

# HISTORIC ENVIRONMENT (WALES) BILL

---

## EXPLANATION OF CHANGES MADE TO EXISTING PROVISIONS WITHIN THE HISTORIC ENVIRONMENT (WALES) BILL

### Introduction

1. This explanation of changes made to existing provisions (known as “Drafters’ Notes”) is for the Historic Environment (Wales) Bill introduced into the Senedd on 4 July 2022. It has been prepared by the Welsh Government’s Office of the Legislative Counsel under Standing Order 26C.9(v).
2. The Bill has been introduced as a consolidation Bill under the procedure in Standing Order 26C. The Bill restates existing primary and secondary legislation and incorporates some related case law and practice. These notes describe the general approach that has been taken in drafting the Bill, and where relevant they explain how the Bill:
  - clarifies the application or effect of existing law;
  - removes or omits provisions which are obsolete, spent or no longer of practical utility or effect;
  - makes minor changes to existing law for the purposes of achieving a satisfactory consolidation; and
  - makes other changes to the law which the Law Commission of England and Wales recommends are appropriate for inclusion within a Consolidation Bill.
3. In preparing the Bill account has been taken of the *Guidance to support the operation of Standing Order 26C on Consolidation Bills* which was issued by the Llywydd under Standing Order 26C.3 in October 2021.

## Contents of the Bill

4. The Bill consolidates legislation relating to the historic environment in Wales. Most of the Bill's provisions are taken from Parts 1 and 3 of the Ancient Monuments and Archaeological Areas Act 1979 ("the 1979 Act") and the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the 1990 Listed Buildings Act"). Provisions from several other Acts are also included.
5. The 1990 Listed Buildings Act includes provisions that apply only to England, and the 1979 Act includes provisions that apply only to England or only to Scotland. The Bill does not restate any of those provisions. These notes do not separately identify all the provisions and words that have been omitted because they are not relevant to Wales (although see the Tables of Destinations for those Acts in Annex B to the Explanatory Memorandum). The material that has been omitted because it relates only to England includes material relating to the Historic Buildings and Monuments Commission for England, to types of local authority that exist only in England, and to powers and procedures that are available only in England (such as listed building consent orders and neighbourhood development orders).
6. The Bill incorporates some provisions of subordinate legislation made under the Acts being consolidated, and some case law and practice which is important in understanding the operation of those Acts. These notes explain where material of these kinds has been included. Where there might be a need to amend provisions that have been moved from subordinate legislation to the Bill, the Bill retains powers to make amendments in regulations. Section 209 provides for all regulations that amend the Bill itself to be subject to affirmative Senedd procedure.

## Law Commission recommendations

7. The Bill gives effect to a number of recommendations made by the Law Commission in its final report on *Planning Law in Wales*<sup>1</sup>. Some of the recommendations relate specifically to provisions that are restated in the Bill; others relate to provisions of planning legislation that are identical or very similar to provisions of the legislation that is consolidated in the Bill. These notes identify the recommendations given effect in the Bill.

---

<sup>1</sup> Law Com No 383, November 2018

8. The fact that a change was recommended in the Law Commission's report does not necessarily mean that reliance is being placed on paragraph (v) of Standing Order 26C.2, which allows a consolidation Bill to make changes in the law which the Law Commission recommends "are appropriate for inclusion within a consolidation Bill". In most of the cases where the Welsh Government has made changes to give effect to recommendations in the report, it has relied on other paragraphs of Standing Order 26C.2.
9. The Welsh Government sought recommendations under paragraph (v) only where it considered that no other paragraphs of Standing Order 26C.2 applied. In a letter to the First Minister dated 13 May 2022, the Chair of the Law Commission identified that four changes were suitable for inclusion in a consolidation Bill under paragraph (v). These notes identify the changes that rely on that letter.

#### **Effects of devolution on the legislation being consolidated**

10. Most of the Acts that are being consolidated conferred functions on the Secretary of State, or in a few cases other Ministers of the Crown. The National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) transferred nearly all those functions to the National Assembly for Wales established by the Government of Wales Act 1998, so far as they were exercisable in relation to Wales. The functions were then transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 ("GoWA 2006").
11. The Planning and Compulsory Purchase Act 2004 ("the 2004 Act") made various amendments to the 1990 Listed Buildings Act and other planning legislation, including amendments which were expressed as conferring additional functions on the Secretary of State. Section 118(3) of the 2004 Act provided that the references to those Acts in SI 1999/672 were to be treated as referring to the Acts as amended, meaning that any new or amended functions were exercisable by the Assembly established by the Government of Wales Act 1998. Part 5 of the 2004 Act (which is partly restated in this Bill) was expressed as conferring functions on the Secretary of State, but section 59(9) provided that in relation to Wales the references to the Secretary of State were to be read as referring to the Assembly. All of these functions of the Assembly were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to GoWA 2006.

12. The Bill reflects the effect of these changes by restating the transferred functions as functions of the Welsh Ministers. These notes do not identify all those changes separately but do identify changes made to clarify the effect of functions having been transferred “in relation to Wales”.

### **Form of subordinate legislation**

13. The legislation being consolidated contains various powers for the Welsh Ministers to make subordinate legislation in the form of an order made by statutory instrument. Since 2014 it has been the practice of the Office of the Legislative Counsel that powers to make subordinate legislation by statutory instrument should normally take the form of powers to make regulations (see *Writing Laws for Wales: A guide to legislative drafting*, paragraph 9.2). The Bill therefore restates all powers of the Welsh Ministers to make orders by statutory instrument as powers to make regulations.

### **Part 2 of the Legislation (Wales) Act 2019**

#### *General*

14. Part 2 of the Legislation (Wales) Act 2019 (“the Legislation Act”) sets out general interpretation provisions which apply to Acts of the Senedd enacted on or after 1 January 2020, and will therefore apply to this Bill. Part 2 of the Legislation Act differs in some respects from the Interpretation Act 1978, which applies to nearly all of the legislation being consolidated (apart from some provisions taken from recent subordinate legislation). For example, the lists of generally applicable definitions in Schedule 1 to each interpretation Act are slightly different, meaning that some terms defined in the existing Acts do not need to be defined in this Bill while other terms not defined in the existing Acts do need to be defined in this Bill. This Bill has been drafted to take account of these differences.

#### *Crown application*

15. The legislation being consolidated was enacted in the context of the common law presumption that legislation does not bind the Crown. The 1979 Act does not generally bind the Crown, although it makes some modifications to the default position. The 1990 Listed Buildings Act does generally bind the Crown, subject to certain exceptions and modifications, as a result of amendments made by the 2004 Act.

16. Sections 4 and 28 of the Legislation Act reversed the default position on Crown application for Acts of Senedd Cymru, by providing that those Acts do bind the Crown unless express provision is made to the contrary. Section 28(3) of the Legislation Act makes clear that this change does not impose criminal liability on the Crown. The change applies to Acts that receive Royal Assent on or after 1 January 2020.
17. This Bill has been drafted to apply to the Crown to the same extent as the legislation being consolidated, but some of the provisions that are required to achieve that outcome are now different as a result of the change in the default position. For example, section 82A(1) and (2) of the 1990 Listed Buildings Act, which provide that the Crown is bound by the provisions of that Act other than the sections creating criminal offences, are mostly not restated because the same result is already achieved by section 28 of the Legislation Act.

#### **Changes to sentencing powers of Magistrates' Courts**

18. The legislation being consolidated includes a number of criminal offences that may be tried summarily (i.e. in a magistrates' court), including either-way offences (i.e. offences triable in either the Crown Court or a magistrates' court) and summary-only offences. These offences are affected by changes made by more recent Acts dealing with the sentences that may be imposed on summary conviction.
19. Where offences were punishable on summary conviction by a maximum fine of £5,000 or more (including where the maximum penalty was "the statutory maximum"), section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 made those offences punishable by a fine of any amount. To reflect this change, the Bill simply provides that the offences in question are punishable by "a fine".
20. This Bill restates provisions which created either-way offences punishable on summary conviction by imprisonment for a maximum term of 6 months, which was until recently the maximum term of imprisonment that a magistrates' court could impose for any single offence (now set out in section 224 of the Sentencing Act 2022). With effect from 2 May 2022, paragraph 24 of Schedule 22 to the Sentencing Act 2020 raised that maximum to 12 months, and section 282 of the Criminal Justice Act 2003 raised all 6 month maximum terms for specific either-way offences to 12 months. However, section 13 of the Judicial Review and Courts Act 2022 further amends the Sentencing Act 2020 so that the Lord Chancellor may change the "applicable limit"

from 12 months to 6 months and back again. Penalties for either-way offences have been restated to reflect these changes, on the understanding that section 13 will come into force before this Bill.

21. The Bill also restates some summary-only offences which are punishable by imprisonment for a term not exceeding 6 months. Those maximum terms will be raised to 51 weeks by section 281(5) of the Criminal Justice Act 2003, which is not yet in force. The penalties for these offences have been restated to reflect the position both before and after section 281(5) is brought into force.

### Changes to language and structure

22. The Bill uses many of the same terms as the legislation it consolidates, and in particular continues to refer to scheduled monuments, listed buildings and conservation areas. However, it replaces some significant terms used in the existing legislation with new terms. These changes do not have any substantive effect but are intended to ensure that the terminology is more accurate or helpful. The main changes are summarised in the following table.

Existing term	New term
Ancient monument	Monument of special historic interest
Appropriate authority (in relation to Crown land)	Appropriate Crown authority
Building preservation notice	Temporary listing notice
Ecclesiastical building	Religious building
Ecclesiastical property	Church of England land
Heritage partnership agreement (in relation to a listed building)	Listed building partnership agreement
Heritage partnership agreement (in relation to a scheduled monument)	Scheduled monument partnership agreement

Including a building in, or excluding a building from, a list compiled or maintained under section 1 of the 1990 Listed Buildings Act	Listing or de-listing a building
Listed building purchase notice	Purchase notice
Listed building enforcement notice	Enforcement notice
Local planning authority	Planning authority
Scheduled monument enforcement notice	Enforcement notice
Town scheme agreement	Conservation area agreement

23. Other changes of language, style and structure have been made throughout the Bill. The reasons for these changes include presenting material in a more logical order, omitting words that are unnecessary, expressing propositions more simply, reflecting current drafting style and improving consistency of language and structure between provisions. These notes do not identify changes of this kind unless there is a special reason for drawing attention to them.

### **Changes made throughout the Bill**

24. The following changes have been made in various places in the Bill and are described once in this section of the notes rather than being identified separately in each place where they arise.

#### *Owners and occupiers of land*

25. The legislation being consolidated contains many references to owners and occupiers of monuments, buildings or land. Most of the references are to “the owner” or “the occupier,” and where there may be more than one owner or occupier, it is not always clear whether the legislation means all of the owners or occupiers, or any one or more of them. A few provisions of the 1990 Listed Buildings Act make this clearer, by referring to “every” owner and occupier, or to “an” or “any” owner or occupier. That approach has been taken throughout the Bill, to make the provisions clearer and more consistent. The general approach that has been adopted is that where notices are to be given to owners and occupiers they must be given to “every owner and occupier,”

but where there is a right for owners and occupiers to make representations or take other action, “any” owner or occupier may take that action.

*“For the time being”*

26. Various provisions in the 1979 Act and the 1990 Listed Buildings Act use the words “for the time being”. For example, a “listed building” is defined in section 1(5) of the 1990 Listed Buildings Act as a building which is “for the time being” included in the list under that section. These words seem to have been included to indicate that the question of whether a building is listed is to be determined by reference to whether it is included in the list at the time the question falls to be considered. However, in nearly every provision of the existing Acts which uses the words “for the time being,” it would be clear without those words that questions had to be considered by reference to circumstances as they arise. The words have therefore been omitted in the restatements of those provisions (see also *Writing Laws for Wales*, paragraph 3.9(4)).
27. The words “for the time being” have been retained in provisions which state that scheduled monument consent and listed building consent have effect for the benefit of the persons who are “for the time being” interested in the monument or building (1979 Act, Schedule 1, paragraph 1(2); 1990 Listed Buildings Act, section 16(3)). In those provisions the words are needed to make clear that a person who acquires an interest after the consent is granted may benefit from the consent.

*“Expedient” and “appropriate”*

28. The legislation being consolidated confers numerous powers and duties on the Welsh Ministers and local authorities. In some cases, provisions enable or require Ministers or authorities to do something where they consider it “expedient” or “appropriate” to do so. The two words have the same effect, and in most cases they do not add anything to the general requirements of administrative law for public authorities to act reasonably and with regard to relevant considerations, since it would be unreasonable for an authority to take steps that it considered “inexpedient” or “inappropriate”. Most of the references to what is “expedient” or “appropriate” have therefore been omitted, but a few have been retained where they do appear to add something or where the provisions would not make sense without them.

*“Subject to” and “without prejudice to”*



29. Numerous provisions in the 1979 Act and 1990 Listed Buildings Act state that they are “subject to” other provisions or are “without prejudice to” other provisions. Current drafting practice is to omit this kind of expression where the relationship between provisions is clear from the context, and to try to describe the relationship between provisions more precisely where it needs to be made clear (see *Writing Laws for Wales*, paragraph 5.6). Changes of this kind have been made throughout the Bill, which contains fewer references to provisions being “subject to” other provisions and no instances of the words “without prejudice to”.

#### *Compensation claims*

30. The 1979 Act and 1990 Listed Buildings Act contain various provisions under which a person is entitled to compensation from the Welsh Ministers or a planning authority for losses caused by a decision or other action (such as the revocation of a consent). Those provisions require claims for compensation to be made “within the prescribed time” and “in the prescribed manner”. Regulations made under each Act require claims to be made in writing and set the time limit for making claims, which in each case is 6 months from the date of the decision or other action giving rise to the claim subject to a power for Ministers to extend the time limit. The current requirements are in regulation 2 of the Ancient Monuments (Claims for Compensation) (Wales) Regulations 2017 (SI 2017/641) for monuments, and regulation 13 of the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (SI 2012/793) for buildings. They have changed very little over time: the requirements for monuments were the same in SI 1991/2647 (except that those regulations specified a statutory application form), and those for buildings were the same in SI 1972/1362. The same requirements have been applied to the rights to compensation introduced by the 2016 Act for losses caused by interim protection and the termination of heritage partnership agreements.

31. As they are important and unlikely to change, the time limits and requirements to make claims in writing have been incorporated in the restatements of the sections conferring the rights to compensation instead of being left to regulations. The opportunity has also been taken to clarify when the time limits for claiming compensation under the 1990 Listed Buildings Act start to run, based on how the provisions are understood to operate in practice and in line with the approach adopted for monuments in SI 2017/641. Section 202 gives the Welsh Ministers a power to extend time in individual cases and clarifies when that power can be exercised, as well as giving them a power to make regulations amending the time limits in the Bill.

#### **Notes on specific provisions of the Bill**

32. The tables below explain changes that have been made in specific provisions in each Part of the Bill, and the final table deals with provisions which have not been restated in the Bill. The tables use the following abbreviations to refer to existing legislation:

<i>When citing origins</i>	<i>When explaining changes</i>	
1936	1936 Act	Public Health Act 1936 (c. 49)
1953	1953 Act	Historic Buildings and Ancient Monuments Act 1953 (c. 49)
1967	1967 Act	Civic Amenities Act 1967 (c. 69)
1972	1972 Act	Local Government Act 1972 (c. 70)
1979	1979 Act	Ancient Monuments and Archaeological Areas Act 1979 (c. 46)
-	1984 Act	Building Act 1984 (c. 55)
1990 LB	1990 Listed Buildings Act	Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)
1990 P	1990 Planning Act	Town and Country Planning Act 1990 (c. 8)
1995	1995 Act	Environment Act 1995 (c. 25)
2004	2004 Act	Planning and Compulsory Purchase Act 2004 (c. 5)
-	2005 Act	Public Services Ombudsman (Wales) Act 2005 (c. 10)
2006	GoWA 2006	Government of Wales Act 2006 (c. 32)
2008	2008 Act	Regulatory Enforcement and Sanctions Act 2008 (c. 13)
2016	2016 Act	Historic Environment (Wales) Act 2016 (anaw 4)
-	Legislation Act	Legislation (Wales) Act 2019 (anaw 4)

SI 1972/1362	SI 1972/1362	Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) Regulations 1972
SI 1994/1381	SI 1994/1381	Ancient Monuments (Class Consents) Order 1994
SI 1999/672	SI 1999/672	National Assembly for Wales (Transfer of Functions) Order 1999
SI 2012/793	SI 2012/793	Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012
SI 2014/2773	SI 2014/2773	Town and Country Planning (Determination of Procedure) (Wales) Order 2014
SI 2017/641	SI 2017/641	Ancient Monuments (Claims for Compensation) (Wales) Regulations 2017
SI 2017/642	SI 2017/642	Ancient Monuments (Applications for Scheduled Monument Consent) (Wales) Regulations 2017
SI 2017/643	SI 2017/643	Scheduled Monuments (Review of Scheduling Decisions) (Wales) Regulations 2017
SI 2017/644	SI 2017/644	Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017
SI 2021/1176	SI 2021/1176	Scheduled Monuments (Heritage Partnership Agreements) (Wales) Regulations 2021
SI 2021/1177	SI 2021/1177	Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021
LC 383	LC 383	Law Commission, <i>Planning Law in Wales: Final Report</i> (Law Com No 383, November 2018)

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
<b>PART 2 – MONUMENTS OF SPECIAL HISTORIC INTEREST</b>				
<i>Chapter 1 – Key terms</i>				
<i>Section 2 – Meaning of “monument” and “site of monument”</i>				
Omission of provision referring to meaning of “Wales”	1979, s. 61	Section 61(7A) omitted from restatement.	26C.2(iii)	Defined by Schedule 1 to Legislation Act.
(3)	1979, s. 61(8)	Reframing exemption for ecclesiastical buildings used for ecclesiastical purposes, including the addition of a power by regulations to specify exceptions.	26C.2(ii) and (iv)	Current effect of provision is uncertain, because it is not clear whether “ecclesiastical” applies to non-Christian religions (or beyond the Church of England). The power to specify exceptions has been included to provide flexibility in case further clarification is needed in future.
<i>Chapter 2- Schedule of monuments of national importance</i>				
<i>Section 3 – Duty to maintain and publish a schedule of monuments</i>				
(1)	1979, s. 1(1), (3), (7) and (8), and s. 53(1) to (2B)	Addition of reference to “in Wales” to clarify which monuments may be added to the schedule, and omission of provisions about monuments in Wales and in territorial waters.	26C.2(ii)	Reflects effects of section 53(1) to (2B) of the 1979 Act, SI 1999/672 and GoWA 2006, and Legislation Act definition of “Wales”. The reference to “Wales” includes the territorial sea.
		Simple requirement to publish up-to-date schedule to reflect existing practice, in place of requirement to publish separate lists of scheduled monuments.	26C.2(ii)	The up-to-date schedule is currently published online on “Cof Cymru”, which may be accessed on the Cadw website.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(2)	Relates to 1979, s. 1(6B)	Addition of requirement for <i>all</i> entries in the schedule to include a map. Current provisions are unclear about whether maps exist for all monuments or form part of entries in the schedule.	26C.2(ii)	In practice, Cadw maintains a map for all scheduled monuments. The maps can be viewed on “Cof Cymru”.
(4)	1979, s. 1(4)	Omission of reference to person <i>employed</i> as a caretaker.	26C.2(ii)	It is uncertain what “employed as” means in this context. In practice, arrangements vary for engaging caretakers. The omission avoids the ambiguity.
		References to buildings included alongside references to structures.	26C.2(ii) and (iv)	There are inconsistencies in how the 1979 Act refers to things occupied as dwellings. Sections 1(4) and 12(10) refer to <i>structures</i> occupied as dwelling houses, but section 24 refers to <i>monuments</i> and section 44(1) refers to <i>buildings</i> . The restatement adopts a consistent approach which reflects how the provisions are applied in practice.
<b>Section 4 – Notification of owner etc. where the schedule is amended</b>				
(1)	1979, s. 1(6) and (6B)	Omission of separate provision about amending maps.	26C.2(ii) and (iii)	Change in approach to maps (see entry for section 3(2)) means it is unnecessary to mention material amendments to maps.
<b>Section 5 – Consultation before adding or removing monument to or from the schedule</b>				
(1)(c)	1979, s. 1AA(1)(c)	Omission of separate provision about proposed amendments affecting monuments defined by reference to maps.	26C.2(ii) and (iii)	See entry for section 4(1)

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
Omission of power to make regulations to add to list of consultees	1979, s. 1AA(6)	Power to make regulations omitted from restatement.	26C.2(iii)	Experience of implementing amendments made by 2016 Act has shown power is unnecessary. Cadw considers that the list of consultees in the section is already comprehensive.
<b><i>Section 6 – Interim protection pending decision on certain amendments relating to the schedule</i></b>				
(1)(b)	1979, s. 1AB(1)(b)	Omission of reference to proposals to make material amendments affecting monuments defined by reference to maps.	26C.2(ii) and (iii)	See entry for section 4(1)
Omission of requirement to publish particulars of monuments electronically	1979, s. 1AB(6)(a)	Reference to “particulars” and requirement for publication electronically omitted.	26C.2(ii) and (iv)	Clarifies that the list is just a list of monuments subject to interim protection. Referring to “particulars” is unnecessary. Express reference to electronic publication is not needed. This is a well-established way of publishing documents, and a bare requirement to publish the list allows Ministers to choose the most suitable way to make the list publicly available.
<b><i>Section 9 – Review of decision to add monument to the schedule etc.</i></b>				
(1)(b)	1979, s. 1AE(1)(b)	Omission of reference to material amendments affecting monuments defined by reference to maps.	26C.2(ii) and (iii)	Change in approach to maps – discussed above in the third entry for section 3 – means it is unnecessary to mention material amendments to maps.
(2), (6)	1979, s. 1AE(6)(a); SI 2017/643, reg 4	Grounds for review moved from regulations to section, with power to amend section to change grounds.	26C.2(ii) and (iv)	This change ensures that the section deals with an important matter one might expect to see covered by primary legislation, while retaining flexibility for any future changes.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
				The drafting clarifies the intended effect of reg 4 of SI 2017/643; this has been reflected in subsection (2).
(3), (4)	1979, s. 1AE(3) and Sch. A2, para 1(1) and (2); SI 2017/643, reg 3	Requirement for the Welsh Ministers to appoint person to carry out review moved from regulations to section, with power by regulations to specify exceptions.	26C.2(ii) and (iv)	The current position, which is not expected to change, is that <i>all</i> reviews are carried out and determined by persons appointed by the Welsh Ministers. Section 1AE(3) may be misleading, because it is falsified by SI 2017/643.
Omission of provision about validity of decision	1979, s. 1AE(4) and Sch. A2, para 2(3)	The reference to section 50 (the restatement of section 55 of the 1979 Act) has not been restated.	26C.2(iv)	The omission avoids duplication with section 72 (statutory review), which already makes clear that it applies to decisions on reviews.
<b><i>Section 10 – supplementary provision about reviews</i></b>				
Omission of provision for decision of appointed person to be treated as that of the Welsh Ministers.	1979, Sch. A2, paras 1 and 2(2)	Omission of paragraph 2(2) of Schedule A2 to the 1979 Act.	26C.2(iv)	Provision omitted because of revised approach in section 9(3) requiring reviews to be carried out by appointed persons.
(3)	1979, s. 1AE(7)	Power to make provision about costs by regulations omitted.	26C.2(iv)	This change is a consequence of dealing with the costs of reviews in Schedule 6.
<b><i>Schedule 2 – decision on review by person appointed by the Welsh Ministers</i></b>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
Para 6	1979, Sch. A2, para 7	Reference to the 2005 Act omitted.	26C.2(iii)	The 2005 Act was repealed by the Public Services Ombudsman (Wales) Act 2019 and there are no longer any cases under it.
<b>Schedule 6 – proceedings under Part 2</b>				
Para 1(1)	1972, s. 250(2) as applied by 1979, Sch. A2 para 4(2)	Clarification of effect of section 250(2) of 1972 Act where a person is required to produce documents.	26C.2(ii)	Clarifies that a person who is required to produce documents is not required to attend a local inquiry to do so, to reflect how the provision is understood to apply in practice.
Paras 3, 4	SI 2017/643, reg 25	Provision moved from regulations into Bill, with modifications to introduce a consistent approach throughout the Part to costs incurred in proceedings.	26C.2(iv)	The provision made by regulation 25 deals only with appointed persons. Because the issue of costs is addressed in the Bill instead of regulations, paragraphs 3 and 4 deal with the costs incurred by Ministers <i>and</i> by appointed persons.
<b>Chapter 3 – Control of works affecting scheduled monuments</b>				
<b>Section 12 and Schedule 3 – authorisation of classes of works</b>				
Section 12(1) and Schedule 3	1979, s. 3(1); SI 1994/1381, art 2 and Schedule	Class consents have been moved from subordinate legislation to Schedule 3 to the Bill, with a power by regulations to amend the Schedule.	26C.2(iv)	SI 1994/1381 remains unchanged since 1994, which reflects the settled nature of the policy on class consents. This allows us to restate the provision about class consents in the Bill, instead of relying on subordinate legislation. We think this approach is more accessible.
(2)	1979, s. 3(2); SI 1994/1381, art 2	Addition of provision that authorisation is subject to <i>exceptions</i> and conditions, not just conditions.	26C.2(ii)	The descriptions of classes of works in SI 1994/1381 are subject to a combination of exceptions and conditions.



Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(5)	1979, s. 3; SI 1994/1381, art 2(3)	Provision about conditions of scheduled monument consent moved from SI 1994/1381 into section 12	26C.2(iv)	SI 1994/1381 remains unchanged since 1994, which reflects the settled nature of the policy on class consents. This allows us to restate the provision about class consents in the Bill, instead of relying on subordinate legislation. We think this approach is more accessible.
Omission of classes 5 and 8 from Schedule	Schedule to SI 1994/1381	Class consents for urgent works (class 5) and works under management agreements (class 8) omitted.	26C.2(iii)	Class 5 overlaps with provision made by section 2(9) of the 1979 Act – restated in section 30(8) – and is unnecessary. Class 8 is redundant because section 51 specifies that management agreements made by the Welsh Ministers may grant consent.
<b><i>Section 14 – applying for scheduled monument consent</i></b>				
(2), (4), (5)	1979, Part 1 of Sch. 1; SI 2017/642, reg 3	Important parts of the process for applying for consent moved into the Bill from regulations.	26C.2(iv)	Settled elements of the application process which are unlikely to change in future have been moved into the Bill.
(3)(a)	1979, Sch. 1, para 1(1); SI 2017/642, reg 3(1)(a)	Addition of words clarifying that regulations may require an application to be made on a form issued by the Welsh Ministers.	26C.2(ii)	Clarifies scope that existing powers are understood to have and reflects practice under SI 2017/642.
<b><i>Section 15 – Declarations of ownership in respect of monument</i></b>				
(2), (3)	1979, Sch. 1, para 2(2)	Important requirements relevant to a declaration included in the Bill with	26C.2(iv)	Reflecting existing practice and ensures consistency with provisions about applications for listed building consent.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
		flexibility retained to require additional information etc.		
(6)	1979, Sch. 1, para 2(3); SI 2017/642, reg 4	Definition of “owner” moved into the Bill from regulations.	26C.2(iv)	Definition is well established. Reg 4 of SI 2017/642 reflects what was originally in SI 1981/1301.
<i>Section 17 and Schedule 6 – procedure for determining applications and effect of grant of consent</i>				
Section 17(6) and Schedule 6	1979, Sch 1, para 4(1)	Clarification of current effect of Part 1 of Schedule 1 to the 1979 Act in relation to local inquiries held for the purposes of paragraph 3A of that Schedule.	26C.2(iv)	Deals with a missed consequential amendment to paragraph 4(1) (which purports to apply only to inquiries held under paragraph 3 of Schedule 1).
Sch 6, para 3		Provision about costs applied to all proceedings under section 17.	26.C.2(iv)	Change made to introduce consistency throughout the Part on costs incurred by Ministers.
Sch 6, para 3(6)	New	Addition of test to be met before Ministers may require a person to pay the costs of another party.	26C.2(ii)	Reflects established practice which has been endorsed by caselaw in the context of planning legislation. The change is also consistent with LC 383 rec 18-12.
<i>Section 19 – condition about period within which works must start</i>				
(1)	1979, s. 4(1)	Addition of requirement for consent to be subject to a condition about when works must start, and provision for a deemed condition if none is included in the consent.	26C.2(iv)	Changed to require condition and impose deemed condition, for consistency with listed buildings (section 98).
(3)(c)	SI 2021/1176, reg 11 and Schedule	Effect of modification relating to partnership agreements in Schedule to SI 2021/1176 restated in the Bill.	26C.2(iv)	Moved to Bill because it disapplies section 4 of the 1979 Act (duration, modification and

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
				revocation of consent) in relation to heritage partnership agreements.
<b>Section 20 and Schedules 4 and 6 – modification and revocation of consent</b>				
(1)	1979, s. 4(3)	Power exercisable by <i>order</i> not directions.	26C.2(iv)	Changed for consistency with listed buildings (section 107).
(2)(b)	SI 2021/1176, reg 11 and Schedule	Effect of the modification relating to partnership agreements in Schedule to SI 2021/1176 restated in the Bill.	26C.2(iv)	The first entry in the table in the Schedule to SI 2021/1176 disappplies section 4 of the 1979 Act in relation to heritage partnership agreements. Section 20(2)(b) achieves the same effect by preventing orders under that section from modifying or revoking consent granted by a scheduled monument partnership agreement.
Sch. 4, para 1(2)(c)	1979, Sch. 1 paras 5(2) and (5)	Change to the 28-day period for making objections, so the period starts on the day <i>after</i> the day of service of the notice, not the day of service.	26C.2(iv)	Gives the person served a full 28 days to make objections. Makes position consistent with modification or revocation of listed building consent (see Schedule 8).
Sch. 4, para 2	1979, Sch. 1, para 8	End of authorisation of works linked to a day specified in a notice under paragraph 1, instead of “the relevant service date”.	26C.2(ii) and (iv)	Avoids uncertainty about what happens where notices are served on more than one person at different times.
Sch. 4, para 5(2)	New drafting	Requirement for appointed person’s report to include the person’s conclusions and recommendations about whether a modification or revocation ought to be made.	26C.2(ii)	Reflects how provisions operate in practice.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
Sch. 6, para 3	1979, Sch. 1, para 9(1)	Provision about costs applied to hearings as well as inquiries.	26C.2(iv)	Change made to introduce consistency throughout the Part on costs incurred by Ministers.
Omission of paragraph 9(2) of Schedule 1 to 1979 Act	1979, Sch. 1, para 9(2)	Provision about when costs powers apply omitted.	26C.2(iii)	Unnecessary to spell this out, because Ministers would not order that a party should pay costs unless they were satisfied that the costs should be met by that party.
<b>Section 21 – compensation for refusal of scheduled monument consent or grant of consent subject to conditions</b>				
Omission of second sentence from section 7(1) of 1979 Act	1979, s. 7(1)	Omission of second sentence about meaning of references to compensation being paid in respect of works.	26C.2(iii)	Unnecessary to spell this out. We think it's clear in context what references to compensation being paid in respect of works mean.
(2)	1979, s. 7(1)	Reference to loss or damage that is <i>directly attributable</i> to the effect of the decision, not "in consequence of" it.	26C.2(iv)	Consistent with the approach to claims for compensation elsewhere in the Bill (see section 24, for example).
(5) (not in force)	1979, s. 7(4A)	Omission of power to specify exceptions by regulations.	26C.2(iii)	Section 7(4A) is not yet in force (see section 10(2) of the 2016 Act); experience since 2016 suggests the power would never be used.
<b>Section 22 – Recovery of compensation paid under section 21 on subsequent grant of consent</b>				
Omission of requirement for claim to exceed £20	1979, s. 8(2)(a)	£20 threshold omitted.	26C.2(iii)	The amount is so low as to be meaningless in practice.
<b>Section 23 – Determination of amount recoverable under section 22</b>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(3)	1979, s. 8(4)	Omission of provision about what the Upper Tribunal considers just.	26C.2(iii)	Covered by combination of the function of the Tribunal and the overriding objective of the procedural rules in SI 2010/2600.
<b>Chapter 4 – Scheduled monument partnership agreements</b>				
<b>Section 25 – Scheduled monument partnership agreements</b>				
(4)	1979, s. 9ZA(3)(b)	Effect of current wording about agreements granting consent subject to conditions clarified; description of types of condition omitted.	26C.2(ii) and (iii)	The current wording suggests a discretion as to whether conditions are included in an agreement. That is not how the provision is understood in practice. The reference to types of condition is unnecessary because it is clear that the consent is a type of scheduled monument consent to which section 18 applies.
<b>Section 26 – Further provision about scheduled monument partnership agreements</b>				
(2)(a) to (c)	SI 2021/1176, reg 3(1)(a) to (d)	Important matters relating to contents of agreements moved from regulations into the Bill.	26C.2(iv)	Moved to section for consistency with provisions about applications for scheduled monument consent.
<b>Section 27 and Schedules 5 and 6</b>				
(1) to (5)	1979, s. 9ZB; SI 2021/1176, reg 6	Important matters about termination of agreements moved from regulations into the Bill, with flexibility to adjust system by regulations retained.	26C.2(iv)	Moved for consistency with provisions about modification and revocation of scheduled monument consent.
<b>Section 28 – Compensation in relation to termination</b>				
(1) to (5)	SI 2021/1176, reg 10	Important matters about compensation moved from regulations into the Bill.	26C.2(iv)	Moved for consistency with other provisions about compensation.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
<i>Chapter 5 – Enforcement of controls relating to scheduled monuments</i>				
<i>Section 30 – offence of carrying out unauthorised works or breaching condition of consent</i>				
(7)(b)	1979 Act, s. 2(8A)(b)	Requirement that knowledge exist <i>before</i> works were carried out etc. omitted.	26C.2(iv)	This corrects an error in the drafting of section 2(8A) in relation to cases where the offence is committed later.
(8)(b), (c)	1979 Act, s. 2(9)	Addition of requirements to prove that works were limited to the minimum necessary, and to give a detailed justification of the works.	26C.2(iv)	This change has been made for consistency with listed buildings (see section 117(4)).
<i>Section 31 – Power of Welsh Ministers to issue temporary stop notice</i>				
(4)(a)	New drafting	Discretion added to display a copy of a notice in a prominent place near a monument or land if it is not reasonably practicable to display it on the monument or land.	26C.2(ii)	Changed to reflect existing practice and effect of requirements (as legislation is not interpreted as requiring the impossible or absurd).
(5)	1979 Act, s. 9ZI(4)	Addition of references to persons permitting works and occupiers as potential recipients of a notice.	26C.2(ii), (iv)	The addition of a reference to persons permitting works to be carried out ensures that a notice will be served on everyone who will be responsible for a breach of the notice under section 33. The addition of occupiers is intended to clarify the effect of the existing law, as recommended in LC 383 rec 12-6(4) for the corresponding provision of the 1990 Planning Act.
<i>Section 32 – Duration etc. of temporary stop notice</i>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(5)	1979, s. 9ZI(10)	The drafting identifies the specific types of alternative enforcement action, instead of saying it <i>includes</i> an injunction.	26C.2(ii)	Clarifies effect provision is understood to have.
<b>Section 33 – offence of breaching temporary stop notice</b>				
(1)	1979, s. 9ZK(1)	Offence amended to refer to doing works when temporary stop notice has effect (and omit reference to notice having been served on person).	26C.2(ii)	Clarifies and simplifies provision, as recommended by LC 383 rec 12-7(1) for the corresponding provision of the 1990 Planning Act.
(4)	1979, s. 9ZK(4)	Addition of requirements to prove that works were limited to the minimum necessary, and to give a detailed justification of the works.	26C.2(iv)	This change has been made for consistency with listed buildings (see section 121(4)).
<b>Section 34 – compensation for loss or damage caused by temporary stop notice</b>				
(1)(a)	1979 Act, s. 9ZL(2)(a)	Wording added to make clear that whether works are unauthorised is to be assessed at time notice takes effect.	26C.2(ii)	Clarification of when the question is to be assessed for compensation purposes.
<b>Section 35 – power of Welsh Ministers to issue enforcement notice</b>				
(3)(a)	1979 Act, s. 9ZC(5)(b)	Change to the test for requiring further works to be carried out, so that Ministers can rely on <i>either</i> practicability or desirability.	26C.2(iv)	Change made for consistency with listed buildings (see section 123(3)).
(5)(a)	1979 Act, s. 9ZD(5)(a)	Requirement for electronic publication and “particulars” omitted.	26C.2(iv)	References to electronic publication and “particulars” are unnecessary.
<b>Section 36 – Service and taking effect of enforcement notice</b>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(5)	1979 Act, s. 9ZC(4)	Subsection (5)(a) is new provision about when an enforcement notice must be served.	26C.2(iv)	Change made for consistency with listed buildings (see section 123(5)(a)).
<i>Section 37 – variation and withdrawal of enforcement notice</i>				
(4)	1979 Act, s. 9ZD(4)	Addition of provision to clarify that notification requirement only applies where enforcement notice had been served.	26C.2(ii)	Sets out effect that provision is already understood to have.
<i>Section 38 – Effect of granting scheduled monument consent on enforcement notice</i>				
(3)	New drafting	Clarification of position in terms of liability for previous failures to comply with an enforcement notice.	26C.2(iv)	Change made for consistency with listed buildings (see section 126(3)).
<i>Section 39 – Appeal against enforcement notice</i>				
(2)(c)	1979 Act, s. 9ZE(3)	Omission of provision about securing safety or health by works of repair or works affording temporary support or shelter.	26C.2(ii) and (iv)	Scheduled monument consent <i>is</i> required for works of repair or temporary support. The ground of appeal in section 9ZE(3)(c) of the 1979 Act replicates equivalent provision for listed buildings – in respect of which repairs or works of support can be carried out without consent – but seems to have been included by error in section 9ZE.
<i>Section 40 – Powers to enter land and take steps required by enforcement notice</i>				
(3)	1979 Act, s. 9ZF(4)	Addition of a requirement for an application to a magistrates’ court for a warrant to be made by way of complaint.	26C.2(ii)	Clarifies how application would be made and ties in to the powers of the magistrates’ court in Part 2 of the Magistrates’ Court Act 1980.



Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
<b>Section 41 – Offence of failing to comply with enforcement notice</b>				
(5)	1979 Act, s. 9ZG(8)	Change in what the court must have regard to, so that regard is had to financial benefits likely to follow in consequence of the offence of failing to comply with the enforcement notice; not benefits following from carrying out the original works that led to the notice being issued.	26C.2(iv)	Change introduces consistency with the equivalent provision for listed buildings (see section 117(8)) and corrects an error in section 9ZG.
<b>Chapter 6 – Acquisition, guardianship and public access</b>				
<b>Section 46 – Supplementary provision about guardianship deeds</b>				
(3)	1979, s. 12(10)	Omission of reference to being <i>employed</i> as a caretaker.	26C.2(ii) and (iv)	It is uncertain what “employed as” means in this context. In practice, arrangements vary for engaging caretakers. The omission avoids the ambiguity.
		Addition of references to buildings.		See note on section 3(4) on references to buildings and structures occupied as dwellings.
<b>Section 47 – General functions of guardians</b>				
(4)	New drafting	Clarification that guardians may require the payment of a charge in connection with any use of a monument.	26C.2(ii)	Reflects established practice; for example, Cadw charges for weddings or other events held on or near monuments.
(5)	1979, s. 13(5)	In the words in brackets, reference to entering the site has been added.	26C.2(ii)	Clarifies the effect of the provision and resolves an inconsistency with similar provision in section 49, which restates section 15(4) of the 1979 Act.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
Omission of definition of “maintenance” and “maintain”	1979, s. 13(7)	Definition omitted.	26C.2(iii)	Definition doesn’t add anything to the ordinary meaning of the expressions.
<b><i>Section 49 – Acquisition and guardianship of land in the vicinity of a monument</i></b>				
(5)(a)	1979, s. 15(3)(a)	Clarification that the power of full control and management allows charging for any use of the land.	26C.2(ii)	Reflects existing practice; for example, Cadw charges for weddings or other events held on or near monuments.
<b><i>Section 51 – Agreements concerning management of monuments of special historic interest and land in their vicinity</i></b>				
(5)(a)	1979, s. 17(4)(a)	Addition of words in brackets saying that agreement may grant scheduled monument consent, to reflect the effect of class 8 of SI 1994/1381.	26C.2(iv)	This approach removes the need to restate section 17(8) of the 1979 Act, which provides that nothing in an agreement made with the Welsh Ministers is to be interpreted as a scheduled monument consent.
(5)(d)	1979, s. 17(4)(d)	Addition of a reference to restricting access to a monument or land.	26C.2(iv)	Introduced for consistency with the provision made for scheduled monument partnership agreements.
(7)	New drafting	Addition of requirement to specify any conditions attached to consent.	26C.2(iv)	Introduced for consistency with the provision made for scheduled monument partnership agreements.
<b><i>Section 55 – Public access to monument under public control</i></b>				
(4)	1979, s. 19(2)	Power of local authorities to control the times of public access no longer exercisable by regulations.	26C.2(ii) and (iv)	This change reflects established practice.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(5)	1979, s. 19(2)	Power of local authorities to exclude the public from access no longer subject to a requirement for Ministerial consent.	26C.2(ii) and (iv)	This change reflects established practice.
(5)(c)	New drafting	Clarification that public access may be controlled in connection with events or other activities.	26C.2(ii)	This change reflects established practice.
(6)	New drafting	Clarification that public access may be controlled in connection with events or other activities.	26C.2(ii)	This change reflects established practice.
<b><i>Section 56 – Power to make regulations and byelaws in connection with public access to monuments under public control</i></b>				
(1)	1979, s. 19(3) and (4)	Power to make regulations narrowed.	26C.2(ii) and (iv)	Power to make regulations has not been exercised. Power has been limited to what Cadw considers is required.
(3)	1979, s. 19(3) and (4)	Power reframed as power to make byelaws and narrowed.	26C.2(ii) and (iv)	Power to make regulations has not been exercised. Power to make byelaws will attract relevant provision from the Local Government Byelaws (Wales) Act 2012.
<b><i>Chapter 7 - General</i></b>				
<b><i>Section 61 – Works for preservation of scheduled monument in cases of urgency</i></b>				
(2)	1979, s. 5(1)	Clarification that 7 days’ notice means 7 clear days.	26C.2(ii)	
(3)(a)	1979, s. 5(1)	Reference to compensation orders under the Powers of Criminal Courts (Sentencing) Act 2000 omitted.	26C.2(iii)	Reference is spent. The 2000 Act was repealed by the Sentencing Act 2020 with effect from 1 December 2020.
<b><i>Section 62 – Expenditure on acquisition and preservation of monuments of special historic interest, etc.</i></b>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(6)	1979, s. 24(5)	Omission of reference to being <i>employed</i> as a caretaker.	26C.2(ii)	It is uncertain what “employed as” means in this context. In practice, arrangements vary for engaging caretakers. The omission avoids the ambiguity.
<b><i>Section 64 – Expenditure by local authorities on archaeological investigation</i></b>				
(1) to (3)	1979, s. 45(1) to (4)	Powers of the Welsh Ministers omitted.	26C.2(iii)	Practice is to use general powers available under GoWA 2006.
<b><i>Section 65 – Power of entry for inspection of scheduled monument etc.</i></b>				
(2)(c)	1979, s. 6(2A) (see SI 2021/1176, reg 11 and Schedule)	Modification of section 6 of the 1979 Act moved into the Bill.	26C.2(iv)	Ensures powers of entry are dealt with consistently in the Bill.
<b><i>Section 66 – powers of entry relating to enforcement of controls on works</i></b>				
(1)	1979, s. 9ZJ	Power to enter land to consider a claim for compensation omitted.	26C.2(iii)	Avoids duplication. This is covered by section 68 (which restates section 43 of the 1979 Act).
<b><i>Section 69 – Supplementary provision about powers of entry under this Part</i></b>				
(5)	1979, s. 44(3)	Addition of requirement to state the purpose of entry.	26C.2(iv)	Change for consistency with equivalent provision for listed buildings; see section 153(4)(a).
(6)	1979, s. 44(4)	Reference to doing anything reasonably necessary omitted.	26C.2(ii) and (iii)	No need to spell this out. It goes without saying that, having entered land for a particular (authorised) purpose, a person is

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
				permitted to do things reasonably necessary for carrying out that purpose.
<i>Section 74 – Crown land</i>				
(1)	New drafting	Provision to limit Crown application.	26C.2(iv)	Included to avoid default position under section 28(1) of Legislation Act that the Bill would bind the Crown.
<i>Section 75 – Interpretation of this Part</i>				
(1)	1979, s. 61(1); 1995, Sch. 9, para 10	The definition of “local authority” includes a reference to a National Park authority.	26C.2(ii)	Reflects effect of modifications made by paragraph 10 of Schedule 9 to 1995 Act, and fact that all National Park authorities in Wales are planning authorities.
(6)(b)	1979, s. 61(12)(b)	Addition of reference to “wholly or mainly in Wales”.	26C.2(ii)	Reflects effect on the 1979 Act of SI 1999/672 and GoWA 2006.
(7)	1979, s. 53(1)	Provision included for the wording in brackets at the end of section 53(1) of the 1979 Act (“but not otherwise”).	26C.2(ii)	Clarifies effect on section 53(1) of section 61(12)(b).
References to owning a monument by virtue of the Act	1979, s. 32(3)	Provision about meaning of Welsh Ministers or local authority being “owners” of a monument omitted.	26C.2(iii)	Provision states the obvious.
<b>PART 3 – BUILDINGS OF SPECIAL ARCHITECTURAL OR HISTORIC INTEREST</b>				
<i>Chapter 1 – Listing buildings of special interest</i>				
<i>Section 76 – Duty to maintain and publish list of buildings</i>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(1)	1990 LB, s. 1(1)	Addition of express requirement for list to include every building the Welsh Ministers consider to be of special interest.	26C.2(ii)	Section 1(1) of the Act is understood to impose a duty to list all buildings that meet the listing criteria. See Welsh Government, <i>Planning Policy Wales Technical Advice Note 24: The Historic Environment</i> (May 2017), paras 5.1 to 5.8.
		Omission of references to Ministers “compiling” a list of buildings and approving lists compiled by others.	26C.2(iii)	The list already exists. The power to approve lists compiled by others has never been used and Cadw considers there is no prospect of it being used.
		Omission of description of purpose of list as guiding planning authorities in exercising planning functions in relation to buildings of special interest.	26C.2(iii)	The description is not required because the Act sets out clearly the effects of listing a building.
	1990 LB, s. 1(1) and 2(4)	Addition of simple requirement for Welsh Ministers to publish up-to-date list, instead of requirement for them to make copies available for public inspection.	26C.2(ii)	Reflects established practice. The up-to-date list is published online on “Cof Cymru”, part the Cadw website.
(5)	1990 LB, s. 1(5)	Addition of wording to specify date for determining which objects within the curtilage of a listed building are included in the listing. The relevant date is generally the date of listing.	26C.2(ii)	Clarification to reflect how the law is understood to operate, based on case law mentioned in LC 383 para 13.252. Change gives effect to LC 383 rec 13-10.
<b>Section 77 – notification of listing or de-listing of building</b>				
(1), (2)	1990 LB, s. 2(1) and (3A)	Duty to “deposit certified copies” of amendments to list with local authorities replaced by duty to send them copies of	26C.2(ii)	Simplifies provisions and reflects existing practice.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
	and 2D(1) and (2)	new entries, and duties to notify owners and occupiers combined.		
<i>Section 78 – consultation before listing or de-listing building</i>				
Omission of power to make regulations to add to the list of consultees	1990 LB, s. 2A(5)	Omission of power to make regulations amending list of persons to be consulted about proposal to list or de-list building.	26C.2(iii)	Experience of implementing 2016 Act has shown power is unnecessary. Cadw considers that the list of consultees in the section is already comprehensive.
<i>Section 79 – interim protection pending decision whether to list building</i>				
(4)	1990 LB, s. 2B(5)	Reference to “particulars” and requirement for electronic publication omitted.	26C.2(ii), (iv)	References to “particulars” and electronic publication are unnecessary. In practice, the list is simply a list of buildings subject to interim protection. And electronic publication is the usual way in which Cadw publishes all documents.
<i>Schedule 7 – end of interim protection or temporary listing for buildings</i>				
Para 2	1990 LB, Sch. 1A para 2 and Sch. 2 para 2	Provision continuing criminal liability after end of interim protection or temporary listing extended to cover offence of intentionally damaging listed building under section 118 of the Bill.	26C.2(iv)	Removes an anomaly, as the provision should apply to all listed buildings offences. Ensures consistency with equivalent provision for monuments (in Schedule A1 to the 1979 Act).
Para 5	1990 LB, Sch. 1A para 4 and Sch. 2 para 4	Extension of provisions about lapse of enforcement notices when interim protection (or temporary listing) ends, to cover notices issued by the Welsh Ministers. Corresponding amendment to	26C.2(iv)	Ensures that all enforcement notices lapse when interim protection or temporary listing ends. Removes gaps in the existing provisions for which no reason has been identified.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
		provision about expenditure incurred in taking steps to comply with a notice.		
Para 6	New provision	Addition of provision that proceedings for an injunction lapse when interim protection (or temporary listing) ends.	26C.2(iv)	Corrects omissions in the Planning and Compensation Act 1991 and the 2016 Act. Ensures that all proceedings to enforce controls relating to listed buildings lapse when interim protection or temporary listing ends. Makes the provisions consistent with those for monuments (in Schedule A1 to the 1979 Act).
<b><i>Section 81 – review of decision to list building</i></b>				
(2), (6)	1990 LB, s. 2D(6)(a); SI 2017/644, reg 4	Ground of review moved from regulations to section, with simplified wording, subject to a power to amend the grounds.	26C.2(iv)	Ensures that the section deals with this important matter, while retaining flexibility for any future changes.
(3), (4)	1990 LB, s. 2D(3)(a) and (b); SI 2017/644, reg 3	Requirement to carry out reviews and make decisions is restated to reflect the requirement in regulations for all reviews to be carried out by persons appointed by the Welsh Ministers, but retaining the existing power for regulations to specify exceptions.	26C.2(ii), (iv)	The position under the regulations reflects the general position for applications and appeals to the Welsh Ministers, which is not expected to change. Since all reviews are carried out and determined by appointed persons, section 2D(3) may be misleading.
Omission of provision treating appointed person's decision as	1990 LB, Sch. 1B, para 2(2)	Omission of provision that decision made by appointed person on review is to be treated as decision of the Welsh Ministers	26C.2(iv)	Provision is not required as a result of previous change. Section requires reviews to be carried out by appointed persons, and there are no references to the Welsh Ministers making decisions.



Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
that of the Welsh Ministers				
Omission of provision about validity of decision	1990 LB, s. 2D(4) and Sch. 1B, para 2(3)	Provision that the validity of a decision on a review may only be challenged under sections 62 and 63 of the 1990 Listed Buildings Act not restated.	26C.2(iii)	Avoids duplication. Section 182 (statutory review) already makes clear that it applies to decisions on reviews.
<i>Section 84 – temporary listing in urgent cases</i>				
(2)	1990 LB, s. 4(1)	Omission of reference to attaching a building preservation notice (renamed a “temporary listing notice”) to an “object” on a building, and addition of provision allowing notice to be displayed as near as reasonably practicable to a building if displaying it on the building is not reasonably practicable or might damage the building.	26C.2(ii) and (iv)	Reference to “object” is not needed. Reference to displaying notice near the building if displaying it on the building is not reasonably practicable reflects existing practice and clarifies effect of requirements (on the basis that legislation is not interpreted as requiring the impossible or absurd). Reference to cases where the building might be damaged is for consistency with position for temporary stop notices under section 9ZI(5) of the 1979 Act: there is no reason for the provisions to be different.
<i>Section 87 – certificate that Welsh Ministers do not intend to list building</i>				
(2)	1990 LB, s. 6A(2)	Clarification that the period for which a certificate has effect includes the day on which it is issued	26C.2(ii)	Clarified on the basis of how the provision is understood to operate.
<i>Chapter 2 – Control of works affecting listed buildings</i>				
<i>Section 89 – authorisation of works by listed building consent</i>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(2)	1990 LB, s. 8(2) (and s. 8(4)(b) to (6))	Omission of provision that demolition is authorised only if the Royal Commission has been given an opportunity to record the building. Section 97(5) of the Bill achieves the same effect by requiring consent for demolition to be subject to a condition requiring the Commission to be given such an opportunity. If the condition is not complied with, the works will not be authorised.	26C.2(iv)	Simplifies provision and is consistent with section 2(5) of 1979 Act (restated in section 18(2)(b) of the Bill), which relies on a condition of scheduled monument consent to require that an opportunity to examine a monument is given before works are carried out.
<b><i>Section 90 – applying for listed building consent</i></b>				
(1)	1990 LB, s. 10(1)	Inclusion of references to additional provisions that may require applications to be made to the Welsh Ministers instead of the planning authority.	26C.2(ii)	Existing list of provisions is incomplete; additional references clarify effect.
(2)(c)	1990 LB, s. 10(2)(c)	Addition of reference to the Welsh Ministers being able to require information to be included in an application.	26C.2(ii)	Clarifies that the person to whom the application is made can always require information. Reflects how provision is understood in practice.
(3)	1990 LB, s. 10(3)(a)	Addition of provision for the regulations to specify the “content” of applications and require the use of forms issued by the Welsh Ministers or others.	26C.2(ii)	Clarifies matters that are understood to be within the scope of the existing power to make provision about the “form” of applications.
(4)	1990 LB, s. 10(4); SI 2012/793, reg 6(2)(d)	Requirement for heritage impact statement to include statement about how works will affect character of building moved from regulations to section.	26C.2(iv)	Moved to the section because this is one of the most important matters that a statement must cover.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(6)	1990 P, s. 327A as applied by 1990 LB, s. 89(1)	Restates section 327A of 1990 Planning Act, as applied to 1990 Listed Buildings Act by section 89(1).	26C.2(ii)	Section 10 is the only section of the 1990 Listed Buildings Act to which section 327A is relevant. Restating it here clarifies its effect for listed buildings.
<b><i>Section 91 – notice of application to owners of building</i></b>				
(1) to (4)	1990 LB, s. 11(1) to (4)	Provisions recast so that regulation-making powers are described in less detail, but prohibition on considering applications that do not comply is moved from regulations to the section.	26C.2(v)	Makes the provisions more consistent with usual drafting practice and with corresponding provisions in section 62 of 1990 Planning Act. Gives effect to Law Com (Notifying owners of applications for consent).
Omission of power for regulations to make provision about meaning of “owner” of building	1990 LB, s. 11(5) and (7); SI 2012/793, reg 7(4)	Power for regulations to make provision about who is the “owner” of a building omitted (but definition of “owner” in existing section retained).	26C.2(iii)	Power is not needed. The definition in the regulations is identical to that in the section.
<b><i>Section 92 – procedure for dealing with application</i></b>				
(1)	1990 LB, s. 10(1)	Addition of references to all provisions under which planning authority may not or must not consider an application made to it.	26C.2(ii)	Fills gaps. Section 10(1) of 1990 Listed Buildings Act is incomplete because it does not refer to section 81A of that Act or section 327A of the 1990 Planning Act.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(2)(b), (3), (4)	1990 LB, s. 15(5) and (6)	Power to give notification directions limited to imposing requirements on individual planning authorities, and replaced with regulations for requirements applying generally.	26C.2(iv)	In this case regulations are considered appropriate and there is no need for general requirements to be imposed by directions.
<i>Section 95 – notification to Welsh Ministers before granting consent</i>				
(4), (5)(a)	1990 LB, s. 15(1) and (6)	Directions excluding requirement to notify the Welsh Ministers before granting consent have been limited to individual planning authorities, and replaced with regulations for making exceptions that apply generally.	26C.2(iv)	In this case regulations are considered appropriate and there is no need for general requirements to be imposed by directions.
Provision about effect of direction	1990 LB, s. 15(2)	Omission of provision about effect of direction disapplying notification requirement.	26C.2(iii)	Section 15(2) of the 1990 Listed Buildings Act is not needed because it states the obvious.
(7)	New provision	New provision setting out ways in which regulations or directions may specify a description of applications.	26C.2(ii)	Clarifies scope that existing direction-giving power is understood to have and gives examples.
<i>Section 96 – grant of refusal of consent</i>				
(3)	1990 LB, s. 16(3)	Addition of reference to consent having effect for the benefit not only of the listed building but also of the land on which it is situated.	26C.2(ii)	Clarifies effect of consent, particularly where consent is for complete demolition of building.
<i>Section 97 – power to grant consent subject to conditions</i>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(5), (6), (8)	1990 LB, s. 8(2), (4) and (5)	Requirement for consent for demolition to be subject to a condition that the Royal Commission will have an opportunity to record the building added in place of provision that works are not authorised unless such an opportunity is given.	26C.2(iv)	See note for section 89(2).
<b><i>Section 98 – condition about period within which works must start</i></b>				
(1), (2)	1990 LB, s. 18(1) and (2)	Wording omitted to make clear that a condition imposed under this provision may specify any period within which works must start, and that the 5-year period is a default that applies only if no period is specified.	26C.2(ii)	Clarifies effect of provision, in the way that was recommended by LC 383 rec 8-14 in relation to the corresponding provision of the 1990 Planning Act.
	1990 LB, s. 18(1) to (2C); 2004, s. 51(4)	Omission of amendments to section 18 of the 1990 Listed Buildings Act which would reduce the default period for starting works to 3 years but extend in the case of legal challenge.	26C.2(iii)	The amendments have not been brought into force and Cadw considers that there is no prospect of them being brought into force.
(3)(b)	SI 2021/1177, reg 13 and Schedule	Provision that section 18 of the 1990 Listed Buildings Act does not apply to consent granted by a partnership agreement moved from regulations to section.	26C.2(iv)	The provision has been moved into the section because it changes the application of the section.
<b><i>Section 99 – application for variation or removal of conditions</i></b>				
(3)	1990 LB, s. 19(3)	List of provisions which apply to applications to vary or remove conditions amended to exclude requirement for	26C.2(iv)	Ensures that provisions which are appropriate for applications to vary and remove conditions are applied, and

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
		heritage impact statement but include power to refuse similar applications.		provisions which are not appropriate are not applied.
Omission of prohibition on extending period for starting works (not in force)	1990 LB, s. 19(5); 2004, s. 51(5)	Omission of amendment inserting a new section 19(5) of the 1990 Listed Buildings Act which would prevent conditions being varied to extend the period within which works must start.	26C.2(iii)	The amendment has not been brought into force and Cadw considers that there is no prospect of it being brought into force.
<b><i>Section 100 – right to appeal against planning authority decision or failure to make decision</i></b>				
(4)	1990 LB, s. 20(2) and (3)	Omission of provision in Act specifying determination period for applications for approval of details, so that determination periods for all applications to which the section applies are set by regulations.	26C.2(iv)	Changed to improve consistency by having all periods set out in one place. That place is regulations because it is a procedural detail that may change from time to time.
<b><i>Section 102 – restriction on varying application after service of notice of appeal</i></b>				
(2)	1990 LB, s. 21(4B); SI 2012/793, reg 12B(2)	Provision for further consultation moved from regulations to section and reworded to clarify that any requirement for further consultation will be imposed by the Welsh Ministers giving directions.	20C.2(ii) and (iv)	A regulation-making power is not needed, but the subsection clarifies how further consultation would be required.
<b><i>Section 103 – decision on application after service of notice of appeal</i></b>				
Omission of references to procedural option chosen by appellant	1990 LB, s. 20A(3)(c) and (4)(c)	Omission of provisions requiring the Welsh Ministers to give an appellant an opportunity to change any option the appellant has chosen relating to the procedure for the appeal.	20C.2(iii)	The provisions are spent. When they were enacted, an appellant could request a hearing (under Schedule 3 to the 1990 Listed Buildings Act) but that option was removed by SI 2014/2773.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
<i>Section 105 – applications by planning authorities and the Crown</i>				
Omission of power to modify certain provisions in relation to planning authorities	1990 LB, s. 82(1)	Omission of power to modify certain provisions about listing buildings in relation to land of planning authorities.	26C.2(iii)	Power has not been used and Cadw considers that there is no likelihood of it being used.
(1), (2)	1990 LB, s. 82(2) and (3) and 82F	Powers to modify legislation in relation to applications by planning authorities and the Crown combined, simplified and made consistent. Types of application to which they apply clarified.	26C.2(ii), (iv)	The list of provisions that may be amended in section 82(3) is incorrect (because it includes provisions not relevant to applications), while that in section 82F seems too wide. It is not entirely clear which applications the powers apply to, but there is no reason to exclude any type of application for which the Act provides.
(3)	1990 LB, s. 82(4)	Power for regulations to require applications to be made to the Welsh Ministers extended to Crown applications; power to provide for Ministers to serve notices omitted.	26C.2(ii), (iii), (iv)	Ensures that powers are consistent and reflects effect powers are already understood to have. Omits provision about notices that is not required.
<i>Section 106 – applications relating to urgent works on Crown land</i>				
(7)	1990 LB, s. 82B(11)	Provision applying section 12(4) of 1990 Listed Buildings Act (about hearings) to urgent Crown applications has been	26C.2(iv)	Corrects an error. Section 12(4) no longer applies to the Welsh Ministers by virtue of SI 2014/2773, which replaced it with a new

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
		replaced with a provision applying the procedural provisions in Part 5 of Bill.		section 88E. It should have applied section 88E to urgent Crown applications.
<b><i>Section 107 – modification and revocation of consent</i></b>				
Omission of duties to have regard to material considerations	1990 LB, s. 23(2) and 26(2)	Omission of requirement for planning authorities and the Welsh Ministers to have regard to any material considerations when exercising powers to revoke or modify consent.	26C.2(iii)	The provisions originally required regard to be had to the development plan. That requirement was repealed by the 2004 Act, so these provisions add nothing to general duties under administrative law.
Omission of provision about effect of order made by Welsh Ministers	1990 LB, s. 26(8)	Omission of provision that orders made by the Welsh Ministers have same effect as orders made by a planning authority	26C.2(iii)	The provision is not needed, as the effect of orders is made clear in the Bill (e.g. for the purposes of compensation and validity).
<b><i>Schedule 8 – procedure for orders modifying or revoking listed building consent</i></b>				
3(3), (4)	1990 LB, s. 25(2)	Wording added to make clear that effect of person giving notice is that order must go through procedure involving Ministerial confirmation.	26C.2(ii)	Clarifies meaning that existing provisions are understood to have.
<b><i>Section 109 – purchase notice where consent is refused, granted subject to conditions, modified or revoked</i></b>				
(2), (3)	1990 LB, s. 32(1) and (4A)	Requirement to serve purchase notice on council or National Park authority replaced with requirement to serve it on the planning authority (including a joint planning board).	26C.2(v)	Ensures purchase notice is served on the authority that made the decision or order that gave rise to the notice. Gives effect to Law Com – Notification of purchase notice.



Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(6)	1990 LB, s. 32(4)	Requirements to ignore development requiring planning permission and works requiring consent clarified and made consistent; reference to Schedule 3 to 1990 Planning Act omitted.	26C.2(ii), (iii), (iv)	Removes inconsistencies for which no reason has been identified; clarifies effect of provision; omits reference which has no practical effect and should have been repealed.
(7)	New	Addition of provision that building is not incapable of reasonably beneficial use if its condition results from carrying out unauthorised works.	26C.2(ii)	Clarifies effect of section based on Court of Appeal decision in <i>Balco Transport Services v Secretary of State for the Environment (No. 2)</i> [1986] 1 WLR 88, and para 18 of Welsh Office Circular 22/83, <i>Purchase Notices</i> .
<b><i>Section 111 - Further provision about service of purchase notice</i></b>				
(1), (3)	1990 LB, s. 32(1); SI 2012/793, reg 13(1) and (2)	The time limit for serving a purchase notice, and power to extend it, have been moved from regulations to the section, and the time limit has been clarified.	26C.2(ii), (iv)	The requirements have not changed for a very long time (if ever): the same provision was made in reg 7 of SI 1972/1362. The point when the time limit starts to run has been clarified on the basis of how it is understood to operate.
(2)	New	New provision that, in a case relating to a refusal or conditional grant of consent, if there is an appeal to the Welsh Ministers the time limit for serving a purchase notice begins when they decide the appeal.	26C.2(ii)	Clarifies effect of provisions, in the way recommended by LC 383 rec 11-5 in relation to the corresponding provision of the 1990 Planning Act.
(6), (7)	New	New provision that a purchase notice may not be amended but that further notices may be served in place of earlier notices.	26C.2(ii)	Clarification on basis of Court of Appeal decision in <i>White v Herefordshire Council</i> [2008] 1 WLR 954, as recommended by LC 383 rec 11-6 in relation to the corresponding provision of the 1990 Planning Act.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
<i>Schedule 9 – action following service of purchase notice</i>				
Para 1(7)	New	Addition of provision that an authority may not withdraw a notice to treat that it is treated as having served by virtue of accepting a purchase notice.	26C.2(iv)	Corrects an apparent error. The equivalent provision in section 208 of the Town and Country Planning Act 1971 did apply to listed building purchase notices, and its omission from the 1990 Listed Buildings Act seems to have been a mistake.
Para 3(1)	1990 LB, s. 34(2)	Requirement to notify planning authority in place of separate requirements to notify county or county borough council and planning authority if it is a joint planning board.	26C.2(v)	Consequence of change requiring purchase notice to be served on planning authority. (See note for section 109(2) and (3).)
Para 4(3)	1990 LB, s. 36(2)	Words added to make clear that the provision applies only where a purchase notice has been sent to the Welsh Ministers.	26C.2(ii)	Clarification to reflect Court of Appeal decision in <i>White v Herefordshire Council</i> .
		Provision about action which prevents deemed confirmation of purchase notice amended so that notification that Ministers “do not propose to” confirm the notice will not be sufficient, only a decision not to confirm it.	26C.2(iv)	Corrects an anomaly in the provisions for which no reason has been identified (including by Willis J in <i>Sheppard v Secretary of State for the Environment</i> [1975] 1 EGLR 133).
Para 4(7)	New	Addition of provision that an authority may not withdraw a notice to treat that it is treated as having served due to the confirmation of a purchase notice.	26C.2(iv)	See note for paragraph 1(7) of Schedule 9.
<i>Chapter 3 – Listed building partnership agreements</i>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
<b><i>Section 113 - listed building partnership agreements</i></b>				
(6) and (7)	1990 LB, s. 26L(6)(a) and (7)	Effect of current wording about agreements granting consent subject to conditions clarified; description of types of condition omitted.	26C.2(ii) and (iii)	The current wording suggests a discretion as to whether conditions are included in an agreement, which is not how the provision is understood in practice. The reference to types of condition is unnecessary because it is clear an agreement grants listed building consent to which section 97 applies.
<b><i>Section 114 - further provision about listed building partnership agreements</i></b>				
(2)(a) to (c), (6)	SI 2021/1177, reg 3(1) and 7	Provisions about contents of agreement and matters to consider moved from regulations to section	26C.2(iv)	Moved to section for consistency with provisions about applications for listed building consent.
<b><i>Section 115 - termination of agreement or provision of agreement</i></b>				
Whole section	1990 LB, s. 26M(3)(d), (e), (4) and (5); SI 2021/1177, regs 9(1), (2), (4) and 10	Provision for termination of agreements moved from regulations to section, with power to amend section.	26C.2(iv)	Moved for consistency with provisions about modification and revocation of listed building consent.
<b><i>Schedule 10 - procedure for orders terminating listed building partnership agreements</i></b>				
Whole Schedule	SI 2021/1177, regs 9(3) and 11	Provisions for termination of agreements moved from regulations to section, with power to amend section.	26C.2(iv)	Moved for consistency with provisions about modification and revocation of consent.
paras 1(5), 2(4)	SI 2021/1177, reg 11(2)	Start of period for requesting hearing changed from the day notice of the order is served to the following day.	26C.2(iv)	Changed for consistency with provisions about orders modifying or revoking consent.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
<b><i>Section 116 - compensation where agreement or provision is terminated</i></b>				
Whole section	1990 LB, s. 26M(5)(a); SI 2021/1177, reg 12(1) to (5)	Provisions for compensation where agreement or provision is terminated moved from regulations to section, with power to amend section.	26C.2(iv)	Moved for consistency with other provisions about compensation.
<b><i>Chapter 4 - Enforcement of controls relating to listed buildings</i></b>				
<b><i>Section 119 - power of planning authority to issue temporary stop notice</i></b>				
(4)	New	Addition of option to display notice as near as reasonably practicable to building where displaying it on the building is not reasonably practicable or might cause damage	26C.2(ii), (iv)	Reflects existing practice and clarifies effect of requirements (on the basis that legislation is not interpreted as requiring the impossible or absurd).
(5)(a)	1990 LB, s. 44B(4)	Addition of provision for authority to serve notice on person it thinks is “permitting” works and on occupier of building	26C.2(iv)	The addition of a reference to persons permitting works to be carried out ensures that a notice will be served on everyone who will be responsible for a breach of the notice under section 121.  The addition of occupiers is intended to clarify the effect of the existing law, as recommended in LC 383 rec 12-6(4) for the corresponding provision of the 1990 Planning Act.
<b><i>Section 120 - duration etc. of temporary stop notice</i></b>				
(5)	1990 LB, s. 44B(10)	The drafting identifies the specific types of alternative enforcement action, instead of saying it <i>includes</i> an injunction.	26C.2(ii)	Clarifies effect provision is understood to have.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
<i>Section 121 - offence of breaching temporary stop notice</i>				
(1)	1990 LB, s. 44C(1)	Offence amended to refer to doing works when temporary stop notice has effect (and omit reference to notice having been served on person).	26C.2(ii)	Clarifies and simplifies provision, as recommended by LC 383 rec 12-7(1) for the corresponding provision of the 1990 Planning Act.
<i>Section 122 - compensation for loss or damage caused by temporary stop notice</i>				
(1)	1990 LB, s. 44D(2)	Wording added to make clear that whether works are unauthorised is to be assessed at time notice takes effect	26C.2(ii)	Clarification of when the question is to be assessed for compensation purposes.
<i>Section 125 - variation and withdrawal of enforcement notice</i>				
(4)	New	New provision to clarify that notification requirement only applies where enforcement notice had been served.	26C.2(ii)	Sets out effect that provision is already understood to have.
<i>Section 126 - effect of granting listed building consent on enforcement notice</i>				
(2)	1990 LB, s. 44(1)	Wording added to clarify that section applies where enforcement notice has not yet come into force.	26C.2(ii)	Sets out effect that provision is already understood to have.
<i>Section 127 - right to appeal against enforcement notice</i>				
(5)	1990 LB, s. 39(4)	Requirement for statement to set out grounds of appeal omitted so that all requirements relating to contents of statement can be put in regulations.	26C.2(iv)	Avoids section duplicating regulations, as recommended by LC 383 rec 12-14 for the corresponding provision of the 1990 Planning Act.
<i>Section 128 - determination of appeal</i>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(3)(b)	1990 LB, s. 41(6)	Omission of reference to discharging (i.e. removing) a “limitation” of listed building consent	26C.2(iv)	Removed because the term “limitation” is not used elsewhere in the provisions.
<i>Section 130 – order to permit steps required by enforcement notice</i>				
Whole section	1990 LB, s. 42(3)(b) and (4); 1936, s. 289; SI 2012/793, reg 15(1)	Omission of power to apply section 289 of the 1936 Act with modifications, and restatement of section 289 (as modified) in the Bill.	26C.2(iv)	Moved because of importance of provision and because how section 289 applies has not changed for a very long time (since at least SI 1972/1362). This change was recommended in LC 383 rec 18-13(2) for the corresponding power in the 1990 Planning Act.
<i>Section 132 – recovery of costs of compliance with enforcement notice</i>				
(2), (3), (7), (8)	1990 LB, s. 42(3)(a) and (c); 1936, s. 276 and 294; SI 2012/793, reg 15(1)	Omission of powers to apply sections 276 and 294 of the 1936 Act with modifications, and restatement of sections 276 and 294 (as modified) in the Bill.	26C.2(iv)	Moved because of importance of provisions and because how they apply has not changed for a very long time (since at least SI 1972/1362). This change was recommended in LC 383 rec 18-13(1) and (3) for the corresponding powers in the 1990 Planning Act.
(5)	1990 LB, s. 42(5); SI 2012/793, reg 15(2)	Provision for costs of works to be a charge on the land moved from regulations to section, and regulation-making power omitted.	26C.2(iv)	Moved because of importance of provision and for consistency with other provisions about recovery of costs.
(7), (8)	SI 2012/793, reg 15(1); 1936, s. 276(3)	Restatement of section 276 of the 1936 Act omits subsection (3), which provides that the section does not apply to “refuse” removed by a local authority.	26C.2(iii)	The exclusion of refuse seems intended to avoid any conflict between section 276 and other provisions of the 1936 Act allowing waste to be sold. It does not seem relevant

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
				or necessary where an authority does works required by an enforcement notice.
<i>Section 134 – power of Welsh Ministers to issue enforcement notice</i>				
(1)	1990 LB, s. 46(1)	Inclusion of wording (from section 38 of 1990 Listed Buildings Act) setting out circumstances in which the Welsh Ministers may issue enforcement notice.	26C.2(ii)	Clarifies that power is available in same circumstances as power of planning authority.
(4)	1990 LB, s. 46(4)	Provision modifying the references to a planning authority in section 42 of the 1990 Listed Buildings Act applied to all relevant sections of the Bill relating to enforcement notices.	26C.2(ii)	Clarifies existing position that the modification must be intended to apply to all references to a planning authority.
<i>Chapter 5 – Acquisition and preservation of buildings of special interest</i>				
<i>Section 136 – power of planning authority to acquire building by agreement</i>				
(1)	1990 LB, s. 52(1); 1995, Sch. 9, para 13(2)	Power for either council or National Park authority to acquire land by agreement replaced with power for planning authority to do so.	26C.2(ii), (iv)	Reflects existing effect of provisions and means that any joint planning board would be able to acquire land.
	1990 LB, s. 52(1)	Addition of requirement for building to be “wholly or mainly in Wales”	26C.2(ii)	Reflects effect of SI 1999/672 and GoWA 2006.
(4)	1990 LB, s. 52(2)	Omission of modification of Part 1 of Compulsory Purchase Act 1965 in relation to land acquired by Ministers or statutory undertakers.	26C.2(iii)	The inclusion of this modification in earlier consolidations appears to have been an error. It is not needed because the section does not provide for land to be acquired by Ministers or statutory undertakers.
<i>Section 137 – powers to acquire listed building compulsorily for purposes of preservation</i>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(1)	1990 LB, s. 47(1) and (3)	Requirement for Ministers to be satisfied that compulsory acquisition is “expedient” replaced with requirement for them to be satisfied that there is a compelling case in the public interest.	26C.2(ii)	Reflects long-established policy on compulsory purchase, now set out in Welsh Government circular 003/2019, <i>Compulsory Purchase in Wales and the ‘Crichel Down’ Rules</i> (October 2020) and endorsed by the Court of Appeal in cases such as <i>R (Clays Lane Housing Co-operative) v Housing Corporation</i> [2005] 1 WLR 2229.
(2)(a)	1990 LB, s. 47(1)(a) and (7); 1995, Sch. 9, para 13(1)	Power for either council or National Park authority to acquire land compulsorily replaced with power for planning authority to do so.	26C.2(ii), (iv)	Reflects existing effect of provisions and means that any joint planning board would be able to acquire land compulsorily.
<b><i>Section 144 – urgent works to preserve listed building</i></b>				
(5)	1990 LB, s. 54(5) and (5A)	Clarification that 7 days’ notice means 7 clear days.	26C.2(ii)	
<b><i>Section 147 – steps for preservation of listed building in disrepair</i></b>				
(2)	1990 LB, s. 56A(2) (not in force); 2016, s. 31(1)	Omission of references to regulations specifying time limit for doing works and making provision for appeals in relation to criminal offences.	26C.2(iv)	References are not needed. Time limit for doing works is clearly within power. Provision for appeals in relation to offences already exists, and in relation to civil sanctions for offences may be made under Part 3 of the 2008 Act.
<b><i>Section 150 – grant by Welsh Ministers for repair or maintenance of building, garden etc.</i></b>				
(1)	1953, s. 4	Omission of provisions in section 4 of 1953 Act specifying terms on which grants can	26C.2(iii)	Provisions about terms of grants state the obvious, and consultation requirement is spent as the Council has been abolished.



Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
		be made and requiring consultation with Historic Buildings Council for Wales.		
	1953, s. 4; 1967, s. 4	Omission of provision in section 4 of 1967 Act that power in section 4 of 1953 Act includes power to make loans.	26C.2(iii)	Power omitted because it does not add anything to general powers of the Welsh Ministers under GoWA 2006.
(7)	1953, s. 4A(8)	Provision preventing excessive recovery of grant as a result of more than one breach of condition or disposal replaced with provision preventing excessive recovery in all circumstances.	26C.2(iv)	Changed for consistency with section 58 of 1990 Listed Buildings Act, which was changed in the same way to give effect to recommendation 45 in the Law Commission's <i>Report on the Consolidation of Certain Enactments relating to Town and Country Planning</i> (Law Com No 189, Cmd 958, February 1990).
<b><i>Section 151 – acceptance by Welsh Ministers of endowment for upkeep of historic building</i></b>				
(2) (definition of “relevant building”)	1953, s. 8(1)	Reference to a building acquired by Ministers under section 5 of the 1953 Act omitted.	26C.2(iii)	The reference does not add anything to the reference to a building Ministers consider to be of outstanding interest; and Schedule 13 to the Bill amends section 5 so that it no longer applies to Wales.
(2) (paragraph (a) of definition of “relevant building”)	1953, s. 8(1)(b)	Reference to building of “outstanding” interest changed to refer to “special” interest.	26C.2(ii)	Changed for consistency and clarity. The tests of “special” and “outstanding” interest are not considered to be any different in practice.
<b><i>Chapter 6 – General</i></b>				
<b><i>Section 152 – powers to enter land</i></b>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(3), (5)	1990 LB, s. 88(2)	List of purposes for which powers of entry may be exercised rationalised, and references to irrelevant provisions omitted.	26C.2(ii), (iii)	Omitted purposes are incorrect or duplicate other purposes. Section 88 says it confers powers of entry in connection with proposals for notices or orders under various sections, most of which do not confer powers to issue notices or orders.
(4)	1990 LB, s. 88(3A)	Addition of power to enter land to decide whether a temporary stop notice should be served, and omission of power to do so to consider claim for compensation relating to temporary stop notice.	26C.2(iv)	Corrects gap in provision and avoids duplication of general power to enter land in connection with claims for compensation.
(9)	1990 LB, s. 88(6)	Insertion of provision that power to survey land includes determining presence of minerals	26C.2(iv)	Makes consistent with position for monuments under section 43(3) of 1979 Act and corrects anomaly. Section 88(6) originally referred to minerals but the reference was repealed by the Planning and Compensation Act 1991. It is unclear why, as the presence of minerals could be relevant to compensation under the 1990 Listed Buildings Act.
<b><i>Section 153 – exercise of power to enter land without warrant</i></b>				
(4)(a)	1990 LB, s. 88B(2)(a)	Wording added to make clear who can demand evidence of a person’s authority	26C.2(ii), (iv)	Clarifies effect of provision, and makes it consistent with provisions for monuments under section 44(3) of 1979 Act.
(9)	1990 LB, s. 88B(10)	Amended to apply all of definition of “appropriate Minister” in section 265 of the	26C.2(iv)	Corrects a gap. The definition of “statutory undertaker” that should apply to this section includes undertakers for which the

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
		1990 Planning Act (not just subsections (1) and (3))		“appropriate Ministers” is defined in section 265(2) of the 1990 Planning Act.
<i>Section 155 – supplementary provision about powers of entry</i>				
(5)	New	Addition of time limit for claiming compensation for damage	26C.2(iv)	Corrects a gap and makes position consistent with that for monuments, based on regulation 2(1)(e) of SI 2017/641.
<i>Section 156 – exempt religious buildings</i>				
(1)	1990 LB, s. 60(1) and (2)	Default position reversed, so that religious buildings are exempt only to the extent provided in regulations, rather than being exempt unless regulations restrict or exclude the exemption.	26C.2(ii)	Better reflects existing position under SI 2018/1087, which removes exemption entirely but then re-exempts some buildings.
(3)(e)	1990 LB, s. 60(6)(e)	Power to amend the 1990 Planning Act omitted.	26C.2(iii)	Power has not been used and no need for it has been identified.
(4)(b)	1990 LB, s. 60(3)	Omission of reference to chapel forming part of episcopal house of residence.	26C.2(iii)	Reference is not relevant to Wales as there are no Church of England cathedrals or episcopal houses of residence in Wales.
<i>Section 157 – interpretation of this Part</i>				
Definition of “local authority”	1990 P, s. 336(1), as applied by 1990 LB, s. 91(2)	Inclusion of National Park authorities in definition of “local authority”.	26C.2(ii)	Clarifies that National Park authorities are treated as local authorities for the purposes of this Part. Every provision restated in this Part which applies to a local authority also applies to a National Park authority: see section 32(4A) and 93(1)(a) of the 1990 Listed Buildings Act, and paragraph 13(4) to (6) of Schedule 9 to the 1995 Act.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
<b>PART 4 - CONSERVATION AREAS</b>				
<i>Section 158 - Designation of conservation areas</i>				
Omission of provision obliging planning authorities to review past exercise of designation functions	1990 LB, s. 69(2)	Section 69(2) omitted from restatement.	26C.2(iii)	Removed to avoid duplication with section 69(1). Ongoing nature of duty to designate means duty to review is not needed.
Omission of power of the Welsh Ministers to designate conservation areas	1990 LB, s. 69(3)	Section 69(3) omitted from restatement.	26C.2(iii)	Welsh Ministers have never used this power. Omitted as it is not needed.
Omission of requirements for the Welsh Ministers to consult and give notice of designations	1990 LB, s. 70(3) and (6)	Section 70(3) and (6) omitted from restatement.	26C.2(iii)	Consequence of omission of the Welsh Ministers' power to designate under section 69(3).

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(2)	New drafting	Addition of provision stating that planning authority may vary or cancel a designation.	26C.2(ii)	Section 70(5) and (6) assume these powers exist, but making them express improves clarity.
<b><i>Section 159 – Duty to formulate and publish proposals for preservation and enhancement of conservation areas</i></b>				
(2)	1990 LB, s. 71(2)	Addition of provision that a meeting may be held outside the conservation area where there is no suitable place in the conservation area.	26C.2(ii)	Reflects practical reality as it may be impractical to hold meeting in conservation area itself (e.g. no facilities available).
<b><i>Section 160 – Exercise of planning functions: general duty relating to conservation areas</i></b>				
(1)	1990 LB, s. 72(1)	Requirement that “ <i>special attention</i> shall be paid” to certain matters relating to conservation areas replaced with requirement to “ <i>have special regard</i> ” to those matters.	26C.2(ii)	Changed for consistency with analogous duty for listed buildings (restated as new section 314A of the 1990 Planning Act). The two tests are understood to have the same meaning.
(2)	1990 LB, s. 72(2)	Omission of functions under Planning (Hazardous Substances) Act 1990 and Planning (Consequential Provisions) Act 1990 from functions to which “ <i>special regard</i> ” duty applies.	26C.2(iii)	Reflects fact that the duty is not relevant to things which could be done under those Acts.
Omission of provision about references to Leasehold Reform, Housing and Urban	1990 LB, s. 72(3)	Omission of provision in section 72(3) that references to provisions of Leasehold Reform, Housing and Urban Development Act 1993 include references to them as they have effect by virtue of section 118(1) of the Housing Act 1996.	26C.2(iii)	Provision about references to amended legislation is not required as section 25 of Legislation Act means references are to legislation as amended.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
Development Act 1993				
<i>Section 161 – Requirement for demolition to be authorised</i>				
Omission of provision requiring that applications for consent by planning authorities be made to the Welsh Ministers.	1990 LB, s. 74(2)	Omission of requirement for planning authority to apply to the Welsh Ministers for conservation area consent, but with power for regulations to modify provisions in relation to applications by planning authorities (under section 105 as applied by section 163).	26C.2(v)	These changes give effect to Law Com – Applications by planning authorities for conservation area consent
Omission of exemption from conservation area consent of ecclesiastical buildings for the time being used for ecclesiastical purposes.	1990 LB, s. 75(1)(b) and (5) to (9)	Omission of ecclesiastical exemption from requirement for consent in section 75(1)(b) and (5), and of powers to restrict, exclude or modify the exemption in subsections (7) to (9). (But section 161(2)(c) confers a general power to exempt descriptions of building.)	26C.2(iii) and (iv)	Reflects fact that the exemption has been removed by article 5 of SI 2018/1087. There is no expectation of it being re-applied. Demolition would nearly always be inconsistent with ongoing use of a building for religious purposes; and where religious use cannot continue after the works, the exemption cannot apply.
(2)(c) and (d)	1990 LB, s. 75(1)(d), (2) and (3)	Power for the Welsh Ministers to give directions exempting buildings from the requirement for consent has been limited to cases involving individual planning	26C.2(iv)	Regulations are considered more appropriate for making general exemptions given their potential effect on the scope of the conservation area consent regime.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
		authorities, and replaced with power to make regulations conferring exemptions that apply generally.		
Power to vary or revoke directions	1990 LB, s. 75(4)	Omission of power to vary or revoke directions in section 75(4).	26C.2(iii)	Not needed. Section 20 of Legislation Act makes general provision to same effect.
<b>Schedule 11 - Effect of section 161 ceasing to apply to building</b>				
paras 4, 5, 6	1990 LB, s. 75(10) and (11)	Addition of provisions about effect of the section ceasing to apply to a building on temporary stop notices, enforcement notices and injunctions.	26C.2(ii)	Clarifies the effect of the need for conservation area consent no longer applying to a building.
<b>Section 163 - Application of Part 3 to conservation areas</b>				
Whole section	1990 LB, s. 74(3); SI 2012/793, Sch. 3	Modifications of provisions in Part 3 of the Bill (relating to listed building consent) as they apply in relation to conservation area consent have been moved from regulations into the Bill, while preserving the Welsh Ministers' power to make other modifications or exclusions in future.	26C.2(ii) and (iv)	Key matters relating to conservation area consent are now set out together in the Bill, instead of leaving it to regulations to exclude or modify provisions.
(1)(a)(i)	New	Addition of provision disapplying requirements in Part 3 for works to be authorised by consent. The corresponding provisions in sections 7 and 8 of the 1990 Listed Buildings Act are not disapplying by reg 16 of and Schedule 3 to SI 2012/793.	26C.2(ii)	Avoids duplication because sections 7 and 8 of the 1990 Listed Buildings Act are <i>restated</i> in relation to conservation areas in sections 161 and 162 of the Bill.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(1)(a)(ii)	New	Addition of provision disapplying requirement for application for consent to be accompanied by statement about design and access. The corresponding provision in section 10 of the 1990 Listed Buildings Act is not disapplying by reg 16 of and Schedule 3 to SI 2012/793.	26C.2(ii)	Reflects fact that neither design principles nor access issues are relevant to demolition works.
(1)(b)(i)	New	Addition of provision disapplying defence where unauthorised works are done to a building subject to interim protection. The corresponding defence in section 9 of the 1990 Listed Buildings Act is not disapplying by reg 16 of and Schedule 3 to SI 2012/793.	26C.2(ii)	Clarifies that defence is not relevant and avoids suggesting that interim protection applies to conservation area consent.
(1)(c)(i) and (2)(d)	New	Addition of provisions applying powers of entry for the purposes of conservation area consent, subject to exceptions. The corresponding powers in sections 88 to 88C of the 1990 Listed Buildings Act are not mentioned in section 74(3) or in reg 16 of or Schedule 3 to SI 2012/793.	26C.2(ii)	Clarifies that certain powers of entry in section 152 to 155 must apply for the purposes of conservation area consent, while excluding others that are irrelevant, to reflect how the existing powers are understood to apply. Corrects what appears to have been an oversight.
(2)	New	Addition of provision explaining how the provisions of Part 3 applied by subsection (1) are to be read in relation to conservation areas and conservation area consent.	26C.2(ii)	Clarifies effect of applying provisions about listed building consent to conservation area consent.
<b><i>Section 164 – Urgent works to preserve buildings in conservation areas</i></b>				



Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(3)	New	Addition of provision about how certain provisions are to be read where a direction under the section has effect in relation to a building.	26C.2(ii)	Clarifies that references to a listed building are to be read as references to the building to which the direction applies.
<b><i>Section 165 – Grant by Welsh Ministers for preservation or enhancement of conservation areas</i></b>				
(1)	1990 LB, s. 77(2)	Omission of provision that power in section 77 includes power to make loans.	26C.2(iii)	Omitted because it does not add anything to general powers of the Welsh Ministers under GoWA 2006.
	1990 LB, s. 77(4)	Omission of provision that grants may be made subject to conditions.	26.C.2(iii)	Omitted because it goes without saying.
<b><i>Section 166 – Conservation area agreements</i></b>				
(2)	1990 LB, s. 79(1)	Addition of express statement that buildings to which agreement relates must be situated in a conservation area.	26C.2(ii)	Clarifies how provisions apply in practice.
(3)	1990 LB, s. 80(3)	Omission of provision that conservation area agreement grants may be made subject to conditions.	26.C.2(iii)	Omitted because it goes without saying.
	1990 LB, s. 80(2) and (5)	Express statement that the Welsh Ministers may pay a grant for the purposes of a conservation area agreement to a planning authority <i>or any other person</i> .	26C.2(ii)	Clarifies meaning that provisions must have, given that powers to recover grants in section 78(4) to (8) apply.
<b><i>PART 5 – SUPPLEMENTARY PROVISION ABOUT BUILDINGS OF SPECIAL INTEREST AND CONSERVATION AREAS</i></b>				
<b><i>Chapter 1 – Exercise of functions by planning authorities and other local authorities</i></b>				
<b><i>Section 169 – arrangements for obtaining specialist advice</i></b>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(6)	1990 LB, Sch 4, para 7(1)	Functions to which provisions apply extended to include functions relating to compensation, purchase notices and listed building partnership agreements	26C.2(iv)	Removes anomalous gaps in the provisions and corrects an oversight in the drafting of SI 2021/1177.
<b><i>Section 170 – form of documents</i></b>				
Whole section	1990 LB, s. 93(1)(a)	Wording added to clarify that power to specify “form” of documents includes power to specify their contents.	26C.2(ii)	Clarifies existing position that power may be used to specify what form must contain and makes wording consistent with other similar powers in Bill.
<b><i>Section 171 – contributions towards expenditure by local authorities</i></b>				
(3)	1990 LB, s. 90(1) and (3)	Amended to remove minor differences between lists of functions covered by the Welsh Ministers powers’ to make contributions and require other authorities to make contributions.	26C.2(iv)	The differences between the lists of provisions in section 90(1) and (3) of the 1990 Listed Buildings Act are minor and no reason for them has been identified. The lists also seem to contain errors.
<b><i>Chapter 2 – Proceedings before the Welsh Ministers</i></b>				
<b><i>Section 173 – determination of appeal by appointed person</i></b>				
(1), (2)	1990 LB, Sch 3, para 1(1); SI 2015/1822, reg 3(2)	Provision for appeals to be determined by appointed persons moved from regulations to section, and power for regulations to specify which appeals are determined by appointed persons omitted.	26C.2(iv)	Reflects existing position under SI 2015/1822 that all appeals are determined by appointed persons. Gives effect to LC 383 rec 11-2 and 11-4.
(3)	1990 LB, Sch 3, para 1(2)	Powers to specify appeals that will not be determined by appointed persons amended so that general exceptions must be in	26C.2(iv)	Power to make general directions is not required in this case. Change gives effect to LC 383 rec 11-2 and 11-4.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
		regulations and directions may only make specific exceptions.		
Omission of power to make provision about publicity for directions	1990 LB, Sch 3, para 1(3)	Power for regulations to provide for giving publicity to directions omitted.	26C.2(iii) and (iv)	Power not required as a result of removing power to give general directions. Regulations already have to be published.
<b><i>Schedule 12 – determination of appeal by appointed person or the Welsh Ministers</i></b>				
Omission of provision about validity of appointed person’s decision	1990 LB, Sch 3, para 2(6)	Provision that the validity of an appointed person’s decision may only be challenged under sections 62 and 63 of the 1990 Listed Buildings Act not restated.	26C.2(iv)	Removes duplication. Sections 182 and 183 (statutory review) already apply to decisions on appeals without any limitation.
Para 3(2)	1990 LB, Sch 3, para 6(2)	Power to appoint assessor extended to cover cases decided on the basis of written representations and to enable appointed person to appoint assessor.	26C.2(v)	Gives effect to LC 383 rec 11-3 and 11-4 and Law Com – Powers to appoint assessors
Para 7(2)	1990 LB, Sch 3, para 7(3)	Omission of reference to 2005 Act.	26C.2(iii)	The reference is spent. The 2005 Act has been repealed and there are no longer any cases under it.
<b><i>Section 174 – choice of inquiry, hearing or written procedure</i></b>				
(7)	1990 LB, s. 88E(7)	Amendment to bring urgent Crown applications for consent within this section.	26C.2(iv)	Corrects an error. The omission of urgent Crown applications from section 88E of the

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
				1990 Listed Buildings Act was an oversight in SI 2014/2773.
<i>Section 177 – power of person holding inquiry to require evidence</i>				
(1)	1972, s. 250(2) as applied by 1990 LB, Sch. 3, para 6(4A) and 1990 P, s. 320(2)	Clarification of effect of section 250(2) of 1972 Act where a person is required to produce documents.	26C.2(ii)	Clarifies that a person who is required to produce documents is not required to attend a local inquiry to do so, to reflect how the provision is understood to apply in practice.
<i>Section 178 – access to evidence at local inquiry</i>				
(6)	1990 LB, Sch 3, para 6A(3), 8(3) and (4); 1990 P, s. 321(7) and 321B(3) and (4)	Omission of concurrent power of the Lord Chancellor to make rules relating to national security directions and functions of appointed representatives. That power would only be available if there were no regulations made by the Welsh Ministers.	26C.2(iv)	Removes duplication of powers and reflects the fact that provision about these matters has been made by the Welsh Ministers in SI 2006/1387.
<i>Section 180 – payment of costs of Welsh Ministers</i>				
(1)	1990 P, s. 322C(1) as applied by 1990 LB, s. 89(1)	Amended to clarify that costs powers apply to all proceedings brought before the Welsh Ministers under the 1990 Listed Buildings Act (whether or not they are applications or appeals).	26C.2(ii)	Clarifies scope of powers relating to costs of proceedings, and of earlier powers that they restated.
<i>Section 181 – orders relating to costs of parties</i>				

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(1)	1990 P, s. 322C(1) as applied by 1990 LB, s. 89(1)	Amended to clarify that costs powers apply to all proceedings brought before the Welsh Ministers under the 1990 Listed Buildings Act (whether or not they are applications or appeals).	26C.2(ii)	Clarifies scope of powers relating to costs of proceedings, and of earlier powers that they restated.
(3) and (4)	New	New provisions setting out test to be met before Ministers may require a person to pay the costs of another party, and noting that their power to do so is also subject to procedural rules.	26C.2(ii)	Subsection (3) reflects existing practice, which has been endorsed by caselaw and is currently set out in Welsh Government, <i>Development Management Manual</i> (May 2017), Annex 12: Award of Costs. The change is also consistent with LC 383 rec 18-12. Subsection (4) makes clear that the power to award costs is also subject to rules under section 175(5).
<b><i>Chapter 3 – Validity and correction of decisions</i></b>				
<b><i>Section 182 – validity of certain decisions and orders relating to buildings</i></b>				
(3)(c)	1990 LB, s. 62(1)(c), (2A)	References to costs orders under section 250(5) of 1972 Act replaced with references to costs orders under provisions in Bill restating section 322C of 1990 Planning Act.	26C.2(ii)	Corrects incorrect reference in section 62(2A) of 1990 Listed Buildings Act, so that it refers to powers which have replaced section 250(5) of 1972 Act in planning cases in Wales.
<b><i>Section 184 – appeal to High Court against decision relating to enforcement notice</i></b>				
(2)(a)	1990 LB, s. 65(1)	Wording added to make clear that the right of appeal under this section does not apply to decisions to grant consent or remove	26C.2(ii)	Clarifies that the rights to appeal and apply for statutory review are mutually exclusive.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
		conditions (which are subject to statutory review – see sections 182 and 183).		
<b><i>Section 186 – power to correct correctable errors in decision documents</i></b>				
(8)	1990 LB, s. 56(2) and 59(3)	Amended to clarify that, where the original decision was made by an appointed person, functions relating to corrections may be exercised by the Welsh Ministers or any appointed person.	26C.2(ii)	Reflects meaning the provisions are understood to have and how they are applied in practice by Planning and Environment Decisions Wales.
<b><i>Section 187 – effect and validity of correction notice</i></b>				
(4)	1990 LB, s. 58(5)	Amended so that a challenge to the correction of a decision on an appeal against an enforcement notice must be brought by appealing to the High Court under section 184.	26C.2(iv)	Corrects anomaly in section 58(5) of 2004 Act, which makes all corrections subject to statutory review even if the original decision was not. Makes position consistent with that for planning decisions.
<b><i>PART 6 – OTHER HERITAGE ASSETS AND RECORDS</i></b>				
<b><i>Section 192 – Duty to maintain and publish register of historic parks and gardens</i></b>				
(4)	1979, s. 41A(4)	Omission of requirement to inform owners etc. where grounds are included in the register.	26C.2(iii)	The register is already in existence, so the provision only needs to deal with subsequent amendments to it.
(5)(a)	1979, s. 41A(4)(a) and (b)	Words in brackets added to require notice to owner or occupier of anything listed in section 192(2) if they are not the owner or occupier of the park or garden.	26C.2(ii)	Clarifies effect of requirement to give notice.
(5)(b)	1979, s. 41A(4)(c)	Reference to “local authority or National Park authority” changed to “planning authority”.	26C.2(ii)	Clarifies which authority needs to be informed.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
<i>Section 193 – Duty to maintain and publish list of historic place names</i>				
Whole section	2016, s. 34	Addition of requirement to publish the list.	26C.2(ii) and (iv)	Reflects how the section is applied in practice and ensures consistency with other similar provisions in the Bill.
<i>Section 194 – Duty to maintain historic environment records</i>				
(1)	2016, s. 35(1)	Requirement to compile and keep up to date records changed to a requirement to maintain.	26C.2(ii) and (iv)	Records have already been compiled, and the requirement to maintain is consistent with other provisions of the Bill (the duty to maintain a schedule of monuments, for example).
(8)(a)	2016, s. 35(7)	Provision about the territorial sea extended to all references to the area of a local authority.	26C.2(iv)	The issue of the territorial sea is relevant to all references to the area of a local authority.
<b>PART 7 - GENERAL</b>				
<i>Section 197 – Power to require information by notice</i>				
(1)	1979, s. 57; 1990 P, s. 330 as applied by 1990 LB, s. 89(1)	Provision for requirement to provide information to be imposed by written notice applied to Part 2 of Bill.	26C.2(ii) and (iv)	Section 57 of the 1979 Act does not specify how information would be required. The change reflects how the provision is applied in practice and introduces consistency with the approach adopted in the 1990 Listed Buildings Act.
		Power to require information about matters in paragraphs (c) to (f) of section 330(2) of 1990 Planning Act omitted.	26C.2(ii)	The matters relate to the use of premises, which is relevant to applications for planning permission under the 1990 Planning Act but is not relevant to the 1990

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
				Listed Buildings Act (which is concerned with works rather than use).
(3)	1990 P, s. 330(3) as applied by 1990 LB, s. 89(1)	Provision about the period within which information must be given applied to Part 2 of Bill.	26C.2(ii) and (iv)	Section 57 of the 1979 Act is currently silent on this issue. Change made for consistency with position under 1990 Listed Buildings Act.
<b>Section 198 - Offences in connection with section 197</b>				
(3)	1979, s. 57(3); 1990 P, s. 330(5) as applied by 1990 LB, s. 89(1)	Omission of provision for imprisonment for a term not exceeding two years on conviction on indictment for offence under section 330(5) of 1990 Planning Act.	26C.2(iv)	Ensures consistency with section 57 of the 1979 Act, which does not make provision for imprisonment. LC 383 rec 12-24 recommended removing the option of imprisonment for an offence under section 330(5), and the change gives effect to that recommendation to the extent that section 330(5) applies for the purposes of the 1990 Listed Buildings Act.
<b>Section 199 - Information as to interests in Crown land</b>				
(1)	1990 P, s. 330A as applied by 1990 LB, s. 89(1)	Alternative provision for acquiring information about interests in Crown land applied to Part 2 of Bill.	26C.2(iv)	Change made for consistency with position under 1990 Listed Buildings Act. There is no equivalent to section 330A in the 1979 Act, but no reason for the two Acts to take different approaches.
<b>Section 200 - Offences by bodies corporate</b>				
(1)	1979, s. 58(2); 1990 P, s. 331(2) as	Omission of words which limit references to bodies managed by their members to	26C.2(iii)	Wording is out-of-date and has not been included in equivalent provisions in recent



Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
	applied by 1990 LB, s. 89(1)	bodies running nationally-owned industries.		Acts (e.g. Renting Homes (Fees etc.) (Wales) Act 2019, s. 26(3)).
Application of section to offence of damaging listed building	1990 LB, s. 89(2)	Omission of provision disapplying section 331 of 1990 Planning Act in relation to offence of damaging listed building under section 59 of 1990 Listed Buildings Act (in section 89(2) of that Act).	26C.2(iv)	Section 89(2) of the 1990 Listed Buildings Act continued an error. The section 59 offence was first created by the Civic Amenities Act 1967, while section 331 of the 1990 Planning Act was first enacted in the Town and Country Planning Act 1968. The need to apply it to this offence was apparently missed.
<b>Section 201 – Civil sanctions</b>				
Whole section	2008, s. 36(2) and Schedule 6	Inclusion of power to make provision for civil sanctions equivalent to what is permitted by Part 3 of the 2008 Act, extended to cover all offences under the Bill.	26C.2(ii) and (iv)	<p>The powers in Part 3 of the 2008 Act apply to “relevant offences” that were in existence immediately before the day that Act was passed: see 2008, s. 37(2) and 38(2).</p> <p>Section 201 preserves the effect of Part 3 of the 2008 Act in relation to relevant offences restated in the Bill, but also brings in offences that were added to the 1979 Act and 1990 Listed Buildings Act by the 2016 Act, as well as a few offences from the 1990 Planning Act and 1972 Act included in the restatement.</p> <p>This is considered appropriate to avoid gaps and ensure consistency. The added offences are all very similar to offences that were already relevant offences for the purposes of</p>

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
				the 2008 Act. The failure to extend the 2008 Act to offences inserted by the 2016 Act was a missed consequential amendment.
<i>Section 203 – Determination of compensation claims by Upper Tribunal</i>				
(1), (2)	1979, s. 47(2) and (3); 1990 LB, s. 31(4) and (5); 1990 P, s. 118 as applied by 1990 LB, s. 88B(7)	Powers for regulations to provide for exceptions and modifications omitted.	26C.2(iii), (iv)	The regulation-making powers in the 1990 Listed Buildings Act and 1990 Planning Act have not been used and no need for them has been identified. Omitting them is also consistent with the position under the 1979 Act (which does not include equivalent powers).
<i>Section 205 – Service of notices and other documents: general</i>				
(2)(c)	1979, s. 56(1)(c); 1990 P, s. 329(1)(c) as applied by 1990 LB, s. 89(1)	Requirements to use registered post or recorded delivery replaced with provision allowing use of ordinary post.	26C.2(ii)	Reflects Cadw’s existing practice for serving documents and accepting service from others. Not a change for local authorities because ordinary post is already allowed for service by and on those authorities under sections 231 and 233 of 1972 Act. Registered post and recorded delivery could still be used where proof of delivery was important.
(3)	1979, s. 56(1A); 1990 P, s. 329(3A) as applied by	Provision simplified and definition of “legible in all material respects” omitted.	26C.2(iii)	Detail is not needed as a result of developments in electronic communications and use of e-mail to send copies of documents. Provisions for electronic service

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
	1990 LB, s. 89(1)			are simpler in recent Acts (e.g. Renting Homes (Wales) Act 2016, section 237).
Definition of “Wales”	1979, s. 56(3)	Definition of “Wales” omitted.	26C.2(iii)	Section 206 of the Bill no longer refers to Wales, as the Bill applies only in relation to Wales; and the definition in section 56(3) is the same as that in Schedule 1 to Legislation Act.
<b><i>Section 206 – Additional provision about service on persons interested in or occupying land</i></b>				
(2)	1979, s. 56(2)(a); 1990 P, s. 329(2)(a) as applied by 1990 LB, s. 89(1)	Provision in 1979 Act for addressing document to “the owner” limited to cases where person’s name is not known.	26C.2(ii)	Makes position for monuments consistent with that under section 329(2)(a) of the 1990 Planning Act, and reflects circumstances in which it would be appropriate to use the provision.
(4)(a)	1979, s. 56(2)(b); 1990 P, s. 329(2)(b) as applied by 1990 LB, s. 89(1)	Provision for document to be served on owner by delivery or display at building or monument limited to cases where owner’s address (rather than name) is not known.	26C.2(iv)	Makes position for buildings consistent with that for monuments under section 56(2)(b) of the 1979 Act, and reflects circumstances in which it would be appropriate to use the provision. It is about where a document is served, so what matters is whether there is an address for service.
(5)	1990 P, s. 329(2)(b) as applied by 1990 LB, s. 89(1); SI	Provision about how document must be marked as important moved from regulations to section and applied to all of the Bill.	26C.2(iv)	Moved to section because provision is brief and does not need to change; applied to documents relating to monuments for consistency, as there is no reason for the requirement not to apply in all cases.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
	1992/1492, reg 13			
(5)(a)	1979, s. 56(2)(b); 1990 P, s. 329(2)(b) as applied by 1990 LB, s. 89(1)	Provision for registered post or recorded delivery replaced with provision for ordinary post.	26C.2(ii)	See note for section 205(2)(c) above.
Provision about service in relation to unoccupied land	1990 P, s. 329(3) as applied by 1990 LB, s. 89(1)	Omission of provisions from 1990 Planning Act about cases where documents must be served on owners and occupiers but land is unoccupied.	26C.2(iii)	Section 329(3) of the 1990 Planning Act adds nothing to the methods of service on occupiers available under section 329(2); and it is unclear why it would be necessary or appropriate for service on persons who have an interest in land.
<b><i>Section 207 – Definitions relating to the Crown</i></b>				
(3)	1990 LB, s. 82C(3)(c), (11) and (12)	Power to specify additional interests as Crown interests omitted from restatement.	26C.2(iii)	No equivalent power in the 1979 Act. Power in section 82C(3)(c) has not been used in relation to any land in Wales, and Cadw does not think it is required.
(3), (6)(c), (9)(a)	1979 Act, s. 50(4); 1990 LB, s. 82C(3)	Reference to interest in right of Her Majesty’s private estates applied to monuments.	26C.2(iv)	Change made for consistency with listed buildings. Section 50(4) of the 1979 Act is currently silent on this point, but there is no reason for Crown land to have different meanings in different parts of the Bill.
(7), (9)(b)	SI 2007/1353, arts 3 and 5	Provision treating the Senedd Commission as a Crown body moved from an Order in Council into the Bill.	26C.2(iv)	Ensures that definitions relating to the Crown in this section are complete.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
Interpretation of references relating to applications for consent	1990 LB, s. 82C(8) and (9)	Omission of provision about references to the “appropriate authority” in relation to applications for consent made by the Crown in relation to non-Crown land.	26C.2(iv)	Corrects what appears to be a mistake. The 1990 Listed Buildings Act contains no references to which the provisions apply.
<b><i>Section 208 – Church of England land</i></b>				
(3)	1979, s. 51(3); 1990 LB, s. 86(3); Schedules to SI 2021/1176 and SI 2021/1177	Provision about payment and use of compensation extended to apply to all compensation under the Bill.	26C.2(iv)	Removes gaps. Section 86(3) of the 1990 Listed Buildings Act does not currently apply to all compensation payable under the Act, but that seems to be an error.
<b><i>Section 209 – Regulations under this Act</i></b>				
(2)(b)	1979, s. 60(1A); 1990 LB, s. 26M(5)(b), 60(6)(e), 88E(9)(a) and 93(6); 1990 P, s. 303(6)(a) and 303ZA(4)(a); 2004, s. 122(3)(b)	Express powers to make ancillary provision included for all regulations under the Bill.	26C.2(ii)	Ensures powers to make ancillary provision are included for all powers from the 1990 Listed Buildings Act and 1990 Planning Act. Such powers can generally be implied, but the change ensures consistency.  Clause 112 of the Levelling-up and Regeneration Bill introduced in the UK Parliament on 11 May 2022 would amend both Acts to include express ancillary powers, but this change does not depend on that Bill being passed for the reasons given above.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
(5)(h)	1979, s. 60(4); 1990 LB, s. 88E(10) and 93(3A); 1990 P, s. 333(3E) and (3F)(e) and (f); 2004, s. 122(6B); 2008, s. 61(2); 2016, s. 40(12)	Affirmative Senedd procedure applied to all regulations amending primary legislation.	26C.2(iv)	Ensures that all regulations amending primary legislation are subject to suitable Senedd procedure, including where powers have become powers to amend primary legislation as a result of moving provisions from subordinate legislation into the Bill (e.g. the power in section 163(3) to amend the provisions of that section modifying Part 3 for conservation areas), and other powers not currently subject to affirmative procedure (such as the power in section 8(5) of the 1990 Listed Buildings Act to replace references to the Royal Commission in that section).
(6)	1979, s. 9ZB(a) to (c) and 60(4)(a); 1990 LB, s. 26M(3)(a) to (c) and 93(3A)	Senedd procedure for certain regulations relating to partnership agreements changed from affirmative to negative	26C.2(iv)	Applies negative Senedd procedure to regulations about certain matters (contents of documents, consultation and publicity) which are addressed by regulations subject to negative procedure elsewhere in the Bill. Affirmative procedure is kept for other regulations relating to partnership agreements, as they amend the Bill.
<b><i>Schedule 13 – Minor and consequential amendments and repeals</i></b>				
Para 9	Public Health Act 1961, Sch 4; SI 1999/672, Sch 1	Provisions relating to listed buildings and scheduled monuments replaced, and effect of transfer of functions clarified	26C.2(ii)	Drafting clarifies effect of relevant entry in Schedule 1 to SI 1999/672 and omits spent references in that entry to British Telecommunications and the Post Office.

Provision	Origin	Description of change	SO 26C.2 grounds	Additional information
Para 65	1990 LB, s. 56	Moved to Building Act 1984 and clarified to reflect effect of that Act	26C.2(ii)	Wording changed to reflect facts that functions under 1984 Act and 1990 Listed Buildings Act are not always exercisable by the same authorities, and that orders under section 77(1)(a) of the 1984 Act are made by a court not a local authority.
Para 90	1990 LB, s. 66	Duties to have regard to desirability of preserving listed buildings etc. when exercising planning functions moved to 1990 Planning Act.	26C.2(ii)	The duties only apply to functions under the 1990 Planning Act and belong in that Act.
Para 161	Planning and Compensation Act 1991, Sch. 18	Provisions about dates from which interest runs included for all rights to compensation in the Bill.	26C.2(iv)	Removes gaps. Consequential amendments that should have been made to add new rights to compensation to the Schedule have been missed.

33. The table below identifies provisions which have been omitted from the Bill in reliance on paragraph (iii) of Standing Order 26C.2 because they are “obsolete, spent or no longer of practical utility or effect”. This table deals with omissions which are not related to provisions that are restated in the Bill, including a number of omissions of whole sections or Schedules. Omissions within sections that are restated in the Bill have been dealt with in the tables relating to the relevant Parts of the Bill.

Omitted provision	Description	Reason for omission
1953, s. 5	Specific power for the Welsh Ministers to acquire buildings of outstanding historic or architectural interest by agreement.	This power is not used and does not add anything to the general powers of the Welsh Ministers under Part 2 of GoWA 2006.
1953, s. 6	Specific power for the Welsh Ministers to make grants to meet costs of acquiring buildings of special interest.	This power is not used and does not add anything to the general powers of the Welsh Ministers under GoWA 2006.

Omitted provision	Description	Reason for omission
1979, s. 31	Specific powers for the Welsh Ministers and local authorities to receive contributions towards costs of exercising functions.	Specific powers are not needed, because contributions can be accepted under general powers (see section 139 of the 1972 Act for local authorities, and Part 2 of GoWA 2006 for the Welsh Ministers).
1979, Part 2 (ss. 33 to 41) and s. 46(2)	Designation of areas of archaeological importance and notification of operations in those areas to allow archaeological investigation.	The powers to designate areas have never been used in Wales and Cadw considers that there is no prospect of them being used. Abolition of the powers in Wales was recommended by LC 383 rec 13-11.
1979, s. 49	Specific power for the Welsh Ministers to make grants to Architectural Heritage Fund.	The specific power is not used and the Welsh Ministers can make grants under their general powers in Part 2 of GoWA 2006.
1990 LB, s. 1(6) and Sch. 1	Provisions about unlisted buildings which were subject to building preservation orders made under Part 3 of the Town and Country Planning Act 1962.	The power to make building preservation orders was repealed by the Town and Country Planning Act 1968. Cadw understands that there are no buildings in Wales subject to building preservation orders.
1990 LB, s. 30(2)	Power for the Welsh Ministers to require a planning authority to contribute to compensation payable by another planning authority.	The provision is understood to be relevant only where there is more than one planning authority for an area, which is not the case anywhere in Wales; and the power adds very little to the power in section 90(3) of the 1990 Listed Buildings Act, which is restated in section 171(3) of the Bill.
1990 LB, s. 40	Power to make procedural regulations for appeals against enforcement notices relating to listed buildings.	The power has been superseded by the general power to make procedural regulations for appeals to the Welsh Ministers in section 323A of the 1990 Planning Act (restated in section 175 of the Bill).
1990 LB, ss. 67 and 73	Powers to make regulations imposing publicity requirements for planning applications that affect listed buildings and conservation areas.	The powers to impose publicity requirements have not been used in Wales and they duplicate wider powers to



Omitted provision	Description	Reason for omission
		make provision about publicising planning applications in section 65 of the 1990 Planning Act.
1990 LB, s. 81B (not in force)	Power of planning authority to decline to determine application while similar application is under consideration.	The insertion of section 81B by the 2004 Act has not been brought into force in Wales, and Cadw considers that there is no prospect of it being brought into force.
1990 LB, s. 90(4) to (8)	Financial provisions relating to joint advisory committees, special expenses of county councils, payments out of money provided by Parliament and the Consolidated Fund.	Joint advisory committees of planning authorities were abolished by the 1972 Act. "Special expenses" are not relevant to expenditure under the Bill. The other provisions relate to financial procedures of the UK Parliament that are not relevant to the Senedd. Omitting the corresponding provisions of the 1990 Planning Act was recommended by LC 383 rec 18-18(1).
1990 LB, s. 91(4) and (5)	Interpretation of references to provisions that are modified in relation to planning authorities, and of references to service of notices to treat.	Provisions are not needed. References to modified provisions include the provisions as modified by virtue of section 25 of the Legislation Act; and none of the references to the service of notices to treat in the Bill would be affected by the provision for them to include deemed service.