

HISTORIC ENVIRONMENT (WALES) BILL

EXPLANATORY NOTES

INTRODUCTION

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

SUMMARY AND BACKGROUND

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

periodic review. There are currently over 500 conservation areas in Wales. This Part also includes provisions for the control of demolition and for urgent works in conservation areas and for grants relating to the preservation or enhancement of conservation areas.

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

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

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

COMMENTARY ON SECTIONS

Part 1 – Overview

Section 1 – Overview

9. The overview in this section includes a statement in subsection (1) about the status of the Bill as part of a code of Welsh law. This statement has been included to improve the accessibility of the law in Wales and is an approach that will be adopted in future consolidation Bills and in any reform Bills that contain a comprehensive statement of the primary legislation on a particular topic.
10. This declaration of status is intended to help persons interested in the law on a particular topic – the historic environment in this instance – find and classify it more easily. The reference to the Bill’s status has been included with a view to subordinate legislation made under the Bill making identical provision. The Welsh Government’s intention is that primary, secondary and tertiary legislation (mostly guidance) will in future be categorised and published as coherent codes of law.
11. Classifying Bills in this way is consistent with recommendations made by the Law Commission in its report *Form and Accessibility of the Law Applicable in Wales (Law Com No 366)*. That report acknowledged the importance for the accessibility of the law of maintaining the integrity of the law. Giving a Bill the status of a code is intended to encourage a move away from a situation where the law on a particular topic is spread across a number of separate pieces of primary legislation. Rather, the intention is that future Senedd Bills are enacted and maintained in a way that allows users of the legislation to find as much of the law affecting a particular topic as possible by reading a single Senedd Act or subordinate legislation made under it.
12. Subsection (2) identifies the Acts from or under which provisions of the Bill are derived. The majority of the content of the Bill comes from the Ancient Monuments and Archaeological Areas Act 1979 (c. 46) (“the 1979 Act”) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) (“the 1990 Listed Buildings Act”). Once the Bill comes into force, the enactments listed in subsection (2) will no longer apply to Wales and Schedule 13 makes the necessary amendments or repeals to achieve that outcome.

13. Subsections (3) to (8) summarise the main effects of Parts 2 to 7 of the Bill, including provisions for the identification of historic assets of special interest or importance, the control of works, the acquisition and preservation of monuments and buildings and the maintenance of historic environment records.

Part 2 – Monuments of special historic interest

14. There are tens of thousands of known archaeological sites across Wales, and many more yet to be discovered that are buried and hidden from sight. The great majority of the known sites are recorded on the statutory historic environment records for each local authority area, maintained by the Welsh archaeological trusts on behalf of the Welsh Ministers (see section 194). The concept of a “monument” is central to the management and protection of this archaeological heritage. Monuments can comprise a wide range of archaeological sites including: scatters of prehistoric artefacts; buried remains; prehistoric funerary and ritual monuments and defensive earthworks; Roman roads, forts and villas; abandoned medieval settlements, abbeys and castles.
15. The term “monument of special historic interest” is now preferred to the previously used “ancient monument” to reflect the fact that many monuments considered to be of public interest date from the recent past, such as the remains of eighteenth- and nineteenth-century industry or twentieth-century military defences.
16. The Welsh Ministers have a duty to compile and maintain a schedule of those monuments that they consider to be of national importance. Not all nationally important monuments or archaeological sites are currently on the schedule and new sites can be found by chance or as the result of systematic archaeological surveys. The complete up-to-date schedule is published on [Cof Cymru – National Historic Assets of Wales](#), the online database of designated historic assets in Wales maintained by Cadw.
17. The legislation relating to monuments and archaeological sites is supported by planning policy and advice and best-practice guidance, notably [TAN 24](#) and [Managing Scheduled Monuments in Wales](#) (2018). These documents explain that, while the Welsh Ministers are responsible for scheduling monuments, in practice the process is managed by Cadw acting on their behalf. Annex A of TAN 24 sets out the selection criteria that are used for assessing whether or not a monument is of national importance. It is an offence to carry out any works that would directly affect a scheduled monument without the prior consent of the Welsh Ministers.
18. As of May 2022, there are 130 monuments in the care of the Welsh Ministers including early Neolithic burial monuments that are over 5,000 years old, many of the great castles and abbeys of medieval Wales and monuments from our more recent industrial past. In practice these monuments are conserved, maintained and presented to the public by Cadw on behalf of the Welsh Ministers. Of these 130 monuments, 97 are currently in guardianship; a voluntary arrangement whereby the guardian (in this case the Welsh Ministers) agrees to accept responsibility for the management of the monument and acquires certain rights over the property but does not take on its ownership.
19. The concepts of scheduled monument and guardianship date from the first legislation relating to the historic environment to be passed in Great Britain and Ireland, the

Ancient Monuments Protection Act 1882 (c. 73). Three prehistoric monuments in Wales were included in the very first schedule in 1882. As of May 2022, there were 4,225 scheduled monuments in Wales. The first monument in Wales to be taken into guardianship was the Neolithic burial monument at Pentre Ifan in north Pembrokeshire in 1884, and the most recent was the medieval castle at Caergwrle in 2020.

Chapter 1 – Key terms

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

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

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

27. Subsection (8) establishes that in this section “remains” includes any trace or sign of the previous existence of the thing in question. Crop marks discovered during an aerial survey or information obtained from 3-D laser scanning (LiDAR), ground-penetrating radar or other scientific techniques for the survey of archaeological sites often reveal the existence of otherwise undetected monuments.
28. The normal dictionary definition of “building” applies in Part 2 rather than the meaning given to the term in section 211.

Chapter 2 – Schedule of monuments of national importance

29. This Chapter requires the Welsh Ministers to maintain a schedule of monuments of national importance. In practice this is maintained by Cadw on behalf of the Welsh Ministers. For the purposes of the transition from the 1979 Act to the Bill, the schedule of monuments currently maintained by the Welsh Ministers under section 1 of the 1979 Act will become the schedule maintained for the purposes of section 3 of the Bill.
30. Inclusion of a monument on the schedule – “scheduling” – renders it subject to the consent regime, enforcement procedures and other provisions contained in Chapters 2 to 5 of this Part of the Bill.
31. This Chapter requires consultation before the Welsh Ministers amend the schedule (section 5) and gives owners and occupiers the opportunity to request a review of the Welsh Ministers’ decision to add a monument or an additional part of a monument to the schedule (sections 9 and 10). It also establishes that, during the consultation period, a monument being considered for scheduling enjoys interim protection as if it were already a scheduled monument. If the Welsh Ministers decide not to amend the schedule, a person with an interest in a monument who suffers loss or damage as a direct result of interim protection may claim compensation from the Welsh Ministers (sections 6 to 8).

Section 3 – Duty to maintain and publish schedule of monuments

32. Section 3(1) provides that the Welsh Ministers must maintain a schedule of monuments and must publish the up-to-date schedule. The Welsh Ministers publish the up-to-date schedule on [Cof Cymru](#).
33. The Welsh Ministers use [selection criteria](#) to assess whether a monument is of national importance and determine if scheduling is appropriate. These criteria are not, however, definitive; rather they are indicators that contribute to a wider judgement based on the individual circumstances of a case. For example, scheduling may not be the best approach for a site soon to be lost to coastal erosion; full excavation is likely to be the only way to record the historic asset’s importance. So, although section 3 requires the Welsh Ministers to maintain a schedule of monuments, the effect of subsection (1) is that they are not required to include all monuments that meet the criteria. It’s also worth noting that, where the Welsh Ministers do schedule a monument, they are able to schedule part of the monument, without scheduling the monument in its entirety. And section 2(6)(c) of the Bill provides that references in the Bill to a monument include references to any part of it.

34. Subsection (2) requires every entry in the schedule to include a map maintained by the Welsh Ministers identifying the monument's area. A definitive map will be included in the entry provided when the Welsh Ministers fulfil the notification requirements in section 4(3). The entry for every monument on [Cof Cymru](#) also provides access to a printable map.
35. Subsection (3) provides that, in addition to scheduling additional monuments under subsection (1), the Welsh Ministers may remove a monument from the schedule – “descheduling” – or amend an existing entry. The latter could involve, for example, increasing or decreasing the scheduled area of a monument. The Welsh Ministers may also make any other changes that may be needed to an entry in the schedule. For example, if archaeological or historical investigations were to provide new information about a monument, the entry in the schedule could be amended to reflect this.
36. Subsection (5) establishes that an entry in the schedule recording the inclusion of a monument is a local land charge. A [local land charge](#) will alert a purchaser to the restrictions imposed on the use of the land by the scheduling of the monument.

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

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

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

38. Section 5 puts in place a formal structure for consultation on the Welsh Ministers' proposals to amend the schedule. It provides that the Welsh Ministers must serve a notice of a proposed amendment on specified recipients and invite those persons to make written representations.
39. The service of a notice of a proposal to amend the schedule by adding a monument or adding anything to an existing entry for a monument will trigger interim protection under section 6. In that case, section 5(4)(b) requires the notice to explain the effect of interim protection and specify the date on which interim protection takes effect.

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

40. Where a notice served under section 5(2) relates to a proposal to amend the schedule by adding a monument or to amend an existing entry for a monument to include an additional part of the monument, the additional monument or part will enjoy interim protection under section 6 from the beginning of the day specified in the notice. From that time, and until interim protection ends in accordance with section 7, this Part of

the Act will have effect as if a monument being considered for addition to the schedule were already scheduled or a proposed amendment were already made.

41. Where a monument is subject to interim protection it is an offence to undertake works to it without consent (section 30) or to damage the monument (section 58). This means, for example, that a person carrying out demolition works in relation to a monument under interim protection would commit an offence, unless a relevant defence was available to the person. Interim protection is designed to afford protection to a monument during the consultation period. This may be protection, for example, from an owner who could otherwise have an incentive to deliberately damage or destroy a historic asset during the consultation period in an effort to undermine the protection that scheduling would otherwise have provided.
42. Subsection (4) requires the Welsh Ministers to publish a list of monuments subject to interim protection and provide a copy of the notice served under section 5(2) to any person who requests one. The list is on the [Cadw website](#) and is also represented as a distinct category and map layer on [Cof Cymru](#).

Section 7 – When interim protection ends

Schedule 1 – End of interim protection for monuments

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

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

47. If the Welsh Ministers serve notice of the end of interim protection under section 7(1)(b) or (2)(b), indicating that they have decided not to schedule a monument or an additional part of a monument, a person who had an interest in the monument when the interim protection took effect may claim compensation for any loss or damage suffered that is directly attributable to the interim protection. This section sets out how a claim must be made to the Welsh Ministers.
48. Section 202 makes additional provision about claims for compensation, and in particular allows the Welsh Ministers to extend the period for making a claim for compensation in a particular case if they are satisfied that there is good reason for

doing so. Any disputes about compensation under this Act will be referred to the [Upper Tribunal](#) under section 203. The [Upper Tribunal \(Lands Chamber\) Rules](#) make provision for the reference of a case to the Tribunal and its handling.

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

49. If the Welsh Ministers add a monument to the schedule or amend an existing entry in the schedule to include an additional part to an existing scheduled monument, section 9 requires them to afford any owner or occupier of the monument an opportunity to request a review of their scheduling decision.
50. Subsection (2) provides that the ground for a review is that the monument (or part, if an extension to an existing entry for a monument) is not of national importance. This reflects that, under section 3(1), national importance is the basis for the Welsh Ministers' inclusion of a monument in the schedule. Subsection (6) provides that the Welsh Ministers may make regulations to specify other grounds for review in the future.
51. Under subsection (3), the Welsh Ministers must appoint a person to carry out the review and make a decision on it. Ordinarily, this will be an inspector of [Planning and Environment Decisions Wales](#) (previously Planning Inspectorate Wales). However, subsection (4) provides that the Welsh Ministers may specify descriptions of cases in which they will conduct and decide a review themselves, instead of appointing a person to do so.

Section 10 – Supplementary provision about reviews

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

Schedule 6 – Proceedings under Part 2

52. Section 10 makes provision about the administration of reviews under section 9. This is supplemented by Schedule 2 and Schedule 6 which make provision about functions and proceedings of persons appointed by the Welsh Ministers to carry out reviews of scheduling decisions.
53. Under paragraph 3 of Schedule 2, an appointed person may appoint an assessor – perhaps a person with particular knowledge of a relevant class of monuments or buildings or the archaeology or history of an area – to provide specialist advice on matters arising in connection with a review.
54. Paragraph 4 gives power to the Welsh Ministers to direct that any of the appointed person's functions, other than making a decision on a review, is to be done instead by the Welsh Ministers. Paragraph 5 allows the appointed person to delegate functions, other than the conduct of a local inquiry or hearing and the making of a decision on a review, to another person. In practice, the functions in question are likely to include administrative functions such as the notification of a review, the circulation of representations or evidence, and the notification of a decision. Paragraph 5 provides mechanisms by which the appointed person's functions are to be carried out by other persons instead.
55. Paragraph 6 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 2019 (anaw 3). This will enable the Public Services Ombudsman for Wales to investigate any allegations of maladministration made in relation to the appointed person's discharge of those functions.

56. Schedule 6 provides for the collection of evidence at a local inquiry held by an appointed person under Part 2, establishes offences relating to a failure to comply with a summons to an inquiry and provides for the payment of costs incurred in the course of certain proceedings.
57. Paragraph 2 incorporates section 250(3) of the Local Government Act 1972 (c. 70) to provide for the collection of evidence at a local inquiry held by an appointed person and to establish offences relating to a failure to comply with a summons to an inquiry. A person guilty of an offence on summary conviction is liable to a fine not exceeding level 3 on the standard scale or a term of imprisonment not exceeding the maximum term for summary offences, or both (sub-paragraph (2)). The standard scale is defined in Schedule 1 of the Legislation (Wales) Act 2019 (anaw 4) by reference to section 122 of the Sentencing Code (as contained in the Sentencing Act 2020 (c. 17)) for an offence of which the offender is convicted on or after 1 December 2020.
58. Paragraph 3 of Schedule 6 allows the Welsh Ministers to make arrangements for the payment of costs associated with certain proceedings as specified in sub-paragraph (1). They may direct that costs that they incur in the proceedings must be paid by any party to the proceedings. The amount of the costs may be recovered by the Welsh Ministers summarily as a civil debt; the Welsh Ministers could also apply to a magistrates' court under section 58(1) of the Magistrates' Court Act 1980 (c. 43) for a court order for the debt, and if the order is granted, the Welsh Ministers can pursue the enforcement of the order. The Welsh Ministers would only be likely to require the payment of their costs if the unreasonable behaviour of a party to the proceedings led to unnecessary expenses.
59. Subparagraphs (4) to (6) give the Welsh Ministers powers to make orders about the costs of the parties to the proceedings, and the party or parties by whom the costs are to be paid. Subparagraph (6) sets out that costs may not be awarded unless the Welsh Ministers are satisfied that a person behaved unreasonably and that the unreasonable behaviour caused another party to incur unnecessary or wasted expenditure.
60. If the Welsh Ministers make an order under subparagraph (4) requiring a person to pay the costs of another party to the proceedings, subparagraph (5) provides that the person to whom the debt is owed may make an application to the High Court for the debt to be recoverable (under section 18 of the Judgments Act 1838 (c. 110)) as if they were payable under an order of the High Court.
61. Subparagraph (7) provides that costs may be recovered even if proceedings do not take place.

Chapter 3 – Control of works affecting scheduled monuments

62. Chapter 3 sets out that particular types of works may only be carried out to scheduled monuments if the works are authorised (section 11). The provisions of this Chapter themselves give authorisation (at section 12 and Schedule 3) for certain descriptions of

works. The Chapter (at section 13) also provides that works may be authorised by grant of scheduled monument consent.

63. The bulk of the provisions in the Chapter are about scheduled monument consent: the application process (sections 14 to 16); the grant of consent (sections 17 to 19) and the modification and revocation of consent (section 20 and Schedule 4). The closing sections of the Chapter deal with the compensation that can be claimed in certain circumstances if scheduled monument consent is refused or granted subject to conditions (sections 21 to 24).
64. The Welsh Ministers have published guidance, which is kept under review, to support the management of scheduled monuments. The current guidance, [*Managing Scheduled Monuments in Wales*](#) (2018), sets out the general principles to follow when managing and making changes to scheduled monuments. It explains how to apply for scheduled monument consent, including the roles and responsibilities of owners and Cadw.

Section 11 – Requirement for works to be authorised

65. This section provides that a wide range of works, extending from demolition to repair, may only be carried out with authorisation under this Chapter. In practice, this means that almost any works to a scheduled monument – including those that will benefit the asset, such as repairing masonry, filling in erosion scars or conducting archaeological investigations – will require authorisation. The authorisation may be either by scheduled monument consent under section 13, or, in certain narrowly defined circumstances, as works of a description of a class of works under section 12.
66. Subsection (1) states that a person must not carry out, cause or permit the relevant works to be carried out unless those works are authorised. In addition to prohibiting a person from undertaking works personally or commissioning or employing others to conduct them, this provision stops a person from allowing works to proceed without taking action to prevent them. A landowner cannot, therefore, deliberately turn a blind eye to unauthorised works – for instance, metal detecting or stone robbing – taking place on a scheduled monument on the landowner’s property.
67. If a person carries out, causes or permits any works to a scheduled monument in breach of subsection (1), it constitutes an offence under section 30(1).

Section 12 – Authorisation of classes of works

Schedule 3 – Authorisation for classes of works

68. Section 12(1) authorises works to a scheduled monument if the works fall within a description of a class of works in the table in Schedule 3.
69. Schedule 3 has been derived with modifications from the Ancient Monuments (Class Consents) Order 1994 (SI 1994/1381). The incorporation of these well-established provisions from secondary legislation brings together the relevant legislation about the authorisation of works. Regulation-making powers in paragraph 1 of Schedule 3, however, give the Welsh Ministers flexibility to amend the Schedule.
70. Schedule 3 sets out eight classes of works that are authorised by section 12(1). These narrowly defined works are not normally damaging and therefore can proceed

without the need for the detailed consideration of the scheduled monument consent process.

71. Class 1 comprises agricultural, horticultural and forestry works of the same kind as works carried out lawfully on the same spot within the immediately preceding six years. By permitting the same activity to occur in the same place, any further disruption to the scheduled monument from the ongoing works will be minimised. For example, where a scheduled site has been lawfully ploughed within the previous six years, ploughing may continue provided it goes no deeper than it did during that six-year period. The works specified in paragraphs (a) to (f) of the Class 1 entry have all been excluded from authorisation because of the threats they would pose to undisturbed archaeology or the standing remains of a scheduled monument.
72. If agricultural, horticultural or forestry works have not taken place on a scheduled monument for more than six years, the possibility of authorisation under section 12(1) lapses and it cannot be revived. Thereafter such works would require scheduled monument consent under section 13.
73. Class 5 has been included to provide authorisation should the Historic Buildings and Monuments Commission for England (Historic England) be undertaking works on Offa's Dyke or some other cross-border scheduled monument and inadvertently or by prior agreement carry the works across the border into Wales.

Section 13 – Authorisation of works by scheduled monument consent

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

Section 14 – Applying for scheduled monument consent

77. Section 14 puts in place the fundamental structure for the scheduled monument consent application process.
78. It prescribes how an application must be made to the Welsh Ministers, sets out its required content and provides the Welsh Ministers with powers to make regulations on further aspects of the application procedure (subsections (1) to (3)).

79. Subsections (4) and (5) allow for a simplified application procedure for scheduled monument consent where works are of a minor nature. Such works might include: localised erosion repairs, replacing short stretches of fencing, re-bedding loose stones, or installing plaques or signs. In cases where proposed minor works will have a neutral or positive impact on a monument, Cadw may agree the works during a site visit and dispense with the need for a formal application. In all cases, even where a written application is not required, works will only be authorised on receipt of written scheduled monument consent, which is granted in compliance with section 13(1).

Section 15 – Declarations of ownership in respect of monument

80. This section enables the Welsh Ministers to refuse to consider an application if it is not accompanied by a declaration of ownership signed by or on behalf of the applicant. The declaration relates to the ownership of the monument 21 days before the date of the application. It must confirm that the applicant either was then the sole owner of the monument, or has given notice to all other owners of the monument or taken all reasonable steps to do so (subsection (1)). In practice the applicant can be the owner, occupier, agent or another person. However, the application must be accompanied by the declaration signed by or on behalf of the applicant.
81. For the purposes of this section, an owner of the freehold estate or a tenant with a lease of 7 years or more to run is to be treated as an owner of a monument (subsection (6)).
82. Under subsection (4), a person who, purportedly complying with this section, knowingly or recklessly makes a declaration that is false or misleading in an important respect, commits an offence. Subsection (5) provides that a person guilty of the offence will be liable on summary conviction to a fine not exceeding level 3 on the standard scale. See paragraph 57 above for information on the standard scale.

Section 16 – Power to refuse to consider similar applications

83. This section permits the Welsh Ministers to refuse to consider an application for scheduled monument consent if it is similar to an application refused within the previous 2 years and there has been no significant change in any relevant considerations, or it is similar to an application that is currently under consideration.

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

84. Section 17, with Schedule 6, regulates the procedure for determining applications and granting scheduled monument consent.
85. Subsection (2) provides that, before determining an application for scheduled monument consent, the Welsh Ministers may:
- a. cause a local inquiry to be held;
 - b. appoint a person to hold a hearing; or
 - c. appoint a person to receive written representations.

86. The Welsh Ministers would normally appoint an inspector from [Planning and Environment Decisions Wales](#) to conduct an inquiry or hearing or receive written representations.
87. However, in practice, various informal actions are taken before the Welsh Ministers exercise their power under subsection (2). In the majority of cases, Cadw will provide pre-application advice to the prospective applicant. This might be of particular importance where there is likely to be a requirement to engage archaeological expertise. Following receipt of an application, normally Cadw (acting on behalf of the Welsh Ministers) will issue an interim decision letter, which includes details of any proposed conditions or the reasons for any proposed refusal. This provides the applicant with the opportunity to make representations, which may include providing additional information relevant to the application. A Cadw officer will receive and consider these representations. It is at that point, if there are unresolved issues, that the Welsh Ministers usually exercise their power under subsection (2).
88. Subsection (3) requires the Welsh Ministers to consider any representations made by any person with respect to a scheduled monument consent application and any report of a person who held an inquiry or hearing or to whom representations were made.
89. Subsection (5) establishes that, unless its terms make some other contrary provision, a scheduled monument consent has effect for the benefit of the monument and all persons for the time being with an interest in it. If, for example, the ownership of a scheduled monument were to change while consented works were underway, the new owner would not need to apply for a new scheduled monument consent in order to continue the works (provided there were no provision to the contrary in the terms of the consent). However, section 19 is also of relevance here as it requires consent to be granted subject to a condition for consented works to be started within a particular period (unless the consent itself is time-limited), and section 20 provides that the Welsh Ministers may modify or revoke a scheduled monument consent by order.
90. Schedule 6 provides for the collection of evidence at a local inquiry held by an appointed person under section 17(2)(a), establishes offences relating to a failure to comply with a summons to an inquiry and provides for the payment of costs incurred in the course of an inquiry. Schedule 6 has been discussed in paragraphs 56 to 61 above.

Section 18 – Power to grant consent subject to conditions

Section 19 – Condition about period within which works must start

91. Section 18 allows scheduled monument consents to be granted subject to conditions. The section provides two examples of conditions, but these are not exhaustive. Conditions may relate directly to the way in which works are carried out or they may impose other requirements, such as a programme of archaeological recording and reporting.
92. Section 19(1) requires a scheduled monument consent to be granted subject to a condition that the works must start before the end of a period specified in the condition. If the consented works do not start within that period, the consent will lapse. Where works are started within the specified period, a consent will have effect

for the benefit of the monument and all persons with an interest in it for the time being (section 17(5), but see also section 19(3)(a) which provides that where consent is time-limited, there is no requirement for a condition for works to be started in a specified period; in such a case, the consent ceases to have effect at its expiry, regardless of who has an interest in the monument at that point).

93. Subsection (2) sets out that if a consent is granted without a condition specifying a period within which works must begin, works must begin within five years of the day on which consent was granted.
94. Subsection (3) provides that this section does not apply in relation to three classes of scheduled monument consents:
 - a. Scheduled monument consents that cease to have effect at the end of a specified period (irrespective of whether works have started) – such consents often relate to short-term events or activities at a monument for which a very specific period may be defined. The period of a consent could also be specified, for instance, in order to limit the impact of works on protected species.
 - b. Scheduled monument consents granted under section 14(2) for works carried out before consent was granted – since the consent authorises works that have already been completed, a requirement for works to begin is unnecessary.
 - c. Scheduled monument consents granted by a scheduled monument partnership agreement – scheduled monument partnership agreements may run for ten to fifteen years and the consents that they grant last for the lifetime of the agreements, irrespective of when works begin.

Section 20 – Modification and revocation of consent

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

Schedule 6 – Proceedings under Part 2

95. Section 20 provides the Welsh Ministers with powers to revoke or modify a scheduled monument consent by order. The associated Schedule 4 establishes the procedure that must be followed in making these orders, and Schedule 6 sets out additional procedures relating to evidence at local inquiries and costs of such proceedings.
96. Subsection (2) sets out that an order under this section may not be made to modify or revoke a scheduled monument consent granted either for the retention of works under section 13(2) or by a scheduled monument partnership agreement. Scheduled monument partnership agreements incorporate separate mechanisms (section 27 and Schedule 5) that permit the Welsh Ministers to terminate all or part of an agreement, including consents, by order.
97. Section 20(3) provides that Schedules 4 and 6 make provision in connection with orders under that section. Schedule 6 has been discussed at paragraphs 56 to 61 above.

98. Part 1 of Schedule 4 – “Notice of proposed modification or revocation” – sets out how and to whom the Welsh Ministers must serve notice of the proposed modification or revocation and specifies how such a notice will affect works.
99. Paragraph 1(3) states that when a proposed modification would exclude any works from a scheduled monument consent – for instance, removing agreement for an element of consented works after the unexpected discovery of significant archaeological remains – the notice must require those specified works to cease on a day specified in the notice. Paragraph 2(1) cancels authorisation for those works from the start of the day specified. Consequently, the continuation of those works after that date would constitute an offence under section 30. Other works allowed by the scheduled monument consent could, however, continue unaffected without interruption.
100. Paragraph 1(4) provides that if a proposed modification would affect the carrying out of works – for instance, by introducing another methodology for masonry consolidation and repair in light of emerging evidence relating to a monument’s condition and conservation requirements – the notice must require that the affected works, in this example, the current masonry repairs, must stop on a day specified in the notice. Paragraph 2(2) makes those stopped works unauthorised. As above, other works allowed under the scheduled monument consent would be unaffected.
101. A notice of a proposed revocation under paragraph 1(5) must provide that all works to which a scheduled monument consent relates must stop on a day specified in the notice. Paragraph 2(3) cancels the authorisation for the works from the start of that day, thereby making any continuation of the works an offence under section 30.
102. Paragraph 2(4) sets out three ways in which a suspension of authorisation imposed by paragraph 2(1), (2) or (3) may be brought to an end within the period of 21 months from the service of the notice proposing a modification or revocation order.
 - a. If, during that 21-month period, the Welsh Ministers make a modification or revocation order, any suspension of authorisation imposed by paragraph 2(1) to (3) will cease to apply on the day the order is made. It will be immediately succeeded by the modification or revocation order itself.
 - b. If, during the 21-month period, the Welsh Ministers serve notice appropriately that they have decided not to make the order, all authorisations will revive on a day specified in the notice.
 - c. All authorisations will revive at the end of the 21-month period, if the Welsh Ministers have not made an order or served notice of their decision not to before that time.
103. Part 2 of Schedule 4 – “Proceeding to make an order after service of notice” – details the procedures that the Welsh Ministers must follow to make an order. In all cases, the Welsh Ministers must not make an order until after the end of the period of 28 days allowed for objections in the notice of the proposed modification or revocation.

104. If no objections are made or all objections are withdrawn, the Welsh Ministers must make the order on the terms set out in the notice (paragraph 3(2)(a)-(b) and (6)).
105. If, on the other hand, a person served with the notice makes an objection during the 28-day period and does not withdraw it, the Welsh Ministers must cause a local inquiry to be held or give the person who made the objection an opportunity to appear before a hearing (paragraph 3(2)(c) and (3)). The Welsh Ministers will routinely appoint an inspector from [Planning and Environment Decisions Wales](#) to conduct an inquiry or hearing.
106. After taking account of any objections raised and the report of the person appointed to hold the inquiry or hearing, the Welsh Ministers may make a modification or revocation order in accordance with the terms proposed in the notice or with any amendments that they consider appropriate (paragraph 3(4) and (7)).
107. Part 3 of Schedule 4 – “Supplementary” – makes provisions relating to procedures after the close of a hearing or inquiry.

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

108. Section 21 makes provision, subject to certain conditions, for the payment of compensation where a person with an interest in a monument suffers loss or damage if scheduled monument consent is refused or granted subject to conditions.
109. Subsection (3) identifies four categories of works in respect of which compensation is payable.
 - a. Works which are reasonably necessary for carrying out any development for which planning permission had been granted (other than by a general development order) before the monument was scheduled and for which the permission remains in force at the time of the scheduled monument consent application. Subsection (4) limits the compensation payable to any expenditure incurred or other loss or damage suffered by virtue of the fact that, as a result of the Welsh Ministers’ decision, development permitted by the planning permission could not be carried out without breaching section 11(1).
 - b. Works that do not constitute development. A monument owner would not need to make formal application for planning permission to undertake these works (or those described in paragraph (c) below). Subsection (5) sets out that, for the purposes of compensation, these works exclude any that would or might result in the total or partial demolition or destruction of a monument.
 - c. Works constituting development for which planning permission is granted by a general development order.
 - d. Works reasonably necessary for keeping the monument in use as it was immediately before the date of the application for scheduled monument consent, providing that that use did not contravene any legal restrictions on the monument’s use. With regard to works in this category, subsection (6)

establishes that if a scheduled monument consent is granted subject to conditions, a person is only entitled to compensation if compliance with the conditions would make it impossible to continue the prior use of the monument.

110. Subsection (7) identifies two matters to be considered in the calculation of the amount of loss or damage consisting of depreciation of the value of an interest in land (meaning the extent to which the value of the land is effectively diminished by the limitations on works imposed by the refusal of scheduled monument consent or its grant subject to conditions).
- a. It is to be assumed that any subsequent application for scheduled monument consent for works of a similar description would be determined by the Welsh Ministers in the same way.
 - b. However, in the case of a refusal of consent, if the Welsh Ministers, on refusing that consent, undertook to grant consent for other works affecting the monument if an application were made, that undertaking should be taken into account. An undertaking might allow for some other viable use of the land, thereby reducing the depreciation for the purposes of calculating the compensation. In practice, however, given that an interim decision is usually given as an administrative part of the scheduled monument consent regime (under section 17 and Schedule 6), and that parties submit representations in light of that interim view, such undertakings are rarely given.

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

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

Section 23 – Determination of amount recoverable under section 22

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

Tribunal, the recoverable amount will be the amount that it determines (subsection (3)).

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

116. This section provides for compensation to be paid if works previously authorised cease to be so authorised. Subsection (1) provides that this may happen if:
- a. an authorisation under section 12 ceases to apply when authorisation for a specified description of works (as set out in Schedule 3) is amended or the Welsh Ministers make a direction to exempt a scheduled monument from authorisation under section 12(1);
 - b. scheduled monument consent is modified or revoked by an order made under section 20; or
 - c. authorisation is cancelled following the service of a notice of proposed modification or revocation of scheduled monument consent as set out in paragraph 2 of Schedule 4 (see paragraphs 99 to 101 above).
117. Any person with an interest in the monument is entitled, on making a claim for compensation to the Welsh Ministers, to be paid compensation by them for any expenditure incurred in carrying out works which become abortive by the cessation of authorisation or any other loss or damage directly attributable to that cessation. For the purposes of this section, expenditure incurred on carrying out works includes expenditure on preparatory matters, which might include, but are not limited to, site surveys, the preparation of plans or a heritage impact statement or the production of detailed specifications of materials and methodologies (subsections (2) and (4)).
118. Subsections (3) and (5) place certain limits on the availability of compensation.
119. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 48 above).

Chapter 4 – Scheduled monument partnership agreements

120. This Chapter provides for the making of scheduled monument partnership agreements. These are voluntary agreements between the Welsh Ministers, owners of scheduled monuments and other parties for the long-term management of one or more scheduled monuments. A scheduled monument partnership agreement may grant scheduled monument consent for an agreed programme of works to be carried out during the lifetime of the agreement. Provision is made for comparable listed building partnership agreements in Part 3, Chapter 3.
121. The Welsh Ministers have published guidance, which is kept under review, to support the preparation of heritage partnership agreements including those for scheduled monuments. The current guidance, [Heritage Partnership Agreements in Wales](#) (2021), sets out the elements required in an agreement and identifies best practice to promote consistency in the implementation of works as well as regular monitoring and review. The guidance includes a template to provide a framework for new agreements.

Section 25 – Scheduled monument partnership agreements

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

Section 26 – Further provision about scheduled monument partnership agreements

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

Section 27 – Termination of agreement or provision of agreement

Schedule 5 – Termination by order of scheduled monument partnership agreement

Schedule 6 – Proceedings under Part 2

133. Section 27 allows the Welsh Ministers to terminate a scheduled monument partnership agreement or any provision of such an agreement by order. It is likely that this will only happen in exceptional cases, for instance, if unauthorised works take place and relations between the parties break down to such an extent that negotiated termination becomes impossible. Alternatively, significant archaeological discoveries might require the cessation of certain works against the wishes of an owner and prompt the Welsh Ministers to terminate a portion of an agreement by order.
134. Section 27(4) provides that Schedule 5 and paragraph 1 of Schedule 6 make provision in connection with making orders under this section.
135. Schedule 5 puts in place the procedure for making an order to terminate a scheduled monument partnership agreement or a provision of such an agreement. This is derived from and closely mirrors the procedure for making an order to modify or revoke scheduled monument consent in Schedule 4 (see paragraphs 98 to 107 above).

136. Part 1 of Schedule 5 – “Notice of proposed termination” – sets out how and to whom the Welsh Ministers must serve notice of the proposed termination and specifies how such a notice will affect works.
137. Paragraph 1(3) provides that where the proposed order would revoke a scheduled monument consent granted by the agreement, the notice must provide that all works to which that consent relates must stop on the day specified in the notice. Paragraph 2(1) cancels the authorisation for the works from the start of that day, thereby making any continuation of the works an offence under section 30.
138. Paragraph 1(4) states that when a proposed termination would exclude any works from a scheduled monument consent granted by the agreement – for instance, removing agreement for an element of consented works after the unexpected discovery of significant archaeological remains – the notice must specify the date the excluded works must halt. Paragraph 2(2) removes authorisation for those works from the start of the day specified. Consequently, the continuation of those works after that date would constitute an offence under section 30. Other works authorised by the scheduled monument partnership agreement could, however, continue unaffected without interruption.
139. Paragraph 2(3) sets out how the suspension of the authorisation of works following the service of a notice of proposed termination may be brought to an end within the 21 months of the service of the notice.
- a. If, during that 21-month period, the Welsh Ministers make a termination order, any suspension of the authorisation of works imposed by paragraph 2(1) or (2) will cease to apply on the day the order is made. It will be immediately succeeded by the termination order itself.
 - b. If, during the 21-month period, the Welsh Ministers serve notice appropriately that they have decided not to make the order, all authorisations will revive on a day specified in the notice.
 - c. All authorisations will revive at the end of the 21-month period, if the Welsh Ministers have not made an order or served notice of their decision not to before that time.
140. Part 2 of Schedule 5 – “Proceeding to make an order after service of notice” – details the procedures that the Welsh Ministers must follow to make an order. In all cases, the Welsh Ministers must not make an order until after the end of the period of 28 days allowed for objections in the notice of the proposed termination.
141. If no objections are made or all objections are withdrawn, the Welsh Ministers must make the order on the terms set out in the notice (paragraph 3(2)(a)-(b) and (6)).
142. If, on the other hand, a person served with the notice makes an objection during the 28-day period and does not withdraw it, the Welsh Ministers must cause a local inquiry to be held or give the person who made the objection an opportunity to appear before a hearing (paragraph 3(2)(c) and (3)). The Welsh Ministers will routinely

appoint an inspector from [Planning and Environment Decisions Wales](#) to conduct an inquiry or hearing.

143. After taking account of any objections raised and the report of the person appointed to hold the inquiry or hearing, the Welsh Ministers may make a termination order in accordance with the terms proposed in the notice or with any amendments that they consider appropriate (paragraph 3(4) and (7)).
144. Part 3 of Schedule 5 – “Supplementary” – makes provisions relating to procedures after the close of the hearing or inquiry.

Section 28 – Compensation in relation to termination

145. Under section 28, any party to a scheduled monument partnership agreement with an interest in a monument or associated land who suffers loss or damage as a direct result of the cessation of works caused by the service of a notice of proposed termination or the making of a termination order is, on making a claim for compensation to the Welsh Ministers, entitled to be paid compensation from the Welsh Ministers.
146. Claims may be made for expenditure incurred on works rendered abortive by the notice or order and on plans and other matters preparatory to the works (subsections (2)(a) and (3)). Such preparatory matters could include the development of the detailed plans needed for a scheduled monument partnership agreement. Claims may also be made for any other loss or damage suffered by the person that is directly attributable to the notice or order.
147. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 48 above).

Chapter 5 – Enforcement of controls relating to scheduled monuments

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

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

149. Section 30(1) makes it an offence for a person to carry out unauthorised works to a scheduled monument, or to cause or allow such works to be carried out. Authorisation may be provided by section 12, which authorises specific classes of works, or under section 13, which provides for the grant of scheduled monument consent by the Welsh Ministers.

150. If scheduled monument consent has been granted, subsection (2)(b) provides that it is an offence for a person to fail to comply with a condition of a consent in carrying out works, or in causing or allowing the works to be carried out. This will apply to all conditions attached to a scheduled monument consent, including, for instance, those for publication of the results of an archaeological investigation.
151. In subsections (1) and (2), a “person” may be anyone who undertakes works to a monument, be that an owner or occupier of a monument, a contractor or sub-contractor or other third party. A person may also be a corporate entity.
152. If works are undertaken without authorisation or in breach of a condition, an offence is committed whether a person:
- a. carries out those works personally,
 - b. instructs or employs someone else to undertake them, or
 - c. permits (or fails to prevent) such works.
153. The last point means that a person cannot turn a blind eye to what happens on a scheduled monument and fail to take reasonable steps to prevent unauthorised works. This would apply, for instance to an owner who tacitly allows metal detectorists onto a scheduled monument and takes no action to stop them from causing damage by digging pits in search of artefacts.
154. Subsection (4) provides a person with a defence in proceedings for a subsection (1) offence relating to a monument under interim protection where the person can prove that the person did not know and could not reasonably have been expected to know that the monument was subject to interim protection. Where the defence is raised by a person on whom a notice of interim protection should have been served, it is for the prosecution to prove that the notice was served on the person.
155. Information on monuments under interim protection should be readily available. Section 5(2) to (4) requires the Welsh Ministers to serve notice if they propose to add a monument to the schedule or add to the area of an existing monument. The notice, which must be served on every owner and occupier of the monument amongst other persons, has to specify the date upon which interim protection begins and explain its effect. A list of monuments under interim protection is published on the [Cadw website](#) in accordance with section 6(4) and [Cof Cymru](#) also displays monuments under interim protection.
156. Subsection (7) provides a similar defence in proceedings for an offence under this section for works that have involved the damage or destruction of a scheduled monument or flooding or tipping on land in, on or under which a scheduled monument is located. A person will have a defence if they prove that prior to the works, all reasonable steps were taken to determine if a scheduled monument was in the area to be affected by the works and that the person did not know and had no reason to believe that the monument was in the area, or, as the case may be, that it was a scheduled monument.

157. Such reasonable steps might include checking [Cof Cymru](#), where accurate and up-to-date information on the location and extent of all scheduled monuments in Wales is available. Other sites – for example, [Archwilio](#), the online portal of the Welsh historic environment records or [DataMapWales](#) – also incorporate information on scheduled monuments derived from Cof Cymru.
158. A long-term owner or occupier of a scheduled monument is likely to be aware of its existence and extent because Cadw field monument wardens visit all scheduled monuments in Wales on a rolling programme to record their condition. New owners should discover their acquisition of a scheduled monument in the conveyancing title search, since an entry in the schedule is a local land charge under section 3(5).
159. Subsection (8) provides a person with a defence for an offence under this section if works were undertaken to address urgent health and safety needs. However, the defence is only available where the works are limited to the minimum measures immediately necessary to secure health and safety and notice was given to the Welsh Ministers with detailed justification for the works as soon as reasonably practicable.
160. Subsection (9) provides that the offence may be tried either way – summarily or on indictment – and that the penalty for an offence under this section is an unlimited fine, whether on summary conviction or conviction by indictment.

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

161. Section 31 gives the Welsh Ministers powers to issue a temporary stop notice to put an immediate halt to any or all works to a scheduled monument that they consider to be unauthorised or to contravene a condition of a granted scheduled monument consent. The Welsh Ministers may only do so if they consider that the works ought to be stopped immediately, having regard to the effect of the works on the monument as one of national importance.
162. Subsections (2) to (5) specify the required contents of a temporary stop notice and make provision for service of a notice. Subsections (3) and (4) require the Welsh Ministers to display a copy of the notice on the monument or land, or, where it is not reasonably practicable to display a copy of the notice on the monument or land or doing so could damage the monument, near to the monument or land. Subsection (5) then provides that a copy of the notice may be served on the persons identified in that subsection – including a person carrying out the works or causing or permitting them to be carried out.
163. While the Welsh Ministers will endeavour to serve individual notices on interested parties under subsection (5), public display of the temporary stop notice provides a mechanism for alerting all involved in the specified works to the scheduled monument that they must be suspended immediately.

Section 32 – Duration etc. of temporary stop notice

164. Section 32(1) to (3) sets out that a temporary stop notice takes effect when first displayed in accordance with section 31, will remain in effect for 28 days (unless a shorter period is specified) and may be withdrawn by the Welsh Ministers before its expiry.

165. Subsections (4) and (5) provide that the Welsh Ministers may not serve a second or subsequent temporary stop notice in relation to the same works without taking some other intervening enforcement action, which may be serving an enforcement notice under section 35 or obtaining an injunction under section 42.

Section 33 – Offence of breaching temporary stop notice

166. Once a temporary stop notice is in effect, section 33 makes it an offence for a person to undertake works prohibited by the notice or cause or allow another person to do so.
167. Subsection (2) provides that an offence may be charged by reference to a day or a longer period during the 28 days that the temporary stop notice is in force. The subsection specifically provides that a person may be convicted of more than one offence if the temporary stop notice is repeatedly breached.
168. Subsections (3) and (4) set out the defences to an offence under this section. The health and safety defence in subsection (4) mirrors that in section 30(8).
169. Subsection (5) provides that the penalty for the offence of contravening a temporary stop notice is an unlimited fine, whether on summary conviction or conviction by indictment.
170. Since deliberate damage to a monument may be prompted by the prospect of financial gain, subsection (6) requires the court 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.

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

171. Section 34 provides that any person with an interest in a monument or land may be entitled to compensation from the Welsh Ministers for loss or damage directly attributable to the effect of a temporary stop notice.
172. Subsection (1) provides that compensation is only payable where:
- a. the works specified in the notice did not breach section 11(1) at the time the notice took effect (that is, they were either authorised or did not require authorisation); or
 - b. the works specified in the notice did not contravene a condition of a scheduled monument consent at the time the notice took effect; or
 - c. the Welsh Ministers withdrew the temporary stop notice after it took effect (but subsection (2) further provides that no compensation is payable if the Welsh Ministers withdraw a notice after granting a scheduled monument consent that will allow the works specified in the notice to proceed).
173. Subsection (5) also excludes any claim for loss or damage that might have been avoided if the claimant had provided information to the Welsh Ministers regarding interests in the land under section 197 or had otherwise cooperated with the Welsh Ministers.

174. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 48 above).

Section 35 – Power of Welsh Ministers to issue enforcement notice

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

Section 36 – Service and taking effect of enforcement notice

177. Section 36 sets out the requirements for service of an enforcement notice and when a notice takes effect.
178. Subsection (2) provides that an enforcement notice will take effect at the beginning of the day specified in the notice. However, should an appeal be brought against the notice under section 39, section 39(4) provides that the notice will not take effect until the appeal is determined or withdrawn.
179. Subsection (3) allows an enforcement notice to set different periods for stopping different works or taking different steps. Such flexibility enables an enforcement notice to make appropriate provision for the conservation requirements of a monument. For instance, a phased series of steps might be set out to achieve the satisfactory restoration or stabilisation of a monument damaged by unauthorised works.

Section 37 – Variation and withdrawal of enforcement notice

180. Section 37 gives the Welsh Ministers powers to withdraw an enforcement notice or waive or relax any requirement of the notice. They may exercise these powers whether or not the notice has taken effect and the withdrawal of a notice does not prevent the Welsh Ministers from issuing another.

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

181. Section 38 provides for a situation where, after an enforcement notice is issued, scheduled monument consent is granted to authorise:
- a. works to which the notice relates and which had been carried out without authorisation, or
 - b. works that had breached a condition of a previous scheduled monument consent.
182. Subsection (2) provides that steps specified in the notice that are inconsistent with the new consent cease to have effect. However, subsection (3) sets out that a person remains liable for any earlier offence arising from a failure to comply with an enforcement notice, even though part or all of the notice subsequently ceases to have effect under this section. Failing to comply with an enforcement notice (section 41) is a separate offence from carrying out unauthorised works (section 30) and proceedings for the offences may be pursued independently.

Section 39 – Appeal against enforcement notice

183. Section 39 permits anyone upon whom an enforcement notice has been served or with an interest in the monument or land to which the notice relates to appeal against the notice to a magistrates' court.
184. Subsection (2) lists the permissible grounds for an appeal and subsection (3) requires that it is made before the date specified in the notice as the date on which it takes effect.
185. Subsection (6) provides that the court may uphold a notice in spite of defects in service if it is satisfied that no one has been significantly disadvantaged by them.

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

186. Section 40 provides for a situation in which a required step has not been taken within the time prescribed in an enforcement notice. In that case, a person authorised in writing by the Welsh Ministers, may enter the land, take that step and recover the costs incurred from any owner or lessee of the monument or land. This allows necessary conservation works to secure the future of the scheduled monument that are detailed in the enforcement notice to take place in a timely fashion. Otherwise, a damaged monument might be left to deteriorate, leading to further damage to the monument and the loss of any archaeological information that it contains.
187. If the power of entry in subsection (1) is to be exercised on occupied land, section 69(2)(a) requires at least 14 days' notice to be given to every occupier.
188. Should an occupier prevent an owner from undertaking works required by an enforcement notice, subsection (3) enables a magistrates' court, on application from the owner, to issue a warrant authorising the owner to enter the land and carry out the work. This provides important legal recourse for an owner since section 41(1) places any liability for an offence for a failure to comply with an enforcement notice on an owner of the scheduled monument or land. An owner may also have a defence under

section 41(3) if, in spite of all reasonable efforts to take steps set out in an enforcement notice, an occupier obstructs their execution.

Section 41 – Offence of failing to comply with enforcement notice

189. Section 41 establishes that if, after the end of the period prescribed in an enforcement notice, works specified in the notice have not stopped or a required step has not been taken, the owner of the scheduled monument or land to which the notice relates will be guilty of an offence.
190. Subsection (2) provides that an offence under this section may be charged by reference to a day or a longer period and that a person may be convicted of more than one offence in relation to the same enforcement notice.
191. Subsection (3) sets out the defences to an offence under this section.
192. Subsection (4) provides that the penalty for the offence of failing to comply with an enforcement notice, whether on summary conviction or conviction by indictment, is an unlimited fine.
193. Since deliberate damage to a monument may be prompted by the prospect of financial gain, subsection (5) requires the court to have regard to any financial benefit the person convicted may have received or be likely to receive as a result of the offence when determining the amount of any fine to be imposed.

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

194. Section 42 allows the Welsh Ministers to apply to the High Court or the county court for an injunction to restrain actual or expected unauthorised works or actual or expected works that fail to comply with a condition of a scheduled monument consent.

Chapter 6 – Acquisition, guardianship and public access

195. This Chapter provides powers for the Welsh Ministers and local authorities to bring monuments of special historic interest into their care.
196. Monuments may be taken into care through their acquisition. The Chapter provides that the Welsh Ministers may acquire monuments of special historic interest either by compulsory acquisition or by agreement or gift (sections 43 and 44), and that local authorities may acquire monuments by agreement or gift (section 44).
197. Monuments may also be taken into care through guardianship; the Chapter sets out arrangements that allow an owner of a monument of special historic interest (defined as a person with a particular type of legal interest in the monument) to appoint either the Welsh Ministers or a local authority as guardian of the monument (sections 45 to 48). Under these voluntary arrangements, the guardian agrees to accept responsibility for the management of the monument and acquires certain rights over the property. The owner of the monument does not give up ownership but is subject to the guardianship agreement.

198. Further sections of this Chapter relate to land in the vicinity of a monument in the care of the Welsh Ministers or local authorities (section 49 and 50), management agreements relating to monuments of special historic interest (section 51) and the arrangements for public access to, and the provision of facilities for, monuments under the control of the Welsh Ministers or local authorities (sections 55 to 57).

Section 43 – Compulsory acquisition of monuments of special historic interest

199. Section 43 provides the Welsh Ministers with the power to make a compulsory acquisition of a monument of special historic interest for the purpose of its preservation, whether the monument is included in the schedule of monuments under section 3 or not. “Monument of special historic interest” is defined in section 75(6) (see paragraph 298 below for further information).
200. Subsection (2) provides that the Acquisition of Land Act 1981 (c. 67) applies to a compulsory acquisition under this section. One of the effects is that compensation is payable on the acquisition. Subsections (3) and (4) further provide that when assessing compensation for the acquisition of a monument that is scheduled at the time of the acquisition, it is to be assumed that scheduled monument consent would not be granted for any work which would or might result in the demolition, destruction or removal of the monument or any part of it. The effect is that the compensation payable may be less than would otherwise be the case.
201. None of the monuments currently in the care of Cadw have been acquired as a consequence of a compulsory acquisition. However, Cadw might consider compulsory acquisition of a monument of special historic interest in exceptional circumstances, but only if other methods of acquisition (through agreement or gift or through guardianship) had not proved possible and there were no other available options for the purpose of its preservation.

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

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

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

203. Section 45 enables a person with a particular type of legal interest in a monument of special historic interest to place it into the guardianship of the Welsh Ministers or a local authority (where the monument is in, or within the vicinity of, the local authority’s area). The types of legal interest required are set out in subsection (5). In practice, this means that monuments are usually placed into guardianship by a

freeholder or a person holding a long-term lease. The transaction is undertaken through the execution of a “guardianship deed”.

204. Subsection (3) provides that any occupier of a monument must be a party to the deed, and subsection (4) clarifies that any other additional person with an interest in the monument can also be a party to the deed.
205. The effect of guardianship is that the owner does not give up ownership of the monument but passes on responsibility for the maintenance and conservation of the monument, and wide-ranging control of the management of the monument, to the guardian. See also section 47.
206. The Welsh Ministers are currently the guardians for 97 monuments, including many of the most outstanding prehistoric and medieval monuments in Wales.

Section 46 – Supplementary provision about guardianship deeds

207. Section 46(1) clarifies that a guardianship deed is a local land charge. The title to the property will therefore alert any purchaser of the existence of the deed, and the restrictions imposed by the terms of the deed.
208. Subsection (2) provides that any person deriving title to a monument of special historic interest that is subject to a guardianship deed after the deed has come into effect, for example through inheritance, is bound by the deed.
209. Subsection (3) provides that the Welsh Ministers or a local authority may not become guardians of a monument occupied as a dwelling, apart from by the caretaker or a member of the caretaker’s family. Cadw currently has a caretaker (custodian) occupying a dwelling within the guardianship area of Raglan Castle and has previously had resident caretakers/custodians within the guardianship areas at White Castle and Neath Abbey and Gatehouse.
210. Subsection (4) clarifies that guardianship does not affect the rights and legal interest of any person who has any estate or interest in the monument other than as a consequence of this Part of the Bill.

Section 47 – General functions of guardians

211. Section 47 requires a guardian to maintain the monument in their guardianship and do anything the guardian considers necessary for its maintenance (subsection (1)). This is effectively a wide-ranging responsibility to keep the monument conserved, well-managed and in good condition.
212. To comply with this duty, the section gives the guardian of the monument wide powers to exercise control and management and to do everything that is necessary for the monument’s maintenance (subsection (2)). For more than a century, the Welsh Ministers and their predecessors have used equivalent powers under predecessor legislation to invest very considerable sums of money in conserving and making the monuments in their guardianship safe for the public to visit and for future generations to enjoy. In many cases, when the guardianship deeds were signed, the monuments concerned were in a very perilous condition and required extensive preliminary

conservation work followed by continuous maintenance to keep them in good condition.

213. Subsection (3) clarifies that the powers in subsection (2) include power to make an examination of the monument, including through excavations, or to remove all or part of a monument elsewhere for the purposes of preserving it. In many cases, there has been a need to undertake archaeological excavations as part of the requirement to maintain and conserve a monument in guardianship. The Welsh Ministers (in practice, Cadw acting on behalf of the Welsh Ministers) have also exercised these powers to relocate parts of monuments into museums or stores to ensure their preservation. For example, this has included moving a large, engraved stone, which is part of the prehistoric burial monument at Bryn Celli Ddu, to a nearby museum where it is protected from damage.
214. Subsection (4) makes clear that the power in subsection (2) includes power for the guardian to make a charge in connection with the use of a monument in guardianship. This may be required to provide appropriate supervision and control during activities or events undertaken at monuments in guardianship. This has frequently enabled monuments in guardianship to be used as a “stage” for a variety of activities such as filming, live theatre and concerts.
215. Finally, subsection (5) gives the guardian, or anyone authorised by the guardian, power to enter the monument at any reasonable time to exercise the guardian’s powers.
216. Subsection (6) provides that all of these powers are subject to any specific provisions to the contrary contained in the guardianship deed.

Section 48 – Termination of guardianship

217. Section 48(1) provides that the guardian of a monument can end their role as a guardian of all or part of the monument by agreement with the persons immediately affected by the guardianship deed.
218. Subsection (2) provides that in the absence of an agreement to terminate a guardianship, it continues until an occupier of the monument terminates the guardianship (or the guardian acquires the monument). An occupier is only entitled to terminate the guardianship if the occupier has a legal interest of a type listed in section 45 and is not bound by the guardianship deed (for example, if an occupier such as a lease holder was not a party to the deed when it was made).
219. Subsection (4) provides that a local authority must consult the Welsh Ministers before making an agreement to terminate a guardianship. Subsection (5) provides that a guardian may not make an agreement to terminate a guardianship unless the guardian is satisfied that alternative arrangements are in place for the monument’s preservation, or that it is no longer practicable to preserve it.
220. There have been occasions where a guardianship has been terminated by the Welsh Ministers or their predecessors. On a number of occasions this has occurred when the guardianship has been replaced by an acquisition through agreement or gift (section 44). Neath Abbey and Gatehouse, for instance, was the subject of a guardianship deed

in 1944, but this was subsequently terminated when it was converted into a deed of gift in 1949. On other occasions, the predecessors of the Welsh Ministers have become temporary guardians of a monument while other arrangements have been put in place for the monument's preservation.

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

221. Section 49(1) allows for adjoining land, or land in the immediate vicinity, of a monument of special historic interest to be acquired or taken into guardianship by public authorities in certain circumstances. Land may only be taken into guardianship if the monument itself has, or is being, taken into guardianship.
222. Subsection (1) applies if the Welsh Ministers or a local authority considers that the land is reasonably required for one or more of the purposes listed in subsection (2). This includes that the land is required for the Welsh Ministers or the local authority to be able to exercise its powers and responsibilities in maintaining the monument and facilitating public access.
223. The powers relating to the guardianship of land in the vicinity of a monument are similar to those for guardianship of the monument itself, including powers that allow full control and management (subsection (5)) and powers of entry (subsection (6)).
224. Subsections (6) to (8) make provision for termination of guardianship. It is terminated in the same circumstances as guardianship of a monument is terminated under section 48, and also when guardianship of the monument is terminated or the monument ceases to exist (subsection (8)).

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

225. Section 50 sets out powers for the Welsh Ministers and local authorities to acquire easements and other rights over land in the vicinity of a monument that is either in their ownership or in their guardianship. This would allow the use of part of an adjoining property for certain purposes, such as to discharge duties relating to the maintenance of the monument or to facilitate access. They also have power to acquire easements and other rights over land in the vicinity for the use of any land that is associated with the monument.
226. Subsections (2) and (4) make clear that the Welsh Ministers may acquire easements through agreement or compulsorily, and local authorities may only acquire them by agreement.
227. Subsections (5) to (8) enable the guardian of a monument to acquire a right of any description over land in the vicinity of the monument for the same purposes as easements may be acquired. And, as is the case in relation to easements, the Welsh Ministers may acquire rights through agreement or compulsorily, while local authorities may only acquire them by agreement. Subsections (9) and (10) enable the grantor to revoke the right in certain circumstances after the monument ceases to be under guardianship or ceases to exist.

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

228. Section 51(1) to (3) enables the Welsh Ministers and local authorities to make a management agreement with an occupier of a monument of special historic interest or of land adjoining or in the vicinity of a monument. Any other person with an interest in the monument may also be a party to the agreement (subsection (4)).
229. Management agreements may make any of the provisions listed in subsection (5). They include, in relation to management agreements entered into by the Welsh Ministers, granting scheduled monument consent for specified works of maintenance or preservation (and the agreement may specify conditions to which the consent is subject). Management agreements between the Welsh Ministers (in practice, Cadw acting on their behalf) and the occupiers of monuments are frequently created to allow for the management or conservation of the monument or to facilitate public access. They usually involve a payment to the occupiers for undertaking a programme of agreed works that are set out in the agreement, and are put in place for a fixed duration, normally for a period of up to 5 years.

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

230. Section 52 provides that a person may establish guardianship of monuments or land (section 45), grant easements or other rights over land in the vicinity of a monument (section 50) or make a management agreement (section 51) despite the person being a limited owner of the monument or land (subsection (1) to (3)).
231. Subsections (4) and (5) clarify what is meant by a limited owner, and subsections (6) to (10) set out the implications of the involvement of a limited owner on any successive owners or incumbrancer.

Section 53 – Transfer of monuments of special historic interest between local authorities and the Welsh Ministers

232. Section 53 provides that where the Welsh Ministers are the owners or guardians of a monument or associated land, they may transfer the ownership or guardianship to any local authority. Similarly, where a local authority is the owner or guardian, it may transfer the ownership or guardianship to the Welsh Ministers or another local authority.
233. Subsections (3) and (4) provides that a transfer of guardianship can only be done with the agreement of the persons who are immediately affected by the guardianship deed by reason of being bound by the deed and being in possession or occupation of the monument or land.

Section 54 – Disposal of land acquired under this Chapter

234. Section 54 gives the Welsh Ministers and local authorities powers to dispose of any land acquired by them under section 43, 44 or 53. Where a local authority wishes to do so it must consult with the Welsh Ministers (subsection (2)).
235. Subsection (3) provides that where the land disposed of is or includes a monument, the disposal must be made on terms the person making the disposal considers will ensure the preservation of the monument. But this requirement does not apply if the

person disposing of the land considers that this is not practicable, whether on cost grounds or otherwise (subsection (4)). This might occur if a monument has been naturally damaged in some way, such as through coastal erosion.

Section 55 – Public access to monuments under public control

236. Section 55 sets out a requirement on the Welsh Ministers and local authorities to provide public access to monuments in their ownership or guardianship subject to certain provisions. These include any regulations or byelaws made under section 56 or if the access arrangements are contrary to the provisions of a guardianship deed (subsection (2)).
237. The section also allows the Welsh Ministers or local authorities, where they are the owners or guardians of a monument, to:
- a. control the times of public access (subsection (4)),
 - b. exclude the public from all or part of the monument in the interests of safety, for maintenance or conservation works or for the holding of activities or events (subsection (5)),
 - c. to impose other restrictions or controls (subsection (6)),
 - d. to charge admission (subsection (7)), and
 - e. to refuse admission if it is felt that a person poses a threat to the monument or to the public enjoyment of the monument (subsection (8)).
238. In practice, the majority of the 130 monuments in the care and control of the Welsh Ministers are unstaffed and non-charging sites with advertised opening times. Access to the indoor parts of unstaffed sites tend to be more restricted for safety reasons and due to the threat of damage posed by unaccompanied access. As of April 2022, there is a charge for admission at less than 30 of Cadw's monuments.

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

239. Section 56 provides that the Welsh Ministers and local authorities may regulate access to monuments in their ownership or guardianship. In the case of the Welsh Ministers this can be done through regulations (subsection (1)) and in the case of local authorities through byelaws (subsection (3)).
240. Failure to comply with the regulations or byelaws made under this section constitutes an offence that, on summary conviction, is subject to a fine not exceeding level 2 on the standard scale (subsections (4) and (5)). (See paragraph 57 above for information on the standard scale.)

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

241. Section 57 gives the Welsh Ministers and local authorities powers to provide facilities, services and information relating to public access for any monument in their ownership or guardianship.
242. This applies to both the monument itself and on land associated with it (subsection (2)). This allows for the establishment of kiosks, cafes or stalls that might sell refreshments, guidebooks or other products, and for the erection of signage and interpretation panels in connection with providing public access and enhancing the public enjoyment of a monument. Such services might be provided on associated land prior to entering the monument, such as in an adjacent car park or building.

Chapter 7 – General

243. This Chapter deals with various miscellaneous matters relating to monuments of special historic interest. These include: works for the preservation of scheduled monuments in the case of emergency (section 61); expenditure on archaeological investigations (section 64); acquisition and preservation (section 62); the use of metal detectors (section 60); powers of entry onto land relating to monuments, or suspected monuments (sections 65 to 70); the treatment of finds (section 71); and the offence of damaging certain monuments of special historic interest (section 58).

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

244. Section 58 provides that it is an offence to destroy or damage a protected monument, as defined in subsection (2), without a lawful excuse (subsection (1)). Subsections (5) and (6) set out the potential consequences of an offence under this section.
245. Subsection (2) extends the definition of a “protected monument” to include not just a scheduled monument (section 3) but also a monument under the ownership or guardianship of the Welsh Ministers or a local authority. In many cases the area under such ownership or guardianship extends beyond the area that is included in the schedule.
246. Subsection (3) clarifies that this section applies to anything done by or under the authority of the owner other than the excepted works that are defined in subsection (4). In the case of a monument under guardianship the owner will be different to the guardian.

Section 59 – Compensation orders for damage to monuments under guardianship

247. Section 59 provides for compensation orders to be made in favour of the Welsh Ministers or a local authority where a person is convicted of an offence involving damage to a monument under the ownership or guardianship of the Welsh Ministers or a local authority.

Section 60 – Restrictions on use of metal detectors

248. This section deals with the offence of using a metal detector (any device designed or adapted for detecting or locating any metal or mineral in the ground) without consent on a protected place. Consent is defined for the purposes of this section as the written consent of the Welsh Ministers. A “protected place” is defined in subsection (1)(b) as

the site of any scheduled monument or the site of any monument under the ownership or guardianship of the Welsh Ministers or a local authority.

249. In recent decades, the unauthorised use of metal detectors on protected places, often under the cover of darkness when it is frequently referred to as “nighthawking”, has become increasingly common. The resulting removal of objects of archaeological or historic interest from their buried archaeological context leads to the loss of irreplaceable archaeological and historical evidence.
250. Four separate offences are therefore identified at subsections (2) to (5) which can be committed by a person using a metal detector in a protected place. A person found guilty on summary conviction or a conviction on indictment is liable to a fine, which depends on the nature of the offence. These fines are set out in subsections (8) and (9).
251. Subsections (6) and (7) set out the defences available to a person in the event of any proceedings for an offence under subsections (2) or (4). In any proceedings for an offence under subsection (2) it is a defence for a person to prove that the metal detector was used for a purpose other than detecting or locating objects of archaeological or historical interest. Further, in any proceedings for an offence under subsection (2) or (4) it is a defence for a person to prove that all reasonable steps had been taken to find out whether the place in which the metal detector was used was a protected place and they did not know, and had no reason to believe that the place was a protected place. Information on the location and extent of all scheduled monuments is now available on [Cof Cymru](#).

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

252. Section 61 permits the Welsh Ministers to enter the site of a scheduled monument and undertake any works requiring authorisation under section 11 that the Welsh Ministers consider to be urgently necessary for its preservation. They must, however, have given 7 clear days’ written notice of their intention to every owner and occupier of the monument (subsection (2)). Subsection (4) provides that works carried out under this section are to be treated as authorised for the purposes of Chapter 3.
253. If works are carried out under this section to repair damage to a scheduled monument, any compensation order made in respect of the damage in favour of someone other than the Welsh Ministers under Chapter 2 of Part 7 of the Sentencing Code is enforceable (to the extent it has not already been complied with) as if it had been made in favour of the Welsh Ministers. Such a situation might arise, for instance, if a court were to make a compensation order in favour of a monument’s owner after the conviction of an offender for causing damage by unauthorised off-road driving. If the Welsh Ministers considered that the damage made urgent works necessary, any outstanding compensation would be transferred to the Welsh Ministers to defray the cost of the emergency intervention.

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

254. Section 62 provides the Welsh Ministers with the powers to meet or contribute towards the costs associated with the acquisition of monuments by any person, and for the Welsh Ministers and local authorities, at the owners’ request, to assist with, or

contribute towards, the costs associated with preserving monuments of special historic interest. In practice, Cadw, acting on behalf of the Welsh Ministers, regularly offer grants towards the conservation and preservation of monuments of special historic interest. Cadw will also consider requests for a contribution towards the costs of relocating a monument of special historic interest to secure its long-term preservation.

Section 63 – Advice and supervision of work by Welsh Ministers

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

Section 64 – Expenditure by local authorities on archaeological investigation

257. Section 64 provides powers to local authorities, including a National Park authority, to carry out or assist in, or meet or contribute towards the costs of, any archaeological investigations of the land, in or in the vicinity of an authority's area. Subsection (2) provides a power for a local authority or National Park authority to publish the results of any such archaeological investigation that has been carried out, assisted or wholly or partly funded by it under section 64.
258. Subsection (3) clarifies that the power in subsection (1) may extend to include any land forming part of the sea bed within the seaward limits of the territorial sea adjacent to Wales.
259. Only a small number of local authorities in Wales currently employ specialist archaeologists, so this power is normally exercised through archaeological contractors or through one of the Welsh archaeological trusts. Details of any archaeological investigations undertaken under this section, and of the findings of those investigations, must be added to the historic environment record for that local authority area (section 194).

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

260. This section provides powers for a person authorised by the Welsh Ministers to enter any land for the inspection of a scheduled monument for the purposes set out in the section.
261. The section provides a wide range of purposes for an authorised person to inspect a scheduled monument including:

- a. to assess its condition and to determine whether it has been damaged, in breach of section 11(1) or is threatened by damage (subsection (1));
 - b. to inspect it in connection with an application for scheduled monument consent or a proposal by the Welsh Ministers to modify or revoke a scheduled monument consent (subsection (2));
 - c. to assess and monitor works being carried out in relation to a scheduled monument consent (subsection (3)); or
 - d. to inspect the land and observe any works undertaken in relation to a scheduled monument consent and to record any matters of archaeological or historical interest (subsection (4)).
262. The power under this section can also be exercised to erect and maintain a notice board relating to the ongoing protection of a scheduled monument (subsection (5)) on land on or near to the monument, although the power has to be exercised with the agreement of every owner and occupier of the land (subsection (6)).
263. An “authorised person” has to be authorised in writing by the Welsh Ministers (subsection (7)). In practice, such inspections are normally undertaken either by specialist Cadw staff or by specialist archaeologists working for other organisations, such as one of the regional Welsh archaeological trusts.
264. This power of entry is subject to supplementary provisions set out in section 69. This states that, except for section 65(5), the power of entry may be exercised at any reasonable time, but for the purposes of inspection at least 24 hours’ notice on intended entry needs to be given to every occupier of the monument.
265. Section 70 makes provision for compensation for damage caused by the exercise of powers of entry under this section.

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

266. Section 66 gives Welsh Ministers the power to authorise a person in writing to enter land for purposes relating to temporary stop notices and enforcement notices.
267. Subsection (1) relates to powers of entry to determine whether a temporary stop notice should be issued, to display or attach a temporary stop notice, or assess whether a notice has been complied with.
268. Subsection (2) relates to powers of entry to determine if an enforcement notice should be issued, to attach an enforcement notice or to assess whether an enforcement notice has been complied with.
269. These powers of entry are subject to the supplementary provisions in section 69 (which include that they may be exercised at any reasonable time). In the case of an enforcement notice and where the land is occupied, section 69(2) provides that, other than in cases where the purpose of the entry is to carry out any works on the land, notice must be given at least 24 hours before the day of the intended entry. No such

notice is required when powers of entry are exercised in relation to a temporary stop notice (section 69(3)(b)).

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

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

271. Section 67 provides the Welsh Ministers with the power to authorise a person to enter land that they know, or have reason to believe, contains a monument of special historic interest. The person must be authorised in writing (subsection (5)) and the power must be exercised at a reasonable time.
272. The purpose of entering the land must be for the inspection of the land with a view to recording any matters of archaeological or historical interest and for the identification of monuments of special historic interest including those that might be added to the schedule of monuments under section 3.
273. Subsection (2) provides that the authorised person may carry out excavations of the land for the purpose of archaeological investigations, subject to the usual agreements that would be required for excavation works (subsection (3)), unless the Welsh Ministers know or have reason to believe that a monument of special historic interest in, on or under the land is under threat of imminent damage or destruction (subsection (4)).
274. In practice, inspections under this section are undertaken either by specialist Cadw staff or by specialist archaeologists working for other organisations, such as one of the regional Welsh archaeological trusts. In recent decades, several thousand visits have been made to inspect land believed to contain monuments. In the vast majority of cases, the visits have been made with the prior agreement of the owner or the occupier of the land (or both). In many cases, the visits have resulted in amendments to the schedule of monuments (section 3) through the addition of monuments of national importance.
275. The power of entry conferred by this section is subject to supplementary provisions set out in section 69. They state that the power of entry may be at any reasonable time, but that at least 24 hours' notice of intended entry needs to be given to every occupier of the monument, including for works relating to excavation under subsection (2).

Section 68 – Power of entry for survey and valuation in connection with claim for compensation

276. Section 68 provides the power for a person authorised in writing by the Welsh Ministers, or an officer of the Valuation Office of Her Majesty's Revenue and Customs to enter any land to survey it, or estimate its value, in connection with a claim for compensation relating to damage to that land or any other land.

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

277. This section sets out supplementary provisions about the exercise of powers of entry relating to monuments of special historic interest. Such powers may be exercised at any reasonable time, but subsection (1) does not apply to section 65(5).
278. The following subsections of section 69 identify a number of qualifications to the powers of entry.
279. Subsection (2) provides that, in certain circumstances, a notice of the intended entry must be given to every occupier prior to entry on to the land. Where any land is occupied, a notice must be given to each occupier, and where the purpose of the entry is to carry out works on the land (other than excavations under section 67) such a notice must be given at least 14 days before the date of the intended entry. In any other case, including excavations under section 67 a notice must be given at least 24 hours before the date of intended entry.
280. Subsection (3) further provides that the requirements set out in subsection (2) do not apply in the following circumstances:
- a. entry under section 61 where 7 clear days' written notice to every owner and occupier of a monument is required where works must be carried out for the preservation of scheduled monuments in cases of urgency, and
 - b. in relation to temporary stop notices section 66 (1), there is no requirement for any notice to be provided to any owners or occupiers.
281. Subsections (4) to (9) of section 69 identify further requirements and powers relating to the powers of entry, such as subsection (5) which provides that a person authorised to enter land under section 69 must, if required to do so by or on behalf of an owner or occupier of the land, produce evidence of the person's authorisation and state the purpose of the entry before entering the land.
282. Subsections (11) and (12) of section 69 provide that a person who intentionally obstructs a person exercising a power of entry under Part 2 commits an offence which is liable on summary conviction to a fine not exceeding level 3 on the standard scale. (See paragraph 57 above for information on the standard scale.)

Section 70 – Compensation for damage caused by exercise of certain powers under this Part

283. This section provides for an application for compensation relating to the power to enter, or to do anything on any land, relating to the sections listed in subsection (1). A claim for compensation must be made in writing within 6 months beginning with the day on which the damage was caused or if the damage was caused over more than one day, within 6 months of the last day on which the damage was caused.
284. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 48 above).

Section 71 – Treatment and preservation of finds

285. This section provides for the treatment and preservation of any objects of archaeological or historic interest that are taken into temporary custody by a person in the exercise of a power of entry under this Part.
286. The circumstances under which such objects might be recovered are listed in subsection (1) and include excavations, observation of works on the land, or carrying out an archaeological examination of the land.
287. Subsection (2) provides for the temporary custody and removal of any objects of archaeological or historical interest discovered during the course of excavations, works or examinations, for the purpose of examining, testing, treating, recording or preserving them.
288. This power allows archaeologists and finds specialists, acting on behalf of an appropriate authority as defined in subsection (4), to properly conserve and analyse any objects recovered. Such objects are of historic value in their own right but can also provide valuable information about the nature and date of the monument of special historic interest from which they derive. They can assist the Welsh Ministers and local authorities in the exercise of their responsibilities and powers under this Part.
289. Subsection (3) provides that the appropriate authority may not, without the consent of every owner, retain the object for longer than is necessary.
290. Subsection (5) clarifies that this section does not affect any right of the Crown under the Treasure Act 1996 (c. 24). Under that Act there is an obligation to report objects which constitute treasure (as defined in the Act) to the local coroner within 14 days who will then hold an inquest in order to determine the object's status.

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

291. This section provides that the validity of a decision of the Welsh Ministers on an application for a scheduled monument consent, a decision on a review under section 9, or an order under section 20 modifying or revoking a scheduled monument consent may not be questioned in any legal proceedings except for a statutory review under section 73.

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

292. This section provides that a person who is aggrieved by a decision or order listed in section 73 may make an application to the High Court for a statutory review. An application for a statutory review must be made before the end of the 6 weeks beginning with the day after the day the decision or order to which the application related is made.
293. The question of whether or not a person is aggrieved will vary dependent on the individual case, but aggrieved persons may include the owner or occupier, the applicant or appellant, or any other party who has been involved or has an interest in the decision or order (for example, a person who made written representation on a review of a scheduling decision). The authority directly concerned with the decision or order may also make an application for statutory review.

Section 74 – Crown land

294. Section 74 provides that this Part only applies to Crown land to the extent specified. It provides that a monument situated in, on or under Crown land may be included in the schedule. And the restrictions imposed and powers conferred by this Part apply in relation to Crown land and anything done on Crown land (otherwise than by or on behalf of the Crown) but not so as to affect any interest of the Crown in the land. In practice, this means that prior to granting scheduled monument consent on Crown land the Welsh Ministers would consult with the appropriate Crown authority to check if its interest in the land would be affected.
295. Subsection (4) clarifies that the section does not permit a person to exercise a power of entry on Crown land without the consent of the appropriate Crown authority or permit the compulsory purchase of an interest in Crown land held otherwise than by or on behalf of the Crown without such consent.
296. “Crown land” and “appropriate Crown authority” are defined in section 207.

Section 75 – Interpretation of this Part

297. Section 75 clarifies the meaning of many of the terms used in this Part. In particular it provides a definition of “monument of special historic interest” in subsection (6).
298. “Monument of special historic interest” captures any scheduled monument and any other monument wholly or mainly in Wales that the Welsh Ministers consider to be of public interest by reason of its historic, architectural, traditional, artistic, or archaeological interest. This definition is only employed in Chapters 6 and 7 of this Part.
299. Subsection (7) provides that the definition in subsection (6)(b) does not include a monument situated in, on or under the bed of the sea below the low water mark. This limits the area in which the Welsh Ministers may recognise monuments of special historic interest to that covered by the Welsh counties and county boroughs including the adjacent seashore to the low water mark (as provided for in section 46 of the Local Government (Democracy) (Wales) Act 2013 (anaw 4)). Consequently, the Welsh Ministers may recognise wrecks, fish traps and other remains in the intertidal zone as monuments of special historic interest, but cannot do the same if similar remains are permanently submerged beyond the low water mark.

Part 3 – Buildings of special architectural or historic interest

300. Buildings are listed when they are considered to be of special architectural or historic interest. Listed buildings represent a unique source of information about the past and make a valuable contribution to the quality and character of landscapes and townscapes in Wales.
301. In March 2022, there were 30,060 listed buildings in Wales. These include not only commonly recognised buildings – houses, shops, civic and religious buildings, barns and other farm buildings, and industrial buildings – but also walls, milestones, bridges, memorials, telephone boxes and many other types of structure. Listed buildings range in age from the medieval period to the very recent past.

302. A complete, up-to-date list of listed buildings is published on [Cof Cymru](#).
303. Legislation relating to listed buildings is supported by planning policy and advice and best-practice guidance, notably [TAN 24](#). This suite of documents explains that, while the Welsh Ministers are responsible for listing buildings, in practice, the process is managed by Cadw acting on their behalf. Annex B of TAN 24 sets out the non-statutory selection criteria that are used for assessing a building's special architectural or historic interest.
304. Annex B of TAN 24 further sets out a non-statutory grading structure to reflect the relative importance of listed buildings assigning them to one of three grades:
- a. Grade I (one) – buildings of exceptional interest. These make up fewer than two per cent of the listed buildings in Wales.
 - b. Grade II* (two star) – particularly important buildings of more than special interest. These make up about 7 per cent of the total number of listed buildings in Wales.
 - c. Grade II (two) – buildings of special interest which justify every effort being made to preserve them. These make up approximately 91 per cent of the total number of listed buildings in Wales.
305. Listing guides planning authorities in the performance of their planning functions. It ensures that careful consideration is given to buildings of special interest before planning decisions are taken. Listing does not prohibit change, but helps to ensure that it is carefully managed in accordance with Cadw's [Conservation Principles](#) through the listed building consent regime. The objective is to preserve the special architectural or historic interest of the listed building by conserving the building for the benefit of present and future generations.

Chapter 1 – Listing buildings of special interest

306. This Chapter requires the Welsh Ministers to maintain and publish a list of buildings in Wales. They must include in the list every building in Wales they consider to be of special architectural or historic interest (section 76). For the purposes of the transition from the 1990 Listed Buildings Act to the Bill, the list of buildings currently maintained by the Welsh Ministers under section 1 of that Act will become the list maintained for the purposes of section 76 of the Bill.
307. Inclusion of a building on the list – “listing” (section 76(6)(a)) – renders it subject to the consent regime, enforcement procedures and other provisions contained in Chapters 2 to 6 of Part 3 of the Bill.
308. This Chapter sets out the requirements for consultation, providing an opportunity for owners and occupiers to articulate why the list should not be amended before the Welsh Ministers amend the list (sections 77 and 78). It also gives owners and occupiers the opportunity to request a review of the Welsh Ministers' decision to list a building (sections 81 and 82). It establishes that, during the consultation period, a building being considered for listing enjoys interim protection as if it were already a listed building (section 79). If the Welsh Ministers decide not to list a building, a person with

an interest in the building who suffers loss or damage as a direct result of interim protection may claim compensation from the Welsh Ministers (section 80).

309. The Chapter also provides for temporary listing by a planning authority (sections 83 to 85). Temporary listing allows an authority to confer the protection of listing on a building that it considers to be of special architectural or historic interest that is in danger of demolition or alteration that would affect its character. If the Welsh Ministers do not list the building at the end of a period of 6 months, a person with an interest in the building may be able to claim compensation from the planning authority for loss or damage suffered directly as a result of the temporary listing (section 86).
310. The Chapter concludes with provision for the Welsh Ministers to issue a certificate that they do not intend to list a building in Wales for a period of 5 years (section 87).

Section 76 – Duty to maintain and publish list of buildings

311. Section 76(1) places a duty on the Welsh Ministers to maintain a list of buildings in Wales and to publish the up-to-date list. The Welsh Ministers must include in the list every building in Wales which they consider to be of special architectural or historic interest. In practice, in determining whether a building is, in their opinion, of special architectural or historic interest the Welsh Ministers will have regard to the [published non-statutory criteria](#) for listing.
312. Section 76(2) gives the Welsh Ministers powers to amend the list by adding a building (referred to as “listing” a building), removing a building (referred to as “de-listing” a building) or amending an existing entry for a building.
313. In practice, buildings are added to the list either as a result of systematic survey of particular areas or building types, or following requests from local authorities, amenity societies, other bodies, or individuals relating to particular buildings (“spot-listing”).
314. The Welsh Ministers will only de-list a building if new evidence becomes available relating to its special architectural or historic interest. Neither the condition of a building through neglect nor the cost of repairing or maintaining it are grounds for de-listing.
315. The powers to amend an existing list entry may be used to correct factual mistakes, including address or location errors, as well as to enhance or revise a listing in light of new evidence relating to a building’s special architectural or historic interest.
316. Section 76(3) provides that the Welsh Ministers may consider a building in its wider context when weighing up whether it should be listed. If, for instance, a candidate building is part of a group – perhaps a well-preserved terrace of houses, an industrial or agricultural complex or a planned community – its contribution to the architectural or historic interest of that group may be taken into account in addition to its own merits.
317. The definition of “building” in section 210 (interpretation) encompasses any building or structure, or any part of a building or structure, but does not include (except in section 148) any plant or machinery forming part of a building or structure. This

prevents large and complex pieces of plant and machinery, for example, steam engines, rolling mills or other industrial equipment, from being listed in their own right, either as freestanding constructions or independently of buildings that house them.

318. However, the presence of plant and machinery in a building may contribute to its special interest and be an important factor in a decision to list it. Once the building is listed, fixed plant and machinery contained within it will be included in the listing.
319. Section 76(5)(a) clarifies that a “listed building” means a building which is included in the list and includes any structure or artificial object fixed to the building; this captures ancillary structures attached to a building and internal and external fixtures. On the other hand, movable furnishings, even of historic importance, are not part of the listing. For instance, subsection (5)(a) would apply to a fixed medieval masonry altar in a listed church, but not to a post-Reformation altar table (and what constitutes a fixture has been the subject of case law).
320. In this context, “artificial” is used as an idiomatic term for objects or features that have been made or crafted by humans, in contrast to natural objects or features. (Its use in this context is of no direct relevance to any question of whether “artificial” materials (in the sense of being imitation or synthetic) may be used in the conservation or repair of listed buildings).
321. Subsection (5)(b) provides that the listing of a building extends to include separate ancillary structures or artificial objects if certain conditions are met.
322. The first condition is that the structure or object has to have formed part of the land since before 1 July 1948, the date on which the [Town and Country Planning Act 1947 \(c. 51\)](#), the first legislation that made provision for statutory listing of buildings of architectural or historic interest, came into force.
323. The second condition is that the structure or object must have been within the curtilage of the building on the date that the building was first listed or 1 January 1969, whichever was later. The provisions of the [Town and Country Planning Act 1968 \(c. 72\)](#) that introduced the extension of listing to structures and objects within a building’s curtilage came into force on 1 January 1969. The date has been included to give greater clarity to the definition of a listed building in line with recommendation 13.10 of the Law Commission’s report, [Planning Law in Wales](#).
324. The section does not define “curtilage”. Case-law provides that it is the land closely associated with a building and its extent will be determined on a case-by-case basis. Factors to be considered in determining what is encompassed within a building’s curtilage may include:
 - a. the physical “layout” of the building, associated structures and the land;
 - b. their ownership, past and present; and
 - c. their use and function, past and present.

325. Examples of curtilage structures and objects to which listing may be extended under subsection (5)(b) include outbuildings, boundary walls, and garden features and ornaments.

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

326. When the Welsh Ministers list or de-list a building, section 77(1) requires them to serve notice on every owner and occupier and every relevant authority in whose area the building is located.
327. Subsection (6) defines a “relevant authority” for the purposes of this section as:
- a. a county council or county borough council,
 - b. a National Park authority, or
 - c. a joint planning board.
328. A joint planning board may be constituted under section 2(1B) and (1C) of the [Town and Country Planning Act 1990 \(c.8\)](#) (“the 1990 Planning Act”) as the local planning authority for two or more areas, each of which is the whole or part of a Welsh county or county borough. At the time of writing, there is none in Wales.
329. When a property is listed, the notice served by the Welsh Ministers must specify the date of its addition to the list and must include a copy of the list entry with the notice (subsection (2)).
330. Under section 77(3), a copy of a list entry served under this section is a local land charge. A [local land charge](#) will alert a purchaser to the restrictions imposed on the use of the land by the listing of the building.
331. Subsections (4) and (5) require relevant authorities to keep available for public inspection copies of the list entries they are served with under this section and any list entries that remain up to date served under earlier Acts (subsection (4)(b)). In practice, authorities normally provide routine access to all up-to-date list entries via [Cof Cymru](#), for example, by means of free internet access in public libraries and similar venues.

Section 78 – Consultation before listing or de-listing building

332. Section 78 puts in place a formal structure for consultation on the Welsh Ministers’ proposals to list or de-list a building. It makes provision for inviting the persons identified in subsection (2) to make written representations on the proposed amendment to the list to the Welsh Ministers.
333. The service of a notice of a proposal to amend the list by adding a building will trigger interim protection under section 79. In that case, subsection (3)(b) requires the notice to explain the effect of interim protection and specify the date upon which interim protection takes effect.

Section 79 – Interim protection pending decision whether to list building
Schedule 7 – End of interim protection or temporary listing for buildings

334. Any building being considered for listing by the Welsh Ministers (unless already a scheduled monument (section 79(7))) will enjoy interim protection under section 79 from the beginning of the day specified in the notice served under section 78(1).
335. Subsection (2) provides that this Bill (except certain specified sections) and the [1990 Planning Act](#) apply to any building under interim protection as if it were a listed building. It will, therefore, be an offence to undertake works that alter its character without listed building consent and the full range of enforcement powers in Chapter 4 (except section 118) will be available to a planning authority or the Welsh Ministers in the event of unauthorised works. Interim protection will afford protection to a building during the consultation period, for example, from an owner who could otherwise have an incentive to deliberately damage or destroy the historic asset during the consultation period in an effort to undermine the protection that listing would otherwise have provided by making its listing pointless.
336. Subsection (4) requires the Welsh Ministers to publish a list of buildings subject to interim protection. The list is published on the [Cadw website](#). Buildings under interim protection also appear as a distinct category of assets on [Cof Cymru](#).
337. Interim protection ends when the Welsh Ministers decide whether or not to list a building and serve notice on every owner and occupier and the requisite authorities under section 77(1) or section 79(5)(b).
338. Schedule 7 provides for the effect of the end of interim protection under section 79(5)(b). It also makes provision about the effect of temporary listing coming to an end without the building being listed under section 85(4).
339. Paragraph 2 of Schedule 7 establishes that, even after the end of interim protection or temporary listing, a person will remain liable to be prosecuted and punished for an offence committed by doing any of the following while the building was protected:
- a. carrying out unauthorised works or failing to comply with conditions of a listed building consent (section 117);
 - b. intentionally damaging a listed building (section 118);
 - c. breaching a temporary stop notice (section 121); or
 - d. failing to comply with an enforcement notice (section 133).
340. On the termination of interim protection or temporary listing, paragraphs 3 to 6 make provision for-
- a. the cessation of the effect of listed building consents, temporary stop notices, and enforcement notices; and

- b. the lapse of any proceedings associated with any of the above or an application for an injunction related to the building.

341. However, paragraph 4(3) allows the continued application of section 132(1) to (6) to permit the recovery of costs reasonably incurred by a planning authority when taking steps specified in an enforcement notice on a building then under interim protection or temporary listing.

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

342. Under this section, if the Welsh Ministers decide not to list a building and serve notice under section 79(5)(b) ending interim protection, any person with an interest in the building when interim protection took effect is entitled, on making a claim for compensation to the Welsh Ministers, to be paid compensation by them for losses or damage directly attributable to the interim protection.

343. Subsection (5) establishes that, in those cases where interim protection follows on from temporary listing, the compensation claims made to the Welsh Ministers may include losses or damage attributable to or suffered as a result of the temporary listing.

344. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 48 above).

Section 81 – Review of decision to list building

345. Where the Welsh Ministers list a building, section 81 requires them to give any owner or occupier of the building an opportunity to request a review of their listing decision.

346. Subsection (2)(a) provides that the ground for review is that the building is not of special architectural or historic interest. Subsection (6) provides that the Welsh Ministers may make regulations to specify other grounds in the future.

347. Under subsection (3), the Welsh Ministers must appoint a person to carry out the review and make a decision on it. Ordinarily, this will be an inspector of [Planning and Environment Decisions Wales](#). However, subsection (4) provides that the Welsh Ministers may make regulations to specify descriptions of cases that they will review and decide themselves, instead of appointing a person to do so.

Section 82 – Supplementary provision about reviews

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

348. Section 82 makes administrative and procedural provision for the reviews provided for in section 81. It is supplemented by Schedule 2, which sets out the functions of persons appointed by the Welsh Ministers to carry out reviews. The Schedule also applies to reviews of decisions to add monuments to the schedule, in relation to which it has already been discussed (see paragraphs 53 to 55 above).

Section 83 – Service of temporary listing notice

349. Section 83 provides for the service of a temporary listing notice by a planning authority. The notice was previously termed a “building preservation notice” in section 3A of the [1990 Listed Buildings Act](#).

350. Once the requisite notice has been served on every owner and occupier of a building, its effect is that the same restrictions and requirements apply to a building under temporary listing as to a building under interim protection (subsection (4)) – see paragraph 335 above.
351. Subsections (2) and (3) detail the required recipients and contents of a temporary listing notice. Subsection (3)(a)(ii) establishes that the temporary listing of a building must be accompanied by a request to the Welsh Ministers to consider the building for listing.
352. The section allows a planning authority to confer temporary listed status on an unlisted building that it considers to be:
- a. of special architectural or historic interest, and
 - b. in danger of demolition or alteration that would affect that interest.

This section and section 84 provide planning authorities with powers to take prompt action, informed by their local knowledge, to protect historic assets that they consider to be of special architectural or historic interest. It allows works to the building to be regulated while it is under consideration for listing by Cadw. However, subsection (6) excludes scheduled monuments and exempt religious buildings (as defined in section 156(1)) from the scope of temporary listing.

Section 84 – Temporary listing in urgent cases

353. Section 84 provides that where a planning authority considers it urgent to protect a building through temporary listing, it may give notice of the temporary listing by attaching the notice to, or near to, the building instead of serving it on each owner and occupier.

Section 85 – End of temporary listing

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

354. Section 85(1)–(3) identifies three ways in which temporary listing may come to an end. It may:
- a. expire at the end of six months from the day it took effect unless ended earlier;
 - b. be superseded and replaced by interim protection if the Welsh Ministers serve notice under section 78(1) of a proposal to list the building; or
 - c. if the Welsh Ministers give notice to the planning authority that they do not intend to consult on a proposal to list the building, end on the day specified in the notice.
355. Schedule 7, which is introduced by subsection (4), makes provision about the effect of interim protection or temporary listing coming to an end without the building being listed; it has already been discussed in paragraphs 338–41 above.

356. If the Welsh Ministers have notified a planning authority that they do not intend to consult on a proposal to list a building that is already temporarily listed, subsection (5)(b) prohibits the authority from serving another temporary listing notice in respect of the same building within the next year.

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

357. If a temporary listing comes to an end after six months or because the Welsh Ministers decide not to consult on a proposal to list the building, any person who had an interest in the building when the temporary listing took effect is entitled, on making a claim for compensation to the planning authority in whose area the building is situated, to be paid compensation by it for losses or damage directly attributable to the temporary listing (section 86(1) – (3)).
358. If, however, interim protection followed on from temporary listing and the Welsh Ministers eventually decided not to list the building, compensation would be available under section 80 above instead.
359. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 48 above).

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

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

Chapter 2 – Control of works affecting listed buildings

361. Chapter 2 provides that, with certain specified exceptions, works for the alteration or extension of a listed building “that would affect its character as a building of special architectural or historic interest” or for the demolition of a listed building must be authorised by the grant of listed building consent. Consent may be granted by the planning authority in whose area the building is situated or by the Welsh Ministers (section 89).
362. The Chapter makes provision for an application procedure for listed building consent routinely administered by planning authorities and the grant of consent subject to conditions (sections 90 to 99). The Chapter also puts in place mechanisms for appeals to the Welsh Ministers against planning authorities’ decisions (or, in some cases, their failure to make decisions) on matters including applications for listed building consent, applications for the variation or removal of conditions imposed on consent, and applications for the approval of details of works (sections 100 to 104).
363. The Chapter also provides that a planning authority or the Welsh Ministers may modify or revoke a listed building consent by order, and also provides for access to

compensation for a person with an interest in a listed building who suffers loss or damage directly attributable to the modification or revocation of consent (sections 107, 108 and Schedule 8). And if the owner of a listed building claims that reasonably beneficial use cannot be made of a listed building and its associated land as a consequence of the refusal of listed building consent, the grant of consent subject to conditions or the modification or revocation of consent by order, a purchase notice may be served on the planning authority. The effect of the notice is that if particular conditions are met, the planning authority is required to purchase the land from the owner (sections 109 to 112 and Schedule 9).

364. Finally, the Chapter gives the Welsh Ministers powers to make regulations about applications for listed building consent made by planning authorities and applications made by or on behalf of the Crown (section 105). In cases where works to a listed building on Crown land are considered to be a matter of national importance and their execution a matter of urgency, an appropriate Crown authority may make a listed building consent application to the Welsh Ministers rather than to a planning authority (section 106).
365. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the management of listed buildings. The current guidance, [*Managing Change to Listed Buildings in Wales*](#) (2017), sets out the general principles to follow when managing and making changes to listed buildings. It explains how to apply for listed building consent, including the roles and responsibilities of owners, planning authorities and Cadw.

Section 88 – Requirement for works to be authorised

366. Section 88 provides that a person must not carry out certain works, or cause certain works to be carried out, unless they have been authorised by the grant of listed building consent under section 89.
367. Under subsection (2), the works requiring authorisation are:
- a. works for the alteration or extension of a listed building in any way that would affect its character as a building of special architectural or historic interest;
 - b. works for the demolition of a listed building.
368. Therefore, works for appropriate routine maintenance and like-for-like repair that do not affect the character of a listed building do not require authorisation by listed building consent.
369. Subsection (3) excludes four categories of works from the requirement for authorisation.
- a. Works in relation to a listed building that is also a scheduled monument. There are currently over 500 listed buildings in Wales that are also scheduled monuments. In such cases, the designation as a scheduled monument takes precedence and, in practice, scheduled monument consent under section 13 will be required for almost any works.

- b. Works in relation to an exempt religious building as defined in section 156.
- c. Works for the demolition of all or part of a building closed for regular public worship in accordance with Part 6 of the [Mission and Pastoral Measure 2011 \(No. 3\)](#). The 2011 Measure only applies to the Church of England so this provision of the Bill will only affect the small number of religious buildings in Wales near the border with England that remain under the jurisdiction of that body.
- d. Urgently necessary works carried out by or on behalf of the Crown in the interests of safety or health or for the preservation of the building under the circumstances set out under section 117(4)(a)-(d)

Section 89 – Authorisation of works by listed building consent

370. Section 89(1) provides that works for the alteration, extension or demolition of a listed building are authorised if written consent is given by the planning authority in whose area the building is situated or the Welsh Ministers and the works are carried out in accordance with the terms of the consent and any conditions attached to it. Sections 97 and 98 make further provision about conditions attached to listed building consents.
371. The expectation is that listed building consent will be obtained before any works begin. However, under subsection (2) a planning authority or the Welsh Ministers may grant listed building consent for unauthorised works already carried out. In practice, such works would normally be known to the planning authority and will have been limited to the minimum works urgently necessary, for example, in the interests of the preservation of the building or on grounds of health and safety. Whatever the circumstances, the applicant will need to justify the works undertaken through an application for listed building consent. In such cases, the works are only authorised from the grant of the consent. Any liability for an offence arising from the unauthorised works under section 117 remains and could be the basis for subsequent proceedings.

Section 90 – Applying for listed building consent

372. Section 90 provides for the application procedure for listed building consent. Applications for listed building consent are ordinarily made to the planning authority in whose area the listed building is situated. However, certain applications, specified in section 90(1), are made to the Welsh Ministers.
373. Subsection (2) sets out what must be included in an application for listed building consent and subsection (3) allows the Welsh Ministers to make regulations about an application's form and content and how it must be made. In practice, most listed building consent applications for works in Wales are submitted on the standard 1APP form provided on the Welsh Government's central online platform – [Planning Applications Wales](#). However, an applicant can also submit an application form, with supporting documentation, by post.
374. Subsection (4) provides that the Welsh Ministers must make regulations to require an applicant to include with the application a statement about the impact of the proposed works on the character of the listed building and, depending upon the nature of the application, either or both of the design principles applied to the works and the

handling of access issues. Such a statement, known as a heritage impact statement, is provided for by regulation 6 of the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (SI 2012/793 (W. 108)) (“SI 2012/793”).

375. Subsection (6) prevents a planning authority from considering a listed building consent application that does not comply with all the requirements of this section.

Section 91 – Notice of application to owners of building

376. Section 91 provides that the Welsh Ministers may make regulations to require an applicant for listed building consent to give notice of the application to any owners of the building. The regulations may also require the applicant to include with the application a statement confirming that the applicant has complied with the requirements.

377. Subsection (2) permits the Welsh Ministers to make provision in the regulations for the form and content of a notice or statement and its publication. Such a statement, commonly known as a “certificate of ownership”, is currently required by regulation 7 of SI 2012/793 and is incorporated in the 1APP form on [Planning Applications Wales](#) and in other listed building consent application forms.

378. Subsection (3) specifies that if the requirements prescribed by the regulations have not been fulfilled, the application must not be considered.

379. Subsection (4) provides that the Welsh Ministers may, by regulations, provide that if the applicant gives notice of the proposed works to owners of the building, the application must not be determined during a period specified in the regulations. During that time, the building owners may make representations about the application and the planning authority or the Welsh Ministers must take account of those representations when determining the application.

380. Subsection (5) makes it an offence for a person to knowingly or recklessly issue an ownership certificate that is false or misleading in a material respect.

381. Subsection (6) provides that a person found guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale. (See paragraph 57 above for information on the standard scale.)

Section 92 – Procedure for dealing with application

382. Section 92 makes provision for dealing with listed building consent applications.

383. Subsection (1) provides that a listed building consent application made to a planning authority must be dealt with by that authority except in the following circumstances:

- a. If the planning authority is required not to consider the application under section 90(6) or 91(3). As noted above, these sections prevent the planning authority from considering an application unless the applicant has provided all the prescribed information and supporting material. Planning authorities operate a validation procedure to determine if planning applications are complete and

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

- b. If the planning authority refuses to consider an application in accordance with section 93 (which relates to similar applications, discussed below).
 - c. If the planning authority is required to refer the application to the Welsh Ministers under section 94 (discussed below).
384. The section's remaining provisions give the Welsh Ministers regulation-making powers and direction-making powers to put in place various elements of the listed building consent procedure.
385. Subsections (3) and (4) provide that the Welsh Ministers may direct a planning authority to notify persons specified in the direction of a listed building consent application made to the authority and inform those persons of the decision taken by the authority. The direction may relate to a particular case, or cases of a description specified in the direction.
386. The Welsh Ministers may use these powers to direct planning authorities to notify the national amenity societies – Historic Buildings and Places (formerly the Ancient Monuments Society), the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society and The Twentieth-Century Society – and the Royal Commission on the Ancient and Historical Monuments of Wales (“the Royal Commission”) if an application involves works for the demolition of a listed building or alterations that would entail the demolition of any part of a listed building. This affords these groups, with their specialist knowledge of listed buildings and the historic environment, the opportunity to offer the planning authority informed comment on proposals that would entail the destruction of all, or part, of a building listed for its architectural or historic interest.

Section 93 – Power to refuse to consider similar applications

387. Section 93 provides that a planning authority may refuse to consider an application for listed building consent if a similar application has been considered and dismissed by the Welsh Ministers or the planning authority during the previous two years, and there has been no significant change in any relevant considerations since the application was dismissed.

Section 94 – Reference of application to Welsh Ministers

388. Section 94(1) and (2) gives the Welsh Ministers power to direct a planning authority to refer an application for listed building consent to them for determination. A direction may relate to a particular application or applications in relation to a category of buildings specified in the direction.
389. The Welsh Ministers may use this power of direction to “call in” a listed building consent application for their own determination. In practice, the Welsh Ministers rarely call in a listed building consent application but may do so if it raises issues of more than local importance and is of exceptional significance or controversial. On the rare occasions when this power is used, it is usually in conjunction with section 95

where the planning authority has indicated that it is minded to grant consent and in doing so there is a suggestion that the authority has not had proper regard to national policy for the protection of the historic environment, or has disregarded it altogether.

390. Subsection (4) requires a planning authority to refer an application for listed building consent to the Welsh Ministers for determination, without being directed to do so, if the application relates to an application under section 1 or 3 of the Transport and Works Act 1992 (c. 42).
391. Applications referred to the Welsh Ministers under this section are to be dealt with in accordance with the procedures set out in Chapter 2 of Part 5 of the Bill.
392. In practice, most referred applications will be determined by a person appointed by the Welsh Ministers, usually from [Planning and Environment Decisions Wales](#), but in some cases the Welsh Ministers themselves will decide on applications of particular sensitivity or significance.

Section 95 – Notification to Welsh Ministers before granting consent

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

Section 96 – Grant or refusal of consent

397. Section 96 provides that a planning authority or the Welsh Ministers may grant or refuse listed building consent. In determining an application, they must have special regard to the desirability of preserving the listed building, its setting or any features of special architectural or historical interest (subsections (1) and (2)).
398. Such matters are of primary material consideration for a consenting authority when considering an application that will affect a listed building or its setting. In determining an application, the supporting planning advice and guidance (for example [TAN 24](#) and [Managing Change to Listed Buildings in Wales](#)), explains that the aim should be to find the best way to protect and enhance the special qualities of a listed building and retain it in use.
399. The planning advice and guidance (for example [TAN 24](#), paragraph 1.25) clarifies that the setting of a listed building includes the surroundings in which it is understood, experienced, and appreciated embracing present and past relationships to the surrounding landscape.
400. Subsection (3) provides that, subject to its terms, a listed building consent will have effect for the benefit of the building and the land on which it is situated, and of all persons for the time being interested in the building and land. This means that should the ownership or occupancy of a listed building change during the course of consented works, the effect of the listed building consent will be unaltered and any consented works may continue uninterrupted.

Section 97 – Power to grant consent subject to conditions

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

Section 98 – Condition about period within which works must start

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

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

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

Section 99 – Application for variation or removal of conditions

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

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

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

411. Section 100 provides that where an application has been made to a planning authority for listed building consent (or certain other types of applications relating to conditions of consent), the applicant may appeal to the Welsh Ministers if the planning authority refuses the application (or imposes conditions, or new conditions, on a consent).
412. Subsection (3) provides that the applicant may also appeal to the Welsh Ministers if the planning authority has failed to give notice of its decision to the applicant within the “determination period” (or has failed to give the applicant notice, in that period, that the authority is refusing to consider the application or is referring the application to the Welsh Ministers for determination).
413. Subsection (4) provides that the “determination period” mentioned in subsection (3) means the period specified in regulations made by the Welsh Ministers or a longer period agreed by the applicant and planning authority. Regulation 3(5) of SI 2012/793 currently specifies an 8-week period.

Section 101 – Procedure for making appeal

414. Section 101 puts in place the procedures for making an appeal under section 100. Subsection (1) requires a notice of appeal to be served on the Welsh Ministers and subsection (3) provides that the Welsh Ministers may make regulations about the form of the notice, information that must be included with a notice and how a notice of appeal must be served and the time limit for serving it.
415. The required notice of appeal is available on the [Welsh Government website](#). It incorporates a statement, known as a “certificate of ownership”, that the person making the appeal has complied with the requirements imposed by subsection (4) to give notice of the appeal to the owners of the building.
416. Subsection (5) provides that regulations making provision about the time limit for serving a notice of appeal must allow a period of at least 28 days for the appellant to serve notice of the appeal, starting from the day of the receipt of a notice of decision or the end of the determination period (as the case may be).
417. At present, SI 2012/793 provides, at regulation 12, that an applicant is allowed six months to make an appeal under section 100 against a decision of a planning authority. If the applicant is making an appeal because the planning authority has failed to give notice at the end of the 8-week determination period, there is no deadline for an appeal.

Section 102 – Restriction on varying application after service of notice of appeal

418. Section 102(1) provides that once notice of an appeal has been served, the application to which the appeal relates may not be varied except in circumstances set out in regulations made by the Welsh Ministers.
419. Where an application is varied in circumstances prescribed in the Welsh Ministers' regulations (albeit the circumstances are likely to be limited), the Welsh Ministers may direct that further consultation must be undertaken on an application. With listed building consent structures already in place, the planning authority will generally be best placed to carry out any consultation needed on a modified application.

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

420. Section 103 sets out how an appeal must be dealt with if it relates to a planning authority's failure to give notice by the end of the determination period as set out in section 100(3).
421. Subsection (2) prohibits the Welsh Ministers from determining the appeal before the end of a period which they specify in regulations. Subsection (3) allows the planning authority to give notice of its decision on the application at any time during the same period. At the time of writing, regulation 12A in SI 2012/793 sets that period at four weeks.

Section 104 – Determination of appeal

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

Section 105 – Applications by planning authorities and the Crown

424. Section 105 provides that the Welsh Ministers may make regulations to provide that any provisions of the Bill, or of regulations made under the Bill, do not apply, or apply with modifications, to particular applications made by a planning authority or by or on behalf of the Crown. Subsection (2) provides that the applications in question are ones for listed building consent, the variation or removal of consent conditions, or approval of details of works under a consent condition.

425. Subsection (3) provides that the regulations may, in particular, require applications to be made to the Welsh Ministers.
426. Regulation 9 in SI 2012/793 currently prevents a planning authority from granting consent on its own application unless it has given notice of the application to the Welsh Ministers. In practice, this means that unless the Welsh Ministers have directed otherwise under section 95, a planning authority must advise the Welsh Ministers if it is minded to approve a relevant application, which gives the Welsh Ministers an opportunity to call the application in.
427. Regulation 9 also currently provides that a planning authority application for listed building consent for the demolition of a listed building must be submitted to and be determined by the Welsh Ministers.

Section 106 – Applications relating to urgent works on Crown land

428. Section 106 provides that an appropriate Crown authority may apply directly to the Welsh Ministers for listed building consent (instead of to a planning authority) if:
- a. the listed building is on Crown land, and
 - b. the appropriate Crown authority certifies that the works for which consent are sought are of national importance and must be carried out as a matter of urgency.
429. “Crown land” and “an appropriate Crown authority” are defined in section 207.
430. The Crown Estate Commissioners might, for instance, make such an application relating to a listed building on the extensive Crown Estate holdings in Wales. The Crown Estate owns 65% of the foreshore and riverbed in Wales, including the port of Milford Haven and a number of other ports and marinas. Similarly, the Ministry of Defence could apply for listed building consent for a building on one of the several military training areas in Wales.
431. In the latter instance, subsection (8) may be of particular relevance. It provides that the requirement in subsection (4) for the Welsh Ministers to make available for public inspection any statements and information relating to the application does not apply if the statement or information is subject to a direction under section 178. The Welsh Ministers would make a direction under that section where they are satisfied that the statement or information contains information relating to national security and that its disclosure would be contrary to the national interest.
432. Subsection (7) signposts the sections that provide for the procedure by which an application made under this section is to be considered. Section 174 sets out that the Welsh Ministers may choose to conduct proceedings in one or more of the following ways:
- a. at a local inquiry
 - b. at a hearing

- c. by means of written representations.

Section 107 – Modification and revocation of consent

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

433. Section 107(1) provides that where listed building consent has been granted on application or appeal under this Part of the Bill, the planning authority in whose area the building is situated or the Welsh Ministers may, by order, modify or revoke the consent to any extent. While such an order may be made at any time before the conclusion of the works, it does not affect the consent for any works already carried out (subsection (2)).
434. Schedule 8 sets out procedures that must be followed before an order made by a planning authority (Part 1), or an order made by the Welsh Ministers (Part 2), takes effect.
435. Paragraph 1 of Schedule 8 provides for two mechanisms for an order made by a planning authority to take effect. The first requires the order to be confirmed by the Welsh Ministers under paragraph 2 before it takes effect. The second, under paragraph 3, does not require the order to be confirmed by the Welsh Ministers if certain conditions are met.
436. Paragraph 2(1) requires a planning authority that has submitted an order under section 107 to the Welsh Ministers for confirmation to give notice of the submission to every owner and occupier of the listed building and any other person whom it thinks will be affected by the order. Included in the latter category may, for example, be conservation architects and craftspeople, other contractors and suppliers and funding bodies who have been or may be involved in the consented works.
437. The recipients of the notice must be given at least 28 days to make a written request to the Welsh Ministers for a hearing before an appointed person, who will usually be an inspector from [Planning and Environment Decisions Wales](#) (paragraph 2(2) and (4)).
438. Paragraph 3 sets out the procedure for an order made by a planning authority to take effect without being confirmed by the Welsh Ministers.
439. Under paragraph 3(1), this procedure applies only if the following have notified the authority that they have no objection to the order:
- a. every owner and occupier of the listed building, and
 - b. every other person the planning authority thinks will be affected by the order (see paragraph 436 above).
440. Where the paragraph 3 procedure applies, sub-paragraph (2) requires the planning authority to publish notice of the order in accordance with regulations made by the Welsh Ministers, to serve a copy of the notice on the interested parties identified in paragraph 3(1)(b) and to send a copy of the notice to the Welsh Ministers.

441. The notice must give persons affected by the order at least 28 days to notify the Welsh Ministers that they want the order to be submitted to the Welsh Ministers for confirmation under the procedure in paragraph 2 (paragraph 3(3)(a) and (5)). This will permit a person who only became aware of the order when the notice was published by the authority to call for its confirmation by the Welsh Ministers. Similarly, following receipt of the notice, an individual who had earlier expressed no objection to the planning authority's order may decide instead to call for the order to be submitted for confirmation by the Welsh Ministers. If any person calls for the order to be submitted for confirmation, it cannot take effect unless confirmed in accordance with paragraph 2.
442. Paragraph 3(4) provides that if no affected person notifies the Welsh Ministers during the allotted period of at least 28 days that they want the order to be submitted to the Welsh Ministers for confirmation, and the Welsh Ministers do not, by the end of a period specified in the notice, direct that the order must be submitted to them for confirmation, the order takes effect at the end of that period. The Welsh Ministers must be given a period of at least 14 days to decide whether to direct that the order must be submitted to them for confirmation, and the period must start after the end of the allotted period of at least 28 days given to affected persons to notify the Welsh Ministers that they wish the order to be submitted for confirmation.
443. Paragraph 4 establishes the procedure to be followed by the Welsh Ministers when making an order to modify or revoke a listed building consent. Before making an order, the Welsh Ministers must consult the planning authority in whose area the listed building is situated (paragraph 4(1)).
444. The Welsh Ministers must also serve notice of the proposed order on every owner and occupier and any other person whom they believe will be affected. The notice must allow at least 28 days for a person on whom the notice is served to request a hearing before a person appointed by the Welsh Ministers, who will usually be an inspector from [Planning and Environment Decisions Wales](#) (paragraph 4(2) and (5)).

Section 108 – Compensation where consent is modified or revoked

445. Section 108 provides that any person interested in a listed building in relation to which a consent is being modified or revoked is, on making a claim, entitled to compensation for expenditure incurred in carrying out works which became abortive or for any other loss or damage caused.
446. Subsection (1) makes clear that the section only makes compensation payable where an order under section 107 is made by a planning authority and confirmed by the Welsh Ministers or is made by the Welsh Ministers. If a planning authority order takes effect under the procedure in paragraph of 3 of Schedule 2 (i.e. without the confirmation of the Welsh Ministers) no compensation is available. The rationale is that in such cases, affected persons will have chosen not to make objections to the order.
447. Irrespective of whether the order is made by the planning authority or the Welsh Ministers, the written compensation claim must be made to the planning authority in whose area the building is situated. A claim must be made within 6 months from the day on which the modification or revocation order took effect (subsections (2) and (5)).

448. For the purposes of this section, expenditure incurred in carrying out works includes the preparation of plans and other preparatory matters; these might include, but are not limited to, site surveys and investigations, the preparation of a heritage impact statement and the production of detailed specifications of methodologies and materials (subsections (2) and (3)).
449. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 48 above).

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

450. Under section 109, if a planning authority or the Welsh Ministers:

- a. refuse consent in relation to a listed building,
- b. grant consent subject to conditions, or
- c. modify or revoke consent under section 107,

the listed building's owner may, if certain conditions are met, serve a purchase notice on the planning authority for the area in which the building is situated. A purchase notice is a notice requiring the planning authority to purchase the owner's interest in the building and any associated land (as defined in subsection (8)).

451. The conditions that must be met before a purchase notice may be served are set out in subsections (4) and (5).

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

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

453. Subsection (5) provides that the use of a listed building and its associated land must be substantially inseparable and that they ought to be treated as a single holding.

Section 110 – Purchase notice in respect of Crown land

454. Section 110 provides for the application of purchase notices to Crown land.

455. Subsection (1) constrains the ability of the owner of a listed building and associated land that constitute a private interest in Crown land (i.e. an interest which is neither a Crown interest nor a Duchy interest (section 207)) to serve a purchase notice on a planning authority. An owner may only serve a purchase notice if:
- a. the interest has been offered to the appropriate Crown authority (as defined in section 207) at a price equal to the compensation that would be payable for the interest if it were acquired after the service of a purchase notice (and if this sum is disputed, it is to be determined by the [Upper Tribunal](#)); and
 - b. the appropriate Crown authority has refused the offer.
456. While subsection (1) is about purchase notices relating to private interests in Crown land, subsections (2) and (3) place constraints on the ability to serve a purchase notice in respect of a Crown interest or a Duchy interest. Only the appropriate Crown authority may serve a purchase notice in respect of such an interest in land referred to in subsection (2)(a) to (d). Subsection (3) provides that no one may serve a purchase notice in relation to a Crown interest or a Duchy interest in land that is not referred to in subsection (2)(a) to (d).

Section 111 – Further provision about service of purchase notice

457. Section 111(1) and (2) requires a purchase notice to be served within 12 months of a relevant decision on a listed building consent or appeal, or of the taking effect of an order modifying or revoking listed building consent (as the case may be). Subsection (3) provides that the Welsh Ministers may allow a longer period in a particular case if they are satisfied that there are good reasons for doing so.
458. Subsection (6) prohibits the amendment of a purchase notice once it is served, but allows an owner to serve a further notice for the same interest. Under subsection (7), the earlier notice will then be treated as withdrawn, unless the person states that it should not be.

Section 112 – Action following service of purchase notice

Schedule 9 – Action following service of purchase notice

459. Section 112 introduces Schedule 9 which makes provision for the actions to be taken by a planning authority and the Welsh Ministers after the service of a purchase notice.
460. Paragraph 1 of Schedule 9 requires that within three months of the day that the purchase notice was served the planning authority must respond to the person with either an acceptance notice or a rejection notice.
461. Sub-paragraph (2) explains that an acceptance notice will state either that the planning authority is willing to comply with the purchase notice or that another local authority or statutory undertaker identified in the notice has agreed to comply. A statutory undertaker is defined in paragraph 7 of the Schedule and section 210.
462. Sub-paragraphs (5) and (7) expand on the effect of the service of an acceptance notice. They allow for the compulsory acquisition under section 137 of the interest of the person who served the notice.

463. A rejection notice, on the other hand, sets out the reasons why the planning authority will not comply with the purchase notice, explains that no other body has been found willing to comply with it and states that copies of the purchase notice and rejection notice have been forwarded to the Welsh Ministers (sub-paragraph (3)).
464. Paragraphs 2 to 5 of the Schedule concern the Welsh Ministers' actions after receiving copies of a purchase notice and the rejection notice relating to it.
465. Paragraph 2(2) states that the Welsh Ministers must, subject to various provisions in sub-paragraphs (3) to (7), confirm a purchase notice if they are satisfied that:
- a. the conditions in section 109 are met; and
 - b. that the notice relates to all of the land adjoining or adjacent to the listed building that they consider is required for preserving the building or its amenities, providing access to it, or its proper control or management.
466. This second condition helps to safeguard the interests of an acquiring authority and increase the likelihood that it would be able to give a listed building and associated land a viable future.
467. Paragraph 4 explains the effect of the Welsh Ministers confirming a purchase notice. Where the Welsh Ministers do so, the specified authority – either the authority upon whom the notice was served or the authority or statutory undertaker substituted by the Welsh Minister under paragraph 2(7) – is effectively placed in the same situation as if it had served an acceptance notice. That authority is treated as authorised to acquire the interest of the person who served the notice by compulsory purchase under section 137 (paragraph 4(1) and (2)).
468. If, on the contrary, the Welsh Ministers are not satisfied that the section 109 conditions are fulfilled, they must, under paragraph 2(8), refuse to confirm a purchase notice.
469. Paragraph 2(3) provides that if the Welsh Ministers are satisfied that the conditions in section 109 are only met in relation to part of the land specified in the purchase notice, then the notice must only be confirmed in relation to that part. This would, for instance, enable the Welsh Ministers to exclude land from the scope of the purchase notice and subsequent compulsory acquisition (under paragraph 4(1)) which could practically be treated as a separate holding from the listed building.
470. Instead of confirming a purchase notice, paragraph 2(4) allows the Welsh Ministers to grant or reinstate a listed building consent or vary or remove conditions as required to permit works that would enable the listed building and associated land to be made capable of reasonably beneficial use.
471. Similarly, instead of confirming a purchase notice, paragraph 2(5)–(6) provides for a situation in which the Welsh Ministers may direct that, should another application for listed building consent or planning permission be made that would render the land, or any part of it, capable of reasonably beneficial use within a reasonable time, that application must be granted.

472. Paragraph 2(7) provides that, in confirming a purchase notice, if the Welsh Ministers believe that another local authority or statutory undertaker would be better able to secure the future of part or all of the land to which a purchase notice relates, they may modify the notice by substituting that authority or undertaker for the planning authority named in the notice.
473. Paragraph 3 requires the Welsh Ministers to serve notice of the action that they propose to take on a purchase notice to the person who served the purchase notice and any authority or statutory undertaker involved with the matter. They must also give them the opportunity to appear before and be heard by an appointed person. The appointed person will usually be an inspector from [Planning and Environment Decisions Wales](#).
474. Paragraph 4 details the effect of the action that the Welsh Ministers have or have not taken with regard to a purchase notice received under paragraph 1(6).
475. Paragraph 4(3) provides that if the Welsh Ministers do not:
- a. confirm a purchase notice,
 - b. refuse to confirm a notice, or
 - c. take any of the other actions available to them under paragraph 2,
- within a relevant period (as defined in paragraph 4(5) and (6)), the purchase notice is to be treated as if it was confirmed by them at the end of that period. The authority upon which the purchase notice was served is effectively placed in the same situation as if it has served an acceptance notice; it is treated as authorised to acquire the interest of the person who served the notice by compulsory purchase under section 137.
476. Paragraph 5 makes provision for the effect of the Welsh Ministers' actions in relation to a purchase notice being quashed on a statutory review under section 183. Sub-paragraph (2) provides that in such cases, the original purchase notice is to be treated as cancelled, but the person who served it may serve a further purchase notice.
477. Paragraph 6 sets out that if any compensation is payable under section 108 (compensation following modification or revocation of listed building consent) for expenditure incurred in carrying out works to a listed building, it must be deducted from the compensation paid for the compulsory acquisition of the interest in the building and associated land in execution of a purchase notice.

Chapter 3 – Listed building partnership agreements

478. This Chapter provides for the making of a listed building partnership agreement. This is a voluntary agreement between a planning authority or the Welsh Ministers, a listed building owner and other parties for the long-term conservation and management of one or more listed buildings. A listed building partnership agreement may grant listed building consent for an agreed programme of works to be carried out during the lifetime of the agreement. Provision is made for comparable scheduled monument partnership agreements in Part 1, Chapter 4.

479. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the preparation of heritage partnership agreements including those for listed buildings. The current guidance, [Heritage Partnership Agreements in Wales](#) (2021), sets out the elements required in an agreement and identifies best practice to promote consistency in the implementation of works as well as regular monitoring and review. The guidance includes a template to provide a framework for new agreements.

Section 113 – Listed building partnership agreements

480. Section 113 sets out the possible parties to a listed building partnership agreement and what such an agreement may do.
481. Subsections (1) and (3) establish that an owner of a listed building or part of a listed building may enter into a listed building partnership agreement with the planning authority in whose area the building is situated or the Welsh Ministers.
482. In practice, listed building partnership agreements will routinely be made between owners and their respective planning authorities. Although agreements between owners and the Welsh Ministers are permitted by the legislation, at the time of writing they are only likely to be made when local authorities are the owners of the listed buildings. While a planning authority may, in some situations, determine its own listed building consent applications (see paragraph 426 above), it might still wish to enter a listed building partnership agreement with the Welsh Ministers to benefit from the long-term efficiency savings that an agreement can offer.
483. Other persons with an interest in the listed building, as identified in subsections (2) and (4), may also be parties to the agreement.
484. Subsection (6) provides that a listed building partnership agreement may grant listed building consent under section 89(1) for specified works for the alteration or extension of the listed building to which it relates. This will permit beneficial works for the conservation and management of the listed building. The works specified will need to be negotiated and agreed by the parties to the agreement and conditions may be attached to the consent (and subsection (7) provides that any such conditions must be specified in the agreement).
485. An agreement cannot, however, grant consent for the demolition of a listed building. Demolition works would require separate listed building consent obtained through the routine application procedure.
486. A listed building consent contained in a listed building partnership agreement is not subject to the provisions in section 98 about when works must start and will remain valid for the lifetime of the agreement, which may last for 10 to 15 years.
487. Subsection (8) sets out a wide range of matters relating to maintenance, conservation and management that the parties may also agree to include in a listed building partnership agreement. Paragraph (a) permits the parties to specify works that would or would not, in the view of the parties to the agreement, affect the character of the listed building as a building of special architectural or historic interest (and which

works, therefore, would or would not require listed building consent). This would allow the parties to identify clearly in the agreement routine maintenance works or like-for-like repairs (with details of methods and materials) that could proceed without consent since there would be no loss of historic fabric or effect on the character of the building. Equally, the parties would be able to identify more substantial works – for instance, the restoration or reconstruction of elements of the listed building, or major additions or alterations – which, due to their complexity or sensitivity, could not be adequately provided for in a listed building partnership agreement. Those works would require the full consideration of the separate listed building consent procedure (sections 90 to 98).

Section 114 – Further provision about listed building partnership agreements

488. Subsections (1) and (2) of section 114 provide that listed building partnership agreements must be in writing and specify essential elements of an agreement. Subsection (5) requires the Welsh Ministers to make regulations about the consultation and publicity that must take place before an agreement is made or varied. Subsection (6) places a duty on the consenting authority in an agreement (i.e. the planning authority or the Welsh Ministers) to have special regard to the desirability of preserving the listed building, its setting and special features, and subsection (7) limits the effect of an agreement and any consent granted by it.
489. Subsection (2)(e) requires a listed building partnership agreement to make provision for its variation. Since an agreement may last for 10 to 15 years, it is likely that adjustments will be required. The parties must build agreed working arrangements for approving necessary variations into the agreement. Depending on the nature of the variations, they may be subject to the consultation and publicity requirements prescribed by the regulations under subsection (5).
490. The requirement in subsection (2)(f) provides for a mechanism for a negotiated termination to a listed building partnership agreement should it no longer serve the mutual interests of the parties or has, for some other reason, broken down. This is distinct from any termination of an agreement or provision of an agreement by order of a planning authority or the Welsh Ministers as provided for under section 115.
491. When considering whether to make or vary a listed building partnership agreement that incorporates listed building consent, a planning authority or the Welsh Ministers must have the same special regard to the desirability of preserving the building, its features and its setting as when granting or refusing listed building consent under section 96. (See paragraphs 397 to 399 above.)
492. Subsection (7) provides that a listed building partnership agreement will only be binding on the parties to the agreement. Future owners of a listed building will not be bound by an agreement, nor will they be able to benefit from any listed building consent granted by an agreement. Unless all parties agree to continue an agreement with a new owner, a listed building partnership agreement will, therefore, cease to have effect with a change of ownership.

Section 115 – Termination of agreement or provision of agreement

Schedule 10 – Procedure for orders terminating listed building partnership agreements

493. Section 115(1) allows a planning authority to make an order to terminate a listed building partnership agreement to which it is a party or any provision of such an agreement. Subsection (2) gives the Welsh Ministers comparable powers, but they do not have to be party to an agreement. Termination by order is only likely to occur in exceptional cases – if, for example, works unauthorised by the agreement take place and relations between the parties break down to such an extent that negotiated termination becomes impossible.
494. Schedule 10 puts in place the procedures for making the termination orders. These procedures are derived from those for making an order to modify or revoke listed building consent in Schedule 8.
495. Part 1 of the Schedule makes provision about termination orders made by planning authorities. Paragraph 1(1) requires that a planning authority's termination order must be confirmed by the Welsh Ministers before it will take effect.
496. Paragraph 1(2) requires a planning authority that has submitted an order to the Welsh Ministers for confirmation to give notice of the submission to:
- a. the other parties to the agreement;
 - b. any other person occupying the listed building to which the agreement relates under a lease that has at least two years to run; and
 - c. any other person the authority thinks will be affected by the order.
497. Paragraph 1(2)(b) has been framed to require consultation with settled occupants of a listed building that will be affected by a termination order. More transient occupiers, for instance students in a university hall of residence, will not be captured by the provision. The group defined by paragraph 1(2)(c) may, for example, include conservation architects and craftspeople, other contractors and suppliers and funding bodies who have been or may be involved in the works associated with the listed building partnership agreement.
498. The recipients of the notice must be given at least 28 days to make a written request to the Welsh Ministers for a hearing before an appointed person, who will usually be an inspector from [Planning and Environment Decisions Wales](#). If a hearing is requested, each planning authority that is party to the agreement will be given the opportunity to attend (paragraph 1(3) and (4)).
499. Part 2 of the Schedule makes provision about termination orders made by the Welsh Ministers. Under paragraph 2(1) the Welsh Ministers must serve notice of the proposed termination order on the parties to the listed building partnership agreement and the other individuals listed in paragraph 496 above.

500. Before the Welsh Ministers can make the order, the recipients of the notice must be afforded the opportunity to appear before and be heard by an appointed person. The procedures in paragraph 2(2)-(4) mirror those in paragraph 1(3)-(5).

Section 116 – Compensation where agreement or provision is terminated

501. Section 116 provides for the payment of compensation if a person suffers loss or damage directly attributable to the termination of a listed building partnership agreement, or a provision of such an agreement, by order.
502. These provisions are similar in many respects to those providing for compensation if listed building consent is modified or revoked by order under section 108. Just as in that earlier section, section 116(3) provides that expenditure incurred in carrying out works includes the preparation of plans and other preparatory matters. Such other matters might include, but not be limited to, site surveys and investigations, the preparation of heritage impact statements and the production of detailed specifications of methodologies and materials.
503. The compensation claim must be made in writing either to the planning authority that made the order, or, in the case of an order made by the Welsh Ministers, to the planning authority in whose area the listed building is situated. It must be made within six months of the termination order taking effect (subsections (5) and (6)).
504. If a planning authority is liable to pay compensation under section 116, section 171(4)-(6) allows the Welsh Ministers to direct any other authority that was or is party to the listed building partnership agreement to defray some or all of the compensation. This acknowledges that a complex agreement – for instance, one for listed buildings associated with a transport corridor – could involve a number of local authorities. While a single authority or the Welsh Ministers might serve the termination order, it might be reasonable to share the burden of compensation between some or all of the other authorities party to the agreement. However, under section 171(6) the Welsh Minister may only give such a direction if they have consulted with all the planning authorities that were or are party to the agreement.
505. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 48 above).

Chapter 4 – Enforcement of controls relating to listed buildings

506. Unauthorised works often destroy the historic fabric (meaning the historic evidence provided by the physical elements of the building) and can damage the special interest of listed buildings. This Chapter sets out a number of offences relating to listed buildings, including offences such as carrying out unauthorised works on a listed building or failing to comply with a condition of a listed building consent (section 117) or deliberately damaging a listed building (section 118). This Chapter also provides planning authorities with the powers to issue a temporary stop notice to put an immediate halt to works that either breach section 88 or a condition of a consent (sections 119 to 122).
507. The Chapter also provides the power for a planning authority to issue enforcement notices (section 123). Such notices may be issued if a planning authority considers that

works which involve a breach of section 88, or of a condition subject to which listed building consent has been granted, have been or are being carried out in relation to a listed building in its area. The enforcement notice can be issued, if appropriate, having regard to the effect of the works on the character of the building as a building of special architectural or historic interest. An enforcement notice must specify steps to be taken to remedy the effects of unauthorised works. Section 124 provides guidance on the service and taking effect of an enforcement notice, and section 127 provides a right to appeal against an enforcement notice. The Chapter provides arrangements for compliance with enforcement notices and a power for the Welsh Ministers to issue enforcement notices (sections 130 to 134). Finally, the Chapter also provides for injunctions to restrain an actual or expected breach of section 88 or an actual or expected failure to comply with a condition of listed building consent for works to a listed building (section 135).

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

508. Section 117(1) makes it an offence for a person to carry out, or cause to be carried out, works in relation to a listed building in breach of section 88. This includes any works that would affect its character as a building of special architectural or historic interest.
509. If listed building consent has been granted, subsection (2)(b) provides that it is an offence for a person to fail to comply with a condition of a consent in carrying out works, or in causing or allowing works to be carried out.
510. For the purposes of this section, a “person” may be anyone who undertakes works to a listed building, be that an owner or occupier of a building, a contractor or sub-contractor or other third party. A “person” may also be a corporate entity.
511. If works are undertaken to a listed building without authorisation or in breach of a condition subject to which listed building consent has been granted, a person commits an offence if they:
- a. carry out those works personally,
 - b. instruct or employ someone to undertake them, or
 - c. permit (or fail to prevent) such works.
512. Subsection (4) provides a person with a defence for an offence under this section if works were undertaken to address urgent health and safety needs or for the preservation of the building. However, the defence is only available where the works are limited to the minimum measures immediately necessary to secure health and safety or the preservation of the building, and notice was given to the planning authority in whose area the building was situated, with detailed justification for the works as soon as reasonably practicable.
513. Subsection (5) provides a person with a defence for an offence under this section relating to a building under interim protection where the person proves that they did not know, and could not reasonably have been expected to know, that the building

was subject to interim protection. Where the defence is raised by a person on whom a notice of interim protection should have been served, it is for the prosecution to prove that the notice was served on the person.

514. Information on buildings under interim protection should be readily available. Section 78 requires the Welsh Ministers to serve notice if they propose to add a building to the list. The notice, which must be served on every owner and occupier of the building amongst other persons, has to specify the date upon which interim protection begins and explain its effect. A list of buildings under interim protection is published on the [Cadw website](#) in accordance with section 79(4)(a) and [Cof Cymru](#) also displays buildings under interim protection.
515. Subsections (6) to (8) detail the levels of penalties a person guilty of an offence under this section is liable to, whether on summary conviction or conviction by indictment. Since unauthorised works to a listed building may be prompted by the prospect of financial gain, the courts are to have regard to any financial benefit the person convicted may have accrued or appears likely to accrue as a result of the offence, when determining the amount of any fine to be imposed (subsection (8)).

Section 118 – Offence of intentionally damaging listed building

516. Section 118(1) provides that a person commits an offence, if, with the intention of damaging a listed building, such a person does anything, or allows anything to be done that causes or is likely to result in damage to that building, and were it not for this subsection, the person would have been entitled to do or permit such action.
517. The manner in which the offence under this section has been limited to persons who are entitled to do or permit works to a listed building, distinguishes it from the more broadly framed offence under section 1(1) of the Criminal Damage Act 1971 (c. 48) (“the 1971 Act”). The offence in the 1971 Act applies to any person who “without lawful excuse destroys or damages any property belonging to another”. Another important difference between the two offences is that intention must be proved for an offence under this section, while recklessness as to whether damage is caused is sufficient for the offence under section 1 of the 1971 Act.
518. Subsection (3) provides that a person found guilty of an offence under subsection (1) will be liable on summary conviction to a fine not exceeding level 3 on the standard scale. (For information on the standard scale, see paragraph 57 above.)
519. If on being convicted of an offence under this section, the person also fails to take reasonable steps that are necessary to prevent damage or any further damage from taking place to the building, the person is liable on summary conviction to further fines for each day on which the failure continues (subsection (4) and (5)).

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

520. Section 119 gives a local planning authority the power to issue a temporary stop notice to put an immediate halt to any or all works to a listed building that they consider to be unauthorised or to contravene a condition of a granted listed building consent. The planning authority may only do so if they consider that the works ought to be stopped

immediately, having regard to the effect of the works on the character of the building as one of special architectural or historic interest.

521. Subsections (2) to (4) specify the required content of a temporary stop notice and make provision for service of a notice. 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.
522. Subsection (3) requires the planning authority to display a copy of the notice on the listed building and the copy must specify the date on which it is first displayed. Subsection (4) however provides that if it is not reasonably practicable to display a copy of the notice on the building or its display on the building might cause damage, the authority may instead display a copy in a prominent place as near to the building as is reasonably practicable.
523. While the planning authority will endeavour to serve individual notices on interested parties under subsection (5), public display of the temporary stop notice provides a mechanism for alerting all involved in the specified works to the listed building that they must be suspended immediately.
524. Subsection (5) then provides that a copy of the notice may be served on any person the authority considers to be carrying out the works, to be an occupier of the listed building to which the notice relates or to have an interest in the building.
525. Subsection (6) provides that a temporary stop notice may not prohibit the carrying out of works of a description, or in circumstances, specified in regulations made by the Welsh Ministers.

Section 120 – Duration etc. of temporary stop notice

526. Section 120(1) to (3) sets out that a temporary stop notice takes effect when first displayed in accordance with section 119, will remain in effect for 28 days (unless a shorter period is specified) and may be withdrawn by the planning authority before its expiry.
527. Subsections (4) and (5) provide that a planning authority may not serve a second or subsequent temporary stop notice in relation to the same works unless the authority has, since issuing the previous notice, taken other enforcement action in relation to the breach which may include serving an enforcement notice under section 123 or obtaining an injunction under section 135.

Section 121 – Offence of breaching temporary stop notice

528. Once a temporary stop notice is in effect, section 121 provides that it is an offence for a person to carry out the works prohibited by a temporary stop notice or cause or permit another person to carry out such works.

529. Subsection (2) provides that a person may be charged with an offence under this section by reference to a day or a longer period during the 28 days that the temporary stop notice is in force. This subsection specifically provides that a person may be convicted of more than one offence in relation to the same temporary stop notice, if the stop notice is repeatedly breached.
530. Subsections (3) and (4) sets out the defences to an offence under this section. For example, subsection (3) provides that it is a defence for a person to prove that they did not know, and could not have reasonably been expected to know, that a temporary stop notice was in existence.
531. Subsection (5) provides that the penalty for the offence of contravening a temporary stop notice is an unlimited fine, whether on summary conviction or conviction by indictment.
532. Since deliberate damage to a listed building may be prompted by the prospect of financial gain, subsection (6) requires the court to have regard to any financial benefit the person convicted of an offence may have accrued or is likely to accrue as a result of the offence, when determining the amount of any fine to be imposed.

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

533. Section 122 provides that any person with an interest in a listed building may, in limited circumstances, be entitled to compensation from the planning authority for loss or damage directly attributable to the effect of a temporary stop notice.
534. Subsection (1) provides that compensation is only payable where:
- a. the works specified in the notice did not breach section 88 at the time the notice took effect (that is, they were either authorised or did not require authorisation); or
 - b. the works specified in the notice did not contravene a condition of a listed building consent at the time the notice took effect; or
 - c. the planning authority withdrew the temporary stop notice after it took effect.
535. Subsection (2) further provides that no compensation is payable if the planning authority withdrew a temporary stop notice after granting a listed building consent that would allow the works specified in the notice to proceed.
536. Subsection (5) also excludes any claim for loss or damage that might have been avoided if the claimant had provided information to the planning authority regarding interests in the land under section 197 or section 16 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57), which gives local authorities powers to obtain details of persons who have an interest in land, or had otherwise cooperated with the planning authority.
537. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 48 above).

Section 123 – Power of planning authority to issue enforcement notice

538. Section 123 gives a planning authority the power to issue an enforcement notice to stop specified unauthorised works to a listed building and/or require steps to be taken to:
- a. restore the listed building to its condition before the unauthorised works took place (and the steps specified would be likely to include undertaking appropriate recording and investigation of the damaged area to recover and record historical evidence before further specified operations proceed);
 - b. alleviate the effect of the works, if restoration is not reasonably practicable or desirable (in the event of serious or extensive damage to a listed building, restoration might be unviable and could, in fact, cause further harm to the special interest of the listed building. In such a case, the planning authority would specify steps to stabilise the building in its altered state to protect it and the special interest it contains for the future); or
 - c. put the building in the condition in which it would have been if the terms and conditions of a granted listed building consent had been complied with.

Section 124 – Service and taking effect of enforcement notice

539. Section 124 sets out the requirements for service of an enforcement notice and when a notice takes effect.
540. Subsection (1) sets out what must be specified in an enforcement notice. Subsection (2) provides that an enforcement notice will take effect at the beginning of the day specified in the notice. However, should an appeal be brought against the notice, section 127(4)(a) provides that the notice will not take effect until the appeal is finally determined or withdrawn, and should an appeal against a notice be made to the High Court, section 184(5) provides that the Court may order that the enforcement notice is to have effect, either in full or to the extent specified in the order.
541. Subsection (3) provides that an enforcement notice can set different periods for stopping different works or taking different steps. Such flexibility enables an enforcement notice to make appropriate provision for the conservation requirements of a building. For instance, a phased series of steps might be set to achieve the satisfactory restoration or stabilisation of a building damaged by unauthorised works.
542. Subsections (4) and (5) place further requirements on planning authorities when serving an enforcement notice. Subsection (4) requires the notice to be served on every owner and occupier of the building and any other person who has an interest in the building that the authority considers to be materially affected by the notice. Subsection (5) requires the notice to be served before the end of 28 days after the day on which it was issued, and at least 28 days before the date specified in the notice as the date on which it is to take effect.

Section 125 – Variation and withdrawal of enforcement notice

543. Section 125 gives the planning authority powers to withdraw an enforcement notice or waive or relax any requirement of the notice. Such powers can be exercised by a planning authority whether or not the notice has taken effect, but, before it can do so,

subsection (5) requires it to give notice to every person who was served with the notice (or would have been served by the notice).

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

544. Section 126 provides for a situation where, after an enforcement notice is issued, listed building consent is granted to authorise:
- a. works to which the notice relates and which had been carried out without authorisation, or
 - b. works that had breached a condition of a previous listed building consent.
545. Subsection (2) provides that steps specified in the notice that are inconsistent with the new consent or require steps to be taken for complying with the condition cease to have effect. However, subsection (3) sets out that a person remains liable for any earlier offence arising from a failure to comply with an enforcement notice, even though part or all of the notice subsequently ceases to have effect under this section. Failing to comply with an enforcement notice (section 133) is a separate offence from carrying out unauthorised works (section 117) or of intentionally damaging a listed building (section 118) and proceedings for the offences may be pursued independently.

Section 127 – Right to appeal against enforcement notice

546. Section 127 permits anyone who has an interest in the listed building to which an enforcement notice relates to appeal to the Welsh Ministers against the notice. This includes owners, lessees and tenants, official receivers and mortgagees and other lenders.
547. Subsection (1)(b) also provides that any person, who by virtue of a licence occupies the building on the day on which the notice is issued and continues to occupy it when the appeal is made, may appeal to the Welsh Ministers against an enforcement notice.
548. Subsection (2) lists the permissible grounds for an appeal.
549. Ground (a) allows the listing of the building to be challenged. An appellant resorting to ground (a) would need to demonstrate that the building is not of special architectural or historic interest. In making the case, consideration must be given not only to the building itself, but also to any contribution made by associated curtilage structures.
550. Ground (c) allows an appellant to argue that the matters alleged to constitute a breach of section 88 or a condition of a listed building consent did not occur. An appeal could be made, for example, if works took place, but they did not affect the character of the building as one of special architectural or historic interest. Ground (c) will also accommodate appeals that affirm a breach did not occur because the building in question is not listed or that what has been listed is not a building. Such situations were considered and recognised as legitimate grounds for appeal in *Dill v Secretary of State for Housing, Communities and Local Government and another* {2020} UKSC 20.

551. Ground (e) provides for circumstances in which the appellant maintains that listed building consent should be granted for the unauthorised works to which an enforcement notice relates or a condition of a granted consent should be removed or replaced. Such an appeal might be made if the works in question had a neutral or beneficial effect on the character of the listed building.
552. Ground (g) provides for an appeal on the ground that steps required in an enforcement notice would not serve the purpose of restoring the character of a building. This would allow an appellant to challenge, for example, an enforcement notice that required the reconstruction of a demolished feature using all of the broken pieces with resulting joins and cracks. The appellant might argue that a faithful replica of the feature, without the distracting joins and cracks, would more fully restore the character of the building.
553. Subsections (3) and (5) to (7) set out the requirements of making an appeal to the Welsh Ministers against an enforcement notice, including a statement in writing containing the information required by regulations made by the Welsh Ministers.

Section 128 – Determination of appeal

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

Section 129 – Grounds for appeal not to be raised in other proceedings

557. Section 129 provides that the validity of an enforcement notice may not be questioned on any of the grounds on which an appeal may be made under section 127 in any proceedings other than an appeal under that section.

Section 130 – Order to permit steps required by enforcement notice

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

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

560. Section 131(1) provides for a situation in which a step required by an enforcement notice has not been taken within the time prescribed. In such a case, the planning

authority may enter the land to which the enforcement notice relates at any reasonable time and take that step. This allows necessary conservation works to secure the special interest of the listed building that are detailed in the enforcement notice to take place in a timely fashion.

561. Subsections (2) and (3) provide that it is an offence to intentionally obstruct a person exercising the power under subsection (1) and that to do so is an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. (See paragraph 57 above for information on the standard scale.)

Section 132 – Recovery of costs of compliance with enforcement notice

562. Section 132 provides for the recovery from any owner of reasonable costs incurred by a planning authority after exercising the power in section 131 and entering land to take the steps required to comply with an enforcement notice.
563. Subsections (2) and (3) also provide further detail about the recovery of such costs from the owner of the land, when acting as an agent or trustee for another person, or from that other person, or from a combination of the two.
564. The section also allows for the recoverable costs to be a local land charge until such time as they are recovered (subsection (5) and (6)).
565. Finally, the section provides for certain circumstances whereby the planning authority can recover some or all of its costs by selling materials recovered while undertaking the steps required following a failure to comply with an enforcement notice (subsections (7) and (8)).

Section 133 – Offence of failing to comply with enforcement notice

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

Section 134 – Power of Welsh Ministers to issue enforcement notice

571. Section 134 sets out the circumstances in which the Welsh Ministers may issue an enforcement notice in respect of a listed building. The sections in this Chapter relating to enforcement notices (sections 123 to 132) apply to an enforcement notice that is issued by the Welsh Ministers in the same way as if a notice was issued by a planning authority, and such a notice has the same effect. However, before issuing such a notice, the Welsh Ministers are required to consult the planning authority in whose area the building is situated (subsection (2)).

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

572. Section 135 allows the Welsh Ministers to apply to the High Court or the county court for an injunction to restrain actual or expected unauthorised works or actual or expected works that fail to comply with a condition of a listed building consent.

Chapter 5 – Acquisition and preservation of buildings of special interest

573. Chapter 5 provides for the various powers that may be exercised when listed buildings fall into disrepair, either through a lack of investment or will from the owners, or, in some cases, through deliberate neglect or abandonment. In most cases, the powers are exercisable by the Welsh Ministers and either the planning authority for the relevant area or the local authority. However, in some cases the power is also conferred on any joint planning board for the area in question.

574. Sections 136 to 142 make provision about acquiring listed buildings, either by a planning authority with the agreement of the owner, or by the Welsh Ministers or planning authority (with authorisation from the Welsh Ministers) through compulsory acquisition. These powers may be needed where it is felt that there is no alternative but to acquire a listed building that has fallen into disrepair and put in place alternative arrangements for its preservation. On the rare occasions when compulsory acquisition is considered necessary, there is a requirement for the acquiring authority to first serve a repairs notice to provide the owners with a final opportunity to undertake reasonable steps for its preservation (section 138).

575. While compensation will be payable to an owner following the compulsory acquisition of their property, the Chapter sets out that a direction for minimum compensation may be made if the acquiring authority is satisfied that the building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site or any adjoining site. The effect is that the compensation will be significantly less than it would have otherwise been. It also sets out the procedures that would need to be followed if any person with an interest in the building wishes to challenge such a direction for minimum compensation (sections 140 and 141). The Chapter provides for the management, use and disposal of a building acquired under this Chapter whether by agreement or compulsorily (section 143).

576. The provisions also include the power for the Welsh Ministers or local authorities to undertake urgent works necessary for the preservation of a listed building and the arrangements for recovering the costs of these works (section 144 and section 145). This includes provisions for how such costs might be recovered through a local land

charge (section 146). In practice, urgent works undertaken tend to be temporary interventions, such as shelters or covers, to provide immediate protection from wind and rain damage. They are often designed to allow time to develop and agree long-term conservation plans for the building.

577. The Chapter provides further steps for the preservation of listed buildings in disrepair by giving the Welsh Ministers powers to make regulations that may, in particular, provide for a “preservation notice” requiring owners of a listed building to carry out works to secure its proper preservation (section 147).
578. The Chapter also sets out the powers for local authorities to provide grants and loans for the repair and maintenance of historic buildings, and the arrangements for the recovery of part or all of a grant awarded by a local authority or the Welsh Ministers (in exercise of their general grant-making powers) on breach of condition or a disposal of interest in the property by the grantee (sections 148 to 150). Finally, the Chapter also makes provision about the consequences of the Welsh Ministers accepting a gift of property to be held on an endowment trust for the upkeep of a historic building and the consequences of the trust failing (section 151).
579. The Welsh Ministers have published non-statutory best-practice guidance, which is kept under review, to support the management of listed buildings that have fallen into disrepair. The current guidance, [Managing Listed Buildings at Risk in Wales](#) (2018), outlines the roles and responsibilities of owners, the Welsh Government and local authorities when managing listed buildings that have fallen into disrepair. It shows how policies and programmes to manage listed buildings at risk can be successful.

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

580. Section 136 provides that a planning authority may acquire by agreement any building that is wholly or mainly in Wales that it considers to be of special architectural or historic interest. Subsection (2) sets out the conditions that must be met for the inclusion of any associated land in the acquisition.

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

581. Section 137 provides the Welsh Ministers with the power to undertake a compulsory acquisition of a listed building and associated land for the purposes of the building’s preservation. It also gives the Welsh Ministers power to authorise the planning authority in whose area a listed building is situated to undertake a compulsory acquisition of the listed building and associated land. Subsection (1) sets out the circumstances that need to apply for the Welsh Ministers to be able to exercise these powers. These are that the Welsh Ministers consider that reasonable steps are not being taken to preserve the building and that there is a compelling case in the public interest to acquire the building for the purpose of its preservation.
582. Subsection (3) sets out the conditions that must be met for associated land to be included in the compulsory acquisition. These are that the land includes, adjoins or is adjacent to the building, and that the Welsh Ministers consider that the land is required for the purposes of preserving the building or its amenities, accessing it or for the proper control and management the building. Provision is made for including

associated land in the compulsory acquisition because without such land it might not be possible to undertake effective conservation of the building.

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

583. Before an acquiring authority, defined by section 137(7) as the Welsh Ministers or a planning authority, can begin the formal process for the compulsory acquisition of a listed building under section 137 for the purposes of its preservation, it needs to provide the opportunity for every owner of the building to take reasonable steps for its proper preservation. If such steps are then taken within the time allowed, section 139 provides that a magistrates' court may order that no further steps may be taken in relation to the compulsory acquisition.

584. Section 138 provides that an acquiring authority may not serve a compulsory acquisition notice under the Acquisition of Land Act 1981 (c.67) ("the 1981 Act") – the start of the formal process for compulsory acquisition – unless a repairs notice has been served on every owner of the building in question and two months have passed since the notice was served. A repairs notice specifies the works the authority considers reasonably necessary for the proper preservation of the building.

585. Subsection (2) also provides that the repairs notice must explain the effect of sections 137 to 141 of the Bill and section 49 of the [1990 Listed Buildings Act](#), which sets out the mechanism for assessing compensation on compulsory acquisition. Its effect is that when calculating compensation it will be assumed that listed building consent would be granted for any works for the alteration or extension of the building or for its demolition under certain circumstances. However, the repairs notice also needs to explain the possibility of minimum compensation to be paid (under section 141); this will be of relevance if the building has been deliberately allowed to fall into disrepair.

586. Subsection (4) provides that an acquiring authority may withdraw a repairs notice at any time (and must serve notice of the withdrawal on every person on whom the repairs notice was served). This may be necessary where the acquiring authority is satisfied that the required steps for preservation have been taken.

Section 139 – Application to stop compulsory acquisition

587. When a compulsory purchase order for the acquisition of a listed building has been made by a planning authority (but not yet confirmed by the Welsh Ministers) or made in draft by the Welsh Ministers (but has not yet taken effect), section 139 makes provision for anyone who has an interest in the building to make an application to a magistrates' court to stop it from taking place (subsection (2)). The application would be made on the ground that reasonable steps have been taken for properly preserving the listed building.

588. Subsection (3) provides that the application has to be made within 28 days of the compulsory acquisition notice being served under the 1981 Act. An appeal against the decision of the magistrates' court can be made to the Crown Court (subsection (5)).

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

Section 141 – Application for removal of direction for minimum compensation

589. Section 140 provides that if an acquiring authority considers that a listed building has been allowed to deliberately fall into disrepair for the purpose of justifying its demolition and the development of the site or any adjoining site, a compulsory purchase order relating to the building may contain a direction for minimum compensation. The effect of the direction is that the compensation payable for damage or loss caused by the acquisition will be assessed on the basis that planning permission and listed building consent would only be granted for the works which are necessary for the conservation of the building and its maintenance in a proper state of repair, and not for any development of the site. This would prevent any development value of the building/land from being considered as part of the compensation assessment.
590. Subsection (3) provides that where a direction for minimum compensation is made, the effect of the direction must be explained in the compulsory acquisition notice served under the 1981 Act.
591. Section 141 provides that any person with an interest in a listed building in relation to which a direction for minimum compensation has been made can make an application to a magistrates' court for an order for the direction to be removed. The application would be made on the ground that the building has not been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site. It has to be made within 28 days of the compulsory acquisition notice being served. An appeal against the decision of the magistrates' court can be made to the Crown Court.

Section 142 – Ending of rights over land acquired compulsorily

592. Section 142(1) provides that, on the completion of a compulsory acquisition of land under section 137, all private rights of way over the land cease, all rights to keep apparatus installed on the land cease, and the acquiring authority becomes entitled to any apparatus on the land. Subsection (2) lists exceptions: where the right or apparatus is a statutory undertaker's, where the right or apparatus is for the purpose of an electronic communications network, or where the right or apparatus is specified in a direction given by the acquiring authority. Subsection (3) provides that subsection (1) is also subject to any agreement to the contrary between the parties. Subsections (4) and (5) provide that a person who suffers loss by the ceasing of a right or the transfer of apparatus is entitled to compensation from the acquiring authority, determined in accordance with the Land Compensation Act 1961 (c. 33).

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

593. Section 143 makes provision for the management, use and disposal of buildings acquired under this Chapter. Subsections (1) and (2) make provision about a building or other land acquired by a planning authority under this Chapter (whether by agreement or by compulsory acquisition). The authority may make any arrangements for the management, use or disposal of the building or land that it considers appropriate for the purpose of preserving the building or land. Subsections (3) and (4) make similar provision in relation to a building or land acquired compulsorily by the Welsh Ministers, who may, in addition, make arrangements for the custody of the building.
594. There are a number of options available to an authority acquiring a building under this Chapter. In the simplest arrangement, the authority would purchase the building,

undertake the required repairs and either use it for its own purposes or sell it to a new owner, or sell it in its unrepaired condition subject to a requirement for its repair. For larger or more complex buildings, the acquiring authority might establish a “back-to-back” agreement, possibly with ownership passing to a building preservation trust or another charitable body set up with the specific objective to conserve the building that has been acquired.

Section 144 – Urgent works to preserve listed building

595. Section 144(1) to (4) enables local authorities and the Welsh Ministers to carry out works that they consider urgently necessary for the preservation of listed buildings. This may include works to provide temporary support or shelter for a listed building and can include works to a building that is in residential use as long as it does not interfere unreasonably with that use. Such urgent works might include relatively minor works that would arrest a building’s decline and remove the need for more extensive work at a later date, works to keep a building weatherproof or safe from collapse or action to prevent vandalism or theft. Urgent works are often intended to be short-term and designed to allow time to develop and agree long-term conservation plans for a building.
596. Subsections (5) and (6) provide that prior to any urgent works being carried out to a listed building, at least 7 days’ written notice must be given to every owner of the building, and every occupier (if any part of the building is in residential use). This notice must include a description of the proposed works.

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

597. If a local authority or the Welsh Ministers incur costs in undertaking urgent works to a listed building, section 145(1) and (2) allow them to serve a notice on any owner of the listed building requiring the owner to meet the costs of the works. Subsections (3) to (6) allow the owner to contest the recovery of costs by making a complaint to the Welsh Ministers and, following a determination, an appeal can be made to the county court. Depending on the circumstance, for example if the owner is of limited means or a charity, the authority might decide not to seek to recover the costs of urgent repairs. Indeed, one of the grounds for a complaint to the Welsh Ministers is that the recovery of the amount would cause hardship to the owner (subsection (3)(d)).

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

598. Section 146 provides for the costs incurred in carrying out urgent works to be a charge on the land on which the listed building stands. This would assist the authority in recovering the charge in the event of the property changing hands. It also provides for the imposition of interest on the sum owed, the manner in which a land charge takes effect, and the powers and remedies available to the local authority or the Welsh Ministers under the Law of Property Act 1925 (c. 20) to enforce the charge, including a power to appoint a receiver.

Section 147 – Steps for preservation of listed buildings in disrepair

599. Section 147 enables the Welsh Ministers to make regulations to confer power on local authorities or the Welsh Ministers to take steps for the proper preservation of listed buildings that have fallen into disrepair. In particular, 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 and offences for failure to comply with the notices.

600. Paragraph 185 of Schedule 13 (minor and consequential amendments and repeals) amends the Regulatory Enforcement and Sanctions Act 2008 (c. 13) ("the 2008 Act") to enable civil sanctions to be imposed in respect of offences in regulations made under this section. The kinds of civil sanctions that may be imposed are those contained in Part 3 of the 2008 Act, for example, fixed monetary penalties, requirements to take specified steps, or stop notices.

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

601. Section 148 enables a local authority, a joint planning board or a National Park authority (referred to collectively in this section as relevant local authorities) to contribute towards any expenditure incurred in the repair or maintenance of a listed building or of a building that is not listed but which the relevant local authority considers to be of special architectural or historic interest (subsection (1)), or any associated garden (subsection (2)), by means of a grant or a loan. Subsections (4) and (6) provide that a relevant local authority may make loans and grants subject to conditions. For example, the authority might set a condition requiring the recipient to provide some form of public access to the building and/or an associated garden.

Section 149 – Recovery of grant made by local authority

602. Section 149 provides that where a condition of a grant made by a relevant local authority is not complied with, the authority may recover the amount of the grant, or any part of it. Subsections (3) to (5) provide that if the recipient of the grant disposes of all or part of the interest that they have in the property within 3 years of the day on which the grant was made, a relevant local authority may recover all or part of the grant. This might be used if the grantee were to sell the property to take advantage of a higher value gained as a consequence of the grant-aided works.

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

603. Section 150(1) enables the Welsh Ministers (in practice, Cadw acting on their behalf) to make grants towards expenditure incurred, or to be incurred, in:
- a. the repair or maintenance of a building which they consider to be of special architectural or historic interest;
 - b. the maintenance of any land associated with building;
 - c. the repair or maintenance of objects ordinarily kept in in such a building, or
 - d. the maintenance of a garden or other land which they consider to be of special historic interest.
604. The remaining provisions apply where the grant under subsection (1) is made on terms which provide for it to be recoverable under this section. In order for it to be recoverable, either before or at the time of making the grant the Welsh Ministers must

give notice in writing to the recipient of the effect of this section. They must also specify a “recovery period” of no more than ten years after the day the grant is made during which the grant will be recoverable under subsections (4) to (6) (subsection (2)).

605. Subsection (3) provides that if any condition imposed on the recoverable grant is not complied with, the Welsh Ministers may recover the entire amount of the grant, or any part, from the recipient.
606. Subsections (4) to (6) provide the Welsh Ministers with powers to recover all or part of a grant in the event of a disposal during the recovery period of the whole or part of the interest that the grant recipient held in the building, land or objects to which the grant relates on the day that the grant was made (“the relevant interest”). A disposal may be made by sale, by exchange or by lease for a term of at least 21 years.
607. These recovery powers might be used if, for example, a building’s value increases as a result of the grant-funded works, and the grant recipient then sells the building in order to capitalise.
608. Subsection (5) deals with two scenarios where recovery would be from the person who received the grant: the first is where the disposal is by the recipient of the grant; the second is where the disposal is by someone to whom the recipient of the grant has given part of the relevant interest.
609. Subsection (6) deals with the scenario where the disposal is by someone to whom the recipient of the grant had given the whole of the relevant interest. In this case the recovery would be from that person who was given the relevant interest.

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

610. Section 151 makes provision about the Welsh Ministers accepting a gift of property on endowment trust to use the income from the property for the repair and maintenance of a building which the Welsh Ministers consider to be of outstanding historic or architectural interest. The building must be one in which the Welsh Ministers have or are about to have an interest or which is or is shortly to be under their control or management. In particular, the section makes provision about the validity of the gift and trust, the Welsh Ministers’ powers, the consequences of the Welsh Ministers not having an interest in, or control or management of, the building to which the trust relates, and about the trust ending or failing.

Chapter 6 – General

611. Chapter 6 provides powers for persons authorised by local authorities and by the Welsh Ministers to enter land. Sections 152 to 155 set out the general powers to enter land, when a power of entry can be exercised without a warrant and under what circumstance a warrant would be required.
612. The Chapter also includes a supplementary provision dealing with exempt religious buildings (section 156). This reflects the particular needs of listed buildings that are currently in use for religious purposes in Wales. Where religious denominations and faith groups in Wales are able to demonstrate that they have sufficiently rigorous internal systems of scrutiny and control in conserving and managing change affecting

religious buildings, it may be possible, through regulations, to identify particular buildings used by those denominations and faith groups for religious purposes as being exempt from certain provisions in Part 3. Any denomination or faith group may make representations to the Welsh Ministers if they wish to be considered for such an exemption, but such an arrangement will normally only be agreed when they can demonstrate that they maintain an appropriate level of protection which is at least equivalent to that given to non-religious buildings.

613. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the management of listed religious buildings. The current guidance, [*Managing Change to Listed Places of Worship in Wales: Ecclesiastical Exemption*](#) (2018), sets out the guiding principles to consider when planning changes to listed religious buildings covered by the regulations provided for by this Chapter. It also sets out a code of practice for denominational consent procedures, which explains how those principles should be included in the control and decision-making process.
614. Finally, the Chapter provides interpretation for certain terms used in Part 3 (section 157).

Section 152 – Powers to enter land

615. Section 152 sets out the different circumstances when a person authorised in writing by the Welsh Ministers or a planning authority can enter land in association with Part 3 (buildings of special architectural or historic interest) and Part 4 (conservation areas) of the Bill.
616. Section 152(7) allows an officer of the Valuation Office of Her Majesty's Revenue and Customs or a person authorised in writing by the planning authority or the Welsh Ministers to enter land to survey or estimate the value of the land in connection with a claim for compensation.

Section 153 – Exercise of power to enter land without warrant

617. This section sets out when the power to enter land can be exercised without a warrant. Subsection (1) provides that the power may be exercised at any reasonable time.
618. Subsection (2) provides that a person may not enter land in exercise of the power under this section unless at least 24 hours' notice has been given to every occupier of the land. There is an exception where the power to enter land is for the purpose of determining whether to issue a temporary stop notice, to display a temporary stop notice or to determine whether a temporary stop notice is being complied with. Temporary stop notices are only issued when the planning authority considers that the works should be stopped immediately and therefore the 24 hours' notice is not required. If the land is occupied, and the authorised person is exercising the power of entry in order to carry out any works, the notice which is served on the occupiers (under subsection (2)) must include the authorised person's intention to carry out works (subsection (5)).
619. Subsection (6) provides that if the land in relation to which the power of entry is proposed to be exercised belongs to a statutory undertaker (as defined in section 210) and the statutory undertaker objects to the proposed works as they will hamper its

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

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

Section 154 – Warrant to enter land

621. Section 154 sets out the circumstances in which a justice of the peace may issue a warrant conferring power on an authorised person to enter land. They are if:
- a. admission to the land has been refused,
 - b. admission is expected to be refused, or
 - c. the need to enter the land is urgent.

In the last case, for example, a planning authority might need to undertake works to secure a building at risk of collapse.

622. The warrant can confer powers of entry on any person who is authorised in writing by the Welsh Ministers or the planning authority under section 152 to enter land for a particular purpose.

Section 155 – Supplementary provision about powers of entry

623. Section 155 makes supplementary provisions associated with the use of the powers of entry conferred under section 152 or with a warrant under section 154.

Section 156 – Exempt religious buildings

624. Section 156 enables the Welsh Ministers to make regulations to recognise a religious building used for religious purposes as an “exempt religious building”. The effect of recognising an “exempt religious building” is that the following provisions of Part 2 of this Act may not apply in relation to the building:

- a. sections 83 and 84, which enable the temporary listing of a building;
- b. section 88, which requires works affecting a listed building to be authorised (and section 156(2) makes it clear that a building recognised as an exempt religious building but which is currently undergoing works – for example, a major programme of conservation – is still exempt if the building would be used for religious purposes if it weren’t for the works being undertaken); however, there is no such exemption for scheduled monuments, so any scheduled structures within the curtilage of an exempt religious building will require scheduled monument consent;

- c. section 118, which makes it an offence to intentionally damage a listed building;
 - d. section 137, which enables a planning authority or the Welsh Ministers to compulsory acquire a listed building in need of repair;
 - e. section 144, which enables the local authority or the Welsh Ministers to carry out urgent works necessary for the preservation of a listed building.
625. Approximately 2,000 religious buildings have been listed in Wales under the provisions set out in section 76, although not all of these are covered by the exemption. However, where they are covered, the provisions relating to religious exemption reflect the particular needs of listed buildings in use as places of worship, but recognise the need to maintain an appropriate level of protection which is at least equivalent to that given to non-religious buildings.
626. Subsection (3)(a) provides that regulations under this section may recognise particular buildings or buildings of a description specified in the regulations (and a description of buildings may be specified by reference to a religious faith or denomination, a use made of the buildings, or any other circumstance).
627. Where religious denominations and faith groups in Wales are able to demonstrate that they have established, or will establish, sufficiently robust and transparent conservation processes for managing change affecting listed religious buildings that meet the required standard, it may be possible to identify particular buildings used by those denominations and faith groups for religious purposes as being exempt. Any denomination or faith group may make representations to the Welsh Ministers if they wish to be considered for such an exemption.
628. As of January 2019, the following denominations and faith groups have been able to demonstrate this to the satisfaction of the Welsh Ministers under the predecessor legislation to this Bill:
- a. The Baptist Unions of Great Britain and Wales
 - b. The Church in Wales
 - c. The Church of England
 - d. The Methodist Church
 - e. The Roman Catholic Church
629. Subsection (3)(b) provides that the regulations may designate as exempt all or part of a religious building (so the exemptions may apply to some parts of the buildings but not to others).
630. Subsection (3)(c) provides that the regulations may specify that only particular types of works are exempt from the requirement for listed building consent. The regulations may specify the nature of the works themselves or specify works by reference to by whom the works are carried out. For example, the regulations could stipulate that any

work undertaken by third parties might not qualify for the exemption. In this way a service provider erecting a telecommunications mast on a church tower might need authorisation from the relevant planning authority by listed building consent. Planning authorities would need to be fully aware of what is covered by the religious exemption under this subsection, because any changes that fall outside its scope would need to be authorised through the usual system of listed building consent (section 89).

631. Subsection (4)(a) clarifies that references in this section to a religious building include an artefact that is fixed to the building, or any structure that is in the curtilage of the building. This means that some structures that are not listed in their own right might come into the scope of the religious exemption provided that they are in the curtilage of the listed building. This might include lychgates, boundary walls, memorials, vestries and school rooms.
632. Under subsection (4)(b) buildings that are wholly or mainly residential and are occupied by a minister of religion, with certain exceptions, are not considered to be religious buildings for the purposes of this section. Works to these buildings are therefore not covered by the exemption. Where a residential building is attached to a listed place of worship (for example, a presbytery attached to a Catholic church, or a minister's house attached to a chapel), works to the residential building will need listed building consent from the local planning authority. When dealing with listed building consent applications for residential elements, planning authorities are advised to consult the denomination responsible for the listed place of worship because they may be well placed to give advice. Works to the listed place of worship will be dealt with through arrangements under the religious exemption, which include consultation with the planning authority

Part 4 – Conservation Areas

633. A conservation area is an area which has been designated as such because it is an area of special architectural or historic interest whose character or appearance it is desirable to preserve or enhance. This reflects the idea that it is not just particular buildings or monuments which can warrant protection, but whole areas too.
634. Part 4 of the Bill places a duty on planning authorities to determine which parts of their areas should be conservation areas, makes provision about the process of designation, and sets out several ways in which conservation areas in Wales are protected. The Bill does not set out every way in which conservation areas are protected. For instance, trees in conservation areas enjoy some statutory protection and that is dealt with in Part 8 of the [1990 Planning Act](#).
635. Some of the notes below explaining provisions in Part 4 (conservation areas) refer to provisions in Part 3 (buildings of special architectural or historic interest). That is because many of the provisions about listed buildings also apply to conservation areas but with some changes. Where a note below mentions a listed building provision, further detail may be found in the explanatory notes that deal with Part 3.
636. Conservation area boundaries are regularly updated on [DataMapWales](#) although each planning authority maintains an up-to-date list of conservation areas within its area. As of September 2021 there were 568 conservation areas listed on DataMapWales.

637. The Welsh Ministers have published best-practice guidance, which is kept under review, to support the management of conservation areas. The current guidance, [Managing Conservation Areas in Wales](#) (2017), sets out the general guidelines for the designation and management of conservation areas. This guidance is aimed primarily at planning authorities to promote a consistent approach to conservation area designation, appraisal and management throughout Wales. It will also be of use to property owners and others with an interest in existing or prospective conservation areas and how positive management can enable change which preserves or enhances the character or appearance of a conservation area.

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

638. Subsections (1) and (2) of section 158 require planning authorities to review, from time to time, which parts of their areas should be designated as conservation areas and whether there should be revisions to existing conservation areas. The test is whether a planning authority considers that a part of its area is an area of special architectural or historic interest whose character or appearance it is desirable to preserve or enhance. If so, the authority must designate the part as a conservation area (or extend an existing designation to include it). Or if the authority considers a part of its area that is currently designated does not meet the criteria, it must cancel the designation or vary the designation to exclude the part (subsection (2)).

639. In practice, conservation areas are created, varied or cancelled following a detailed appraisal process, though potential conservation areas may be identified in the course of other activity such as evidence gathering for a local development plan or in the development of a wider heritage strategy. The *Managing Conservation Areas in Wales* guidance referred to in paragraph 637 identifies good practice for the designation of conservation areas. For example:

- a. carrying out appraisals and using set selection criteria to determine whether an area is of sufficient special architectural or historic interest to merit designation; and
- b. consulting with stakeholders such as property owners, residents, businesses and other interests such as amenity societies.

640. Subsections (3) to (5) of section 158 specify some procedural requirements which planning authorities must follow after designating, varying or cancelling designations.

641. Under subsection (6) of section 158, a designation as a conservation area is a local land charge. A [local land charge](#) will alert a purchaser to the fact that there are restrictions on the use of the land as a result of it being situated in a conservation area.

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

642. Subsection (1) of section 159 places a duty on planning authorities to prepare and publish proposals for the preservation and enhancement of their conservation areas, with subsections (2) and (3) setting out some basic requirements about consulting the public on the proposals. *Managing Conservation Areas in Wales* provides more detail

about how authorities may go about consulting. Among other things, it gives guidance to planning authorities about:

- a. consulting on proposals for the preservation or enhancement of conservation areas including wider and more informal approaches in addition to those that are required under subsections (2) and (3); and
- b. producing detailed conservation area management plans where “policies for enhancement can best be set out”.

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

643. Subsection (1) of section 160 places a duty on any person, in exercising a planning function in relation to a building or other land in a conservation area, to have special regard to the desirability of preserving or enhancing the character or appearance of the conservation area. This is a wide-ranging duty because there are many planning functions (see paragraphs 647–8 below) and the duty applies to anyone exercising them (as long as the person is doing so in relation to a building or other land in a conservation area).
644. Section 160 restates section 72(1) of the 1990 Listed Buildings Act, which used the slightly different phrase, “special attention shall be paid to the desirability of preserving or enhancing...”. The change is not intended to alter the meaning and makes the phrasing of section 160 consistent with that of an analogous duty, in section 314A of the 1990 Planning Act, which requires the Welsh Ministers and local planning authorities to have special regard to various things when considering whether to grant planning permission.
645. The general duty under section 160 applies to any person, so it applies not just to planning authorities but also, for instance, to the Welsh Ministers and planning inspectors.
646. The general duty applies when a person is exercising a “planning function”, defined by subsection (2) as a function conferred or imposed under or by virtue of:
- a. Part 3, Part 4, Part 5 or Part 7 of this Bill as it applies for the purposes of any of those Parts;
 - b. the 1990 Planning Act;
 - c. section 70 or 73 of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) (to do with schemes, called estate management schemes, which allow estate owners to address potential problems about an estate’s appearance once they have lost their powers as landlord following tenants asserting rights to acquire the freehold of their properties).
647. Some particularly relevant planning functions under the Bill are:
- a. controlling works that affect listed buildings (see Part 3, Chapter 2);

- b. enforcing those controls (see Part 3, Chapter 4);
- c. acquiring and preserving historic buildings (see Part 3, Chapter 5);
- d. preparing proposals for the preservation and enhancement of conservation areas (see section 159);
- e. controlling demolition in conservation areas (see section 162);
- f. carrying out urgent works to preserve buildings in conservation areas (see section 164).

This is not an exhaustive list.

648. Some particularly relevant planning functions under the 1990 Planning Act are:

- a. preparing development plans (see Part 2 of that Act);
- b. controlling development (see Part 3 of that Act);
- c. enforcing those controls (see Part 7 of that Act);
- d. controls relating to trees, advertisements and land that requires maintenance (see Part 8 of that Act);
- e. exercising highways powers (see Part 10 of that Act).

This is not an exhaustive list.

649. “Building” and “land” have the meanings given by section 210 of the Bill.

Example of the general duty applying in relation to a planning function under the Bill

650. The duty would apply when a planning authority is deciding whether to grant consent under section 162, i.e. when it is deciding whether to allow the demolition of a building to which section 161 applies. That is because making this decision is exercising a planning function, so section 160(1) applies. Accordingly, in deciding whether to grant the consent, the authority must have special regard to the desirability of preserving or enhancing the character or appearance of the conservation area in which the building is situated.

Example of the general duty applying in relation to a planning function under the 1990 Planning Act

651. The duty would apply when a planning authority is deciding whether to grant planning permission to carry out a development under section 58(1) of the 1990 Planning Act. That is because deciding whether to grant planning permission is exercising a planning function, so section 160(1) of the Bill applies. Accordingly, in deciding whether to grant the planning permission, the authority must have special

regard to the desirability of preserving or enhancing the character or appearance of the conservation area in which the building is situated.

Section 161 – Requirement for demolition to be authorised

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

652. Under subsection (1) of section 161, a person must not carry out works for the demolition of a building in a conservation area (or cause such works) unless consent (referred to as “conservation area consent”) has been granted under section 162.
653. Subsection (2) excludes various categories of building from the requirement to obtain conservation area consent. The excluded categories are:
- a. buildings which are scheduled monuments (subsection (2)(a)) – but demolishing a scheduled monument requires scheduled monument consent (section 11);
 - b. listed buildings (subsection (2)(b)) – but demolishing a listed building requires listed building consent (section 88);
 - c. buildings of descriptions specified in regulations made by the Welsh Ministers (subsection (2)(c));
 - d. buildings of descriptions specified in directions given to an individual planning authority by the Welsh Ministers (subsection (2)(d)).
654. Subsection (3) gives the Welsh Ministers further flexibility, by allowing the Ministers to direct a planning authority that a building in the authority’s area requires conservation area consent despite the fact that it falls within a description of buildings that were excluded from needing conservation area consent by regulations made under subsection (2)(c).
655. Subsection (4) excludes certain emergency works carried out by or on behalf of the Crown from the requirement to obtain conservation area consent. The works that are excluded are works carried out by or on behalf of the Crown in the circumstances set out in paragraphs (a) to (d) of section 117(4).
656. Schedule 11 (introduced by section 161) deals with when a building ceases being a building to which section 161 applies (in other words, stops being a building whose demolition requires conservation area consent). That could happen if, for instance, the building is taken out of the scope of conservation area consent by regulations made under subsection (2)(c) or by a direction made under subsection (2)(d). Schedule 11 sets out how this would affect various actions taken while section 161 did apply to the building (including enforcement action and criminal liability).

Section 162 – Authorisation of demolition by conservation area consent

657. Under subsection (1) of section 162, works for the demolition of a building to which section 161 applies are authorised if:

- a. first, conservation area consent is granted by the relevant planning authority or the Welsh Ministers; and
 - b. second, the demolition works are carried out in accordance with the terms of the consent.
658. Applications for conservation area consent must generally be made to planning authorities (see section 90). But under section 105, the Welsh Ministers may make regulations requiring that certain applications for conservation area consent are made to the Welsh Ministers, i.e. (a) applications made by planning authorities for their own proposed works, and (b) applications made by or on behalf of the Crown. And under section 106 an appropriate Crown authority (defined in section 207) may in certain circumstances apply to the Welsh Ministers for consent. (Sections 90, 105 and 106 are in Part 3 of the Bill, which deals with listed buildings. But they also apply in relation to conservation area consent, as a result of section 163.)
659. Under subsection (2), if retrospective conservation area consent is given, the demolition works are authorised from when that consent was given.

Section 163 – Application of Part 3 to conservation areas

660. Section 163 applies a modified version of Part 3 (buildings of special architectural or historic interest) in relation to buildings whose demolition requires conservation area consent under section 161. The effect is that the conservation area consent regime is the listed building consent regime as adapted by section 163.
661. Subsection (1) of section 163 is the provision that applies Part 3 to buildings whose demolition requires conservation area consent (section 161). Subsection (1) applies the whole of Part 3 except for the provisions listed in paragraphs (a), (b) and (c).
662. Subsection (2) is the provision that modifies how the applied provisions are read when they are being applied in the context of conservation area consent. The modifications in paragraph (a) are general and the modifications in paragraphs (b), (c) and (d) are specific to particular provisions.
663. Two examples of the general modifications are:
- a. references to listed building consent are to be read as if they were references to conservation area consent;
 - b. references to the character of a listed building are to be read as if they were references to the character or appearance of the conservation area in which the building is situated.
664. The example below uses section 117 (offence of carrying out unauthorised works or breaching condition of consent) to illustrate how section 163 applies listed building provisions to the conservation area consent context.
665. Section 117 is in Chapter 4 of Part 3. Under section 117 it could be an offence to alter, extend or demolish a listed building without having obtained listed building consent.

666. Section 163(1)(b) applies section 117, except for subsection (5) of section 117 (see section 163(1)(b)(i)).
667. Section 163(2)(a) makes some general changes to how listed building provisions are read when being applied in the conservation areas context.
668. And section 163(2)(c)(i) makes a specific change to how section 117 is read when being applied in the conservation areas context. Section 117(4) is to be read as if references to the preservation of the building were omitted. This is because the references to the preservation of the building are not relevant to conservation area consent, conservation area consent being about demolition.
669. The combined effect of section 163(1)(b)(i), 163(2)(a) and 163(2)(b)(i) is that section 117 is read as follows when being applied in the conservation areas context:

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

- (1) A person commits an offence if the person carries out, or causes to be carried out, works in relation to a ~~listed building~~ building to which section 161 applies in breach of section ~~88~~ 161.
- (2) A person also commits an offence if the person –
- (a) carries out, or causes to be carried out, works in relation to a ~~listed building~~ building to which section 161 applies, and
 - (b) fails to comply with a condition subject to which ~~listed building consent~~ conservation area consent has been granted for the works.
- (3) Subsection (2) does not limit what may be an offence under subsection (1)
- (4) In proceedings against a person for an offence under this section, it is a defence for the person to prove that –
- (a) works were urgently necessary in the interests of safety or health ~~or for the preservation of the building~~,
 - (b) it was not practicable to secure safety or health ~~or the preservation of the building~~ by carrying out works of repair or works to provide temporary support or shelter,
 - (c) the works that were carried out were limited to the minimum measures immediately necessary, and
 - (d) notice in writing justifying in detail the carrying out of the works was given to the planning authority in whose area the building is or was situated as soon as reasonably practicable.
- ~~(5) In proceedings against a person for an offence under this section in relation to a building on which interim protection is conferred –~~
- ~~(a) it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, that the interim protection had been conferred, and~~

~~(b) where the defence is raised by a person on whom a notice should have been served under section 78(1), it is for the prosecution to prove that the notice was served on the person.~~

- (6) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to a fine or imprisonment for a term not exceeding the applicable limit under section 224(1A)(b) of the Sentencing Code, or both;
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years, or both.
- (7) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

Example: Section 117 as modified by section 163

670. Subsection (3) of section 163 is a regulation-making power that gives the Welsh Ministers flexibility to amend how listed buildings provisions are applied in the context of conservation area consent.

Section 164 – Urgent works to preserve buildings in conservation areas

671. Section 144 (in Part 3) enables local authorities and the Welsh Ministers to carry out urgent works to preserve listed buildings. These powers may also be used in relation to unlisted buildings in conservation areas. But first the Welsh Ministers must have made a direction – under subsection (2) of section 164 – that section 144 applies to a particular unlisted building in a conservation area. And the Welsh Ministers may only make such a direction if they consider preserving the building is important for maintaining the character or appearance of the conservation area (section 164(1)).
672. As a result of subsection (3) of section 164, if the Welsh Ministers have directed that section 144 applies to a building in a conservation area, related provisions about making owners of buildings meet the cost of urgent preservation works will also apply. Those provisions (which include allowing owners to contest the recovery of costs) are stated in sections 145 (power to require owner to meet costs of preservation works) and 146 (further provision about recovery of costs of preservation works).

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

673. Subsections (1) and (2) of section 165 set out a power available to the Welsh Ministers (in practice, Cadw acting on their behalf) to make grants to meet expenditure they consider has made, or will make, a significant contribution towards the preservation or enhancement of the character or appearance of a conservation area.
674. Subsections (5) to (7) set out powers of the Welsh Ministers to recover all or part of such a grant if it was made in relation to a building or other land but then – during a specified recovery period – there is a disposal of all or part of the interest that the recipient of the grant had in the building or land on the day when the grant was made (“the relevant interest”). A disposal in this context means a sale, exchange or lease for

a term of at least 21 years. The recovery period begins with the day on which the grant is made and must end no more than 10 years after that day.

675. These recovery powers might be used if, for example, the recipient of the grant were to sell a property to take advantage of a higher value gained as a consequence of the grant-aided works.
676. Subsection (6) deals with two scenarios where recovery would be from the person who received the grant: the first is where the disposal is by the recipient of the grant; the second is where the disposal is by someone to whom the recipient of the grant has given part of the relevant interest.
677. Subsection (7) deals with the scenario where the disposal is by someone to whom the recipient of the grant had given the whole of the relevant interest. In this case the recovery would be from that person who was given the relevant interest.
678. Under subsection (3), the Welsh Ministers may only recover grants using the powers described above if:
- a. the terms of the grant say it is recoverable under section 165, and
 - b. before or on making the grant the Ministers give written notice to the recipient of the grant summarising the effect of section 165 and specifying the recovery period.
679. As is stated at subsection (4), the Welsh Ministers may also recover grants if conditions imposed on the making of grants are not complied with.

Section 166 – Conservation area agreements

680. Conservation area agreements are a way in which the Welsh Ministers and planning authorities can collaborate about allocating grant money to the repair of buildings in conservation areas.
681. Section 166(1) and (2) provide that the Welsh Ministers and one or more planning authorities may agree to set aside for a specified period of years an amount of money for making grants to repair buildings that are in conservation areas and are included in a list or shown on a map prepared for this purpose.
682. These agreements were called “town scheme agreements” in the 1990 Listed Buildings Act and in practice were also referred to as “town scheme partnership agreements”. Section 166 renames them “conservation area agreements” to reflect the fact that the buildings must be in conservation areas, and because the buildings could be in settlements that are smaller than towns.
683. In practice, the process of entering into a conservation area agreement typically starts with a local authority drawing up a “delivery plan” setting out what the aims, objectives and targets of the scheme would be. If the Welsh Ministers (in practice, Cadw acting on behalf of the Welsh Ministers) are happy with the delivery plan, they and the local authority agree a conservation area agreement. If (as is normally the case) it is agreed that the local authority will supervise matters relating to the agreement,

the local authority will be responsible for making the grants, including the share contributed by other partner organisations.

684. A grant made in relation to a conservation area agreement may in certain circumstances be recovered by the body that made it. If the body is the Welsh Ministers, the recovery powers set out in section 165 will apply, but with a recovery period of 3 years (section 166(5)). If a planning authority has made a grant under section 148, the recovery powers set out in section 149 will apply.

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

685. Part 5 contains supplementary provision relating to Part 3 (buildings of special architectural or historic interest) and Part 4 (conservation areas).

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

Section 167 – Fees and charges for exercising functions

686. Section 167 allows the Welsh Ministers to make regulations to require the payment of a fee or charge to a planning authority for performing any of its functions, or anything connected with those functions, under Parts 3, 4, 5 or 7 of the Bill. Subsection (2) contains a non-exhaustive list of the matters that may be covered by any regulations, for example, how the amount which may be charged is to be calculated, who is liable to pay a fee and when the fee is payable.
687. Subsection (3) provides that, where the regulations allow for a planning authority to calculate the amount of the fees or charges, the income that the planning authority collects from those charges must not be higher than the cost of performing the functions.

Section 168 – Arrangements for exercising functions in relation to applications

688. Section 168 applies sections 319ZA to 319ZD of the 1990 Planning Act to the exercise of a planning authority's functions in relation to applications for listed building or conservation area consent, variation of a consent or approval of details as required as part of a condition of a consent. Sections 319ZA to 319ZD make provision for planning authorities' functions to be discharged by committees, sub-committees or officers, and set the requirements for the size and composition of the committees.
689. Subsection (2) prevents challenges to decisions on the grounds that they should have been made by another planning authority.

Section 169 – Arrangements for obtaining specialist advice

690. Section 169 enables the Welsh Ministers to direct a planning authority to submit for their approval the arrangements that the authority has in place for obtaining specialist advice in connection with some of its functions under the Bill. The relevant functions are set out in subsection (6) and are those where an understanding of the significance and special architectural or historic interest of a building is required in order for the planning authority to undertake its functions effectively. For example, when considering an application for listed building consent, a planning authority has a duty to have special regard to the desirability of preserving the building or its setting or any

features of special architectural or historic interest which it possesses (section 96(2)). Due to the specialist nature of works to a listed building, the availability of specialist advice is essential when determining listed building consent applications.

691. Section 169(3) provides that if the Welsh Ministers are not satisfied with the arrangements that an authority (authority A) proposes to make to receive specialist advice, they can direct another authority (authority B) to exercise any of the relevant functions of authority A, or to make an officer from planning authority B available to provide specialist advice to authority A.

Section 171 – Contributions towards expenditure by local authorities

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

Chapter 2 – Proceedings before the Welsh Ministers

Section 172 – Fees for appeals

696. Section 172 allows the Welsh Ministers to make regulations to require an appellant to pay a fee for:
- a. appeals against a decision or a failure to make a decision on an application for:
 - i. listed building consent or conservation area consent,

- ii. the variation or removal of conditions of consent,
 - iii. the approval of details as required as part of a consent; and
- b. an appeal against an enforcement notice.

Section 173 – Determination of appeal by appointed person

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

697. Section 173 provides that appeals of a type specified in subsection (2) are to be determined by a person appointed by the Welsh Ministers, instead of by the Welsh Ministers themselves. Ordinarily, the appointed person will be an inspector of [Planning and Environment Decisions Wales](#).
698. Regulations may be made under section 173(3)(a) which would allow the Welsh Ministers to determine certain categories of appeals instead of the appointed person, for example those for Grade I listed buildings. Case-specific directions can also be made under section 173(3)(b) which would recover a specific appeal to be determined by the Welsh Ministers. Comparable powers provided by the 1990 Listed Buildings Act have rarely been used, and usually only if the appeal is of national interest where the result may lead to a substantive change in policy.
699. Schedule 12 makes additional provisions about the powers and duties of the appointed person and the administration of directions under section 173(3)(b).
700. Paragraph 2 of the Schedule provides that an appointed person has the same powers in relation to an appeal under section 100 (appeal against decision or failure to make decision) or 127 (appeal against an enforcement notice) as the Welsh Ministers have where they determine such appeals themselves.
701. Paragraph 4 makes provision for the Welsh Ministers to revoke an appointed person's appointment and appoint another person to undertake the review. In these circumstances, the appeal must start afresh, but Ministers do not need to give a person an opportunity to make fresh representations, or to modify or withdraw representations.
702. Paragraph 5 provides the procedure to be followed should the Welsh Ministers issue a case-specific direction under 173(3)(b) that an appeal is to be determined by them rather than by an appointed person.

Section 174 – Choice of inquiry, hearing or written procedure

703. Section 174 requires the Welsh Ministers to determine, in each case, the procedure to follow in considering the proceedings set out in subsection (7). The procedure can be a local inquiry, a hearing, written representations or a combination of those three. The Welsh Ministers must determine the procedure within a period prescribed in regulations, notify the appellant or applicant (as appropriate, depending on the nature of the proceedings) and the planning authority of the procedure that has been selected and publish the criteria that are to be applied in determining the procedure to be followed.

Section 175 – Procedural requirements

704. Section 175 allows the Welsh Ministers to make regulations setting out the procedures to be followed in connection with any appeal, application or reference that is to be considered by the Welsh Ministers under Part 3 and Part 4 of the Bill. The regulations may also make provision for the procedure to be followed for any other local inquiry or hearing held by or on behalf of Welsh Ministers under Parts 3 or 4 or this Part of the Bill. For example, the regulations may, therefore, set procedures for hearings or inquiries that are held before the Welsh Ministers to confirm an order modifying or revoking listed building consent (see Schedule 8).

Section 176 – Power of Welsh Ministers to hold local inquiry

Section 177 – Power of person holding inquiry to require evidence

705. Section 176 allows the Welsh Ministers to cause a local inquiry to be held for the purpose of exercising any of their functions in Parts 3 and 4 of the Bill, or under this Part. Section 177 allows the person holding an inquiry to summon any person to attend an inquiry to give evidence or to produce any documents that relates to the inquiry.

Section 178 – Access to evidence at inquiry

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

706. Section 178 requires all oral evidence at inquiries to be heard in public, and all documents to be available for public inspection. However, where the Welsh Ministers or the Secretary of State consider that the public disclosure of information may relate to national security or to the security of any premises or property, subsection (2) provides that the Welsh Ministers or the Secretary of State may direct that oral evidence be heard and documents be inspected by specific people only. If such a direction is being considered, the Counsel General may appoint a person (an “appointed representative”) to represent the interests of those people who would be prevented from hearing or inspecting the evidence. Section 179 provides for the payment of the appointed representative whether or not an inquiry takes place.

Section 180 – Payment of costs of Welsh Ministers

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

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

Section 181 – Orders relating to costs of parties

709. Section 181 allows the Welsh Ministers to order one party to pay another party’s costs, which may include costs in respect of an inquiry or hearing that does not take place.

710. Costs will only be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense.

Chapter 3 – Validity and correction of decisions

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

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

711. Section 182 provides that certain decisions and orders may only be challenged by statutory review under the procedure set out in section 183, and may not be challenged by means of any other legal proceedings. The decisions in question are set out in subsection (2) and the orders in subsection (3).

712. Section 183 provides that a person who is aggrieved by a decision or order listed in section 182(2) or (3) may make an application to the High Court for the decision or order to be reviewed. The question of whether or not a person is aggrieved will vary dependent on the individual case, but aggrieved persons may include the owner or occupier, the applicant or appellant, or any other party who has been involved or has an interest in the decision or order (for example, a person who made written representations on a review of a listing decision). The authority directly concerned with the decision or order, as defined in subsection (7), may also make an application for statutory review.

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

713. Section 184 requires rules of court to provide a mechanism for interested persons (see subsection (2)(b)) to challenge decisions made by the Welsh Ministers on appeals relating to enforcement notices. The rules must make provision for interested persons to appeal to the High Court (in practice, the appeals would be dealt with by the Planning Court, a specialist court within the High Court, and the rules are contained in Part 54 of the Civil Procedure Rules and Practice Direction 54D, which are made by the Civil Procedure Rule Committee). The rules must also make provision for interested persons to require the Welsh Ministers to state a case for the opinion of the High Court (which, in practice, would require the Welsh Ministers to ask the Planning Court for its judgment on whether they decided the appeal properly, and the rules are contained in Practice Direction 52E).

714. Section 184 does not apply to challenges to enforcement appeal decisions under section 128(3)(a) or (b) (granting consent or removing conditions of consents). These decisions can only be challenged under section 183 (statutory review).

715. Subsection (8) provides that an appeal to the High Court under this section may only be brought with the permission of the High Court. If the Court does not consider that there is a strong case, it can refuse permission (and appeal applications under this section may only be made on points of law, and not merely because a person disagrees with a decision). Practice Direction 54D currently provides that an application for permission must be made within 28 days of the decision being challenged, although the High Court can extend this period if it considers there is good reason to do so.

716. Practice Direction 54D also provides that, where the Court determines that the original decision is erroneous on a point of law, the Court cannot set the decision aside and can only require the Welsh Ministers or appointed person to reconsider the case.

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

Section 186 – Power to correct correctable errors in decision documents

Section 187 – Effect and validity of correction notice

717. Sections 185 to 187 provide that the Welsh Ministers may correct certain errors contained in particular decision documents. These three sections define key terms, set out the power to correct errors, and explain the effect of a decision whether or not to correct an error.
718. Section 185 provides that the correction power is exercisable in relation to documents that record decisions of a type listed in section 182(2), decisions on appeals against enforcement notices under section 127, and any other types of decisions specified in regulations made by the Welsh Ministers. The section also makes clear that the correction power may only be exercised in relation to errors that are not part of any reasons given for the decision.
719. Section 186 sets out the procedure the Welsh Ministers must follow to correct errors in a relevant decision document.
720. Subsection (2) sets out that the procedure starts where, before the end of the “review period”, the Welsh Ministers receive a request in writing to correct an error or, on their own initiative, write to the applicant to explain that the decision document contains a mistake that the Welsh Ministers are considering correcting. The “review period” is defined in subsection (4); it is 6 weeks in relation to decision documents about decisions of a type listed in section 182(2) and 4 weeks in relation to decision documents about appeals against enforcement notices under section 127. The planning authority must also be informed that a request to make a correction has been received, or that the Welsh Ministers are considering making a correction.
721. Subsection (5) provides that the Welsh Ministers must, as soon as practicable after correcting an error or deciding not to correct an error, issue a correction notice which will either specify the correction that has been made or give notice that they are not correcting the error. Subsection (7) specifies on whom the correction notice must be served. Subsection (8) provides that the functions under this section are exercisable by an appointed person if an appointed person made the original decision.
722. Section 187 sets out the status of decisions which have been corrected and of decisions where it has been decided not to make a correction.
723. The corrected decision will be treated as having been made on the date the relevant correction is made and the statutory period for challenging the corrected decision will start to run from that date. Any person wishing to challenge the decision is therefore not prejudiced by the time taken to correct the decision. Where a decision not to correct has been made, the original decision will stand and the statutory period for challenge will be unaffected.

Chapter 4 – General

Section 188 – Representation of Crown and Duchy interests in land

Section 189 – Service of documents on the Crown

Section 190 – Enforcement steps in relation to Crown land

Section 191 – Meaning of “local authority” in this Part

724. Sections 188 to 190 make provision for matters relating to the Crown that arise under Parts 3 and 4 or this Part of the Bill. Section 191 also provides a definition of “local authority” for the purposes of Part 5 of the Bill.
725. Section 190 stipulates that a planning authority may not take a “relevant enforcement step” in relation to Crown land without consent from the appropriate Crown authority. A “relevant enforcement step” is defined in subsection (3) of section 190 as anything done in connection with “the enforcement of a requirement or prohibition” imposed by or under Part 3, Part 4 or this Part of the Bill. It does not include, however, issuing or serving a notice, or making an order. A planning authority would not, for example, be able to enter land to take a step specified in an enforcement notice under section 131 without the consent of the appropriate Crown authority. Subsection (2) provides that the appropriate Crown authority may give consent subject to conditions. “Crown land” and “appropriate Crown authority” are defined in section 207.

Part 6 – Other heritage assets and records

726. This Part sets out legislation relating to historic parks and gardens (section 192), historic place names (section 193) and historic environment records in Wales (sections 194 to 196).

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

727. Section 192 places a duty on the Welsh Ministers to maintain a register of parks and gardens in Wales that they consider to be of special historic interest. Subsection (1) also requires the Welsh Ministers to publish the up-to-date register. The register of historic parks and gardens is published on [Cof Cymru](#).
728. There are around 400 registered historic parks and gardens in Wales. All registered historic parks and gardens are of special historic interest and are graded using a system similar to that used for listed buildings (I, II* and II). Subsection (6) explains that reference to parks and gardens include places of recreation and other designed grounds, including designed ornamental landscapes. Historic parks and gardens can include a wide range of places – rural parks around country houses, deer parks, town gardens, hospital grounds, cemeteries and public parks, for example. They date from the medieval period to the very recent past. Whilst inclusion in the register does not introduce any new consent regimes, registered historic parks and gardens, and their settings, may be protected through the planning system.
729. In identifying parks and gardens of special historic interest, the Welsh Ministers are required by subsection (2) to decide whether to include land adjoining or adjacent to the grounds being registered, or any building or water on or adjoining or adjacent to those grounds. This will allow the exercise of professional judgement in determining the most logical boundary line. For example, a grand splayed entrance to a driveway, which is outside the walls of an estate but clearly part of the design, could be included

in a register entry. Alternatively, a modern greenhouse or stable block could be excluded from an entry.

730. The Welsh Ministers have published guidance, which is kept under review, to support the management of registered parks and gardens. The current guidance, [Managing Change to Registered Historic Parks and Gardens in Wales](#) (2017), sets out the general principles to follow when considering changes that may have an impact on registered historic parks and gardens. It is principally aimed at owners and agents to help them to understand the implications of owning a registered park or garden and managing changes that affect it.

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

731. Section 193 places a duty on the Welsh Ministers to maintain a list of historic place names. The List of Historic Place Names of Wales is managed on behalf of the Welsh Ministers by the Royal Commission. It is freely available [online](#) and through the [Welsh historic environment records](#). The list contains historic names from geo-referenced sources earlier than 1914. The list is vast and includes different names/spellings for the same structure or place at different times. It will continue to grow as further place names are collected from a variety of historical sources.
732. The statutory guidance for historic environment records – [Historic Environment Records in Wales: Compilation and Use](#) (2017) – published in accordance with section 196, includes an annex providing guidance for local authorities on the use of the list of historic place names which can be accessed through the historic environment records.

Section 194 – Duty to maintain historic environment records

733. Section 194 requires the Welsh Ministers to compile and keep up to date a historic environment record for each local authority area in Wales. The Welsh archaeological trusts maintain the historic environment records on behalf of the Welsh Ministers.
734. The historic environment records have been created as a result of decades of research and investigation and provide detailed information about the historic environment of a given area. Historic environment records are critical sources of information for those making decisions about the sustainable management of the historic environment. That information is important for management processes, conservation, fieldwork and research, 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, could be brought into question.
735. Subsection (2) sets out the range of information that must be provided in a historic environment record. Paragraph (h) requires the inclusion of details of every other area or site (in addition to the areas and sites listed in paragraphs (a) to (g)) considered to be of local historic, archaeological or architectural interest by the local authority or the Welsh Ministers. Records might relate to unscheduled archaeological sites, unlisted historic buildings or structures, historic parks and gardens, battlefields or landscapes that do not appear on the relevant registers or inventories, or locations with important palaeo-environmental evidence. Records might also include locations that do not have

any visible physical evidence, but might be associated with a historical, cartographic or documentary reference, or the discovery of an archaeological artefact.

736. 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.

Section 195 – Access to historic environment records

737. Section 195 requires a historic environment record to be a publicly available resource. Every historic environment record is freely available online through [Archwilio](#) and is supported by associated reference material, which may be digital or paper, and is publicly available at the Welsh archaeological trust offices. This material can include aerial photographs, copies of early maps and antiquarian reports, characterisation studies, unpublished reports (“grey literature”), and other published and documentary sources. Historic environment records are a dynamic and constantly evolving resource which requires continuous maintenance and enhancement as new information about the historic environment comes to light. Professional advice and assistance must also be offered to help users locate and interpret information provided in or accessed by means of a historic environment record.
738. Subsection (2) requires the Welsh Ministers on request to provide a person with a copy of part of a historic environment record if the request is deemed reasonable. Subsection (3) requires the Welsh Ministers to compile a document with the requested information retrieved from the historic environment record. The compilation of this document may require interpretation of the data within the record, some form of analysis or additional research.
739. Subsection (5) gives the Welsh Ministers the power to impose charges to recover the costs of providing certain services associated with historic environment records, for example, the production of reports based on analysis of historic environment record content. No profit will be made from such charges, which will be limited to the costs of providing the service.

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

740. Section 196 requires the Welsh Ministers to issue guidance to local authorities, National Park authorities and Natural Resources Wales on how they may contribute to the compilation and maintenance of the historic environment records and on the use of the historic environment records in the exercise of their functions. The current guidance, [Historic Environment Records in Wales: Compilation and Use](#), is available on the website of Cadw. Local authorities, National Park authorities and Natural Resources Wales must have regard to this guidance. These public bodies have an important role in the management and conservation of the historic environment and the way in which it is promoted, accessed and appreciated by the public. These functions depend on

access to good-quality, authoritative information about the historic environment, such as that provided by the historic environment records.

Part 7 – General

741. Part 7 contains general provisions that relate to multiple parts or all of the Bill. Sections 197 to 199 enable “relevant authorities” to obtain information about interests in land in relation to the exercise of their functions in Parts 2, 3, 4 and 5. The provisions relating to offences (sections 200 and 201), compensation (sections 202 to 204), service of documents (sections 205 and 206), definitions and interpretation (sections 207 and 210) and other matters (sections 208 and 209) are applicable to the entire Bill. Section 211 introduces Schedule 13, which makes minor and consequential amendments and repeals, and Schedule 14, which makes transitional and saving provisions. The section also provides the Welsh Ministers with powers to make further incidental, consequential, transitional, transitory or saving provisions by regulations.

Section 197 – Power to require information by notice

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

Section 198 – Offences in connection with section 197

743. Section 198 provides that a person commits an offence if the person, without a reasonable excuse, fails to provide information, or knowingly provides false or misleading information, in response to an information notice.

744. A person guilty of the offence of failing, without a reasonable excuse, to provide the required information is liable on summary conviction to a fine not exceeding level 3 on the standard scale. (See paragraph 57 above for information on the standard scale.) A person guilty of the offence of knowingly providing information which is false or misleading in a material respect is liable on summary conviction or on conviction on indictment to an unlimited fine.”

Section 199 – Information about interests in Crown land

745. Section 199 allows the Welsh Ministers to make requests in certain cases to the appropriate Crown authority for information about the nature of their interest in the land and the name and address of any other person who may have an interest in the land. The request for information may not relate to a private interest in Crown land and can only be made for certain purposes which relate to enabling the Welsh Ministers, or a local authority (as defined in section 157) to exercise particular

functions under the Bill as set out in section 197(2). “Appropriate Crown authority” and “private interest” are defined in section 207.

Section 200 – Offences by bodies corporate

746. Section 200 provides that where an offence under the Bill is committed by a body corporate and is proved to have been committed with the consent or connivance of senior officers, including directors or managers, the senior officers, as well as the body corporate, are liable to be prosecuted.”

Section 201 – Civil sanctions

747. Section 201 provides for the application of civil sanctions to offences committed under this legislation.

748. Subsection (1) gives the Welsh Ministers regulation-making powers to make any provision for a civil sanction in relation to an offence under this Bill that they could make under Part 3 of the 2008 Act if they or any other authority were a regulator in relation to a relevant offence. Civil sanctions may include fixed monetary penalties and discretionary requirements to be determined by the relevant enforcement authority.

749. Subsections (2) to (4) apply relevant provisions of the 2008 Act to any provision that the Welsh Ministers make by regulations under subsection (1).

Section 202 – Making claims for compensation

750. Section 202 enables the Welsh Ministers to make regulations about how claims for compensation under the Bill must be made. The regulations may also amend any provision of the Bill which specifies the period within which a claim for compensation must be made.

751. Subsection (2) provides that, if they consider there to be good reasons for doing so, the Welsh Ministers may extend the period for claiming compensation under the Bill in a particular case.

Section 203 – Determination of compensation claims by Upper Tribunal

752. Section 203(1) provides that any dispute about compensation payable under the Bill must be referred to and be determined by the [Upper Tribunal](#). Subsection (2) further provides that section 4 of the Land Compensation Act 1961 (c. 33) (“the 1961 Act”) applies to any Upper Tribunal proceedings about disputed compensation under the Bill. Section 4 enables the Upper Tribunal to require one party to proceedings before it about compensation disputes to pay the costs incurred by another party to the proceedings.

Section 204 – Compensation for depreciation of value of land

753. Section 204 provides that section 5 of the 1961 Act applies when calculating compensation for depreciation of the value of land. This could be applicable, for example, when the value of the land has reduced as a result of the refusal of scheduled monument consent (section 21) or the revocation of listed building consent (section 108). It also sets out the procedure if the interest in land is subject to a mortgage.

Section 205 – Service of notices and other documents: general

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

754. Sections 205 and 206 make provision for the service of notices or other documents on persons, including bodies corporate, under the Bill. For these purposes, “served” includes references in the Bill to “serve”, “give” (and any similar terms).
755. Section 205(2)(a) to (d) sets out the different methods of service that may be used under the Bill, including electronic communications. Electronic communications may only be used where the person being served has provided an address for electronic service, and when using this method – email, for example – specific conditions need to be met to ensure that the recipient can read and access the document (section 205(3)). A notice can be served on a body corporate by sending it by post in a pre-paid letter or handing it to the secretary or clerk at its registered or principal office, or by using electronic communication.
756. Section 205(5) signposts section 233 of the Local Government Act 1972 (c.70), which makes additional provision about the method by which local authorities may serve documents, which includes ordinary post.
757. Section 206 makes further provision about how a notice or document is to be served on a person who has an interest in, or who is an occupier of, a building, monument or land. If the name of the owner is unknown, after making reasonable inquiries, such as contacting the Land Registry, the document may be addressed to “the owner” (subsection (2)).
758. Subsections (4) and (5) set out the actions that must be taken when serving a notice or document in order for the notice or document to be treated as properly served.

Section 207 – Definitions relating to the Crown

759. Section 207 defines key terms relating to the Crown used in the Bill, including “appropriate Crown authority” and “Crown land”.

Section 208 – Church of England land

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

Section 209 – Regulations under this Act

761. Section 209 contains general provisions regarding regulations made under this Act. The power to make regulations is exercisable by statutory instrument and subsections (2) and (3) set out what provisions may be made by such regulations.

762. Subsection (5) identifies the regulations that must be laid before and approved by resolution of the Senedd prior to being made; this is known as the affirmative procedure.
763. Under subsection (6) all other regulations are subject to the negative procedure, in which a statutory instrument is laid before the Senedd and it becomes law unless it is annulled within a period of 40 days.

Section 211 – Consequential and transitional provision etc.

Schedule 13 – Minor and consequential amendments and repeals

Schedule 14 – Transitional and saving provisions

764. Section 211 introduces Schedules 13 and 14 which together make amendments and transitional provisions that will accommodate the legal changes occasioned by the enactment of the Historic Environment (Wales) Bill.
765. Subsections (3) and (4) give the Welsh Ministers powers to make further incidental, consequential, transitional, transitory or saving provisions by regulations.
766. Schedule 13 contains various amendments that are necessary in consequence of consolidating the legislation in the Historic Environment (Wales) Bill. Some changes make provision for the appropriate citation of the Bill in existing legislation, while many others are needed to extract Wales from the historic environment legislation that will remain in effect in England and Scotland, particularly the 1979 Act and 1990 Listed Buildings Act. Some legislation, for instance, the Historic Environment (Wales) Act 2016 (anaw 4), is entirely replaced by this Bill and is repealed (paragraph 192).
767. Paragraph 65 of Schedule 13 inserts a new section 79A into the Building Act 1984 (c. 55) (“the 1984 Act”). Derived from section 56 of the 1990 Listed Buildings Act, it requires a local authority in Wales to take steps in relation to listed buildings and certain other buildings under the 1984 Act prior to obtaining an order under section 77(1)(a) of that Act (making a dangerous building order) or serving a notice under section 79(1) of that Act (serving a notice with regard to a ruinous or dilapidated building detrimental to amenity). The steps required by section 79A of the 1984 Act are to consider the exercise of appropriate measures provided by the Bill.
768. If the building is listed and the local authority is the planning authority for the area in which the building is situated, it should consider whether it should exercise its powers under sections 137 and 138 of the Bill to serve a repairs notice and initiate the process for compulsory acquisition.
769. Section 79A(1)(b) further provides that, in any case involving a listed building, a local authority should consider undertaking urgent preservation works under section 144 of the Bill.
770. Section 79A(2) further provides that, if a building is subject to interim protection or temporary listing under the Bill, or if a building in a conservation area is important for maintaining the character or appearance of that area, the local authority should consider undertaking urgent works for the preservation of the building under section 144 of the Bill.

771. Paragraph 90 inserts a new section 314A into the 1990 Planning Act. Derived from section 66 of the 1990 Listed Buildings Act, it provides that, if considering whether to grant planning permission for development that affects a listed building or its setting, a local planning authority in Wales or the Welsh Ministers must have special regard to the desirability of preserving the listed building, its setting and any features of special architectural or historic interest.
772. Section 314A(4) of the 1990 Planning Act specifies that in this section “listed building” refers to buildings situated in both Wales and England. Consequently, in regions of Wales along the border with England, a Welsh planning authority or the Welsh Ministers might have to give special regard to the desirability of preserving listed buildings and their settings on both sides of the border when considering whether to grant planning permission. A complementary amendment to the 1990 Listed Buildings Act is made by paragraph 136. This will place a corresponding duty on English local planning authorities and the Secretary of State with regard to listed buildings in Wales.
773. Schedule 14 contains various provisions necessary for the smooth and uninterrupted transition from earlier enactments to the Historic Environment (Wales) Bill. While Part 1 contains general provisions, Part 2 makes provision for matters relating to monuments under guardianship.