

# HISTORIC ENVIRONMENT (WALES) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Listed Buildings**

##### *Section 24 – Amendments relating to the listing of buildings*

134. [Section 24](#) inserts new provisions into the 1990 Act which place a duty on the Welsh Ministers to consult on certain changes to lists, to make arrangements for interim protection pending decisions as to whether to list buildings, and to provide for the review of certain listing decisions.
135. Section 1 of the 1990 Act places the Welsh Ministers under a duty to compile lists of buildings of special architectural or historic interest.
136. [Section 24\(1\)](#) inserts new sections 2A to 2D into the 1990 Act to make provision about the steps that must be carried out in connection with the listing of buildings.

##### **2A Duty to consult on certain changes to lists**

137. If the Welsh Ministers propose to include a building on the list or remove one from the list, new section 2A requires them to consult the appropriate persons, including the owner and occupier of the building, as listed in subsection (3). Section 2A(5) provides regulation-making powers to allow the Welsh Ministers to add further appropriate persons to the list in subsection (3) and make any consequential amendments to the Act that may be necessary as a result.
138. The Welsh Ministers must consult the appropriate persons by serving a notice upon them. The notice must give the appropriate persons at least 28 days to respond. If the proposal is to include a building in the list, the notice must explain that interim protection applies to the building until notified otherwise and that any unauthorised works to the building in the meantime will constitute a criminal offence.
139. Section 329 of the Town and Country Planning Act 1990 (service of notices) applies (by virtue of section 89 of the 1990 Act) to the service of notices under new section 2A.

##### **2B Interim protection pending certain listing decisions**

140. New section 2B makes provision for interim protection for buildings which the Welsh Ministers are proposing to include in the list under section 1 of the 1990 Act.
141. Section 2B(2) sets out that interim protection applies from the beginning of the day specified in the notice served under section 2A, and that all the provisions of the 1990 Act (other than sections 47 to 51 and 59 — provisions relating to compulsory acquisition of listed buildings and certain acts causing or likely to result in damage to listed buildings) have effect from that date as if the building were a listed building.
142. Section 2B(4) makes provision for the cessation of interim protection following a decision by the Welsh Ministers to list, or not to list, the building.

143. Section 2B(5) requires the Welsh Ministers to publish electronically a list of all buildings granted interim protection, and to provide a copy of any notice served under section 2A on request.

## **2C Provisions applicable on lapse of interim protection**

144. New section 2C introduces Schedule 1A into the 1990 Act. The Schedule contains provisions which apply where interim protection ceases to have effect as a result of the Welsh Ministers' decision not to list a building.

## **2D Review of certain listing decisions**

145. New section 2D makes provision for the review of certain listing decisions.
146. Section 2D applies where the Welsh Ministers include a building on the list. Section 2D(2) requires the Welsh Ministers to serve a notice on the owner and occupier of the building informing them that the building has been included in the list and that they may make an application to the Welsh Ministers requesting them to review their decision.
147. Section 2D(3) requires the Welsh Ministers to carry out a review if requested to do so, and to make a decision on the review. It also requires them to amend the list if it is necessary to do so to give effect to the final decision.
148. Section 2D(4) prohibits any legal challenge to the validity of a decision made on a review, unless that challenge is brought by means of proceedings in the High Court under sections 62 and 63 of the 1990 Act (validity of instruments, decisions and proceedings). The decision may only be challenged under sections 62 and 63 on the grounds that the decision was not within the powers of the Act, or that any of the relevant requirements had not been complied with in relation to the decision.
149. Section 2D(5) requires the Welsh Ministers to carry out the review by means of a local inquiry, a hearing or written representations. The Welsh Ministers may decide which procedure is the most appropriate.
150. Section 2D(6) requires the Welsh Ministers to make regulations about: the grounds on which an application for a review may be made, the form and manner of such an application, the information that must be provided in connection with an application, and the period within which an application must be made.
151. Section 2D(7) enables the Welsh Ministers to make regulations on other procedural matters relating to reviews.
152. Section 2D(8) introduces Schedule 1B into the 1990 Act, which allows the Welsh Ministers to appoint a person to make decisions on reviews.
153. [Section 24\(2\)](#) inserts new subsection (3A) into section 9 of the 1990 Act (offences). This new subsection provides a defence for a person who is accused of carrying out unauthorised works to a building on which interim protection has been conferred. The defence applies where the person can prove that he or she did not know, and could not reasonably have been expected to know, that interim protection had been conferred on the building. If such a defence is raised by a person on whom a notice should have been served under section 2A(2), the prosecution will have to prove that the notice was served.
154. [Section 24\(3\)](#) inserts new section 28B into the 1990 Act which makes provision for compensation for loss or damage caused by interim protection if the Welsh Ministers decide not to include a building on the list.