

# **HISTORIC ENVIRONMENT (WALES) ACT 2016**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Overview**

##### ***Section 1 – Overview***

7. Section 1 of the Historic Environment (Wales) Act provides an overview of the provisions in the Act. The Act amends the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) Act 1990. The Act also introduces new stand-alone provisions relating to a list of historic place names, historic environment records and an advisory panel for the historic environment in Wales.

#### **Part 2: Ancient Monuments Etc**

##### ***Section 2 – Overview of this Part***

8. Section 2 provides an overview of the provisions within this Part of the Act, which makes amendments to the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”).

##### ***Section 3 – Amendments relating to the Schedule***

9. Section 3(1) inserts new sections 1AA to 1AE into the 1979 Act. These place a requirement on the Welsh Ministers to consult on certain amendments to the schedule of monuments (“the Schedule”); introduce interim protection for monuments pending decisions on certain amendments relating to the Schedule; and provide for the review of decisions on certain amendments relating to the Schedule.

#### **1AA Duty to consult on certain amendments relating to the Schedule**

10. New section 1AA places a requirement on the Welsh Ministers to consult on proposals to include a monument in the Schedule, exclude a monument from the Schedule or make a material amendment relating to an entry in the Schedule.
11. A Schedule entry contains only the name of the monument, but is accompanied by a map identifying the exact extent of the monument that is protected. Section 1AA(5) defines a “material amendment” as one that adds to or reduces the area shown for the monument on such a map. If it is proposed to increase or reduce the area shown for a monument on the map, the Welsh Ministers must consult on the change.
12. The Welsh Ministers must carry out the consultation by serving notice of the proposal on the appropriate persons, as defined in section 1AA(3). Section 1AA(6) 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.

13. Section 1AA(4) requires the notice to include specific information, including:
- the date by which the appropriate persons must make their written representations about the proposed scheduling (which must be at least 28 days from the date that the notice is served);
  - an explanation that interim protection will apply where the proposal is to include a monument in the Schedule, or to make a material amendment in relation to an entry in the Schedule which would increase the area of land that is scheduled. The monument will then be protected as though it were scheduled in accordance with the proposal until a further notice is served on the owner, occupier and local authority. Any unauthorised works to the monument in the meantime will be a criminal offence; and
  - the date that the interim protection takes effect, which may be the same date as that on which the notice of consultation is served on the appropriate persons (under section 1AA(2)).
14. Section 56 of the 1979 Act sets out how documents may be served under the Act, and its provisions apply to the delivery of notices to the appropriate persons under new section 1AA.

### **1AB Interim protection pending decisions on certain amendments relating to the Schedule**

15. New section 1AB makes provision for monuments and areas of land to be given interim protection pending the decision of the Welsh Ministers on the making of certain amendments relating to the Schedule.
16. While a monument is being considered and consulted upon for scheduling, it needs to be protected from destruction, alterations or damage that may compromise its significance. Similarly, if the Welsh Ministers are considering an addition to the area of a scheduled monument, that land will need to be protected so that its significance cannot be compromised before a decision is made.
17. Section 1AB(1) specifies that interim protection will apply where the Welsh Ministers have served a notice of a proposal either to include a monument in the Schedule, or to make a material amendment that increases the area shown for a monument on a map that accompanies the monument's entry in the Schedule.
18. Section 1AB(2) sets out the date from which the interim protection will apply. The provisions of the 1979 Act have effect from that date as though the monument were in the Schedule, or as though the amendment to the map were made.
19. Section 1AB(4) and (5) makes provision for interim protection to cease when the Welsh Ministers:
- include the monument in the Schedule;
  - serve notice on the owner, occupier and local authority that the monument will not be included on the Schedule;
  - make a material amendment that increases the area shown for the monument on a map that accompanies the monument's entry in the Schedule; or
  - serve notice on the owner, occupier and local authority that a material amendment of that kind will not be made.
20. Section 1AB(6) requires the Welsh Ministers to publish electronically a list of all monuments in relation to which interim protection has effect, and to provide a copy of any notice served under section 1AA(2) on request.

### **1AC Provisions applicable on lapse of interim protection**

21. New section 1AC introduces Schedule A1 into the 1979 Act. The Schedule contains provisions which apply where interim protection ceases to have effect as a result of the Welsh Ministers' decision not to include a monument in the Schedule or not to make a material amendment that increases the area shown for a monument on a map that accompanies the monument's entry in the Schedule.

### **1AD Compensation for loss or damage caused by interim protection**

22. New section 1AD makes provision for compensation to be paid for loss or damage caused by interim protection if the Welsh Ministers decide not to include a monument in the Schedule or not to make a material amendment that increases the area shown for a monument on a map that accompanies the monument's entry in the Schedule.

### **1AE Review of decisions on certain amendments relating to the Schedule**

23. New section 1AE contains provision for the review of the Welsh Ministers' decisions to make certain amendments relating to the Schedule. The amendments in question are those that include a monument in the Schedule, or that add to the area shown for a monument on a map that accompanies the monument's entry in the Schedule.
24. Where such an amendment is made, section 1AE(2) requires the Welsh Ministers to serve a notice on the owner and occupier (if the owner is not the occupier) informing them that the monument has been included in the Schedule, or that an amendment has been made that adds to the area shown for the monument, and that an application may be made to the Welsh Ministers requesting a review of the decision.
25. Section 1AE(3) requires the Welsh Ministers to undertake a review on request and to give effect to their decision on the review by amending the Schedule or map appropriately.
26. Section 1AE(4) specifies that a review decision can only be challenged in the High Court by way of section 55 of the 1979 Act (proceedings for questioning validity of certain orders). The only permitted grounds for a challenge under section 55 are that the decision was not within the powers of the 1979 Act or that relevant requirements had not been complied with.
27. Section 1AE(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.
28. Section 1AE(6) requires the Welsh Ministers to make regulations setting out: the grounds on which a review may be requested, the information that must be provided in connection with an application for a review, the form and manner of an application for a review, and the period within which an application must be made.
29. Section 1AE(7) enables the Welsh Ministers to make further provision in regulations in connection with reviews, including provision about costs.
30. Section 1AE(9) introduces Schedule A2 into the 1979 Act which allows the Welsh Ministers to appoint a person to make decisions on reviews.
31. [Section 3\(2\)](#) inserts new section 2(6A) into the 1979 Act, which provides a defence for a person who is accused of carrying out unauthorised works to a monument on which interim protection has been conferred. The defence applies where the accused 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 monument. If such a defence is raised, the prosecution will have to prove that, if an interim protection notice should have been served on the accused under section 1AA(2), it had been served.

#### ***Section 4 – Amendments relating to the Schedule: consequential provision***

32. **Section 4** makes consequential amendments to the 1979 Act as a result of introducing the consultation, interim protection and review provisions.
33. **Section 4(1)** inserts new subsection (5A) into section 1 of the 1979 Act (schedule of monuments), signposting the new provisions about consultation by the Welsh Ministers on proposals to include a monument in the Schedule, exclude a monument from the Schedule or make a material amendment in relation to the Schedule.
34. **Section 4(2)** inserts new subsections (6B) and (6C) into section 1 of the 1979 Act. Section 1(6B) requires the Welsh Ministers to inform the owner and the occupier of a monument, and the local authority in whose area the monument is situated, where an amendment has been made to the area shown for the monument on the scheduling map, and to send them a copy of the amended map. Section 1(6C) signposts provisions about additional information that needs to be provided to owners and/or occupiers when certain amendments are made in relation to the Schedule, namely information about the right to request a review of the decision to make the amendment.
35. **Section 4(3)** applies section 27 of the 1979 Act, which sets out the manner in which compensation for the depreciation of the value of an interest in land is to be assessed, to the compensation payable under section 1AD for loss or damage caused by interim protection.
36. **Section 4(4)** applies subsection (3) of section 51 of the 1979 Act (ecclesiastical property) to any compensation for loss or damage caused by interim protection for a monument on land that is ecclesiastical property. “Ecclesiastical property”, in this context, means land belonging to the Church of England, and the effect of the provision is to require any such compensation to be paid to the Diocesan Board of Finance for the diocese in which the land is situated.
37. **Section 4(5)** applies section 55 of the 1979 Act (proceedings for questioning validity of certain orders) to a review decision under section 1AE, so that a decision taken by the Welsh Ministers on a review may only be referred to the High Court on certain grounds.

#### ***Section 5 – Simplification of process***

38. **Section 5(1)** inserts new subsections (5A) and (5B) into section 2 of the 1979 Act (control of works affecting scheduled monuments) and section 5(2) inserts paragraph 1(3) into Part 1 of Schedule 1 to that Act (applications for scheduled monument consent). The new provisions enable regulations to be made to simplify the process by which scheduled monument consent is applied for and granted.
39. Section 2 of the 1979 Act states that scheduled monument consent is required for:
  - any works resulting in damage to or demolition of a scheduled monument,
  - any works to remove or repair such a monument or part of it or any alterations or additions to it, and
  - any flooding or tipping operations on land in, on or under which there is a scheduled monument.
40. New section 2(5A) and (5B) allows the Welsh Ministers to make regulations on the form and content of scheduled monument consent and removes the requirement that consent must be granted in writing.
41. Regulations made under paragraph 1(1) of Part 1 of Schedule 1 to the 1979 Act set out the form and manner in which applications for scheduled monument consent are to be made.

42. New paragraph 1(3) of Part 1 of Schedule 1 enables regulations to be made by the Welsh Ministers to allow applications for scheduled monument consent to be made in other ways. Those regulations may give the Welsh Ministers discretion to decide on the application procedure that may be appropriate.
43. A significant proportion of scheduled monument consent applications involve straightforward proposals, for example the like-for-like replacement of a stile, or the simple repair of erosion scars. These regulation-making powers will enable the Welsh Ministers to introduce simplified scheduled monument consent procedures for straightforward proposals for unobtrusive minor works. For instance, elements of the process, such as the submission of a written application or the applicant's acceptance of an interim decision, could be omitted in cases where both the Welsh Ministers and the applicant are content to employ a simplified procedure.

### ***Section 6 – Grant of consent for unauthorised works***

44. **Section 6** inserts new subsections (3A) and (3B) into section 2 of the 1979 Act (control of works affecting scheduled monuments). These provisions allow scheduled monument consent to be granted for works already executed.
45. Section 2 of the 1979 Act makes it an offence to carry out specified works to a scheduled monument unless they are authorised under Part I of that Act, including by the grant of written scheduled monument consent by the Welsh Ministers.
46. In certain circumstances, it may be better to retain unauthorised works to a monument than to require their reversal, particularly if reversal could lead to further damage. For instance, works to remove the foundations constructed for a building or to reinstate a track could lead to further ground disturbance. The grant of scheduled monument consent to authorise works already carried out and to control, through conditions, their completion would resolve uncertainties about the lawfulness of retaining the works and eliminate the prospect of future prosecution or other sanctions.

### ***Section 7 – Offence of false information on application***

47. **Paragraph 2(1)** of Part 1 of Schedule 1 to the 1979 Act (applications for scheduled monument consent) allows the Welsh Ministers to refuse to entertain an application for scheduled monument consent unless it is accompanied by a specified certificate. Paragraph 2(2) gives the Welsh Ministers power to make regulations regarding the form of such certificates and the further particulars that they must contain. Paragraph 2(4) makes it an offence to issue a certificate that purports to comply with the requirements of paragraph 2 of Part 1 of Schedule 1, but which contains a statement which is false or misleading in a significant detail.
48. **Section 7** amends paragraph 2(4) to make it an offence, in addition, to issue a certificate that purports to comply with any requirements contained in regulations made by the Welsh Ministers under paragraph 2 of Part 1 of Schedule 1, but which contains a statement that is false or misleading in a significant detail.

### ***Section 8 – Refusal of repeat applications etc***

49. **Section 8** inserts new paragraph 2B into Part 1 of Schedule 1 to the 1979 Act (applications for scheduled monument consent), which enables the Welsh Ministers to decline to consider a scheduled monument consent application where:
  - the application is similar to an application made within the previous two years and the Welsh Ministers consider that there has been no significant change in any material consideration since the similar application was refused; or
  - the application is made while a similar application is under consideration by the Welsh Ministers.

### ***Section 9 – Procedure for determining applications***

50. **Section 9** introduces new procedures for determining scheduled monument consent applications.
51. **Section 9(1)** restricts the application of paragraph 3 in Part 1 of Schedule 1 of the 1979 Act (applications for scheduled monument consent) to scheduled monuments in England.
52. **Section 9(2)** inserts paragraph 3A into Part 1 of Schedule 1. This paragraph applies to applications for scheduled monument consent to carry out works to scheduled monuments in Wales.
53. Paragraph 3A sets out that, before determining whether or not to grant scheduled monument consent, the Welsh Ministers may hold a public local inquiry or give persons an opportunity to appear before and be heard by a person appointed by the Welsh Ministers or to make representations to such a person.
54. Paragraph 3A(4) obliges the Welsh Ministers to take account of any representations made with respect to an application and to consider any report made by a person appointed to hold an inquiry or hearing or receive representations.
55. Paragraph 3A(5) requires the Welsh Ministers to serve notice of their decision on the applicant and on every person who has made representations about the scheduled monument consent application.

### ***Section 10 – Compensation for refusal of scheduled monument consent***

56. **Section 10** amends section 7 of the 1979 Act, which requires compensation to be paid in certain circumstances if an applicant for scheduled monument consent suffers loss or damage as a result of its refusal or its grant subject to conditions.
57. The section restricts the application of section 7(4) of the 1979 Act to England and inserts new subsection (4A). The new subsection sets out that in Wales no compensation will be payable if the works for which scheduled monument consent was sought would or might result in the total or partial demolition of a monument, unless those works would only have entailed operations directly related or incidental to the use of the monument's site for purposes specified in regulations made by the Welsh Ministers.

### ***Section 11 – Heritage partnership agreements***

58. **Section 11** inserts new sections 9ZA and 9ZB into the 1979 Act which make provision for heritage partnership agreements in Wales. In broad terms, heritage partnership agreements are agreements between the Welsh Ministers and the owners of scheduled monuments which may grant scheduled monument consent for a programme of specified works, negating the need to apply for separate consent for each set of works.

#### **9ZA Heritage partnership agreement**

59. Section 9ZA(1) sets out that the parties to an agreement must include the Welsh Ministers and the owner of a scheduled monument or of land adjoining or in the vicinity of a scheduled monument. Section 9ZA(2) allows additional persons to be parties to an agreement, including any person with an interest in the asset, such as a community group, or any person involved in the management of the asset, such as a site manager.
60. A heritage partnership agreement may grant scheduled monument consent for specified works for the purpose of:
  - removing or repairing the scheduled monument, or
  - making any alterations or additions to the monument.

61. An agreement may also specify any conditions attached to that consent.
62. A heritage partnership agreement may not grant scheduled monument consent for works that result in the demolition or destruction of, or any damage to, a scheduled monument (section 2(2)(a) of the 1979 Act) or for any flooding or tipping operations on land in, on or under which there is a scheduled monument (section 2(2)(c) of the 1979 Act).
63. Section 9ZA(4) sets out the range of additional matters for which a heritage partnership agreement may make provision, including the specification of works that the parties agree would not require scheduled monument consent.
64. Section 9ZA(6) and (7) defines "owner" for the purpose of heritage partnership agreements and allows the Welsh Ministers to enter into an agreement with any one or more of the owners of a scheduled monument that is in multiple ownership, without having to enter into an agreement with all such owners.

### **9ZB Heritage partnership agreement: supplemental**

65. New section 9ZB makes supplemental provision in relation to heritage partnership agreements. Section 9ZB(1) specifies that such agreements must be in writing and must make provision for review, termination and variation by the parties.
66. Section 9ZB(2) makes it clear that more than one scheduled monument can be the subject of an agreement, provided that in each case the Welsh Ministers and the owner are parties to the agreement.
67. Section 9ZB(3) places a duty upon the Welsh Ministers to make regulations to provide for: the consultation and publicity required for the creation or variation of a heritage partnership agreement; terms that must be included in a heritage partnership agreement; and the termination of a heritage partnership agreement or any provision thereof.
68. Section 9ZB(4) and (5) specifies the persons who must be consulted under the consultation arrangements for the creation or variation of a heritage partnership agreement. The consultation arrangements differ for a heritage partnership agreement that covers a scheduled monument and for one that covers land adjoining or in the vicinity of a scheduled monument.
69. Section 9ZB(6) provides that the regulations made by the Welsh Ministers enabling the termination by order of a heritage partnership agreement can contain supplementary, incidental, transitory, transitional or saving provision.
70. Section 9ZB(7) allows the regulations to disapply, apply or reproduce, with or without modification, any provisions of the 1979 Act for the purpose of heritage partnership agreements.
71. Section 9ZB(8) provides that heritage partnership agreements will only be binding on parties to those agreements. Future owners of the scheduled monument will not be bound by a heritage partnership agreement, nor will they be able to benefit from any scheduled monument consent granted by the agreement.

### ***Section 12 – Enforcement notices***

72. **Section 12** inserts new sections 9ZC to 9ZH into the 1979 Act, which allow the Welsh Ministers to issue scheduled monument enforcement notices.

### **9ZC Scheduled monument enforcement notice**

73. Section 9ZC(1) and (2) allows the Welsh Ministers to serve enforcement notices in respect of unauthorised works that have been carried out, or are being carried out, to a scheduled monument or to land in, on or under which there is a scheduled monument. In considering whether to issue an enforcement notice, the Welsh Ministers must have regard to the effects of the works on the monument as one of national importance.

74. Section 9ZC(3) requires the enforcement notice to specify the alleged contravention and the works that are to cease and/or the steps that the Welsh Ministers require to be taken. These may be steps to restore the monument or land to its former state. If the Welsh Ministers consider that the restoration of the monument or land to its former state is not practicable or desirable, the enforcement notice may specify the steps required to alleviate the effect of the unauthorised works. If scheduled monument consent for the works has been granted, an enforcement notice may also specify the steps required for bringing the monument or land to the state it would have been in if the conditions of the scheduled monument consent had been complied with.
75. The enforcement notice must also set the period within which the Welsh Ministers require the works to cease and the period within which any steps required by the notice must be carried out. Given that a range of works of differing urgency may be required, section 9ZC(6) allows the notice to specify different periods for compliance for different works or steps. For example, the notice may require immediate archaeological investigation followed by the subsequent production of a report.

### **9ZD Scheduled monument enforcement notice: supplementary provision**

76. Section 9ZD(1) specifies on whom a copy of the scheduled monument enforcement notice must be served. Section 56 of the 1979 Act (service of documents) applies to the service of the notice.
77. Section 9ZD(2) states that the Welsh Ministers may withdraw an enforcement notice and, if necessary, issue another. Section 9ZD(3) also enables the Welsh Ministers to amend the requirements imposed by an enforcement notice, for example by extending the deadline for compliance. However, the Welsh Ministers cannot amend an enforcement notice to impose more onerous requirements; if they wish to impose such requirements, they will need to withdraw the notice and issue a new notice.
78. Section 9ZD(5) requires the Welsh Ministers to publish a list of enforcement notices that have been issued and are still in effect, as well as to provide a copy of a notice on request.

### **9ZE Scheduled monument enforcement notice: appeal**

79. This section sets out the process and grounds for appeal against an enforcement notice. A person on whom an enforcement notice has been served under section 9ZD(1), or any other person with an interest in the monument or land in question, may challenge the notice by appeal to a magistrates' court. The grounds for appeal are set out in section 9ZE(3).
80. The appeal must be made before the date on which the notice takes effect under section 9ZC(3)(a). Once an appeal has been lodged, the enforcement notice has no effect until the appeal is withdrawn or finally determined.
81. Section 9ZE(6) allows an enforcement notice to be upheld even if it has not been served in accordance with section 9ZD, provided that no one with an interest in the monument or land is substantially prejudiced by the failure.

### **9ZF Scheduled monument enforcement notice: power of entry**

82. Section 9ZF(1) gives a person authorised in writing by the Welsh Ministers the power: to enter land at a reasonable time to ascertain whether an enforcement notice should be served; to secure an enforcement notice to the monument or to some object on the site of the monument or on the land (if the usual or last known place of abode of the owner or occupier cannot be found); and to ascertain whether an enforcement notice has been complied with.
83. Section 9ZF(2) allows a person authorised by the Welsh Ministers to enter the land at a reasonable time to undertake any works required by the notice if the works have not



been carried out within the period for compliance stated in the notice. It also provides for the recovery of expenses incurred in carrying out such works from the owner or lessee of the monument or land.

84. Section 9ZF(3) limits the recovery of costs from owners receiving rent as a trustee for another person to the amount of money the trustee has or has had in their hands on behalf of the beneficiary.
85. If an occupier of a monument prevents an owner from undertaking works required by an enforcement notice, section 9ZF(4) permits the owner to apply to a magistrates' court for a warrant authorising entry to the land and the execution of the works.

### **9ZG Failure to comply with scheduled monument enforcement notice**

86. Section 9ZG provides that, where an enforcement notice has not been complied with within the period specified, the owner of the monument or land is in breach of the notice and is guilty of an offence. A person may be convicted of more than one offence in relation to the same enforcement notice if the breach continues.
87. Section 9ZG(5) and (6) sets out the defences to the offence, and section 9ZG(7) makes provision for the imposition of financial penalties on summary conviction or on conviction on indictment. Section 9ZG(8) states that the courts are to have regard to any financial benefit the person convicted may have received or be likely to receive as a result of the offence when determining the amount of any fine to be imposed.

### **9ZH Effect of scheduled monument consent on notice**

88. Section 9ZH applies where a scheduled monument enforcement notice has been issued, and scheduled monument consent is then granted under new section 2(3A) of the 1979 Act for the retention of works (see section 6 above). In those circumstances, the enforcement notice will no longer have effect in so far as it requires: the cessation of such works; steps in which the works are not retained; or steps to comply with any condition attached to a previous scheduled monument consent.
89. [Section 12\(2\)](#) amends subsection 3 of section 46 of the 1979 Act, which provides for compensation for damage arising from the exercise of certain powers under the Act, so that it will apply in cases of damage arising from the exercise of the new power of entry conferred by section 9ZF.

### ***Section 13 – Temporary stop notices***

90. [Section 13](#) inserts new sections 9ZI to 9ZL into the 1979 Act to allow a temporary stop notice to be issued where it appears that unauthorised works have been or are being carried out to scheduled monuments.
91. A temporary stop notice will allow the Welsh Ministers to require an immediate halt to unauthorised works before a scheduled monument suffers further damage or destruction. It will also provide a period of time to allow the Welsh Ministers to assess the situation and to put in place arrangements for informal resolution, enforcement or prosecution.

### **9ZI Temporary stop notice**

92. Section 9ZI(1) and (2) gives the Welsh Ministers the power to issue a temporary stop notice. A temporary stop notice may be issued where any works have been, or are being, executed to a scheduled monument or to land in, on or under which a monument is situated if it appears to the Welsh Ministers that the works are unauthorised or fail to comply with a condition attached to a scheduled monument consent and the Welsh Ministers consider it expedient to stop the works immediately, having regard to the effect of the works on the monument as one of national importance.

93. Section 9ZI(3) states that a temporary stop notice must: be in writing, specify the works that are to stop, explain why the notice has been issued, and state that contravention of the notice is an offence.
94. Section 9ZI(4) and (5) sets out the arrangements for bringing a temporary stop notice to public attention. It must be displayed on the monument, or nearby if display on the monument might cause damage, and specify the date on which it is first displayed. The temporary stop notice takes effect on that date. In addition, the Welsh Ministers may serve the temporary stop notice on any person who appears to the Welsh Ministers to be carrying out the works or causing them to be carried out, or on any person who has an interest in the monument or land. Section 56 of the 1979 Act (service of documents) applies to the service of the notice.
95. Section 9ZI(7) states that the temporary stop notice ceases to have effect after a period of 28 days, or any shorter period that is specified in the notice. Section 9ZI(8) allows the Welsh Ministers to withdraw the temporary stop notice before the end of the 28-day period (or any shorter period specified). Section 9ZI(9) prohibits the issue of a further temporary stop notice in relation to the same works unless the Welsh Ministers have taken some other enforcement action in relation to the contravention, such as the service of an enforcement notice or the obtaining of an injunction under section 9ZM.

#### **9ZJ Temporary stop notice: power of entry**

96. Section 9ZJ allows the Welsh Ministers to authorise a person in writing to enter land to ascertain whether a temporary stop notice should be served, to display a notice, to determine if a notice has been complied with, and to consider a claim for compensation. The authorised person may only enter the land at a reasonable time and does not require the explicit permission of the owner to do so.

#### **9ZK Temporary stop notice: offence**

97. Section 9ZK(1) and (2) sets out the circumstances in which a person is guilty of an offence for contravening a temporary stop notice and allows a person to be convicted of different offences by reference to different days or periods. It will be possible, therefore, for a person to be convicted for more than one offence in relation to a temporary stop notice if it is breached repeatedly.
98. Section 9ZK(3) and (4) sets out the defences to an offence under this section.
99. Section 9ZK(5) provides that the penalty for the offence of contravening a temporary stop notice is an unlimited fine. Since deliberate damage to a monument may be prompted by the prospect of financial gain, the courts are to have regard to any financial benefit the person convicted may have received or be likely to receive as a result of the offence when determining the amount of any fine to be imposed.

#### **9ZL Temporary stop notice: compensation**

100. Section 9ZL(1) and (2) sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the effect of a temporary stop notice. Compensation is only available in particular circumstances. It may be claimed if the works specified in a temporary stop notice do not contravene subsections (1) or (6) of section 2 of the 1979 Act (control of works affecting scheduled monuments) because scheduled monument consent is not required or has been granted on or before the date the notice is first displayed. It may also be claimed if the Welsh Ministers withdraw the temporary stop notice other than following the grant of scheduled monument consent authorising the works, because, for example, it is discovered that the works were not unauthorised and that the notice should not have been displayed.
101. Section 9ZL(4) specifies that no compensation will be payable for loss or damage if the claimant was required to provide information regarding the ownership of interests in

the land in question under section 57 of the 1979 Act and the loss or damage could have been avoided if the claimant had provided that information or had otherwise cooperated with the Welsh Ministers when responding to the temporary stop notice.

102. **Section 13(2)** applies section 27 of the 1979 Act, which makes provision about compensation payable in respect of loss or damage consisting of depreciation of the value of an interest in land, to the compensation payable under section 9ZL for loss or damage attributable to the effect of a temporary stop notice.
103. **Section 13(3)** amends section 44 of the 1979 Act, which contains supplementary provisions with respect to powers of entry, to remove the requirement to give 24 hours' notice prior to the use of the power of entry to ascertain whether a temporary stop notice should be served, to display a notice or to ascertain compliance with a notice.
104. **Section 13(4)** amends subsection (3) of section 46 of the 1979 Act, which provides for compensation for damage arising from the exercise of certain powers under the Act, so that it will apply in cases of damage arising from the exercise of the new power of entry conferred by section 9ZJ.
105. **Section 13(5)** applies section 51 of the 1979 Act (ecclesiastical property) to any compensation paid as a result of the service of a temporary stop notice which relates to a scheduled monument on land that is ecclesiastical property.

#### ***Section 14 – Injunctions***

106. **Section 14** inserts new section 9ZM into the 1979 Act, which permits the Welsh Ministers to apply to the High Court or the county court for an injunction if they consider it necessary or expedient to restrain an actual or apprehended contravention of subsections (1) or (6) of section 2 of the 1979 Act (control of works affecting scheduled monuments).

#### ***Section 15 – Control of works affecting scheduled monuments***

107. **Section 15** inserts new section 2(8A) into the 1979 Act to modify one of the defences to the offence of carrying out unauthorised works to a scheduled monument.
108. Section 2 of the 1979 Act provides for the control of works affecting scheduled monuments through the requirement for scheduled monument consent and is supported, in subsections (1) and (6), by criminal offences. Under section 2(8), it is a defence to some of those offences for the accused to prove, on the balance of probabilities, that he or she did not know and had no reason to believe that the monument was within the area affected by the works, or that the monument was scheduled.
109. **Section 15** disapplies the section 2(8) defence in relation to Wales and replaces it with the new defence in section 2(8A). This new defence requires a person accused of executing, causing or permitting unauthorised works in relation to a scheduled monument in Wales to prove, in addition, that he or she took all reasonable steps to find out whether the area affected by the works contained a scheduled monument. Such steps might include, for example, checking Cadw's publicly accessible online information on the location and extent of a scheduled monument.

#### ***Section 16 – Damaging certain ancient monuments***

110. **Section 16** amends section 28 of the 1979 Act (offence of damaging certain ancient monuments) by inserting a new subsection (1A), which modifies the offence of destroying or damaging a protected monument. A "protected monument" is a monument which is:
  - i. a scheduled monument, or

- ii. a monument under the ownership or guardianship of the Welsh Ministers or a local authority by virtue of the 1979 Act.
111. Under section 28(1), a person who without lawful excuse destroys or damages any protected monument, knowing that it is protected and intending to destroy or damage the monument, or being reckless as to whether the monument would be destroyed or damaged, is guilty of an offence. No offence will be committed if the person did not know that the monument was a protected monument.
112. **Section 16** disapplies the section 28(1) offence in relation to Wales and replaces it with the new offence in section 28(1A). Under the new offence, a person who destroys or damages a protected monument without lawful excuse is guilty of an offence if the person knew or ought reasonably to have known that it was a protected monument and intended to damage the monument or was reckless as to whether it would be damaged or destroyed.

### ***Section 17 – Restrictions on use of metal detectors***

113. Under section 42 of the 1979 Act (restrictions on use of metal detectors) it is an offence to use a metal detector in a protected place in Wales without the written consent of the Welsh Ministers. A “protected place” is a place which is:
- i. the site of a scheduled monument or a monument which is under the ownership or guardianship of the Welsh Ministers or a local authority by virtue of the 1979 Act, or
  - ii. situated in an area of archaeological importance.
114. Under section 42(7), it is a defence for the accused to prove that he or she had taken all reasonable precautions to find out whether the place where the metal detector was used was protected and did not believe that it was. This defence places responsibility on the accused to show that appropriate precautions were taken, but does not test whether the accused’s belief that the site was not protected was a reasonable belief.
115. **Section 17** disapplies the section 42(7) defence in relation to Wales and replaces it with the new defence in section 42(8), which requires the accused to prove that all reasonable steps had been taken to find out whether the place in which the metal detector was used was a protected place, and that he or she did not know, and had no reason to believe, that it was a protected place.

### ***Section 18 – Register of historic parks and gardens***

116. **Section 18(1)** inserts a new section 41A into Part 3 of the 1979 Act, which places a duty on the Welsh Ministers to compile and maintain a register of historic parks and gardens of special historic interest. This register supersedes the non-statutory register of parks and gardens which was previously compiled by the Welsh Government.

#### **41A Register of historic parks and gardens in Wales**

117. The definition of historic parks and gardens is included in section 41A(1) and (2). It includes parks, gardens, designed ornamental landscapes, places of recreation and other designed grounds, which could include, for example, cemeteries. In identifying parks and gardens of special historic interest, the Welsh Ministers are required by subsection (2) to decide whether to include land adjacent or contiguous to the grounds being registered, or any building or water on or adjacent or contiguous to those grounds. This will allow the exercise of professional judgement in the definition of the most logical boundary line. For example, a grand splayed entrance to a driveway, which is outside the walls of an estate but clearly part of the design, could be included in a register entry. Alternatively, a modern greenhouse or stable block could be excluded from an entry.

118. Section 41A(3) and (4) provides the Welsh Ministers with the power to add, remove or amend entries to the register, but when doing so they must inform the owner, the occupier and the relevant local authority or National Park authority. Section 56 of the 1979 Act (service of documents) applies to any notification under subsection (4).
119. Section 41A(6) requires the Welsh Ministers to publish the up-to-date register. The register will be supported by a publicly accessible, map-based, online record on which all nationally designated and registered historic assets will be depicted.
120. **Section 18(2)** amends section 50 of the 1979 Act (application to Crown land) to allow parks and gardens of special historic interest on Crown land to be included on the register of historic parks and gardens in Wales.

### ***Section 19 – Land believed to contain an ancient monument: power of entry***

121. **Section 19** inserts new section 26(4) into the 1979 Act to relax the requirement upon a person authorised by the Welsh Ministers to obtain consent before exercising the power of entry to carry out excavations.
122. Section 26(1) of the 1979 Act provides the Welsh Ministers with a power to authorise entry to any land where they know or have reason to believe there is an ancient monument (which may be, but need not be, a scheduled monument) for the purpose of inspecting the land to record matters of archaeological or historical interest. Section 26(2) allows a person exercising the power of entry to carry out excavations in the land for the purposes of archaeological investigation. But the power to carry out excavations is limited in section 26(3) by the requirement for the consent of the owner prior to any excavation.
123. New section 26(4) restricts the application of section 26(3) and enables a person authorised by the Welsh Ministers to enter land to undertake archaeological excavations without the consent of the landowner if an ancient monument is known, or believed, to be at risk of imminent damage or destruction. Such circumstances could arise as a result of unauthorised works or natural damage, for instance, damage caused by coastal erosion that leaves archaeological remains exposed or vulnerable.

### ***Section 20 – Monuments in territorial waters***

124. **Section 20** amends section 53 of the 1979 Act (monuments in territorial waters) to clarify the circumstances in which a monument in territorial waters is to be treated as being in Wales for the purposes of the Act. New subsection (2B) states that a monument in territorial waters is not to be treated as being in Wales unless it is situated in Wales as defined in section 158 of the Government of Wales Act 2006. This definition of Wales includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.

### ***Section 21 – Service of documents by electronic communication***

125. Section 56 of the 1979 Act makes provision for the service of a document by:
  - delivering it to the person on whom it is to be served;
  - leaving it at the usual or last known place of abode of that person;
  - sending it in a pre-paid registered letter or by recorded delivery; or
  - affixing it to the monument or to some object on the site of the monument, when the usual or last known address of the person cannot be found.
126. **Section 21** amends section 56 of the 1979 Act by making provision for the service of documents by electronic means.

127. **Section 21(1)** inserts new section 56(1)(ca) into the 1979 Act, which allows a document or notice under the Act to be served by electronic means in specified circumstances.
128. **Section 21(2)** inserts new section 56(1A) into the 1979 Act, which sets out specific requirements with which documents served electronically must comply.

### ***Section 22 – Meaning of “monument” in the Ancient Monuments and Archaeological Areas Act 1979***

129. **Section 22** amends the definition of a monument in subsection (7) of section 61 of the 1979 Act (interpretation) to include sites that provide evidence of past human activity but are devoid of structures or works.
130. Many important archaeological sites in Wales, particularly those from the distant Palaeolithic and Mesolithic periods, consist of nothing more than artefact scatters or other insubstantial traces of human activity.
131. New section 61(7)(d) will enable sites of national importance that provide evidence of past human activity to be designated as scheduled monuments by the Welsh Ministers.
132. **Section 22(3)** applies the Government of Wales Act 2006 definition of “Wales” to allow the scheduling of non-structural sites out as far as the seaward boundary of the territorial sea.

## **Part 3: Listed Buildings**

### ***Section 23 – Overview of this Part***

133. **Section 23** provides an overview of the provisions within this Part of the Act which make amendments to the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”).

### ***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.

### ***Section 25 – Amendments relating to the temporary listing of buildings***

155. [Section 25](#) inserts new section 3A into the 1990 Act to provide temporary protection for unlisted buildings in a manner which takes account of the new provision for interim protection that this Act inserts into the 1990 Act.
156. Subsection (1) limits the application of section 3 of the 1990 Act (temporary listing: building preservation notices) to England only.
157. Subsection (3) inserts new section 3A into the 1990 Act. This new section applies to buildings in Wales.
158. Section 3A(1) states that if a local planning authority believes that a building that may merit listing because of its special architectural or historic interest is in imminent danger of destruction or alteration that threatens its character as a building of interest, it may serve a building preservation notice. Section 3A(3) specifies that a building preservation notice takes effect as soon as it is served on the owner and occupier and remains in force for up to six months, subject to section 3A(4).
159. Section 3A(4) provides that a building preservation notice will cease to have effect if the Welsh Ministers serve a consultation notice under section 2A(2) that triggers interim protection or if they notify the local planning authority in writing that they do not intend to consult under new section 2A on a proposal to include the building in a list.
160. Section 3A(5) specifies that while the building preservation notice is in force, the provisions of the 1990 Act, with the exception of sections 47 to 51 and section 59 (compulsory acquisition of listed buildings in need of repair and certain acts causing or likely to result in damage to listed buildings), apply.
161. Section 3A(6) applies in situations where interim protection supersedes a building preservation notice. Anything done under section 3A(5) while the building preservation notice was in force — for instance, a grant of listed building consent or the service of a listed building temporary stop notice — is to be treated as done under interim protection by virtue of new section 2B(2).
162. Section 3A(7) and(8) requires the local planning authority to notify the owner and occupier of the building immediately if the Welsh Ministers advise the authority that they do not intend to consult under new section 2A on a proposal to include the building in a list. If such a notification is given, the local planning authority may not serve another building preservation notice on the building for a period of 12 months.
163. [Section 25\(4\)](#) modifies the manner in which compensation for interim protection is calculated in instances where a building preservation notice was in force immediately before interim protection began. It adds subsections (4) and (5) to new section 28B of the 1990 Act (compensation for loss or damage caused by interim protection) which provide that, for the purposes of compensation, interim protection is to be treated as beginning at the time that the building preservation notice came into force.
164. [Section 25\(5\)](#) inserts new subsection (1A) into section 29 of the 1990 Act (compensation for loss or damage caused by service of building preservation notice). It specifies that anyone who had an interest in a building at the time that a building



preservation notice was served is entitled to compensation from the local planning authority for any loss or damage directly attributable to the effect of the notice if the building preservation notice ceases by virtue of its expiration at the end of six months (section 3A(3)(b)) or the Welsh Ministers' notification to the local planning authority that they do not intend to consult under new section 2A on a proposal to include the building in a list (section 3A(4)(b)).

***Section 26 – Amendments relating to the listing of buildings: consequential provision***

165. **Section 26** makes amendments to the 1990 Act in consequence of the introduction of new requirements for consultation, interim protection, the review of listing decisions and the temporary listing of buildings.
166. **Section 26(3)** inserts new subsections (3A) and (3B) into section 2 of the 1990 Act (publication of lists). New section 2(3A) requires the Welsh Ministers to inform the local planning authority of their decision to include or remove a building from the list. It also requires the Welsh Ministers to inform the owner and occupier if a building has been removed from a list. The further steps that the Welsh Ministers must take when they include a building in a list are contained in new section 2D, and new section 2(3B) signposts this provision.
167. Section 21(4) of the 1990 Act allows an applicant making an appeal to the Welsh Ministers against a local planning authority's handling of a listed building consent application for a building in respect of which a building preservation notice is in force to include a claim that the building should not be listed. Section 26(7) of this Act amends that section of the 1990 Act so that an applicant making an appeal against a local planning authority's handling of a listed building consent application for a building in respect of which interim protection is in force may similarly include a claim that the building should not be listed.
168. **Section 26(8)** applies section 31 of the 1990 Act, which makes provision about compensation payable in respect of depreciation of the value of an interest in land, to the compensation payable under section 28B of the 1990 Act (inserted by section 24(3) of this Act) for loss or damage attributable to the effect of interim protection.
169. **Section 26(10)** adds sections 2B (interim protection pending certain listing decisions) and 3A (temporary listing in Wales: building preservation notices) to the list of provisions which do not apply to buildings which are scheduled monuments under the 1979 Act.
170. **Section 26(11)** applies section 62 of the 1990 Act (validity of certain orders and decisions) to a decision on a review under section 2D of that Act (inserted by section 24(1) of this Act), so that a decision of that kind may only be referred to the High Court on certain grounds.
171. **Section 26(12)** amends section 82 of the 1990 Act so that the new provisions introduced by this Act relating to consultation, interim protection and review in connection with the designation of listed buildings apply to the land of local planning authorities.
172. **Section 26(13)** gives the Valuation Office a right to enter land to survey or estimate its value in connection with a claim for compensation for loss or damage arising from interim protection.

***Section 27 – Issue of certificate that building not intended to be listed: Wales***

173. **Section 27** inserts new section 6A into the 1990 Act and amends section 6 of that Act (issue of certificate that building not intended to be listed) so that it applies only to buildings in England.

174. New section 6A allows a person to apply to the Welsh Ministers for the issue of a certificate of immunity from listing. The issue of a certificate of immunity from listing guarantees that a building will not be listed for 5 years from the date of issue and prevents a local planning authority from serving a building preservation notice in relation to the building during the same period.
175. An application for a certificate of immunity from listing may be made under section 6A at any time. This enables owners and developers to seek guarantees that buildings will be immune from listing without having to incur the cost associated with an application for planning permission, which is a prerequisite for an application for a certificate of immunity from listing under section 6.

### **Section 28 – Heritage partnership agreements**

176. **Section 28** inserts new sections 26L and 26M into the 1990 Act, which make provision for heritage partnership agreements relating to listed buildings. Owners of complex or multiple historic assets may have to apply for an array of separate consents if they wish to carry out management programmes for their properties. In such cases, heritage partnership agreements may provide a more positive approach to the sustainable management of listed buildings and reduce the number of consent applications required.

### **26L Heritage partnership agreements**

177. The Welsh Ministers or a relevant local planning authority may make a heritage partnership agreement with an owner of a listed building or part of a listed building in Wales, and any persons mentioned in section 26L(2) or (4) may be an additional party to the agreement.
178. Section 26L(6) and (7) sets out that a heritage partnership agreement may grant listed building consent for specified works under section 8(1) of the 1990 Act and attach conditions to that consent. A heritage partnership agreement may not, however, grant consent for the demolition of a listed building or any other permission, such as planning permission.
179. Section 26L(8) sets out the range of additional matters for which a heritage partnership agreement may make provision, including the specification of works that the parties agree would not affect the character of the listed building and, therefore, do not require listed building consent.
180. Section 26L(10) defines "owner" and "relevant local planning authority" for the purpose of heritage partnership agreements.

### **26M Heritage partnership agreements: supplemental**

181. New section 26M makes supplemental provision in relation to heritage partnership agreements. Section 26M(1) provides that such agreements must be in writing and make provision for review, termination and variation by the parties.
182. Section 26M(2) allows a heritage partnership agreement to cover more than one listed building, provided that, in each case, a relevant local planning authority (or the Welsh Ministers) and an owner are parties to the agreement. For example, a heritage partnership agreement could include all of the listed bridges in the ownership of a local authority.
183. Section 26M(3) places a duty upon the Welsh Ministers to make regulations about: the consultation and publicity required in connection with the creation or variation of a heritage partnership agreement; any particular terms that must be included in an agreement; and provisions for termination of an agreement or any provision thereof.

184. Section 26M(5) allows the Welsh Ministers by regulations to disapply, apply or reproduce, with or without modifications, certain provisions of the 1990 Act for the purpose of heritage partnership agreements.
185. Section 26M(6) provides that heritage partnership agreements will only be binding on the parties to those agreements. Future owners and occupiers of those buildings will not be bound by those agreements, nor will they be able to benefit from any listed building consent provided by the agreement.

### **Section 29 – Temporary stop notices**

186. **Section 29** inserts new sections 44B to 44D into the 1990 Act which make provision to allow temporary stop notices to be issued in relation to listed buildings.

### **44B Temporary stop notices**

187. Unauthorised works often destroy the historic fabric, and can damage the special interest, of listed buildings. The 1990 Act makes it an offence to carry out unauthorised works to a listed building or fail to comply with the conditions of a listed building consent. The same Act makes provision for the service of a listed building enforcement notice to require the restoration of a listed building after unauthorised works, or steps to alleviate the effects of such works. A listed building enforcement notice cannot come into effect earlier than 28 days after its service. If an appeal is lodged against it, an enforcement notice will not take effect until the appeal has been determined or withdrawn, unless a court determines otherwise. A temporary stop notice, by contrast, can bring unauthorised works to an immediate halt, avoiding the risk of further damage to the historic fabric of the building.
188. Sections 44B to 44D provide local planning authorities with a power to serve a temporary stop notice requiring the immediate cessation of unauthorised works for a period of 28 days whilst a solution to the situation is sought.
189. A local planning authority may serve a temporary stop notice if it appears to the authority that works are being or have been carried out to a listed building without consent or in breach of a condition attached to a consent and the authority considers it expedient to stop those works immediately, in consequence of their effect on the character of the building as one of special architectural or historic interest (section 44B(1) and (2)).
190. Section 44B(3) requires the notice to be in writing and to specify the works which are to stop, explain why the notice has been issued and state that contravention of the notice is an offence. The works specified in the temporary stop notice need not include all of the works that are underway. For example, a local planning authority may wish to stop the alteration or removal of a particular feature, such as a window, which is part of a wider programme of works, but may be satisfied that the remainder of the programme of works has been authorised by listed building consent, or consists of simple repairs that will not affect the character of the building.
191. Section 44B(5) and (6) requires the local planning authority to display a copy of the temporary stop notice on the building and to specify, on the copy, the date on which it first does so. The notice takes effect as soon as the copy is first displayed on the building.
192. Section 44B(7) states that a temporary stop notice ceases to have effect after a period of 28 days, or any shorter period that is specified in the notice. Section 44B(8) to (10) states that a local planning authority may withdraw the notice before the end of 28 days (or any shorter period specified). A further temporary stop notice cannot be issued for the same works unless another enforcement action has been taken in relation to the contravention, for example, the service of a listed building enforcement notice or the obtaining of an injunction under section 44A of the 1990 Act. There is no requirement for a temporary

stop notice to be accompanied or followed by a listed building enforcement notice or any other enforcement action.

193. Section 44B(11) allows the Welsh Ministers to make regulations that exempt the execution of certain works, or works in certain circumstances, from the effects of a temporary stop notice. This provides some flexibility for the Welsh Ministers to adapt the use of temporary stop notices in light of experience of their use.

#### **44C Temporary stop notices: offence**

194. New section 44C sets out the circumstances in which a person is guilty of an offence for contravening a temporary stop notice and allows a person to be convicted of different offences by reference to different days or periods. It will be possible, therefore, for a person to be convicted for more than one offence if a notice is breached repeatedly.
195. Section 44C(3) and (4) sets out the defences to an offence under this section.
196. Section 44C(5) and (6) provides that the penalty for the offence of contravening a temporary stop notice is an unlimited fine. Since unauthorised works to a listed building may be prompted by the prospect of financial gain, the courts are to have regard to any financial benefit the person convicted may have received or be likely to receive as a result of the offence when determining the amount of any fine to be imposed.

#### **44D Temporary stop notices: compensation**

197. Section 44D(1) to (3) sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the effect of a temporary stop notice. Compensation is only available in particular circumstances. It may be claimed if the works specified in a temporary stop notice do not contravene subsections (1) or (2) of section 9 of the 1990 Act (offences) because listed building consent is not required or has been granted on or before the date the notice is first displayed. It may also be claimed if the local planning authority withdraws the temporary stop notice other than following the grant of listed building consent authorising the works, because, for example, it is discovered that the works were not unauthorised and that the notice should not have been displayed.
198. Section 44D(4) specifies that no compensation will be payable for loss or damage that could have been avoided if the claimant had provided information required under the provisions mentioned in section 44D(5) or had otherwise cooperated with the local planning authority when responding to the temporary stop notice.
199. The provisions mentioned in section 44D(5) are section 16 of the Local Government (Miscellaneous Provisions) Act 1976, which gives local authorities powers to obtain details of persons who have an interest in land, and section 330 of the Town and Country Planning Act 1990, which allows the local planning authority or the Welsh Ministers to require information as to interests in land.
200. [Section 29\(2\)](#) applies section 31 of the 1990 Act, which makes provision about compensation payable in respect of the depreciation of the value of an interest in land, to the compensation payable under section 44D for loss and damage attributable to a temporary stop notice.
201. [Section 29\(3\)](#) amends section 82A(2) of the 1990 Act (Crown application) so that the provisions which deal with temporary stop notices bind the Crown, except those in section 44C which make it an offence to contravene a temporary stop notice.
202. [Section 29\(4\)](#) amends section 88 of the 1990 Act (rights of entry) to allow local planning authorities to authorise a person in writing to enter land for the purpose of displaying a temporary stop notice, ascertaining whether a notice has been complied with and considering a claim for compensation.

*These notes refer to the Historic Environment (Wales) Act  
2016 (c.4) which received Royal Assent on 21 March 2016*

203. **Section 29(5)** gives the Valuation Office a right to enter land to survey or estimate its value in connection with a claim for compensation arising from the service of a temporary stop notice.
204. **Section 29(6)** amends section 88B of the 1990 Act by removing the requirement to give 24 hours' notice prior to the use of powers of entry to display a temporary stop notice or to ascertain compliance with a notice.
205. **Section 29(7)** amends Schedule 2 of the 1990 Act (lapse of building preservation notices) so that, on the lapse of a building preservation notice, any temporary stop notice which has been served on the building ceases to have effect.
206. **Section 29(8)** amends Schedule 4 of the 1990 Act (exercise of functions by different authorities). From time to time, the Welsh Ministers may require a local planning authority to submit for approval its proposed arrangements to obtain specialist advice in connection with the payment of compensation arising from the service of a temporary stop notice.

***Section 30 – Urgent works: extension of scope and recovery of costs***

207. **Section 30** inserts new sections 54(4A), 54(5A) and 55(5A) to (5G) into the 1990 Act. These provisions extend the range of circumstances in which local authorities or the Welsh Ministers may carry out urgent works to preserve a listed building, provide a right of appeal against the Welsh Ministers' decision as to the expenses that may be recovered in respect of such works, and allow land charges to be created to secure the payment of those expenses.
208. Section 54 of the 1990 Act provides for the execution of urgent works by local authorities to unoccupied listed buildings. The powers in section 54 may also be exercised by the Welsh Ministers.
209. There are restrictions on the circumstances in which urgent works may be carried out under section 54. Section 54(4) of the 1990 Act provides that where a building is occupied, urgent works may be carried out only to those parts of the building that are not in use. Section 30(1) of this Act amends this restriction so that it applies only to buildings in England.
210. New section 54(4A) broadens the circumstances in which urgent works can be undertaken to preserve listed buildings in Wales. It enables urgent works to be carried out to any listed building in Wales as long as they do not unreasonably interfere with its residential use.
211. **Section 30(3)** inserts new subsection (5A) into section 54 of the 1990 Act, which requires an occupier of a building which is in residential use to be given not less than seven days' notice of the intention to carry out urgent works to the property. The owner of the building must also be given seven days' notice of those works, in accordance with section 54(5) of the 1990 Act.
212. If local authorities or the Welsh Ministers incur expenses in undertaking urgent works to a listed building, they may recover these expenses in accordance with section 55 of the 1990 Act. Section 55 provides that the process of recovery is initiated through the service of a notice on the owner. The owner may contest the recovery of expenses by making representations to the Welsh Ministers on the grounds set out in section 55(4). The Welsh Ministers determine the amount that is recoverable.
213. **Section 30(6)** inserts new subsection (5A) into section 55 of the 1990 Act which allows an owner of a listed building, within 28 days of receiving the decision of the Welsh Ministers on the recoverable amount, to appeal that decision to the county court. A local authority may also appeal against the Welsh Ministers' decision in the same way.

214. **Section 30(6)** also inserts new subsections (5B) to (5G) into section 55 of the 1990 Act which provide for the expenses incurred in carrying out urgent works to be a charge on the land on which the listed building stands. The new subsections also provide for: the imposition of interest on the sum owed at a rate to be prescribed by order of the Welsh Ministers, the manner in which a land charge takes effect, and the powers and remedies available to the local planning authority under the Law of Property Act 1925 to enforce the charge, including a power to appoint a receiver.

### ***Section 31 – Preservation of listed buildings in disrepair***

215. **Section 31(1)** inserts new section 56A into the 1990 Act, which allows Welsh Ministers to make regulations for local authorities or the Welsh Ministers to take further steps for the proper preservation of listed buildings that have fallen into disrepair. The regulations may make provision for the service of a preservation notice on the owner of a listed building. Such a notice may specify the works required to secure the building's proper preservation and a deadline for the execution of the works. The regulations may also make provision for appeals against preservation notices, offences for failure to comply with the notices and appeals in respect of such offences.
216. New section 56A(3) and(4) allows the regulations under this section to disapply, apply or reproduce, with or without modification, any provisions in the 1990 Act, as well as to amend the 1990 Act, for the purpose of the preservation of listed buildings in disrepair.
217. **Section 31(2)** amends section 82A of the 1990 Act (application to the Crown) so that provision made under section 56A cannot bind the Crown.
218. **Section 31(3)** amends section 88 of the 1990 Act (rights of entry) to allow for the service of preservation notices.
219. **Section 31(4)** amends the Regulatory Enforcement and Sanctions Act 2008 to enable civil sanctions to be imposed in respect of offences in regulations made under new section 56A. The kinds of civil sanctions that may be imposed are those contained in Part 3 of the 2008 Act, for example, fixed monetary penalties, requirements to take specified steps, or stop notices.

### ***Section 32 – Service of documents by electronic communication***

220. **Section 32** amends section 89(1A) of the 1990 Act, so as to remove the restriction on the service of documents by electronic communication in relation to buildings in Wales, allowing all documents to be served by electronic communications.

### ***Section 33 – Determination of appeals by appointed person: supplementary provision***

221. **Section 33** inserts new paragraph 7(3) into Schedule 3 of the 1990 Act (determination of certain appeals by person appointed by Secretary of State). The new paragraph provides that, where the Welsh Ministers appoint a member of staff of the Welsh Government to determine an appeal under Schedule 3, the functions of determining the appeal and of doing anything in connection with the appeal are to be treated as functions of the Welsh Government for the purposes of the Public Services Ombudsman (Wales) Act 2005. This enables the Public Services Ombudsman for Wales to investigate any allegations of maladministration made in relation to the appointed person's discharge of those functions.

## **Part 4: Miscellaneous**

### ***Section 34 – List of historic place names***

222. **Section 34** places a duty on the Welsh Ministers to compile and maintain a list of historic place names in Wales.

### **Section 35 – Historic environment records**

223. **Section 35** places a duty on the Welsh Ministers to compile and keep up to date a historic environment record for each local authority area in Wales.
224. Historic environment records are critical sources of information for those making decisions about the sustainable management of the historic environment. That information is an important starting point for management processes, conservation, fieldwork and research, and public engagement and outreach relating to the historic environment. It forms the basis for archaeological and other heritage management advice provided to local planning authorities. Without such information, the essential advice that informs, for example, the assessment of the impact on the historic environment of development proposals, would be brought into question.
225. Subsection (2) sets out the range of information that must be provided in a historic environment record. Paragraphs (a) to (d) require details of those historic assets that are statutorily protected or registered under the 1979 or 1990 Acts to be included. Paragraphs (e), (f) and (g) require the inclusion of details of conflict sites, historic landscapes and world heritage sites.
226. Paragraph (h) requires the inclusion of details of every other area, site or place considered to be of local historic, archaeological or architectural interest by the local authority or the Welsh Ministers. These may include details of historic assets that local communities have identified as being of local significance.
227. Paragraph (i) requires the incorporation of information about the way in which the historic, archaeological or architectural development of an area has contributed to its present character. This information may be obtained from ongoing urban and rural characterisation programmes and processes such as conservation area appraisals. These area-based studies explain how the historic environment contributes to the distinctive local/regional character of an area and how this character can be conserved for the future.
228. Paragraph (k) requires historic environment records to provide a means of accessing details of every historic place name in a local planning authority's area that has been included in the list compiled and maintained by the Welsh Ministers under section 34.
229. Subsections (3) to (8) define the different terms used in subsection (2) to describe what a historic environment record must contain.
230. Subsections (9) and (10) enable the Welsh Ministers to amend, by regulations, the categories of information that must be contained in a historic environment record. The Welsh Ministers must consult local authorities and any other persons whom they consider appropriate before making the regulations.

### **Section 36 – Access to historic environment records**

231. **Section 36** requires a historic environment record to be a publicly available resource, access to which should be available free of charge. The Welsh Ministers must also furnish professional advice and assistance to help users locate and interpret information provided in or accessed by means of a historic environment record.
232. Subsection (3) gives the Welsh Ministers the power to impose charges in order to recover the costs of providing certain services associated with historic environment records, for example, the production of reports based on analysis of historic environment record content. No profit will be made from such charges, which will be limited to the costs of providing the service.

### ***Section 37 – Guidance***

233. **Section 37** requires the Welsh Ministers to issue guidance to local authorities, National Park authorities and Natural Resources Wales on how they may contribute to the compilation and maintenance of the historic environment records and on the use of the historic environment records in the exercise of their functions. Prior to issuing the guidance, the Welsh Ministers must consult with the bodies and any other persons whom the Welsh Ministers consider appropriate. In addition, the Welsh Ministers must lay the guidance before the National Assembly for Wales.

### ***Section 38 – Establishment of Panel and work programme***

234. **Section 38** requires the Welsh Ministers to establish the Advisory Panel for the Welsh Historic Environment (“the Panel”). The purpose of the Panel is to provide expertise and a diversity of perspectives on a broad range of policy and strategy developments and activities relating to the wider historic environment. These activities may include: the gathering, recording and interpretation of information such as research, survey activities and excavation; the conservation of the historic environment, including identifying assets of national significance and applying the appropriate legislative protection; and public engagement with the historic environment, including active participation and access to historic assets and information.
235. The Panel may also provide expert advice on the effectiveness and operation of the current statutory protection and management framework for the historic environment of Wales, including periodic advice on potential future improvements in primary and secondary legislation.
236. The Panel will be required to prepare a three-year work programme and submit a draft to the Welsh Ministers for approval. The Welsh Ministers may approve the work programme with or without modifications. The Panel must publish the approved work programme.
237. The work programme may be reviewed and amended during the three-year period to respond to new issues as they arise. If the amendments are significant, they will need to be agreed by the Welsh Ministers. The work programme as amended must be published.
238. The Panel must, at the end of each financial year, publish a document setting out the matters on which it has provided the Welsh Ministers with advice.

### ***Section 39 – Constitution etc***

239. **Section 39** makes provision about the membership of the Panel and about its legal status.

## **Part 5: General**

### ***Section 40 – Regulations and orders***

240. **Section 40** makes a number of amendments to the 1979 Act and the 1990 Act in order to clarify the Welsh Ministers’ powers to make regulations and orders under those Acts and the procedures which apply to the making of those regulations and orders. The amended provision in section 60 of the 1979 Act (regulations and orders) and section 93 of the 1990 Act (regulations and orders) will apply to the making of regulations under the new provisions inserted into those Acts by this Act.
241. Subsection (2) amends section 60 of the 1979 Act. It affirms that the power of the Welsh Ministers to make regulations under the Act or an order under sections 3 (grant of scheduled monument consent), 37 (exemptions from offence under section 35) or 61 (interpretation) of the Act is exercisable by statutory instrument.
242. Subsection (2) also requires that any statutory instrument containing regulations under new sections 1AA (duty to consult on certain amendments relating to the Schedule) or



9ZB (heritage partnership agreement) of the 1979 Act must be laid in draft before, and approved by a resolution of, the National Assembly for Wales. Any statutory instrument containing regulations under the 1979 Act that amend or repeal any provision of primary legislation must also be subject to that procedure. The subsection further provides that any other statutory instruments containing regulations or orders made by the Welsh Ministers under the 1979 Act, except regulations made under section 19 of that Act (public access to monuments under public control), will be subject to annulment by a resolution of the National Assembly for Wales.

243. Subsection (3) amends subsection (1) of section 93 of the 1990 Act (regulations and orders) to make it clear that the Welsh Ministers may make regulations under that Act in relation to Wales.
244. Subsections (4) and (5) require any statutory instrument containing regulations under new sections 2A (duty to consult on certain changes to lists), 26M (heritage partnership agreements) or 56A (preservation of listed buildings in disrepair) of the 1990 Act to be laid in draft before, and approved by a resolution of, the National Assembly for Wales. Any other regulations under the Act will be subject to annulment by a resolution of the National Assembly for Wales.
245. Subsections (6) and (7) confirm that an order under section 55(5B) of the 1990 Act (interest on outstanding costs of urgent works) is to be made by statutory instrument and shall be subject to annulment by a resolution of the National Assembly for Wales.
246. Subsection (12) requires a statutory instrument containing regulations under section 35(9) (power to vary meaning of “historic environment record”) or section 39(7)(h) (Advisory Panel for Welsh Historic Environment: disqualification from membership for staff of specified organisations) to be laid in draft before, and approved by a resolution of, the National Assembly for Wales.

### ***Section 41 – Coming into force***

247. **Section 41** sets out the provisions that will come into force on the date of Royal Assent; those that will come into force two months after Royal Assent; and those that will be brought into force by an order made by the Welsh Ministers.

### ***Section 42 – Short title***

248. This section sets out the Act’s short title.

### ***Schedule 1***

249. **Schedule 1** is introduced by section 3(3) of the Act, and inserts Schedule A1 and Schedule A2 into the 1979 Act.

### **Schedule A1 Lapse of interim protection**

250. Schedule A1 contains provision which applies where interim protection ceases to have effect as a result of a decision by the Welsh Ministers:
- not to include a monument in the Schedule, or
  - not to make a material amendment that increases the area shown for a monument on a map that accompanies its entry in the Schedule.
251. Even after interim protection has lapsed, a person can still be prosecuted for certain offences committed while it was in effect. The Welsh Ministers may also recover expenses incurred in undertaking work under section 9ZF(2) of the 1979 Act following a failure to comply with an enforcement notice which was served while the interim protection had effect. However, various other matters done under the 1979 Act cease

to have effect on the lapse of interim protection: for example, scheduled monument consent, enforcement notices and temporary stop notices.

### **Schedule A2 Decisions on reviews by person appointed by Welsh Ministers**

252. Paragraph 1 of Schedule A2 allows the Welsh Ministers to make regulations setting out the classes of reviews on which decisions are to be made by a person appointed by the Welsh Ministers.
253. [Paragraph 2](#) sets out the powers and duties of an appointed person. The appointed person has the same powers and duties as the Welsh Ministers to carry out the review, to make a decision on the review and to decide on the procedures and conduct of the review and the costs associated with it.
254. A decision of an appointed person cannot be challenged except by way of section 55 of the 1979 Act (proceedings for questioning validity of certain orders). In addition, an application to the High Court under section 55 cannot be made on the grounds that the decision should have been made by the Welsh Ministers instead of the appointed person, unless the appointed person's power to make the decision was challenged before the decision on the review was taken.
255. [Paragraph 3](#) makes provisions for the Welsh Ministers to revoke an appointed person's authority and appoint another person to undertake the review.
256. [Paragraph 4](#) allows an appointed person to appoint an assessor to provide advice on any matters arising at a local inquiry or hearing, or in written representations made in connection with the review. Sub-paragraph (2) applies provisions of the Local Government Act 1972 which allow an appointed person to summon a person to attend and provide evidence at an inquiry. Refusal to attend will render a person liable, on summary conviction, to a fine not exceeding level 3 on the standard scale, imprisonment for a term not exceeding six months, or both.
257. [Paragraph 5](#) allows the Welsh Ministers to direct that anything that should have been done by the appointed person, with the exception of making a decision on a review, may be done instead by the Welsh Ministers. This enables the Welsh Ministers to direct that matters such as the notification of a review, the circulation of representations or evidence, and the notification of a decision are to be undertaken by them.
258. [Paragraph 6](#) allows an appointed person to delegate to another person anything that would fall to be done by the appointed person except for the conduct of a local inquiry or hearing or the making of a decision on the review. This enables the appointed person to delegate administrative tasks, such as the notification of a review application, the notification of hearing/inquiry timetables and details, and the circulation of statements and representations.
259. [Paragraph 7](#) provides that, where the Welsh Ministers appoint a member of staff of the Welsh Government to carry out their functions in relation to a review, those functions are to be treated as functions of the Welsh Government for the purposes of the Public Services Ombudsman (Wales) Act 2005. This will enable the Public Services Ombudsman for Wales to investigate any allegations of maladministration made in relation to the appointed person's discharge of those functions.

### **Schedule 2**

260. [Schedule 2](#) is introduced by section 24(4) of the Act, and inserts Schedule 1A and Schedule 1B into the 1990 Act.

### **Schedule 1A Lapse of interim protection**

261. Schedule 1A contains provision which applies where interim protection ceases to have effect as a result of the Welsh Ministers' decision not to list a building. In those

circumstances, any proceedings arising out of an application for listed building consent or any consent granted will lapse, and any enforcement notices or temporary stop notices served on the building will cease to have effect. However, the criminal liability of any person for an offence committed during the interim protection period will persist.

### **Schedule 1B Decisions on reviews by person appointed by the Welsh Ministers**

262. Paragraph 1 enables the Welsh Ministers to make regulations that prescribe the classes of reviews on which decisions are to be made by a person appointed by the Welsh Ministers.
263. [Paragraph 2](#) sets out the powers and duties of an appointed person. The appointed person has the same powers and duties as the Welsh Ministers to carry out the review, to make a decision on the review and to decide on the relevant procedure and award costs.
264. [Paragraph 3](#) makes provision to allow the Welsh Ministers to revoke an appointed person's authority and appoint another person to undertake the review.
265. [Paragraph 4](#) allows an appointed person to appoint an assessor to provide advice on any matters arising at a local inquiry or hearing, or in written representations. Sub-paragraph (2) applies provisions within the Local Government Act 1972 which allow an appointed person to summon a person to attend and provide evidence at an inquiry. Refusal to attend will render a person liable, on summary conviction, to a fine not exceeding level 3 on the standard scale, imprisonment for a maximum of six months, or both.
266. [Paragraph 5](#) allows the Welsh Ministers to direct that anything that should be done by the appointed person, with the exception of making a decision on a review, may be done instead by the Welsh Ministers. This will enable the Welsh Ministers to direct that matters such as the notification of a review, the circulation of representations and evidence and the notification of a decision are to be undertaken by them.
267. [Paragraph 6](#) allows an appointed person to delegate to another person anything that would fall to be done by the appointed person except for the conduct of a local inquiry or hearing or the making of a decision on the review. This enables the appointed person to delegate administrative tasks such as the notification of hearing/inquiry timetables and details and the circulation of statements and representations.
268. [Paragraph 7](#) provides that, where the Welsh Ministers appoint a member of staff of the Welsh Government to carry out their functions in relation to a review, those functions are to be treated as functions of the Welsh Government for the purposes of the Public Services Ombudsman (Wales) Act 2005. This will enable the Public Services Ombudsman for Wales to investigate any allegations of maladministration made in relation to the appointed person's discharge of those functions.