

# HISTORIC ENVIRONMENT (WALES) BILL

---

## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes are for the Historic Environment (Wales) Bill, which was introduced into Senedd Cymru on 4 July 2022, as amended at Detailed Committee Consideration on 13 February 2023. They have been prepared by Cadw, the Welsh Government's historic environment service, in order to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.
2. These notes do not provide a comprehensive description of the contents of the Bill. Where a provision of the Bill does not seem to require explanation or comment, none is given.

### SUMMARY AND BACKGROUND

3. The Bill brings together the principal legislation for the conservation of the historic environment in Wales. It is organised into seven Parts:
  - a. Part 1 provides an overview of the Bill.
  - b. Part 2 contains the law relating to monuments of special historic interest, which may range from scatters of prehistoric tools or other archaeological sites to the standing ruins of castles, abbeys or later industrial sites. Amongst other things, Part 2 requires the Welsh Ministers to maintain the schedule of monuments that they consider to be of national importance (numbering over 4,200 at the time of writing these notes) and makes provision for the authorisation and control by the Welsh Ministers of works to scheduled monuments. Part 2 also includes powers for the acquisition and guardianship of monuments of special historic interest by the Welsh Ministers or local authorities, which provides the basis for the management and conservation of many of the monuments in the care of the Welsh Ministers (in practice, Cadw acting on their behalf).
  - c. Part 3 relates to the more than 30,000 listed buildings in Wales dating from the Middle Ages to more recent times. It requires the Welsh Ministers to list buildings that are, in their view, of special architectural or historic interest, and makes provision for the authorisation and control of works affecting listed buildings. Unlike the schedule of monuments, where not all monuments considered to be of national importance have to be on the schedule, every building considered to be of special architectural or historic interest has to be included on the list. The responsibility for the authorisation and control of works affecting listed buildings is shared between planning authorities and the Welsh Ministers, although it is planning authorities who are most heavily involved in administering the system. Part 3 also provides powers for the Welsh Ministers or planning authorities to acquire a building. The Welsh Ministers or a local authority may also undertake urgent works to preserve a building of special architectural or historic interest.

- d. Part 4 deals with conservation areas and provides for their designation as areas of special architectural or historic interest by planning authorities and their periodic review. At the time of writing these notes, there are over 500 conservation areas in Wales. This Part also includes provisions for the control of demolition and for urgent works in conservation areas and for grants relating to the preservation or enhancement of conservation areas.
  - e. Part 5 contains supplementary provisions relating to buildings of special interest and conservation areas. They cover matters such as the exercise of functions by planning authorities, proceedings before the Welsh Ministers and the validity and correction of decisions.
  - f. Part 6 requires the Welsh Ministers to maintain and publish the register of historic parks and gardens in Wales, which at the time of writing these notes includes nearly 400 sites, and the list of historic place names in Wales, which has almost 700,000 entries. Part 6 also requires the Welsh Ministers to maintain a historic environment record for each of the 22 local authorities in Wales, details what a historic environment record must contain and sets out the arrangements that must be made for public access to records, amongst other matters.
  - g. Part 7 makes general provision relating to matters in the Bill, such as service of documents, powers to require information, compensation and definitions and interpretation.
4. The main Acts brought together in this consolidation are:
    - a. The Historic Buildings and Ancient Monuments Act 1953 (c. 49)
    - b. The Ancient Monuments and Archaeological Areas Act 1979 (c. 46)
    - c. The Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)
    - d. The Historic Environment (Wales) Act 2016 (anaw 4).
  5. The consolidation also restates provisions currently found in other Acts relevant to the historic environment to improve accessibility and clarity. These include:
    - a. The Local Government Act 1972 (c. 70)
    - b. The Town and Country Planning Act 1990 (c. 8)
    - c. The Planning and Compulsory Purchase Act 2004 (c. 5).
  6. Consolidation has also provided an opportunity to incorporate relevant provisions from secondary legislation into the Bill where appropriate. This course has generally been taken when the secondary legislation is well established and is not likely to require frequent amendment.
  7. In addition to being supplemented by relevant secondary legislation, the primary legislation is also supplemented by technical planning advice, notably [Planning Policy](#)

[Wales](#) and [Technical Advice Note 24: The Historic Environment](#) (2017) (“TAN 24”). Cadw also publishes a number of non-statutory, best-practice guidance documents relating to the historic environment. Among other things, TAN 24 sets out the selection criteria applied when determining whether to include a monument in the schedule of monuments (Part 2, Chapter 1) and when determining whether a building is of special architectural or historic interest for the purposes of the list of buildings (Part 3, Chapter 1). All of these advice and guidance documents make reference to the [Conservation Principles for the Sustainable Management of the Historic Environment in Wales](#) (“*Conservation Principles*”) published by Cadw, on behalf of the Welsh Ministers, in 2011. Together these documents set out that “conservation” means managing change carefully to protect and preserve what is significant and special about historic assets.

8. A table of the origins of each provision in the Bill, together with a table showing how the enactments repealed and revoked by the Bill are dealt with is given at Annex B. Further information to explain certain changes is set out in Annex C.

## COMMENTARY ON SECTIONS

### Part 1 – Overview

#### Section 1 – Overview

9. The overview in this section includes a statement in subsection (1) about the status of the Bill as part of a code of Welsh law. This statement has been included to improve the accessibility of the law in Wales and is an approach that will be adopted in future consolidation Bills and in any reform Bills that contain a comprehensive statement of the primary legislation on a particular topic.
10. This declaration of status is intended to help persons interested in the law on a particular topic – the historic environment in this instance – find and classify it more easily. The reference to the Bill’s status has been included with a view to subordinate legislation made under the Bill making identical provision. The Welsh Government’s intention is that primary, secondary and tertiary legislation (mostly guidance) will in future be categorised and published as coherent codes of law.
11. Classifying Bills in this way is consistent with recommendations made by the Law Commission in its report *Form and Accessibility of the Law Applicable in Wales* (Law Com No 366). That report acknowledged the importance for the accessibility of the law of maintaining the integrity of the law. Giving a Bill the status of a code is intended to encourage a move away from a situation where the law on a particular topic is spread across a number of separate pieces of primary legislation. Rather, the intention is that future Senedd Bills are enacted and maintained in a way that allows users of the legislation to find as much of the law affecting a particular topic as possible by reading a single Senedd Act or subordinate legislation made under it.
12. Subsection (2) identifies the Acts from or under which provisions of the Bill are derived. The majority of the content of the Bill comes from the Ancient Monuments and Archaeological Areas Act 1979 (c. 46) (“the 1979 Act”) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) (“the 1990 Listed Buildings Act”).

## Part 2 – Monuments of special historic interest

13. There are tens of thousands of known archaeological sites across Wales, and many more yet to be discovered that are buried and hidden from sight. The great majority of the known sites are recorded on the statutory historic environment records for each local authority area, maintained by the Welsh archaeological trusts on behalf of the Welsh Ministers (section 194). The concept of a “monument” is central to the management and protection of this archaeological heritage. Monuments can comprise a wide range of archaeological sites including: scatters of prehistoric artefacts; buried remains; prehistoric funerary and ritual monuments and defensive earthworks; Roman roads, forts and villas; abandoned medieval settlements, abbeys and castles.
14. The term “monument of special historic interest” is now preferred to the previously used “ancient monument” to reflect the fact that many monuments considered to be of public interest date from the more recent past, such as the remains of eighteenth- and nineteenth-century industry or twentieth-century military defences.
15. The Welsh Ministers have a duty to compile and maintain a schedule of monuments that they consider to be of national importance. Not all nationally important monuments or archaeological sites are currently on the schedule and new sites can be found by chance or as the result of systematic archaeological surveys. The complete up-to-date schedule is published on [Cof Cymru – National Historic Assets of Wales](#), the online database of designated historic assets in Wales maintained by Cadw.
16. The legislation relating to monuments and archaeological sites is supported by planning policy and advice and best-practice guidance, notably [TAN 24](#) and [Managing Scheduled Monuments in Wales](#) (2018). These documents explain that, while the Welsh Ministers are responsible for scheduling monuments, in practice the process is managed by Cadw acting on their behalf.
17. As of May 2022, there are 130 monuments in the care of the Welsh Ministers including early Neolithic burial monuments that are over 5,000 years old, many of the great castles and abbeys of medieval Wales and monuments from our more recent industrial past. In practice, these monuments are conserved, maintained and presented to the public by Cadw on behalf of the Welsh Ministers. Of these 130 monuments, 97 are currently in guardianship. This is a voluntary arrangement whereby the guardian (in this case the Welsh Ministers) agrees to accept responsibility for the management of the monument and acquires certain rights over the property but does not take on its ownership.
18. The concepts of “scheduled monument” and “guardianship” date from the first legislation relating to the historic environment to be passed in Great Britain and Ireland, the Ancient Monuments Protection Act 1882 (c. 73). Three prehistoric monuments in Wales were included in the very first schedule in 1882. As of May 2022, there were 4,225 scheduled monuments in Wales. The first monument in Wales to be taken into guardianship was the Neolithic burial monument at Pentre Ifan in north Pembrokeshire in 1884, and the most recent was the medieval castle at Caergwrle in Flintshire in 2020.

## **Chapter 1 – Key terms**

19. The concept of a “monument” is central to the legislation for the designation, management and protection of the archaeological heritage of Wales. Chapter 1 therefore provides fundamental definitions relating to monuments at the beginning of the Part.

## **Section 2 – Meaning of “monument” and “site of monument”**

20. The five categories defined in section 2(1)(a) to (e) will accommodate a wide range of “monuments” in both the terrestrial and marine historic environments.
21. In paragraphs (a) and (b), “work” refers to anything constructed by or as a result of human activity. This would include prehistoric and later earthworks, such as the early medieval Offa’s Dyke.
22. Paragraph (e) provides that the site of any thing or group of things that evidences previous human activity may be considered a monument (as long as it is not already captured in paragraph (b), (c) or (d)). This could include, for example, sites without buildings or works where scatters of artefacts – perhaps prehistoric flint tools or, from more recent times, rejects from pottery kilns or other industrial processes – offer archaeological evidence of past human activity.
23. Subsection (3) removes from consideration as a monument any religious building that is currently used for religious purposes. While a place of worship being used for services could not be deemed a monument, a derelict or ruined place of worship could.
24. Subsection (3) would not prevent artefacts that have been brought into a place of worship for protection and display from being classed as monuments if they fall within the definition in subsection (1). These artefacts could be crosses, inscribed stones and other similar artefacts. Even if an artefact of this kind is fixed to a floor or wall of a church, it may be recognised as a monument if it could be removed with minimal disruption to the building.
25. Subsection (5) explains that the “site of a monument” includes not only the land in, on or under which the monument is situated, but any other land that is essential for the monument’s support and preservation. Whether other land is essential for this purpose would be determined either by the Welsh Ministers or a local authority, depending on which of the two parties was exercising a function under this Part in relation to the monument. Such additional land might, for instance, provide access to the monument necessary for ongoing management and conservation.
26. Subsection (8) establishes that in this section “remains” includes any trace or sign of the previous existence of the thing in question. Crop marks discovered during an aerial survey or information obtained from 3-D laser scanning (lidar), ground-penetrating radar or other scientific techniques for the survey of archaeological sites often reveal the existence of otherwise undetected monuments.

## **Chapter 2 – Schedule of monuments of national importance**

27. This Chapter requires the Welsh Ministers to maintain a schedule of monuments of national importance. In practice, this is maintained by Cadw on behalf of the Welsh

Ministers. For the purposes of the transition from the 1979 Act to the Bill, the schedule of monuments currently maintained by the Welsh Ministers under section 1 of the 1979 Act will become the schedule maintained for the purposes of section 3 of the Bill.

28. Inclusion of a monument on the schedule – “scheduling” – renders it subject to the consent regime, enforcement procedures and other provisions contained in later Chapters of this Part of the Bill.
29. This Chapter requires consultation before the Welsh Ministers amend the schedule (section 5) and gives owners and occupiers the opportunity to request a review of the Welsh Ministers’ decision to add a monument or an additional part of a monument to the schedule (sections 9 and 10). It also establishes that, during the consultation period, a monument being considered for scheduling enjoys interim protection as if it were already a scheduled monument. If the Welsh Ministers decide not to amend the schedule, a person with an interest in a monument who suffers loss or damage as a direct result of interim protection may claim compensation from the Welsh Ministers (sections 6 to 8).

### **Section 3 – Duty to maintain and publish schedule of monuments**

30. Section 3(1) provides that the Welsh Ministers must maintain a schedule of monuments and must publish the up-to-date schedule. The Welsh Ministers publish the up-to-date schedule on [Cof Cymru](#).
31. The Welsh Ministers use [selection criteria](#) contained in Annex A of TAN 24 to assess whether a monument is of national importance and determine if scheduling is appropriate. These criteria are not, however, definitive; rather they are indicators that contribute to a wider judgement based on the individual circumstances of a case. For example, scheduling may not be the best approach for a site soon to be lost to coastal erosion; full excavation is likely to be the only way to record the historic asset’s importance. So, although section 3 requires the Welsh Ministers to maintain a schedule of monuments they consider to be of national importance, the effect of subsection (1) is that they are not required to include all monuments that meet the criteria. It’s also worth noting that, where the Welsh Ministers do schedule a monument, they are able to schedule part of the monument, without scheduling the monument in its entirety. And section 2(6)(c) of the Bill provides that references in the Bill to a monument include references to any part of it.
32. Subsection (2) requires every entry in the schedule to include a map maintained by the Welsh Ministers identifying the monument’s area. A definitive map will be included in the entry provided when the Welsh Ministers fulfil the notification requirements in section 4(3). The entry for every monument on [Cof Cymru](#) also provides access to a printable map.
33. Subsection (3) provides that, in addition to scheduling additional monuments under subsection (1), the Welsh Ministers may remove a monument from the schedule – “descheduling” – or amend an existing entry. The latter could involve, for example, increasing or decreasing the scheduled area of a monument. The Welsh Ministers may also make any other changes that may be needed to an entry in the schedule. For example, if archaeological or historical investigations were to provide new information about a monument, the entry in the schedule could be amended to reflect

this. Descheduling will only be considered in exceptional cases. Reasons for descheduling might include severe loss to a monument or its site, perhaps through coastal erosion.

34. Subsection (5) establishes that an entry in the schedule recording the inclusion of a monument is a local land charge. A [local land charge](#) will alert a purchaser to the restrictions imposed on the use of the land by the scheduling of the monument.

#### **Section 4 – Notification of owner etc. where the schedule is amended**

35. This section sets out how the Welsh Ministers must serve notice after they have amended the schedule by adding a monument, removing a monument or amending the entry for a monument. Notice must be served on the specified recipients as soon as possible after an amendment is made to raise awareness of its implications – owners and occupiers, for instance, need to be alerted that scheduling imposes certain prohibitions on unauthorised works. Unless the amendment removes a monument from the schedule, the notice must specify the date that the Welsh Ministers made the amendment and be accompanied by a copy of the entry or amended entry in the schedule.

#### **Section 5 – Consultation before adding or removing monument to or from the schedule**

#### **Section 6 – Interim protection pending decision on certain amendments relating to the schedule**

36. Section 5 puts in place a formal structure for consultation on the Welsh Ministers' proposals to amend the schedule. It provides that the Welsh Ministers must serve a notice of a proposed amendment on specified recipients and allow those persons at least 28 days to make written representations.
37. The service of a notice of a proposal to amend the schedule by adding a monument or adding anything as part of a monument will trigger interim protection under section 6. In that case, section 5(4)(b) requires the notice to explain the effect of interim protection and specify the date on which interim protection takes effect.
38. From that time, and until interim protection ends in accordance with section 7, this Part of the Act will have effect as if a monument being considered for addition to the schedule were already scheduled or a proposed amendment were already made.
39. Where a monument is subject to interim protection it is an offence to undertake works to it without consent (section 30) or to damage the monument (section 58). This means, for example, that a person carrying out demolition works without consent in relation to a monument under interim protection would commit an offence, unless a relevant defence was available to the person. Interim protection is designed to afford protection to a monument during the consultation period. This may be protection, for instance, from an owner who could otherwise have an incentive to deliberately damage or destroy a historic asset during the consultation period in an effort to undermine the protection that scheduling would otherwise have provided.
40. Subsection (4) of section 6 requires the Welsh Ministers to publish a list of monuments subject to interim protection and provide a copy of the notice served under section 5(2)

to any person who requests one. The list is on the [Cadw website](#) and is also represented as a distinct category on [Cof Cymru](#).

## **Section 7 – When interim protection ends**

### **Schedule 1 – End of interim protection for monuments**

41. Section 7 sets out how and when interim protection comes to an end.
42. If the Welsh Ministers decide to add a monument to the schedule or add a new part to an existing monument in the schedule, interim protection ends at the beginning of the day specified in the notice that the Welsh Ministers are required to give under section 4 (see subsections (1)(a) and (2)(a) of section 7).
43. If, on the other hand, the Welsh Ministers decide not to add a monument to the schedule or add a new part to an existing monument in the schedule, they must serve notice of their decision on every owner and occupier and every local authority in whose area the monument is situated. Interim protection will cease at the beginning of the day specified in that notice (see subsections (1)(b), (2)(b) and (3)).
44. Schedule 1 – which is introduced by this section – applies when interim protection comes to an end as a result of the service of a notice under section 7(1)(b) or (2)(b); it sets out how the end of interim protection affects various actions taken while interim protection was in effect (including enforcement action and criminal liability).

## **Section 8 – Compensation for loss or damage caused by interim protection**

45. If the Welsh Ministers serve notice of the end of interim protection under section 7(1)(b) or (2)(b), indicating that they have decided not to schedule a monument or an additional part of a monument, a person who had an interest in the monument when the interim protection took effect may claim compensation for any loss or damage suffered that is directly attributable to the interim protection. This section sets out how a claim must be made to the Welsh Ministers.
46. Section 202 makes additional provision about claims for compensation, and in particular allows the Welsh Ministers to extend the period for making a claim for compensation in a particular case if they are satisfied that there is good reason for doing so. Any disputes about compensation under this Act will be referred to the [Upper Tribunal](#) under section 203. The [Upper Tribunal \(Lands Chamber\) Rules](#) make provision for the reference of a case to the Tribunal and its handling.

## **Section 9 – Review of decision to add monument to the schedule etc.**

### **Section 10 – Supplementary provision about reviews**

### **Schedule 2 – Decision on review by person appointed by the Welsh Ministers**

### **Schedule 6 – Proceedings under Part 2**

47. If the Welsh Ministers add a monument to the schedule or amend an existing entry in the schedule to include an additional part to an existing scheduled monument, section 9 requires them to afford any owner or occupier of the monument an opportunity to request a review of their scheduling decision.
48. Subsection (2) of section 9 provides that the ground for a review is that the monument (or part, if an extension to an existing entry for a monument has been made) is not of



national importance. This reflects that, under section 3(1), national importance is the basis for the Welsh Ministers' inclusion of a monument in the schedule. Subsection (6) of section 9 provides that the Welsh Ministers may make regulations to specify other grounds for review in the future.

49. Under subsection (3) of section 9, the Welsh Ministers must appoint a person to carry out the review and make a decision on it. Ordinarily, this will be an inspector of [Planning and Environment Decisions Wales](#) (previously Planning Inspectorate Wales). However, subsection (4) provides that the Welsh Ministers may specify descriptions of cases in which they will conduct and decide a review themselves, instead of appointing a person to do so.
50. Section 10 makes provision about the administration of reviews under section 9. This is supplemented by Schedules 2 and 6. Schedule 2 makes provision about the functions of persons appointed by the Welsh Ministers to carry out reviews. It covers various administrative matters, including the appointment of an assessor to assist an appointed person and the delegation of functions by an appointed person to another person. Schedule 6 makes provision permitting appointed persons to issue summonses in connection with local inquiries held for the purposes of this section and gives the Welsh Ministers powers in relation to the recovery or payment of costs incurred in connection with those inquiries or any other proceedings held for the purposes of this section.

### **Chapter 3 – Control of works affecting scheduled monuments**

51. Chapter 3 sets out that particular types of works may only be carried out to scheduled monuments if the works are authorised (section 11). The provisions of this Chapter themselves give authorisation (at section 12 and Schedule 3) for certain descriptions of works. The Chapter (at section 13) also provides that works may be authorised by grant of scheduled monument consent.
52. The bulk of the provisions in the Chapter are about scheduled monument consent: the application process (sections 14 to 16); the grant of consent (sections 17 to 19) and the modification and revocation of consent (section 20 and Schedule 4). The closing sections of the Chapter deal with the compensation that can be claimed in certain circumstances if scheduled monument consent is refused, granted subject to conditions or subsequently modified or revoked (sections 21 to 24).
53. The Welsh Ministers have published guidance, which is kept under review, to support the management of scheduled monuments. The guidance at the time of writing these notes, [Managing Scheduled Monuments in Wales](#) (2018), sets out the general principles to follow when managing and making changes to scheduled monuments. It explains how to apply for scheduled monument consent, including the roles and responsibilities of owners and Cadw.

### **Section 11 – Requirement for works to be authorised**

54. This section provides that a wide range of works affecting a scheduled monument, extending from demolition to repair, may only be carried out with authorisation under this Chapter. In practice, this means that almost any works to a scheduled monument – including those that will benefit the asset, such as repairing masonry, filling in

erosion scars or conducting archaeological investigations – will require authorisation. The authorisation may be either by scheduled monument consent under section 13, or, in certain narrowly defined circumstances, as works falling within a description of a class of works under section 12.

55. Subsection (1) of this section states that a person must not carry out, cause or permit the relevant works to be carried out unless those works are authorised. In addition to prohibiting a person from undertaking works personally or commissioning or employing others to conduct them, this provision stops a person from allowing works to proceed without taking action to prevent them. A landowner cannot, therefore, deliberately turn a blind eye to unauthorised works taking place on a scheduled monument on the landowner's property.
56. If a person carries out, causes or permits any works to a scheduled monument in breach of subsection (1), it constitutes an offence under section 30(1).

## **Section 12 – Authorisation of classes of works**

### **Schedule 3 – Authorisation for classes of works**

57. Section 12(1) authorises works to a scheduled monument if the works fall within a description of a class of works in the table in Schedule 3.
58. Schedule 3 restates, with modifications, classes of consent from the Ancient Monuments (Class Consents) Order 1994, SI 1994/1381. The incorporation of these well-established provisions from secondary legislation brings together the relevant legislation about the authorisation of works. Regulation-making powers in paragraph 1 of Schedule 3, however, give the Welsh Ministers flexibility to amend the Schedule.
59. Schedule 3 sets out eight classes of works that are authorised by section 12(1). These works are not normally damaging and therefore can proceed without the need for the detailed consideration of the scheduled monument consent process.
60. Class 1 comprises agricultural, horticultural and forestry works of the same kind as works carried out lawfully on the same spot within the previous six years. By permitting the same activity to occur in the same place, any further disruption to the scheduled monument from the ongoing works will be minimised. For example, where a scheduled site has been lawfully ploughed within the previous six years, ploughing may continue provided it goes no deeper than it did during that six-year period. The works specified in paragraphs (a) to (f) of the Class 1 entry have all been excluded from authorisation because of the threats that they would pose to undisturbed archaeology or the standing remains of a scheduled monument.
61. If agricultural, horticultural or forestry works have not taken place on a scheduled monument for more than six years, the possibility of authorisation under section 12(1) lapses and it cannot be revived. Thereafter such works would require scheduled monument consent under section 13.
62. Class 5 has been included to provide authorisation should the Historic Buildings and Monuments Commission for England (Historic England) be undertaking works on

Offa's Dyke or some other cross-border scheduled monument and inadvertently or by prior agreement carry the works across the border into Wales.

63. Class 6 permits works of archaeological evaluation to be carried out by or on behalf of someone who has applied for scheduled monument consent. Such works will be limited, for instance test pits or trial trenches, and be carried out to assess the archaeological resource and potential of the monument in order to inform the determination of the scheduled monument consent. These works must be undertaken in accordance with a written specification approved by Cadw.

### **Section 13 – Authorisation of works by scheduled monument consent**

64. Section 13 provides for the authorisation of works by the grant of scheduled monument consent.
65. Subsection (1) sets out that works are authorised if written consent has been granted by the Welsh Ministers and the works are carried out in accordance with the terms of the consent, which may include conditions. Sections 18 and 19 make further provision about conditions attached to scheduled monument consents. In practice, Cadw, acting on behalf of the Welsh Ministers, administers the scheduled monument consent process and grants consent.
66. Under subsection (2), the Welsh Ministers may grant written consent for unauthorised works already carried out to a scheduled monument or land in, on or under which there is such a monument. In such cases, the works are only authorised from the grant of the consent. Any potential criminal liability arising from the unauthorised works prior to the consent remains and could be the basis for subsequent proceedings. In practice, retrospective consent is rarely granted and only in cases where the unauthorised works are beneficial to the monument.

### **Section 14 – Applying for scheduled monument consent**

67. Section 14 puts in place the fundamental structure for the scheduled monument consent application process.
68. It prescribes how an application must be made to the Welsh Ministers, sets out its required content and provides the Welsh Ministers with powers to make regulations on further aspects of the application procedure (subsections (1) to (3)).
69. Subsections (4) and (5) allow for a simplified application procedure for scheduled monument consent where works are of a minor nature. Such works might include: localised erosion repairs, replacing short stretches of fencing, re-bedding loose stones, or installing plaques or signs. In cases where proposed minor works will have a neutral or positive impact on a monument, Cadw may agree the works during a site visit and dispense with the need for a formal application. In all cases, even where a written application is not required, works will only be authorised on receipt of written scheduled monument consent, which is granted under section 13(1).

### **Section 15 – Declarations of ownership in respect of monument**

70. This section enables the Welsh Ministers to refuse to consider an application for scheduled monument consent if it is not accompanied by a declaration of ownership

signed by or on behalf of the applicant. The declaration relates to the ownership of the monument at the beginning of the 21-day period that ends on the day of the application. It must confirm that the applicant either was then the sole owner of the monument, or has given notice to all other owners of the monument or taken all reasonable steps to do so (subsection (1)). In practice, the applicant can be an owner, occupier, agent or another person.

## **Section 17 – Procedure for determining applications and effect of grant of consent Schedule 6 – Proceedings under Part 2**

71. Section 17, with Schedule 6, regulates the procedure for determining applications and granting scheduled monument consent.
72. Subsection (2) provides that, before determining an application for scheduled monument consent, the Welsh Ministers may:
  - a. cause a local inquiry to be held;
  - b. appoint a person to hold a hearing; or
  - c. appoint a person to receive written representations; or
  - d. employ any combination of these proceedings.
73. At the time of writing these notes, the Welsh Ministers would appoint an inspector from [Planning and Environment Decisions Wales](#) to conduct such proceedings.
74. In practice, various informal actions are taken before the Welsh Ministers might exercise their power under subsection (2). In the majority of cases, Cadw will provide pre-application advice to the prospective applicant. This might be of particular importance where there is likely to be a requirement to engage archaeological expertise. Following receipt of an application, normally Cadw (acting on behalf of the Welsh Ministers) will issue an interim decision letter, which includes details of any proposed conditions or the reasons for any proposed refusal. This provides the applicant with the opportunity to make representations, which may include providing additional information relevant to the application. A Cadw officer will receive and consider these representations. It is at that point, if there are unresolved issues, that the Welsh Ministers may exercise their power under subsection (2).
75. Subsection (5) establishes that, unless its terms make some other contrary provision, a scheduled monument consent has effect for the benefit of the monument and all persons for the time being with an interest in it. If, for example, the ownership of a scheduled monument were to change while consented works were underway, the new owner would not need to apply for a new scheduled monument consent in order to continue the works (provided there were no provision to the contrary in the terms of the consent).
76. Schedule 6 makes provision for summonses to require evidence or attendance at local inquiries and about the recovery or payment of costs incurred during inquiries or hearings.

## **Section 18 – Power to grant consent subject to conditions**

### **Section 19 – Condition about period within which works must start**

77. Section 18 allows scheduled monument consents to be granted subject to conditions. The section provides two examples of conditions, but these are not exhaustive. Conditions may relate directly to the way in which works are carried out or they may impose other requirements, such as a programme of archaeological recording and reporting or the publication of results after the completion of archaeological excavations and any necessary post-excavation analysis.
78. Section 19(1) requires a scheduled monument consent to be granted subject to a condition that the works must start before the end of a period specified in the condition. If the consented works do not start within that period, the consent will lapse. Where works are started within the specified period, a consent will have effect as provided by section 17(5).
79. Subsection (2) sets out that if a consent is granted without a condition specifying a period within which works must begin, the works must begin within five years of the day on which consent was granted.
80. Subsection (3) provides that this section does not apply in relation to three classes of scheduled monument consents:
- a. Scheduled monument consents that cease to have effect at the end of a specified period (irrespective of whether works have started) – such consents often relate to short-term events or activities at a monument for which a very specific period may be defined. The period of a consent could also be specified, for instance, in order to limit the impact of works on protected species.
  - b. Scheduled monument consents granted under section 13(2) for works carried out before consent was granted – since the consent authorises works that have already been completed, a requirement for works to begin is unnecessary.
  - c. Scheduled monument consents granted by a scheduled monument partnership agreement – scheduled monument partnership agreements may run for ten to fifteen years and the consents that they grant last for the lifetime of the agreements, irrespective of when works begin.

## **Section 20 – Modification and revocation of consent**

### **Schedule 4 – Procedure for orders modifying or revoking scheduled monument consent**

### **Schedule 6 – Proceedings under Part 2**

81. Section 20 provides the Welsh Ministers with powers to revoke or modify a scheduled monument consent by order. Schedule 4 sets out the procedure that must be followed in making these orders, which includes provision for holding local inquiries or hearings in certain circumstances. Schedule 6 makes provision for summonses to require evidence or attendance at local inquiries and about the recovery or payment of costs incurred during inquiries or hearings.

82. Subsection (2) sets out that an order under this section may not be made to modify or revoke a scheduled monument consent granted either for the retention of works under section 13(2) or by a scheduled monument partnership agreement. Scheduled monument partnership agreements incorporate separate mechanisms (section 27 and Schedule 5) that permit the Welsh Ministers to terminate all or part of an agreement, including consents, by order.

**Section 21 – Compensation for refusal of scheduled monument consent or grant of consent subject to conditions**

83. Section 21 makes provision, subject to certain conditions, for the payment of compensation where a person with an interest in a monument suffers loss or damage if scheduled monument consent is refused or granted subject to conditions.
84. Subsection (7) identifies two matters to be considered in the calculation of the amount of loss or damage consisting of depreciation of the value of an interest in land (meaning the extent to which the value of the interest is effectively diminished by the limitations on works imposed by the refusal of scheduled monument consent or its grant subject to conditions).
- a. It is to be assumed that any subsequent application for scheduled monument consent for works of a similar description would be determined by the Welsh Ministers in the same way.
  - b. In the case of a refusal of consent, if the Welsh Ministers, on refusing that consent, undertook to grant consent for other works affecting the monument if an application were made, that undertaking should be taken into account. An undertaking might allow for some other viable use of the land, thereby reducing the depreciation for the purposes of calculating the amount of compensation payable.

**Section 22 – Recovery of compensation paid under section 21 on subsequent grant of consent**

85. Section 22 gives the Welsh Ministers powers to recover compensation paid under section 21 if they subsequently grant consent for, or modify or remove conditions that affected, any or all of the works in respect of which compensation was paid.
86. This section only applies if the Welsh Ministers have served notice of the payment of compensation on the council of each county or county borough in which the monument is located (subsection (2)). The required details of the notice are set out in subsection (5) and subsection (6) makes the notice a local land charge.
87. Subsection (3) provides that when granting or modifying a scheduled monument consent in a case to which this section applies, the Welsh Ministers may specify that works for which compensation had been paid cannot proceed until the “recoverable amount” (defined in section 23) has been repaid or satisfactorily secured.

### **Section 23 – Determination of amount recoverable under section 22**

88. Section 23(1) requires the Welsh Ministers to specify the “recoverable amount” of the compensation paid under section 21 when giving notice of their decision to grant or modify scheduled monument consent in a case under section 22.
89. If a person with an interest in the monument disputes the amount specified by the Welsh Ministers, that person may seek a determination of the amount from the [Upper Tribunal](#). The [Upper Tribunal \(Lands Chamber\) Rules](#) make provision for the reference of a case to the Tribunal and its handling. If a dispute is referred to the Upper Tribunal, the recoverable amount will be the amount that it determines (subsections (2) and (3)).

### **Section 24 – Compensation where works affecting a scheduled monument cease to be authorised**

90. This section provides for compensation to be paid if works previously authorised cease to be so authorised. Subsection (1) provides that this may happen if:
- a. an authorisation under section 12 ceases to apply when a class of works specified in Schedule 3 is amended or the Welsh Ministers direct that section 12(1) does not apply to a scheduled monument;
  - b. scheduled monument consent is modified or revoked by an order made under section 20; or
  - c. authorisation is cancelled following the service of a notice of proposed modification or revocation of scheduled monument consent as set out in paragraph 2 of Schedule 4.
91. Any person with an interest in the monument is entitled, on making a claim for compensation to the Welsh Ministers, to be paid compensation by them for any expenditure incurred in carrying out works which become abortive by the cessation of authorisation or any other loss or damage directly attributable to that cessation. For the purposes of this section, expenditure incurred on carrying out works includes expenditure on preparatory matters, which might include, but are not limited to, site surveys, the preparation of plans or a heritage impact statement or the production of detailed specifications of materials and methodologies (subsections (2) and (4)).
92. Sections 202, 203 and 204 make additional provisions about claims for compensation under this Act.

### **Chapter 4 – Scheduled monument partnership agreements**

93. This Chapter provides for the making of scheduled monument partnership agreements. These are voluntary agreements between the Welsh Ministers, owners of scheduled monuments and other parties for the long-term management of one or more scheduled monuments. A scheduled monument partnership agreement may grant scheduled monument consent for an agreed programme of works to be carried out during the lifetime of the agreement. Provision is made for comparable listed building partnership agreements in Part 3, Chapter 3.

94. The Welsh Ministers have published guidance, which is kept under review, to support the preparation of heritage partnership agreements including those for scheduled monuments. The guidance at the time of writing these notes, [Heritage Partnership Agreements in Wales](#) (2021), sets out the elements required in an agreement and identifies best practice to promote consistency in the implementation of works as well as regular monitoring and review. The guidance includes a template to provide a framework for new agreements.

### **Section 25 – Scheduled monument partnership agreements**

95. Section 25(1) specifies the essential parties for any scheduled monument partnership agreement:
- a. the Welsh Ministers – as the relevant consenting authority – and
  - b. any owner of a scheduled monument to which the agreement relates, or
  - c. any owner of any land adjoining or in the vicinity of such a monument, referred to as “associated land”.
96. Other persons with an interest in a monument, as identified in subsection (2), may also join as parties to the agreement.
97. A scheduled monument partnership agreement may grant scheduled monument consent under section 13(1) for an agreed programme of works specified in the agreement. The consent may authorise works for the purpose of removing or repairing a monument or making any alterations or additions to it (subsections (3) and (7)). This will permit maintenance, conservation or management works that will be beneficial for the monument or monuments covered by the agreement.
98. A scheduled monument partnership agreement cannot grant consent for works resulting in the demolition or destruction of, or any damage to, a monument or for any flooding or tipping operations on land in, on or under which a scheduled monument is situated (section 11(2)(a) and (c)). Any of these excluded works would require separate scheduled monument consent obtained through the routine application process (sections 14 to 19).
99. A scheduled monument consent contained in a scheduled monument partnership agreement is not subject to the provisions in section 19 about when works must start and will remain valid for the lifetime of the agreement, which may last for 10 to 15 years.
100. Subsection (5)(a) permits the parties to an agreement to specify works to which section 11 would or would not apply, and which, therefore, would or would not require authorisation. This might allow the parties to identify certain minor works – for example, an agreed programme of vegetation clearance and management – that could proceed without authorisation. They could also specify more substantial works that could not be accommodated within the scheduled monument partnership agreement and would therefore require the full consideration of the separate scheduled monument consent procedure.



## **Section 26 – Further provision about scheduled monument partnership agreements**

101. This section prescribes required components for a scheduled monument partnership agreement (subsections (1) and (2)), requires the Welsh Ministers to make provision, by regulations, for the consultation and publicity that must take place before an agreement is made or varied (subsections (5) and (6)) and limits the effect of an agreement and of any consent granted (subsection (7)).
102. Subsection (2)(e) requires a scheduled monument partnership agreement to make provision for its variation. Since an agreement will last for years, it is likely that adjustments will be required from time to time. The parties, therefore, must incorporate in the agreement agreed working arrangements for approving necessary variations. In some instances, variations will be subject to the consultation and publicity requirements prescribed by regulations under subsection (5).
103. The provision for termination of the agreement required by subsection (2)(f) calls for a mechanism for a negotiated termination should the agreement no longer serve the mutual interests of the parties or it has otherwise broken down. This is distinct from any termination of an agreement or a provision of an agreement by order of the Welsh Ministers under section 27.
104. Subsection (7) provides that a scheduled monument partnership agreement will only be binding on the parties to that agreement. Future owners of the scheduled monument will not be bound by an agreement, nor will they be able to benefit from any scheduled monument consent granted by the agreement. Consequently, unless all the parties agree to continue an agreement with a new owner, a scheduled monument partnership agreement will cease to have effect with a change of ownership.

## **Section 27 – Termination of agreement or provision of agreement**

### **Schedule 5 – Termination by order of scheduled monument partnership agreement**

#### **Schedule 6 – Proceedings under Part 2**

105. Section 27 allows the Welsh Ministers to terminate a scheduled monument partnership agreement or any provision of such an agreement by order. It is likely that this will only happen in exceptional cases, for instance, if unauthorised works take place and relations between the parties break down to such an extent that negotiated termination becomes impossible. Alternatively, significant archaeological discoveries might require the cessation of certain works against the wishes of an owner and prompt the Welsh Ministers to terminate a portion of an agreement by order.
106. Section 27(4) provides that Schedule 5 and paragraph 1 of Schedule 6 make provision in connection with making orders under this section.
107. Schedule 5 puts in place the procedure for making an order to terminate a scheduled monument partnership agreement or a provision of such an agreement. This procedure is very similar to the procedure for making an order to modify or revoke scheduled monument consent in Schedule 4.

### **Section 28 – Compensation in relation to termination**

108. Under section 28, any party to a scheduled monument partnership agreement with an interest in a monument or associated land who suffers loss or damage as a direct result of the cessation of works caused by the service of a notice of proposed termination or the making of a termination order is, on making a claim for compensation to the Welsh Ministers, entitled to be paid compensation from the Welsh Ministers.
109. Claims may be made for expenditure incurred on works rendered abortive by the notice or order and on plans and other matters preparatory to the works (subsections (2)(a) and (3)). Such preparatory matters could include the development of the detailed plans needed for a scheduled monument partnership agreement. Claims may also be made for any other loss or damage suffered by the person that is directly attributable to the notice or order.
110. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 46 above).

### **Chapter 5 – Enforcement of controls relating to scheduled monuments**

111. This Chapter sets out that it is an offence to carry out, or cause or permit to be carried out, unauthorised works in relation to a scheduled monument (section 30). It provides the Welsh Ministers with the powers to issue a temporary stop notice to put an immediate halt to works that either breach section 11 or a condition of a consent (sections 31 to 34). It also provides for an enforcement notice, which may be used to specify steps to be taken to remedy the effects of unauthorised works and provision is made for the service and taking effect of a notice as well as for an appeal against it (sections 35 to 41). The Chapter also provides for injunctions to restrain actual or expected breaches of section 11 or failures to comply with scheduled monument consent conditions (section 42).

### **Section 30 – Offence of carrying out unauthorised works or breaching condition of consent**

112. Section 30(1) makes it an offence for a person to carry out unauthorised works to a scheduled monument, or to cause or permit such works to be carried out. Authorisation may be provided by section 12, which authorises specific classes of works, or under section 13, which provides for the grant of scheduled monument consent by the Welsh Ministers.
113. If scheduled monument consent has been granted, subsection (2)(b) provides that it is an offence for a person to fail to comply with a condition of a consent in carrying out works, or in causing or permitting the works to be carried out. This will apply to all conditions attached to a scheduled monument consent, including, for instance, those for publication of the results after the completion of an archaeological investigation.
114. In subsections (1) and (2), a “person” may be anyone who undertakes works to a monument, be that an owner or occupier of a monument, a contractor or sub-contractor or other third party.
115. If works are undertaken without authorisation or in breach of a condition, an offence is committed whether a person:

- a. carries out those works personally,
  - b. instructs or employs someone else to undertake them, or
  - c. permits such works.
116. The last point means that a person cannot turn a blind eye to what happens on a scheduled monument and fail to take reasonable steps to prevent unauthorised works.
117. Subsection (4) provides a person with a defence in proceedings for a subsection (1) offence relating to a monument under interim protection where the person can prove that the person did not know and could not reasonably have been expected to know that the monument was subject to interim protection. Where the defence is raised by a person on whom a notice should have been served under section 5(2), it is for the prosecution to prove that the notice was served on the person.
118. Information on monuments under interim protection should be readily available. Section 5(2) to (4) requires the Welsh Ministers to serve notice if they propose to add a monument to the schedule or add to the area of an existing scheduled monument. The notice, which must be served on every owner and occupier of the monument amongst other persons, has to specify the date upon which interim protection begins and explain its effect. A list of monuments under interim protection is published on the [Cadw website](#) in accordance with section 6(4) and [Cof Cymru](#) also identifies monuments under interim protection.
119. Subsection (7) provides a similar defence in proceedings for an offence under this section for works that have resulted in the demolition or destruction of, or any damage to, a scheduled monument or flooding or tipping operations on land in, on or under which a scheduled monument is located. A person will have a defence if the person can prove that, prior to the works, the person took all reasonable steps to determine if a scheduled monument was in the area to be affected by the works and that the person did not know and had no reason to believe that the monument was in the area, or, as the case may be, that it was a scheduled monument.
120. Such reasonable steps might include checking [Cof Cymru](#), where accurate and up-to-date information on the location and extent of all scheduled monuments in Wales is available. Other sites – for example, [Archwilio](#), the online portal of the Welsh historic environment records or [DataMapWales](#) – also incorporate information on scheduled monuments derived from Cof Cymru.
121. A long-term owner or occupier of a scheduled monument is likely to be aware of its status and extent because Cadw field monument wardens visit all scheduled monuments in Wales on a rolling programme to record their condition. New owners should discover their acquisition of a scheduled monument in the conveyancing title search, since an entry in the schedule is a local land charge under section 3(5).
122. Subsection (8) provides a person with a defence in proceedings for an offence under this section if works were undertaken to address urgent health and safety needs. However, the defence is only available where the works are limited to the minimum

measures immediately necessary to secure health and safety and notice was given to the Welsh Ministers with detailed justification for the works as soon as reasonably practicable.

123. Subsection (9) provides that the penalty for an offence under this section is an unlimited fine, whether on summary conviction or conviction by indictment.

**Section 31 – Power of Welsh Ministers to issue temporary stop notice**

**Section 32 – Duration etc. of temporary stop notice**

**Section 33 – Offence of breaching temporary stop notice**

124. Section 31 gives the Welsh Ministers powers to issue a temporary stop notice to put an immediate halt to any or all works to a scheduled monument that they consider to be unauthorised or to breach a condition of a scheduled monument consent. The Welsh Ministers may only do so if they consider that the works ought to be stopped immediately, having regard to the effect of the works on the monument as one of national importance.

125. Subsections (2) to (5) specify the required contents of a temporary stop notice and make provision for service of a notice. Subsections (3) and (4) require the Welsh Ministers to display a copy of the notice on the monument or land, or, where it is not reasonably practicable to display a copy of the notice on the monument or land or doing so could damage the monument, in a prominent location nearby. Subsection (5) then provides that a copy of the notice may be served on the persons identified in that subsection – including a person whom the Welsh Ministers consider is carrying out the works or causing or permitting them to be carried out.

126. While the Welsh Ministers will endeavour to serve individual copies on interested parties under subsection (5), public display of a copy of the temporary stop notice provides a mechanism for alerting all involved in the specified works affecting the scheduled monument that those works must be suspended immediately.

127. Section 66 makes provision for an authorised person to enter land to display a temporary stop notice and for related purposes.

128. Section 32 sets out that a temporary stop notice takes effect when a copy of it is first displayed in accordance with section 31, will remain in effect for 28 days (unless a shorter period is specified) and may be withdrawn by the Welsh Ministers before its expiry.

129. Once a temporary stop notice is in effect, section 33 makes it an offence for a person to undertake works prohibited by the notice or cause or permit another person to do so.

**Section 34 – Compensation for loss or damage caused by temporary stop notice**

130. Section 34 provides that any person with an interest in a monument or land to which a temporary stop notice relates may be entitled to compensation from the Welsh Ministers for loss or damage directly attributable to the effect of a temporary stop notice.

131. Subsection (1) provides that compensation is only payable where:

- a. the works specified in the notice did not breach section 11 at the time the notice took effect (that is, they were either authorised or did not require authorisation); or
  - b. the works specified in the notice did not breach a condition of a scheduled monument consent at the time the notice took effect; or
  - c. the Welsh Ministers withdrew the temporary stop notice after it took effect. However, subsection (2) further provides that no compensation is payable if the Welsh Ministers withdraw a notice after granting a schedule monument consent that will allow the works specified in the notice to proceed.
132. Subsection (5) also excludes any claim for loss or damage that might have been avoided if the claimant had provided information required by the Welsh Ministers regarding interests in the land under section 197 or had otherwise cooperated with the Welsh Ministers.
133. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 46 above).

#### **Section 35 – Power of Welsh Ministers to issue enforcement notice**

134. Section 35 gives the Welsh Ministers powers to issue an enforcement notice to stop specified unauthorised works to a scheduled monument and/or require steps to be taken to:
- a. restore the monument or land to its condition before the unauthorised works took place;  
The steps required would be likely to include appropriate archaeological investigation of the damaged area to recover and record historical evidence before further specified operations proceed.
  - b. alleviate the effect of the works, if restoration is not reasonably practicable or desirable;  
In the event of serious or extensive damage to a scheduled monument, restoration might be unviable and could, in fact, cause further harm to surviving archaeological evidence. In such a case, the Welsh Ministers would specify steps to stabilise the monument in its altered state to protect it and the information it contains for the future.
  - c. put the monument or land in the condition it would have been in if the terms and conditions of a granted scheduled monument consent had been fulfilled.
135. Under subsection (5) the Welsh Ministers must maintain an up-to-date list of scheduled monument enforcement notices that are in effect. This list is available on the [Cadw website](#).

### **Section 36 – Service and taking effect of enforcement notice**

136. Section 36 sets out the requirements for service of a copy of an enforcement notice and when a notice takes effect.
137. Subsection (2) provides that an enforcement notice will take effect at the beginning of the day specified in the notice. Should an appeal be made to a magistrates' court against the notice under section 39, section 39(4) provides that the notice will not take effect until the appeal is determined or withdrawn.
138. Subsection (3) allows an enforcement notice to set different periods for stopping different works or taking different steps. Such flexibility enables an enforcement notice to make appropriate provision for the conservation requirements of a monument. For instance, a phased series of steps might be set out to achieve the satisfactory restoration or stabilisation of a monument damaged by unauthorised works.
139. Subsection (4) requires a copy of the notice to be served on every owner and occupier of the monument or land to which it relates, to any lessee (if appropriate) and to any other person who has an interest in the monument or land which the Welsh Ministers consider to be materially affected by the notice.
140. Subsection (5) requires a copy of the notice to be served before the end of 28 days after the day on which it was issued, and at least 28 days before the date specified in the notice as the date on which it is to take effect. "Issued" here means when the enforcement notice was agreed by a delegated officer of the Welsh Ministers.
141. Section 66 makes provision for an authorised person to enter land to serve an enforcement notice and for related purposes.

### **Section 38 – Effect of granting scheduled monument consent on enforcement notice**

142. Section 38 provides for a situation where, after an enforcement notice is issued, scheduled monument consent is granted to authorise:
- a. works to which the notice relates that had been carried out in breach of section 11, or
  - b. works that had breached a condition of a previous scheduled monument consent.
143. Subsection (2) provides that steps specified in the notice that are inconsistent with the new consent cease to have effect. However, subsection (3) sets out that a person remains liable for any earlier offence arising from a failure to comply with an enforcement notice, even though part or all of the notice subsequently ceases to have effect under this section. Failing to comply with an enforcement notice (section 41) is a separate offence from carrying out unauthorised works (section 30) and proceedings for the offences may be pursued independently.

**Section 39 – Appeal against enforcement notice**

144. Section 39 permits anyone upon whom a copy of an enforcement notice has been served or with an interest in the monument or land to which the notice relates to appeal against the notice to a magistrates' court.
145. Subsection (2) lists the grounds for an appeal and subsection (3) requires that it is made before the date specified in the notice as the date on which the notice takes effect. Subsection (2)(b) provides for an appeal on the basis that the works did not constitute such a breach, perhaps because they occurred outside the area of the scheduled monument or they did, in fact, comply with an authorisation provided by section 12 or 13 and any attached conditions.
146. Subsection (6) provides that the court may uphold a notice in spite of a failure to serve the notice on a person who was required to be served, if it is satisfied that the person has not been significantly disadvantaged by the failure.

**Section 40 – Powers to enter land and take steps required by enforcement notice**

**Section 41 – Offence of failing to comply with enforcement notice**

147. Section 40 provides for a situation in which a required step has not been taken within the time prescribed in an enforcement notice. In that case, a person authorised in writing by the Welsh Ministers may enter the land, take that step and recover the costs incurred from any owner or lessee of the monument or land. This allows necessary conservation works to secure the future of the scheduled monument that are detailed in the enforcement notice to take place in a timely fashion. Otherwise, a damaged monument might be left to deteriorate, leading to further damage to the monument and the loss of any archaeological information that it contains.
148. If the power of entry in subsection (1) is to be exercised on occupied land, section 69(2)(a) requires at least 14 days' notice to be given to every occupier.
149. Should an occupier prevent an owner from undertaking works required by an enforcement notice, subsection (3) enables a magistrates' court, on application from the owner, to issue a warrant authorising the owner to enter the land and carry out the work. This provides important legal recourse for an owner since section 41(1) places any liability for an offence for a failure to comply with an enforcement notice on an owner of the scheduled monument or land. An owner may also have a defence under section 41(3) if, in spite of all reasonable efforts to take steps set out in an enforcement notice, an occupier obstructs their execution.
150. Section 70 allows any person with an interest in land to make a claim for compensation for any damage to land or other property caused by the exercise of powers under this section.
151. Section 41 establishes that if, after the end of the period prescribed in an enforcement notice, works specified in the notice have not stopped or a required step has not been taken, an owner of the scheduled monument or land to which the notice relates will be guilty of an offence.

## **Section 42 – Injunction to restrain unauthorised works or failure to comply with condition of consent**

152. Section 42 allows the Welsh Ministers to apply to the High Court or the county court for an injunction to restrain actual or expected breaches of section 11 (requirement for works to be authorised) or actual or expected failures to comply with a condition of a scheduled monument consent.

## **Chapter 6 – Acquisition, guardianship and public access**

153. This Chapter provides powers for the Welsh Ministers and local authorities to bring monuments of special historic interest into their care.
154. Monuments may be taken into care through acquisition. The Chapter provides that the Welsh Ministers may acquire monuments of special historic interest either by compulsory acquisition or by agreement or gift (sections 43 and 44), and that local authorities may acquire monuments by agreement or gift (section 44).
155. Monuments may also be taken into care through guardianship; the Chapter sets out arrangements that allow a person with a qualifying legal interest in a monument of special historic interest to appoint either the Welsh Ministers or a local authority as guardian of the monument (sections 45 to 48). Under these voluntary arrangements, the guardian agrees to accept responsibility for the management of the monument and acquires certain rights over the property.
156. Further sections of this Chapter relate to land in the vicinity of a monument in the guardianship of the Welsh Ministers or local authorities (sections 49 and 50), management agreements relating to monuments of special historic interest (section 51) and the arrangements for public access to monuments under the control of the Welsh Ministers or local authorities (sections 55 to 57).

## **Section 43 – Compulsory acquisition of monuments of special historic interest**

157. Section 43 allows the Welsh Ministers to acquire a monument of special historic interest by compulsory acquisition for the purpose of its preservation, whether the monument is included in the schedule of monuments under section 3 or not. “Monument of special historic interest” is defined in section 75(6) (see paragraph 244 below).
158. Subsection (2) provides that the Acquisition of Land Act 1981 (c. 67) (“the 1981 Act”) applies to a compulsory acquisition under this section. One of the effects is that compensation is payable on the acquisition. Subsections (3) and (4) further provide that when assessing compensation for the acquisition of a monument that is scheduled at the time of the acquisition, it is to be assumed that scheduled monument consent would not be granted for any work which would or might result in the demolition, destruction or removal of the monument or any part of it. The effect is that the compensation payable may be less than would otherwise be the case.
159. None of the monuments in the care of the Welsh Ministers at the time of writing these notes have been acquired by compulsory acquisition. However, the Welsh Ministers might consider compulsory acquisition of a monument of special historic interest in exceptional circumstances, but only if other methods of acquisition (through



agreement or gift) or guardianship had not proved possible and no other options were available for its preservation. The Welsh Government's [Compulsory Purchase Order \(CPO\) Manual](#) (2021), which is kept under review, provides guidance on compulsory acquisition.

#### **Section 44 – Acquisition by agreement or gift of monuments of special historic interest**

160. Section 44 provides the Welsh Ministers and local authorities with the power to acquire, by agreement or gift, a monument of special historic interest. In the case of a local authority the power to acquire a monument by agreement is limited to monuments in, or in the vicinity of, its area (subsection (2)). In Wales, a number of monuments have been acquired by the Welsh Ministers through agreement or gift including Neath Abbey and Gatehouse, Dolforwyn Castle and Blaenavon Ironworks. Several local authorities have similarly acquired monuments either through gift, such as Cardiff Castle (Cardiff City Council), or purchase agreement, such as Caldicot Castle (Monmouthshire County Council).

#### **Section 45 – Power to place monument of special historic interest under guardianship**

161. Section 45 enables a person with a particular type of legal interest in a monument of special historic interest to place it into the guardianship of the Welsh Ministers or a local authority (where the monument is in, or in the vicinity of, the local authority's area). The types of legal interest required are set out in subsection (5). In practice, this means that monuments are usually placed into guardianship by a freeholder or a person holding a long-term lease. The transaction is undertaken through the execution of a "guardianship deed".

162. Guardianship transfers responsibility for the maintenance and conservation of the monument, and wide-ranging control of the management of the monument, to the guardian. See section 47.

163. The Welsh Ministers are at the time of writing these notes the guardians for 97 monuments, including many of the most outstanding prehistoric and medieval monuments in Wales.

#### **Section 46 – Supplementary provision about guardianship deeds**

164. Section 46(1) establishes that a guardianship deed is a local land charge. The title to the property will therefore alert any purchaser of the existence of the deed, and the restrictions imposed by the terms of the deed.

165. Subsection (2) provides for a situation where person A derives title to a monument of special historic interest from person B who has executed a guardianship deed. Person A will be bound by the guardianship deed unless person A's title to the monument was derived from a disposal made by person B before the execution of the guardianship deed.

166. Subsection (3) provides that the Welsh Ministers or a local authority may not become guardians of a monument occupied as a dwelling, apart from where the occupier is the caretaker or a member of the caretaker's family.

### **Section 47 – General functions of guardians**

167. Section 47 requires the guardian of a monument to maintain it. The guardian may do anything considered necessary for the maintenance of the monument (subsection (1)). This is effectively a wide-ranging responsibility to keep the monument conserved, well-managed and in good condition.
168. To comply with this duty, the section gives the guardian of the monument wide powers to exercise control and management and to do everything that is necessary for the monument's maintenance (subsection (2)).
169. Subsection (3) clarifies that the powers in subsections (1) and (2) include power to make an examination of the monument, including through excavations, or to remove all or part of a monument elsewhere for the purposes of preserving it. In many cases, there has been a need to undertake archaeological excavations as part of the requirement to maintain and conserve a monument in guardianship. These powers have been used to relocate parts of guardianship monuments into museums or stores to ensure their preservation. For example, this has included moving a large, engraved stone, which is part of the prehistoric burial monument at Bryn Celli Ddu, Anglesey, to a museum where it is protected from damage.
170. Subsection (4) makes clear that the power in subsection (2) includes power for the guardian to make a charge in connection with the use of a monument in guardianship. This may be required to provide appropriate supervision and control during activities or events. This has frequently enabled monuments in guardianship to be used as a "stage" for a variety of activities such as filming, live theatre and concerts.

### **Section 48 – Termination of guardianship**

171. Section 48(1) provides that the guardian of a monument may, by agreement with the persons immediately affected by the guardianship deed, terminate the guardianship of all or part of the monument.
172. Subsection (5) provides that a guardian may not make an agreement to terminate a guardianship unless the guardian is satisfied that alternative arrangements are in place for the monument's preservation, or that it is no longer practicable, because of cost or otherwise, to preserve it.
173. The Welsh Ministers have, on occasion, terminated guardianship. This has sometimes occurred when the guardianship has been replaced by an acquisition through agreement or gift (section 44). Neath Abbey and Gatehouse, for instance, was the subject of a guardianship deed in 1944, but this was subsequently terminated when it was converted into a deed of gift in 1949. On other occasions, the Welsh Ministers acted as temporary guardians of a monument while other arrangements were put in place for its preservation.

### **Section 49 – Acquisition and guardianship of land in the vicinity of a monument**

174. Section 49 allows for land adjoining or in the vicinity of a monument of special historic interest to be acquired or taken into guardianship by the Welsh Ministers or local

authorities in certain circumstances. Land may only be taken into guardianship if the monument itself has been, or is being, taken into guardianship.

175. Subsection (1) provides that references in sections 43 to 46 to a monument of special historic interest include any land adjoining it or in its vicinity if, in the estimation of the Welsh Ministers or a local authority, that land is reasonably required for one or more of the purposes listed in subsection (2), which include maintaining the monument and facilitating public access to it. The adjoining land might accommodate routes for access, storage yards, parking areas or visitor facilities.
176. The powers relating to the guardianship of land in the vicinity of a monument are similar to those for guardianship of the monument itself, including powers that allow full control and management (subsection (5)) and powers of entry (subsection (6)).
177. Subsections (7) and (8) make provision for termination of guardianship. It is terminated in the same circumstances as when guardianship of a monument is terminated under section 48, and also when guardianship of the monument is terminated or the monument ceases to exist.

#### **Section 50 – Acquisition of easements and other similar rights over land in the vicinity of a monument**

178. Section 50 sets out powers for the Welsh Ministers and local authorities to acquire easements and other rights over land in the vicinity of a monument that is either in their ownership or in their guardianship. This would allow the use of part of an adjoining property for certain purposes, such as to discharge duties relating to the maintenance of the monument or to facilitate access.

#### **Section 51 – Agreements concerning management of monuments of special historic interest and land in their vicinity**

179. Section 51(1) to (3) enables the Welsh Ministers or local authorities to make a “management agreement” with an occupier of a monument of special historic interest or of land adjoining or in the vicinity of a monument. Any other person with an interest in the monument or land may also be a party to the agreement (subsection (4)).
180. Management agreements may make any of the provisions listed in subsection (5). A management agreement entered into by Cadw (on behalf of the Welsh Ministers) may grant scheduled monument consent for specified works of maintenance or preservation (and attach conditions to which the consent is subject). The consented works are generally minor works of maintenance and repair for the benefit of the monument and cannot extend to demolition or flooding or tipping operations. Management agreements are frequently created to allow for the management or conservation of a monument or to facilitate public access, and are used for some of Cadw’s jointly managed guardianship sites operated by other parties. Management agreements are usually of a fixed duration, normally for a period of 3 to 5 years.

#### **Section 52 – Powers of limited owners for purposes of sections 45, 50 and 51**

181. Section 52 provides that a person may establish guardianship of monuments or land (section 45), grant easements or other rights over land in the vicinity of a monument

(section 50) or make a management agreement (section 51) despite the person being a limited owner of the monument or land.

### **Section 55 – Public access to monuments under public control**

182. Section 55 places a requirement on the Welsh Ministers and local authorities to provide public access to monuments in their ownership or guardianship subject to the provisions of this section, any regulations or byelaws made under section 56 and any provision to the contrary contained in a guardianship deed (subsection (2)).
183. Under this section, Cadw (acting for the Welsh Ministers) or local authorities, where they are the owners or guardians of a monument, may:
- a. control opening times (subsection (4));
  - b. limit public access to all or part of a monument in the interests of safety, for maintenance or conservation works or for the holding of activities or events (subsection (5));
  - c. impose other restrictions or controls on public access (subsection (6));
  - d. charge admission (subsection (7)); and
  - e. refuse admission if it is felt that a person poses a threat to the monument or to the public enjoyment of the monument (subsection (8)).
184. At the time of writing these notes the majority of the 130 monuments under Cadw's care and control are unstaffed, non-charging sites with advertised opening times. Access to the indoor parts of unstaffed sites tends to be more restricted for safety reasons and due to the threat of damage posed by unaccompanied access. As of April 2022, admission is charged at fewer than 30 of Cadw's monuments.
185. Local authorities have around 400 scheduled monuments in their ownership or guardianship. They range from prehistoric monuments through medieval remains to buildings of the Industrial Revolution.

### **Section 56 – Power to make regulations and byelaws in connection with public access to monuments under public control**

186. Section 56 provides that the Welsh Ministers and local authorities may regulate access to monuments in their ownership or guardianship by making, respectively, regulations (subsection (1)) or byelaws (subsection (3)) that prohibit or regulate any act or thing likely to:
- a. damage the monument or its amenities, or
  - b. disturb the public in their enjoyment of it.
187. These regulations or byelaws could be used to address issues of antisocial behaviour, such as vandalism or out-of-hours gatherings on site.

188. Subsection (2) also applies regulations made under subsection (1) to monuments that are under the control or management of the Welsh Ministers, but not by virtue of their ownership or guardianship.
189. Failure to comply with the regulations or byelaws made under this section constitutes an offence that, on summary conviction, is subject to a fine not exceeding level 2 on the standard scale (subsections (4) and (5)).

### **Section 57 – Provision of facilities for the public in connection with monuments of special historic interest**

190. Section 57(1) gives the Welsh Ministers powers to provide facilities, information and other services to the public in conjunction with providing public access to monuments in their ownership or guardianship or otherwise under their control or management.
191. Subsection (2) gives local authorities comparable powers for monuments in their ownership or guardianship.
192. Under subsection (3), the Welsh Ministers or local authorities may provide these public facilities and services in or on the monument itself or on any associated land. This allows for the establishment of kiosks, cafes or stalls that might sell guidebooks, refreshments or other products, and for the erection of signage and interpretation panels in connection with providing public access and enhancing the public enjoyment and understanding of a monument. Such services might be provided on associated land, such as in an adjacent car park or building.

### **Chapter 7 – General**

193. This Chapter deals with miscellaneous matters relating to monuments of special historic interest. Several provisions treat damage to monuments (sections 58 to 60). Expenditure on monuments is covered under sections 62 to 64. Sections 65 to 71 treat powers of entry and supplementary provisions are included in sections 72 to 75.

### **Section 58 – Offence of damaging certain monuments of special historic interest**

194. Section 58 provides that it is an offence to destroy or damage a protected monument, as defined in subsection (2), without a lawful excuse (subsection (1)).
195. Subsection (1) establishes two tests to determine if a person who has destroyed or damaged a protected monument is guilty of an offence. The first is did the person know or ought the person reasonably to have known that the monument was a protected monument. Accurate and up-to-date information on the location and extent of all scheduled monuments in Wales is available on [Cof Cymru](#).
196. The second test requires that the person intended to destroy or damage the monument or was reckless as to whether the monument would be destroyed or damaged.
197. Subsection (2) includes within the definition of a “protected monument” not just a scheduled monument (section 3) but also a monument under the ownership or guardianship of the Welsh Ministers or a local authority. In many cases the area under such ownership or guardianship extends beyond the area that is included in the schedule.

198. Subsection (3) clarifies that this section applies to anything done by or under the authority of the owner other than the excepted works that are defined in subsection (4). In the case of a monument under guardianship the owner will be different to the guardian.
199. The excepted works in subsection (3) include works authorised under Chapter 3 and works for which development consent has been granted under the Planning Act 2008 (c. 29) (“the 2008 Act”). Development consent under the 2008 Act is required for the categories of projects described in Part 3 of that Act. Not all categories include projects in Wales. Section 150 of the 2008 Act enables an order granting development consent under the 2008 Act to remove a requirement for certain consents, which are prescribed in secondary legislation (Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, SI 2015/462), if the consenting body agrees.

### **Section 60 – Restrictions on use of metal detectors**

200. This section deals with the offence of using a “metal detector” (any device designed or adapted for detecting or locating any metal or mineral in the ground) without consent on a protected place. Consent is defined for the purposes of this section as the written consent of the Welsh Ministers. A “protected place” is defined in subsection (1) as the site of any scheduled monument or the site of any monument under the ownership or guardianship of the Welsh Ministers or a local authority.
201. In recent decades, the unauthorised use of metal detectors on protected places, often under the cover of darkness when it is frequently referred to as “nighthawking”, has become increasingly common. The resulting removal of objects of archaeological or historical interest from their buried archaeological context leads to the loss of irreplaceable archaeological and historical evidence.
202. Four separate offences are therefore identified at subsections (2) to (5) which can be committed by a person using a metal detector in a protected place. A person found guilty on summary conviction or a conviction on indictment is liable to a fine, which depends on the nature of the offence. These fines are set out in subsections (8) and (9).
203. Subsections (6) and (7) set out the defences available to a person in the event of any proceedings for an offence under subsections (2) or (4). In any proceedings for an offence under subsection (2) it is a defence for a person to prove that the metal detector was used for a purpose other than detecting or locating objects of archaeological or historical interest. Further, in any proceedings for an offence under subsection (2) or (4) it is a defence for a person to prove that all reasonable steps had been taken to find out whether the place in which the metal detector was used was a protected place and they did not know, and had no reason to believe that the place was a protected place. Information on the location and extent of all scheduled monuments is available on [Cof Cymru](#).

### **Section 61 – Works for preservation of scheduled monument in cases of urgency**

204. Section 61 permits the Welsh Ministers to enter the site of a scheduled monument and undertake any works requiring authorisation under section 11 that the Welsh Ministers consider to be urgently necessary for its preservation. They must, however,

have given 7 clear days' written notice of their intention to every owner and occupier of the monument (subsection (2)). Subsection (4) provides that works carried out under this section are to be treated as authorised for the purposes of Chapter 3.

205. If works are carried out under this section to repair damage to a scheduled monument, any compensation order previously made in respect of the damage in favour of someone other than the Welsh Ministers under Chapter 2 of Part 7 of the Sentencing Code is enforceable (to the extent it has not already been complied with) as if it had been made in favour of the Welsh Ministers. Such a situation might arise, for instance, if a court were to make a compensation order in favour of a monument's owner after the conviction of an offender for causing damage by unauthorised off-road driving. If the Welsh Ministers considered that the damage made urgent works necessary and undertook those works, any outstanding compensation would be transferred to the Welsh Ministers to defray the cost of the emergency intervention.

### **Section 62 – Expenditure on acquisition and preservation of monuments of special historic interest etc.**

206. Section 62 provides the Welsh Ministers with powers to meet or contribute towards the costs associated with the acquisition of a monument of special historic interest (section 75(6)) by any person. The Welsh Ministers or a local authority may, at an owner's request, also assist with, or contribute towards, the costs associated with preserving a monument of special historic interest.
207. Cadw, acting on behalf of the Welsh Ministers, regularly offers grants towards the conservation and preservation of monuments of special historic interest. Cadw will also consider requests for a contribution towards the costs of relocating a monument of special historic interest to secure its long-term preservation.

### **Section 63 – Advice and supervision of work by Welsh Ministers**

208. Section 63 allows the Welsh Ministers to provide advice about the treatment of any monument of special historic interest (subsection (1)) or to supervise any work in connection with a monument of special historic interest if invited to do so by the owner (subsection (2)). However, they must supervise work in connection with a scheduled monument, if they consider it advisable (subsection (3)). Cadw, acting behalf of the Welsh Ministers, employ regional inspectors of monuments and field monument wardens who undertake regular visits to discuss and advise on the management and conservation of scheduled monuments with their owners and/or occupiers.
209. Although the provisions allow the Welsh Ministers to recover the costs of such advice or supervision (subsection (4)), they have rarely done so. The discussions with Cadw inspectors and field monument wardens are more likely to include advice on the availability of financial support for any required expenditure, including from the Welsh Ministers under section 62.

### **Section 64 – Expenditure by local authorities on archaeological investigation**

210. Section 64 provides powers to local authorities to carry out or assist in, or meet or contribute towards the costs of, any archaeological investigations in or in the vicinity of an authority's area.

211. At the time of writing these notes, only a small number of local authorities in Wales employ specialist archaeologists, so this power is normally exercised through archaeological contractors or through one of the Welsh archaeological trusts. Details of any archaeological investigations undertaken under this section, and of the findings of those investigations, must be added to the historic environment record for that local authority area (section 194).

### **Section 65 – Powers of entry for inspection of scheduled monuments etc.**

212. This section provides powers for a person authorised in writing by the Welsh Ministers to enter any land for the inspection of a scheduled monument for the purposes set out in the section.
213. In practice, such inspections are normally undertaken either by specialist Cadw staff or by specialist archaeologists working for other organisations, such as one of the regional Welsh archaeological trusts.
214. These powers of entry are subject to supplementary provisions set out in section 69. Section 69(1) provides that the power of entry may be exercised at any reasonable time.
215. An exception to the requirement for entry at any reasonable time is made in section 69(1) for section 65(5), which provides for the erection of notice boards and marker posts. However, section 65(6) stipulates that the power in section 65(5) may only be exercised with the agreement of every owner and occupier.
216. Section 69(2) requires that, if the land is occupied, notice of the intended entry must be served on every occupier. For the purposes of inspection, at least 24 hours' notice of intended entry is required (section 69(2)(b)). If a notice board or marker post is to be erected under section 65(5) this constitutes works and at least 14 days' notice to every occupier is needed (section 69(2)(a)).
217. Section 70 makes provision for compensation for damage caused by the exercise of powers of entry under this section.

### **Section 66 – Powers of entry relating to enforcement of controls on works**

218. Section 66 gives Welsh Ministers the power to authorise a person in writing to enter land for purposes relating to temporary stop notices and enforcement notices.
219. Subsection (1) relates to powers of entry to determine whether a temporary stop notice should be issued, to display or attach a copy of a temporary stop notice, or assess whether a notice has been complied with.
220. Subsection (2) relates to powers of entry to determine if an enforcement notice should be issued, to attach a copy of an enforcement notice or to assess whether an enforcement notice has been complied with.
221. These powers of entry are subject to the supplementary provisions in section 69 (which include that they may be exercised at any reasonable time). In the case of an enforcement notice and where the land is occupied, section 69(2)(b) provides that for the purposes specified in section 66(2) notice must be given at least 24 hours before the



day of the intended entry. No such notice is required when powers of entry are exercised in relation to a temporary stop notice (section 69(3)(b)). This will allow timely action to assess the condition of a monument and, if necessary, intervention to halt further damage.

222. An authorised person might be a Welsh Government staff member, such as a Cadw inspector or field monument warden, or an archaeological or conservation specialist working under contract to the Welsh Government or working for one of the regional Welsh archaeological trusts. On occasion, the person might need to be accompanied by the police, depending on circumstances.

### **Section 67 – Power of entry on land believed to contain monument of special historic interest**

223. Section 67 provides the Welsh Ministers with the power to authorise a person to enter land that they know, or have reason to believe, contains a monument of special historic interest (section 75(6)). The person must be authorised in writing (subsection (5)).
224. The purpose of entering the land must be for the inspection of the land with a view to recording any matters of archaeological or historical interest and for the identification of monuments of special historic interest including those that might be added to the schedule of monuments under section 3.
225. Subsection (2) provides that the authorised person may carry out excavations of the land for the purpose of archaeological investigations (section 75(2)), subject to agreements – for example, with the owner and occupier – that would normally be required for excavation works (subsection (3)). Such prior agreement is not required if the Welsh Ministers know or have reason to believe that a monument of special historic interest in, on or under the land is under threat of imminent damage or destruction (subsection (4)).
226. In practice, inspections under this section are undertaken either by specialist Cadw staff or by specialist archaeologists working for other organisations, such as one of the regional Welsh archaeological trusts. In recent decades, several thousand visits have been made to inspect land believed to contain monuments. In the vast majority of cases, the visits have been made with the prior agreement of the owner or the occupier of the land (or both). In many cases, the visits have resulted in amendments to the schedule of monuments (section 3) through the addition of monuments of national importance.
227. The power of entry conferred by this section is subject to supplementary provisions set out in section 69. They state that the power of entry may be exercised at any reasonable time, but that at least 24 hours' notice of intended entry needs to be given to every occupier of the monument, including for works relating to excavation under subsection (2).

### **Section 69 – Supplementary provision about powers of entry under this Part**

228. This section sets out supplementary provisions about the exercise of powers of entry relating to monuments of special historic interest. Subsection (1) sets out that such

powers may be exercised at any reasonable time, but this does not apply to section 65(5).

229. The following subsections of section 69 identify a number of qualifications to the powers of entry.
230. Subsection (2) provides that, where any land is occupied, a notice of the intended entry must be given to every occupier prior to entry on to the land. Where the purpose of the entry is to carry out works (other than excavations under section 67) such a notice must be given at least 14 days before the date of the intended entry. In any other case, including excavations under section 67, a notice must be given at least 24 hours before the date of intended entry.
231. Subsection (3) further provides that the requirements set out in subsection (2) do not apply in the following circumstances:
- a. entry under section 61 where 7 clear days' written notice to every owner and occupier of a monument is required before executing urgent works for the preservation of a scheduled monument, and
  - b. in relation to the powers of entry for temporary stop notices (section 66 (1)), where no notice is required to occupiers.
232. Subsections (4) to (9) of section 69 identify further requirements and powers relating to the powers of entry, such as subsection (5) which provides that a person authorised to enter land under section 69 must, if required to do so by or on behalf of an owner or occupier of the land, produce evidence of the person's authorisation and state the purpose of the entry before entering the land.
233. Subsections (11) and (12) of section 69 provide that a person who intentionally obstructs a person exercising a power of entry under Part 2 commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Section 71 – Treatment and preservation of finds**

234. This section provides for the treatment and preservation of any objects of archaeological or historic interest that are taken into temporary custody by a person, for any of the purposes mentioned in subsection (1)(a) to (c).
235. This power allows archaeologists and finds specialists, acting on behalf of an appropriate authority as defined in subsection (4), to properly conserve and analyse any objects recovered. Such objects are of archaeological and historical value in their own right but can also provide valuable information about the nature and date of the monument of special historic interest from which they derive. They can assist the Welsh Ministers and local authorities in the exercise of their responsibilities and powers under this Part.
236. Subsection (5) clarifies that this section does not affect any right of the Crown under the Treasure Act 1996 (c. 24). Under that Act there is an obligation to report objects which constitute treasure (as defined in the Act) to the local coroner within 14 days who will then hold an inquest in order to determine the object's status.

**Section 72 – Validity of certain decisions and orders under this Part**

**Section 73 – Application to High Court for statutory review of decision or order**

237. Section 72 provides that the validity of a decision of the Welsh Ministers on an application for a scheduled monument consent, a decision on a review under section 9, or an order under section 20 modifying or revoking a scheduled monument consent may not be questioned in any legal proceedings except for a statutory review under section 73.
238. Section 73 provides that a person who is aggrieved by a decision or order listed in section 72 may make an application to the High Court for a statutory review. An application for a statutory review must be made before the end of the 6 weeks beginning with the day after the day the decision or order to which the application relates is made.
239. The question of whether or not a person is aggrieved will vary dependent on the individual case, but aggrieved persons may include the owner or occupier, the applicant or any other party who has been involved or has an interest in the decision or order. The authority directly concerned with the decision or order may also make an application for statutory review.

**Section 74 – Crown land**

240. Section 74 sets out how this Part applies to Crown land. A monument on Crown land may be scheduled. Any restrictions imposed and powers conferred by this Part apply to Crown lands, but not so as to affect any interest of the Crown in the land. In practice, this means that prior to granting scheduled monument consent on Crown land, Cadw, acting on behalf of the Welsh Ministers, would consult with the appropriate Crown authority to check if its interest in the land would be affected.
241. Subsection (4) does not permit a person to exercise a power of entry on Crown land without the consent of the appropriate Crown authority. Nor does it permit the compulsory purchase of an interest in Crown land held otherwise than by or on behalf of the Crown without such consent.
242. “Crown land” and “appropriate Crown authority” are defined in section 207.

**Section 75 – Interpretation of this Part**

243. Section 75 clarifies the meaning of many of the terms used in this Part. In particular it provides a definition of “monument of special historic interest” in subsection (6).
244. “Monument of special historic interest” captures any scheduled monument and any other monument wholly or mainly in Wales that the Welsh Ministers consider to be of public interest by reason of its historic, architectural, traditional, artistic, or archaeological interest. This definition is only employed in Chapters 6 and 7 of this Part. Amongst other things, this definition permits the Welsh Ministers to bring monuments that are of public interest, but do not meet the criteria for scheduling, into guardianship.

245. Subsection (7) provides that the definition in subsection (6)(b) does not include a monument situated in, on or under the bed of the sea below the low water mark. This limits the area in which the Welsh Ministers may recognise monuments of special historic interest to that covered by the Welsh counties and county boroughs including the adjacent seashore to the low water mark (as provided for in section 46 of the Local Government (Democracy) (Wales) Act 2013 (anaw 4)). Consequently, the Welsh Ministers may recognise wrecks, fish traps and other remains in the intertidal zone as monuments of special historic interest, but cannot do the same if similar remains are permanently submerged beyond the low water mark.

### **Part 3 – Buildings of special architectural or historic interest**

246. Buildings are listed when they are considered to be of special architectural or historic interest. Listed buildings represent a unique source of information about the past and make a valuable contribution to the quality and character of landscapes and townscapes in Wales.
247. In March 2022, there were 30,060 listed buildings in Wales. These include not only commonly recognised buildings – houses, shops, civic and religious buildings, barns and other farm buildings, and industrial buildings – but also walls, milestones, bridges, memorials, telephone boxes and many other types of structure. Listed buildings range in age from the medieval period to the very recent past.
248. A complete, up-to-date list of listed buildings is published on [Cof Cymru](#).
249. Legislation relating to listed buildings is supported by planning policy and advice and best-practice guidance, notably [TAN 24](#) and [Managing Change to Listed Buildings in Wales \(2017\)](#). This suite of documents explains that, while the Welsh Ministers are responsible for listing buildings, in practice, the process is managed by Cadw acting on their behalf. Annex B of TAN 24 sets out the non-statutory selection criteria that are used for assessing a building's special architectural or historic interest.
250. Annex B of TAN 24 further sets out a non-statutory grading structure to reflect the relative importance of listed buildings:
- a. Grade I (one) – buildings of exceptional interest. These make up fewer than two per cent of the listed buildings in Wales.
  - b. Grade II\* (two star) – particularly important buildings of more than special interest. These make up about seven per cent of the total number of listed buildings in Wales.
  - c. Grade II (two) – buildings of special interest which justify every effort being made to preserve them. These make up approximately 91 per cent of the total number of listed buildings in Wales.
251. Listing guides planning authorities in the performance of their functions. It ensures that careful consideration is given to buildings of special interest before planning decisions are taken. Listing does not prohibit change, but helps to ensure that it is carefully managed in accordance with Cadw's [Conservation Principles](#) through the listed building consent regime.

## **Chapter 1 – Listing buildings of special interest**

252. This Chapter requires the Welsh Ministers to maintain and publish a list of buildings in Wales. They must include in the list every building in Wales they consider to be of special architectural or historic interest (section 76). For the purposes of the transition from the 1990 Listed Buildings Act to the Bill, the list of buildings maintained by the Welsh Ministers under section 1 of that Act will become the list maintained for the purposes of section 76 of the Bill.
253. Inclusion of a building on the list – “listing” (section 76(6)(a)) – renders it subject to the consent regime, enforcement procedures and other provisions contained in Chapters 2 to 6 of Part 3 of the Bill.
254. This Chapter sets out the requirements for consultation before the Welsh Ministers amend the list by adding or removing a building (sections 77 and 78). It also gives owners and occupiers the opportunity to request a review of the Welsh Ministers’ decision to list a building (sections 81 and 82). It establishes that, during the consultation period, a building being considered for listing enjoys interim protection as if it were already a listed building (section 79). If the Welsh Ministers decide not to list a building, a person with an interest in the building who suffers loss or damage as a direct result of interim protection may claim compensation from the Welsh Ministers (section 80).
255. The Chapter also provides for temporary listing by a planning authority (sections 83 to 85). Temporary listing allows an authority to confer the protection of listing on a building that it considers to be of special architectural or historic interest that is in danger of demolition or alteration that would affect its character. If temporary listing comes to an end under certain circumstances, a person with an interest in the building may be able to claim compensation from the planning authority for loss or damage suffered directly as a result of the temporary listing (section 86).
256. The Chapter concludes with provision for the Welsh Ministers to issue a certificate that they do not intend to list a building in Wales for a period of 5 years (section 87).

## **Section 76 – Duty to maintain and publish list of buildings**

257. Section 76(1) places a duty on the Welsh Ministers to maintain a list of buildings in Wales and to publish the up-to-date list. The Welsh Ministers must include in the list every building in Wales which they consider to be of special architectural or historic interest. In practice, in determining whether a building is, in their opinion, of special architectural or historic interest, the Welsh Ministers will have regard to the [non-statutory criteria](#) for listing published in TAN 24.
258. Section 76(2) gives the Welsh Ministers powers to amend the list by adding a building (referred to as “listing” a building), removing a building (referred to as “de-listing” a building) or amending an existing entry for a building.
259. In practice, buildings are added to the list either as a result of systematic survey of particular areas or building types, or following “spot listing” requests relating to

particular buildings from local authorities, amenity societies, other bodies, or individuals.

260. The Welsh Ministers will only de-list a building if new evidence becomes available relating to its special architectural or historic interest. Neither the condition of a building through neglect nor the cost of repairing or maintaining it are grounds for de-listing.
261. The powers to amend an existing list entry may be used to correct factual mistakes, including address or location errors, as well as to enhance or revise a listing in light of new evidence relating to a building's special architectural or historic interest.
262. Section 76(3)(a) provides that the Welsh Ministers may consider a building in its wider context when weighing up whether it should be listed. If, for instance, a candidate building is part of a group – perhaps a well-preserved terrace of houses, an industrial or agricultural complex or a planned community – its contribution to the architectural or historic interest of that group may be taken into account in addition to its own merits.
263. Section 76(3)(b) allows for the desirability of preserving an artificial feature of a building on the grounds of its architectural or historic interest to be taken into consideration when determining if a building should be listed. These artificial features might include interior fittings, such as fireplaces, panelling or staircases, or exterior features, perhaps sculptures, clocks or commemorative plaques. Artificial features do not encompass movable furnishings.
264. The definition of “building” in section 210 (interpretation) encompasses any building or structure, or any part of a building or structure. The meaning of “building” for the purposes of listing has been considered in case law (such as *Dill v Secretary of State for Housing, Communities and Local Government and another* [2020] 1 WLR 2206). The definition in section 210 does not include (except in section 148) any plant or machinery forming part of a building or structure. This prevents large and complex pieces of plant and machinery, for example, steam engines, rolling mills or other industrial equipment, from being listed in their own right, either as freestanding constructions or independently of buildings that house them.
265. However, the presence of plant and machinery in a building may contribute to its special interest and be an important factor in a decision to list it. Once the building is listed, fixed plant and machinery contained within it will be included in the listing and will be subject to the controls in this Part.
266. Section 76(5)(a) clarifies that a “listed building” means a building which is included in the list and includes any structure or artificial object that is fixed to the building and ancillary to it; this will capture internal and external fixtures. On the other hand, movable furnishings, even of historic importance, are not part of the listing. For instance, subsection (5)(a) would apply to a fixed medieval masonry altar in a listed church, but not to a post-Reformation altar table. The requirement for an object or structure to be “ancillary” is based on case law, including *Debenhams plc v Westminster City Council* [1987] AC 396; *Morris v Wrexham County Borough Council* [2002] 2 P & CR

7; *R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs* [2022] QB 103.

267. In this context, “artificial” is used as an idiomatic term for objects or features that have been made or crafted by humans, in contrast to natural objects or features. Its use in this context is of no relevance to any question of whether “artificial” materials (in the sense of being imitation or synthetic) may be used in the conservation or repair of listed buildings.
268. Subsection (5)(b) provides that the listing of a building extends to include separate ancillary structures or artificial objects if certain conditions are met.
269. The first condition is that the structure or object has to have formed part of the land since before 1 July 1948, the date on which the [Town and Country Planning Act 1947 \(c. 51\)](#), the first legislation that made provision for statutory listing of buildings of architectural or historic interest, came into force.
270. The second condition is that the structure or object must have been within the curtilage of the building, and ancillary to it, on the date that the building was first listed or 1 January 1969, whichever was later. The provisions of the [Town and Country Planning Act 1968 \(c. 72\)](#) that introduced the extension of listing to structures and objects within a building’s curtilage came into force on 1 January 1969. The date has been included to give greater clarity to the definition of a listed building in line with recommendation 13.10 of the Law Commission’s report, [Planning Law in Wales](#).
271. The section does not define “curtilage”. Case law (*Attorney General (ex rel Sutcliffe) v Calderdale BC* (1982) 46 P & CR 399, CA as accepted by *Debenhams plc v Westminster City Council*, 1987) provides that it is the land closely associated with a building and its extent will be determined on a case-by-case basis. Factors to be considered in determining whether other structures or artificial objects are encompassed within a building’s curtilage may include:
- a. the physical “layout” of the building, associated structures and the land;
  - b. their ownership, past and present; and
  - c. their use and function, past and present.
272. Examples of curtilage structures and objects to which listing may be extended under subsection (5)(b) include outbuildings, boundary walls, and garden features and ornaments.

### **Section 77 – Notification of listing or de-listing of building**

273. When the Welsh Ministers list or de-list a building, section 77(1) requires them to serve notice on every owner and occupier and every relevant local authority in whose area the building is located.
274. Subsection (6) defines a “relevant local authority” for the purposes of this section as:
- a. a county council or county borough council,

- b. a National Park authority, or
  - c. a joint planning board.
275. A joint planning board may be constituted under section 2(1B) and (1C) of the [Town and Country Planning Act 1990 \(c.8\)](#) (“the 1990 Planning Act”) as the planning authority for two or more areas, each of which is the whole or part of a Welsh county or county borough. At the time of writing, there is none in Wales.
276. When a property is listed, the notice served by the Welsh Ministers must specify the date of its addition to the list and must include a copy of the list entry (subsection (2)).
277. Under subsection (3), a copy of a list entry served under this section is a local land charge. A [local land charge](#) will alert a purchaser to the restrictions imposed on the use of the land by the listing of the building.
278. Subsections (4) and (5) require relevant local authorities to keep available for public inspection copies of the list entries they are served with under this section and any list entries that remain up to date served under earlier Acts (subsection (4)(b)). In practice, authorities normally provide routine access to all up-to-date list entries via [Cof Cymru](#), for example, by means of free internet access in public libraries and similar venues.

#### **Section 78 – Consultation before listing or de-listing building**

#### **Section 79 – Interim protection pending decision whether to list building**

#### **Schedule 7 – End of interim protection or temporary listing for buildings**

279. Section 78 puts in place a formal structure for consultation on the Welsh Ministers’ proposals to list or de-list a building. It makes provision for inviting the persons identified in subsection (2) to make written representations on the proposed amendment to the list to the Welsh Ministers.
280. The service of a notice of a proposal to amend the list by adding a building will trigger interim protection under section 79. In that case, section 78(3)(b) requires the notice to explain the effect of interim protection and specify the date upon which interim protection takes effect.
281. Any building being considered for listing by the Welsh Ministers, unless already a scheduled monument (section 79(7)), will enjoy interim protection under section 79 from the beginning of the day specified in the notice served under section 78(1).
282. Section 79(2) provides that this Bill (except certain specified sections) and the [1990 Planning Act](#) apply to any building under interim protection as if it were a listed building. It will, therefore, be an offence to undertake works that alter its character without listed building consent and the full range of enforcement powers in Chapter 4 will be available to a planning authority or the Welsh Ministers in the event of unauthorised works. Section 118, however, does not apply to a building under interim protection. Interim protection will afford protection to a building during the consultation period, for example, from an owner who could otherwise have an incentive to deliberately damage or destroy the historic asset in an effort to undermine



the protection that listing would otherwise have provided by making its listing pointless.

283. Subsection (4) requires the Welsh Ministers to publish a list of buildings subject to interim protection. The list is published on the [Cadw website](#). Buildings under interim protection also appear as a distinct category of assets on [Cof Cymru](#).
284. Interim protection ends when the Welsh Ministers decide whether or not to list a building and serve notice on every owner and occupier and the relevant local authorities under section 77(1) or section 79(5)(b).
285. Schedule 7 provides for the effect of the end of interim protection under section 79(5)(b). It also makes provision about the effect of temporary listing coming to an end without the building being listed under section 85(4).
286. Paragraph 2 of Schedule 7 establishes that, even after the end of interim protection or temporary listing, a person will remain liable to be prosecuted and punished for an offence under the Bill committed while the building was protected.
287. On the termination of interim protection or temporary listing, paragraphs 3 to 6 make provision for:
  - a. the cessation of the effect of listed building consents, temporary stop notices, and enforcement notices; and
  - b. the lapse of any proceedings associated with any of the above or an application for an injunction related to the building.
288. However, paragraph 5(3) allows the continued application of section 132(1) to (6) to permit the recovery of costs reasonably incurred by a planning authority when taking steps specified in an enforcement notice on a building then under interim protection or temporary listing.

### **Section 80 – Compensation for loss or damage caused by interim protection**

289. Under this section, if the Welsh Ministers decide not to list a building and serve notice under section 79(5)(b) ending interim protection, any person with an interest in the building when interim protection took effect is entitled, on making a claim for compensation to the Welsh Ministers, to be paid compensation by them for losses or damage directly attributable to the interim protection.
290. Subsection (5) establishes that, in those cases where interim protection follows on from temporary listing, the compensation claims made to the Welsh Ministers may include losses or damage attributable to or suffered as a result of the temporary listing.
291. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 46 above).

**Section 81 – Review of decision to list building**

**Section 82 – Supplementary provision about reviews**

**Schedule 2 – Decision on review by person appointed by the Welsh Ministers**

292. Where the Welsh Ministers list a building, section 81 requires them to give any owner or occupier of the building an opportunity to request a review of their listing decision.
293. Subsection (2) provides that the ground for review is that the building is not of special architectural or historic interest. Subsection (6) provides that the Welsh Ministers may make regulations to specify other grounds in the future.
294. Under subsection (3), the Welsh Ministers must appoint a person to carry out the review and make a decision on it. Ordinarily, this will be an inspector of [Planning and Environment Decisions Wales](#). However, subsection (4) provides that the Welsh Ministers may make regulations to specify descriptions of cases that they will review and decide themselves, instead of appointing a person to do so.
295. Section 82 makes administrative and procedural provision for the reviews provided for in section 81. It is supplemented by Schedule 2, which sets out the functions of persons appointed by the Welsh Ministers to carry out reviews. Schedule 2 also applies to reviews of decisions to add monuments to the schedule.

**Section 83 – Service of temporary listing notice**

**Section 84 – Temporary listing in urgent cases**

296. Section 83 allows a planning authority to confer temporary listed status on an unlisted building that it considers to be:
- a. of special architectural or historic interest, and
  - b. in danger of demolition or alteration that would affect that interest.
297. This section and section 84 provide planning authorities with powers to take prompt action, informed by their local knowledge, to protect historic assets that they consider to be of special architectural or historic interest. It allows works to the building to be regulated while it is under consideration for listing by the Welsh Ministers.
298. Section 83(2) provides for the service of a temporary listing notice by a planning authority. The notice was previously termed a “building preservation notice” in section 3A of the [1990 Listed Buildings Act](#).
299. Subsections (2) and (3) detail the required recipients and contents of a temporary listing notice. Subsection (3)(a)(ii) establishes that the temporary listing of a building must be accompanied by a request to the Welsh Ministers to consider the building for listing.
300. Once the requisite notice has been served on every owner and occupier of a building, its effect is that the same restrictions and requirements apply to a building under temporary listing as to a building under interim protection (subsection (4)) – see paragraph 282 above.

301. Subsection (6) excludes scheduled monuments and exempt religious buildings (as defined in section 156(1)) from the scope of temporary listing.
302. Section 84 provides that where a planning authority considers it urgent to protect a building through temporary listing, it may give notice of the temporary listing by attaching the notice to, or near to, the building instead of serving it on each owner and occupier.

### **Section 85 – End of temporary listing**

#### **Schedule 7 – End of interim protection or temporary listing for buildings**

303. Section 85(1)–(3) identifies three ways in which temporary listing may come to an end. It may:
- a. expire at the end of six months from the day it took effect unless ended earlier;
  - b. be superseded and replaced by interim protection if the Welsh Ministers serve notice under section 78(1) of a proposal to list the building; or
  - c. if the Welsh Ministers give notice to the planning authority that they do not intend to consult on a proposal to list the building, end on the day specified in the notice.
304. Schedule 7, which is introduced by subsection (4), makes provision about the effect of interim protection or temporary listing coming to an end without the building being listed; it has already been discussed in paragraphs 285–8 above.

### **Section 86 – Compensation for loss or damage caused by temporary listing**

305. If a temporary listing comes to an end after six months or because the Welsh Ministers decide not to consult on a proposal to list the building, any person who had an interest in the building when the temporary listing took effect is entitled, on making a claim for compensation to the planning authority in whose area the building is situated, to be paid compensation by it for losses or damage directly attributable to the temporary listing (section 86(1)–(3)).
306. If, however, interim protection followed on from temporary listing and the Welsh Ministers eventually decided not to list the building, compensation would be available under section 80 above instead.
307. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 46 above).

### **Section 87 – Certificate that Welsh Ministers do not intend to list building**

308. Under section 87, the Welsh Ministers may, on the application of any person, issue a certificate stating that they do not intend to list a particular building. The effect is that for 5 years the Welsh Ministers may not list the building and the relevant planning authority may not list the building temporarily. Such an application equates to a person asking the Welsh Ministers to consider the building for listing and if the building is judged not to meet the listing criteria a certificate may be issued. This provides certainty for a person wishing to develop or undertake works to a building,

or to develop the land on which it is situated, that the building will not be listed for the next 5 years.

## **Chapter 2 – Control of works affecting listed buildings**

309. Chapter 2 provides that, with certain specified exceptions, works for the alteration or extension of a listed building “that would affect its character as a building of special architectural or historic interest” or for the demolition of a listed building must be authorised by the grant of listed building consent. Consent may be granted by the planning authority in whose area the building is situated or by the Welsh Ministers (sections 88 and 89).
310. The Chapter makes provision for an application procedure for listed building consent routinely administered by planning authorities and the grant of consent subject to conditions (sections 90 to 99). The Chapter also puts in place mechanisms for appeals to the Welsh Ministers against planning authorities’ decisions (or, in some cases, their failure to make decisions) on matters including applications for listed building consent, applications for the variation or removal of conditions imposed on consent, and applications for the approval of details of works (sections 100 to 104).
311. The Chapter also provides that a planning authority or the Welsh Ministers may modify or revoke a listed building consent by order, and also provides for access to compensation for a person with an interest in a listed building who suffers loss or damage directly attributable to the modification or revocation of consent (sections 107, 108 and Schedule 8). If the owner of a listed building claims that reasonably beneficial use cannot be made of a listed building and its associated land as a consequence of the refusal of listed building consent, the grant of consent subject to conditions or the modification or revocation of consent by order, a purchase notice may be served on the planning authority. The effect of the notice is that, if particular conditions are met, the planning authority is required to purchase the land from the owner (sections 109 to 112 and Schedule 9).
312. Finally, the Chapter gives the Welsh Ministers powers to make regulations about applications for listed building consent made by planning authorities and applications made by or on behalf of the Crown (section 105). In cases where works to a listed building on Crown land are considered to be a matter of national importance and their execution a matter of urgency, an appropriate Crown authority may make a listed building consent application to the Welsh Ministers rather than to a planning authority (section 106).
313. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the management of listed buildings. The guidance at the time of writing these notes, [Managing Change to Listed Buildings in Wales](#) (2017), sets out the general principles to follow when managing and making changes to listed buildings. It explains how to apply for listed building consent, including the roles and responsibilities of owners, planning authorities and Cadw.

### **Section 88 – Requirement for works to be authorised**

314. Section 88 provides that a person must not carry out certain works, or cause certain works to be carried out, unless they have been authorised by the grant of listed building consent under section 89.
315. Under subsection (2), the works requiring authorisation are:
- a. works for the alteration or extension of a listed building in any way that would affect its character as a building of special architectural or historic interest;
  - b. works for the demolition of a listed building.
316. Therefore, works for appropriate routine maintenance and like-for-like repair that do not affect the character of a listed building do not require authorisation by listed building consent.
317. Subsection (3) excludes four categories of works from the requirement for authorisation.
- a. Works in relation to a listed building that is also a scheduled monument. There are currently over 500 listed buildings in Wales that are also scheduled monuments. In such cases, the designation as a scheduled monument takes precedence and, in practice, scheduled monument consent under section 13 will be required for almost any works. It is no longer normal Cadw practice to schedule and list the same asset.
  - b. Works in relation to an exempt religious building as defined in section 156.
  - c. Works for the demolition of all or part of a building closed for regular public worship in accordance with Part 6 of the [Mission and Pastoral Measure 2011 \(No. 3\)](#). The 2011 Measure only applies to the Church of England so this provision of the Bill will only affect the small number of religious buildings in Wales near the border with England that remain under the jurisdiction of that body.
  - d. Urgently necessary works carried out by or on behalf of the Crown in the interests of safety or health or for the preservation of the building under the circumstances set out under section 117(4)(a)–(d)

### **Section 89 – Authorisation of works by listed building consent**

318. Section 89(1) provides that works for the alteration, extension or demolition of a listed building are authorised if written consent is given by the planning authority in whose area the building is situated or the Welsh Ministers and the works are carried out in accordance with the terms of the consent including any conditions attached to it. Sections 97 and 98 make further provision about conditions attached to listed building consents.
319. The expectation is that listed building consent will be obtained before any works begin. However, under subsection (2) a planning authority or the Welsh Ministers may grant

listed building consent for unauthorised works already carried out. In practice, it is only in exceptional circumstances and when the works undertaken have been for the benefit of the listed building that such consent will be granted. The applicant will need to fully justify the works in an application for listed building consent. In such cases, the works are only authorised from the grant of the consent. Any liability for an offence arising from the unauthorised works under section 117 remains and could be the basis for subsequent proceedings.

## **Section 90 – Applying for listed building consent**

### **Section 91 – Notice of application to owners of building**

320. Section 90 provides for the application procedure for listed building consent. Applications for listed building consent are ordinarily made to the planning authority in whose area the listed building is situated. However, certain applications, specified in section 90(1), are made to the Welsh Ministers.
321. Subsection (2) sets out what must be included in an application for listed building consent and subsection (3) allows the Welsh Ministers to make regulations about an application's form and content and how it must be made. In practice, most listed building consent applications for works in Wales are submitted on the standard 1APP form provided on the Welsh Government's central online platform – [Planning Applications Wales](#). However, an applicant can also submit an application form, with supporting documentation, by post.
322. Subsection (4) provides that the Welsh Ministers must make regulations to require an applicant to include with the application a statement – known as a “heritage impact statement” – about the impact of the proposed works on the character of the listed building and, depending upon the nature of the application, either or both of the design principles applied to the works and the handling of access issues. A heritage impact statement is the outcome of a heritage impact assessment. This process is more fully explained in Cadw's non-statutory, best-practice guidance, [Heritage Impact Assessment in Wales](#) (2017), which is kept under review.
323. Section 91 provides that the Welsh Ministers may make regulations to require an applicant for listed building consent to give notice of the application to any owners of the building. This will ensure that owners have an opportunity to make representations regarding any works proposed to the listed building.

### **Section 92 – Procedure for dealing with application**

324. Section 92 makes provision for dealing with listed building consent applications.
325. Subsection (1) provides that a listed building consent application made to a planning authority must be dealt with by that authority except in the following circumstances:
- a. If the planning authority is required not to consider the application under section 90(6) or 91(3). These sections prevent the planning authority from considering an application unless the applicant has provided all the prescribed information and supporting material. Planning authorities operate a validation procedure to determine if planning applications are complete and ready for processing. If

validation reveals deficiencies in an application, the planning authority may request additional information from an applicant.

- b. If the planning authority refuses to consider an application in accordance with section 93 (power to refuse to consider similar applications).
  - c. If the planning authority is required to refer the application to the Welsh Ministers under section 94 (discussed below).
326. The section's remaining provisions give the Welsh Ministers regulation-making powers and direction-making powers to put in place various elements of the listed building consent procedure.
327. Subsection (2) provides the Welsh Ministers with regulation-making powers which include powers to impose requirements for consultation or notification in relation to applications. In practice, these powers have been used to require planning authorities to notify certain national amenity societies – Historic Buildings and Places (formerly the Ancient Monuments Society), the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society and The Twentieth-Century Society – and the Royal Commission on the Ancient and Historical Monuments of Wales (“the Royal Commission”) if an application involves works for the demolition of a listed building or alterations that would entail the demolition of any part of a listed building. This affords these groups, with their specialist knowledge of listed buildings and the historic environment, the opportunity to offer the planning authority informed comment on proposals that would entail the destruction of all, or part, of a building listed for its architectural or historic interest.

#### **Section 94 – Reference of application to Welsh Ministers**

328. Section 94(1) and (2) gives the Welsh Ministers power to direct a planning authority to refer an application for listed building consent to them for determination. A direction may relate to a particular application or applications in relation to buildings specified in the direction.
329. The Welsh Ministers may use this power of direction to “call in” a listed building consent application for their own determination. In practice, the Welsh Ministers rarely call in a listed building consent application but may do so if it raises issues of more than local importance and is of exceptional significance or controversial. On the rare occasions when this power is used, it is usually in conjunction with section 95 where the planning authority has indicated that it is minded to grant consent and the notification suggests that the authority has not had proper regard to national policy for the protection of the historic environment.
330. Applications referred to the Welsh Ministers under this section are to be dealt with in accordance with the procedures set out in Chapter 2 of Part 5 of the Bill. Section 174 sets out that proceedings on such applications may be conducted in one or more of the following ways:
- a. at a local inquiry,
  - b. at a hearing, or

- c. by means of written representations.

### **Section 95 – Notification to Welsh Ministers before granting consent**

- 331. Section 95(1) to (3) provides that a planning authority may not grant listed building consent without first notifying the Welsh Ministers of the application and providing details of the works for which consent is sought. The Welsh Ministers have 28 days to decide whether to direct the authority to refer the application to them under section 94 or to request more time to consider making such a direction. If, at the end of 28 days, the Welsh Ministers have made no response or have notified the authority that they do not intend to make a direction to call in the application, the planning authority may grant the consent. A planning authority does not need to notify the Welsh Ministers if they refuse listed building consent.
- 332. Under subsection (4), the Welsh Ministers may make regulations to describe listed building consent applications which planning authorities generally may determine without notifying the Welsh Ministers. At present, all planning authorities may grant listed building consent for works affecting the interior only of Grade II (unstarred) listed buildings without notification to the Welsh Ministers.
- 333. Subsections (5) and (6) permit the Welsh Ministers to issue directions to specific planning authorities. Under subsection (5), the Welsh Ministers may direct a planning authority that the requirement to notify them does not apply to a listed building consent application, or, conversely, that the requirement applies in spite of any existing regulations or direction to the contrary.
- 334. Subsection (6) sets out that a direction may relate to a particular case or cases of a description specified in the direction.
- 335. Subsection (7) provides that the Welsh Ministers may attach specific requirements to regulations under subsection (4) or directions under subsection (6)(b). For instance, they may specify how and by whom a listed building consent application must be handled.
- 336. As of May 2022, the Welsh Ministers have issued directions to eight planning authorities in Wales permitting the authorities to dispense with the procedure of notifying the Welsh Ministers of an application for listed building consent involving works affecting the exterior of grade II (unstarred) listed buildings. This is subject to certain caveats, including the authority following the advice of a named, specialist conservation expert. One of these planning authorities also has such autonomy for grade II\* buildings but in all cases the arrangements exclude applications for demolition.

### **Section 96 – Grant or refusal of consent**

- 337. Section 96(1) provides that a planning authority or the Welsh Ministers may grant or refuse listed building consent.
- 338. In reaching a decision on an application, subsection (2) requires that a planning authority or the Welsh Ministers must have special regard to the desirability of



preserving the listed building, any features of special architectural or historic interest and the building's setting. Preserving a building or other historic asset does not mean that it has to be maintained unchanged, but that its significance is sustained for the future. The application and interpretation of "preserve" – with the meaning "to keep safe from harm" – has been the subject of case law (*South Lakeland District Council v Secretary of State for the Environment and another* [1992] 1 ALL ER 573).

339. In determining an application, the supporting planning advice and guidance (for example [TAN 24](#) and [Managing Change to Listed Buildings in Wales](#)) explains that the aim should be to find the best way to protect and enhance the special qualities of a listed building and retain it in use.
340. The planning advice and guidance (for example [TAN 24](#), paragraph 1.25) clarifies that the setting of a listed building "includes the surroundings in which it is understood, experienced, and appreciated embracing present and past relationships to the surrounding landscape". Cadw has published non-statutory, best-practice guidance, [Setting of Historic Assets in Wales](#) (2017), which is kept under review.
341. Subsection (3) provides that, subject to its terms, a listed building consent will have effect for the benefit of the building and the land on which it is situated, and of all persons for the time being interested in the building and land. This means that, should the ownership or occupancy of a listed building change during the course of consented works, the effect of the listed building consent will be unaltered and any consented works may continue uninterrupted.

### **Section 97 – Power to grant consent subject to conditions**

342. Section 97 allows listed building consent to be granted subject to conditions.
343. Subsection (2) provides examples of conditions, but the list is not exhaustive. [Welsh Government Circular 016/2014, The Use of Planning Conditions for Development Management](#), at paragraph 5.75, recommends that conditions on listed building consents should be drafted on the basis of the principles and tests that the circular sets out for the drafting of planning conditions. It offers a set of model conditions (conditions 71–80 in the appendix to the circular) for listed building consents, which, again, is not exhaustive.
344. Under subsection (5), a consent for demolition of a listed building must include a condition allowing for the recording of the building by the Royal Commission. Under the terms of its Royal Warrant, the Royal Commission has a responsibility to survey and record "buildings, sites and ancient monuments of archaeological, architectural and historic interest" in Wales and the adjacent territorial sea. The Royal Commission must also compile and curate the National Monuments Record for Wales "as the basic national record of the archaeological and historical environment"; [Coflein](#) is the online database for the National Monuments Record of Wales.

### **Section 98 – Condition about period within which works must start**

345. Section 98(1) requires a listed building consent to be granted subject to a condition that works must start within a period specified in the condition. The period begins on the day on which the consent is granted. If the consented works do not start within that

period, the consent will lapse. Once works are started within the specified period, a consent will have effect for the benefit of the listed building and the land on which it is situated and all persons with an interest in the building and land, subject to any terms of the consent (section 96(3)).

346. Subsection (2) sets out that if a consent fails to include a condition specifying a period within which works must begin, works must begin within five years of the day on which consent was granted.
347. Subsection (3) provides that this section does not apply where listed building consent is granted:
- a. under section 89(2) for works carried out before the consent was granted – since the consent authorises works that have already been completed, a requirement for works to begin is unnecessary; or
  - b. by a listed building partnership agreement under section 113(6) – partnership agreements may run for ten to fifteen years and the consents that they grant last for the lifetime of the agreements, irrespective of when works begin.

### **Section 99 – Application for variation or removal of conditions**

348. Section 99 permits any person interested in a listed building to apply to the planning authority for the variation or removal of conditions attached to a consent for that building.
349. The use of the term “removal” in this section represents a change from the corresponding “discharge” in section 19 of the [1990 Listed Buildings Act](#), from which it is derived. This will help to reduce confusion between the matters in section 99 and what is widely known in the historic environment sector as the “discharge” of a condition – the approval by a consenting authority of details of works required by a condition, often necessary before works can progress. Application for such approval (discharge) is made on the standard 1APP form provided on [Planning Applications Wales](#). In such applications, since the applicant is only seeking acknowledgement of compliance with a condition rather than any alteration to it, the application requirements are minimal and the procedures are straightforward.
350. This change accordingly helps to clarify that section 99 is concerned with alterations to the conditions of a listed building consent, which could potentially impact upon the character of a listed building. Consequently, subsection (3) provides that an application for variation or removal of conditions must comply with all the listed building consent application requirements and procedures set out in sections 90 to 95 (except the requirement for a heritage impact statement in section 90(4)). This includes that the application will usually be made to the planning authority in whose area the building is situated (unless specific enactments apply to the application), and the requirement for the planning authority to notify the Welsh Ministers if it intends to grant the application, allowing the Welsh Ministers to call the application in for determination.
351. Subsection (5) stipulates that this section does not apply to a consent granted by a listed building partnership agreement. Just as the listed building consents contained

in a listed building partnership agreement would be a matter of negotiation between the parties to the agreement, so too would any variation or removal of conditions of those consents. Section 114(2)(e) requires a listed building partnership agreement to make provision for its variation, which could include, but would not be limited to, the variation or removal of conditions.

## **Section 100 – Right to appeal against planning authority decision or failure to make decision**

### **Section 101 – Procedure for making appeal**

352. Section 100 provides that where an application has been made to a planning authority for listed building consent (or certain other types of applications relating to conditions of consent), the applicant may appeal to the Welsh Ministers if the planning authority refuses the application (or imposes conditions, or new conditions, on a consent) or fails to give notice of its decision on the application within the “determination period” (8 weeks under the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012, SI 2012/973 (W 108) (“the 2012 regulations”).
353. Section 101 puts in place the procedures for making an appeal under section 100. Subsection (1) requires a notice of appeal to be served on the Welsh Ministers and subsection (3) provides that the Welsh Ministers may make regulations about the form of the notice, information that must be included with a notice and how a notice of appeal must be served and the time limit for serving it.
354. The required notice of appeal is available on the [Welsh Government website](#). It incorporates a statement, known as a “certificate of ownership”, that the person making the appeal has complied with the requirements imposed by subsection (4) to give notice of the appeal to the owners of the building.
355. Subsection (5) provides that regulations making provision about the time limit for serving a notice of appeal must allow a period of at least 28 days for the appellant to serve notice of the appeal, starting from the day after the day of the receipt of a notice of decision or the end of the determination period (as the case may be).
356. At the time of writing these notes, under the 2012 regulations an applicant is allowed six months to make an appeal against a decision of a planning authority. If the applicant is making an appeal because the planning authority has failed to give notice at the end of the 8-week determination period, there is no deadline for an appeal.

### **Section 103 – Decision on application after service of notice of appeal**

357. Section 103 sets out how an appeal must be dealt with if it relates to a planning authority’s failure to give notice by the end of the determination period as set out in section 100(3).
358. Subsection (2) prohibits the Welsh Ministers from determining the appeal before the end of a period which they specify in regulations (four weeks under the 2012 regulations). Subsection (3) allows the planning authority to give notice of its decision on the application at any time during the same period.

359. Subsections (4) and (5) provide that if the planning authority determines the application within that four-week period, the Welsh Ministers must give the appellant the opportunity to proceed with the appeal and revise the grounds if the application is refused or the consent is granted subject to conditions.

#### **Section 104 – Determination of appeal**

360. Section 104 makes various provisions about how the Welsh Ministers may determine an appeal made under section 100.
361. Subsection (4) signposts that Chapter 2 of Part 5 of the Bill provides for the procedure by which an appeal is to be considered. Section 173 sets out that, unless the Welsh Ministers direct otherwise, an appeal will be determined by a person appointed by the Welsh Ministers, and the appointed person will have the same powers and duties as the Welsh Ministers. In practice, it is likely that the appointed person will be an inspector from [Planning and Environment Decisions Wales](#). Section 174 requires the Welsh Ministers to decide that the appeal proceedings will be conducted in one or more of the following ways:
- a. at a local inquiry,
  - b. at a hearing, or
  - c. by means of written representations.

#### **Section 105 – Applications by planning authorities and the Crown**

362. Section 105 provides that the Welsh Ministers may make regulations to provide that any provisions of the Bill, or of regulations made under the Bill, do not apply, or apply with modifications, to particular applications made by a planning authority or by or on behalf of the Crown. Subsection (2) provides that the applications in question are ones for listed building consent, the variation or removal of consent conditions, or approval of details of works under a consent condition.
363. Subsection (3) provides that the regulations may, in particular, require applications to be made to the Welsh Ministers.
364. Under the 2012 regulations, a planning authority must apply to the Welsh Ministers for listed building consent for the demolition of a listed building in its ownership. A planning authority may determine its own applications for listed building consent if they do not involve demolition. Unless the Welsh Ministers have directed otherwise under section 95, a planning authority must advise the Welsh Ministers if it is minded to approve an application, which gives the Welsh Ministers an opportunity to call the application in.

#### **Section 106 – Applications relating to urgent works on Crown land**

365. Section 106 provides that an appropriate Crown authority may apply directly to the Welsh Ministers for listed building consent (instead of to a planning authority) if:
- a. the listed building is on Crown land, and

- b. the appropriate Crown authority certifies that the works for which consent are sought are of national importance and must be carried out as a matter of urgency.
366. “Crown land” and “an appropriate Crown authority” are defined in section 207.
367. The Crown Estate Commissioners might, for instance, make such an application relating to a listed building on the extensive Crown Estate holdings in Wales. The Crown Estate owns 65 per cent of the foreshore and riverbed in Wales, including the port of Milford Haven and a number of other ports and marinas. Similarly, the Ministry of Defence could apply for listed building consent for a building on one of the several military training areas in Wales.
368. In the latter instance, subsection (8) may be of particular relevance. It provides that the requirement in subsection (4) for the Welsh Ministers to make available for public inspection any statements and information relating to the application does not apply if the statement or information is subject to a direction under section 178. The Welsh Ministers would make a direction under that section where they are satisfied that the statement or information contains information relating to national security and that its disclosure would be contrary to the national interest.
369. Subsection (7) signposts the sections that provide for the procedure by which an application made under this section is to be considered. Section 174 sets out that the Welsh Ministers must choose to conduct proceedings in one or more of the following ways:
- a. at a local inquiry,
  - b. at a hearing, or
  - c. by means of written representations.

## **Section 107 – Modification and revocation of consent**

### **Schedule 8 – Procedure for orders modifying or revoking listed building consent**

370. Section 107 provides that a planning authority or the Welsh Ministers may, by order, modify or revoke to any extent a listed building consent granted on application or appeal under this Part of the Bill. Such an order may be made at any time before the conclusion of the works, but it will have no effect on the consent for works already completed.
371. Schedule 8 sets out procedures that must be followed before an order made by a planning authority (Part 1), or an order made by the Welsh Ministers (Part 2), takes effect.
372. Paragraph 1 of Schedule 8 provides for two mechanisms for an order made by a planning authority to take effect. The first requires the order to be confirmed by the Welsh Ministers under paragraph 2 before it takes effect. The second, under paragraph 3, does not require the order to be confirmed by the Welsh Ministers if certain conditions are met.

373. Paragraph 2(1) requires a planning authority that has submitted an order under section 107 to the Welsh Ministers for confirmation to give notice of the submission to every owner and occupier of the listed building and any other person whom it thinks will be affected by the order.
374. The recipients of the notice must be given at least 28 days to make a written request to the Welsh Ministers for a hearing before an appointed person, who will usually be an inspector from [Planning and Environment Decisions Wales](#) (paragraph 2(2) and (4)).
375. Paragraph 3 sets out the procedure for an order made by a planning authority to take effect without being confirmed by the Welsh Ministers.
376. Under paragraph 3(1), this procedure applies only if the following have notified the authority that they have no objection to the order:
- a. every owner and occupier of the listed building, and
  - b. every other person the planning authority thinks will be affected by the order.
377. This procedure is only likely to be used if the modification or revocation of consent is being done with the understanding and agreement of the interested parties. If they accept the order without objection, they will have no future claim to compensation under section 108.
378. If no objections are raised by the interested parties, sub-paragraph (2) requires the planning authority to publish notice of the order.
379. The notice must give persons affected by the order at least 28 days to notify the Welsh Ministers that they want the order to be submitted to the Welsh Ministers for confirmation under the procedure in paragraph 2 (paragraph 3(3)(a) and (5)). This will permit a person who only became aware of the order when the notice was published by the authority to call for its confirmation by the Welsh Ministers. Similarly, following receipt of the notice, an individual who had earlier expressed no objection to the planning authority's order may decide instead to call for the order to be submitted for confirmation by the Welsh Ministers. If any person calls for the order to be submitted for confirmation, it cannot take effect unless confirmed in accordance with paragraph 2.
380. Paragraph 3(4) provides that if no affected person notifies the Welsh Ministers during an allotted period of at least 28 days that they want the order to be submitted to the Welsh Ministers for confirmation, and the Welsh Ministers do not, by the end of a succeeding period of at least 14 days, direct that the order must be submitted to them for confirmation, the order takes effect at the end of that period.
381. If the Welsh Ministers decide that a listed building consent should be modified or revoked, paragraph 4 establishes the procedure for making an order. Before making an order, the Welsh Ministers must consult the planning authority in whose area the listed building is situated (paragraph 4(1)).

382. The Welsh Ministers must also serve notice of the proposed order on every owner and occupier and any other person whom they believe will be affected. The notice must allow at least 28 days for a person on whom the notice is served to request a hearing before a person appointed by the Welsh Ministers, who will usually be an inspector from [Planning and Environment Decisions Wales](#) (paragraph 4(2) – (3) and (5)).

### **Section 108 – Compensation where consent is modified or revoked**

383. Section 108 provides that any person interested in a listed building is, on making a claim, entitled to compensation for expenditure incurred in carrying out works which became abortive or for any other loss or damage caused by the modification or revocation of a consent.
384. Subsection (1) makes clear that the section only makes compensation payable where an order under section 107 is made by a planning authority and confirmed by the Welsh Ministers or is made by the Welsh Ministers. If a planning authority order takes effect under the procedure in paragraph 3 of Schedule 8 (i.e. without the confirmation of the Welsh Ministers) no compensation is available. In those cases, affected persons will have chosen not to object to the order.
385. Irrespective of whether the order is made by the planning authority or the Welsh Ministers, the written compensation claim must be made to the planning authority in whose area the building is situated. A claim must be made within 6 months from the day on which the modification or revocation order took effect (subsections (2) and (5)).
386. For the purposes of this section, expenditure incurred in carrying out works includes the preparation of plans and other preparatory matters; these might include, but are not limited to, site surveys and investigations, the preparation of a heritage impact statement and the production of detailed specifications of methodologies and materials (subsections (2) and (3)).
387. If a planning authority is liable to pay compensation under section 108, section 171(3) provides that, under certain circumstances, the Welsh Ministers may contribute towards the payment of the compensation or direct that another local authority contribute an amount to the payment.
388. Sections 202, 203 and 204 make additional provisions about claims for compensation under this Act.

### **Section 109 – Purchase notice where consent is refused, granted subject to conditions, modified or revoked**

389. Listed building controls place restrictions on what an owner can do with a building and in rare cases an owner may find that there is no viable use for a listed building. Left with a building of little value, under section 109 the owner may be able to serve a purchase notice that requires a planning authority to purchase the owner's interest in the listed building and associated land if specific conditions are met.
390. A listed building owner may serve a purchase notice on the planning authority for the area in which the building is situated if consent:

- a. is refused,
  - b. granted subject to conditions, or
  - c. modified or revoked by order under section 107,
- and certain other conditions set out in subsections (4) and (5) are met.

391. The subsection (4) conditions are met if:

- a. the listed building and its associated land are unusable in their existing state;
- b. in a case where conditions have been attached to a listed building consent, either as granted or after modification, the building and land cannot be made usable by carrying out the works in accordance with the conditions; and
- c. the carrying out of any other works for which listed building consent has been granted (or for which a planning authority or the Welsh Ministers have undertaken to grant consent) also cannot make the building or land usable.

392. Subsection (6) defines “usable” as meaning “capable of reasonably beneficial use”.

393. Associated land must be in the same ownership as the listed building and must be treated as inseparable from the building. It would not be possible to serve a purchase notice requiring a planning authority to purchase curtilage buildings without the principal listed building.

## **Section 112 – Action following service of purchase notice**

### **Schedule 9 – Action following service of purchase notice**

394. Section 112 introduces Schedule 9 which makes provision for the actions to be taken by a planning authority and the Welsh Ministers after the service of a purchase notice.

395. Paragraph 1 of Schedule 9 requires that within three months of the day that the purchase notice was served the planning authority must respond to the person with either an acceptance notice or a rejection notice.

396. Sub-paragraph (2) explains that an acceptance notice will state either that the planning authority is willing to comply with the purchase notice or that another local authority or statutory undertaker identified in the notice has agreed to comply. A statutory undertaker is defined in paragraph 7 of the Schedule and section 210.

397. Sub-paragraphs (5) and (7) expand on the effect of the service of an acceptance notice. Sub-paragraph (5) treats the authority or undertaker as being authorised to carry out the compulsory acquisition of the interest in the listed building and associated land under section 137, and as having initiated the compulsory purchase by serving a “notice to treat” on the owner. This means that the purchase proceeds in accordance with the Compulsory Purchase Act 1965 (c. 56) and compensation is determined under the Land Compensation Act 1961 (c. 33) (“the 1961 Act”).



398. A rejection notice, on the other hand, sets out the reasons why the planning authority will not comply with the purchase notice, explains that no other body has been found willing to comply with it and states that copies of the purchase notice and rejection notice have been forwarded to the Welsh Ministers (sub-paragraph (3)).
399. Paragraphs 2 to 5 of the Schedule concern the Welsh Ministers' actions after receiving copies of a purchase notice and the rejection notice relating to it.
400. Paragraph 2(2) states that the Welsh Ministers must, subject to various provisions in sub-paragraphs (3) to (7), confirm a purchase notice if they are satisfied that:
- a. the conditions in section 109 are met; and
  - b. that the notice relates to all of the land adjoining or adjacent to the listed building that they consider is required for preserving the building or its amenities, providing access to it, or its proper control or management.
401. This second condition will help to safeguard the interests of an acquiring authority and increase the likelihood that it will be able to give the listed building and associated land a viable future.
402. Paragraph 4 explains the effect of the Welsh Ministers confirming a purchase notice. Where the Welsh Ministers do so, the specified authority – either the authority upon whom the notice was served or the authority or statutory undertaker substituted by the Welsh Minister under paragraph 2(7) – is effectively placed in the same situation as if it had served an acceptance notice. That authority is treated as authorised to acquire the interest of the person who served the notice by compulsory purchase as explained in paragraph 397 above.
403. If, on the contrary, the Welsh Ministers are not satisfied that the section 109 conditions and other requirements specified in paragraph 2(2)(b) are fulfilled, they must, under paragraph 2(8), refuse to confirm a purchase notice.
404. Paragraph 2(3) provides that if the Welsh Ministers are satisfied that the conditions in section 109 are only met in relation to part of the land specified in the purchase notice, then the notice must only be confirmed in relation to that part. This would, for instance, enable the Welsh Ministers to exclude land from the scope of the purchase notice and subsequent compulsory acquisition (under paragraph 4(1)) which could practically be treated as a separate holding from the listed building.
405. Instead of confirming a purchase notice, paragraph 2(4) allows the Welsh Ministers to grant or reinstate a listed building consent or vary or remove conditions as required to permit works that would enable the listed building and associated land to be made usable.
406. Similarly, instead of confirming a purchase notice, paragraph 2(5)–(6) provides for a situation in which the Welsh Ministers may direct that, should another application for listed building consent or planning permission be made that would render the land, or any part of it, usable within a reasonable time, that application must be granted.

407. Paragraph 2(7) provides that, in confirming a purchase notice, if the Welsh Ministers believe that another local authority or statutory undertaker would be better able to secure the future of part or all of the land to which a purchase notice relates, they may modify the notice by substituting that authority or undertaker for the planning authority named in the notice.
408. Paragraph 3 requires the Welsh Ministers to give notice of the action that they propose to take on a purchase notice under paragraph 2 to the person who served the purchase notice and any authority or statutory undertaker involved with the matter. They must also give them the opportunity to appear before and be heard by an appointed person. The appointed person will usually be an inspector from [Planning and Environment Decisions Wales](#).
409. Paragraph 4 details the effect of the action that the Welsh Ministers have or have not taken with regard to a purchase notice received under paragraph 1(6).
410. Paragraph 4(3) provides that if the Welsh Ministers do not:
- a. confirm a purchase notice,
  - b. refuse to confirm a notice, or
  - c. take any of the other actions available to them under paragraph 2,
- within a relevant period (as defined in paragraph 4(5) and (6)), the purchase notice is to be treated as if it was confirmed by them at the end of that period. The authority upon which the purchase notice was served is effectively placed in the same situation as if it has served an acceptance notice; it is treated as authorised to acquire the interest of the person who served the notice by compulsory purchase under section 137 and as having served a “notice to treat” on the person.

### **Chapter 3 – Listed building partnership agreements**

411. This Chapter provides for the making of a listed building partnership agreement. This is a voluntary agreement between a planning authority or the Welsh Ministers, a listed building owner and other parties for the long-term conservation and management of one or more listed buildings. A listed building partnership agreement may grant listed building consent for an agreed programme of works to be carried out during the lifetime of the agreement. Provision is made for comparable scheduled monument partnership agreements in Part 1, Chapter 4.
412. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the preparation of heritage partnership agreements including those for listed buildings. The guidance at the time of writing these notes, [Heritage Partnership Agreements in Wales](#) (2021), sets out the elements required in an agreement and identifies best practice to promote consistency in the implementation of works as well as regular monitoring and review. The guidance includes a template to provide a framework for new agreements.

### **Section 113 – Listed building partnership agreements**

413. Section 113 sets out the possible parties to a listed building partnership agreement and what such an agreement may do.
414. Subsections (1) and (3) establish that an owner of a listed building or part of a listed building may enter into a listed building partnership agreement with the planning authority in whose area the building is situated or the Welsh Ministers.
415. In practice, listed building partnership agreements will routinely be made between owners and their respective planning authorities. Although agreements between owners and the Welsh Ministers are permitted by the legislation, at the time of writing they are only likely to be made when local authorities are the owners of the listed buildings. While a planning authority may, in some situations, determine its own listed building consent applications (see paragraph 364 above), it might still wish to enter a listed building partnership agreement with the Welsh Ministers to benefit from the long-term efficiency savings that an agreement can offer.
416. Other persons with an interest in the listed building, as identified in subsections (2) and (4), may also be parties to the agreement.
417. Subsection (6) provides that a listed building partnership agreement may grant listed building consent under section 89(1) for specified works for the alteration or extension of the listed building to which it relates. This power is used to grant permission for beneficial works for the conservation and management of the listed building. The works specified will need to be negotiated and agreed by the parties to the agreement and conditions may be attached to the consent (and subsection (7) provides that any such conditions must be specified in the agreement).
418. An agreement cannot, however, grant consent for the demolition of a listed building. Demolition works would require separate listed building consent obtained through the routine application procedure.
419. A listed building consent contained in a listed building partnership agreement is not subject to the provisions in section 98 about when works must start. A consent for works that have not been started will remain valid for the lifetime of the agreement, which may last for 10 to 15 years.
420. Subsection (8) sets out a wide range of matters relating to maintenance, conservation and management that the parties may also agree to include in a listed building partnership agreement. Paragraph (a) permits the parties to specify works that in their view would or would not affect the character of a listed building as a building of special architectural or historic interest and consequently would or would not require listed building consent. This would allow the parties to identify clearly routine maintenance works or like-for-like repairs (with details of methods and materials) that could proceed without consent since there would be no loss of historic fabric or effect on the character of the building. Equally, the parties would be able to outline more substantial works – for instance, the restoration or reconstruction of elements of the listed building, or major additions or alterations – which, due to their complexity or sensitivity, could not be adequately provided for in a listed building partnership

agreement. Those works would require the full consideration of the separate listed building consent procedure (sections 90 to 98).

### **Section 114 – Further provision about listed building partnership agreements**

421. Subsections (1) and (2) of section 114 provide that listed building partnership agreements must be in writing and specify essential elements of an agreement.
422. Subsection (2)(e) requires a listed building partnership agreement to make provision for its variation. Since an agreement will last for years, it is likely that adjustments will be required. The parties, therefore, must incorporate in the agreement agreed working arrangements for approving necessary variations into the agreement. Depending on the nature of the variations, they may be subject to the consultation and publicity requirements prescribed by the regulations under subsection (5).
423. The requirement in subsection (2)(f) provides for a mechanism for a negotiated termination to a listed building partnership agreement should it no longer serve the mutual interests of the parties or has, for some other reason, broken down. This is distinct from any termination of an agreement or provision of an agreement by order of a planning authority or the Welsh Ministers as provided for under section 115.
424. When considering whether to make or vary a listed building partnership agreement that incorporates listed building consent, a planning authority or the Welsh Ministers must have the same special regard to the desirability of preserving the building, its features and its setting as when granting or refusing listed building consent under section 96. See the discussion in paragraph 338 above.
425. Subsection (7) provides that a listed building partnership agreement will only be binding on the parties to the agreement. Future owners of a listed building will not be bound by an agreement, nor will they be able to benefit from any listed building consent granted by an agreement. Unless all parties agree to continue an agreement with a new owner, a listed building partnership agreement will, therefore, cease to have effect with a change of ownership.

### **Section 115 – Termination of agreement or provision of agreement**

#### **Schedule 10 – Procedure for orders terminating listed building partnership agreements**

426. Section 115(1) allows a planning authority to make an order to terminate a listed building partnership agreement to which it is a party or any provision of such an agreement. Subsection (2) gives the Welsh Ministers comparable powers, but they do not have to be party to an agreement. Termination by order is only likely to occur in exceptional cases – if, for example, works unauthorised by the agreement take place and relations between the parties break down to such an extent that negotiated termination becomes impossible.
427. A termination order may be made at any time before the conclusion of the affected works, but it will have no effect on the consent for works already completed.

428. Schedule 10 puts in place the procedures for making the termination orders. These procedures are derived from those for making an order to modify or revoke listed building consent in Schedule 8.
429. Part 1 of the Schedule makes provision about termination orders made by planning authorities. Paragraph 1(1) requires that a planning authority's termination order must be confirmed by the Welsh Ministers before it will take effect.
430. Paragraph 1(2) requires a planning authority that has submitted an order to the Welsh Ministers for confirmation to give notice of the submission to:
- a. the other parties to the agreement;
  - b. any other person occupying the listed building to which the agreement relates under a lease that has at least two years to run; and
  - c. any other person the authority thinks will be affected by the order.
431. Paragraph 1(2)(b) has been framed to require consultation with longer-term occupants of a listed building that will be affected by a termination order. More transient occupiers, for instance students in a university hall of residence, will not be captured by the provision.
432. The recipients of the notice must be given at least 28 days to make a written request to the Welsh Ministers for a hearing before an appointed person, who will usually be an inspector from [Planning and Environment Decisions Wales](#). If a hearing is requested, each planning authority that is party to the agreement will be given the opportunity to attend (paragraph 1(3) and (4)).
433. Part 2 of the Schedule makes provision about termination orders made by the Welsh Ministers. Under paragraph 2(1) the Welsh Ministers must serve notice of the proposed termination order on the parties to the listed building partnership agreement and the other individuals listed in paragraph 430 above.
434. Before the Welsh Ministers can make the order, the recipients of the notice must be afforded the opportunity to appear before and be heard by an appointed person. The procedures in paragraph 2(2)-(4) mirror those in paragraph 1(3)-(5).

### **Section 116 – Compensation where agreement or provision is terminated**

435. If a listed building partnership agreement, or a provision of such an agreement, is terminated by order and a person suffers loss or damage as a direct result, section 116 provides for the payment of compensation.
436. These provisions are similar in many respects to those providing for compensation if listed building consent is modified or revoked by order under section 108. Just as in that earlier section, section 116(3) provides that expenditure incurred in carrying out works includes the preparation of plans and other preparatory matters. Such other matters might include, but not be limited to, site surveys and investigations, the preparation of heritage impact statements and the production of detailed specifications of methodologies and materials.

437. The compensation claim must be made in writing either to the planning authority that made the order, or, in the case of an order made by the Welsh Ministers, to the planning authority in whose area the listed building is situated. It must be made within six months of the termination order taking effect (subsections (5) and (6)).
438. If a planning authority is liable to pay compensation under section 116, section 171(3)(a) permits the Welsh Ministers to contribute towards the payment of the compensation in certain circumstances. Section 171(4)-(6) allows the Welsh Ministers to direct any other authority that was or is party to the listed building partnership agreement to defray some or all of the compensation. This acknowledges that a complex agreement – for instance, one for listed buildings associated with a transport corridor – could involve a number of local authorities. While a single authority or the Welsh Ministers might serve the termination order, it might be reasonable to share the burden of compensation between some or all of the other authorities party to the agreement. However, under section 171(6) the Welsh Minister may only give such a direction if they have consulted with all the planning authorities that were or are party to the agreement.
439. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 46 above).

#### **Chapter 4 – Enforcement of controls relating to listed buildings**

440. Listed buildings are nationally important and irreplaceable historic assets. It is a criminal offence to carry out unauthorised works to a listed building, which can destroy the historic fabric (meaning the historic evidence provided by the physical elements of the building) and damage the special interest of listed buildings. This Chapter sets out a number of offences relating to listed buildings, including the offences of carrying out unauthorised works, failing to comply with a condition of a listed building consent (section 117) or deliberately damaging a listed building (section 118).
441. This Chapter also provides planning authorities with the powers to issue a temporary stop notice to put an immediate halt to works that either breach section 88 or a condition of a consent (sections 119 to 122).
442. The Chapter also provides the power for a planning authority to issue enforcement notices (section 123). Such notices may be issued if a planning authority considers that works which involve a breach of section 88, or of a condition subject to which listed building consent has been granted, have been or are being carried out in relation to a listed building in its area. The enforcement notice can be issued, if appropriate, having regard to the effect of the works on the character of the building as a building of special architectural or historic interest. An enforcement notice must specify steps to be taken to remedy the effects of unauthorised works. Section 124 provides for the service and taking effect of an enforcement notice, and section 127 establishes a right to appeal against an enforcement notice. The Chapter provides arrangements for compliance with enforcement notices and a power for the Welsh Ministers to issue enforcement notices (sections 130 to 134).

443. Finally, the Chapter provides for injunctions to restrain an actual or expected breach of section 88 or an actual or expected failure to comply with a condition of listed building consent for works to a listed building (section 135).

**Section 117 – Offence of carrying out unauthorised works or breaching condition of consent**

444. Section 117(1) makes it an offence for a person to carry out, or cause to be carried out, works in relation to a listed building in breach of section 88. This includes any works that would affect its character as a building of special architectural or historic interest.
445. If listed building consent has been granted, subsection (2)(b) provides that it is an offence for a person to fail to comply with a condition of a consent in carrying out works, or in causing works to be carried out.
446. For the purposes of this section, a “person” may be anyone who undertakes works to a listed building, be that an owner or occupier of a building, a contractor or sub-contractor or other third party.
447. If works are undertaken to a listed building without authorisation or in breach of a condition subject to which listed building consent has been granted, a person commits an offence if they:
- a. carry out those works personally, or
  - b. instruct or employ someone to undertake them.
448. Consequently, both an owner and a builder instructed by the owner to undertake unauthorised works could be guilty of an offence.
449. Subsection (4) provides a person with a defence for an offence under this section if works were undertaken to address urgent health and safety needs or for the preservation of the building. However, the defence is only available where the works were limited to the minimum measures immediately necessary to secure health and safety or the preservation of the building, and notice was given to the planning authority in whose area the building was situated, with detailed justification for the works, as soon as reasonably practicable.
450. Subsection (5) provides a person with a defence for an offence under this section relating to a building under interim protection where the person proves that they did not know, and could not reasonably have been expected to know, that the building was subject to interim protection. Where the defence is raised by a person on whom a notice of interim protection should have been served, it is for the prosecution to prove that the notice was served on the person.
451. Information on buildings under interim protection should be readily available. Section 78 requires the Welsh Ministers to serve notice if they propose to add a building to the list. The notice, which must be served on every owner and occupier of the building amongst other persons, has to specify the date upon which interim protection begins and explain its effect. A list of buildings under interim protection is published on the

[Cadw website](#) in accordance with section 79(4)(a) and [Cof Cymru](#) also displays buildings under interim protection.

452. Subsections (6) and (7) detail the levels of penalties a person guilty of an offence under this section is liable to, whether on summary conviction or conviction by indictment. Since unauthorised works to a listed building may be prompted by the prospect of financial gain, the courts are to have regard to any financial benefit the person convicted may have gained or appears likely to gain as a result of the offence, when determining the amount of any fine to be imposed (subsection (7)).

### **Section 118 – Offence of intentionally damaging listed building**

453. Section 118(1) provides that a person commits an offence, if, with the intention of damaging a listed building, such a person does anything, or permits anything to be done that causes or is likely to result in damage to that building, and were it not for this subsection, the person would have been entitled to do or permit such action. A person entitled to do or permit an action to a listed building in this case would include an owner, occupier or someone employed by them.
454. The manner in which the offence under this section has been limited to persons who are entitled to do or permit works to a listed building, distinguishes it from the more broadly framed offence under section 1(1) of the Criminal Damage Act 1971 (c. 48) (“the 1971 Act”). The offence in the 1971 Act applies to any person who “without lawful excuse destroys or damages any property belonging to another”. Another important difference between the two offences is that intention must be proved for an offence under this section, while recklessness as to whether damage is caused is sufficient for the offence under section 1 of the 1971 Act.
455. Subsection (3) provides that a person found guilty of an offence under subsection (1) will be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
456. If, on being convicted of an offence under this section, the person also fails to take reasonable steps that are necessary to prevent damage or any further damage from taking place to the building, the person is liable on summary conviction to further fines for each day on which the failure continues (subsections (4) and (5)).
457. Section 118 does not apply to a building subject to interim protection or temporary listing – see sections 79(2) and 83(4).

### **Section 119 – Power of planning authority to issue temporary stop notice**

458. Section 119 gives a planning authority the power to issue a temporary stop notice to put an immediate halt to any or all works to a listed building that they consider to be unauthorised or to contravene a condition of a granted listed building consent. The planning authority may only issue a notice if it considers that the works ought to be stopped immediately, having regard to the effect of the works on the character of the building as one of special architectural or historic interest.
459. Subsections (2) to (4) specify the required content of a temporary stop notice and make provision for display of a notice. The works specified in the temporary stop notice



need not include all of the works that are underway. For example, a planning authority may wish to stop the alteration or removal of a particular feature, such as a window, which is part of a wider programme of works, but may be satisfied that the remainder of the programme of works has been authorised by listed building consent or consists of simple repairs that will not affect the character of the building.

460. Subsection (3) requires the planning authority to display a copy of the notice on the listed building and the copy must specify the date on which it is first displayed. Subsection (4) however provides that if it is not reasonably practicable to display a copy of the notice on the building or its display on the building might cause damage, the authority may instead display a copy in a prominent place as near to the building as is reasonably practicable.
461. While the planning authority may serve copies of the notice on interested parties under subsection (5), only display of a copy of the notice as specified in subsection (3) is needed for the immediate suspension of the specified works.

### **Section 122 – Compensation for loss or damage caused by temporary stop notice**

462. Section 122 provides that any person with an interest in a listed building may, in limited circumstances, be entitled to compensation from the planning authority for loss or damage directly attributable to the effect of a temporary stop notice.
463. Subsection (1) provides that compensation is only payable where:
- a. the works specified in the notice did not breach section 88 at the time the notice took effect (that is, they were either authorised or did not require authorisation); or
  - b. the works specified in the notice did not contravene a condition of a listed building consent at the time the notice took effect; or
  - c. the planning authority withdrew the temporary stop notice after it took effect.
464. A planning authority might withdraw a temporary stop notice after it takes effect if, for example, it discovers that the notice was displayed in error because works were not unauthorised or the notice was brought into effect for the wrong property.
465. Subsection (2) further provides that no compensation is payable if the planning authority withdrew the temporary stop notice after listed building consent was granted that would allow the works specified in the notice to proceed. This exception applies only if the consent was granted after the temporary stop notice had taken effect; if the consent was granted first, compensation may be payable.
466. If a planning authority is liable to pay compensation under section 122, section 171(3) provides that, under certain circumstances, the Welsh Ministers may contribute towards the payment of the compensation or direct that another local authority contribute an amount to the payment.
467. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 46 above).

### **Section 123 – Power of planning authority to issue enforcement notice**

468. Section 123 gives a planning authority the power to issue an enforcement notice to require steps to be taken where it considers that unauthorised works have been carried out on a listed building. The planning authority must consider it appropriate to issue the notice, having regard to the effect of the works on the character of the building as one of special architectural or historic interest. The planning authority, accordingly, may weigh up factors such as the severity of the damage to the listed building and the likelihood of future harm, the impact of the damage on the listed building's character and significance, the scope for negotiation and cooperative solutions and the availability and suitability of other legal remedies.
469. An enforcement notice must identify the alleged breach and require steps to be taken for any or all of the following purposes:
- a. restore the listed building to its condition before the unauthorised works took place;  
The steps specified would be likely to include undertaking appropriate recording and investigation of the damaged area to recover and record historical evidence before further specified operations proceed.
  - b. alleviate the effect of the works, if restoration is not reasonably practicable or desirable; or  
In the event of serious or extensive damage to a listed building, restoration might be unviable and could, in fact, cause further harm to the special interest of the listed building. In such a case, the planning authority would specify steps to stabilise the building in its altered state to protect it and the special interest it contains for the future.
  - c. put the building in the condition in which it would have been if the terms and conditions of a granted listed building consent had been complied with.

### **Section 124 – Service and taking effect of enforcement notice**

470. Section 124 sets out the requirements for service of a copy of an enforcement notice and when a notice takes effect.
471. Subsection (2) provides that an enforcement notice will take effect at the beginning of the day specified in the notice. Should an appeal against the notice be made to the Welsh Ministers, section 127(4)(a) provides that the notice will not take effect until the appeal is finally determined or withdrawn. However, should an appeal against a decision of the Welsh Ministers on an enforcement notice be made to the High Court, section 184(5) provides that the Court may order that the enforcement notice is to have effect, either in full or to the extent specified in the order.
472. Subsection (3) provides that an enforcement notice can set different periods for taking different steps. Such flexibility enables an enforcement notice to make appropriate provision for the conservation requirements of a building. For instance, a phased series of steps might be set to achieve the satisfactory restoration or stabilisation of a building damaged by unauthorised works.

473. Subsection (4) requires a copy of the notice to be served on every owner and occupier of the building and any other person who has an interest in the building that the authority considers to be materially affected by the notice.
474. Subsection (5) requires a copy of the notice to be served before the end of 28 days after the day on which it was issued, and at least 28 days before the date specified in the notice as the date on which it is to take effect. "Issued" here means when the enforcement notice was agreed by the relevant committee or delegated officer of the planning authority.

### **Section 126 – Effect of granting listed building consent on enforcement notice**

475. Section 126 provides for a situation where, after an enforcement notice is issued, listed building consent is granted under section 89(2) to authorise works to which the notice relates.
476. In practice, consent under section 89(2) is only granted in exceptional circumstances and when the works undertaken have been for the benefit of the listed building.
477. Subsection (2) provides that requirements of the notice that are inconsistent with the new consent cease to have effect. However, subsection (3) sets out that a person remains liable for any earlier offence arising from a failure to comply with an enforcement notice, even though part or all of the notice subsequently ceases to have effect under this section. Failure to comply with an enforcement notice (section 133) is a separate offence from carrying out unauthorised works (section 117) or of intentionally damaging a listed building (section 118) and proceedings for the offences may be pursued independently.

### **Section 127 – Right to appeal against enforcement notice**

478. Section 127 permits anyone who has an interest in the listed building to which an enforcement notice relates to appeal to the Welsh Ministers against the notice. This includes owners, lessees and tenants, official receivers and mortgagees and other lenders.
479. Subsection (1)(b) also provides that any person, who by virtue of a licence occupies the building on the day on which the notice is issued and continues to occupy it when the appeal is made, may appeal to the Welsh Ministers against an enforcement notice.
480. Subsection (2) lists the permissible grounds for an appeal.
481. Ground (a) allows the listing of the building to be challenged. An appellant resorting to ground (a) would need to demonstrate that the building is not of special architectural or historic interest. In making the case, consideration must be given not only to the building itself, in its condition prior to any unauthorised works taking place, but also to any contribution made by associated structures or artificial objects in the curtilage of the building. If an appeal on this ground is successful, the Welsh Ministers will delist the building (see section 128(3)(c)).

482. Ground (b) permits an appellant to challenge an enforcement notice by contending that the matters alleged to have constituted a breach of section 88 or a condition of a listed building consent never took place.
483. Ground (c), on the other hand, allows an appellant to argue that those matters, if they occurred, did not constitute a breach. An appeal could be made, for example, if works took place, but they did not affect the character of the building as one of special architectural or historic interest. Ground (c) will also accommodate appeals arguing that a breach did not occur because the building in question is not listed or that what has been listed is not a building. Such situations were considered and recognised as legitimate grounds for appeal in *Dill v Secretary of State for Housing, Communities and Local Government and another* [2020] 1 WLR 2206.
484. Ground (d) allows an appeal on the basis that the works to which the enforcement notice relates were urgently necessary for health and safety or the preservation of the building, those objectives could not be secured by works of repair or to provide temporary support or shelter and the works undertaken were limited to the minimum measures necessary.
485. Ground (e) provides for circumstances in which the appellant maintains that listed building consent should be granted for the unauthorised works to which an enforcement notice relates or a condition of a granted consent should be removed or replaced. Such an appeal might be made if the works in question had a neutral or beneficial effect on the character of the listed building.
486. Ground (f) permits an appeal if a notice was not served on a person as required under section 124. That section requires service on every owner and occupier and any other person with an interest in the building whom the planning authority considers will be materially affected by the notice. However, section 128(4) establishes that if the failure to serve an enforcement notice on a person is a ground for an appeal, the Welsh Ministers may ignore the fact if neither the appellant nor that person has been substantially prejudiced by the failure.
487. Ground (g) provides for an appeal on the ground that steps required in an enforcement notice would not serve the purpose of restoring the character of a building. This would allow an appellant to challenge, for example, an enforcement notice that required the reconstruction of a demolished feature using all of the broken pieces with resulting joins and cracks. The appellant might argue that a faithful replica of the feature, without the distracting joins and cracks, would more fully restore the character of the building.
488. Ground (h) provides that an appeal can argue that remedial steps detailed in the notice under section 123(3) exceed what is necessary to restore the listed building, alleviate the effect of the breach, or put the building into the condition it would have been in if conditions attached to a consent had been fulfilled.
489. Ground (i) allows for an appeal on the basis that the period within which the notice requires any step to be taken is unreasonably short. Successful appeals on ground (i) almost invariably lead to enforcement notices being varied to allow for longer periods

in which to carry out the specified works and are unlikely to result in notices being quashed.

### **Section 128 – Determination of appeal**

490. Section 128 provides Welsh Ministers with the power to determine an appeal against an enforcement notice.
491. Subsection (1) provides that the Welsh Ministers may correct any defect, error or misdescription in the notice to which the appeal relates, or vary the terms of the enforcement notice, if they are satisfied that such steps will not cause injustice to either party to the appeal.
492. Subsection (6) clarifies that the decision of the Welsh Ministers on the appeal is final.

### **Section 130 – Order to permit steps required by enforcement notice**

493. Section 130 allows an owner of land to apply for an order from a magistrates' court requiring another person who has an interest in the land to allow the owner to take steps required by an enforcement notice. If it is satisfied that the owner is being prevented from taking the required steps, the court may make such an order.
494. This provides an important legal recourse for an owner of land, since section 133(1) places any liability for an offence for a failure to comply with an enforcement notice on a person who is at the time an owner of the listed building to which the notice relates.

### **Section 131 – Power to enter land and take steps required by enforcement notice**

495. Section 131(1) provides for a situation in which a step required by an enforcement notice has not been taken within the time prescribed. In such a case, the planning authority may enter the land to which the enforcement notice relates at any reasonable time and take that step. This allows necessary conservation works to secure the special interest of the listed building that are detailed in the enforcement notice to take place in a timely fashion.
496. Subsections (2) and (3) provide that it is an offence to intentionally obstruct a person exercising the power under subsection (1) and that a person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Section 132 – Recovery of costs of compliance with enforcement notice**

497. Section 132 provides for the recovery from any owner of reasonable costs incurred by a planning authority after exercising the power in section 131 and entering land to take the steps required to comply with an enforcement notice.
498. Subsections (2) and (3) provide for the recovery of such costs from an owner of the land acting as an agent or trustee for another person, or from that other person, or from a combination of the two.
499. The section also provides for the recoverable costs to be a local land charge until such time as they are recovered (subsections (5) and (6)).

500. Finally, the section provides for certain circumstances whereby the planning authority may recover some or all of its costs by selling materials recovered while undertaking the steps required following a failure to comply with an enforcement notice. If there is any surplus after deducting the recoverable costs, the remaining proceeds must be paid to the person who owned the materials (subsections (7) and (8)).

**Section 133 – Offence of failing to comply with enforcement notice**

501. Section 133 establishes that if, after the end of the period prescribed in an enforcement notice, a required step has not been taken, an owner of the listed building to which the notice relates will be guilty of an offence. This would be an offence in addition to the offence of carrying out the unauthorised works under section 117.
502. Subsection (2) provides that an offence under this section may be charged by reference to a day or a longer period, and that a person may be convicted of more than one offence in relation to the same enforcement notice by reference to different periods.
503. Subsection (3) sets out the possible defences available under this section. It is a defence for a person to prove that:
- a. the person did everything that could be expected to be done to secure that the required steps were taken, or
  - b. the person was not served with a copy of the notice and so was unaware of its existence.
504. Subsection (4) provides that the penalty for the offence of failing to comply with an enforcement notice, whether on summary conviction or conviction by indictment, is an unlimited fine.
505. Since deliberate damage to a listed building may be prompted by the prospect of financial gain, subsection (5) requires the court to have regard to any financial benefit the person convicted may have accrued or appears likely to have accrued as a result of the offence, when determining the amount of any fine to be imposed.

**Section 135 – Injunction to restrain unauthorised works or failure to comply with condition of consent**

506. Section 135 allows a planning authority to apply to the High Court or the county court for an injunction to restrain actual or expected unauthorised works or actual or expected works that fail to comply with a condition of a listed building consent.
507. Subsection (2) establishes that a planning authority may apply for an injunction irrespective of whether it has used or proposes to use any other powers provided by this Part – for instance, an enforcement notice (section 123) or urgent works (section 144).
508. The court may grant the injunction on any terms it consider appropriate to restrain the breach and issue it against a person whose identity is unknown (subsections (3) and (4)). This will make it easier to obtain an injunction in timely fashion if it is needed to

put a halt to works that threaten to damage the special architectural or historic interest of a listed building.

## **Chapter 5 – Acquisition and preservation of buildings of special interest**

509. Chapter 5 provides various powers for the acquisition and preservation of historic buildings of special interest. They offer a suite of measures that may be used when listed buildings fall into disrepair, either through a lack of investment or will from owners, or, in some cases, through deliberate neglect or abandonment. In most cases, the powers are exercisable by the Welsh Ministers and either the relevant planning authority or the local authority.
510. Sections 137 to 142, for instance, provide for the compulsory acquisition of a listed building by a planning authority (with authorisation from the Welsh Ministers) or by the Welsh Ministers themselves. These compulsory powers may be needed if there is no alternative but to acquire a listed building that has fallen into disrepair, so other arrangements can be made for its preservation. On the rare occasions when compulsory acquisition is considered necessary, the acquiring authority must first serve a repairs notice to provide every owner with a final opportunity to undertake reasonable steps for a building's preservation (section 138).
511. Compensation will be payable to an owner following a compulsory acquisition, but the Chapter allows an acquiring authority to make a direction for minimum compensation if it is satisfied that a building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site or any adjoining site. It also sets out the procedures any person with an interest in the building would need to follow to challenge such a direction (sections 140 and 141).
512. Local authorities or the Welsh Ministers may also undertake urgent works necessary for the preservation of a listed building and may take measures to recover the costs of these works, including through a local land charge (sections 144 to 146). In practice, urgent works tend to be temporary interventions, such as shelters or covers, to provide immediate protection from wind and rain damage. They are often intended to allow time to develop and agree long-term conservation plans for the building.
513. The Chapter provides further steps for the preservation of listed buildings in disrepair by giving the Welsh Ministers powers to make regulations that may, in particular, provide for a "preservation notice" requiring owners of a listed building to carry out works to secure its proper preservation (section 147).
514. The Chapter also enables local authorities and the Welsh Ministers to offer financial support for the maintenance and repair of historic buildings and gardens, and to recover funds in certain circumstances (sections 148 to 150).
515. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the management of listed buildings that have fallen into disrepair. The guidance at the time of writing these notes, [\*Managing Listed Buildings at Risk in Wales\*](#) (2018), outlines the roles and responsibilities of owners, the Welsh Government and local authorities when managing listed buildings that have fallen into disrepair. It shows how policies and programmes to manage listed buildings at risk can be successful.

**Section 136 – Power of planning authority to acquire building by agreement**

516. Section 136 provides that a planning authority may acquire by agreement any building that is wholly or mainly in Wales that it considers to be of special architectural or historic interest. While such a building may be listed, it is not necessary. The acquiring planning authority must only be satisfied that the building is “of special architectural or historic interest”.
517. The acquisition of a building might be motivated by a local authority’s concern for its immediate preservation, but it could equally be prompted by other aims, for instance securing the future of a building of special interest and providing public access.
518. Associated land may be included in the acquisition provided the conditions in subsection (2) are met.
519. Subsection (3) applies standard provisions governing the exercise of compulsory purchase from Part 1 of the Compulsory Purchase Act 1965 (c. 56), so far as they are relevant, to an acquisition by agreement.
520. Subsection (4) provides that, where lessees are entitled to compensation for certain damage because of the execution of works, it includes damage from works carried out under section 203 of the Housing and Planning Act 2016 (c. 22).

**Section 137 – Powers to acquire listed building compulsorily for purpose of preservation**

**Section 138 – Requirement to serve repairs notice before starting compulsory acquisition**

521. Together sections 137 and 138 provide for the compulsory acquisition of a listed building for the purpose of preservation by an acquiring authority – a planning authority or the Welsh Ministers. Section 138 sets out that the acquiring authority must first serve a repairs notice before employing the compulsory acquisition powers in section 137.
522. Section 137 provides powers for the compulsory acquisition of a listed building if it is not being properly preserved. In order for these powers to be used, subsection (1) requires that two separate tests must be met in the estimation of the Welsh Ministers. First, the Welsh Ministers must consider that reasonable steps are not being taken for properly preserving a listed building. While reasonable steps encompass routine maintenance and repairs, they may also include other works that will vary from building to building, depending upon the nature of the structure and its current condition. Second, the Welsh Ministers must be satisfied that there is a compelling case in the public interest for the compulsory acquisition of the building for the purpose of preservation. In arriving at their conclusion, the Welsh Ministers may take into account the significance of the building (including its curtilage structures and objects), previous attempts to find a sustainable basis for the management of the building and the likelihood of negotiating a viable way forward, any other available legal solutions and the risk of loss or irreparable damage to part or all of the listed building. The Welsh Government’s [Compulsory Purchase Order \(CPO\) Manual](#) (2021), which is kept under review, provides guidance on compulsory acquisition.



523. If both tests are met, under subsection (2) the Welsh Ministers may authorise the planning authority in whose area the listed building is situated to undertake a compulsory acquisition of the building and associated land. The same subsection also allows the Welsh Ministers themselves to acquire the building and land compulsorily.
524. Subsection (3) sets out the conditions that must be met for associated land to be included in the compulsory acquisition. These are that the land includes, adjoins or is adjacent to the building, and that the Welsh Ministers consider that the land is required for the purposes of preserving the building or its amenities, accessing it or its proper control and management. Provision is made for including associated land in the compulsory acquisition because without such land it might not be possible to undertake effective conservation and management of the building.
525. Subsections (4) and (5) exempt from the operation of this section: any building which is also a scheduled monument, any exempt religious building (defined in section 156) and interests in Crown land (defined in section 207), except as specified.
526. Subsection (6) applies the 1981 Act to an acquisition under this section. The 1981 Act provides for compulsory acquisitions of land to be authorised by compulsory purchase orders and sets out the procedures for making those orders. They include provision for notice to be given of orders, for the consideration of objections, and for orders made by local authorities to be confirmed by Ministers.
527. Section 138(1) provides that an acquiring authority may not serve notice of an intended compulsory acquisition under the 1981 Act – the start of the formal process for compulsory acquisition – unless a “repairs notice” has been served on every owner of the building in question and two months have passed.
528. Under subsection (2), a repairs notice must specify the works the authority considers reasonably necessary for the proper preservation of the building. The works specified in the repairs notice might be those necessary for the preservation of the building in the state in which it was at the date of listing, rather than at the date of the notice. The service of the notice provides a final opportunity for every owner to take reasonable steps for the building’s preservation and forestall the compulsory acquisition process.
529. Subsection (2) also provides that the repairs notice must explain the effect of sections 137 to 141 of the Bill and section 49 of the [1990 Listed Buildings Act](#). The effect of section 49 is that when calculating compensation it will be assumed that listed building consent would be granted for any works for the alteration or extension of the building or for its demolition under certain circumstances. This assumption will apply in addition to the general provisions about assessing compensation in the 1961 Act. However, the repairs notice will also need to explain the possibility of the payment of minimum compensation under section 140 if a building has been deliberately allowed to fall into disrepair.
530. Where a repairs notice is served on an owner, section 111(5) bars the owner from serving a purchase notice on the authority for three months or, if compulsory purchase proceedings are started within that three-month period, at any time until they are concluded.

**Section 139 – Application to stop compulsory acquisition**

531. When a compulsory purchase order for the acquisition of a listed building has been made by a planning authority (but not yet confirmed by the Welsh Ministers) or prepared in draft by the Welsh Ministers (but not yet put into effect), section 139 permits anyone with an interest in the building to apply to a magistrates' court for an order to halt further progress on the compulsory purchase (subsection (2)).
532. Subsection (3) provides that the application must be made within 28 days after the day notice of the compulsory acquisition is served under the 1981 Act. The application would be made on the ground that reasonable steps had been taken for properly preserving the listed building, and subsection (4) requires the magistrates' court to make the applied for order if it is satisfied that such steps have been taken. An appeal against the magistrates' court decision can be made to the Crown Court (subsection (5)).

**Section 140 – Direction for minimum compensation where building deliberately allowed to fall into disrepair**

**Section 141 – Application for removal of direction for minimum compensation**

533. If an acquiring authority considers that a listed building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site or any adjoining site, under section 140 a compulsory purchase order relating to the building may contain a direction for minimum compensation. The effect of the direction is that the compensation payable for damage or loss caused by the acquisition will be assessed on the basis that planning permission and listed building consent would only be granted for the works which are necessary for the conservation of the building and its maintenance in a proper state of repair, and not for any development of the site. This would prevent any development value of the building/land from being considered as part of the compensation assessment.
534. According to section 210, the definition of "development" that applies to this Bill is the definition in section 55 of the 1990 Planning Act. It is broadly framed and includes any building or other operations (including demolition and rebuilding) and any material change in the use of land.
535. Section 141 allows any person with an interest in a listed building in relation to which a direction for minimum compensation has been made to apply to a magistrates' court for an order for the direction to be removed. The application would be made on the ground that the building had not been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site. The application must be made within 28 days after the day of the service of the compulsory acquisition notice. An appeal against the decision of the magistrates' court can be made to the Crown Court.

**Section 142 – Ending of rights over land acquired compulsorily**

536. Section 142(1) provides that, on the completion of a compulsory acquisition of land under section 137, all private rights of way over the land and all rights to keep apparatus installed on the land cease. Moreover, the acquiring authority becomes entitled to any apparatus on, under or over the land.

537. Subsection (2), however, makes important exceptions in those cases where the right or apparatus is:
- a. a statutory undertaker's,
  - b. conferred or installed for the purposes of an electronic communications code network, or
  - c. specified in a direction given by the acquiring authority.
538. Subsection (3) provides that subsection (1) is also subject to any agreement between the parties.
539. Subsections (4) and (5) provide that a person who suffers loss by the ceasing of a right or the transfer of apparatus is entitled to compensation from the acquiring authority, determined in accordance with the 1961 Act.

### **Section 143 – Management, use and disposal of building acquired under this Chapter**

540. Section 143 makes provision for the management, use and disposal of buildings acquired under this Chapter. Subsection (1) makes provision about a building or other land acquired by a planning authority under this Chapter – whether by agreement or by compulsory acquisition. The authority may make any arrangements for the management, use or disposal of the building or land that it considers appropriate for the purpose of preserving the building or land. Subsection (3) makes similar provision in relation to a building or land acquired compulsorily by the Welsh Ministers, but permits them to make “any arrangements that they consider appropriate for the management, custody or use of the building or land” or dispose or deal with the building or land in any other way.
541. There are a number of options available to an authority acquiring a building under this Chapter. In the simplest arrangement, the authority would purchase the building, undertake the required repairs and either use it for its own purposes or sell it to a new owner. Alternatively, the authority could sell it unrepaired subject to a condition for its repair. For larger or more complex buildings, the acquiring authority might establish a “back-to-back” agreement, possibly with ownership passing to a building preservation trust or another charitable body set up with the specific objective to conserve the building that has been acquired.

### **Section 144 – Urgent works to preserve listed building**

542. Section 144(1) to (4) enables local authorities and the Welsh Ministers to carry out works that they consider urgently necessary for the preservation of listed buildings. These may include works to a building that is in residential use as long as it does not interfere unreasonably with that use. Such urgent works might include:
- a. relatively minor works to arrest a building's decline and remove the need for more extensive work at a later date,

- b. works to provide temporary shelter or support for a building to keep it weatherproof or safe from collapse, or
  - c. actions to prevent vandalism or theft.
543. Urgent works are often intended to be short-term and designed to allow time to develop and agree long-term conservation plans for a building.
544. Subsections (5) and (6) provide that, prior to any urgent works being carried out, at least 7 days' written notice must be given to every owner of the listed building and to every occupier (if any part of the building is in residential use). This notice must include a description of the proposed works.
545. Subsection (7) establishes that the powers in this section may not be used to carry out urgent works on: an building which is also a scheduled monument, an exempt religious building (defined in section 156) or a listed building on Crown land (defined in section 207).

#### **Section 145 – Power to require owner to meet costs of preservation works**

546. If a local authority or the Welsh Ministers incur costs in undertaking urgent works to a listed building, section 145 allows them to serve a notice on any owner of the listed building requiring the owner to meet the costs of the works.
547. Subsection (2) makes specific provision for the recovery of costs for continuing expenditure involved in ongoing works to provide temporary support or shelter. Such expenditure might be required, for example, to pay for the hire of scaffolding and sheeting erected to keep a building weatherproof while long-term conservation plans are finalised.
548. Under subsection (3), an owner may, within 28 days after the day a notice of costs is served, complain in writing to the Welsh Ministers that:
- a. some or all of the works were unnecessary for the preservation of the listed building;  
The owner would have to be able to show that the works undertaken went beyond those needed for temporary support or shelter or the immediate preservation of the listed building, for instance that they incorporated precautionary or preventative works that were not strictly necessary.
  - b. temporary arrangements to provide support or shelter have continued for an unreasonable length of time;  
For instance, an owner might complain about continuing expenditure on scaffolding and other materials used to provide temporary support and shelter if a more permanent solution for a listed building did not follow urgent works.
  - c. the amount specified for recovery is unreasonable; or
  - d. the recovery of the amount would cause hardship to the owner.

549. Should the Welsh Ministers determine that the complaint is well-founded, they may, under subsection (5), reduce the amount that may be recovered or even decide that nothing may be recovered, if all the works were unnecessary.
550. Under subsection (6), an owner or local authority on whom a notice of the Welsh Ministers' determination is served may appeal to the county court within 28 days after the day the notice is served.

#### **Section 146 – Further provision about recovery of costs of preservation work**

551. Section 146 makes additional provision about the recovery of costs incurred by a local authority or the Welsh Ministers in undertaking urgent works. The recovery of costs may, in practice, prove to be a protracted process, so subsection (1) provides that any recoverable sums carry interest at a rate specified in regulations made by the Welsh Ministers. Interest is applied from the time the notice requiring the owner to meet the costs of urgent works under section 145(1) becomes operative (subsection (7)) until all outstanding amounts are recovered by the relevant authority.
552. Under subsection (2), the costs and any interest are recoverable as a debt. A local authority, or, as the case may be, the Welsh Ministers, would, therefore, be able to employ all available mechanisms for the recovery of a debt, including a claim in the county court.
553. Furthermore, from the time the section 145(1) notice becomes operative, the costs and any accrued interest become a charge on the land on which the listed building stands. This is a legal charge – a debt secured by the property – and a [local land charge](#) and will remain in place until the costs and interest are entirely recovered (subsections (3) and (4)).
554. For the purposes of enforcing the charge, subsection (5) gives the recovering authority the same powers and remedies as a mortgagee by deed under the Law of Property Act 1925 (c. 20). The authority may appoint a receiver if one month or more has passed since the charge took effect. The recovering authority also has powers to lease or sell land to recover sums, but such measures are likely to be rarely used.

#### **Section 147 – Steps for preservation of listed buildings in disrepair**

555. Section 147 enables the Welsh Ministers to make regulations to confer power on local authorities or the Welsh Ministers to take steps for the proper preservation of listed buildings that have fallen into disrepair. Subsection (2) allows the regulations to make particular provision for “preservation notices” requiring owners to undertake specified works to secure the proper preservation of such buildings. The regulations may also make provision for appeals against preservation notices and offences for failure to comply with the notices.
556. Paragraph 186 of Schedule 13 (minor and consequential amendments and repeals) amends the Regulatory Enforcement and Sanctions Act 2008 (c. 13) (“the 2008 Regulatory Enforcement Act”) to enable civil sanctions to be imposed in respect of offences in regulations made under this section. The kinds of civil sanctions that may be imposed are those contained in Part 3 of the 2008 Regulatory Enforcement Act, for

example, fixed monetary penalties or notices imposing requirements to take specified steps.

**Section 148 – Grant or loan by local authority for repair or maintenance of building**

**Section 149 – Recovery of grant made by local authority**

557. Section 148 enables a county or county borough council, a National Park authority or a joint planning board (referred to collectively in this section as relevant local authorities) to offer financial support for incurred or planned expenditure for the repair and maintenance of historic buildings and associated gardens. Under the definition in section 210, a building for the purposes of section 148 may include plant or machinery forming part of the structure.
558. Under subsection (1), a relevant local authority may contribute towards any expenditure for the repair or maintenance of a listed building in or near its authority area or for the repair or maintenance of a building in its authority area that is not listed but that the authority considers to be of special architectural or historic interest. Subsection (2) further permits an authority to extend any funding to include a contribution to the maintenance of a garden associated with a historic building.
559. Subsection (3) allows a contribution under this section to be made by a grant or a loan. Subsections (4) and (6) provide that a relevant local authority may make loans and grants subject to conditions. For example, the authority might set a condition requiring the recipient to provide some form of public access to the building and/or an associated garden.
560. Section 149 provides that where a condition of a grant made by a relevant local authority under section 148 is not complied with, the authority may recover the amount of the grant, or any part of it (subsection (2))
561. Subsections (3) to (5) provide that if the recipient of the grant disposes of all or part of the interest that they have in the property within 3 years of the day on which the grant was made, a relevant local authority may recover all or part of the grant.
562. These recovery powers might be used if, for example, a building's value increases as a result of the grant-funded works, and the grant recipient then sells the building in order to capitalise.

**Section 150 – Grant by Welsh Ministers for repair or maintenance of building, garden etc.**

563. Section 150(1) enables the Welsh Ministers to make grants towards expenditure incurred, or to be incurred, in:
- a. the repair or maintenance of a building which they consider to be of special architectural or historic interest;  
While the building may be listed, it is not required. The Welsh Ministers need only be satisfied that the building is of “special architectural or historic interest” to make a grant.

- b. the maintenance of any land associated with building;  
This will permit grants to support the maintenance of land associated with a building for purposes such as access or the provision of amenities.
- c. the repair or maintenance of objects ordinarily kept in such a building; or  
This would permit the funding of the conservation of objects found in a historic building. These could range from fittings and furniture to ornaments and works of art.
- d. the maintenance of a garden or other land which they consider to be of special historic interest.  
In contrast to paragraph (b), the expenditure in this paragraph is limited to the maintenance of a garden or other land considered to be of special historic interest. This might include parkland, some other designed landscape or, perhaps, a relict industrial landscape providing the setting for a building of special architectural or historic interest.

564. The section's remaining provisions apply where the grant under subsection (1) is made on terms which provide for it to be recoverable. In order for it to be recoverable, either before or at the time of making the grant the Welsh Ministers must give notice in writing to the recipient. They must also specify a "recovery period" of no more than ten years after the day the grant is made during which the grant will be recoverable under subsections (4) to (6) (subsection (2)).
565. Subsection (3) provides that the Welsh Ministers may recover all or part of the grant if the recipient fails to comply with any condition imposed on the grant.
566. Subsections (4) to (6) provide the Welsh Ministers with powers to recover all or part of a grant in the event of a disposal during the recovery period of the whole or part of the interest that the grant recipient held in the building, land or objects to which the grant relates on the day that the grant was made. A disposal may be made by sale, by exchange or by lease for a term of at least 21 years.
567. These recovery powers might be used if, for example, a building's value increases as a result of the grant-funded works, and the grant recipient then sells the building in order to capitalise. These powers are equivalent to those provided for local authorities in section 149(3)-(5).

### **Section 151 – Acceptance by Welsh Ministers of endowment for upkeep of building**

568. Section 151 makes provision about the Welsh Ministers accepting a gift of property on endowment trust to use the income from the property for the repair and maintenance of a building which the Welsh Ministers consider to be of special historic or architectural interest. The building must be one in which the Welsh Ministers have or are about to have an interest or which is or is shortly to be under their control or management. In particular, the section makes provision about the validity of the gift and trust, the Welsh Ministers' powers, and the consequences of the Welsh Ministers ceasing to have an interest in, or control or management of, the building to which the trust relates.

## **Chapter 6 – General**

569. Chapter 6 provides powers for persons authorised by local authorities and by the Welsh Ministers to enter land. Sections 152 to 155 set out the general powers to enter land, when a power of entry can be exercised without a warrant and under what circumstances a warrant would be required.
570. The Chapter also includes a provision dealing with exempt religious buildings (section 156). This reflects the particular needs of listed buildings that are currently in use for religious purposes in Wales.
571. Finally, the Chapter provides interpretation for certain terms used in Part 3 (section 157).

### **Section 152 – Powers to enter land**

572. Section 152 sets out the different circumstances when a person authorised in writing by the Welsh Ministers or by a planning authority or other local authority can enter land in association with Part 3 (buildings of special architectural or historic interest) and Part 4 (conservation areas) of the Bill.
573. Examples of persons authorised by the Welsh Ministers might be Cadw officers visiting buildings to assess them for designation or monitor their condition. Planning authorities, for instance, might authorise planning, conservation or enforcement officers to enter land in conjunction with their duties.
574. Section 152(7) allows an officer of the Valuation Office of His Majesty's Revenue and Customs or a person authorised in writing by the planning authority or the Welsh Ministers to enter land to survey or estimate the value of the land in connection with a claim for compensation.

### **Section 153 – Exercise of power to enter land without warrant**

575. This section makes provision about the exercise of the power to enter land under section 152 without a warrant. Subsection (1) provides that the power may be exercised at any reasonable time.
576. Subsection (2) provides that a person may not enter land that is occupied in exercise of the power under section 152 unless at least 24 hours' notice has been given to every occupier of the land. Subsection (3) makes an exception where the power to enter land is for the purpose of determining whether to issue a temporary stop notice, to display a temporary stop notice or to determine whether a temporary stop notice is being complied with (under section 152(4)). A temporary stop notice is only issued when a planning authority considers that unauthorised works to a listed building should be stopped immediately and the removal of the requirement for 24 hours' notice ensures that all aspects of a temporary stop notice can be handled with a minimum of delay to limit any harm to the character and significance of the building.
577. Subsection (6) provides that if the land in relation to which the power of entry is proposed to be exercised belongs to a statutory undertaker (as defined in section 210) and the statutory undertaker objects to proposed works as they will hamper its ability



to carry out its undertakings, the authorised person would need the permission of the appropriate Minister prior to carrying out any works. “Appropriate Minister” is defined in section 265 of the [1990 Planning Act](#) and may be either the Welsh Ministers or a particular Secretary of State depending on the undertaker.

578. Subsection (7) provides that an authorised person may not enter Crown land in exercise of the power of entry under this section without the permission of the appropriate Crown authority, or a person who is entitled to give permission. “Crown land” is defined in section 207(2) and the “appropriate Crown authority” in section 207(6).

### **Section 154 – Warrant to enter land**

579. Section 154 sets out the circumstances in which a justice of the peace may issue a warrant conferring a power to enter land on an authorised person for a purpose mentioned in section 152. On the basis of sworn written information, the justice of the peace must be satisfied that there are reasonable grounds for entering the land and that:

- a. admission to the land has been refused,
- b. admission is reasonably expected to be refused, or
- c. the need to enter the land is urgent.  
A planning authority, for example, might need to undertake works to secure a building at risk of collapse.

580. The warrant can confer powers of entry on any person who is authorised in writing by the Welsh Ministers or a planning authority under section 152 to enter land for a particular purpose, but only for one occasion and, unless the case is a matter of urgency, only at a reasonable time. A warrant under this section will only have effect for one month from its date of issue.

### **Section 156 – Exempt religious buildings**

581. Section 156 enables the Welsh Ministers to make regulations to recognise a religious building used for religious purposes as an “exempt religious building”. The effect of recognising an “exempt religious building” is that the following provisions of Part 3 of this Act do not apply in relation to the building:

- a. sections 83 and 84, which enable the temporary listing of a building;
- b. section 88, which requires works affecting a listed building to be authorised;
- c. section 118, which makes it an offence to intentionally damage a listed building;
- d. section 137, which enables a planning authority or the Welsh Ministers to compulsorily acquire a listed building in need of repair; and
- e. section 144, which enables the local authority or the Welsh Ministers to carry out urgent works necessary for the preservation of a listed building.

582. Approximately 2,000 religious buildings have been listed in Wales under the provisions set out in section 76, although not all of these are covered by the exemption. However, where they are covered, the provisions relating to religious exemption reflect the particular needs of listed buildings in use as places of worship, but recognise the need to maintain an appropriate level of protection which is at least equivalent to that given to non-religious buildings.
583. Subsection (3)(a) provides that regulations under this section may recognise particular buildings or buildings of a description specified in the regulations (and a description of buildings may be specified by reference to a religious faith or denomination, a use made of the buildings, or any other circumstance).
584. Where religious denominations and faith groups in Wales are able to demonstrate that they have established, or will establish, sufficiently robust and transparent conservation processes for managing change affecting listed religious buildings, it may be possible to identify particular buildings used by those denominations and faith groups for religious purposes as being exempt. Any denomination or faith group may make representations to the Welsh Ministers if they wish to be considered for such an exemption.
585. At the time of writing these notes, the following denominations and faith groups have been able to demonstrate this to the satisfaction of the Welsh Ministers:
- a. The Baptist Unions of Great Britain and Wales
  - b. The Church in Wales
  - c. The Church of England
  - d. The Methodist Church
  - e. The Roman Catholic Church.
586. Subsection (3)(b) provides that the regulations may designate as exempt all or part of a religious building (so the exemption may apply to some parts of a building but not to others).
587. Subsection (3)(c) provides that the regulations may specify that only particular types of works are exempt from the requirement for listed building consent. The regulations may specify the nature of the works themselves or specify works by reference to the person by whom the works are carried out. For example, the regulations could stipulate that any work undertaken by third parties might not qualify for the exemption. In this way a service provider erecting a telecommunications mast on a church tower might need authorisation from the relevant planning authority by listed building consent. Any changes that fall outside the scope of the exemption would need to be authorised through the usual system of listed building consent (section 89).
588. Section 156(2) makes clear that, for the purposes of the exemption from requiring listed building consent, the fact that a building is out of use while works are being carried

out (e.g. during major conservation works) does not prevent the building being regarded as “used for religious purposes” provided that it would be used for those purposes if it were not for those works.

589. Subsection (4)(a) provides that references in this section to a religious building include any artificial object or structure that is fixed to the building, or that is within the curtilage of the building. This means that some structures that are not listed in their own right might come into the scope of the religious exemption provided that they are in the curtilage of the listed building. These might include lychgates, boundary walls, memorials, vestries and school rooms. However, if there is a scheduled monument within the curtilage of an exempt religious building, any works to that monument will require scheduled monument consent.
590. Under subsection (4)(b), buildings that are wholly or mainly used as residences by ministers of religion are not considered to be religious buildings for the purposes of this section. Works to these buildings are therefore not covered by the exemption. Where a residential building is attached to a listed place of worship (for example, a presbytery attached to a Catholic church, or a minister’s house attached to a chapel), works to the residential building will need listed building consent from the local planning authority.
591. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the management of listed religious buildings. The guidance at the time of writing these notes, [\*Managing Change to Listed Places of Worship in Wales: Ecclesiastical Exemption\*](#) (2018), sets out the guiding principles to consider when planning changes to listed religious buildings covered by the regulations provided for by this Chapter. It also sets out a code of practice for denominational consent procedures, which explains how those principles should be included in the control and decision-making process.

#### **Part 4 – Conservation Areas**

592. A conservation area is an area of special architectural or historic interest whose character or appearance it is desirable to preserve or enhance. The designation of conservation areas reflects the idea that the historic environment more generally, as well as particular buildings or monuments, warrants recognition and protection.
593. Part 4 requires planning authorities to determine which parts of their areas are of special architectural or historic interest and to designate them as conservation areas. It also places a general duty on planning authorities and others to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area in the exercise of planning functions. In addition, Part 4 makes provision for the authorisation and control of demolition in conservation areas, urgent works to preserve certain buildings in conservation areas, and the making of grants relating to the preservation or enhancement of conservation areas. The Bill does not set out every way in which conservation areas are protected. For instance, trees in conservation areas enjoy some statutory protection and that is dealt with in Part 8 of the 1990 Planning Act.

594. Conservation area boundaries are regularly updated on [DataMapWales](#) although each planning authority maintains an up-to-date list of conservation areas within its area. As of September 2021, there were 568 conservation areas listed on DataMapWales.
595. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the management of conservation areas. The guidance at the time of writing these notes, [Managing Conservation Areas in Wales](#) (2017), sets out the general guidelines for the designation and management of conservation areas.
596. Many of the listed building provisions in Part 3 of the Bill also apply to conservation areas in this Part, but with some changes.

### **Section 158 – Designating areas of special architectural or historic interest as conservation areas**

597. Subsections (1) and (2) of section 158 require planning authorities to determine, from time to time, which parts of their areas should be designated as conservation areas and whether there should be revisions to existing conservation areas. If a planning authority considers that a part of its area is an area of special architectural or historic interest whose character or appearance it is desirable to preserve or enhance, the authority must designate the part as a conservation area (or extend an existing designation to include it). If the authority considers a part of its area that is currently designated no longer meets the criteria, it must cancel the designation or vary the designation to exclude the part.
598. In practice, conservation areas are created, varied or cancelled following a detailed appraisal process, though potential conservation areas may be identified in the course of other activity such as evidence gathering for a local development plan or in the development of a wider heritage strategy.
599. Subsections (3) to (5) of section 158 specify some procedural requirements which planning authorities must follow after designating, varying or cancelling designations.
600. Under subsection (6) of section 158, a designation as a conservation area is a local land charge. A [local land charge](#) will alert a purchaser to the fact that there are restrictions on the use of the land as a result of it being situated in a conservation area.

### **Section 159 – Duty to formulate and publish proposals for preservation and enhancement of conservation areas**

601. Subsection (1) of section 159 places a duty on planning authorities to prepare and publish proposals for the preservation and enhancement of their conservation areas from time to time. Although this establishes no fixed period for the preparation and publication of the proposals, *Managing Conservation Areas in Wales* sets out that it is considered best practice to undertake conservation area reviews on a 5 to 10 year cycle.
602. Subsection (2) requires a public authority to submit such proposals to a public meeting in the conservation area (or as near to it as reasonably practicable). An authority might also undertake wider consultation and engagement, in the form of exhibitions, surveys and social media activity, to obtain community views on the proposals.

**Section 160 – Exercise of planning functions: general duty relating to conservation areas**

603. Subsection (1) of section 160 places a duty on any person, in exercising a planning function in relation to a building or other land in a conservation area, to have special regard to the desirability of preserving or enhancing the character or appearance of the conservation area. This is a wide-ranging duty because there are many planning functions (see paragraphs 606–09 below) and the duty applies to anyone exercising them (as long as the person is doing so in relation to a building or other land in a conservation area).
604. In case law (*South Lakeland District Council v Secretary of State for the Environment and another* [1992] 1 ALL ER 573), “preservation” has been understood as doing no harm to a conservation area’s existing character or appearance. Enhancement will improve the character or appearance, for instance by removing a derelict building that is an eyesore and harms the character of the conservation area.
605. The duty under section 160 applies to any person, so it applies not just to planning authorities but also, for instance, to the Welsh Ministers and planning inspectors.
606. The duty applies when a person is exercising a “planning function”, defined by subsection (2) as a function conferred or imposed under or by virtue of:
- a. Part 3, Part 4, Part 5 or Part 7 of this Bill as it applies for the purposes of any of those Parts;
  - b. the [1990 Planning Act](#);
  - c. section 70 or 73 of the [Leasehold Reform, Housing and Urban Development Act 1993 \(c. 28\)](#) (to do with schemes, called estate management schemes, which allow estate owners to address potential problems about an estate’s appearance once they have lost their powers as landlords following tenants asserting rights to acquire the freehold of their properties).
607. Some particularly relevant planning functions under the Bill are (this list is not exhaustive):
- a. controlling works that affect listed buildings (see Part 3, Chapter 2);
  - b. enforcing those controls (see Part 3, Chapter 4);
  - c. acquiring and preserving historic buildings (see Part 3, Chapter 5);
  - d. preparing proposals for the preservation and enhancement of conservation areas (see section 159);
  - e. controlling demolition in conservation areas (see section 162);
  - f. carrying out urgent works to preserve buildings in conservation areas (see section 164).

608. Some particularly relevant planning functions under the [1990 Planning Act](#) are (this list is not exhaustive):
- a. preparing development plans (see Part 2 of that Act);
  - b. controlling development (see Part 3 of that Act);
  - c. enforcing those controls (see Part 7 of that Act);
  - d. controls relating to trees, advertisements and land that requires maintenance (see Part 8 of that Act);
  - e. exercising highways powers (see Part 10 of that Act).
609. The duty, for instance, would apply when a planning authority is deciding whether to grant planning permission to carry out a development under section 58(1) of the 1990 Planning Act. Accordingly, in deciding whether to grant the planning permission, the authority must have special regard to the desirability of preserving or enhancing the character or appearance of the conservation area in which the building is situated.
610. “Building” and “land” have the meanings given by section 210 of the Bill.

### **Section 161 – Requirement for demolition to be authorised**

#### **Schedule 11 – Effect of section 161 ceasing to apply to building**

611. Section 161 provides that a person must not carry out works for the demolition of a building in a conservation area (or cause such works) unless they have been authorised by the grant of conservation area consent under section 162.
612. Section 161(2) excludes various categories of building from the requirement to obtain conservation area consent. The excluded categories are:
- a. buildings which are scheduled monuments – but demolishing a scheduled monument requires scheduled monument consent (section 11);
  - b. listed buildings – but demolishing a listed building requires listed building consent (section 88);
  - c. buildings of descriptions specified in regulations made by the Welsh Ministers;
  - d. buildings of descriptions specified in directions given to an individual planning authority by the Welsh Ministers.
613. The buildings described by the Welsh Ministers in subsection (2)(c) might, for instance, be of small-scale, such as minor outbuildings or sheds, so their demolition would be unlikely to have a substantial impact on the character of the conservation area. Alternatively, the Welsh Ministers might identify a range of buildings whose demolition is already authorised or required under other enactments or procedures.

These are only examples and other buildings might be described by the Welsh Ministers.

614. Subsection (3) permits the Welsh Ministers to direct a planning authority that conservation area consent is needed for a building in its area even though the building falls within a description of buildings that were excluded from needing conservation area consent by regulations made under subsection (2)(c). Such a direction might be used if a conservation area contained a number of buildings that made an important contribution to its character that would otherwise be excepted from conservation area consent by regulations – for instance, small corrugated-iron coal bunkers in an industrial community.
615. Subsection (4) excludes certain emergency works carried out by or on behalf of the Crown from the requirement to obtain conservation area consent. The works that are excluded are works carried out by or on behalf of the Crown in the circumstances set out in paragraphs (a) to (d) of section 117(4).
616. Section 161(5) introduces Schedule 11, which deals with what happens if conservation consent used to be required to demolish a building, but is no longer needed. That could happen if, for instance, the building is taken out of the scope of conservation area consent by regulations made under subsection (2)(c) or by a direction made under subsection (2)(d). Both in its form and effect, Schedule 11 closely mirrors Schedule 7 (end of interim protection or temporary listing for buildings).

### **Section 162 – Authorisation of demolition by conservation area consent**

617. Under section 162(1), works for the demolition of a building to which section 161 applies are authorised if:
  - a. first, the relevant planning authority or the Welsh Ministers grant written conservation area consent; and
  - b. second, the demolition works are carried out in accordance with the terms of the consent (including any conditions attached to it).
618. Applications for conservation area consent must generally be made to planning authorities under section 90. But under section 105, the Welsh Ministers may make regulations requiring that applications by planning authorities or the Crown for conservation area consent be made to the Welsh Ministers. And under section 106 an appropriate Crown authority (defined in section 207) may in certain circumstances apply to the Welsh Ministers (instead of to a planning authority) for consent. Sections 90, 105 and 106 are in Part 3 of the Bill, which deals with listed buildings. But they also apply in relation to conservation area consent, as a result of section 163.
619. The expectation is that conservation area consent will be obtained before any works begin. However, under subsection (2), a planning authority or the Welsh Ministers may grant conservation area consent for unauthorised works already carried out. In such a case, the works are only authorised from the grant of the consent. Any liability for an offence arising from the unauthorised works under section 117 (as applied by section 163) remains and could be the basis for subsequent proceedings.

### Section 163 – Application of Part 3 to conservation areas

620. Section 163 applies, with necessary modifications, provisions from Part 3 that relate to the control of works, enforcement and associated matters for listed buildings to buildings for which conservation area consent is required for demolition under section 161.
621. The listed building provisions that section 163 applies to conservation areas are from the following Chapters in Part 3: Chapter 2 (control of works), Chapter 4 (enforcement) and Chapter 6 (general – specifically, some of that Chapter’s provisions about powers of entry).
622. Section 163(1) specifies which of those Chapters’ provisions are, and are not, applied. Section 163(2) specifies how the applied provisions are to be read in the conservation areas context. The modifications in section 163(2)(a) are general and the modifications in section 163(2)(b), (c) and (d) are specific to particular provisions.
623. Two instances of the general modifications are:
- a. references to listed building consent are to be read as if they were references to conservation area consent;
  - b. references to the character of a listed building are to be read as if they were references to the character or appearance of the conservation area in which the building is situated.
624. The following example shows how one section from Part 3 (section 117) is to be read in the conservation areas context as a result of section 163(1) and (2).

#### **Section 117 - Offence of carrying out unauthorised works or breaching condition of consent**

- (1) A person commits an offence if the person carries out, or causes to be carried out, works in relation to a ~~listed building~~ building to which section 161 applies in breach of section ~~88~~ 161.
- (2) A person also commits an offence if the person –
- (a) carries out, or causes to be carried out, works in relation to a ~~listed building~~ building to which section 161 applies, and
  - (b) fails to comply with a condition subject to which ~~listed building consent~~ conservation area consent has been granted for the works.
- (3) Subsection (2) does not limit what may be an offence under subsection (1).
- (4) In proceedings against a person for an offence under this section, it is a defence for the person to prove that –
- (a) works were urgently necessary in the interests of safety or health ~~or for the preservation of the building~~,



- (b) it was not practicable to secure safety or health ~~or the preservation of the building~~ by carrying out works of repair or works to provide temporary support or shelter,
- (c) the works that were carried out were limited to the minimum measures immediately necessary, and
- (d) notice in writing justifying in detail the carrying out of the works was given to the planning authority in whose area the building is or was situated as soon as reasonably practicable.
- ~~(5) In proceedings against a person for an offence under this section in relation to a building on which interim protection is conferred –~~
- ~~(a) it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, that the interim protection had been conferred, and~~
- ~~(b) where the defence is raised by a person on whom a notice should have been served under section 78(1), it is for the prosecution to prove that the notice was served on the person.~~
- (6) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to a fine or imprisonment for a term not exceeding the applicable limit under section 224(1A)(b) of the Sentencing Code, or both;
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years, or both.
- (7) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

*Example: Section 117 as modified by section 163*

### **Section 164 – Urgent works to preserve buildings in conservation areas**

625. If the Welsh Ministers consider that the preservation of an unlisted building is important for maintaining the character or appearance of a conservation area they may make a direction to apply section 144 (from Part 3 of the Bill) to that building (section 164 (1 and 2)). Section 144 enables local authorities and the Welsh Ministers to carry out urgent works to preserve listed buildings.
626. If the Welsh Ministers have made a direction to apply section 144 to an unlisted building in a conservation area, section 164(3) provides that the related provisions about making owners of buildings meet the cost of urgent preservation works will also apply. Those provisions (which include allowing owners to contest the recovery of costs) are stated in sections 145 (power to require owner to meet costs of preservation works) and 146 (further provision about recovery of costs of preservation works).

### **Section 165 – Grant by Welsh Ministers for preservation or enhancement of conservation areas**

627. Under section 165 the Welsh Ministers may make grants to meet expenditure they consider has made, or will make, a significant contribution towards the preservation or enhancement of the character or appearance of a conservation area.
628. Subsections (5) to (7) set out powers of the Welsh Ministers to recover all or part of such a grant if it was made in relation to a building or other land but then – during a specified recovery period – there is a disposal of all or part of the interest that the recipient of the grant had in the building or land on the day when the grant was made. A disposal in this context means a sale, exchange or lease for a term of at least 21 years. The recovery period begins with the day on which the grant is made and must end no more than 10 years after that day.
629. These recovery powers might be used if, for example, the recipient of the grant were to sell a property to take advantage of a higher value gained as a consequence of the grant-aided works.
630. Under subsection (3), the Welsh Ministers may only recover grants using the powers described above if:
- a. the terms of the grant say it is recoverable under section 165, and
  - b. before or on making the grant the Ministers give written notice to the recipient of the grant summarising the effect of section 165 and specifying the recovery period.
631. As is stated at subsection (4), the Welsh Ministers may also recover grants if conditions imposed on the making of grants are not complied with.

### **Section 166 – Conservation area agreements**

632. The Welsh Ministers and planning authorities may use conservation area agreements to collaborate in allocating grant money for the repair of buildings in conservation areas. Section 166(1) and (2) provide that the Welsh Ministers and one or more planning authorities may agree to set aside for a specified period of years an amount of money for making grants to repair buildings that are in a conservation area and are included in a list or shown on a map prepared for this purpose.
633. In practice, the negotiation of a conservation area agreement typically starts with a planning authority drawing up a “delivery plan” setting out what the aims, objectives and targets of the scheme would be. If the Welsh Ministers are happy with the delivery plan, it will form the basis of the conservation area agreement. If (as is normally the case) it is agreed that the planning authority will supervise the agreement, the authority will be responsible for making the grants, including the share contributed by any other partner organisations.
634. A grant made in relation to a conservation area agreement may, in certain circumstances, be recovered by the body that made it. If the body is the Welsh Ministers, the recovery powers set out in section 165 will apply, but with a recovery

period of 3 years (section 166(5)). If a planning authority has made a grant under section 148 (in Part 3), the recovery powers set out in section 149 (also Part 3) will apply.

## **Part 5 – Supplementary provision about buildings of special interest and conservation areas**

635. Part 5 contains supplementary provision relating to Part 3 (buildings of special architectural or historic interest) and Part 4 (conservation areas). Chapter 1 contains various provisions relating to the exercise of functions by planning and other local authorities. Chapter 2 concerns proceedings before the Welsh Ministers. Sections 172 to 175 make procedural provisions applying to appeals and other proceedings before the Welsh Ministers, sections 176 to 179 concern local inquiries and sections 180 to 181 relate to costs of proceedings. The sections in Chapter 3 deal with the validity of decisions and orders relating to listed buildings and conservation areas (section 182), provide for statutory review of orders and decisions by the High Court (sections 183 and 184) and permit the correction of decisions of the Welsh Ministers under certain circumstances (sections 185 to 187). Chapter 4 groups together several provisions relating to the Crown and provides a definition of “local authority” for this Part.

### **Chapter 1 – Exercise of functions by planning authorities and other local authorities**

#### **Section 167 – Fees and charges for exercising functions**

636. Section 167 allows the Welsh Ministers to make regulations to require the payment of a fee or charge to a planning authority for performing any of its functions, or anything connected with those functions, under Parts 3, 4, 5 or 7 of the Bill. Subsection (2) contains a non-exhaustive list of the matters that may be covered by any regulations, for example, how the amount which may be charged is to be calculated, who is liable to pay a fee and when the fee is payable.

637. Subsection (3) provides that, where the regulations allow for a planning authority to calculate the amount of the fees or charges, the income that the planning authority collects from those charges must not be higher than the cost of performing the functions.

#### **Section 168 – Arrangements for exercising functions in relation to applications**

638. Section 168(1) applies sections 319ZA to 319ZD of the [1990 Planning Act](#) to the exercise of a planning authority’s functions in relation to applications for listed building or conservation area consent, variation of a consent or approval of details as required as part of a condition of a consent. Sections 319ZA to 319ZD make provision for planning authorities’ functions to be discharged by committees, sub-committees or officers, and set the requirements for the size and composition of the committees.

639. Subsection (2) prevents challenges to decisions on the grounds that they should have been made by another planning authority.

#### **Section 169 – Arrangements for obtaining specialist advice**

640. Section 169 enables the Welsh Ministers to direct a planning authority to submit for their approval the arrangements that the authority has in place for obtaining specialist advice in connection with some of its functions under the Bill. The relevant functions

are set out in subsection (6) and are those where an understanding of the significance and special architectural or historic interest of a building is required in order for the planning authority to undertake its functions effectively.

641. For example, when considering an application for listed building consent, a planning authority has a duty to have special regard to the desirability of preserving the listed building, its setting and any features of special architectural or historic interest the building possesses (section 96(2)). Due to the specialist nature of works to a listed building, the availability of specialist advice is essential when determining listed building consent applications.
642. Section 169(3) provides that if the Welsh Ministers are not satisfied with the arrangements that one planning authority (authority A) proposes to make to receive specialist advice, they can direct another planning authority (authority B) to exercise any of the relevant functions of authority A, or to make an officer from authority B available to provide specialist advice to authority A.

### **Section 171 – Contributions towards expenditure by local authorities**

643. Section 171 provides that any local authority or statutory undertaker may contribute towards expenditure incurred by a planning authority or other local authority in, or in connection with, the exercise of certain functions under Part 3 (including functions when that Part is applied to a conservation area by section 163). Such a power is likely to be exercised when a planning authority's exercise of a function benefits another authority or statutory undertaker, who could contribute to the costs incurred in recognition of that fact.
644. Subsection (3) gives the Welsh Ministers a power to make or require a contribution to the cost of compensation payable by a planning authority or other local authority, in consequence of anything done under Chapters 1 to 4 of Part 3 – including anything done under Chapters 2 and 4 as applied to conservation areas by section 163.
645. In the first instance, the Welsh Ministers may contribute to the cost of compensation if the compensation arises as a result of something done wholly or partly in the interest of a service provided by the Welsh Ministers. The Welsh Ministers may also require another local authority to make a reasonable contribution towards a compensation payment if that authority has benefitted from the action that gave rise to the compensation.
646. Subsections (4) to (6) provide for compensation on the termination of a listed building partnership agreement or a provision of such an agreement. While more than one planning authority may be party to an agreement, any compensation will be paid by the authority that makes the termination order under section 115. The Welsh Ministers may, however, direct any of the other authorities party to such an agreement to reimburse the authority that paid the compensation, in whole or in part. The Welsh Ministers may only make such a direction after consulting with all of the planning authorities that are or were parties to the agreement.

## Chapter 2 – Proceedings before the Welsh Ministers

### Section 173 – Determination of appeal by appointed person

#### Schedule 12 – Determination of appeal by appointed person or the Welsh Ministers

647. Section 173 provides that appeals of a type specified in subsection (2) are to be determined by a person appointed by the Welsh Ministers, instead of by the Welsh Ministers themselves. Ordinarily, the appointed person will be an inspector of [Planning and Environment Decisions Wales](#).
648. Regulations may be made under section 173(3)(a) which would require the Welsh Ministers to determine certain categories of appeals instead of an appointed person, for example those for Grade I listed buildings. Case-specific directions can also be made under section 173(3)(b) which would recover a specific appeal to be determined by the Welsh Ministers. Comparable powers provided by the 1990 Listed Buildings Act have rarely been used, and usually only if the appeal is of national interest where the result may lead to a substantive change in policy.
649. Schedule 12 makes additional provisions about the powers and duties of the appointed person and the administration of directions under section 173(3)(b).
650. Paragraph 2 of the Schedule provides that an appointed person has the same powers and duties in relation to an appeal under section 100 (appeal against planning authority decision or failure to make decision) or 127 (appeal against an enforcement notice) as the Welsh Ministers have where they determine such appeals themselves.
651. Paragraph 3 concerns the arrangements that an appointed person may make to conduct an appeal. Subparagraph (1) permits the appointed person to hold a local inquiry or hearing in connection with an appeal where such proceedings are allowed by a determination under section 174. Under subparagraph (2) an appointed person may appoint an assessor to advise on matters arising at a local inquiry or hearing or in written representations associated with an appeal. Since both section 100 and section 127 allow an appeal on the ground that the building is not of special architectural or historic interest, an appointed person might, for example, find it helpful to call on an assessor with particular knowledge of a class of buildings or the history of the area for specialist advice on matters arising in connection with the appeal.
652. Paragraph 4 makes provision for the Welsh Ministers to revoke an appointed person's appointment at any point before an appeal is determined, and appoint another person to undertake the appeal. In these circumstances, the appeal must start afresh, but the Welsh Ministers do not need to give a person an opportunity to make fresh representations, or to modify or withdraw representations.
653. Paragraph 5 provides the procedure to be followed should the Welsh Ministers issue a case-specific direction under 173(3)(b) that an appeal is to be determined by them rather than by an appointed person. Paragraph 6 further provides that the Welsh Ministers may revoke such a direction at any point before an appeal is determined and appoint a person to determine the appeal.

654. Paragraph 7 contains supplementary provisions. Paragraph 7(1) establishes that the appellant or planning authority cannot make application to the High Court under sections 183 or 184 that the Welsh Ministers should have determined the appeal unless they challenged the appointed person's power to determine the appeal before any decision was made.
655. Paragraph 7(2) provides that, where the Welsh Ministers appoint a member of staff of the Welsh Government to carry out their functions in relation to an appeal, those functions are to be treated as functions of the Welsh Government for the purposes of the Public Services Ombudsman (Wales) Act 2019 (anaw 3). This will enable the Public Services Ombudsman for Wales to investigate any allegations of maladministration made in relation to the appointed person's discharge of those functions.

### **Section 174 – Choice of inquiry, hearing or written procedure**

656. Section 174 requires the Welsh Ministers to determine, in each case, the procedure to follow in considering the proceedings set out in subsection (7). The procedure can be a local inquiry, a hearing, written representations or any combination of those three. The choice of procedure will largely be determined by the extent to which evidence needs to be tested through oral examination. Written representations are suitable when the issues raised can be clearly understood from the submitted documents and a site inspection. A hearing will be scheduled where evidence needs to be tested through questioning but there is no need for cross-examination or for evidence to be given on oath. An inquiry is likely to be necessary where the issues are complex and the evidence needs forensic examination through cross-examination. It is possible that some issues in cases will be considered on the basis of written submissions while others will be examined in a hearing or inquiry.
657. The Welsh Ministers must determine the procedure within a period prescribed in regulations, but may vary that determination with a further determination at any time before the proceedings conclude. The Welsh Ministers must notify the appellant or applicant (as appropriate, depending on the nature of the proceedings) and the planning authority of the procedure that has been selected and publish the criteria that are to be applied in determining the procedure to be followed.

### **Section 175 – Procedural requirements**

658. Section 175 allows the Welsh Ministers to make regulations setting out the procedures to be followed in connection with any appeal, application or reference that is to be considered by the Welsh Ministers under Part 3 and Part 4 of the Bill (whether by local inquiry, hearing or written representations). The regulations may also make provision for the procedure to be followed for any other local inquiry or hearing held by or on behalf of Welsh Ministers under Parts 3 or 4 or this Part of the Bill. For example, the regulations may, therefore, set procedures for hearings or inquiries that are held before the Welsh Ministers to confirm an order modifying or revoking listed building consent (see Schedule 8). The Welsh Government has published a [procedural guide for appeals](#), including listed building and conservation area consent appeals, listed building and conservation area enforcement notice appeals and listed building or conservation area consent call-ins.

**Section 176 – Power of Welsh Ministers to hold local inquiry**

**Section 177 – Power of person holding inquiry to require evidence**

659. Section 176 allows the Welsh Ministers to cause a local inquiry to be held for the purpose of exercising any of their functions in Parts 3 and 4 of the Bill, or under this Part. Section 177 allows the person holding an inquiry to summon any person to attend an inquiry to give evidence or to produce any documents that relates to the inquiry.
660. Section 177(5) to (7) establishes offences relating to a failure to comply with a summons to an inquiry.
661. A person guilty of an offence on summary conviction is liable to a fine not exceeding level 3 on the standard scale or a term of imprisonment not exceeding the maximum term for summary offences, or both (subsection (6)).

**Section 178 – Access to evidence at inquiry**

**Section 179 – Payment of appointed representative where access to evidence restricted**

662. At a local inquiry held under this Part, section 178 requires all oral evidence to be heard in public and all documentary evidence to be available for public inspection. However, where the Welsh Ministers or the Secretary of State consider that public disclosure would be likely to reveal information about national security or the security of any premises or property and would be against the national interest, subsection (2) provides that the Welsh Ministers or the Secretary of State may direct that oral evidence be heard and documents be inspected by specific people only.
663. If such a direction is being considered, the Counsel General, the Welsh Government's law officer and chief legal advisor, may appoint a person (an "appointed representative") to represent the interests of those people who would be prevented from hearing or inspecting the evidence.
664. Section 179 provides for the payment of the appointed representative whether or not an inquiry takes place. The Welsh Ministers or the Secretary of State may direct a "responsible person" with a national security or other interest in the inquiry to pay the appointed representative's expenses. If, for instance, a local inquiry was held in connection with an appeal relating to a listed building on an active military base in Wales, there could easily be reasons for limiting access to information in the interest of national security. In such a case, the Welsh Ministers or the Secretary of State might direct the Ministry of Defence, as the responsible person, to pay the costs of the appointed representative.

**Section 180 – Payment of costs of Welsh Ministers**

665. Section 180 allows the Welsh Ministers to recover the costs they incur in proceedings on any application, appeal or reference made to the Welsh Ministers under Part 3 or Part 4 whether matters proceed by way of written representations, hearing or inquiry. They may also recover the costs they incur where a local inquiry or hearing is held for the purpose of making any other kind of decision under Parts 3 and 4 or this Part, for example prior to confirming a purchase notice or making an order modifying or revoking listed building consent.

666. Section 180 allows the Welsh Ministers to recover the entire administrative costs they incur, including general staff costs and overheads. It also allows the Welsh Ministers to make regulations prescribing a standard daily amount for specified proceedings.

**Section 181 – Orders relating to costs of parties**

667. Section 181 allows the Welsh Ministers to order one party to pay another party's costs, which may include costs in respect of an inquiry or hearing that does not take place.
668. Costs will only be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense.
669. Guidance on the award of costs is contained in Annex 12 of the Welsh Government's [Development Management Manual](#) (2016).

**Chapter 3 – Validity and correction of decisions**

**Section 182 – Validity of certain decisions and orders relating to buildings**

**Section 183 – Application to High Court for statutory review of decision or order**

670. Section 182 provides that certain decisions and orders may only be challenged by statutory review under the procedure set out in section 183, and may not be challenged by means of any other legal proceedings. The decisions in question are set out in subsection (2) and the orders in subsection (3).
671. Section 183 provides that a person who is aggrieved by a decision or order listed in section 182(2) or (3) may make an application to the High Court for the statutory review of the decision or order. Depending on the circumstances of the individual case, aggrieved persons may include the owner or occupier, the applicant or appellant, or some other party who made objections or representations as part of the procedure which preceded the decision or order challenged. The authority directly concerned with the decision or order, as defined in subsection (7), may also make an application for statutory review.
672. An application for statutory review may only be made with the permission of the High Court. A relevant decision/order may be challenged on the grounds that:
- a. it is not within the appropriate powers; or
  - b. there has been a failure to comply with a procedural requirement and the applicant has been substantially prejudiced by that failure.
673. A decision may be found to be outside the appropriate powers not only by reference to the powers and requirements set out in the Act, but also, for example, because the decision-maker has acted irrationally, or taken into account irrelevant, or failed to take into account relevant, considerations.
674. Such a challenge is not an opportunity to review the merits of the decision or order challenged.



### **Section 184 – Appeal to High Court against decision relating to enforcement notice**

675. Section 184 requires rules of court to provide a mechanism for interested persons (see subsection (2)(b)) to challenge decisions made by the Welsh Ministers on appeals relating to enforcement notices. The rules must determine whether interested persons may appeal to the High Court (in practice, the appeals would be dealt with by the Planning Court, a specialist court within the High Court, and the rules are contained in [Part 54 of the Civil Procedure Rules](#) and [Practice Direction 54D](#), which are made by the Civil Procedure Rule Committee), or whether the Welsh Ministers may be required to state and sign a case for the opinion of the High Court (which, in practice, would require the Welsh Ministers to ask the Planning Court for its judgment on whether they decided the appeal properly, and the rules are contained in [Practice Direction 52E](#)).
676. Section 184 does not apply to challenges to enforcement appeal decisions under section 128(3)(a) or (b) (granting consent or removing conditions of consents). These decisions can only be challenged under section 183 (statutory review).
677. Subsection (8) provides that an appeal to the High Court under this section may only be brought with the permission of the High Court. If the Court does not consider that there is a strong case, it can refuse permission (and appeal applications under this section may only be made on points of law, and not merely because a person disagrees with a decision). Practice Direction 54D currently provides that an application for permission must be made within 28 days of the decision being challenged, although the High Court can extend this period if it considers there is good reason to do so.
678. Practice Direction 54D also provides that, where the Court determines that the original decision is erroneous on a point of law, the Court cannot set the decision aside and can only require the Welsh Ministers or appointed person to reconsider the case.

### **Section 185 – Meaning of “decision document” and “correctable error”**

### **Section 186 – Power to correct correctable errors in decision documents**

### **Section 187 – Effect and validity of correction notice**

679. Sections 185 to 187 provide that the Welsh Ministers may correct certain errors contained in particular decision documents. These three sections define key terms, set out the power to correct errors, and explain the effect of a decision whether or not to correct an error.
680. Section 185 provides that the correction power is exercisable in relation to “decision documents” that record:
- a. decisions of a type listed in section 182(2);
  - b. decisions on appeals against enforcement notices under section 127; and
  - c. any other types of decisions specified in regulations made by the Welsh Ministers.
681. The section also sets out that the correction power may only be exercised in relation to errors, which include omissions, that are not part of any reasons given for the decision.

682. Section 186 sets out the procedure the Welsh Ministers must follow to correct errors in a relevant decision document.
683. Subsection (2) sets out that the procedure starts where, before the end of the “review period”, the Welsh Ministers receive a request in writing to correct an error or, on their own initiative, write to the applicant to explain that the decision document contains a mistake that the Welsh Ministers are considering correcting. The “review period” is defined in subsection (4) by reference to the period for bringing proceedings under section 183 or 184 (set out in the relevant Civil Procedure Rules and practice directions). It is 6 weeks in relation to decision documents recording decisions of a type listed in section 182(2) and 4 weeks in relation to decision documents recording decisions on appeals against enforcement notices under section 127 (other than decisions to which section 182 applies). The planning authority must also be informed that a request to make a correction has been received, or that the Welsh Ministers are considering making a correction.
684. Subsections (5) and (6) provide that the Welsh Ministers must, as soon as practicable after correcting an error or deciding not to correct an error, issue a correction notice which will either specify the correction that has been made or give notice that they are not correcting the error. Subsection (7) specifies on whom the correction notice must be served. Subsection (8) provides that the functions under this section may be exercised by an appointed person if an appointed person made the original decision.
685. Section 187 sets out the status of corrected and uncorrected decisions.
686. A corrected decision will be treated as having been made on the date the relevant correction is made and the statutory period for challenging the corrected decision will start to run from that date. Any person wishing to challenge the decision is therefore not prejudiced by the time taken to correct the decision. If the Welsh Ministers do not correct a decision, the original decision will stand and the statutory period for challenge will be unaffected.

## **Part 6 – Other heritage assets and records**

687. This Part makes provision about historic parks and gardens (section 192), historic place names (section 193) and historic environment records in Wales (sections 194 to 196).

### **Section 192 – Duty to maintain and publish register of historic parks and gardens**

688. Section 192 places a duty on the Welsh Ministers to maintain a register of parks and gardens in Wales that they consider to be of special historic interest. Subsection (1) also requires the Welsh Ministers to publish the up-to-date register. The register of historic parks and gardens is published on [Cof Cymru](#).
689. There are, at the time of writing these notes, around 400 registered historic parks and gardens in Wales. All registered historic parks and gardens are of special historic interest and are graded using a system similar to that used for listed buildings (I, II\* and II). Subsection (6) explains that references in this section to parks and gardens include places of recreation and other designed grounds, including designed ornamental landscapes. Historic parks and gardens can include a wide range of places

– rural parks around country houses, deer parks, town gardens, hospital grounds, cemeteries and public parks, for example. They date from the medieval period to the very recent past. Whilst inclusion in the register does not introduce any specific consent regimes, registered historic parks and gardens, and their settings, may be protected through the planning system.

690. In identifying parks and gardens of special historic interest, the Welsh Ministers are required by subsection (2) to decide whether to include land adjoining or adjacent to the grounds being registered, or any building or water on or adjoining or adjacent to those grounds. This will allow the exercise of professional judgement in determining the most logical boundary line. For example, a grand splayed entrance to a driveway, which is outside the walls of an estate but clearly part of the design, could be included in a register entry. Alternatively, a modern greenhouse or stable block could be excluded from an entry.
691. The Welsh Ministers have published guidance, which is kept under review, to support the management of registered parks and gardens. The guidance at the time of writing these notes, [Managing Change to Registered Historic Parks and Gardens in Wales](#) (2017), sets out the general principles to follow when considering changes that may have an impact on registered historic parks and gardens. It is principally aimed at owners and their agents to help them to understand the implications of owning a registered park or garden and managing changes that affect it.

### **Section 193 – Duty to maintain and publish list of historic place names**

692. Section 193 places a duty on the Welsh Ministers to maintain a list of historic place names in Wales. Historic place names provide valuable evidence for the linguistic, social and historical changes that have shaped Wales. They are important elements of the urban and rural landscape and contribute to local and regional identity. The List of Historic Place Names of Wales is managed on behalf of the Welsh Ministers by the Royal Commission. It is freely available [online](#) and through the [Welsh historic environment records](#). In May 2022, the List contained nearly 700,000 historic names from geo-referenced sources earlier than 1914, including variant names and spellings for the same structure or place at different times. It will continue to grow as further place names are collected from a variety of historical sources.
693. The statutory guidance for historic environment records – [Historic Environment Records in Wales: Compilation and Use](#) (2017) – published in accordance with section 196 and kept under review, includes an annex providing guidance for local authorities on the use of the List of Historic Place Names, which can be accessed through the historic environment records.

### **Section 194 – Duty to maintain historic environment records**

694. Section 194 requires the Welsh Ministers to maintain a historic environment record for each local authority area in Wales. The Welsh archaeological trusts curate the historic environment records on behalf of the Welsh Ministers.
695. The historic environment records have been created as a result of decades of research and investigation and provide detailed information about the historic environment of a given area. Historic environment records are critical sources of information for those

making decisions about the sustainable management of the historic environment. That information is important for management processes, conservation, fieldwork and research, as well as public engagement and outreach relating to the historic environment. It forms the basis for archaeological and other heritage management advice provided to local planning authorities. Without such information, the essential advice that informs, for example, the assessment of the impact of development proposals on the historic environment, could be brought into question.

696. Subsection (2) sets out the wide range of information that must be provided in a historic environment record, with paragraphs (a) to (g) detailing various formally designated or recognised historic assets or sites that must be included. Paragraph (h) requires the inclusion of details of every other area or site considered to be of local historic, archaeological or architectural interest by the local authority or the Welsh Ministers. Records under paragraph (h) might relate to unscheduled archaeological sites, unlisted historic buildings or structures, historic parks and gardens, battlefields or landscapes that do not appear on the relevant registers or inventories, or locations with important palaeo-environmental evidence. Such records might also include locations that do not have any visible physical evidence, but might be associated with a historical, cartographic or documentary reference, or the discovery of an archaeological artefact.
697. Paragraph (i) requires the incorporation in a historic environment record of information about the way in which the historic, archaeological or architectural development of an area has contributed to its present character. This information may be obtained from ongoing urban and rural characterisation programmes and processes such as conservation area appraisals. These area-based studies explain how the historic environment contributes to the distinctive local/regional character of an area and how this character can be conserved for the future.
698. Subsection (8) establishes that if a local authority's area includes a section of coastline, the authority's area will include any part of the sea that lies seaward from that part of the shore and forms part of Wales. Under the definition in the [Legislation \(Wales\) Act 2019 \(anaw 4\)](#), Wales includes the sea adjacent to Wales within the seaward limit of the territorial sea, that is 12 nautical miles (under the [Territorial Sea Act 1987 \(c. 49\)](#)). If a relevant record from the marine historic environment within the 12 nautical mile limit is captured by one of the categories in subsection (2), it should be included in the historic environment record. For instance, there are many historic shipwrecks in Welsh waters that could be included.

### **Section 195 – Access to historic environment records**

699. Section 195 requires a historic environment record to be a publicly available resource. Every historic environment record is freely available online through [Archwilio](#) and is supported by associated reference material, which may be digital or paper, and is publicly available at the offices of the Welsh archaeological trusts. This material can include aerial photographs, copies of early maps and antiquarian reports, characterisation studies, unpublished reports ("grey literature"), and other published and documentary sources. Historic environment records are dynamic and constantly evolving resources which require continuous maintenance and enhancement as new information about the historic environment comes to light. Professional advice and

assistance must also be offered to help users locate and interpret information provided in or accessed by means of a historic environment record.

700. Subsection (2) requires the Welsh Ministers on request to provide a person with a copy of part of a historic environment record if the request is deemed reasonable. Subsection (3) requires the Welsh Ministers to compile a document with the requested information retrieved from the historic environment record. The compilation of this document may require interpretation of the data within the record, some form of analysis or additional research.
701. Subsection (5) gives the Welsh Ministers the power to impose charges to recover the costs of providing certain services associated with historic environment records, for example, the production of reports based on analysis of historic environment record content. No profit will be made from such charges, which will be limited to the costs of providing the service.

### **Section 196 – Guidance to certain public bodies about historic environment records**

702. Section 196 requires the Welsh Ministers to issue guidance to local authorities, National Park authorities and Natural Resources Wales on how they may contribute to the compilation and maintenance of the historic environment records and on the use of the historic environment records in the exercise of their functions. The guidance at the time of writing these notes, [\*Historic Environment Records in Wales: Compilation and Use\*](#), is available on the website of Cadw.
703. Local authorities, National Park authorities and Natural Resources Wales must have regard to this guidance. These public bodies have important roles in the management and conservation of the historic environment and in the way it is promoted, accessed and appreciated by the public. Their success depend on access to good-quality, authoritative information about the historic environment, such as that provided by the historic environment records.

## **Part 7 – General**

### **Section 197 – Power to require information by notice**

### **Section 198 – Offences in connection with section 197**

704. Section 197 enables a “relevant authority” (defined in subsection (4) as the Welsh Ministers or a local authority) to serve an information notice on the occupier of any land or anyone who receives rent in respect of any land. The information notice requires the recipient to provide information about the nature of the person’s interest in the land and the name and address of any other person known to have an interest in the land. Subsection (2) provides that an information notice may only be served where the information is required to enable the relevant authority to undertake particular functions under the Bill. For instance, when investigating alleged unauthorised works to a scheduled monument or listed building, the Welsh Ministers or a local authority may use an information notice as an initial step to identify occupiers and owners before making contact. For the purposes of this section, local authority has the meaning given in section 157.

705. Section 198 provides that a person commits an offence if the person, without a reasonable excuse, fails to provide information, or knowingly provides false or misleading information, in response to an information notice served under section 197.
706. A person guilty of the offence of failing, without a reasonable excuse, to provide the required information is liable on summary conviction to a fine not exceeding level 3 on the standard scale. A person guilty of the offence of knowingly providing information which is false or misleading in a material respect is liable on summary conviction or on conviction on indictment to an unlimited fine.

### **Section 199 – Information about interests in Crown land**

707. Section 199 allows the Welsh Ministers to make requests in certain cases to the appropriate Crown authority for information about the nature of its interest in Crown land and the name and address of any other person who may have an interest in the land. The request for information may not relate to a private interest in Crown land, in which case section 197 will apply. The Welsh Ministers may only request information about interests in Crown lands for certain purposes which relate to enabling the Welsh Ministers, or a local authority (as defined in section 157) to exercise the particular functions under the Bill set out in section 197(2). “Appropriate Crown authority” and “private interest” are defined in section 207.
708. Subsection (3) requires the appropriate Crown authority to comply with such a request unless it does not know the information or it would disclose information about national security or measures for the security of land or other property.

### **Section 201 – Civil sanctions**

709. Section 201 provides for the application of civil sanctions to offences committed under this legislation.
710. Subsection (1) gives the Welsh Ministers regulation-making powers to make any provision for a civil sanction in relation to an offence under this Bill that they could make under Part 3 of the 2008 Regulatory Enforcement Act if they or any other authority with an enforcement function were a regulator in relation to a relevant offence. Civil sanctions may include fixed monetary penalties and various discretionary requirements to be determined by the relevant enforcement authority. The discretionary requirements may include financial penalties to be set by a regulator; steps to be taken to ensure an offence will not reoccur; or steps to be taken to restore the position before the commission of the offence.
711. Subsections (2) to (4) apply relevant provisions of the 2008 Regulatory Enforcement Act to any provision that the Welsh Ministers make by regulations under subsection (1).

### **Section 202 – Making claims for compensation**

### **Section 203 – Determination of compensation claims by Upper Tribunal**

### **Section 204 – Compensation for depreciation of value of land**

712. Sections 202 to 204 make various provisions relating to compensation.

713. Section 202 enables the Welsh Ministers to make regulations about how claims for compensation under the Bill must be made. The regulations may also amend any provision of the Bill which specifies the period within which a claim for compensation must be made.
714. Subsection (2) provides that, if they consider there to be good reasons for doing so, the Welsh Ministers may extend the period for claiming compensation under the Bill in a particular case.
715. Section 203 provides that any dispute about compensation payable under the Bill must be referred to and be determined by the [Upper Tribunal](#). Subsection (2) further provides that section 4 of the 1961 Act applies to any Upper Tribunal proceedings about disputed compensation under the Bill. Section 4 enables the Upper Tribunal to require one party in any proceedings before it about disputed compensation to pay the costs incurred by another party to those proceedings.
716. Section 204 provides that section 5 of the 1961 Act, which sets out basic rules for assessing compensation on the compulsory acquisition of land, applies when calculating compensation for depreciation of the value of land. This could be applicable, for example, when the value of the land has reduced as a result of the refusal of scheduled monument consent (section 21) or the revocation of listed building consent (section 108). It also sets out rules about who may claim and receive compensation, and about the basis on which compensation is payable, if the interest in land is subject to a mortgage.

### **Section 205 – Service of notices and other documents: general**

### **Section 206 – Additional provision about service on persons interested in or occupying land**

717. Sections 205 and 206 make provision for the service of notices or other documents on persons, including bodies corporate, under the Bill. For these purposes, “served” includes references in the Bill to “serve”, “give” (and any similar terms).
718. Section 205(2)(a) to (d) sets out the different methods of service that may be used under the Bill, including electronic communications. Electronic communications may only be used where the person being served has provided an address for electronic service, and when using this method – email, for example – specific conditions need to be met to ensure that the recipient can read and access the document (section 205(3)). A notice can be served on a body corporate by sending it by post in a pre-paid letter or handing it to the secretary or clerk at its registered or principal office, or by using electronic communication.
719. Section 206 makes further provision for the service of a notice or document on a person with an interest in a building, monument or land whose name and/or address may be unknown. The section also provides for the service of a notice or document on an occupier of a building, monument or land.
720. If, after making reasonable inquiries, such as contacting the Land Registry, the name of a person with an interest in a building, monument or land is unknown, a document may be addressed to the person as “the owner” (subsection (2)). A document to be

served on an occupier of a building monument or land, may be addressed to the person by name or as an “occupier”.

721. Subsections (4) and (5) set out options for the proper service of a document on a person with an interest in a building, monument or land with no current address for delivery or on a occupier of a building, monument or land.

### **Section 208 – Church of England land**

722. Section 208 makes provision for the application of the Bill to land belonging to the Church of England. There are a small number of churches in Wales which are owned by the Church of England. Among other things, the section provides that where a notice or document is served under the Bill on the Church of England as an owner of land, a corresponding notice or document must be served on the Diocesan Board of Finance for the area in question. Subsection (3) provides that any compensation payable to the Church of England under the Bill must be paid to the appropriate Board of Finance.

### **Section 209 – Regulations under this Act**

723. Section 209 contains general provisions regarding regulations made under this Act. The power to make regulations is exercisable by statutory instrument and subsections (2) and (3) set out what provisions may be made by such regulations.
724. Subsection (5) identifies the regulations that must be laid before and approved by resolution of the Senedd prior to being made; this is known as the affirmative procedure. Paragraph (h) applies this requirement to any regulations that amend or repeal enactments in primary legislation.
725. Under subsection (6) all other regulations are subject to the negative procedure, in which a statutory instrument is laid before the Senedd and it becomes law unless it is annulled within a period of 40 days.

### **Section 211 – Consequential and transitional provision etc.**

#### **Schedule 13 – Minor and consequential amendments and repeals**

#### **Schedule 14 – Transitional and saving provisions**

726. Section 211 introduces Schedules 13 and 14 which together make amendments and transitional provisions that will accommodate the legal changes occasioned by the enactment of the Historic Environment (Wales) Bill.
727. Subsections (3) and (4) give the Welsh Ministers powers to make further incidental, consequential, transitional, transitory or saving provisions by regulations.
728. Schedule 13 contains various amendments that are necessary in consequence of consolidating the legislation in the Historic Environment (Wales) Bill. Some changes make provision for the appropriate citation of the Bill in existing legislation, while many others are needed to extract Wales from the historic environment legislation that will remain in effect in England and Scotland, particularly the 1979 Act and 1990 Listed Buildings Act.



729. Paragraphs 35 to 37 of Schedule 13 make the changes that are necessary to revoke Part II (archaeological areas) of the 1979 Act in Wales. Part II has never been used in Wales, because in practice planning policy provides greater protection to the archaeological heritage. This gives effect to recommendation 13.11 of the Law Commission’s report, [\*Planning Law in Wales\*](#).
730. Paragraph 65 of Schedule 13 inserts a new section 79A into the Building Act 1984 (c. 55) (“the 1984 Act”). Derived from section 56 of the 1990 Listed Buildings Act, it requires a local authority in Wales to consider taking certain steps in relation to listed buildings and certain other buildings under the Bill prior to obtaining an order under section 77(1)(a) of the 1984 Act (making a dangerous building order) or serving a notice under section 79(1) of that Act (serving a notice with regard to a ruinous or dilapidated building detrimental to amenity).
731. If the building is listed and the local authority is the planning authority for the area in which the building is situated, it should consider whether it should exercise its powers under sections 137 and 138 of the Bill to serve a repairs notice and initiate the process for compulsory acquisition.
732. Section 79A(1)(b) further provides that, in any case involving a listed building, a local authority should consider undertaking urgent preservation works under section 144 of the Bill.
733. Section 79A(2) further provides that, if a building is subject to interim protection or temporary listing under the Bill, or if the Welsh Ministers have given a direction in relation to a building in a conservation area on the ground that it is important for maintaining the character or appearance of that area, the local authority should consider undertaking urgent works for the preservation of the building under section 144 of the Bill.
734. Paragraph 90 inserts a new section 314A into the 1990 Planning Act. Derived from section 66 of the 1990 Listed Buildings Act, it provides that, if considering whether to grant planning permission for development that affects a listed building or its setting, a local planning authority in Wales or the Welsh Ministers must have special regard to the desirability of preserving the listed building, its setting and any features of special architectural or historic interest.
735. Section 314A(4) of the 1990 Planning Act specifies that in this section “listed building” refers to buildings situated in both Wales and England. Consequently, in regions of Wales along the border with England, a Welsh planning authority or the Welsh Ministers might have to give special regard to the desirability of preserving listed buildings and their settings on both sides of the border when considering whether to grant planning permission. A complementary amendment to the 1990 Listed Buildings Act is made by paragraph 136. This will place a corresponding duty on English local planning authorities and the Secretary of State with regard to listed buildings in Wales.
736. Paragraph 127 amends section 49 of the 1990 Listed Buildings Act so that its provisions for compensation on the compulsory acquisition of listed buildings will continue to apply to England and Wales. The other provisions of the 1990 Listed Buildings Act cease to apply to Wales by virtue of paragraphs 93 to 160.

737. Paragraph 192 completely repeals the Historic Environment (Wales) Act 2016. The bulk of the provisions have been restated in the Bill apart from those for the Advisory Panel for the Historic Environment, which have never been brought into effect.
738. Schedule 14 contains various provisions necessary for the smooth and uninterrupted transition from earlier enactments to the Historic Environment (Wales) Bill. While Part 1 contains general provisions, Part 2 makes provision for matters relating to monuments under guardianship, and Part 3 deals with a number of specific cases in which the Bill makes changes to the previous law.