

# Constitutional and Legislative Affairs Committee

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Meeting Venue:  
**Committee Room 2 – Senedd**

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Meeting date:  
**8 June 2015**

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Meeting time:  
**13.30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



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## Agenda

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### **1 Introduction, apologies, substitutions and declarations of interest**

### **2 Evidence in relation to the Historic Environment (Wales) Bill (Pages 1 – 189)**

*(Indicative time 13.30)*

Ken Skates AM, Deputy Minister for Culture, Sport and Tourism;  
Eifiona Williams, Welsh Government;  
Angharad Huws, Welsh Government

**CLA(4)–15–15 – Paper 1 – Statement of Policy Intent**

**CLA(4)–15–15 – Paper 1A – Keeling Schedule: Planning (listed Building and Conservation Areas) Act 1990**

**CLA(4)–15–15 – Paper 1B – Keeling Schedule: Ancient Monuments and Archaeological Areas Act 1979**

**CLA(4)–15–15 – Research Service Briefing**

**CLA(4)–15–15 – Legal Advice Note**

### **3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (Pages 190 – 191)**

**CLA(4)–15–15 – Paper 2 – Statutory instruments with clear reports**

#### Negative Resolution Instruments

**CLA535 – The Town and Country Planning (Referrals and Appeals) (Written Representation Procedure) (Wales) Regulations 2015**

Negative procedure; Date made: 20 May 2015; Date laid: 22 May 2015; Coming into force date: 22 June 2015

**CLA536 – The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2015**

Negative procedure; Date made: 20 May 2015; Date laid: 22 May 2015; Coming into force date: 22 June 2015

**CLA537 – The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2015**

Negative procedure; Date made: 20 May 2015; Date laid: 22 May 2015; Coming into force date: 22 June 2015

### **4 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

#### Negative Resolution Instruments

**CLA538 – The Care and Support (Care Planning) (Wales) Regulations 2015 (Pages 192 – 237)**

Negative procedure; Date made: 21 May 2015; Date laid: 1 June 2015; Coming into force date: 6 April 2016

**CLA(4)–15–15 – Paper 3 – Report**

**CLA(4)–15–15 – Paper 4 – Regulations**

**CLA(4)–15–15 – Paper 5 – Explanatory Memorandum**

**5 Papers to Note** (Pages 238 – 275)

**CLA(4)–15–15 – Paper 6 – Letter from the Minister, Renting Homes (Wales) Bill: Key Workers**

**CLA(4)–15–15 – Paper 7 – Letter from the Minister, Regulation and Inspection of Social Care (Wales) Bill**

**CLA(4)–15–15 – Paper 7A – Annex**

**6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(vi) the Committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

**Draft Report on the Renting Homes (Wales) Bill** (Pages 276 – 289)

**CLA(4)–15–15 – Paper 8 – Draft Report**

**Draft Report on the Regulation and Inspection of Social Care (Wales) Bill** (Pages 290 – 334)

**CLA(4)–15–15 – Paper 9 – Draft Report**

**Draft Report: Inquiry into Making laws in the Fourth Assembly** (Pages 335 – 426)

**CLA(4)–15–15 – Paper 10 – Draft Report**



Llywodraeth Cymru  
Welsh Government

# Historic Environment (Wales) Bill

Statements of Policy Intent

May 2015

Agenda Item 2

## 1. Introduction

- 1.1 These statements of policy intent set out the current policy approaches for the subordinate legislation for the Historic Environment (Wales) Bill. Consultation will be undertaken on each policy area and therefore the policy approaches may be subject to change. These statements have been prepared to assist the responsible committee during the scrutiny of the Historic Environment (Wales) Bill.
- 1.2 The Welsh Government considers that these subordinate legislative powers are essential in order to prescribe matters of procedural detail and provide flexibility for matters that may require adjustment to facilitate effective implementation and operation.
- 1.3 The Assembly procedure proposed for each subordinate legislative power is set out in detail in chapter 5 of the Explanatory Memorandum. The guidelines published by the Counsel General in January 2012 have been followed to ensure a consistent approach to the Assembly procedures.
- 1.4 A draft of the statutory guidance on historic environment records that will be issued under section 35 of the Historic Environment (Wales) Bill has also been produced to assist the Committee during scrutiny. This has been shared informally with key partners such as the Welsh Local Government Association, the Welsh archaeological trusts and the Royal Commission on the Ancient and Historical Monuments of Wales. Formal consultation on the guidance will be undertaken in late 2015/early 2016, once the provisions of the Bill have been finalised.

## **2. Consultation on and review of, certain scheduling or listing decisions made by the Welsh Ministers**

### **Powers**

- 2.1. Part 2, section 3 of the Historic Environment (Wales) Bill introduces new sections 1AA(6), 1AD(2) and 1AE(6) in the Ancient Monuments and Archaeological Areas Act 1979 ('the 1979 Act'). Schedule 1 of the Bill introduces paragraphs 1(1) and 5 in new schedule A2 of the 1979 Act.
- 2.2. Part 3, section 24 of the Historic Environment (Wales) Bill introduces new sections 2A(5), 2D(6) and 28B(2) in the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the 1990 Act'). Schedule 2 of the Bill introduces paragraphs 1(1) and 5 in new schedule 1B of the 1990 Act.

### **Description**

- 2.3. Part 2, section 3 and Schedule 1 of the Historic Environment (Wales) Bill place a duty on the Welsh Ministers to consult with appropriate persons, including the owner and occupier, when proposing to add, remove or make a material amendment to an entry in the schedule of monuments. Section 1AA(6) allows the Welsh Ministers, by regulations, to add to the categories of appropriate persons identified in the Bill.
- 2.4. The Bill also gives an owner or occupier the right, in certain circumstances, to request that the Welsh Ministers review a decision to schedule a monument or make a material amendment to an entry in the schedule of monuments. The Welsh Ministers may appoint a person to undertake such a review. The regulations may include provisions about:
  - the grounds on which an application for a review may be made;
  - the information that must be provided to, or may be required by, the Welsh Ministers in connection with an application;
  - the form and manner in which an application must be made;
  - the period within which an application must be made;
  - the procedure that is to be followed in connection with a review;
  - the conduct of public local inquiries and hearings;
  - the costs that may be required to be paid in connection with a review; and
  - the classes of review on which a decision is to be made by an appointed person on behalf of the Welsh Ministers.

- 2.5. Part 3, section 24 and Schedule 2 of the Bill introduce comparable measures for listed buildings. The Welsh Ministers must consult with the owner and other appropriate persons when proposing to add or remove an entry on the list of buildings of special architectural or historic interest. Section 2A(5) allows the Welsh Ministers, by regulations, to add to the categories of appropriate persons identified in the Bill.
- 2.6. The provisions accord owners and occupiers the right, in certain circumstances, to request that the Welsh Ministers review a decision to list a building. The Welsh Ministers may appoint a person to undertake such a review. The regulations may include provisions about:
- the grounds on which an application for a review may be made;
  - the form and manner in which an application must be made;
  - the information that is to be provided to, or may be required by, the Welsh Ministers in connection with an application;
  - the period within which an application must be made; and
  - the classes of reviews on which a decision is to be made by an appointed person on behalf of the Welsh Ministers.

### **Policy intent**

- 2.7. To introduce flexibility into the categories of people with whom the Welsh Ministers will consult prior to designating an asset, so that those people with an interest in the building or monument have an opportunity to feed into the formal consultation process.
- 2.8. To create a mechanism for review that is flexible and responsive to meet the needs of the public and the Welsh Ministers. Stipulating the administrative arrangements in regulations will provide an effective and efficient legislative mechanism for the Welsh Ministers to amend the procedures based on experience.
- 2.9. Subject to consultation with stakeholders, the current policy intentions for the details to be prescribed in subordinate legislation and directions are summarised below.

<b>Scheduled monuments</b>	
<b>Extend the categories of people that need to be consulted prior to designation.</b>	
<b>Part 2, section 3(1) which inserts new section 1AA(6) into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
1AA(6) The Welsh Ministers may by regulations add to the list of appropriate persons in 1AA(3) and make consequential amendments to the Act if appropriate.	The regulation-making power allows the Welsh Ministers to identify other categories of people who may have an interest in the monument to be formally consulted prior to scheduling. If an additional category of person is identified, consequential amendments may be required to other sections of the Bill, such as those that deal with notification and review.
<b>Review of certain decisions to schedule a monument</b>	
<b>Part 2, section 3(1) which inserts new section 1AE(6)(a)–(g) into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
1AE(6)(a) The grounds on which an application for a review may be made	<p>The grounds of review will be limited to matters concerning the criteria for scheduling.</p> <p>It should be possible to seek a review on the basis that:</p> <ul style="list-style-type: none"> <li>• a factual error was made in the identification of the site as one of national importance;</li> <li>• the location or extent of the area was shown incorrectly on the map accompanying the scheduling entry; or</li> <li>• there is significant new evidence that was not previously considered relating to the national importance of the monument, for example, new information on the monument's date that makes a material difference to its national importance.</li> </ul> <p>The intention is not to provide a right of review on the grounds that scheduling will restrict the use of the land or result in adverse consequences for the owner or occupier.</p>
1AE(6)(b) The information that must be provided to, or may be required by, the Welsh Ministers in connection with an application	The Welsh Ministers will provide a form for an owner/occupier to complete to apply for a review of a decision to designate. The form will require information such as the grounds for review, the notice of the decision and why the applicant disagrees with the Welsh Ministers' decision.
1AE(6)(c) The form and manner in which an application must be made	The applicant will be able to make an application for review online or in writing using the form provided by the Welsh Ministers.

1AE(6)(d) The period within which an application must be made	It is intended that an application for review must be made within 12 weeks of the Welsh Ministers' decision to schedule a monument. The appointed person will have the discretion to accept a late application, but only for very exceptional reasons.
1AE(6)(e) The procedure that is to be followed in connection with a review	The Bill requires reviews to be undertaken by written representations, hearings or inquiries. The appointed person will be able to determine the procedure for deciding the appeal. It is anticipated that rules similar to those that govern planning application appeals will be used. It is expected that, outside of exceptional circumstances, the appointed person would make a site visit.
1AE(6)(f) The conduct of local public inquiries and hearings	Local public inquiries and hearings are likely to follow the procedures that govern planning permission hearings and inquiries. It is anticipated that the majority of reviews will be undertaken by written representations and that public inquiries will be unusual.
1AE(6)(g) Costs that may be required to be paid in connection with a review	There is no charge for requesting a review, but the applicant will have to pay their own costs. However, an application for an award of costs may be made by a party on the grounds that the other party's unreasonable behaviour has caused the person applying for costs unnecessary expense. Such a circumstance may arise, for instance, when a hearing is cancelled at a late stage on the withdrawal of an appeal.
<b>Schedule 1 which inserts Schedule A2, paragraph 1(1) and paragraph 5 into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
1(1) The classes of reviews on which a decision is to be made by an appointed person	It is the intention of the Welsh Ministers to appoint the Planning Inspectorate to undertake reviews on their decisions to schedule monuments. A power to make regulations setting out the classes of reviews on which a decision is to be made by an appointed person will allow flexibility in the future to identify the most appropriate person to undertake the reviews.
5 Directions that anything that would fall to be done by an appointed person in connection with a review (other than making a decision) is to be done by the Welsh Ministers	This will enable the Welsh Ministers to direct that matters such as the notification of a review, the circulation of representations/evidence and the notification of a decision are to be undertaken by the Welsh Ministers. This will allow administrative officers that support the appointed person to undertake such roles, especially if, in the future, the review is undertaken by an organisation other than the Planning Inspectorate. The Bill requires the appointed person to make the decision on the review, so the independence of the decision making is not compromised.

<b>Compensation for loss or damage caused by interim protection</b>	
<b>Part 2, section 3(1) which inserts new section 1AD(2) into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
1AD(2) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the effect of interim protection	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the effect of interim protection. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

<b>Listed buildings</b>	
<b>Extend the categories of people that need to be consulted prior to designation.</b>	
<b>Part 3, section 24(1) which inserts new section 2A(5) into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
2A(5) The Welsh Ministers may by regulations add to the list of appropriate persons in 2A(3) and make consequential amendments to the Act if appropriate.	The regulation-making power allows the Welsh Ministers to identify other categories of people who may have an interest in a building and should be formally consulted prior to listing. If an additional category of person is identified then consequential amendments may be required to other sections of the Bill, such as those that deal with notification and review.
<b>Review of certain decisions to list a building</b>	
<b>Part 3, section 24(1) which inserts new section 2D(6)(a)–(d) into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
2D(6)(a) The grounds on which an application for a review may be made	<p>The policy intention is that the review must relate to the special architectural or historic interest of a building and:</p> <ul style="list-style-type: none"> <li>• the original decision was made wrongly — for instance, the wrong building was listed as a result of a factual error;</li> <li>• there was some irregularity in the process which affected the outcome — for example, relevant considerations were not taken into account or irrelevant considerations were taken into account; or</li> </ul>

	<ul style="list-style-type: none"> <li>there is significant new evidence that was not previously considered relating to the special architectural or historic interest of the building — for example, new information relating to the building’s date that makes a material difference to its architectural or historic interest.</li> </ul> <p>It is not anticipated that other factors, such as the cost of upkeep or repair of listed buildings or planning considerations, should be taken into consideration.</p>
2D(6)(b) The form and manner in which an application must be made	The Welsh Ministers will provide a form for an owner/occupier to complete to apply for a review of a decision to designate. The applicant will be able to make an application for review online or in writing.
2D(6)(c) The information that is to be provided to, or may be required by, the Welsh Ministers in connection with an application	The form will require information such as the grounds for review, the notice of the decision and why the applicant disagrees with the Welsh Ministers’ decision.
2D(6)(d) The period within which an application must be made	It is intended that an application for review must be made within 12 weeks of the Welsh Ministers’ decision to list a building. The appointed person will have the discretion to accept a late application, but only for very exceptional reasons.
<b>N.B.</b> It is anticipated that the same review procedures will be established for decisions on scheduled monuments and listed buildings. The 1990 Act and the Town and Country Planning Act 1990 already allow the Welsh Ministers to make provisions on the conduct of local and public inquiries and the costs that may be required to be paid. Separate provisions are therefore not required to cover those matters in the context of reviews of the Welsh Ministers’ listing decisions.	
<b>Schedule 2 which inserts Schedule 1B, paragraph 1(1) and paragraph 5 into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
1(1) The classes of reviews on which a decision is to be made by an appointed person rather than the Welsh Ministers	It is the intention of the Welsh Ministers to appoint the Planning Inspectorate to undertake reviews on their decisions to list buildings. A power to make regulations setting out the classes of reviews on which a decision is to be made by an appointed person will allow flexibility in the future to identify the most appropriate person to undertake the reviews.
5 Directions that anything that would fall to be done by an appointed person in connection with a review (other than making a decision) is to be done by	This will enable the Welsh Ministers to direct that matters such as the notification of a review, the circulation of representations/evidence and the notification of a decision are to be undertaken by the Welsh Ministers. This will allow administrative officers that support the appointed person to undertake such roles, especially if, in the future, the review is

the Welsh Ministers	undertaken by an organisation other than the Planning Inspectorate. The Bill requires the appointed person to make the decision on the review, so the independence of the decision making is not compromised.
<b>Compensation for loss or damage caused by interim protection</b>	
<b>Part 3, section 24(3) which inserts new section 28B(2) into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
28B(2) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the effect of interim protection.	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the effect of interim protection. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

### **3. Scheduled monument consent — simplification of process**

#### **Power**

- 3.1 Part 2, section 5(1)–(2) of the Historic Environment (Wales) Bill introduces new section 5B and paragraph 1(3) to Part 1 of Schedule 1 in the 1979 Act.

#### **Description**

- 3.2 Part 2, section 5(1)–(2) of the Historic Environment (Wales) Bill allows the Welsh Ministers to make regulations to set out the way in which they may grant scheduled monument consent and how an owner/occupier can apply for consent other than by using the prescribed form.

#### **Policy intent**

- 3.3 To create a consent process that is flexible and proportionate in order to meet the needs of the public and the Welsh Ministers.
- 3.4 Subject to consultation with stakeholders, the current policy intentions for the details to be prescribed in subordinate legislation are summarised below.

<b>Scheduled monument consent — simplification of process</b>	
<b>Part 2, section 5(1) which inserts new section 5B into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
Form and content of scheduled monument consent	The 1979 Act requires scheduled monument consent to be granted in writing if works are to be authorised. The new section allows for the Welsh Ministers to grant scheduled monument consent in such other manner as they prescribe. The policy intent here is to allow the grant of consent electronically and to future-proof the system to keep pace with technological change.
<b>Part 2, section 5(2) which inserts new paragraph 1(3) in Part 1 of Schedule 1 of the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
Application may be made otherwise than in the form provided for in paragraph 1(1) of Schedule 1	Schedule 1, Part 1 of the 1979 Act provides for regulations on the form and manner in which applications for scheduled monument consent can be made. The new paragraph would give the Welsh Ministers flexibility to permit certain applications for scheduled monument consent to be made in a form other than that provided for in paragraph 1(1). This would allow for the introduction of a simplified scheduled monument consent process that would dispense with a written application and the interim consent stage, which provides the applicant with the opportunity to make further representations or require a hearing. Where the applicant and the Welsh Ministers agree on the use of this process, a scheduled monument consent letter could be issued simply authorising the works to a monument as described. This procedure would only be used for minor works.

## **4. Compensation for refusal of scheduled monument consent.**

### **Powers**

4.1 Part 2, section 10(2) of the Historic Environment (Wales) Bill introduces new section 7(4A) in the 1979 Act.

### **Description**

4.2 Section 7 of the 1979 Act makes provision for the payment of compensation in very limited circumstances when scheduled monument consent is refused or granted subject to onerous conditions. An owner or anyone with an interest in a monument who incurs a loss or damage because scheduled monument consent is refused (or is granted subject to conditions which make it impossible to use the monument in the case of c) below) may be entitled to compensation if the works proposed:

- a) are reasonably necessary to implement a planning permission granted before the monument was scheduled;
- b) do not constitute development or are permitted development under the provisions of a General Development Order; or
- c) are necessary for the monument to continue being used for the lawful purpose for which it had been previously used immediately before the date of the application for consent.

4.3 Section 7(4) states that compensation is not payable (under b) above) where refusal relates to works which would totally or partially destroy a monument except for the purposes of agriculture or forestry.

### **Policy intent**

4.4 The regulation-making power allows the Welsh Ministers to look further at the compensation provisions within the Act and to determine whether there is merit in the current policy of differential treatment for the purposes of agriculture and forestry compared with other purposes, especially taking into account current environmental protection legislation and agri-environment schemes.

## 5. Heritage partnership agreements

### Powers

5.1 Part 2, section 11(1) of the Historic Environment (Wales) Bill introduces new section 9ZB(3) in the 1979 Act.

5.2 Part 3, section 28(1) of the Historic Environment (Wales) Bill introduces new section 26M(3) in the 1990 Act.

### Description

5.3 Owners of scheduled monuments and/or listed buildings will be able to enter heritage partnership agreements with the Welsh Ministers or local planning authorities. Such an agreement will grant consent for a programme of specified works during a fixed period, negating the need for separate consents for each set of works.

5.4 Part 2, section 11(1) of the Historic Environment (Wales) Bill inserts new sections 9ZA and 9ZB in the 1979 Act providing for heritage partnership agreements for scheduled monuments and for the Welsh Ministers to grant scheduled monument consent for works as part of an agreement. Section 9ZB(3) provides powers for the Welsh Ministers to make provision by regulations for:

- any consultation that must take place before a heritage partnership agreement is made or varied;
- the publicity that must be given to a heritage partnership agreement before it is made or varied;
- terms that must be included in a heritage partnership agreement;
- enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any of its provisions;
- the provision that may be included in such an order; and
- disapplying, or applying or reproducing with or without modifications, any provision of the Bill for the purposes of heritage partnership agreements.

5.5 Part 3, section 28(1) of the Historic Environment (Wales) Bill inserts new sections 26L and 26M in the 1990 Act putting equivalent measures in place for listed buildings, including the power for local planning authorities or the Welsh Ministers to grant listed building consent for works covered by the agreement. Section 26M(3) provides powers for the Welsh Ministers to make provision by regulations for:

- any consultation that must take place before a heritage partnership agreement is made or varied;
- the publicity that must be given to a heritage partnership agreement before it is made or varied;
- terms that must be included in a heritage partnership agreement;
- enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any of its provisions;
- enabling any local planning authority who is party to an agreement to terminate;
- the provision that may be included in such a termination order;
- disapplying, or applying or reproducing with or without modifications, specified provisions in the 1990 Act relating to the listed building consent process for the purposes of heritage partnership agreements; and
- any consequential amendments that may be required to specified sections of the 1990 Act.

### **Policy intent**

- 5.6 To improve the sustainable management of Wales' statutorily designated historic assets by creating powers for consenting authorities, owners and other interested parties to enter into long-term, voluntary management plans which can provide all the necessary statutory consents for an agreed programme of works. Stipulating the details of the administrative arrangements in regulations will allow for flexibility and for the procedures to be amended relatively quickly based on experience.
- 5.7 Subject to consultation with stakeholders, the current policy intentions for the details to be prescribed in subordinate legislation are summarised below.

<b>Heritage partnership agreements for scheduled monuments</b>	
<b>Part 2, section 11(1) which inserts new section 9ZB(3) into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
9ZB(3)(a) Any consultation that must take place before a heritage partnership agreement is made or varied	Heritage partnership agreements can be expected to grant multiple scheduled monument consents within one agreement and to cover a relatively long period of time. It is intended therefore that the regulations will require the Welsh Ministers to consult with the relevant local planning authority, the appropriate archaeological trust and other bodies with pertinent expertise prior to agreeing to a heritage partnership agreement. The consultation and publicity process will last for a minimum of 28 days.
9ZB(3)(b) The publicity that must be given to a heritage partnership agreement before or after it is made or varied	The intention is to require the Welsh Ministers to publish online information on a proposed heritage partnership and to make any owner or occupier not party to the agreement aware of it.
9ZB(3)(c) Terms that must be included in a heritage partnership agreement	The mandatory features of a heritage partnership agreement are set out section 9ZB(1), including that it must be in writing and provide for review, termination and variation. The regulations will supplement these by specifying any other terms that must be included in an agreement. Such terms might include a statement of the significance of the historic assets, an assessment of the impact of the works on that significance, justification for the works and the duration of the agreement.
9ZB(3)(d) Enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an agreement	The intention is that the Welsh Ministers will have the power to terminate a heritage partnership agreement where, as a last resort, this is considered necessary to protect the national importance of a scheduled monument and it has proved impossible to negotiate a modification to the agreement. Such a situation might arise if changed circumstances necessitate significant amendments to the works approved in an agreement, but the parties are unable to agree on the necessary variations.
9ZB(3)(e) The provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision	If a heritage partnership agreement is to be terminated by order of the Welsh Ministers, some transitional arrangements may need to be made in the order. For instance, such arrangements may be needed to allow any scheduled monument consent granted under the heritage partnership agreement to remain in force if works have started. This regulation-making power will allow the Welsh Ministers to specify what can be included in the termination order.

9ZB(3)(f) Disapplying, or applying or reproducing with or without modifications, any provision of this Act for the purposes of heritage partnership agreements	The regulations will set out the sections of the 1979 Act which will apply or disapply to heritage partnership agreements. Thus, the regulations may apply the provisions in the Act that deal with the control of works affecting scheduled monuments and unauthorised works, but may disapply the provisions in the Act that set out the duration of scheduled monument consent.
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<b>Heritage partnership agreements for listed buildings</b>	
<b>Part 3, section 28(1) which inserts new section 26M(3) into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
26M(3)(a) Any consultation that must take place before a heritage partnership agreement is made or varied	Heritage partnership agreements can be expected to grant multiple listed building consents within one agreement and to cover a relatively long period of time. It is intended therefore that the regulations will require local planning authorities to consult specified amenity bodies, such as the Georgian Society, the Victorian Society or the Twentieth Century Society, as well as the Welsh Ministers if they are not party to the agreement. These arrangements are similar to those that are currently in place for listed building consent applications. The consultation and publicity process will last for a minimum of 28 days.
26M(3)(b) The publicity that must be given to a heritage partnership agreement before or after it is made or varied	The intention is to require the local planning authority to publish online the information on a proposed heritage partnership agreement and to make any owner or occupier not party to the agreement aware of it.
26M(3)(c) Terms that must be included in a heritage partnership agreement	The mandatory features of a heritage partnership agreement are set out section 26M(1), including that it must be in writing and provide for review, termination and variation of the agreement . The regulations will supplement these by specifying any other terms that must be included in the agreement. Such terms might include a statement of the significance of the historic assets, an assessment of the impact of the works on that significance, justification for the works and the duration of the agreement.
26M(3)(d) and (e) Enabling the Welsh Ministers or local planning authority to terminate by order a heritage partnership agreement or any	The intention is that the Welsh Ministers and a local planning authority who is party to an agreement will have the power to terminate it where, as a last resort, this is considered necessary to protect the special interest of a listed building and it has proved impossible to negotiate a modification to the agreement. Such a situation might arise if changed

provision of such an agreement	circumstances necessitate significant amendments to the works approved in an agreement, but the parties are unable to agree on the necessary variations.
26M(3)(f) The provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision	If a heritage partnership agreement is to be terminated by order of the Welsh Ministers, a local planning authority or some other specified person, some transitional arrangements may need to be made in the order. For instance, such arrangements may be needed to allow any listed building consent granted under the heritage partnership agreement to remain in force if works have started. This regulation-making power will allow the Welsh Ministers to specify what can be included in the termination order.
26M(3)(g) Disapplying, or applying or reproducing with or without modifications, any provision of sections 10 to 13, 15 to 26 , 28 and 38 to 46 for the purposes of heritage partnership agreements	The regulations will set out sections of the 1990 Act which will apply or disapply to heritage partnership agreements; these sections relate to the application, notification, consent and appeal processes, and enforcement for listed building. For example, the regulations may apply the provisions in the Act that allow conditions to be placed within listed building consent decisions or those that allow applications for listed building consent to be referred to Welsh Ministers. As heritage partnership agreements are voluntary, the rights of applicants will not be undermined.
26M(3)(h) Providing for any of the following, as they apply for the purposes of provisions mentioned in paragraph (f), to apply with any modifications consequential on provision made under that paragraph: <ul style="list-style-type: none"> <li>i. sections 30 to 37;</li> <li>ii. sections 62 and 63;</li> <li>iii. Parts 3 and 4;</li> <li>iv. Schedule 3.</li> </ul>	The provision would allow the regulations to modify provisions of the 1990 Act that have the potential to be affected as a consequence of the substitution of the heritage partnership agreement for the listed building consent process. These could include provisions pertaining to compensation, listed building purchase notices and the classes of appeals to be determined by a person appointed by the Welsh Ministers.

## 6. Temporary stop notices

### Power

- 6.1 Part 2, section 13(1) of the Historic Environment (Wales) Bill introduces new section 9ZL(1) in the 1979 Act.
- 6.2 Part 3, section 29(1) of the Historic Environment (Wales) Bill introduces new section 44B(11) and 44D(1) in the 1990 Act.

### Description

- 6.3 Part 2, section 13(1) inserts new sections 9ZI–9ZL into the 1979 Act to govern new powers for Welsh Ministers to issue temporary stop notices requiring the immediate cessation of specified works to scheduled monuments for a period of 28 days. New section 9ZL sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the service of the temporary stop notice, while 9ZL(1) allows Welsh Ministers to prescribe the time and manner in which a compensation claim must be made.
- 6.4 Part 3, section 29(1) inserts comparable measures (new sections 44B–44D) for local planning authorities to issue temporary stop notices requiring the immediate cessation of specified works to listed buildings. New section 44B(11) allows the Welsh Ministers to make regulations prescribing works to which temporary stop notices shall not apply. New section 44D(1) allows the Welsh Ministers to prescribe the time and manner in which a compensation claim must be made in respect of any loss or damage directly attributed to the service of the temporary stop notice.

### Policy intent

- 6.5 Temporary stop notices will give the Welsh Ministers and local planning authority effective measures to put an immediate halt to unauthorised works that are damaging designated historic assets.

<b>Temporary stop notices — scheduled monuments</b>	
<b>Part 2, section 13(1) which inserts new section 9ZL(1) into the 1979 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
9ZL(1) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the service of a temporary stop notice.	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the service of a temporary stop notice. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

<b>Temporary stop notices — listed buildings</b>	
<b>Part 3, section 29(1) which inserts new sections 44B(11) and 44D(1) into the 1990 Act</b>	
<b>Detail</b>	<b>Policy intention</b>
44B(11) The Welsh Minister may prescribe works to which temporary stop notices shall not apply.	The new power will enable the Welsh Ministers to exclude certain works from the direct or indirect application of temporary stop notices for listed buildings. The expectation is that temporary stop notices will be used infrequently against unauthorised works and it is not anticipated that classes of works will need to be exempted. However, if experience of the use of the notices warrants such an exemption, the regulation-making powers will provide a means to ensure that temporary stop notices function in an appropriate manner.
44D(1) The Welsh Ministers may prescribe the time and manner in which a claim should be made for compensation for any loss or damage directly attributable to the service of a temporary stop notice.	In certain circumstances the Welsh Ministers must pay compensation for any loss or damage directly attributable to the service of a temporary stop notice.. The provision allows the Welsh Ministers to prescribe the time and manner in which any compensation claim must be made. It is proposed that any such claim must be made in writing within six months and include evidence of the loss/damage.

## 7. Historic environment records

### Powers

- 7.1 Part 4, section 33(9) of the Historic Environment (Wales) Bill confers powers to make regulations.
- 7.2 Part 4, section 36 of the Historic Environment (Wales) Bill confers powers to issue guidance.

### Description

- 7.3 Part 4, sections 33 to 36 of the Historic Environment (Wales) Bill set out the requirement for the establishment of historic environment records in Wales. Section 33 places a duty on each local planning authority to create and maintain an up-to-date historic environment record for its particular area. Section 33(2) sets out the information that must be contained in a historic environment record, which includes:
- details of those historic assets that are statutorily protected or registered under the 1979 or 1990 Act;
  - details of every conflict site which the authority considers to be of historic interest;
  - details of every historic landscape in the authority's area;
  - details of every world heritage site in the authority's area;
  - details of every other area or site or other place in the authority's area which the authority considers to be of historic, archaeological or architectural interest;
  - information about the way in which the historic, archaeological or architectural development of the authority's area or any part of it has contributed to the present character of the area or part and about how that character may be preserved, and
  - details of relevant investigations carried out in the authority's area and of the findings of those investigations.
- 7.4 Section 33(9) enables the Welsh Ministers to amend, by regulations, the categories of information that must be contained in a historic environment record. The Bill requires the Welsh Ministers to consult local planning authorities and any other persons whom they consider appropriate before making the regulations.
- 7.5 Section 36 allows the Welsh Ministers to issue guidance on creating and maintaining historic environment records, the publication of historic environment records and the charging of fees in connection with their publication, and the making of

arrangements for the discharge of functions related to historic environment records. Prior to issuing the guidance, the Welsh Ministers must consult with the local planning authorities and any other persons whom they consider appropriate.

### Policy intent

- 7.6 The regulation-making power provides flexibility for the Welsh Ministers to amend the definition of a historic environment record in the future should it be deemed necessary. The categories of information included in the Bill are based on the current content of the historic environment records. In the future, other categories of information on the historic environment may be deemed necessary to inform archaeological and other heritage advice and actions. For example, it may be deemed appropriate to require the inclusion of culturally significant sites or intangible heritage, or to amend the requirement to include 'every other site... in an authority's area' and replace with a more defined list. The effectiveness of the categories in the Bill will be reviewed as part of the monitoring of benchmarks and standards by the Royal Commission on the Ancient and Historical Monument of Wales on behalf of the Welsh Ministers.
- 7.7 The request to amend the categories of information contained in a historic environment record is likely to come from the historic environment sector. The Welsh Ministers will liaise closely with the Royal Commission on the Ancient and Historical Monuments of Wales, local planning authorities and other interested organisations, such as the Welsh archaeological trusts, in framing any new requirement. In addition, as required by the Bill, the Welsh Ministers will formally consult with local planning authorities and others prior to making the regulations.
- 7.8 A draft of the guidance to be issued under section 36 of the Bill accompanies this statement of policy intent. The draft has been shared with the Royal Commission on the Ancient and Historical Monuments of Wales, the Welsh Local Government Association and the Welsh archaeological trusts and will be consulted upon once the provisions of the Bill have been finalised.

## 8. Advisory Panel for the Welsh Historic Environment

### Power

8.1 Part 4, section 38(7)(h) of the Historic Environment (Wales) Bill confers powers to make regulations.

### Description

8.2 Part 4, section 37 of the Historic Environment (Wales) Bill requires the Welsh Ministers to establish the Advisory Panel for the Welsh Historic Environment. Section 38 makes provision about the constitution and membership of the panel. Subsection (7) sets out categories of people who are disqualified from membership of the panel, which include members of:

- the National Assembly for Wales,
- the House of Commons or the House of Lords,
- the European Parliament,
- a county council or county borough council, or
- a National Park authority.

8.3 In addition, subsection 7(h) will allow the Welsh Ministers to make regulations to disqualify staff from other organisations from panel membership.

### Policy intent

8.4 The panel will need to demonstrate independence, integrity and impartiality. The panel will provide advice to the Welsh Ministers on a range of policy, strategy and funding issues. Many of the decisions taken by the Welsh Ministers on these issues may impact directly on a range of organisations be it in terms of the policies that they have to implement or the funding that they might (or might not) be awarded. The categories of persons under consideration for disqualification are:

- staff employed by the Welsh Government,
- staff employed by the Royal Commission on the Ancient and Historical Monuments of Wales, and
- staff employed by the four Welsh archaeological trusts.

- 8.5 It will not be possible to eliminate all conflicts of interest, since the pool of people with the required expertise, skills and knowledge is relatively small. Operating protocols will be used to deal with any potential conflicts of interest beyond those identified in the legislation and regulations.

## Planning (Listed Buildings and Conservation Areas) Act 1990

### AMENDMENTS TO BE MADE BY THE HISTORIC ENVIRONMENT (WALES) BILL

#### Purpose

This document is intended to show how the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990, as they applied in relation to Wales on 7 January 2015, would look as amended by the Historic Environment (Wales) Bill (if enacted as introduced on 1 May 2015).

Material to be deleted by the Historic Environment (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Historic Environment (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page.

The Planning (Wales) Bill proposes some amendments to the provisions of this Act and, following the conventions outlined above, these have been included in green *like this*.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments. Text in square brackets [like this] indicates a difference between the law as it applies in relation to Wales and its application in relation to England, which will be expanded upon in the footnote.

#### Warning

**This text has been prepared by officials of Cadw. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.**

**It has been produced solely to help people understand the effect of the Historic Environment (Wales) Bill. It is not intended for use in any other context.**

**Listed Buildings**

**Chapter I**

**Listing of Special Buildings**

**1 Listing of buildings of special architectural or historic interest**

- (1) For the purposes of this Act and with a view to the guidance of local planning authorities in the performance of their functions under this Act and the principal Act in relation to buildings of special architectural or historic interest, the Secretary of State shall compile lists of such buildings, or approve, with or without modifications, such lists compiled by the Historic Buildings and Monuments Commission for England (in this Act referred to as "the Commission") or by other persons or bodies of persons, and may amend any list so compiled or approved.
- (2) The Secretary of State shall not approve any list compiled by the Commission if the list contains any building situated outside England.
- (3) In considering whether to include a building in a list compiled or approved under this section, the Secretary of State may take into account not only the building itself but also--
  - (a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part; and
  - (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.
- (4) Before compiling, approving (with or without modifications) or amending any list under this section in relation to buildings which are situated in England the Secretary of State shall consult--
  - (a) ~~in relation to buildings which are situated in England,~~ with the Commission; and
  - (b) with such other persons or bodies of persons as appear to him appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.

S 26(1)(a)(i)

S 26(1)(a)(ii)

(4A) Section 2A makes provision about consultation on amendments of any list under this section to include or exclude a building which is situated in Wales.

S 26(1)(b)

- (5) In this Act "listed building" means a building which is for the time

being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act--

- (a) any object or structure fixed to the building;
- (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948,

shall, subject to subsection (5A)(a), be treated as part of the building.

- (5A) In a list compiled or approved under this section, an entry for a building situated in England may provide--
  - (a) that an object or structure mentioned in subsection (5)(a) or (b) is not to be treated as part of the building for the purposes of this Act;
  - (b) that any part or feature of the building is not of special architectural or historic interest.
- (6) Schedule 1 shall have effect for the purpose of making provision as to the treatment as listed buildings of certain buildings formerly subject to building preservation orders.

## **2 Publication of lists**

- (1) As soon as possible after any list has been compiled or approved under section 1 or any amendments of such a list have been made, a copy of so much of the list as relates to any district, Welsh county, county borough, or London borough or, as the case may be, of so much of the amendments as so relates, certified by or on behalf of the Secretary of State to be a true copy, shall be deposited--
  - (a) in the case of a London borough, with the council of borough and with the chief officer of the Commission; . . .
  - (b) in the case of a district--
    - (i) with the district council;
    - (ii) with the county planning authority whose area or any part of whose area includes the district, or any part of it; and
    - (iii) where the district council are not the district planning authority, with that authority and
  - (c) in the case of a Welsh county or county borough--
    - (i) with the county council or (as the case may be) the county borough council; and
    - (ii) with the local planning authority, if different from that council.

- (2) Any copy deposited under subsection (1) shall be a local land charge, and the council with whom a copy is deposited shall be treated for the purposes of the Local Land Charges Act 1975 as the originating authority as respects the charge constituted by the deposit.
  - (3) As soon as possible after the inclusion of any building situated in England in a list under section 1 (whether it is included when the list is compiled, approved or amended) or as soon as possible after any such list has been amended by the exclusion of ~~any building any such building~~ from it--
    - (a) the Secretary of State shall inform the council of the district, ~~Welsh county, county borough,~~ or London borough in whose area the building is situated of the inclusion or exclusion; and
    - (b) the council shall serve a notice in the prescribed form on every owner and occupier of the building, stating that the building has been included in or excluded from the list.
- S 26(2)(a)(i)  
S 26(2)(a)(ii)  
S 26(2)(b)
- (3A) As soon as possible after amending a list under section 1 to include or exclude a building which is situated in Wales, the Welsh Ministers—
- (a) must inform the local planning authority in whose area the building is situated of its inclusion or exclusion; and
  - (b) in the case of an amendment to exclude a building, must serve a notice on every owner and occupier of the building, stating that the building has been excluded from the list.
- (3B) Section 2D makes provision about the further steps that the Welsh Ministers must take after amending a list under section 1 to include a building which is situated in Wales.
- } S 26(3)
- (4) The Secretary of State shall keep available for public inspection free of charge at reasonable hours and at a convenient place, copies of all lists and amendments of lists, compiled, approved or made by him under section 1.
  - (5) Every authority with whom copies of any list or amendments are deposited under this section shall similarly keep available copies of so much of any such list or amendment as relates to buildings within their area.
  - (6) For the purposes of subsection (5) the Commission shall be taken to be an authority whose area is Greater London.

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

- (1) This section applies where the Welsh Ministers are proposing to—
- } S 24(1)

- (a) include a building in a list compiled or approved under section 1; or
  - (b) exclude a building from such a list.
- (2) The Welsh Ministers must—
  - (a) serve a notice of the proposed inclusion or exclusion on the appropriate persons; and
  - (b) invite those persons to submit written representations about the proposal.
- (3) The appropriate persons are—
  - (a) the owner and occupier of the building;
  - (b) the local planning authority in whose area the building is situated; and
  - (c) such other persons or bodies of persons as appear to the Welsh Ministers appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.
- (4) A notice under subsection (2) must—
  - (a) specify the proposed inclusion or exclusion;
  - (b) specify the period within which representations about the proposal may be made, which must be at least 28 days beginning with the date on which the notice is served; and
  - (c) in the case of a proposed inclusion—
    - (i) include a statement of the effect of section 2B; and
    - (ii) specify the date on which interim protection takes effect under subsection (2) of that section.
- (5) The Welsh Ministers may by regulations amend subsection (3) by adding a description of person to the list of appropriate persons in that subsection; and where the Welsh Ministers do so, they may also make such amendments to this Act as they consider appropriate in consequence of the amendment to subsection (3).

S 24(1)

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

- (1) This section applies where the Welsh Ministers consult under section 2A on a proposal to include a building in a list compiled or approved under section 1.
- (2) The provisions of this Act (other than sections 47 to 51 and 59) and the principal Act have effect in relation to the building, from the beginning of the day specified in the notice for the purposes of section 2A(4)(c)(ii), as if the building were a listed building
- (3) The protection conferred upon a building by virtue of subsection

- (2) is referred to in this Act as “interim protection”.
- (4) Interim protection conferred by virtue of subsection (2) ceases to have effect—
- (a) where the Welsh Ministers include the building in a list compiled or approved under section 1, from the beginning of the day specified in the notice for the purposes of section 2D(2)(b); and
  - (b) where the Welsh Ministers decide not to include the building in such a list, from the beginning of the day specified in a notice issued to—
    - (i) the owner and occupier of the building; and
    - (ii) the local planning authority in whose area the building is situated.
- (5) The Welsh Ministers—
- (a) must publish by electronic means a list containing particulars of each building in relation to which interim protection has effect; and
  - (b) must, on request, provide a copy of the notice served under section 2A(2) in respect of such a building.

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

Schedule 1A has effect as respects the lapse of interim protection.

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

- (1) This section applies where the Welsh Ministers include a building in a list compiled or approved under section 1.
- (2) As soon as possible after amending the list to include the building, the Welsh Ministers must serve on the owner and occupier of the building a notice which—
- (a) states that the Welsh Ministers have included the building in the list;
  - (b) specifies the date on which the Welsh Ministers did so (and on which interim protection under section 2B(2) ceased to have effect); and
  - (c) states that the owner or occupier may make an application to the Welsh Ministers requesting them to review their decision to do so.
- (3) Where an owner or occupier of the building makes such an application, the Welsh Ministers must—

S 24(1)

- (a) carry out the review requested;
- (b) make a decision on the review; and
- (c) make such amendment to the list as they consider appropriate to give effect to that decision.
- (4) Except as provided in sections 62 and 63, the validity of a decision of the Welsh Ministers on the review is not to be questioned in any legal proceedings.
- (5) The Welsh Ministers must carry out a review under this section in such one or more of the following ways as appears to them to be appropriate—
  - (a) by means of a local inquiry;
  - (b) by means of a hearing;
  - (c) on the basis of written representations.
- (6) The Welsh Ministers may by regulations make further provision in connection with reviews under this section, including provision about—
  - (a) the grounds on which an application for a review may be made;
  - (b) the form and manner in which an application must be made;
  - (c) the information that is to be provided to, or may be required by, the Welsh Ministers in connection with an application; and
  - (d) the period within which an application must be made.
- (7) Schedule 1B applies to reviews under this section.

S 24(1)

**3 Temporary listing in England: building preservation notices** S 25(2)

- (1) ~~If it appears to a local planning authority in Wales, or to a local planning authority in England who are not a county planning authority;~~ If it appears to a local planning authority in England who are not a county planning authority that a building in their area which is not a listed building-- S 25(1)

- (a) is of special architectural or historic interest; and
- (b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest,

they may serve on the owner and occupier of the building a notice (in this Act referred to as a "building preservation notice").

- (2) A building preservation notice served by a local planning authority under this section shall-- S 26(4)(a)

- (a) state that the building appears to them to be of special

architectural or historic interest and that they have requested the Secretary of State to consider including it in a list compiled or approved under section 1; and

- (b) explain the effect of subsections (3) to (5) and Schedule 2.
- (3) A building preservation notice under this section -- S 26(4)(b)
- (a) shall come into force as soon as it has been served on both the owner and occupier of the building to which it relates; and
- (b) subject to subsection (4), shall remain in force for six months from the date when it is served or, as the case may be, last served.
- (4) A building preservation notice under this section shall cease to be in force if the Secretary of State-- S 26(4)(c)
- (a) includes the building in a list compiled or approved under section 1, or
- (b) notifies the local planning authority in writing that he does not intend to do so.
- (5) While a building preservation notice under this section is in force with respect to a building, the provisions of this Act (other than section 59) and the principal Act shall have effect in relation to the building as if it were a listed building. S 26(4)(d)
- (6) If, following the service of a building preservation notice under this section, the Secretary of State notifies the local planning authority that he does not propose to include the building in a list compiled or approved under section 1, the authority shall immediately give notice of that decision to the owner and occupier of the building. S 26(4)(e)
- (7) Following such a notification by the Secretary of State no further building preservation notice in respect of the building shall be served by the local planning authority within the period of 12 months beginning with the date of the notification.
- (8) The Commission shall, as respects any London borough, have concurrently with the council of that borough the functions of a local planning authority under this section; and references to the local planning authority shall be construed accordingly.

### **3A Temporary listing in Wales: building preservation notices**

- (1) If it appears to a local planning authority in Wales that a building in their area which is not a listed building (and which is not treated as such by virtue of section 2B(2))— S 25(3)
- (a) is of special architectural or historic interest; and
- (b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest.

- they may serve a notice on the owner and occupier of the building (in this Act referred to as a “building preservation notice”).
- (2) A building preservation notice under this section must—
- (a) state that the building appears to them to be of special architectural or historic interest and that they have requested the Welsh Ministers to consider including it in a list compiled or approved under section 1; and
  - (b) explain the effect of subsections (3) to (5) and Schedule 2.
- (3) A building preservation notice under this section—
- (a) comes into force as soon as it has been served on both the owner and occupier of the building to which it relates; and
  - (b) subject to subsection (4), remains in force for six months from the date when it is served or, as the case may be, last served.
- (4) A building preservation notice under this section ceases to be in force—
- (a) if interim protection under section 2B(2) takes effect in relation to the building; or
  - (b) if the Welsh Ministers notify the local planning authority in writing that they do not intend to consult under section 2A on a proposal to include the building in a list compiled or approved under section 1.
- (5) While a building preservation notice under this section is in force with respect to a building, the provisions of this Act (other than sections 47 to 51 and 59) and the principal Act have effect in relation to the building as if it were a listed building.
- (6) If, following the service of a building preservation notice under this section, interim protection under section 2B(2) takes effect in relation to the building, anything done by virtue of subsection (5) is to be treated as having been done by virtue of section 2B(2).
- (7) If, following the service of a building preservation notice under this section, the Welsh Ministers notify the local planning authority that they do not intend to consult under section 2A on a proposal to include the building in a list compiled or maintained under section 1, the authority must immediately give notice of that decision to the owner and occupier of the building.
- (8) Where such a notification is given by the Welsh Ministers, no further building preservation notice in respect of the building may be served by the local planning authority within the period of 12 months beginning with the date of the notification.

S 25(3)

**4 Temporary listing in urgent cases**

- (1) If it appears to the local planning authority to be urgent that a building preservation notice should come into force, they may, instead of serving the notice on the owner and occupier of the building, affix the notice conspicuously to some object on the building.
- (2) The affixing of a notice under subsection (1) shall be treated for all the purposes of section 3, **3A**, this section, sections 5 and 10 to 26 and Schedule 2 as service of the notice. S 26(5)
- (3) A notice which is so affixed must explain that by virtue of being so affixed it is treated as being served for those purposes.
- (4) The Commission shall, as respects any London borough, have concurrently with the council of that borough the functions of a local planning authority under this section; and references to the local planning authority shall be construed accordingly.

**5 Provisions applicable on lapse of building preservation notice**

- (1) Schedule 2 to this Act shall have effect as respects the lapse of building preservation notices. S 26(6)(a)
- (2) See section 3A(6) for provision as respects the lapse of building preservation notices in consequence of interim protection taking effect. S 26(6)(b)

**6 Issue of certificate that building not intended to be listed: England** S 27(2)

- (A1) The Secretary of State may, on the application of any person, issue a certificate stating that the Secretary of State does not intend to list a building situated in England.
- ~~(1) Where--~~
  - ~~(a) application has been made for planning permission for any development involving the alteration, extension or demolition of a building situated in Wales; or~~
  - ~~(b) any such planning permission has been granted;~~
- ~~the Secretary of State may, on the application of any person, issue a certificate stating that he does not intend to list the building.~~
- (2) The issue of a certificate under subsection (A1) ~~or (1)~~ in respect of a building shall--
  - (a) preclude the Secretary of State for a period of 5 years from the date of issue from exercising in relation to that building

- any of the powers conferred on him by section 1; and
- (b) preclude the local planning authority for that period from serving a building preservation notice in relation to it.
- (3) Notice of an application under subsection (A1) ~~or (1)~~ shall be given to the local planning authority within whose area the building is situated at the same time as the application is submitted to the Secretary of State. S 27(1)(c)
- (4) In this section "local planning authority", in relation to a building in Greater London, includes the Commission.

**6A Issue of certificate that building not intended to be listed: Wales**

- (1) The Welsh Ministers may, on the application of any person, issue a certificate stating that the Welsh Ministers do not intend to list a building situated in Wales.
- (2) The issue of a certificate under subsection (1) in respect of a building —
- (a) precludes the Welsh Ministers for a period of 5 years from the date of issue from exercising in relation to that building any of the powers conferred on them by section 1 or 2A; and
- (b) precludes the local planning authority for that period from serving a building preservation notice in relation to it.
- (3) Notice of an application under subsection (1) must be given to the local planning authority within whose area the building is situated at the same time as the application is submitted to the Welsh Ministers.
- } S 27(3)

## Chapter II

### Authorisation of Works Affecting Listed Buildings

#### *Control of works in respect of listed buildings*

#### 7 Restriction on works affecting listed buildings

- (1) Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised under section 8.
- (2) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).

## **8 Authorisation of works: listed building consent**

- (1) Works for the alteration or extension of a listed building are authorised if--
  - (a) written consent for their execution has been granted by the local planning authority or the Secretary of State; and
  - (b) they are executed in accordance with the terms of the consent and of any conditions attached to it.
- (2) Works for the demolition of a listed building are authorised if--
  - (a) such consent has been granted for their execution;
  - (b) notice of the proposal to execute the works has been given to the Royal Commission [the Commission]<sup>1</sup>;
  - (c) after such notice has been given either--
    - (i) for a period of at least one month following the grant of such consent, and before the commencement of the works, reasonable access to the building has been made available to members or officers of the Royal Commission [the Commission] for the purpose of recording it; or
    - (ii) the Secretary of the Royal Commission [the Commission], or another officer of theirs with authority to act on their behalf for the purposes of this section, has stated in writing that they have completed their recording of the building or that they do not wish to record it; and
  - (d) the works are executed in accordance with the terms of the consent and of any conditions attached to it.
- (3) Where--
  - (a) works for the demolition of a listed building or for its alteration or extension are executed without such consent; and
  - (b) written consent is granted by the local planning authority or the Secretary of State for the retention of the works,the works are authorised from the grant of that consent.
- (4) In this section "the Royal Commission" means--
  - (a) in relation to England, the Royal Commission on the Historical Monuments of England; and
  - (b) in relation to Wales, the Royal Commission on Ancient and Historical Monuments in Wales.

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<sup>1</sup> Amendments to S 8(2) pertaining to England have been made by the Authorisation of Works (Listed Buildings) (England) Order 2001 (SI 2001/24).

- (5) The Secretary of State may by order provide that subsection (2) shall have effect with the substitution for the references to the Royal Commission of references to such other body as may be so specified.
- (6) Such an order--
  - (a) shall apply in the case of works executed or to be executed on or after such date as may be specified in the order; and
  - (b) may apply in relation to either England or Wales, or both.
- (7) Consent under subsection (1), (2) or (3) is referred to in this Act as "listed building consent".

**9 Offences**

- (1) If a person contravenes section 7 he shall be guilty of an offence.
- (2) Without prejudice to subsection (1), if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, he shall be guilty of an offence.
- (3) In proceedings for an offence under this section it shall be a defence to prove the following matters--
  - (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
  - (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
  - (c) that the works carried out were limited to the minimum measures immediately necessary; and
  - (d) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable.

(3A) In proceedings for an offence under this section in relation to a building on which interim protection is conferred (which is, as a result of section 2B(2), treated as a listed building)—

- (a) it is a defence for the person to show that the person did not know, and could not reasonably have been expected to know, that interim protection had been conferred on the building; and
- (b) where the defence is raised by a person on whom a notice should have been served under section 2A(2), it is for the prosecution to prove that the notice was served on that person.

S 24(2)

- (4) A person who is guilty of an offence under this section shall be liable--
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000, or both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (5) In determining the amount of any fine to be imposed on a person convicted . . . of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

### **Appeals**

#### **20 Right to appeal against decision or failure to take decision**

- (1) Where a local planning authority--
- (a) refuse an application for listed building consent or grant it subject to conditions;
  - (b) refuse an application for the variation or discharge of conditions subject to which such consent has been granted or grant it and add new conditions; or
  - (c) refuse an application for approval required by a condition imposed on the granting of listed building consent with respect to details of works or grant it subject to conditions,
- the applicant, if aggrieved by the decision, may appeal to the Secretary of State.
- (2) A person who has made such an application may also appeal to the Secretary of State if the local planning authority have neither [done none of the following]<sup>2</sup>--
- (a) given notice to the applicant of their decision on the application; nor
  - [(aa) given notice to the applicant that they have exercised their power under section 81A or 81B to decline to determine the application.]
  - (b) in the case of such an application as is mentioned in paragraph (a) or (b) of subsection (1), given notice to the applicant that the application has been referred to the Secretary of State in accordance with directions given under section 12,

within the relevant period from the date of the receipt of the

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<sup>2</sup> Amendments to S 20(2) pertaining to England were made by the Planning and Compulsory Purchase Act 2004, S 43(4)(a).

application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.

- (3) In this section "the relevant period" means--
  - (a) in the case of such an application as is mentioned in paragraph (a) or (b) of subsection (1), such period as may be prescribed; and
  - (b) in the case of such an application for approval as is mentioned in paragraph (c) of subsection (1), the period of eight weeks from the date of the receipt of the application.
- (4) For the purposes of the application in relation to England<sup>3</sup> of sections 22(1) and 63(7)(b) in relation to an appeal under subsection (2) it shall be assumed that the authority decided to refuse the application in question.
- (5) For the purposes of the application in relation to Wales of sections 22(1), 63(7)(b) and 88E(7)(b) in relation to an appeal under subsection (2) it shall be assumed that the authority decided to refuse the application in question.<sup>4</sup>

## **20A Appeal made: functions of local planning authorities<sup>5</sup>**

### **21 Appeals: supplementary provisions**

- (1) An appeal under section 20 must be made by notice served in the prescribed manner within such period as may be prescribed.
- (2) The period which may be prescribed under subsection (1) must not be less than--
  - (a) in the case of an appeal under subsection (1) of section 20, 28 days from the receipt by the applicant of notification of the decision; or
  - (b) in the case of an appeal under subsection (2) of that section, 28 days from the end of the relevant period (within the meaning of that section) or, as the case may be, the extended period there mentioned.
- (3) The notice of appeal may include as the ground or one of the grounds of the appeal a claim that the building is not of special architectural or historic interest and ought to be removed from any list compiled or approved by the Secretary of State under section 1.
- (4) In the case of a building with respect to which interim protection S 26(7)

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<sup>3</sup> Words "in relation to England" inserted by Town and Country Planning (Determination of Procedure) (Wales) Order 2014

<sup>4</sup> Subsection (5) inserted by Town and Country Planning (Determination of Procedure) (Wales) Order 2014.

<sup>5</sup> This section will come into force in Wales in June 2015 (SI 2015/340).

has effect or a listed building preservation notice is in force, the notice may include a claim that the building should not be included in such a list.

S 26(7)

(4A) Once notice of an appeal under section 20 to the Welsh Ministers has been served, the application to which it relates may not be varied, except in such circumstances as may be prescribed.

(4B) Regulations which make provision under subsection (4A) must provide for an application which is varied to be subject to such further consultation as the Welsh Ministers consider appropriate.<sup>6</sup>

(5) Regulations under this Act may provide that an appeal in respect of an application for listed building consent or for the variation or discharge of conditions subject to which such consent has been granted shall not be entertained unless it is accompanied by a certificate in the prescribed form and corresponding to one of those described in subsection (1) of section 11.

(6) Any such regulations may also include provisions corresponding to those which may be included in the regulations which may be made by virtue of section 11.

(7) If any person--

(a) issues a certificate which purports to comply with the requirements of regulations made by virtue of subsection (5) or (6) and contains a statement which he knows to be false or misleading in a material particular; or

(b) recklessly issues a certificate which purports to comply with those requirements and contains a statement which is false or misleading in a material particular,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) Regulations under this Act may provide for an appeal under section 20 to be accompanied by such other information as may be prescribed.

(9) The power to make regulations under subsection (8) is exercisable by--

(a) the Secretary of State, in relation to England;

(b) the Welsh Ministers, in relation to Wales.

~~(10) Section 93(3) does not apply in relation to regulations under subsection (8) made by the Welsh Ministers.~~

~~(11) Regulations under subsection (8) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.]~~

} S 39(8)

<sup>6</sup> To be inserted by the Planning (Wales) Bill, S 43(3).

***[Buildings in England: heritage partnership agreements***

**26A Heritage partnership agreements**

- (1) A relevant local planning authority may make an agreement under this section (a "heritage partnership agreement") with any owner of a listed building, or a part of such a building, situated in England.
- (2) Any of the following may also be a party to a heritage partnership agreement in addition to an owner and the relevant local planning authority--
  - (a) any other relevant local planning authority;
  - (b) the Secretary of State;
  - (c) the Commission;
  - (d) any person who has an interest in the listed building;
  - (e) any occupier of the listed building;
  - (f) any person involved in the management of the listed building;
  - (g) any other person who appears to the relevant local planning authority appropriate as having special knowledge of, or interest in, the listed building, or in buildings of architectural or historic interest more generally.
- (3) A heritage partnership agreement may contain provision--
  - (a) granting listed building consent under section 8(1) in respect of specified works for the alteration or extension of the listed building to which the agreement relates, and
  - (b) specifying any conditions to which the consent is subject.
- (4) The conditions to which listed building consent may be subject under subsection (3)(b) in respect of specified works are those that could be attached to listed building consent in respect of the works if consent were to be granted under section 16.
- (5) If a heritage partnership agreement contains provision under subsection (3), nothing in sections 10 to 26 and 28 applies in relation to listed building consent for the specified works, subject to any regulations under section 26B(2)(f).
- (6) A heritage partnership agreement may also--
  - (a) specify or describe 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;
  - (b) make provision about the maintenance and preservation of the listed building;

- (c) make provision about the carrying out of specified work, or the doing of any specified thing, in relation to the listed building;
  - (d) provide for public access to the listed building and the provision to the public of associated facilities, information or services;
  - (e) restrict access to, or use of, the listed building;
  - (f) prohibit the doing of any specified thing in relation to the listed building;
  - (g) provide for a relevant public authority to make payments of specified amounts and on specified terms--
    - (i) for, or towards, the costs of any works provided for under the agreement; or
    - (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.
- (7) For the purposes of subsection (6)(g), each of the following, if a party to the agreement, is a relevant public authority--
- (a) the Secretary of State;
  - (b) the Commission;
  - (c) a relevant local planning authority.
- (8) In this section "specified" means specified or described in the heritage partnership agreement.
- (9) In this section and section 26B--
- "owner", in relation to a listed building or a part of such a building, means a person who is for the time being--
- (a) the estate owner in respect of the fee simple in the building or part; or
  - (b) entitled to a tenancy of the building or part granted or extended for a term of years certain of which not less than seven years remain unexpired;
- "relevant local planning authority", in relation to a listed building, means a local planning authority in whose area the building or any part of the building is situated.

**26B Heritage partnership agreements: supplemental**

- (1) A heritage partnership agreement--
  - (a) must be in writing;
  - (b) must make provision for the parties to review its terms at

- intervals specified in the agreement;
  - (c) must make provision for its termination and variation;
  - (d) may relate to more than one listed building or part, provided that in each case a relevant local planning authority and an owner are parties to the agreement; and
  - (e) may contain incidental and consequential provisions.
- (2) The Secretary of State may by regulations make provision--
- (a) about any consultation that must take place before heritage partnership agreements are made or varied;
  - (b) about the publicity that must be given to heritage partnership agreements before or after they are made or varied;
  - (c) specifying terms that must be included in heritage partnership agreements;
  - (d) enabling the Secretary of State or any other person specified in the regulations to terminate by order a heritage partnership agreement or any provision of such an agreement;
  - (e) about the provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision;
  - (f) applying or reproducing, with or without modifications, any provision of sections 10 to 26 and 28 for the purposes of heritage partnership agreements;
  - (g) providing for any of the following, as they apply for the purposes of provisions mentioned in paragraph (f), to apply with any modifications consequential on provision made under that paragraph--
    - (i) sections 30 to 37;
    - (ii) sections 62 and 63;
    - (iii) Parts 3 and 4;
    - (iv) Schedule 3.
- (3) Regulations made under subsection (2)(a) may, in particular, include provision as to--
- (a) the circumstances in which consultation must take place;
  - (b) the types of listed building in respect of which consultation must take place;
  - (c) who must carry out the consultation;
  - (d) who must be consulted (including provision enabling the Commission to direct who is to be consulted in particular

cases); and

- (e) how the consultation must be carried out.
- (4) Listed building consent granted by a heritage partnership agreement (except so far as the agreement or regulations under subsection (2) otherwise provide) enures for the benefit of the building and of all persons for the time being interested in it.
- (5) Subject to subsection (4), a heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not party to the agreement.
- (6) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenant) does not apply to a heritage partnership agreement.]<sup>7</sup>

**Buildings in Wales: heritage partnership agreements**

**26L Heritage partnership agreements**

- (1) A relevant local planning authority may make an agreement under this section with any owner of a listed building, or part of such a building, situated in Wales.
- (2) Any of the following may also be a party to an agreement made by a relevant local planning authority under this section (in addition to the owner and the authority)—
  - (a) any other relevant local planning authority;
  - (b) the Welsh Ministers;
  - (c) any occupier of the listed building;
  - (d) any person who has an interest in the listed building;
  - (e) any person involved in the management of the listed building;
  - (f) any other person who appears to the relevant planning authority appropriate as having special knowledge of, or interest in, the listed building, or in buildings of architectural or historic interest more generally.
- (3) The Welsh Ministers may make an agreement under this section with any owner of a listed building, or part of such a building, situated in Wales.
- (4) Any of the following may also be a party to an agreement made by the Welsh Ministers under this section (in addition to the owner and the Welsh Ministers)—

S 28(1)

<sup>7</sup> Sections 26A to 26K have been inserted by the Enterprise and Regulatory Reform Act 2013, S 60–61. Sections 26C to 26K treat listed building consent orders and certificates of lawfulness and apply only in England.

- (a) any relevant local planning authority;
  - (b) any occupier of the listed building;
  - (c) any person who has an interest in the listed building;
  - (d) any person involved in the management of the listed building;
  - (e) any other person who appears to the Welsh Ministers appropriate as having special knowledge of, or interest in, the listed building, or in buildings of architectural or historic interest more generally.
- (5) An agreement under this section is referred to in this section and in section 26M as a “heritage partnership agreement”.
- (6) A heritage partnership agreement may contain provision—
- (a) granting listed building consent under section 8(1) in respect of specified works for the alteration or extension of the listed building to which the agreement relates; and
  - (b) specifying any conditions to which the consent is subject.
- (7) The conditions to which listed building consent may be subject under subsection (6)(b) in respect of specified works are those that could be attached to listed building consent in respect of the works if consent were to be granted under section 16.
- (8) A heritage partnership agreement may also—
- (a) specify or describe 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;
  - (b) make provision about the maintenance and preservation of the listed building;
  - (c) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the listed building;
  - (d) provide for public access to the listed building and the provision to the public of associated facilities, information or services;
  - (e) restrict access to, or use of, the listed building;
  - (f) prohibit the doing of any specified thing in relation to the listed building;
  - (g) provide for a relevant local planning authority or the Welsh Ministers to make payments of specified amounts and on specified terms—
    - (i) for, or towards, the costs of any works provided for under the agreement; or

S 28(1)

(ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.

(9) In this section “specified” means specified or described in the heritage partnership agreement.

(10) In this section and in section 26M—

“owner”, in relation to a listed building or part of such a building, means a person who is for the time being—

(a) the estate owner in respect of the fee simple in the building or part; or

(b) entitled to a tenancy of the building or part granted or extended for a term of years certain of which not less than 7 years remain unexpired;

“relevant local planning authority”, in relation to a listed building, means a local planning authority in whose area the building or any part of the building is situated.

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

(1) A heritage partnership agreement—

(a) must be in writing;

(b) must make provision for the parties to review its terms at intervals specified in the agreement;

(c) must make provision for its termination and variation; and

(d) may contain incidental and consequential provision.

(2) A heritage partnership agreement may relate to more than one listed building or part of such a building, provided that the following are parties to the agreement in each case—

(a) a relevant local planning authority or the Welsh Ministers; and

(b) an owner of the building or part.

(3) The Welsh Ministers may by regulations make provision—

(a) about any consultation that must take place before a heritage partnership agreement is made or varied;

(b) about the publicity that must be given to a heritage partnership agreement before or after it is made or varied;

(c) specifying terms that must be included in a heritage partnership agreement;

(d) enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an

S 28(1)

- agreement;
- (e) enabling any local planning authority who is a party to a heritage partnership agreement to terminate the agreement, or any provision of the agreement, by order;
  - (f) about the provision that may be included in an order made under regulations under paragraph (d) or (e), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision;
  - (g) disapplying, or applying or reproducing with or without modifications, any provision of sections 10 to 13, 15 to 26, 28, and 38 to 46 for the purposes of heritage partnership agreements;
  - (g) providing for any of the following, as they apply for the purposes of provisions mentioned in paragraph (g), to apply with any modifications consequential on provision made under that paragraph—
    - (i) sections 30 to 37;
    - (ii) sections 62 and 63;
    - (iii) Parts 3 and 4;
    - (iv) Schedule 3.
- (4) A heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not a party to the agreement (and, accordingly, listed building consent granted by such an agreement enures only for the benefit of the parties to the agreement).
- S 28(1)

### Chapter III

#### Rights of Owners etc

#### Compensation

- 28 Compensation where listed building consent revoked or modified**
- (1) This section shall have effect where listed building consent is revoked or modified by an order under section 23 (other than an order which takes effect by virtue of section 25).
  - (2) If on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the building--
    - (a) has incurred expenditure in carrying out works which are rendered abortive by the revocation or modification; or
    - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the authority shall pay that person compensation in respect of that expenditure, loss or damage.

- (3) Subject to subsection (4), no compensation shall be paid under this section in respect of--
  - (a) any works carried out before the grant of the listed building consent which is revoked or modified; or
  - (b) any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.
- (4) For the purposes of this section, expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory to any works, shall be taken to be included in the expenditure incurred in carrying out those works.

**[28A Compensation where consent formerly granted by order is granted conditionally or refused]<sup>8</sup>**

**28B Compensation for loss or damage caused by interim protection**

- (1) This section applies where interim protection in respect of a building ceases to have effect as a result of the issue of a notice by the Welsh Ministers under section 2B(4)(b).
- (2) Any person who, at the time when the interim protection took effect, had an interest in the building is, on making a claim to the Welsh Ministers within the prescribed time and in the prescribed manner, entitled to be paid compensation by the Welsh Ministers in respect of any loss or damage directly attributable to the effect of the protection.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the interim protection having effect.
- (4) Subsection (5) applies where—
  - (a) a building preservation notice was in force in respect of the building before interim protection took effect; and
  - (b) the notice ceased to be in force by virtue of section 3A(4)(a).
- (5) In such a case—

S 24(3)

S 25(4)

<sup>8</sup> Inserted by the Enterprise and Regulatory Reform Act 2013, S 60 and apply only to England.

- (a) the reference in subsection (2) to the time when the interim protection took effect is to be treated as a reference to the time when the building preservation notice came into force;
- (b) the reference in that subsection to loss or damage directly attributable to the effect of the interim protection is to be treated as including a reference to loss or damage directly attributable to the effect of the building preservation notice being in force; and
- (c) the reference in subsection (3) to the necessity of discontinuing or countermanding works on account of the interim protection having effect is to be treated as including a reference to the necessity of discontinuing or countermanding works on account of the building preservation notice being in force.

S 25(4)

**29 Compensation for loss or damage caused by service of building preservation notice**

- (1) This section applies where a building preservation notice in respect of a building situated in England ceases to have effect without the building having been included in a list compiled or approved by the Secretary of State under section 1.

S 25(5)(a)

(1A) This section also applies where a building preservation notice in respect of a building situated in Wales ceases to have effect by virtue of section 3A(3)(b) or (4)(b).

S 25(5)(b)

- (2) Any person who at the time when the notice was served had an interest in the building shall, on making a claim to the authority within the prescribed time and in the prescribed manner, be entitled to be paid compensation by the local planning authority in respect of any loss or damage directly attributable to the effect of the notice.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) shall include a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.

**30 Local planning authorities for compensation purposes**

- (1) Subject to subsection (2)--
  - (a) . . .
  - (b) claims under section 28 shall be made to and paid by the local planning authority who made the order in question or, where it was made by the Secretary of State under section 26, the local planning authority who are treated as having

made it under that section;

- (c) claims under section 29 shall be made to and paid by the local planning authority who served the building preservation notice,

and references in those sections to a local planning authority shall be construed accordingly.

- (2) The Secretary of State may after consultation with all the authorities concerned direct that where a local planning authority is liable to pay compensation under section . . . 28 or 29 in any particular case or class of case they shall be entitled to be reimbursed the whole of the compensation or such proportion of it as he may direct from one or more authorities specified in the direction.
- (3) This section does not apply in Greater London.

### **31 General provisions as to compensation for depreciation under this Part**

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

- (2) This section applies to any compensation which is payable under sections 28, ~~28B and 29~~, 29 and 44D in respect of depreciation of the value of an interest in land.

*S 26(8) and  
S 29(2)*

- (3) Where an interest in land is subject to a mortgage--
  - (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the mortgage;
  - (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no compensation to which this section applies shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
  - (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

- (4) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under sections 28 and 29 shall be referred to and determined by the Upper Tribunal.
- (5) In relation to the determination of any such question, the provisions of section 4 of the Land Compensation Act 1961 shall apply subject to any necessary modifications and to the provisions of any regulations made under this section.

## **Chapter IV**

### **Enforcement**

#### **38 Power to issue listed building enforcement notice**

- (1) Where it appears to the local planning authority--
  - (a) that any works have been or are being executed to a listed building in their area; and
  - (b) that the works are such as to involve a contravention of section 9(1) or (2),they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice under this section (in this Act referred to as a "listed building enforcement notice").
- (2) A listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken . . . --
  - (a) for restoring the building to its former state; or
  - (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or
  - (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.
- (3) A listed building enforcement notice--
  - (a) shall specify the date on which it is to take effect and, subject to sections 39(3) and 65(3A), shall take effect on that date, and
  - (b) shall specify the period within which any steps are required

to be taken and may specify different periods for different steps,

and, where different periods apply to different steps, references in this Part to the period for compliance with a listed building enforcement notice, in relation to any step, are to the period within which the step is required to be taken.

- (4) A copy of a listed building enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in it as the date on which it is to take effect --
  - (a) on the owner and on the occupier of the building to which it relates; and
  - (b) on any other person having an interest in that building which in the opinion of the authority is materially affected by the notice.
- (5) The local planning authority may--
  - (a) withdraw a listed building enforcement notice (without prejudice to their power to issue another); or
  - (b) waive or relax any requirement of such a notice and, in particular, may extend the period specified in accordance with section 38(3),

and the powers conferred by this subsection may be exercised whether or not the notice has taken effect.

- (6) The local planning authority shall, immediately after exercising the powers conferred by subsection (5), give notice of the exercise to every person who has been served with a copy of the listed building enforcement notice or would, if the notice were re-issued, be served with a copy of it.
- (7) Where a listed building enforcement notice imposes any such requirement as is mentioned in subsection (2)(b), listed building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

### **39 Appeal against listed building enforcement notice**

- (1) A person having an interest in the building to which a listed building enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice on any of the following grounds--
  - (a) that the building is not of special architectural or historic interest;
  - (b) that the matters alleged to constitute a contravention of

section 9(1) or (2) have not occurred;

- (c) that those matters (if they occurred) do not constitute such a contravention ;
  - (d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
  - (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
  - (f) that copies of the notice were not served as required by section 38(4);
  - (g) except in relation to such a requirement as is mentioned in section 38(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
  - (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
  - (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
  - (j) that steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;
  - (k) that steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.
- (2) An appeal under this section shall be made . . .--
- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the listed building enforcement notice as the date on which it is to take effect; or
  - (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date ; or
  - (c) by sending such notice to him using electronic

communications at such time that, in the ordinary course of transmission, it would be delivered to him before that date .

- (3) Where such an appeal is brought the listed building enforcement notice shall subject to any order under section 65(3A) be of no effect pending the final determination or the withdrawal of the appeal.
- (4) A person who gives notice of appeal under this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed, a statement in writing--
  - (a) specifying the grounds on which he is appealing against the listed building enforcement notice; and
  - (b) giving such further information as may be prescribed.
- (5) If, where more than one ground is specified in the statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.
- (6) Where any person has appealed to the Secretary of State under this section against a notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.
- (7) In this section "relevant occupier" means a person who--
  - (a) on the date on which the listed building enforcement notice is issued occupies the building to which the notice relates by virtue of a licence . . . ; and
  - (b) continues so to occupy the building when the appeal is brought.

#### **40 Appeals: supplementary provisions**

- (1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 39, and in particular, but without prejudice to the generality of this subsection may--
  - (a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
  - (b) specify the matters to be included in such a statement;
  - (c) require the authority or the appellant to give such notice of such an appeal as may be prescribed, being notice which in

the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the building in question is situated;

- (d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (2) Subject to section 41(4), the Secretary of State shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- [(2A) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in England.]<sup>9</sup>
- (2B) Subsection (2) does not apply to an appeal against a listed building enforcement notice issued by a local planning authority in Wales.<sup>10</sup>
- (3) Schedule 3 applies to appeals under section 39.

#### **41 Determination of appeals under s 39**

- (1) On an appeal under section 39 the Secretary of State may--
  - (a) correct any defect, error or misdescription in the listed building enforcement notice; or
  - (b) vary the terms of the listed building enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
- (2) Where the Secretary of State determines to allow the appeal, he may quash the notice.
- (2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.
- (3) The Secretary of State--
  - (a) may dismiss such an appeal if the appellant fails to comply with section 39(4) within the prescribed time; and
  - (b) may allow such an appeal and quash the listed building enforcement notice if the local planning authority fail to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 40(1)(a), (b) or (d).

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<sup>9</sup> Inserted by the Planning Act 2008, Schedule 10, paragraph 19 and yet to be commenced.

<sup>10</sup> Inserted by Town and Country Planning (Determination of Procedure) (Wales) Order 2014.

- (4) If [section 40(2) would otherwise apply and]<sup>11</sup> the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) [of this section] or to allow an appeal and quash the listed building enforcement notice under paragraph (b) of that subsection he need not comply with section 40(2).
- (5) Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required to be served with a copy of the listed building enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
- (6) On the determination of an appeal the Secretary of State may--
  - (a) grant listed building consent for the works to which the listed building enforcement notice relates or for part only of those works;
  - (b) discharge any condition or limitation subject to which listed building consent was granted and substitute any other condition, whether more or less onerous;
  - (c) if he thinks fit, exercise his power under section 1 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.
- (7) Any listed building consent granted by the Secretary of State under subsection (6) shall be treated as granted on an application for the same consent under section 10 and the Secretary of State's decision in relation to the grant shall be final.
- (8) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings in England<sup>12</sup> before the Secretary of State on an appeal under section 39 as if those proceedings were an inquiry held by the Secretary of State under section 250.

## **42 Execution of works required by listed building enforcement notice**

- (1) If any of the steps specified in the listed building enforcement notice have not been taken within the period for compliance with the notice, the authority may--
  - (a) enter the land and take those steps, and
  - (b) recover from the person who is then the owner of the land

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<sup>11</sup> The passages in square brackets in S 41(4) have been introduced in Wales by the Town and Country Planning (Determination of Procedure) (Wales) Order 2014. The same changes have been made for England by the Planning Act 2008, Schedule 10, paragraph 20, but not yet commenced.

<sup>12</sup> To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 20.

any expenses reasonably incurred by them in doing so.

- (2) Where a listed building enforcement notice has been served in respect of a building--
- (a) any expenses incurred by the owner or occupier of the building for the purpose of complying with it, and
  - (b) any sums paid by the owner of the building under subsection (1) in respect of expenses incurred by the local planning authority in taking steps required by it,

shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.

- (3) Regulations under this Act may provide that all or any of the following sections of the Public Health Act 1936, namely--
- (a) section 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);
  - (b) section 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises);
  - (c) section 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),

shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a listed building enforcement notice.

- (4) Regulations under subsection (3) applying all or any of section 289 of that Act may include adaptations and modifications for the purpose of giving the owner of land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice.
- (5) Regulations under subsection (3) may also provide for the charging on the land on which the building stands of any expenses recoverable by a local planning authority under subsection (1).
- (6) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) . . .

**43 Offence where listed building enforcement notice not complied with**

- (1) Where, at any time after the end of the period for compliance with the notice, any step required by a listed building enforcement notice to be taken has not been taken, the person who is then owner of the land is in breach of the notice.
- (2) If at any time the owner of the land is in breach of a listed building enforcement notice he shall be guilty of an offence.
- (3) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.
- (4) In proceedings against any person for an offence under this section, it shall be a defence for him to show--
  - (a) that he did everything he could be expected to do to secure that all the steps required by the notice were taken; or
  - (b) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence.
- (5) A person guilty of an offence under this section shall be liable--
  - (a) on summary conviction, to a fine not exceeding £20,000; and
  - (b) on conviction on indictment, to a fine.
- (6) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

**44 Effect of listed building consent on listed building enforcement notice**

- (1) If, after the issue of a listed building enforcement notice, consent is granted under section 8(3)--
  - (a) for the retention of any work to which the notice relates; or
  - (b) permitting the retention of works without compliance with some condition subject to which a previous listed building consent was granted,the notice shall cease to have effect in so far as it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition.
- (2) The fact that such a notice has wholly or partly ceased to have effect under subsection (1) shall not affect the liability of any

person for an offence in respect of a previous failure to comply with that notice.

#### **44A Injunctions**

- (1) Where a local planning authority consider it necessary or expedient for any actual or apprehended contravention of section 9(1) or (2) to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
- (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the contravention.
- (3) Rules of court may, in particular, provide for such an injunction to be issued against a person whose identity is unknown.
- (4) The references in subsection (1) to a local planning authority include, as respects England, the Commission.
- (5) In this section "the court" means the High Court or the county court.

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

- (1) This section applies where it appears to a local planning authority in Wales that—
  - (a) works have been or are being executed to a listed building in their area; and
  - (b) the works are such as to involve a contravention of section 9(1) or (2).
- (2) The authority may issue a temporary stop notice if, having regard to the effect of the works on the character of the building as one of special architectural or historic interest, they consider it is expedient that the works are stopped immediately (or that part of them is).
- (3) A temporary stop notice must be in writing and must—
  - (a) specify the works in question;
  - (b) prohibit execution of the works (or so much of them as is specified in the notice);
  - (c) set out the authority's reasons for issuing the notice; and
  - (d) include a statement of the effect of section 44C.
- (4) A temporary stop notice may be served on a person who appears to the authority—
  - (a) to be executing the works or causing them to be executed;

S 29(1)

or

(b) to have an interest in the building.

(5) The authority must display a copy of the notice on the building.

(6) A temporary stop notice takes effect when the copy of it is first displayed in accordance with subsection (5).

(7) A temporary notice ceases to have effect—

(a) at the end of the period of 28 days beginning with the day on which the copy of it is first displayed in accordance with subsection (5); or

(b) if the notice specifies a shorter period beginning with that day, at the end of that period.

(8) But if the authority withdraws the notice before the time when it would otherwise cease to have effect under subsection (7), the notice ceases to have effect on its withdrawal.

(9) A local planning authority may not issue a subsequent temporary stop notice in relation to the same works unless the authority have, since issuing the previous notice, taken other enforcement action in relation to the contravention referred to in subsection (1)(b).

(10) The reference in subsection (9) to taking other enforcement action includes a reference to obtaining an injunction under section 44A.

(11) A temporary stop notice does not prohibit the execution of works of such description, or the execution of works in such circumstances, as the Welsh Ministers may by regulations prescribe.

S 29(1)

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

(1) A person is guilty of an offence if the person contravenes, or causes or permits a contravention of, a temporary stop notice—

(a) which has been served on the person; or

(b) a copy of which has been displayed in accordance with section 44B(5).

(2) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different periods.

(3) In proceedings against a person for an offence under this section, it is a defence for the person to show that the person did not know, and could not reasonably have been expected to know, of

the existence of the temporary stop notice.

- (4) In proceedings against a person for an offence under this section, it is also a defence for the person to show—
- (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
  - (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
  - (c) that the works carried out were limited to the minimum measures immediately necessary; and
  - (d) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (6) In determining the amount of a fine to be imposed on a person convicted 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.

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

- (1) A person who, on the day when a temporary stop notice is first displayed in accordance with section 44B(5), has an interest in the building is, on making a claim to the local planning authority within the prescribed time and in the prescribed manner, entitled to be paid compensation by the authority in respect of any loss or damage directly attributable to the effect of the notice.
- (2) But subsection (1) applies only if—
- (a) the works specified in the notice are not such as to involve a contravention of section 9(1) or (2); or
  - (b) the authority withdraws the notice other than following the grant of listed building consent, after the day mentioned in subsection (1), which authorises the works.
- (3) The loss or damage in respect of which compensation is payable under this section includes a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the notice.
- (4) No compensation is payable under this section in the case of loss or damage suffered by a claimant if—
- (a) the claimant was required to provide information under a relevant provision, and

S 29(1)

- (b) the loss or damage could have been avoided if the claimant had provided the information or had otherwise co-operated with the planning authority when responding to the notice.
  - (5) In subsection (4)(a), each of the following is a relevant provision—
    - (a) section 16 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57);
    - (b) section 330 of the principal Act.
- } S 29(1)

**45 Commission to have concurrent enforcement functions in London**

The Commission shall, as respects any London borough, have concurrently with the council of that borough the functions of a local planning authority under sections 38 to 43; and references to the local planning authority in those provisions shall be construed accordingly.

**46 Enforcement by the Secretary of State**

- (1) If it appears to the Secretary of State to be expedient that a listed building enforcement notice should be issued in respect of any land, he may issue such a notice.
- (2) Before the Secretary of State serves a notice under subsection (1) he shall consult--
  - (a) the local planning authority; and
  - (b) if the land is situated in England, the Commission.
- (3) A listed building enforcement notice issued by the Secretary of State shall have the same effect as a notice issued by the local planning authority.
- (4) In relation to a listed building enforcement notice issued by the Secretary of State, section 42 shall apply as if for any reference in that section to the local planning authority there were substituted a reference to the Secretary of State.
- (5) References in this section to the local planning authority shall in the case of an authority for an area in England outside Greater London be construed as references to the district planning authority.

**Chapter V**  
**Prevention of Deterioration and Damage**  
***Compulsory acquisition of listed building in need of repair***  
***Urgent preservation***

- 54 Urgent works to preserve ~~unoccupied~~ listed buildings** S 30(5)
- (1) A local authority may execute any works which appear to them to be urgently necessary for the preservation of a listed building in their area.
- (2) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a listed building--
- (a) if the building is in England, he shall authorise the Commission to execute any works specified in the authorisation which appear to him to be urgently necessary for its preservation; or
- (b) if the building is in Wales, he may himself execute any works which appear to him to be urgently necessary for its preservation.
- (3) The works which may be executed under this section may consist of or include works for affording temporary support or shelter for the building.
- (4) If, in the case of a building in England, the building is occupied works may be carried out only to those parts which are not in use. S 30(1)
- (4A) If, in the case of a building in Wales, the whole or part of the building is in residential use, works may be carried out only where they would not interfere unreasonably with that use. S 30(2)
- (5) The owner of the building must be given not less than seven days notice in writing of the intention to carry out the works and, in the case of works authorised under subsection (2)(a), the Commission shall give that notice.
- (5A) Where the works are to be executed to a building in Wales the whole or part of which is in residential use, the occupier of the building must also be given not less than seven days' notice in writing of the intention to carry out the works. S 30(3)
- (6) A notice under subsection (5) or (5A) shall describe the works proposed to be carried out. S 30(4)
- (7) As respects buildings in Greater London, the functions of a local authority under this section are exercisable concurrently by the Commission and the relevant London borough council.

**55 Recovery of expenses of works under s 54**

- (1) This section has effect for enabling the expenses of works executed under section 54 to be recovered by the authority who carried out the works, that is to say the local authority, the Commission or the Secretary of State or, in the case of works carried out by the Commission on behalf of the Secretary of State, the Secretary of State.
- (2) That authority may give notice to the owner of the building requiring him to pay the expenses of the works.
- (3) Where the works consist of or include works for affording temporary support or shelter for the building--
  - (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used; and
  - b) notices under subsection (2) in respect of any such continuing expenses may be given from time to time.
- (4) The owner may within 28 days of the service of the notice represent to the Secretary of State--
  - (a) that some or all of the works were unnecessary for the preservation of the building; or
  - (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time; or
  - (c) that the amount specified in the notice is unreasonable; or
  - (d) that the recovery of that amount would cause him hardship,and the Secretary of State shall determine to what extent the representations are justified.
- (5) The Secretary of State shall give notice of his determination, the reasons for it and the amount recoverable--
  - (a) to the owner of the building; and
  - (b) if the authority who gave notice under subsection (2) is a local authority or the Commission, to them.

(5A) Where the Welsh Ministers make a determination under subsection (4), the owner of the building or (if it is given notice under subsection (5)) the local authority may, within 28 days of the service of the notice under subsection (5), appeal to the county court against the decision.

(5B) In the case of a building in Wales, as from the time when the notice under subsection (2) becomes operative, the expenses which an authority may recover under this section carry interest at such rate as the authority may fix until recovery of all sums due

} S 30(6)

under this section; and the expenses and any interest are recoverable by the authority as a debt.

(5C) As from that time, the expenses and any interest are, until recovery, a charge on the land on which the building stands.

(5D) The charge takes effect at that time as a legal charge which is a local land charge.

(5E) For the purpose of enforcing the charge, the authority have the same powers and remedies under the Law of Property Act 1925 and otherwise as if they were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

(5F) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.

(5G) For the purposes of subsections (5B) to (5F), the notice becomes operative—

S 30(6)

(a) where no representations are made under subsection (4) within the period referred to in that subsection, at the end of that period;

(b) where representations are made as mentioned in paragraph (a) but no appeal against the determination under subsection (4) is made under subsection (5A) within the period referred to in that subsection, at the end of that period;

(c) where an appeal is made as mentioned in paragraph (b) and the decision on the appeal confirms the determination under subsection (4) (with or without variation), at the time of the decision;

(d) where an appeal is made as mentioned in paragraph (b) but is withdrawn, at the time of the withdrawal.

### ***Validity of instruments, decisions and proceedings***

#### **62 Validity of certain orders and decisions**

- (1) Except as provided by section 63, the validity of--
- (a) any order under section 23 or 26 (whether before or after it has been confirmed); or
  - (b) any such decision by the Secretary of State as is mentioned in subsection (2),

shall not be questioned in any legal proceedings whatsoever.

- (2) Those decisions are--

(za) any decision on a review under section 2D;

S 26(9)

- (a) any decision on an application referred to the Secretary of State under section 12 or on an appeal under section 20;
  - (aa) any decision to approve or reject a local listed building consent order or part of such an order;
  - (ab) any decision on an appeal under section 26K;
  - (b) any decision to confirm or not to confirm a listed building purchase notice including--
    - (i) any decision not to confirm such a notice in respect of part of the land to which it relates, and
    - (ii) any decision to grant any consent, or give any direction, in lieu of confirming such a notice, either wholly or in part;
  - (c) any decision to grant listed building consent under paragraph (a) of section 41(6) or to discharge a condition or limitation under paragraph (b) of that section;
  - (d) any decision on an application for listed building consent under section 82B .
- (3) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such decision as is mentioned in subsection (2).

**63 Proceedings for questioning validity of other orders, decisions and directions**

- (1) If any person is aggrieved by any such order or decision as is mentioned in section 62(1) and wishes to question its validity on the grounds--
- (a) that it is not within the powers of this Act, or
  - (b) that any of the relevant requirements have not been complied with in relation to it,
- he may make an application to the High Court under this section.
- (2) Without prejudice to subsection (1), if the authority directly concerned with any such order or decision wish to question its validity on any of those grounds, the authority may make an application to the High Court under this section.
- (3) An application under this section must be made within six weeks from the date on which the order is confirmed (or, in the case of an order under section 23 which takes effect under section 25 without confirmation, the date on which it takes effect) or, as the case may be, the date on which the action is taken.
- (4) On any application under this section the High Court--

- (a) may by interim order suspend the operation of the order or decision, the validity of which is questioned by the application, until the final determination of the proceedings; and
- (b) if satisfied--
  - (i) that the order or decision is not within the powers of this Act, or
  - (ii) that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it,
 may quash that order or decision.
- (5) References in this section to the confirmation of an order include the confirmation of an order subject to modifications.
- (6) In this section "the relevant requirements", in relation to any order or decision, means any requirements of this Act or of the Tribunals and Inquiries Act 1992 or of any order, regulations or rules made under either of those Acts which are applicable to that order or decision.
- (7) For the purposes of subsection (2) the authority directly concerned with an order or decision is--
  - (a) in relation to any such decision as is mentioned in section 62(2)(b)--
    - (i) the council on whom the listed building purchase notice was served, and
    - (ii) in a case where the Secretary of State has modified the notice wholly or in part by substituting another local authority or statutory undertakers for that council, also that authority or those statutory undertakers; and
  - (b) otherwise, the authority who--
    - (i) made the order or decision to which the proceedings in question relate, or
    - (ii) referred the matter to the Secretary of State, or
    - (iii) if the order was made by him, are the authority named in it.

#### **64 Validity of listed building enforcement notices**

The validity of a listed building enforcement notice shall not, except by way of an appeal under section 39, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

**65 Appeals to High Court relating to listed building enforcement notices**

- (1) Where the Secretary of State gives a decision in proceedings on an appeal under section 39 against a listed building enforcement notice, the appellant or the local planning authority or any other person having an interest in the land to which the notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court.
- (2) At any stage of the proceedings on any such appeal, the Secretary of State may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court.
- (3) A decision of the High Court on a case stated by virtue of subsection (2) shall be deemed to be a judgment of the court within the meaning of section 16 of the Senior Courts Act 1981 (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).
- (3A) In proceedings brought by virtue of this section, the High Court or, as the case may be, the Court of Appeal may, on such terms, if any, as the Court thinks fit (which may include terms requiring the local planning authority to give an undertaking as to damages or any other matter), order that the listed building enforcement notice shall have effect, or have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.
- (4) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this section the power to make rules of court shall include power to make rules--
  - (a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State; and
  - (b) providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.
- (5) No proceedings in the High Court shall be brought by virtue of this section except with the leave of that Court and no appeal to the Court of Appeal shall be so brought except with the leave of the Court of Appeal or of the High Court.

- (6) In this section "decision" includes a direction or order, and references to the giving of a decision shall be construed accordingly.
- (7) In the case of a listed building enforcement notice issued by the Commission subsection (1) shall apply as if the reference to the local planning authority were a reference to the Commission.

**76 Urgent works to preserve ~~unoccupied~~ buildings in conservation areas**

S 30(5)

- (1) If it appears to the Secretary of State that the preservation of a building in a conservation area is important for maintaining the character or appearance of that area, he may direct that section 54 shall apply to it as it applies to listed buildings.
- (2) The Secretary of State shall consult the Commission before giving a direction under subsection (1) in respect of a building in England.

**Part III**

**General**

***Authorities exercising functions under Act***

**81 Authorities exercising functions under Act**

In this Act "local planning authority" shall be construed in accordance with Part I of the principal Act and Schedule 4 to this Act (which makes further provision as to the exercise of functions under this Act).

**[Power to decline to determine application**

**81A Power to decline to determine subsequent application**

- (1) A local planning authority may decline to determine an application for a relevant consent if--
  - (a) one or more of the conditions in subsections (2) to (4) is satisfied, and
  - (b) the authority think there has been no significant change in any material considerations since the relevant event.
- (2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Secretary of State has refused a similar application referred to him under section 12.
- (3) The condition is that in that period the Secretary of State has dismissed an appeal--

- (a) against the refusal of a similar application, or
  - (b) under section 20(2) in respect of a similar application.
- (4) The condition is that--
- (a) in that period the local planning authority have refused more than one similar application, and
  - (b) there has been no appeal to the Secretary of State against any such refusal or, if there has been such an appeal, it has been withdrawn .
- (5) Relevant consent is--
- (a) listed building consent, or
  - (b) conservation area consent.
- (6) The relevant event is--
- (a) for the purposes of subsections (2) and (4) the refusal of the similar application;
  - (b) for the purposes of subsection (3) the dismissal of the appeal.
- (7) An application for relevant consent is similar to another application if (and only if) the local planning authority think that the building and works to which the applications relate are the same or substantially the same.
- (8) For the purposes of an application for conservation area consent a reference to a provision of this Act is a reference to that provision as excepted or modified by regulations under section 74.]<sup>13</sup>

**[81B Power to decline to determine overlapping application**

- (1) A local planning authority may decline to determine an application for a relevant consent which is --
  - (a) made on the same day as a similar application, or
  - (b) made at a time when any of the conditions in subsections (2) to (4) applies in relation to a similar application.
- (2) The condition is that a similar application is under consideration by the local planning authority and the determination period for that application has not expired.
- (3) The condition is that a similar application is under consideration by the Secretary of State in pursuance of section 12 or on an appeal under section 20 and the Secretary of State has not

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<sup>13</sup> Inserted by the Planning and Compulsory Purchase Act 2004, S 43(3) and commenced in England only by SI 2005/2081.

issued his decision.

- (4) The condition is that a similar application--
- (a) has been granted by the local planning authority,
  - (b) has been refused by them, or
  - (c) has not been determined by them within the determination period,
- and the time within which an appeal could be made to the Secretary of State under section 20 has not expired.
- (4A) If a local planning authority exercise their power under subsection (1)(a) to decline to determine an application made on the same day as a similar application, they may not also exercise that power to decline to determine the similar application.
- (5) Relevant consent is--
- (a) listed building consent, or
  - (b) conservation area consent.
- (6) An application for relevant consent is similar to another application if (and only if) the local planning authority think that the building and works to which the applications relate are the same or substantially the same.
- (7) The determination period is--
- (a) the period prescribed for the determination of the application, or
  - (b) such longer period as the applicant and the authority have agreed for the determination of the application.
- (8) For the purposes of an application for conservation area consent a reference to a provision of this Act is a reference to that provision as excepted or modified by regulations under section 74.]<sup>14</sup>

### ***Special cases***

#### **82 Application of Act to land and works of local planning authorities**

- (1) In relation to land of a local planning authority, section 1(1), (2) and (4) and sections 2, and 39(6) shall have effect subject to such exceptions and modifications as may be prescribed.
- (2) The provisions mentioned in subsection (3) shall have effect for the purpose of applications by local planning authorities relating to the execution of works for the demolition, alteration or

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<sup>14</sup> Inserted by the Planning and Compulsory Purchase Act 2004 s43(3) and commenced in England only by SI 2009/384.

extension of listed buildings, subject to such exceptions and modifications as may be prescribed.

- (3) Those provisions are sections 1(3), (5) and (6), 3 to 5, 7 to 26, 28, 29, 32 to 50 (except section 39(6)), 60(1) to (4) (as it applies as respects the provisions mentioned in this subsection), 62 to 65, 67(2)(b), (6) and (7), 73(1), Schedules 1 and 2, paragraph 2 of Schedule 4 (as it applies to Schedule 1) and paragraph 4(1) of Schedule 4 (as it applies as respects the provisions mentioned in this subsection).
- (4) Regulations under this section may in particular provide--
  - (a) for the making of applications for listed building consent to the Secretary of State; and
  - (b) for the issue or service by him of notices under section 2(3) and the provisions mentioned in subsection (3).

## **82A Application to the Crown**

- (1) This Act (except the provisions specified in subsection (2)) binds the Crown.
- (2) These are the provisions--
  - (a) section 9;
  - (b) section 11(6);
  - (c) section 21(7);
  - (ca) section 26J;
  - (d) section 42(1), (5) and (6);
  - (e) section 43;
  - (f) section 44A;
  - (fa) section 44C;**
  - (g) section 54;
  - (h) section 55;
  - (i) section 59;
  - (j) section 88A.
- (3) But subsection (2)(a) does not have effect to prohibit the doing of anything by or on behalf of the Crown which falls within the circumstances described in section 9(3)(a) to (d) and the doing of that thing does not contravene section 7.

S 29(3)

## **82B Urgent works relating to Crown land: application**

- (1) This section applies to any works proposed to be executed in

connection with any building which is on Crown land if the appropriate authority certifies--

- (a) that the works are of national importance, and
  - (b) that it is necessary that the works are carried out as a matter of urgency.
- (2) The appropriate authority may, instead of making an application for consent to the local planning authority in accordance with this Act, make an application for consent to the Secretary of State under this section.
- (3) If the appropriate authority proposes to make the application to the Secretary of State it must publish in one or more newspapers circulating in the locality of the building a notice--
  - (a) describing the proposed works, and
  - (b) stating that the authority proposes to make the application to the Secretary of State.
- (4) For the purposes of an application under this section the appropriate authority must provide to the Secretary of State a statement of the authority's grounds for making the application.
- (5) If the appropriate authority makes an application under this section subsections (6) to (9) below apply.
- (6) The Secretary of State may require the authority to provide him with such further information as he thinks necessary to enable him to determine the application.
- (7) As soon as practicable after he is provided with any document or other matter in pursuance of subsection (4) or (6) the Secretary of State must make a copy of the document or other matter available for inspection by the public in the locality of the proposed development.
- (8) The Secretary of State must in accordance with such requirements as may be prescribed publish notice of the application and of the fact that such documents and other material are available for inspection.
- (9) The Secretary of State must consult--
  - (a) the local planning authority for the area to which the proposed development relates, and
  - (b) such other persons as may be prescribed,about the application.
- (10) Subsection (7) does not apply to the extent that the document or other matter is subject to a direction under paragraph 6(6) of Schedule 3 (matters related to national security).
- (11) Subsections (4) and (5) of section 12 apply to an application

under this section as they apply to an application in respect of which a direction under section 12 has effect.

## **82C Expressions relating to the Crown**

- (1) In this Act, expressions relating to the Crown must be construed in accordance with this section.
- (2) Crown land is land in which there is a Crown interest or a Duchy interest.
- (3) A Crown interest is any of the following--
  - (a) an interest belonging to Her Majesty in right of the Crown or in right of Her private estates;
  - (b) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
  - (c) such other interest as the Secretary of State specifies by order.
- (4) A Duchy interest is--
  - (a) an interest belonging to Her Majesty in right of the Duchy of Lancaster, or
  - (b) an interest belonging to the Duchy of Cornwall.
- (5) A private interest is an interest which is neither a Crown interest nor a Duchy interest.
- (6) The appropriate authority in relation to any land is--
  - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
  - (b) in relation to any other land belonging to Her Majesty in right of the Crown, the government department having the management of the land;
  - (c) in relation to land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Secretary of State;
  - (d) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
  - (e) in relation to land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy, appoints;
  - (f) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a

government department, the department;

- (g) in relation to Westminster Hall and the Chapel of St Mary Undercroft, the Lord Great Chamberlain and the Speakers of the House of Lords and the House of Commons acting jointly;
  - (h) in relation to Her Majesty's Robing Room in the Palace of Westminster, the adjoining staircase and ante-room and the Royal Gallery, the Lord Great Chamberlain.
- (7) If any question arises as to what authority is the appropriate authority in relation to any land it must be referred to the Treasury, whose decision is final.
  - (8) For the purposes of an application for listed building consent made by or on behalf of the Crown in respect of land which does not belong to the Crown or in respect of which it has no interest a reference to the appropriate authority must be construed as a reference to the person who makes the application.
  - (9) For the purposes of subsection (8) the Crown includes--
    - (a) the Duchy of Lancaster;
    - (b) the Duchy of Cornwall;
    - (c) a person who is an appropriate authority by virtue of subsection (6)(g) and (h).
  - (10) The reference to Her Majesty's private estates must be construed in accordance with section 1 of the Crown Private Estates Act 1862.
  - (11) An order made for the purposes of paragraph (c) of subsection (3) must be made by statutory instrument.
  - (12) But no such order may be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

## **82D Enforcement in relation to the Crown**

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act.
- (2) A local planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
- (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
- (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
- (5) A step taken for the purposes of enforcement includes--

- (a) entering land;
  - (b) bringing proceedings;
  - (c) the making of an application.
- (6) A step taken for the purposes of enforcement does not include--
- (a) service of a notice;
  - (b) the making of an order (other than by a court).

**82E References to an interest in land**

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest or a Duchy interest.
- (2) Anything which requires or is permitted to be done by or in relation to the owner of the interest in land must be done by or in relation to the appropriate authority.
- (3) An interest in land includes an interest only as occupier of the land.

**82F Applications for listed building or conservation area consent by Crown**

- (1) This section applies to an application for listed building consent or conservation area consent made by or on behalf of the Crown.
- (2) The Secretary of State may by regulations modify or exclude any statutory provision relating to the making and determination of such applications.
- (3) A statutory provision is a provision contained in or having effect under any enactment.

***Miscellaneous provisions***

**88 Rights of entry**

- (1) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of surveying any building on it or any other land in connection with a proposal to include the building in, or exclude it from, a list compiled or approved under section 1.
- (2) Any person duly authorised in writing by the Secretary of State, a local planning authority or, where the authorisation relates to a building situated in Greater London, the Commission may at any reasonable time enter any land for any of the following purposes--
  - (a) surveying it or any other land in connection with any proposal by the authority or the Secretary of State to make,

issue or serve any order or notice under any of the provisions of sections 1 to 26, 38, 40, 46, 54, 55, 60, 68, 75 or 76 or under any order or regulations made under any of them, or any notice under section 48;

- (b) ascertaining whether any such order or notice has been complied with in relation to the land or any other land ;
  - (c) ascertaining whether an offence has been, or is being, committed with respect to any building on the land or any other land , under section 9, 11 , 26J or 43;
  - (d) ascertaining whether any building on the land or any other land is being maintained in a proper state of repair.
- (3) Any person duly authorised in writing by the Secretary of State, a local authority or, where the authorisation relates to a building situated in Greater London, the Commission may at any reasonable time enter any land for any of the following purposes--
- (a) ascertaining whether an offence has been or is being committed under section 59 in relation to the land or any other land ;
  - (b) ascertaining whether any of the functions conferred by section 54 should or may be exercised in connection with the land or any other land ; or
  - (c) exercising any of those functions in connection with the land or any other land.

(3A) Any person duly authorised in writing by a local planning authority in Wales may at any reasonable time enter any land for any of the following purposes—

- (a) securing the display or removal of a temporary stop notice (see section 44B);
- (b) ascertaining whether a temporary stop notice is being complied with;
- (c) considering any claim for compensation under section 44D.

S 29(4)

- (4) Any person who is an officer of the Valuation Office or is duly authorised in writing by a local planning authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation payable by the authority under section . . . 28, 28B or 29, 29 or 44D in respect of any land.
- (5) Any person who is an officer of the Valuation Office or is duly authorised in writing by a local authority having power to acquire land under sections 47 to 52 may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that land or any other land or in connection with any claim for compensation in respect

S 26(10) and  
S 29(5)

of any such acquisition.

- (6) Subject to section 88B(8) , any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil . . . .
- (7) . . .

**88A Warrants to enter land**

- (1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing--
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 88; and
  - (b) that--
    - (i) admission to the land has been refused, or a refusal is reasonably apprehended; or
    - (ii) the case is one of urgency,

the justice may issue a warrant authorising any person duly authorised in writing by the appropriate authority to enter the land.
- (2) In subsection (1) "the appropriate authority" means the person who may authorise entry on the land under section 88 for the purpose in question.
- (3) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (4) A warrant authorises entry on one occasion only and that entry must be--
  - (a) within one month from the date of the issue of the warrant; and
  - (b) at a reasonable hour, unless the case is one of urgency.

**88B Rights of entry: supplementary provisions**

- (1) A person authorised under section 88 to enter any land shall not demand admission as of right to any land which is occupied unless twenty-four hours notice of the intended entry has been given to the occupier.
- (2) A person authorised to enter land in pursuance of a right of entry conferred under or by virtue of section 88 or 88A (referred to in this section as "a right of entry")--
  - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;

- (b) may take with him such other persons as may be necessary;  
and
  - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
- (3) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.
- (5) Subsection (4) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.
- (6) A person who is guilty of an offence under subsection (4) shall be liable--
  - (a) on summary conviction to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.
- (7) If any damage is caused to land or chattels in the exercise of--
  - (a) a right of entry; or
  - (b) a power conferred by virtue of section 88(6) in connection with such a right,

compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State; and section 118 of the principal Act shall apply in relation to compensation under this subsection as it applies in relation to compensation under Part IV of that Act.
- (8) No person shall carry out any works in exercise of a power conferred under section 88 unless notice of his intention to do so was included in the notice required by subsection (1).
- (9) The authority of the appropriate Minister shall be required for the carrying out of works in exercise of a power conferred under section 88 if--
  - (a) the land in question is held by statutory undertakers; and
  - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking.

- (10) Section 265(1) and (3) of the principal Act (meaning of "appropriate Minister") applies for the purposes of subsection (9) as it applies for the purposes of section 325(9) of the principal Act.

**88C Rights of entry: Crown land**

- (1) Section 88 applies to Crown land subject to the following modifications.
- (2) A person must not enter Crown land unless he has the relevant permission.
- (3) Relevant permission is the permission of--
  - (a) a person appearing to the person seeking entry to the land to be entitled to give it, or
  - (b) the appropriate authority.
- (4) In subsection (6) the words "Subject to section 88B(8)" must be ignored.
- (5) Section 88B does not apply to anything done by virtue of this section.
- (6) "Appropriate authority" must be construed in accordance with section 82C(6).

**[88D Determination of procedure for certain proceedings**

- (1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate--
  - (a) at a local inquiry;
  - (b) at a hearing;
  - (c) on the basis of representations in writing.
- (3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Secretary of State must notify the appellant or applicant (as the case may be) and the local planning authority of any

- determination made under subsection (1).
- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
  - (7) This section applies to--
    - (a) an application referred to the Secretary of State under section 12 instead of being dealt with by a local planning authority in England;
    - (b) an appeal under section 20 against a decision of a local planning authority in England; and
    - (c) an appeal under section 39 against a listed building enforcement notice issued by a local planning authority in England.
  - (8) The Secretary of State may by order amend subsection (7) to--
    - (a) add proceedings under this Act to, or remove proceedings under this Act from the list of proceedings to which this section applies, or
    - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
  - (9) An order under subsection (8) may--
    - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
    - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.]<sup>15</sup>

**88E Determination of procedure for certain proceedings: Wales**

- (1) The Welsh Ministers must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination under subsection (1) must provide for the proceedings to be considered in such one or more of the following ways as appear to the Welsh Ministers to be appropriate—
  - (a) at a local inquiry;
  - (b) at a hearing;
  - (c) on the basis of representations in writing.
- (3) The Welsh Ministers must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a

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<sup>15</sup> Section 88D only applies in relation to applications and appeals in England.

- subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Welsh Ministers must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).
  - (6) The Welsh Ministers must publish the criteria which are to be applied in making determinations under subsection (1).
  - (7) This section applies to--
    - (a) an application referred to the Welsh Ministers under section 12;
    - (b) an appeal to the Welsh Ministers under section 20;
    - (c) an appeal to the Welsh Ministers under section 39.
  - (8) The Welsh Ministers may by order amend subsection (7) to—
    - (a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies; or
    - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
  - (9) An order under subsection (8) may—
    - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
    - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
  - (10) No order may be made under subsection (8) unless a draft of the instrument containing the order has been laid before and approved by resolution of the National Assembly for Wales.

## **89 Application of certain general provisions of principal Act**

- (1) Subject to subsections (1A) and (2), the following provisions of the principal Act shall apply for the purposes of this Act as they apply for the purposes of that Act, namely--
 

sections 319ZA to 319ZD (Wales: discharge of functions of local planning authority relating to applications),<sup>16</sup>

section 320 (local inquiries),

[section 322 (orders as to costs of parties where no inquiry held: England<sup>17</sup>)]

section 322A (order as to costs: supplementary)

<sup>16</sup> To be inserted by the Planning (Wales) Bill, S 37(3).

<sup>17</sup> To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 21.

section 322C (costs: Wales),<sup>18</sup>

323 (procedure on certain appeals and applications: England<sup>19</sup>),

section 323A (procedure for certain proceedings: Wales),<sup>20</sup>

section 327A (compliance with requirements relating to applications),

section 329 (service of notices),

section 329A(1) and (2) (service of notices on the Crown)

section 330 (power to require information as to interests in land),

section 330A(1) to (4) (information as to interests in Crown land)

section 331 (offences by corporations).

[(1ZA) In the application of sections 322, 322A and 323 of that Act by virtue of this section, references to section 319A of that Act shall have effect as references to section 88D of this Act<sup>21</sup>.]

~~(1ZB) In the application of sections 322, 322A and 323 of that Act, references to section 319A of that Act shall have effect as references to section 88E of this Act.<sup>22</sup>~~

(1A) In the case of a building situated in England, Subsection (1)(cc) of S 31 section 329 of that Act shall not apply to--

- (a) service of a building preservation notice;
  - (b) service of a copy of a listed building enforcement notice by a planning authority;
  - (c) giving of notice under section 38 of this Act of the exercise of powers conferred by subsection (5) of that section; or
  - (d) service of a listed building enforcement notice issued by the Secretary of State.
- (2) Section 331 of that Act shall not apply to offences under section 59 of this Act.
- (3) In the application of section 330 by virtue of this section, references to a local authority include the Commission.

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<sup>18</sup> To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 21.

<sup>19</sup> To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 21.

<sup>20</sup> To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 21.

<sup>21</sup> Inserted by the Planning Act 2008, S 196, Schedule 10, paragraph 22 but not yet in force

<sup>22</sup> To be deleted by the Planning (Wales) Bill, Schedule 5, paragraph 21.

**Part IV**  
**Supplemental**

**91 Interpretation**

(1) In this Act, except in so far as the context otherwise requires--  
"address", in relation to electronic communications, means any number or address used for the purpose of such communications;

"building preservation notice" has the meaning given in section 3(1) and 3A(1);

S 26(11)(a)

"the Commission" means the Historic Buildings and Monuments Commission for England;

"conservation area" means an area for the time being designated under section 69;

"conservation area consent" has the meaning given in section 74(1);

"electronic communication" has the same meaning as in the Electronic Communications Act 2000;

"interim protection" has the meaning given in section 2B(3);

S 26(11)(b)

"listed building" has the meaning given in section 1(5);

"listed building consent" has the meaning given in section 8(7);

"listed building enforcement notice" has the meaning given in section 38(1);

"listed building purchase notice" has the meaning given in section 32(1);

"local planning authority" shall be construed in accordance with section 81;

"prescribed", except in relation to matters expressly required or authorised by this Act to be prescribed in some other way, means prescribed by regulations under this Act;

"the principal Act" means the Town and Country Planning Act 1990;

"town scheme agreement" has the meaning given in section 79.

(2) Subject to subsections (6) and (7) and except in so far as the context otherwise requires, the following expressions have the same meaning as in the principal Act--

"the 1962 Act"

"acquiring authority"

"the Broads"

"building"

"compulsory acquisition"

"development"

"development order"

. . .

"disposal"

"enactment"

"functions"

"government department"

"joint planning board"

"land"

"lease"

"local authority"

"London borough"

"minerals"

"Minister"

. . .

"owner"

"the planning Acts"

"planning permission"

"public gas supplier"

"use"

"Valuation Office",

but this subsection does not affect the meaning of "owner" in section 11, [26L or 26M](#).

S 28(2)

- (3) In this Act "statutory undertakers" has the same meaning as in the principal Act except that--
- (a) in sections 33 to 36 it shall be deemed to include references to an electronic communications code operator and to a former PTO ;
  - (b) in sections 33 to 36, 51(2)(a) and 90(2) it shall be deemed to include a universal service provider in connection with the provision of a universal postal service , the Civil Aviation Authority, a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (to the extent that the person is carrying out activities authorised by the licence), a public gas supplier, a holder of a licence under section 6 of the Electricity Act 1989, the Environment Agency, the

Natural Resources Body for Wales and every water or sewerage undertaker .

- (3A) The undertaking of a universal service provider so far as relating to the provision of a universal postal service shall be taken to be his statutory undertaking for the purposes of this Act; and references in this Act to his undertaking shall be construed accordingly.
- (3B) In subsections (3) and (3A) "universal service provider" has the same meaning as in Part 3 of the Postal Services Act 2011 ; and the references to the provision of a universal postal service shall be construed in accordance with that Part .
- (4) References in the planning Acts to any of the provisions mentioned in section 82 include, except where the context otherwise requires, references to those provisions as modified under that section.
- (5) Words in this Act importing a reference to service of a notice to treat shall be construed as including a reference to the constructive service of such a notice which, by virtue of any enactment, is to be deemed to be served.
- (5A) Where--
- (a) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of this Act, and
  - (b) the communication is received by that person outside that person's business hours,
- it shall be taken to have been received on the next working day; and in this subsection "working day" means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.
- (6) In sections 33 to 36, 53(1), 54, 55 and 88(3) "local authority", in relation to a building or land in the Broads, includes the Broads Authority.
- (7) For the purposes of subsection (1)(b) of section 57 and subsection (2) of that section as it applies for the purposes of that subsection the definition of "building" in the principal Act shall apply with the omission of the words "but does not include any plant or machinery comprised in a building".

### 93 Regulations and orders

- (1) The Secretary of State may make regulations under this Act in relation to England and the Welsh Ministers may make regulations under this Act in relation to Wales--
- (a) for prescribing the form of any notice, order or other document authorised or required by any of the provisions of

S 39(3)

this Act to be served, made or issued by any local authority or National Park authority;

- (b) for any purpose for which regulations are authorised or required to be made under this Act.
- (2) Any power conferred by this Act to make regulations shall be exercisable by statutory instrument.
- (3) Any statutory instrument containing regulations made under this Act, other than regulations under section 2A or 26M, shall be subject to annulment in pursuance of a resolution of either House of Parliament (in the case of regulations made by the Secretary of State) or the National Assembly for Wales (in the case of regulations made by the Welsh Ministers). S 39(4)(a)  
S 39(4)(b)
- (3A) A statutory instrument containing regulations under section 2A or 26M may not be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales. S 39(5)
- (4) The power to make orders under sections 8(5), 26C, 60, 75(7), 88D(8) and 92 shall be exercisable by statutory instrument.
- (5) Any statutory instrument which contains an order under section 60 or 75(7) shall be subject to annulment in pursuance of a resolution of either House of Parliament (in the case of an order made by the Secretary of State) or the National Assembly for Wales (in the case of an order made by the Welsh Ministers). S 39(6)
- (5A) No order may be made under section 26C or 88D(8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.
- (6) Any order under section 60 or 75(7) may contain such supplementary and incidental provisions as may appear to the Secretary of State or (as the case may be) the Welsh Ministers appropriate. S 39(7)
- (6A) Regulations and orders may make different provision for different purposes.
- (6B) The powers to make regulations under sections 10(3)(b), 67(1) and 73(1) must be taken to be powers mentioned in section 100(2) of the Local Government Act 2003 (powers exercisable in relation to descriptions of certain local authorities which fall into particular categories for the purposes of section 99 of that Act).
- (7) Without prejudice to section 14 of the Interpretation Act 1978, any power conferred by this Act to make an order shall include power to vary or revoke any such order by a subsequent order.

**SCHEDULE 1A**  
**introduced by section 2C**  
**LAPSE OF INTERIM PROTECTION**

- 1** This Schedule applies where interim protection ceases to have effect in relation to a building as a result of the issue of a notice under section 2B(5)(b).
- 2** The fact that the interim protection has ceased to have effect does not affect the liability of any person to be prosecuted and punished for an offence under section 9, 43 or 44C committed with respect to the building while the interim protection had effect.
- 3** Any proceedings on or arising out of an application for listed building consent with respect to the building lapse; and any such consent granted while it had effect lapses.
- 4** (1) Any listed building enforcement notice served by the local planning authority with respect to the building ceases to have effect.  
(2) Any proceedings on such a notice under sections 38 to 40 lapse.  
(3) Notwithstanding sub-paragraph (1), section 42(1) and (2) continue to have effect as respects any expenses incurred by the local planning authority, owner or occupier as mentioned in that section and with respect to any sums paid on account of such expenses.
- 5** Any temporary stop notice served by the local planning authority with respect to the building ceases to have effect.

S 24(4) and  
Schedule 2

**SCHEDULE 1B**  
**introduced by section 2D**  
**DECISIONS ON REVIEWS BY PERSON APPOINTED BY WELSH**  
**MINISTERS**

Decisions on reviews by appointed persons

- 1** (1) The Welsh Ministers may by regulations prescribe the classes of reviews under section 2D on which a decision is to be made by a person appointed by the Welsh Ministers for the purpose instead of by the Welsh Ministers.  
(2) Decisions on reviews of a prescribed class are to be made accordingly except in such classes of case as may for the time being be prescribed by the Welsh Ministers.  
(3) This paragraph does not affect any provision in this Act or any

instrument made under it that an application for a review is to be made to the Welsh Ministers.

- (4) A person appointed under this paragraph is referred to in this Schedule as “an appointed person”.

*Powers and duties of appointed person*

2 (1) An appointed person has the same powers and duties in relation to a review under section 2D as the Welsh Ministers have—

(a) under subsections (3)(a) and (b) and (5) of that section; and

(b) by virtue of section 322C and 323A of the Town and Country Planning Act 1990 (c. 8) (costs and procedural matters: Wales), as applied to this Act by section 89 of this Act.

(2) Where an appointed person makes a decision on a review under section 2D, the decision is to be treated as that of the Welsh Ministers.

(3) Except as provided by sections 62 and 63, the validity of the decision is not to be questioned in any legal proceedings.

(4) No application may be made to the High Court under section 63 on the ground that the decision ought to have been made by the Welsh Ministers and not by an appointed person unless the person who made the application for the review challenges the appointed person’s power to make the decision before the decision is made.

(5) Where in any enactment (including this Act) there is a reference to the Welsh Ministers in a context relating or capable of relating—

(a) to a review under section 2D; or

(b) to anything done or authorised or required to be done by, to or before the Welsh Ministers in or in connection with any such review,

then, so far as the context permits and subject to sub-paragraph (6), the reference is to be construed, in relation to a review on which a decision has been made or is to be made by an appointed person, as a reference to that person.

(6) Sub-paragraph (5) does not permit references to the Welsh Ministers in section 2D(2)(c), (3)(c) or (6) to be construed as references to an appointed person.

(7) Sub-paragraph (1) does not affect the generality of sub-paragraph (5).

S 24(4) and  
Schedule 2

Appointment of another person to make a decision on a review

- 3 (1) At any time before an appointed person has made a decision on a review under section 2D the Welsh Ministers may—
- (a) revoke the person's appointment; and
  - (b) appoint another person under paragraph 1 to make the decision instead.
- (2) Where such a new appointment is made, the review, and any inquiry or other hearing in connection with the review, must be begun afresh.
- (3) Nothing in sub-paragraph (2) requires any person to be given an opportunity to make fresh representations or to modify or withdraw any representations already made.

Local inquiries, hearings and written representations

- 4 (1) An appointed person may appoint an assessor to provide advice on—
- (a) any matters arising at a local inquiry or hearing held by the appointed person in connection with a review under section 2D or in consequence of such an inquiry or hearing; or
  - (b) any matters arising in written representations made to the appointed person in connection with such a review or in consequence of such representations.
- (2) Section 250(2) and (3) of the Local Government Act 1972 (c. 70) (local inquiries: evidence) applies to an inquiry held by an appointed person.

S 24(4) and  
Schedule 2

Directions

- 5 (1) The Welsh Ministers may direct that anything that would fall to be done by an appointed person in connection with a review under section 2D, other than the making of a decision on the review under subsection (3)(b) of that section, is to be done instead by the Welsh Ministers.
- 2) A direction given under sub-paragraph (1) may be amended or withdrawn by a further direction.

Delegation

- 6 (1) An appointed person may delegate to another person anything that would fall to be done by the appointed person in connection with a review under section 2D, other than—
- (a) the conduct of a local inquiry or hearing; and

- (b) the making of a decision on the review under subsection (3)(b) of that section.
- (2) A delegation under sub-paragraph (1) is to be to the extent, and on the terms, that the appointed person determines and may be amended or revoked.

Supplementary provision

7 Where an appointed person is a member of the staff of the Welsh Government, the functions of making a decision on a review under section 2D and doing anything in connection with it conferred on the person by this Schedule are to be treated for the purposes of the Public Services (Ombudsman) Wales Act 2005 (c. 10) as functions of the Welsh Government.

S 24(4) and Schedule 2

**SCHEDULE 2**

**Lapse of Building Preservation Notices**

**Section 5**

- 1 This Schedule applies where a building preservation notice ceases to be in force by virtue of--
  - (a) the expiry of the six month period mentioned in subsection (3)(b) of section 3; ~~or~~ S 25(6)(a)
  - (b) the service of a notification by the Secretary of State under subsection (4)(b) of that section.
  - (c) the expiry of the six month period mentioned in subsection (3)(b) of section 3A; or
  - (d) the service of a notification by the Welsh Ministers under subsection (4A)(b) of that section. } S 25(6)(b)
- 2 The fact that the notice has ceased to be in force shall not affect the liability of any person to be prosecuted and punished for an offence under section 9 ~~or 43~~, 43 or 44C committed with respect to the building while it was in force. S 29(6)(a)
- 3 Any proceedings on or arising out of an application for listed building consent with respect to the building made while the notice was in force and any such consent granted while it was in force shall lapse.
- 4 (1) Any listed building enforcement notice served by the local planning authority while the building preservation notice was in force shall cease to have effect.
- (2) Any proceedings on it under sections 38 to 40 shall lapse.

- (3) Notwithstanding sub-paragraph (1), section 42(1) and (2) shall continue to have effect as respects any expenses incurred by the local authority, owner or occupier as mentioned in that section and with respect to any sums paid on account of such expenses.
- (4) The reference to a local authority in sub-paragraph (3) above includes a reference to any National Park authority which is the local planning authority for any area.

5 Any temporary stop notice served by the local planning authority with respect to the building while the building preservation notice was in force ceases to have effect.

S 29(6)(b)

### SCHEDULE 3

#### Determination of Certain Appeals by Person Appointed by Secretary of State

Sections 22, 40

##### *Determination of appeals by appointed person*

- 1 (1) The Secretary of State may by regulations prescribe the classes of appeals under sections 20 , 26K and 39 which are to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.
- (2) Appeals of a prescribed class shall be so determined except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State.
- (3) Regulations made for the purpose of this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.
- (4) This paragraph shall not affect any provision in this Act or any instrument made under it that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.
- (5) A person appointed under this paragraph is referred to in this Schedule as "an appointed person".

##### *Powers and duties of appointed person*

- 2 (1) An appointed person shall have the same powers and duties--
  - (a) in relation to an appeal under section 20, as the Secretary of State has under subsection (1) of section 22 and paragraph 2 of Schedule 1;
  - (aa) in relation to an appeal under section 26K, as the Secretary of State has under section 26K(4) to (6); and

- (b) in relation to an appeal under section 39, as he has under section 41(1), (2) (2A) , (5) or (6) and paragraph 2 of Schedule 1.
- (2) Sections 22(2) and 40(2) shall not apply to an appeal which falls to be determined by an appointed person, but before it is determined the Secretary of State shall ask the appellant and the local planning authority whether they wish to appear before and be heard by the appointed person.
- (3) If both the parties express a wish not to appear and be heard the appeal may be determined without their being heard.
- (4) If either of the parties expresses a wish to appear and be heard, the appointed person shall give them both an opportunity of doing so.
- (4A) Sub-paragraph (2) does not apply in the case of an appeal to which section 88D applies.
- (5) Where an appeal has been determined by an appointed person, his decision shall be treated as that of the Secretary of State.
- (6) Except as provided by sections 62 to 65, the validity of that decision shall not be questioned in any proceedings whatsoever.
- (7) It shall not be a ground of application to the High Court under section 63, or of appeal to the High Court under section 65, that an appeal ought to have been determined by the Secretary of State and not by an appointed person, unless the appellant or the local planning authority challenge the appointed person's power to determine the appeal before his decision on the appeal is given.
- (8) Where in any enactment (including this Act) there is a reference to the Secretary of State in a context relating or capable of relating--
  - (a) to an appeal under section 20 , 26K or 39, or
  - (b) to anything done or authorised or required to be done by, to or before the Secretary of State on or in connection with any such appeal,
 then so far as the context permits it shall be construed, in relation to an appeal determined or falling to be determined by an appointed person, as a reference to him.
- (9) Sub-paragraph (8) does not apply to references to the Secretary of State in section 88D (powers and duties of the Secretary of State in relation to the determination of procedure for certain proceedings).

*Determination of appeals by Secretary of State*

- 3 (1) The Secretary of State may, if he thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person shall instead be determined by the Secretary of State.
- (2) Such a direction shall state the reasons for which it is given and shall be served on the appellant, the local planning authority, any person who made representations relating to the subject matter of the appeal which the authority were required to take into account by regulations made under section 11(4) and, if any person has been appointed under paragraph 1, on him.
- (3) Where in consequence of such a direction an appeal under section 20 , 26K or 39 falls to be determined by the Secretary of State himself, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions of this paragraph, apply to the appeal as if this Schedule had never applied to it.
- (4) The Secretary of State shall give the appellant, the local planning authority and any person who has made such representations as are referred to in sub-paragraph (2) an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose if--
- (a) the reasons for the direction raise matters with respect to which any of those persons have not made representations; or
  - (b) in the case of the appellant and the local planning authority, either of them was not asked in pursuance of paragraph 2(2) whether they wished to appear before and be heard by the appointed person, or expressed no wish in answer to that question, or expressed a wish to appear and be heard but was not given an opportunity of doing so.
- (4A) Sub-paragraph (4) does not apply in the case of an appeal to which section 88D applies.
- (4B) In the case of an appeal to which section 88D applies, the Secretary of State must give the appellant, the local planning authority and any person who has made any representations mentioned in sub-paragraph (2) an opportunity to make further representations if the reasons for the direction raise matters with respect to which any of those persons have not made representations.
- (5) Except as provided by sub-paragraph (4) or (4B) , the Secretary of State need not give any person an opportunity of appearing before and being heard by a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made.
- (6) In determining the appeal the Secretary of State may take into

account any report made to him by any person previously appointed to determine it.

- 4 (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.
- (2) Such a further direction shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the appellant, the local planning authority and any person who made representations relating to the subject matter of the appeal which the authority were required to take into account by regulations made under section 11(4).
- (3) Where such a further direction has been given the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) shall unless that person directs otherwise, be treated as having been done by him.

*Appointment of another person to determine appeal*

- 5 (1) At any time before the appointed person has determined the appeal the Secretary of State may--
  - (a) revoke his appointment; and
  - (b) appoint another person under paragraph 1 to determine the appeal instead.
- (2) Where such a new appointment is made the consideration of the appeal or any inquiry or other hearing in connection with it shall be begun afresh.
- (3) Nothing in sub-paragraph (2) shall require--
  - (a) the question referred to in paragraph 2(2) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person (any answers being treated as given with reference to the new appointed person); or
  - (b) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

*Local inquiries and hearings*

- 6 (1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person--
- (a) may hold a local inquiry in connection with the appeal; and
  - (b) shall do so if the Secretary of State so directs.
- (1A) Sub-paragraph (1) does not apply in the case of an appeal to which section 88D applies; but an appointed person may hold a hearing or local inquiry in connection with such an appeal pursuant to a determination under that section.
- (2) Where an appointed person--
- (a) holds a hearing by virtue of paragraph 2(4) or this paragraph; or
  - (b) holds an inquiry by virtue of this paragraph,
- an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal.
- (3) Subject to sub-paragraph (4), the costs of any such hearing or inquiry shall be paid by the Secretary of State.
- (4) Section 250(2) to (5) of the Local Government Act 1972 (local inquiries: evidence and costs) applies to an inquiry held by virtue of this paragraph **in England**<sup>23</sup> with the following adaptations--
- (a) for the references in subsection (4) (recovery of costs of holding the inquiry) to the Minister causing the inquiry to be held, there shall be substituted references to the Secretary of State; and
  - (b) for the reference in subsection (5) (orders as to the costs of the parties) to the Minister causing the inquiry to be held, there shall be substituted a reference to the appointed person or the Secretary of State.
- (4A) Subsections (2) and (3) of that section apply to an inquiry held under this paragraph in Wales.**<sup>24</sup>
- (5) Subject to sub-paragraph (6), at any **such inquiry** **inquiry held by virtue of this paragraph**<sup>25</sup> oral evidence shall be heard in public and documentary evidence shall be open to public inspection.
- (6) If the Secretary of State is satisfied in the case of any such inquiry--
- (a) that giving evidence of a particular description or, as the

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<sup>23</sup> To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 22.

<sup>24</sup> To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 22.

<sup>25</sup> To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 22

case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in sub-paragraph (7); and

- (b) that the public disclosure of that information would be contrary to the national interest,

he may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry by such persons or persons of such descriptions as he may specify in that direction.

- (7) The matters referred to in sub-paragraph (6)(a) are--
  - (a) national security; and
  - (b) the measures taken or to be taken to ensure the security of any premises or property.
- (8) The appointed person or the Secretary of State has the same power to make orders under section 250(5) of the Local Government Act 1972 (orders with respect to costs of the parties) in relation to proceedings in England<sup>26</sup> under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry.

- 6A**
- (1) If the Secretary of State is considering giving a direction under paragraph 6(6) the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if the direction is given.
  - (2) If before the Secretary of State gives a direction under paragraph 6(6) no person is appointed under sub-paragraph (1), the Attorney General may at any time appoint a person as mentioned in sub-paragraph (1) for the purposes of the inquiry.
  - (3) The Lord Chancellor may by rules make provision--
    - (a) as to the procedure to be followed by the Secretary of State before he gives a direction under paragraph 6(6) in a case where a person has been appointed under sub-paragraph (1);
    - (b) as to the functions of a person appointed under sub-paragraph (1) or (2).
  - (4) If a person is appointed under sub-paragraph (1) or (2) (the appointed representative) the Secretary of State may direct any person who he thinks is interested in the inquiry in relation to a matter mentioned in paragraph 6(7) (the responsible person) to pay the fees and expenses of the appointed representative.
  - (5) If the appointed representative and the responsible person are

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<sup>26</sup> To be inserted by the Planning (Wales) Bill, Schedule 5, paragraph 22

- unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State.
- (6) The Secretary of State must cause the amount agreed between the appointed representative and the responsible person or determined by him to be certified.
  - (7) An amount so certified is recoverable from the responsible person as a civil debt.
  - (8) Rules made under sub-paragraph (3) must be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
  - (9) Sub-paragraph (10) applies if--
    - (a) a person is appointed under sub-paragraph (1) or (2), but
    - (b) no inquiry is held as mentioned in paragraph 6(1).
  - (10) Sub-paragraphs (4) to (7) above apply in respect of the fees and expenses of the person appointed as if the inquiry had been held.
  - (11) For the purposes of sub-paragraph (10) the responsible person is the person to whom the Secretary of State thinks he would have given a direction under sub-paragraph (4) if an inquiry had been held.
  - (12) Sub-paragraphs (9) to (11) do not affect paragraph 6(8).

*Supplementary provisions*

- 7 (1) The Tribunals and Inquiries Act 1992 shall apply to a local inquiry or other hearing held in pursuance of this Schedule as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by an appointed person.
- (2) Where an appointed person is an officer of the Department for Communities and Local Government ~~or the Welsh Office~~ the functions of determining an appeal and doing anything in connection with it conferred on him by this Schedule shall be treated for the purposes of the Parliamentary Commissioner Act 1967--
  - (a) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of that Department; ~~and~~
  - ~~(b) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to Wales, as functions of the Welsh Office.~~

S 32(1)(a)

} S 32(1)(b)

(3) Where an appointed person is a member of the staff of the Welsh Government, the functions of determining an appeal and doing anything in connection with it conferred on the person by this Schedule are to be treated for the purposes of the Public Services Ombudsman (Wales) Act 2005 (c. 10) as functions of the Welsh Government.

S 32(3)

*Local inquiries: Wales*

- 8** (1) This paragraph applies in relation to a local inquiry held in pursuance of this Schedule if the matter in respect of which the inquiry is to be held relates to Wales.
- (2) The references in paragraph 6A(1) and (2) to the Attorney General must be read as references to the Counsel General to the Welsh Assembly Government .
- (3) The Assembly may by regulations make provision as mentioned in paragraph 6A(3) in connection with a local inquiry to which this section applies.
- (4) If the Assembly acts under sub-paragraph (3) rules made by the Lord Chancellor under paragraph 6A(3) do not have effect in relation to the inquiry.
- (5) . . .

~~(6) Section 93(3) does not apply to regulations made under this paragraph.~~

S 39(9)

## Ancient Monuments and Archaeological Areas Act 1979

### AMENDMENTS TO BE MADE BY THE HISTORIC ENVIRONMENT (WALES) BILL

#### Purpose

This document is intended to show how the provisions of the Ancient Monuments and Archaeological Areas Act 1979, as they applied in relation to Wales on 7 January 2015, would look as amended by the Historic Environment (Wales) Bill (if enacted as introduced on 1 May 2015).

Material to be deleted by the Historic Environment (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Historic Environment (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments.

#### Warning

**This text has been prepared by officials of Cadw. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.**

**It has been produced solely to help people understand the effect of the Historic Environment (Wales) Bill. It is not intended for use in any other context.**

# Ancient Monuments and Archaeological Areas Act 1979

*Amending  
section of  
the Historic  
Environment  
(Wales) Bill*

## Part I

### Ancient Monuments

#### *Protection of scheduled monuments*

#### **1 Schedule of monuments**

- (1) The Secretary of State shall compile and maintain for the purposes of this Act (in such form as he thinks fit) a schedule of monuments (referred to below in this Act as "the Schedule").
- (2) The Secretary of State shall on first compiling the Schedule include therein--
  - (a) any monument included in the list last published before the commencement of this Act under section 12 of the Ancient Monuments Consolidation and Amendment Act 1913; and
  - (b) any monument in respect of which the Secretary of State has before the commencement of this Act served notice on any person in accordance with section 6 (1) of the Ancient Monuments Act 1931 of his intention to include it in a list to be published under section 12.
- (3) Subject to subsection (4) below, the Secretary of State may on first compiling the Schedule or at any time thereafter include therein any monument which appears to him to be of national importance.

The Secretary of State shall consult the Historic Buildings and Monuments Commission for England (in this Act referred to as "the Commission") before he includes in the Schedule a monument situated in England.
- (4) The power of the Secretary of State under subsection (3) above to include any monument in the Schedule does not apply to any structure which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family.
- (5) The Secretary of State may--
  - (a) exclude any monument from the Schedule; or
  - (b) amend the entry in the Schedule relating to any monument (whether by excluding anything previously included as part of the monument or adding anything not previously so included, or otherwise).

In the case of a monument situated in England, the Secretary of

State shall consult with the Commission before he makes an exclusion or amendment.

(5A) Section 1AA makes provision about consultation by the Welsh Ministers on proposals to include or exclude a monument or to make a material amendment in relation to a scheduled monument.

S 4(1)

(6) As soon as may be after--

- (a) including any monument in the Schedule under subsection (3) above;
- (b) amending the entry in the Schedule relating to any monument; or
- (c) excluding any monument from the Schedule;

the Secretary of State shall (subject to sub-section (6A) below) inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the action taken and, in a case falling within paragraph (a) or (b) above, shall also send to him or them a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.

(6A) Subsection (6) above shall not apply as regards a monument situated in England but, as soon as may be after acting as mentioned in paragraph (a), (b) or (c) of that subsection as regards such a monument, the Secretary of State shall inform the Commission of the action taken and, in a case falling within paragraph (a) or (b) of that subsection, shall also send to the Commission a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.

(6B) As soon as may be after making a material amendment of the kind described in section 1AA(5) in relation to a monument identified in the Schedule by reference to a map, the Welsh Ministers must—

- (a) inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the action taken; and
- (b) send to those persons a copy of the amended map.

S 4(2)

(6C) Section 1AE(2) makes further provision about information that the Welsh Ministers must provide after making certain amendments in relation to the Schedule.

(7) Subject to subsection (7A) below the Secretary of State shall from time to time publish a list of all the monuments which are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list published in sections, all sections of the list

need not be published simultaneously.

- (7A) Subsection (7) above shall not apply as regards monuments situated in England, but the Secretary of State shall from time to time supply the Commission with a list of all the monuments which are so situated and are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list supplied in sections, all sections of the list need not be supplied simultaneously.
- (8) The Secretary of State may from time to time publish amendments of any list published under subsection (7) above, and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being--
  - (a) of the monuments listed; and
  - (b) of any matters purporting to be produced in the list from the entries in the Schedule relating to the monuments listed.
- (8A) The Secretary of State shall from time to time supply the Commission with amendments of any list supplied under subsection (7A) above.
- (9) An entry in the Schedule recording the inclusion therein of a monument situated in England and Wales shall be a local land charge.
- (10) It shall be competent to record in the Register of Sasines--
  - (a) a certified copy of the entry or (as the case may be) the amended entry in the Schedule relating to any monument in Scotland which is heritable; and
  - (b) where any such monument is excluded from the Schedule and a certified copy of the entry in the Schedule relating to it has previously been so recorded under paragraph (a) above, a certificate issued by or on behalf of the Secretary of State stating that it has been so excluded.
- (11) In this Act "scheduled monument" means any monument which is for the time being included in the Schedule.

## **1A Commission's functions as to informing and publishing**

- (1) As soon as may be after the Commission--
  - (a) have been informed as mentioned in section 1(6A) of this Act, and
  - (b) in a case falling within section 1(6)(a) or (b) of this Act, have

received a copy of the entry or (as the case may be) of the amended entry from the Secretary of State,

the Commission shall inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the inclusion, amendment or exclusion and, in a case falling within section 1(6)(a) or (b), shall also send to him or them a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.

- (2) As soon as may be after the Commission receive a list or a section in pursuance of section 1(7A) of this Act, they shall publish the list or section (as the case may be).
- (3) The Commission shall from time to time publish amendments of any list published under subsection (2) above, and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being--
  - (a) of the monuments listed; and
  - (b) of any matters purporting to be reproduced in the list from the entries in the Schedule relating to monuments listed.

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

- (1) This section applies where the Welsh Ministers are proposing—
  - (a) to include a monument in the Schedule;
  - (b) to exclude a monument from the Schedule; or
  - (c) in the case of a monument which is identified in the Schedule by reference to a map maintained by the Welsh Ministers, to make a material amendment in relation to the monument.
- (2) The Welsh Ministers must—
  - (a) serve notice of the proposed inclusion, exclusion or amendment on the appropriate persons; and
  - (b) invite those persons to submit written representations about the proposal.
- (3) The appropriate persons are—
  - (a) the owner of the monument;
  - (b) if the owner is not the occupier, the occupier of the monument
  - (c) each local authority in whose area the monument is situated;  
and

S 3(1)

(d) any other person who appears to the Welsh Ministers appropriate as having special knowledge of, or interest in, the monument, or in monuments of special historic or archaeological interest more generally.

(4) A notice under subsection (2) must—

(a) specify the proposed inclusion, exclusion or amendment;

(b) specify the period within which representations about the proposal may be made, which must be at least 28 days beginning with the day on which the notice is served; and

(c) in the case of a proposed inclusion or a proposed amendment of the kind described in subsection (5)(a)—

(i) include a statement of the effect of section 1AB; and

(ii) specify the date on which interim protection takes effect under subsection (2) of that section.

(5) For the purposes of this section an amendment in relation to a monument in the Schedule is “material” if it—

(a) adds to the area shown for the monument on the map referred to in subsection (1)(c); or

(b) reduces the area so shown.

(6) The Welsh Ministers may by regulations amend subsection (3) by adding a description of person to the list of appropriate persons in that subsection; and where the Welsh Ministers do so, they may also make such amendments to this Act as they consider appropriate in consequence of the amendment to subsection (3).

S 3(1)

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

(1) This section applies where the Welsh Ministers consult under section 1AA on a proposal to—

(a) include a monument in the Schedule; or

(b) make a material amendment of the kind described in section 1AA(5)(a) in relation to a monument in the Schedule.

(2) The provisions of this Act have effect in relation to the monument, from the beginning of the day specified for the purposes of section 1AA(4)(c)(ii)—

(a) in the case of a proposal to include a monument in the Schedule, as if the monument were a scheduled monument; and

- (b) in the case of a proposal to make a material amendment in relation to a monument in the Schedule, as if the amendment were made.
- (3) The protection conferred on a monument or area by virtue of subsection (2) is referred to in this Act as “interim protection”.
- (4) Interim protection conferred by virtue of subsection (2)(a) ceases to have effect—
- (a) where the Welsh Ministers include the monument in the Schedule, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
  - (b) where the Welsh Ministers decide not to include the monument in the Schedule, from the beginning of the day specified in a notice issued to—
    - (i) the owner of the monument;
    - (ii) if the owner is not the occupier, the occupier of the monument; and
    - (iii) each local authority in whose area the monument is situated.
- (5) Interim protection conferred by virtue of subsection (2)(b) ceases to have effect—
- (a) where the Welsh Ministers make the material amendment, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
  - (b) where the Welsh Ministers decide not to make the material amendment, from the beginning of the day specified in a notice issued to—
    - (i) the owner of the monument;
    - (ii) if the owner is not the occupier, the occupier of the monument; and
    - (iii) each local authority in whose area the monument is situated.
- (6) The Welsh Ministers—
- (a) must publish by electronic means a list containing particulars of each monument in relation to which interim protection has effect, and
  - (b) must, on request, provide a copy of the notice served under section 1AA(2) in respect of such a monument.

S 3(1)

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

Schedule A1 has effect with respect to the lapse of interim protection.

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

- (1) This section applies where interim protection in respect of a monument ceases to have effect as a result of the issue of a notice by the Welsh Ministers under section 1AB(4)(b) or (5)(b).
- (2) Any person who, at the time when the interim protection took effect, had an interest in the monument is, on making a claim to the Welsh Ministers within the prescribed time and in the prescribed manner, entitled to be paid compensation by the Welsh Ministers in respect of any loss or damage directly attributable to the effect of the protection.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the monument on account of the interim protection having effect.

S 3(1)

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

- (1) This section applies where the Welsh Ministers—
  - (a) include a monument in the Schedule; or
  - (b) make a material amendment of the kind described in section 1AA(5)(a) in relation to a monument in the Schedule.
- (2) When the Welsh Ministers inform the owner and (if the owner is not the occupier) the occupier of the monument under section 1(6) or (6B) that they have taken that action, they must also serve on that person or those persons a notice which—
  - (a) specifies the date on which the Welsh Ministers did so (and on which interim protection under section 1AB(2) ceased to have effect); and
  - (b) states that the person may make an application to the Welsh Ministers requesting them to review their decision to do so.
- (3) Where the owner or occupier of the monument makes such an application, the Welsh Ministers must—
  - (a) carry out the review requested;

- (b) make a decision on the review; and
  - (c) make such amendment to the Schedule or the map referred to in section 1AA(1)(c) as they consider appropriate to give effect to that decision.
- (4) Except as provided in section 55, the validity of any decision taken by the Welsh Ministers on the review is not to be questioned in any legal proceedings.
- (5) The Welsh Ministers must carry out a review under this section in such one or more of the following ways as appears to them to be appropriate—
  - (a) by means of a public local inquiry;
  - (b) by means of a hearing;
  - (c) on the basis of written representations.
- (6) The Welsh Ministers may by regulations make further provision in connection with reviews under this section, including provision about —
  - (a) the grounds on which an application for a review may be made;
  - (b) the information that must be provided to, or may be required by, the Welsh Ministers in connection with an application;
  - (c) the form and manner in which an application must be made;
  - (d) the period within which an application must be made;
  - (e) the procedure that is to be followed in connection with a review;
  - (f) the conduct of public local inquiries and hearings; and
  - (g) costs that may be required to be paid in connection with a review.
- (7) Regulations made by virtue of subsection (6)(e), (f) or (g) may confer power on the Welsh Ministers—
  - (i) to determine matters of a description specified in the regulations; and
  - (ii) to give directions in relation to those matters.
- (8) Schedule A2 applies to reviews under this section.

S 3(1)

## **2 Control of works affecting scheduled monuments**

- (1) If any person executes or causes or permits to be executed any

works to which this section applies he shall be guilty of an offence unless the works are authorised under this Part of this Act or by development consent.

- (2) This section applies to any of the following works, that is to say--
  - (a) any works resulting in the demolition or destruction of or any damage to a scheduled monument;
  - (b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto; and
  - (c) any flooding or tipping operations on land in, on or under which there is a scheduled monument.
- (3) Without prejudice to any other authority to execute works conferred under this Part of this Act, works to which this section applies are authorised under this Part of this Act if--
  - (a) the Secretary of State has granted written consent (referred to below in this Act as "scheduled monument consent") for the execution of the works; and
  - (b) the works are executed in accordance with the terms of the consent and of any conditions attached to the consent.

(3A) If works to which this section applies have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument without being authorised under this Part, and the Welsh Ministers grant consent for the retention of the works, the works are authorised under this Part from the grant of the consent.

(3B) References in this Act to scheduled monument consent (other than in section 4) include a reference to consent under subsection (3A).

} S 6(1)

- (4) Scheduled monument consent may be granted either unconditionally or subject to conditions (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).
- (5) Without prejudice to the generality of subsection (4) above, a condition attached to a scheduled monument consent may require that
  - (a) a person authorised by the Commission (in a case where the monument in question is situated in England), or
  - (b) the Secretary of State or a person authorised by the Secretary of State (in any other case)

be afforded an opportunity, before any works to which the consent

relates are begun, to examine the monument and its site and carry out such excavations therein as appear to the Secretary of State to be desirable for the purpose of archaeological investigation.

(5A) In the case of a monument situated in Wales, the reference in subsection (3)(a) to the granting of written consent includes a reference to the granting of consent in such other manner as may be prescribed by the Welsh Ministers. } S 5(1)

(5B) The Welsh Ministers may by regulations make provision as to the form and content of consent under this section in relation to a monument situated in Wales.

(6) Without prejudice to subsection (1) above, if a person executing or causing or permitting to be executed any works to which a scheduled monument consent relates fails to comply with any condition attached to the consent he shall be guilty of an offence, unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.

(6A) In any proceedings for an offence under subsection (1) in relation to a monument or anything else on which interim protection is conferred (which is, as a result of section 1AB(2), treated as a scheduled monument or part of such a monument) — } S 3(2)

(a) it is a defence for the accused to prove that the accused 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 1AA(2), it is for the prosecution to prove that the notice was served on the person.

(7) In any proceedings for an offence under this section in relation to works within subsection (2)(a) above it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument.

(8) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) above which have been executed in relation to a scheduled monument situated in England or land in, on or under which there is such a scheduled monument it shall be a defence for the accused to prove that he did not know and had no reason to believe that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument. S 15(2)

(8A) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) which have been executed in S 15(3)

relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument, it is a defence for the accused to prove that, before executing the works or before causing or permitting their execution (as the case may be), the accused —

(a) had taken all reasonable steps to find out whether there was a scheduled monument in the area affected by the works; and

(b) did not know, and had no reason to believe, that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.

S 15(3)

- (9) In any proceedings for an offence under this section it shall be a defence to prove that the works were urgently necessary in the interests of safety or health and that notice in writing of the need for the works was given to the Secretary of State as soon as reasonably practicable.
- (10) A person guilty of an offence under this section shall be liable--
- (a) on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment to a fine.
- (11) Part I of Schedule 1 to this Act shall have effect with respect to applications for and the effect of, scheduled monument consent.

### **3 Grant of scheduled monument consent by order of the Secretary of State**

- (1) The Secretary of State may by order grant scheduled monument consent for the execution of works of any class or description specified in the order, and any such consent may apply to scheduled monuments of any class or description so specified. Before granting consent in relation to monuments of a class or description which includes monuments situated in England, the Secretary of State shall consult with the Commission in relation to the monuments so situated.
- (2) Any conditions attached by virtue of section 2 of this Act to a scheduled monument consent granted by an order under this section shall apply in such class or description of cases as may be specified in the order.
- (3) The Secretary of State may direct that scheduled monument consent granted by an order under this section shall not apply to any scheduled monument specified in the direction, and may

withdraw any direction given under this subsection. Before making a direction in relation to a monument situated in England, or withdrawing such a direction, the Secretary of State shall consult with the Commission.

- (4) A direction under subsection (3) above shall not take effect until notice of it has been served on the occupier or (if there is no occupier) on the owner of the monument in question.
- (5) References below in this Act to a scheduled monument consent do not include references to a scheduled monument consent granted by an order under this section unless the contrary intention is expressed.

#### **4 Duration, modification and revocation of scheduled monument consent**

- (1) Subject to subsection (2) below, if no works to which a scheduled monument consent relates are executed or started within the period of five years beginning with the date on which the consent was granted, or such longer or shorter period as may be specified for the purposes of this subsection in the consent, the consent shall cease to have effect at the end of that period (unless previously revoked in accordance with the following provisions of this section).
- (2) Subsection (1) above does not apply to a scheduled monument consent which provides that it shall cease to have effect at the end of a period specified therein.
- (3) If it appears to the Secretary of State to be expedient to do so, he may by a direction given under this section modify or revoke a scheduled monument consent to any extent he considers expedient. Where a direction would (if given) affect a monument situated in England, the Secretary of State shall consult with the Commission before he gives such a direction.
- (4) Without prejudice to the generality of the power conferred by subsection (3) above to modify a scheduled monument consent, it extends to specifying a period, or altering any period specified, for the purposes of subsection (1) above, and to including a provision to the effect mentioned in subsection (2) above, or altering any period specified for the purposes of any such provision.
- (5) Part II of Schedule 1 to this Act shall have effect with respect to directions under this section modifying or revoking a scheduled monument consent.

**5 Execution of works for preservation of a scheduled monument by Secretary of State in cases of urgency**

- (1) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a scheduled monument he may enter the site of the monument and execute those works, after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than seven days' notice in writing of his intention to do so.
- (2) Where the Secretary of State executes works under this section for repairing any damage to a scheduled monument--
  - (a) any compensation order previously made in respect of that damage under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders against convicted persons) in favour of any other person shall be enforceable (so far as not already complied with) as if it had been made in favour of the Secretary of State; and
  - (b) any such order subsequently made in respect of that damage shall be made in favour of the Secretary of State.
- (3) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a scheduled monument situated in England, he may (instead of acting as mentioned in subsection (1) above) authorise the Commission to enter the site of the monument and execute such works as are specified in the authorisation.
- (4) In that case, the Commission may enter the site and execute the works after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than seven days' notice in writing of their intention to do so.
- (5) Where the Secretary of State gives an authorisation under subsection (3) above, subsection (2) above shall have effect with the substitution of "Commission" for "Secretary of State" (in each place) and of "execute" for "executes".

**6 Powers of entry for inspection of scheduled monuments, etc**

- (1) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining its condition and
  - (a) whether any works affecting the monument are being carried out in contravention of section 2(1) of this Act; or

- (b) whether it has been or is likely to be damaged (by any such works or otherwise).
- (2) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land in connection with--
  - (a) any application for scheduled monument consent for works affecting that monument; or
  - (b) any proposal by the Secretary of State to modify or revoke a scheduled monument consent for any such works.
- (3) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of--
  - (a) observing the execution on the land of any works to which a scheduled monument consent relates; and
  - (b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works;

so as to ensure that the works in question are to have been executed in accordance with the terms of the consent and of any conditions attached to the consent.

- (4) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land on which any works to which a scheduled consent relates are being carried out for the purpose of--
  - (a) inspecting the land (including any buildings or other structures on the land) with a view to recording any matters of archaeological or historical interest; and
  - (b) observing the execution of those works with a view to examining and recording any objects or other material of archaeological or historical interest, and recording any matters of archaeological or historical interest, discovered during the course of those works.
- (5) Any person duly authorised in writing by the Secretary of State may enter any land in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Secretary of State to be desirable with a view to preserving the monument from accidental or deliberate damage. This subsection does not apply to land in England.

- (6) References in this section to scheduled monument consent include references to consent granted by order under section 3 of this Act.

**6A Commission's powers of entry in relation to scheduled monuments**

- (1) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining whether any works affecting the monument have been or are being carried out in contravention of section 2(1) of this Act and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1).
- (2) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of--
- (a) observing the execution on the land of any works to which a scheduled monument consent relates; and
  - (b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works,
- with a view to ascertaining whether the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the consent, and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1) or (6) of this Act.
- (3) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land in connection with any consultation made in respect of the monument under section 4(3) of this Act or paragraph 3(3)(c) of Schedule 1 to this Act.
- (4) Any person duly authorised in writing by the Commission may enter any land which is in England and in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Commission to be desirable with a view to preserving the monument from accidental or deliberate damage.
- (5) References in this section to scheduled monument consent include references to consent granted by order under section 3 of this Act.

## 7 **Compensation for refusal of scheduled monument consent**

- (1) Subject to the following provisions of this section, where a person who has an interest in the whole or any part of a monument incurs expenditure or otherwise sustains any loss or damage in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to any works of a description mentioned in subsection (2) below, the Secretary of State or (where the monument in question is situated in England) the Commission shall pay to that person compensation in respect of that expenditure, loss or damage.

References in this section and in section 8 of this Act to compensation being paid in respect of any works are references to compensation being paid in respect of any expenditure incurred or other loss or damage sustained in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to those works.

- (2) The following are works in respect of which compensation is payable under this section--
- (a) works which are reasonably necessary for carrying out any development for which planning permission had been granted (otherwise than by a general development order) before the time when the monument in question became a scheduled monument and was still effective at the date of the application for scheduled monument consent;
  - (b) works which do not constitute development, or constitute development such that planning permission is granted therefor by a general development order; and
  - (c) works which are reasonably necessary for the continuation of any use of the monument for any purpose for which it was in use immediately before the date of the application for scheduled monument consent.

For the purpose of paragraph (c) above, any use in contravention of any legal restrictions for the time being applying to the use of the monument shall be disregarded.

- (3) The compensation payable under this section in respect of any works within subsection (2)(a) above shall be limited to compensation in respect of any expenditure incurred or other loss or damage sustained by virtue of the fact that, in consequence of the Secretary of State's decision, any development for which the planning permission in question was granted could not be carried out without contravening section 2(1) of this Act.
- (4) In the case of a monument situated in England, a person shall not S 10(1)

be entitled to compensation under this section by virtue of subsection (2)(b) above if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument, unless those works consist solely of operations involved in or incidental to the use of the site of the monument for the purposes of agriculture or forestry (including afforestation).

(4A) In the case of a monument situated in Wales, a person is not entitled to compensation under this section by virtue of section (2)(b) if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument, unless those works consist solely of operations involved in or incidental to the use of the site of the monument for purposes specified by the Welsh Ministers by regulations.

S 10(2)

- (5) In a case where scheduled monument consent is granted subject to conditions, a person shall not be entitled to compensation under this section by virtue of subsection (2)(c) above unless compliance with those conditions would in effect make it impossible to use the monument for the purpose there mentioned.
- (6) In calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of an interest in land--
  - (a) it shall be assumed that any subsequent application for scheduled monument consent in relation to works of a like description would be determined in the same way; but
  - (b) in the case of a refusal of scheduled monument consent, the Secretary of State, on refusing that consent, undertook to grant such consent for some other works affecting the monument in the event of an application being made in that behalf, regard shall be had to that undertaking.
- (7) References in this section to a general development order are references to a development order made as a general order applicable (subject to such exceptions as may be specified therein) to all land.

## **8 Recovery of compensation under section 7 on subsequent grant of consent**

- (1) Subject to the following provisions of this section, this section applies--
  - (a) in a case where compensation under section 7 of this Act was paid in consequence of the refusal of a scheduled monument consent, if the Secretary of State subsequently grants scheduled monument consent for the execution of all or any of

- the works in respect of which the compensation was paid; and
- (b) in a case where compensation under that section was paid in consequence of the granting of a scheduled monument consent subject to conditions, if the Secretary of State subsequently so modifies that consent that those conditions, or any of them, cease to apply to the execution of all or any of the works in respect of which the compensation was paid or grant a new consent in respect of all or any of those works free from those conditions, or any of them.
- (2) This section does not apply in any case unless--
- (a) the compensation paid exceeded £20; and
  - (b) the requirement mentioned in subsection (2A) below is fulfilled.
- (2A) The requirement is that--
- (a) where the monument in question is situated in England, the Commission have caused notice of the payment of compensation to be deposited with the council of each district or London borough in which the monument is situated or (where it is situated in the City of London, the Inner Temple or the Middle Temple) with the Common Council of the City of London;
  - (b) where the monument in question is situated in Scotland, the Secretary of State has caused such notice to be deposited with the local authority of each area in which the monument is situated;
  - (c) where the monument in question is situated in Wales, the Secretary of State has caused such notice to be deposited with the council of each county or county borough in which the monument is situated.
- (3) In granting or modifying a scheduled monument consent in a case to which this section applies the Secretary of State may do so on terms that no works in respect of which the compensation was paid are to be executed in pursuance of the consent until the recoverable amount has been repaid to the Secretary of State or secured to his satisfaction or (as the case may be) has been repaid to the Commission or secured to their satisfaction.

Subject to subsection (4) below, in this subsection "the recoverable amount" means such amount (being an amount representing the whole of the compensation previously paid or such part thereof as the Secretary of State thinks fit) as the Secretary of State may specify in giving notice of his decision on the application for scheduled monument consent or (as the case may be) in the

direction modifying the consent.

- (4) Where a person who has an interest in the whole or any part of a monument is aggrieved by the amount specified by the Secretary of State as the recoverable amount for the purpose of subsection (3) above, he may require the determination of that amount to be referred to the Upper Tribunal or (in the case of a monument situated in Scotland) to the Lands Tribunal for Scotland; and in any such case the recoverable amount for the purposes of that subsection shall be such amount (being an amount representing the whole or any part of the compensation previously paid) as that Tribunal may determine to be just in the circumstances of the case.
- (5) A notice deposited under subsection (2)(b) above shall specify the decision which gave rise to the right to compensation, the monument affected by the decision, and the amount of the compensation.
- (6) A notice so deposited in the case of a monument situated in England and Wales shall be a local land charge; and for the purposes of the Local Land Charges Act 1975 the council with whom any such notice is deposited shall be treated as the originating authority as respects the charge thereby constituted.

## **9 Compensation where works affecting a scheduled monument cease to be authorised**

- (1) Subject to the following provisions of this section, where any works affecting a scheduled monument which were previously authorised under this Part of this Act cease to be so, then, if any person who has an interest in the whole or any part of the monument--
  - (a) has incurred expenditure in carrying out works which are rendered abortive by the fact that any further works have ceased to be so authorised; or
  - (b) has otherwise sustained loss or damage which is directly attributable to that fact;the Secretary of State or (where the monument in question is situated in England) the Commission shall pay to that person compensation in respect of that expenditure, loss or damage.
- (2) Subsection (1) above only applies where the works cease to be authorised under this Part of this Act--
  - (a) by virtue of the fact that a scheduled monument consent granted by order under section 3 of this Act ceases to apply to any scheduled monument (whether by virtue of variation or

- revocation of the order or by virtue of a direction under subsection (3) of that section); or
- (b) by virtue of the modification or revocation of a scheduled monument consent by a direction given under section 4 of this Act; or
  - (c) in accordance with paragraph 8 of Schedule 1 to this Act, by virtue of the service of a notice of proposed modification or revocation of a scheduled monument consent under paragraph 5 of that Schedule.
- (3) A person shall not be entitled to compensation under this section in a case falling within subsection (2)(a) above unless, on an application for scheduled monument consent for the works in question, consent is refused, or is granted subject to conditions other than those which previously applied under the order.
  - (4) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out those works.
  - (5) Subject to subsection (4) above, no compensation shall be paid under this section in respect of any works carried out before the grant of the scheduled monument consent in question, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

*Agreements concerning scheduled monuments etc: Wales*

**9ZA Heritage partnership agreement**

- (1) The Welsh Ministers may enter into an agreement under this section (a “heritage partnership agreement”) with the owner of—
  - (a) a scheduled monument situated in Wales; or
  - (b) any land adjoining or in the vicinity of such a scheduled monument (“associated land”).
- (2) Any of the following may also be a party to a heritage partnership agreement (in addition to the owner and the Welsh Ministers)—
  - (a) any occupier of the scheduled monument or its associated land;
  - (b) any person with an interest in the scheduled monument or its associated land;

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- (c) any person involved in the management of the scheduled monument or its associated land;
- (d) any local authority in whose area the scheduled monument or its associated land is situated;
- (e) any local authority which is a guardian of the scheduled monument or its associated land by virtue of this Act;
- (f) any other person who appears to the Welsh Ministers appropriate as having a special knowledge of, or interest in, the scheduled monument, or in monuments of special historic or archaeological interest more generally.

(3) A heritage partnership agreement may contain provision—

- (a) granting scheduled monument consent under section 2(3) for specified works for the purpose of removing or repairing the scheduled monument to which the agreement relates or any part of it, or of making any alterations or additions to the monument; and
- (b) specifying any conditions to which the consent is subject (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).

(4) A heritage partnership agreement may also—

- (a) specify or describe works that would, or would not, in the view of the parties to the agreement, constitute works to which section 2 applies;
- (b) make provision about the maintenance and preservation of the monument or its associated land;
- (c) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the scheduled monument or its associated land;
- (d) provide for public access to the scheduled monument or its associated land and the provision of associated facilities, information or services to the public;
- (e) restrict access to, or use of, the scheduled monument or its associated land;
- (f) prohibit the doing of any specified thing in relation to the scheduled monument or its associated land;
- (g) provide for the Welsh Ministers, or any local authority in whose area the scheduled monument or its associated land is situated, to make payments of specified amounts and on

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specified terms—

- (i) for, or towards, the cost of any works provided for under the agreement; or
- (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.

(5) In this section “specified” means specified or described in the heritage partnership agreement.

(6) In this section and in section 9ZB “owner”, in relation to a scheduled monument or its associated land, means a person who is for the time being—

- (a) the estate owner in respect of the fee simple in the monument or its associated land (as the case may be); or
- (b) entitled to a tenancy of the monument or its associated land (as the case may be) for a term of years certain of which not less than 7 years remains unexpired.

(7) Where more than one person is the owner of a scheduled monument or its associated land, the references in subsection (1) and in section 9ZB(2)(b) to the owner are to any one or more of those persons.

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

(1) A heritage partnership agreement—

- (a) must be in writing;
- (b) must make provision for the parties to review its terms at intervals specified in the agreement;
- (c) must make provision for its termination and variation; and
- (d) may contain incidental and consequential provision.

(2) A heritage partnership agreement may relate to more than one scheduled monument, provided that the following are parties to the agreement in each case—

- (a) the Welsh Ministers; and
- (b) the owner of the scheduled monument or the owner of land adjoining or in the vicinity of the scheduled monument.

(3) The Welsh Ministers may by regulations make provision—

- (a) about any consultation that must take place before a heritage partnership agreement is made or varied;

- (b) about the publicity that must be given to a heritage partnership agreement before or after it is made or varied;
  - (c) specifying terms that must be included in a heritage partnership agreement;
  - (d) enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an agreement;
  - (e) about the provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision;
  - (f) disapplying, or applying or reproducing with or without modifications, any provision of this Act for the purposes of heritage partnership agreements.
- (4) A heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not a party to the agreement (and, accordingly, scheduled monument consent granted by such an agreement enures only for the benefit of the parties to the agreement).

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*Scheduled monument enforcement notices*

**9ZC Scheduled monument enforcement notice**

- (1) This section applies where it appears to the Welsh Ministers that works affecting a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument have been or are being carried out in contravention of section 2(1) or (6).
- (2) The Welsh Ministers may issue a notice under this section (referred to in this Part as a “scheduled monument enforcement notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient to do so.
- (3) A scheduled monument enforcement notice must be in writing and must specify—
  - (a) the date on which the notice takes effect (see subsection (4));
  - (b) the alleged contravention;
  - (c) where the Welsh Ministers require works to cease, the works concerned and the period within which the Welsh Ministers require them to cease; and

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- (d) where the Welsh Ministers require steps of a kind referred to in subsection (5) to be taken, the steps concerned and the period within which the Welsh Ministers require them to be taken.
- (4) A scheduled monument enforcement notice takes effect on the date specified in the notice for the purposes of subsection (3)(a); and the date so specified must be at least 28 days after the date on which the notice is served in accordance with section 9ZD.
- (5) The steps mentioned in subsection (3)(d) are—
- (a) steps for restoring the monument or land to its former state;
  - (b) if the Welsh Ministers consider restoration would not be practicable or desirable, steps for executing such further works as they consider are required to alleviate in a manner acceptable to them the effect of the works carried out without scheduled monument consent;
  - (c) if scheduled monument consent for the works has been granted, steps for bringing the monument or land to the state it would have been in if the conditions of the consent had been complied with.
- (6) A scheduled monument enforcement notice may specify different periods for different works or different steps.
- (7) Where works of the kind mentioned in subsection (5)(b) are carried out, scheduled monument consent is to be treated as having been granted in respect of the works.

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

- (1) A copy of a scheduled monument enforcement notice must be served on—
- (a) the owner of the monument or land concerned;
  - (b) if the owner is not the occupier, the occupier;
  - (c) if the monument or land is let but the lessee is not the occupier, the lessee; and
  - (d) every other person with an interest in the monument or land which is, in the opinion of the Welsh Ministers, materially affected by the notice.
- (2) The Welsh Ministers may at any time withdraw a scheduled monument enforcement notice; but that does not affect the power to issue another notice under section 9ZC.

- (3) The Welsh Ministers may at any time waive or relax any requirement imposed by a scheduled monument enforcement notice (including the length of a period specified in the notice for the purposes of section 9ZC(3)(c) or (d)).
- (4) The Welsh Ministers must, immediately after exercising the power under subsection (2) or (3), give notice of the exercise of the power to every person who has been served with a copy of the notice under subsection (1) (or who would be if the notice were to be reissued).
- (5) The Welsh Ministers—
  - (a) must publish by electronic means a list containing particulars of each monument in respect of which a scheduled monument enforcement notice has effect; and
  - (b) must, on request, provide a copy of a scheduled monument enforcement notice the particulars of which are contained in the list.

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

- (1) A person on whom a scheduled monument enforcement notice is served, or any other person with an interest in the monument or land concerned, may appeal to a magistrates' court against the notice.
- (2) An appeal under this section must be brought before the date specified in the notice for the purposes of section 9ZC(3)(a).
- (3) An appeal under this section may be brought on any of the following grounds—
  - (a) that the matters alleged to constitute the contravention specified for the purposes of section 9ZC(3)(b) have not occurred;
  - (b) that those matters, in so far as they have occurred, do not constitute a contravention of section 2(1) or (6);
  - (c) that works to the monument or land were urgently necessary in the interests of safety or health and that—
    - (i) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter;
    - (ii) the works carried out were limited to the minimum measures immediately necessary; and
    - (iii) written notice justifying in detail the need for the works

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was given to the Welsh Ministers as soon as reasonably practicable;

- (d) that a copy of the notice was not served as required by section 9ZD;
- (e) that a period specified for the purposes of section 9ZC(3)(c) or (d) falls short of what should reasonably be allowed.
- (4) Where an appeal under this section is brought, the notice is of no effect until the appeal is finally determined or withdrawn.
- (5) On an appeal under this section, a magistrates' court may uphold the notice or quash it.
- (6) The court may uphold a notice even if copies of it have not been served in accordance with section 9ZD if the court is satisfied that no person on whom a copy should have been, but was not, served has been substantially prejudiced by the failure.

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

- (1) A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes —
  - (a) ascertaining whether a scheduled monument enforcement notice should be served;
  - (b) securing that a scheduled monument enforcement notice is affixed for the purposes of service in accordance with section 56(2)(b);
  - (c) ascertaining whether a scheduled monument enforcement notice has been complied with.
- (2) If steps specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(d) have not been taken within the period so specified, a person duly authorised by the Welsh Ministers may—
  - (a) at any reasonable time enter the land in, on or under which the monument is situated and take the steps concerned; and
  - (b) recover from the person who is then the owner or lessee of the monument or land expenses incurred by them in doing so.
- (3) The liability under subsection (2)(b) of a person who is the owner of a monument or land merely by virtue of being entitled to receive the rack rent as trustee for another person is limited to the total amount of money the person has or has had by virtue of that

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entitlement.

- (4) Where, on a claim by the owner of a scheduled monument or land, it appears to a magistrates' court that the occupier of the monument or land is preventing the owner from carrying out the work required by a scheduled monument enforcement notice, the court may by warrant authorise the owner to enter the land and carry out the work.

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

- (1) This section applies where after the end of a period specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(c) or (d)—
- (a) the works specified as being required to cease have not ceased; or
  - (b) the steps specified as being required to be taken have not been taken.
- (2) The person who is for the time being owner of the scheduled monument or of the land in, on or under which it is situated is in breach of the notice.
- (3) If the owner of a monument or land is in breach of a scheduled monument enforcement notice, the owner is guilty of an offence.
- (4) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same scheduled monument enforcement notice, be convicted of more than one offence under this section by reference to different periods.
- (5) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did everything the person could be expected to do to secure that—
- (a) in a case concerning works required to cease, the works did cease; or
  - (b) in a case concerning steps required to be taken, the steps were taken.
- (6) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the scheduled monument enforcement notice.
- (7) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.

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(8) In determining the amount of a fine to be imposed on a person convicted 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 execution of the works to which the scheduled monument enforcement notice relates.

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

- (1) This section applies if, after the issue of a scheduled monument enforcement notice, consent is granted under section 2(3A)—
- (a) for the retention of any work to which the notice relates; or
  - (b) permitting the retention of works without complying with a condition subject to which a previous scheduled monument consent was granted.
- (2) The notice ceases to have effect in so far as it—
- (a) requires the work or works to cease;
  - (b) requires steps to be taken involving the works not being retained; or
  - (c) requires steps to be taken for complying with that condition.

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*Scheduled monuments: temporary stop notices*

**9ZI Temporary stop notice**

- (1) This section applies where it appears to the Welsh Ministers that works affecting a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument have been or are being carried out in contravention of section 2(1) or (6).
- (2) The Welsh Ministers may issue a notice under this section (referred to in this Part as a “temporary stop notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient that the works are stopped immediately (or that part of them is).
- (3) A temporary stop notice must be in writing and must—
- (a) specify the works in question;
  - (b) prohibit execution of the works (or so much of them as is specified in the notice);
  - (c) set out the Welsh Ministers’ reasons for issuing the notice; and

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- (d) include a statement of the effect of section 9ZK.
- (4) A temporary stop notice may be served on a person who appears to the Welsh Ministers—
- (a) to be carrying out the works or causing them to be carried out; or
  - (b) to have an interest in the monument or land.
- (5) The Welsh Ministers must display a copy of the notice on the monument or land (except where doing so might damage the monument, in which case it is sufficient to display the notice in a prominent position as close to the monument or land as is reasonably practicable).
- (6) A temporary stop notice takes effect when the copy of it is first displayed in accordance with subsection (5).
- (7) A temporary stop notice ceases to have effect—
- (a) at the end of the period of 28 days beginning with the day on which the copy of it is first displayed in accordance with subsection (5); or
  - (b) if the notice specifies a shorter period beginning with that day, at the end of that period.
- (8) But if the Welsh Ministers withdraw the notice before the time when it would otherwise cease to have effect under subsection (7), the notice ceases to have effect on its withdrawal.
- (9) The Welsh Ministers may not issue a subsequent temporary stop notice in relation to the same works unless they have, since issuing the previous notice, taken other enforcement action in relation to the contravention referred to in subsection (1).
- (10) The reference in subsection (9) to taking other enforcement action includes a reference to obtaining an injunction under section 9ZM.

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

A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes —

- (a) ascertaining whether a temporary stop notice should be served;
- (b) securing the display or removal of a temporary stop notice or securing that it is affixed for the purposes of service in accordance with section 56(2)(b);

- (c) ascertaining whether a temporary stop notice has been complied with;
- (d) considering a claim for compensation under section 9ZL.

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

- (1) A person is guilty of an offence if the person contravenes, or causes or permits a contravention of, a temporary stop notice—
  - (a) which has been served on the person; or
  - (b) a copy of which has been displayed in accordance with section 9ZI(5).
- (2) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different periods.
- (3) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the temporary stop notice.
- (4) In proceedings against a person for an offence under this section, it is a defence for the person to prove—
  - (a) that the works were urgently necessary in the interests of safety or health; and
  - (b) that notice in writing of the need for the works was given to the Welsh Ministers as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (6) In determining the amount of a fine to be imposed on a person convicted 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.

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

- (1) A person who, on the day when a temporary stop notice is first displayed in accordance with section 9ZI(5), has an interest in the monument or land concerned is, on making a claim to the Welsh Ministers within the prescribed time and manner, entitled to be paid compensation by them in respect of any loss or damage directly attributable to the effect of the notice.

- (2) But subsection (1) applies only if—
- (a) the works specified in the notice do not contravene section 2(1) or (6); or
  - (b) the Welsh Ministers withdraw the notice other than following the grant of scheduled monument consent, after the day mentioned in subsection (1), which authorises the works.
- (3) The loss or damage in respect of which compensation is payable under this section includes a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the notice.
- (4) No compensation is payable under this section in the case of loss or damage suffered by a claimant if—
- (a) the claimant was required to provide information under section 57, and
  - (b) the loss or damage could have been avoided if the claimant had provided the information or otherwise co-operated with the Welsh Ministers when responding to the notice.
- } S 13(1)

*Scheduled monuments: injunctions*

**9ZM Injunctions**

- (1) This section applies where the Welsh Ministers consider it necessary or expedient for any actual or apprehended contravention of section 2(1) or (6) in respect of a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument to be restrained by injunction.
- (2) The Welsh Ministers may apply to the High Court or the county court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Act.
- (3) On an application under subsection (2), the court may grant such an injunction as it thinks appropriate for the purpose of restraining the contravention.
- } S 14

**26 Power of entry on land believed to contain an ancient monument**

- (1) A person duly authorised in writing by the Secretary of State may at any reasonable time enter any land in, on or under which the Secretary of State knows or has reason to believe there is an ancient monument for the purpose of inspecting the land (including any building or other structure on the land) with a view to recording

any matters of archaeological or historical interest.

- (2) Subject to subsection (3) below, a person entering any land in exercise of the power conferred by subsection (1) above may carry out excavations in the land for the purpose of archaeological investigation.
- (3) No excavation shall be made in exercise of the power conferred by subsection (2) above except with the consent of every person whose consent to the making of the excavation would be required apart from this section.

(4) But subsection (3) does not apply in relation to excavations in the land by a person authorised by the Welsh Ministers under subsection (1) if the Welsh Ministers know or have reason to believe that an ancient monument they know or believe to be in, on or under the land is or may be at risk of imminent damage or destruction.

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## 27 **General provisions as to compensation for depreciation under Part I**

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 5 of the Land Compensation Act 1961 or, in relation to land in Scotland, the rules set out in section 12 of the Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

- (2) This section applies to any compensation payable under ~~section 7 or 9~~ section 1AD, 7, 9 or 9ZL of this Act in respect of any loss or damage consisting of depreciation of the value of an interest in land.

S 4(3) and  
S 13(2)

- (3) Where an interest in land is subject to a mortgage--
  - (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the mortgage;
  - (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no compensation to which this section applies shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage);

and

- (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

## 28 Offence of damaging certain ancient monuments

- (1) A person who without reasonable excuse destroys or damages any protected monument situated in England - S 16(2)
  - (a) knowing that it is a protected monument; and
  - (b) intending to destroy or damage the monument or being reckless as to whether the monument would be destroyed or damaged;

shall be guilty of an offence.

- (1A) A person who without lawful excuse destroys or damages a protected monument situated in Wales is guilty of an offence if the person—
  - (a) knew or ought reasonably to have known that it was a protected monument; and
  - (b) intended to destroy or damage the monument or was reckless as to whether the monument would be damaged or destroyed.} S 16(3)

- (2) This section applies to anything done by or under the authority of the owner of the monument, other than an act for the execution of excepted works, as it applies to anything done by any other person.

In this subsection "excepted works" means works for which scheduled monument consent has been given under this Act (including any consent granted by order under section 3) or for which development consent has been granted.

- (3) In this section "protected monument" means any scheduled monument and any monument under the ownership or guardianship of the Secretary of State or the Commission or a local authority by virtue of this Act.
- (4) A person guilty of an offence under this section shall be liable--
  - (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or both; or

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

**29 Compensation orders for damage to monuments under guardianship in England and Wales**

Where the owner or any other person is convicted of an offence involving damage to a monument situated in England and Wales which was at the time of the offence under the guardianship of the Secretary of State or the Commission or any local authority by virtue of this Act, any compensation order made under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders against convicted persons) in respect of that damage shall be made in favour of the Secretary of State or the Commission or the local authority in question (as the case may require).

**30 Disposal of land acquired under Part I**

- (1) Subject to the following provisions of this section, the Secretary of State or the Commission or any local authority may dispose of any land acquired by them under section 10, 11 or 21 of this Act.
- (1A) The Secretary of State shall consult with the Commission before disposing of any land situated in England under this section.
- (1B) The Commission shall consult with the Secretary of State before disposing of any land under this section.
- (2) A local authority shall consult with the Secretary of State before disposing of any land under this section.
- (3) Subject to subsection (4) below, where the land in question is or includes a monument, the Secretary of State or the Commission or the local authority (as the case may be) may only dispose of it on such terms as will in their opinion ensure the preservation of the monument.
- (4) Subsection (3) above does not apply in any case where the Secretary of State or the Commission or the local authority (as the case may be) are satisfied that it is no longer practicable to preserve the monument (whether because of the cost of preserving it or otherwise).

**31 Voluntary contributions towards expenditure under Part I**

The Secretary of State or any local authority may receive voluntary

contributions for or towards the cost of any expenditure incurred by them under this Part of this Act (whether in relation to any particular monument or land or otherwise).

### 32 Interpretation of Part I

- (1) In this Part of this Act "maintenance" and "maintain" have the meanings given by section 13(7) of this Act, and expressions to which a meaning is given for the purposes of the Town and Country Planning Act 1990 or the Planning (Listed Buildings and Conservation Areas) Act 1990 or (as regards Scotland) for the purposes of the Town and Country Planning (Scotland) Act 1997 or the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 have the same meaning as in the said Acts of 1990 or (as the case may require) as in the said Acts of 1997.
- (2) References in this Part of this Act to a monument, in relation to the acquisition or transfer of any monument (whether under a power conferred by this Part of this Act or otherwise), include references to any interest in or right over the monument.
- (3) For the purposes of this Part of this Act the Secretary of State or the Commission or a local authority are the owners of a monument by virtue of this Act if the Secretary of State or the Commission or the local authority (as the case may be) have acquired it under section 10, 11 or 21 of this Act.

### Part III

#### Miscellaneous and Supplemental

##### Register of historic parks and gardens in Wales

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

- (1) The Welsh Ministers must compile and maintain a register (to be known as "the register of historic parks and gardens") of such of the following grounds in Wales as appear to them to be of special historic interest—
  - (a) parks,
  - (b) gardens,
  - (c) designed ornamental landscapes,
  - (d) places of recreation,
  - (e) other designed grounds.
- (2) The Welsh Ministers must decide whether, or to what extent, it would be appropriate to include as part of the registration of

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- grounds of a description referred to in subsection (1)—
- (a) any building or water on, or adjacent or contiguous to, those grounds, or
  - (b) any land adjacent or contiguous to those grounds.
- (3) For the purpose of maintaining the register, the Welsh Ministers may from time to time modify it by—
- (a) adding an entry,
  - (b) removing an entry, or
  - (c) amending an entry.
- (4) As soon as reasonably practicable after including grounds in the register or modifying the register, the Welsh Ministers must inform—
- (a) the owner of the grounds in question,
  - (b) if the owner is not the occupier, the occupier, and
  - (c) each local authority or National Park Authority in whose area the grounds are situated.
- (5) Where the Welsh Ministers include grounds in the register or modify the register under subsection (3)(a) or (c), the duty to inform under subsection (4) also includes a duty to send each of the persons concerned a copy of the entry or modified entry (as the case may be).
- (6) The Welsh Ministers must publish the up-to-date register in such manner as they think appropriate.
- S 18(1)

### ***Restrictions on use of metal detectors***

#### **42 Restrictions on use of metal detectors**

- (1) If a person uses a metal detector in a protected place without the written consent of the Commission (in the case of a place situated in England) or of the Secretary of State (in any other case) he shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.
- (2) In this section--
- "metal detector" means any device designed or adapted for detecting or locating any metal or mineral in the ground; and
- "protected place" means any place which is either--
- (a) the site of a scheduled monument or of any monument under

the ownership or guardianship of the Secretary of State or the Commission or a local authority by virtue of this Act; or

- (b) situated in an area of archaeological importance.
- (3) If a person without written consent removes any object of archaeological or historical interest which he has discovered by the use of a metal detector in a protected place he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine. The reference in this subsection to written consent is to that of the Commission (where the place in question is situated in England) or of the Secretary of State (in any other case).
- (4) A consent granted by the Secretary of State or the Commission for the purposes of this section may be granted either unconditionally or subject to conditions.
- (5) If any person--
  - (a) in using a metal detector in a protected place in accordance with any consent granted by the Secretary of State or the Commission for the purposes of this section; or
  - (b) in removing or otherwise dealing with any object which he has discovered by the use of a metal detector in a protected place in accordance with any such consent;

fails to comply with any condition attached to the consent, he shall be guilty of an offence and liable, in a case falling within paragraph (a) above, to the penalty provided by subsection (1) above, and in a case falling within paragraph (b) above, to the penalty provided by subsection (3) above.

- (6) In any proceedings for an offence under subsection (1) above, it shall be a defence for the accused to prove that he used the metal detector for a purpose other than detecting or locating objects of archaeological or historical interest.
- (7) In any proceedings for an offence under subsection (1) or (3) above relating to a protected place situated in England, it shall be a defence for the accused to prove that he had taken all reasonable precautions to find out whether the place where he used the metal detector was a protected place and did not believe that it was.

S 17(2)

(8) In proceedings for an offence under subsection (1) or (3) relating to a protected place situated in Wales, it is a defence for the accused to prove that the accused—

- (a) had taken all reasonable steps to find out whether the place in which the metal detector was used was a protected place; and

} S 17(3)

(b) did not know, and had no reason to believe, that the place was a protected place.

S 17(3)

### ***Powers of entry***

#### **43 Power of entry for survey and valuations**

- (1) Any person authorised under this section may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that or any other land under this Act or in connection with any claim for compensation under this Act in respect of any such acquisition or for any damage to that or any other land.
- (2) A person is authorised under this section if he is an officer of the Valuation Office of the Inland Revenue Department or a person duly authorised in writing by the Secretary of State or other authority proposing to make the acquisition which is the occasion of the survey or valuation or (as the case may be) from whom in accordance with this Act compensation in respect of the damage is recoverable.
- (3) Subject to section 44(9) of this Act, the power to survey land conferred by this section shall be construed as including power to search and bore for the purposes of ascertaining the nature of the subsoil or the presence of minerals therein.

#### **44 Supplementary provisions with respect to powers of entry**

- (1) A person may not in the exercise of any power of entry under this Act, other than that conferred by section 43, enter any building or part of a building occupied as a dwelling house without the consent of the occupier.
- (2) Subject to the following provisions of this subsection, a person may not in the exercise of any power of entry under this Act demand admission as of right to any land which is occupied unless prior notice of the intended entry has been given to the occupier--
  - (a) where the purpose of the entry is to carry out any works on the land (other than excavations in exercise of the power under section 26 or 38 of this Act), not less than fourteen days before the day on which admission is demanded; or
  - (b) in any other case, not less than twenty-four hours before admission is demanded.

This subsection does not apply in relation to the power of entry under section 5 of this Act.

- (3) A person seeking to enter any land in exercise of any power of entry under this Act shall, if so required by or on behalf of the owner or occupier thereof, produce evidence of his authority before entering.
- (4) Any power of entry under this Act shall be construed as including power for any person entering any land in exercise of the power of entry to take with him any assistance or equipment reasonably required for the purpose to which his entry relates and to do there anything reasonably necessary for carrying out that purpose.
- (5) Without prejudice to subsection (4) above, where a person enters any land in exercise of any power of entry under this Act for the purpose of carrying out any archaeological investigation or examination of the land, he may take and remove such samples of any description as appear to him to be reasonably required for the purpose of archaeological analysis.
- (6) Subject to subsection (7) below, where any works are being carried out on any land in relation to which any power of entry under this Act is exercisable, a person acting in the exercise of that power shall comply with any reasonable requirements or conditions imposed by the person by whom the works are being carried out for the purpose of preventing interference with or delay to the works.
- (7) Any requirements or conditions imposed by a person by whom any works are being carried out shall not be regarded as reasonable for the purposes of subsection (6) above if compliance therewith would in effect frustrate the exercise of the power or the purpose of the entry; and that subsection does not apply where the works in question are being carried out in contravention of section 2(1) or (6) or 35 of this Act.
- (8) Any person who intentionally obstructs a person acting in the exercise of any power of entry under this Act shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.
- (9) Where under section 43 of this Act a person proposes to carry out any works authorised by virtue of subsection (3) of that section--
  - (a) he shall not carry out those works unless notice of his intention to do so was included in the notice required by subsection (2)(a) above; and
  - (b) if the land in question is held by statutory undertakers, and those undertakers object to the proposed works on the grounds that the carrying out thereof would be seriously

detrimental to the carrying on of their undertaking, the works shall not be carried out except with the authority of the Secretary of State.

### ***Financial provisions***

#### **45 Expenditure on archaeological investigation**

- (1) The Secretary of State may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation of any land (other than land in England) which he considers may contain an ancient monument or anything else of archaeological or historical interest.
- (1A) The Commission may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation of any land in England which they consider may contain an ancient monument or anything else of archaeological or historical interest; and the reference to an ancient monument in this subsection shall be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to the Commission.
- (2) Any local authority may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation of any land in or in the vicinity of their area, being land which they consider may contain an ancient monument or anything else of archaeological or historical interest.
- (3) The Secretary of State or the Commission or any local authority may publish the results of any archaeological investigation undertaken, assisted, or wholly or partly financed by them under this section in such manner and form as they think fit.
- (4) Without prejudice to the application, by virtue of section 53 of this Act, of any other provision of this Act to land which is not within Great Britain, the powers conferred by this section shall be exercisable in relation to any such land which forms part of the sea bed within the seaward limits of United Kingdom territorial waters adjacent to the coast of Great Britain (or, as regards the powers mentioned in subsection (1A) above, England).

#### **46 Compensation for damage caused by exercise of certain powers under this Act**

- (1) Subject to subsection (2) below, where, in the exercise in relation to any land of any power to which this section applies, any damage has been caused to that land or to any chattels on that land, any person interested in that land or those chattels may recover

compensation in respect of that damage from the Secretary of State or the Commission or other authority by or on whose behalf the power was exercised.

- (2) Where any such damage is caused in the exercise of any such power by or on behalf of any person for the time being holding appointment as the investigating authority for an area of archaeological importance under section 34 of this Act, compensation shall be recoverable in accordance with this section from the Commission (if the area in question is situated in England) or from the Secretary of State (in any other case).
- (3) This section applies to any power to enter, or to do anything, on any land under any of the following sections of this Act, that is to say, sections 6, 6A, [9ZF](#), [9ZJ](#), 26, 38, 39, 40 and 43.
- (4) References in subsection (1) above to chattels shall be construed in relation to Scotland as references to moveables.

S 12(2) and  
S 13(3)

#### **47 General provisions with respect to claims for compensation under this Act**

- (1) Any claim for compensation under this Act shall be made within the time and in the manner prescribed.
- (2) Any question of disputed compensation under this Act shall be referred to and determined by the Upper Tribunal or (in the case of any land situated in Scotland) by the Lands Tribunal for Scotland.
- (3) In relation to the determination of any such question, the provisions of section 4 of the Land Compensation Act 1961 or (as the case may be) of sections 9 and 11 of the Land Compensation (Scotland) Act 1963 shall apply, but the references in section 4 of the Act of 1961 and section 11 of the Act of 1963 to the acquiring authority shall be construed as references to the authority by whom the compensation claimed is payable under this Act.

#### ***Application to special cases***

#### **50 Application to Crown land**

- (1) Notwithstanding any interest of the Crown in Crown land, but subject to the following provisions of this section--
  - (a) a monument which for the time being is Crown land may be included in the Schedule; and
  - (b) any restrictions or powers imposed or conferred by any of the provisions of this Act shall apply and be exercisable in relation to Crown land and in relation to 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 therein.

- (2) Except with the consent of the appropriate authority--
  - (a) no power under this Act to enter, or to do anything, on any land shall be exercisable in relation to land which for the time being is Crown land; and
  - (b) no interest in land which for the time being is Crown land shall be acquired compulsorily under Part I of this Act.
- (3) In relation to any operations proposed to be carried out on Crown land otherwise than by or on behalf of the Crown, an operations notice served under section 35 of this Act shall not be effective for the purposes of that section unless it is accompanied by a certificate from the appropriate authority in the prescribed form consenting to the exercise in relation to that land in connection with those operations of the powers conferred by sections 38 and 40 of this Act.

(3A) Crown land may be included in the register of historic parks and gardens (see section 41A).

S 18(2)

- (4) In this section "Crown land" means land in which there is a Crown interest or a Duchy interest; "Crown interest" means an interest belonging to Her Majesty in right of the Crown, or belonging to a Government department, or held in trust for Her Majesty for the purposes of a Government department, and includes any estate or interest held in right of the Prince and Steward of Scotland; "Duchy interest" means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall; and for the purposes of this section "the appropriate authority", in relation to any land--
  - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the Government department having the management of that land;
  - (b) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;
  - (c) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
  - (d) in the case of land belonging to a Government department or held in trust for Her Majesty for the purposes of a Government department, means that department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

In this subsection "Government department" includes any Minister of the Crown.

## **51 Ecclesiastical property**

- (1) Without prejudice to the provisions of the Acquisition of Land (Authorisation Procedure) Act 1946 with respect to notices served under that Act, where under any of the provisions of this Act a notice is required to be served on an owner of land, and the land is ecclesiastical property, a like notice shall be served on the Diocesan Board of Finance for the diocese in which the land is situated.
- (2) Where any ecclesiastical property is vested in the incumbent of a benefice which is vacant it shall for the purposes of this Act be treated as being vested in the Diocesan Board of Finance for the diocese in which the land is situated.
- (3) Any sum which under section 7, 9 or 46 of this Act is payable in relation to land which is ecclesiastical property, and apart from this subsection would be payable to an incumbent, shall be paid to the Diocesan Board of Finance for the diocese in which the land is situated, to be applied for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising, or disposing of the proceeds of, such a sale.
- (4) Where any sum is recoverable under section 8 of this Act in respect of land which is ecclesiastical property the Diocesan Board of Finance for the diocese in which the land is situated may apply any money or securities held by it in the payment of that sum.
- (5) In this section "ecclesiastical property" means land belonging to an ecclesiastical benefice of the Church of England, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese of the Church of England or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

## **52 Application to the Isles of Scilly**

The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application to those Isles of the provisions of this Act--

- (a) as if those Isles were a district and the Council of the Isles were the council of that district; and
- (b) in other respects subject to such modifications as may be specified in the order.

**52A The Broads**

Parts I and II and section 45(2) and (3) of this Act shall apply, in relation to the Broads (as defined by the Norfolk and Suffolk Broads Act 1988), as if the Broads Authority were a local authority.

**53 Monuments in territorial waters**

- (1) A monument situated in, on or under the sea bed within the seaward limits of United Kingdom territorial waters adjacent to the coast of Great Britain (referred to below in this section as a monument in territorial waters) may be included in the Schedule under section 1(3) of this Act, and the remaining provisions of this Act shall extend accordingly to any such monument which is a scheduled monument (but not otherwise).

- (2) The entry in the Schedule relating to any monument in territorial waters shall describe the monument as lying off the coast of England, or of Scotland, or of Wales; and, subject to subsection (2B), any such monument shall be treated for the purposes of this Act as situated in the country specified for the purposes of this subsection in the entry relating to the monument in the Schedule.

S 20(1)

(2A) The functions under this Act conferred on the Welsh Ministers by the Historic Environment (Wales) Act 2015 (as well as those already transferred to them) are exercisable in relation to Wales within the meaning of the Government of Wales Act 2006 (c. 32) (which includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea (see section 158(1) of that Act)).

S 20(2)

(2B) Accordingly, a monument is not to be treated by virtue of section 53(2) as being in Wales unless it is situated in Wales within the meaning of section 158(1) of the Government of Wales Act 2006 (c.32).

- (3) In relation to any monument in territorial waters which is under the ownership or guardianship of the Secretary of State or the Commission or any local authority by virtue of this Act, references in this Act to land associated with the monument (or to associated land) include references to any part of the sea bed occupied by the Secretary of State or by the Commission or by a local authority for

any such purpose relating to the monument as is mentioned in section 15(1) of this Act.

- (4) Without prejudice to any jurisdiction exercisable apart from this subsection, proceedings for any offence under this Act committed in United Kingdom territorial waters adjacent to the coast of Great Britain may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain.
- (5) It is hereby declared that, notwithstanding that by virtue of this section this Act may affect individuals or bodies corporate outside the United Kingdom, it applies to any individual whether or not he is a British subject, and to any body corporate whether or not incorporated under the law of any part of the United Kingdom.
- (6) A constable shall on any monument in territorial waters have all the powers, protection and privileges which he has in the area for which he acts as constable.
- (7) References in this section to the sea bed do not include the seashore or any other land which, though covered (intermittently or permanently) by the sea, is within Great Britain.

### ***Supplemental***

#### **54 Treatment and preservation of finds**

- (1) Where a person enters any land in exercise of any power of entry under this Act for any of the following purposes, that is to say--
  - (a) to carry out any excavations in the land or any operations affecting any ancient monument situated in, on or under the land;
  - (b) to observe any operations on the land in exercise of the power under section 6(3)(a) or (4)(b) or 6A(2)(a) of this Act; or
  - (c) to carry out any archaeological examination of the land;he may take temporary custody of any object of archaeological or historical interest discovered during the course of those excavations or operations or (as the case may be) during the course of that examination, and remove it from its site for the purpose of examining, testing, treating, recording or preserving it.
- (2) The Secretary of State or other authority by or on whose behalf the power of entry was exercised may not retain the object without the consent of the owner beyond such period as may be reasonably required for the purpose of examining and recording it and carrying

out any test or treatment which appears to the Secretary of State or to that other authority to be desirable for the purpose of archaeological investigation or analysis or with a view to restoring or preserving the object.

- (3) Nothing in this section shall affect any right of the Crown under the Treasure Act 1996.

## **55 Proceedings for questioning validity of certain orders, etc**

- (1) If any person--

- (a) is aggrieved by any order to which this section applies and desires to question the validity of that order, on the grounds that it is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to it; or
- (b) is aggrieved by any action on the part of the Secretary of State to which this section applies and desires to question the validity of that action, on the grounds that it is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to it;

he may, within six weeks from the relevant date, make an application under this section to the High Court or (in Scotland) to the Court of Session.

- (2) This section applies to any designation order and to any order under section 33(4) of this Act varying or revoking a designation order.
- (3) This section applies to action on the part of the Secretary of State of either of the following descriptions, that is to say--
- (a) any decision of the Secretary of State on an application for scheduled monument consent; and
- (b) the giving by the Secretary of State of any direction under section 4 of this Act modifying or revoking a scheduled monument consent.

(3A) This section applies to a decision on a review under section 1AE (review by Welsh Ministers or appointed person). S 4(4)

- (4) In subsection (1) above "the relevant date" means--
- (a) in relation to an order, the date on which notice of the making of the order is published (or, as the case may be, first published) in accordance with Schedule 2 to this Act; and
- (b) in relation to any action on the part of the Secretary of State,

the date on which that action is taken.

- (5) On any application under this section the High Court or (in Scotland) the Court of Session--
  - (a) may by interim order suspend the operation of the order or action, the validity whereof is questioned by the application, until the final determination of the proceedings;
  - (b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation thereto, may quash that order or action in whole or in part.
- (6) In this section "the relevant requirements" means--
  - (a) in relation to any order to which this section applies, any requirements of this Act or of any regulations made under this Act which are applicable to that order; and
  - (b) in relation to any action to which this section applies, any requirements of this Act or of the Tribunals and Inquiries Act 1992 or of any regulations or rules made under this Act or under that Act which are applicable to that action.
- (7) Except as provided by this section, the validity of any order or action to which this section applies shall not be questioned in any legal proceedings whatsoever; but nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take a decision on an application for scheduled monument consent.

## **56 Service of documents**

- (1) Any notice or other document required or authorised to be served under this Act may be served either--
  - (a) by delivering it to the person on whom it is to be served; or
  - (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address; or
  - (c) by sending it in a pre-paid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address; or

(ca) in a case where—

- (i) the notice or other document relates to a monument situated in Wales or land in Wales; and
- (ii) an address for service using electronic communications has been given by that person,  
by sending it using electronic communications, in accordance with the condition set out in subsection (1A); or

S 21(1)

- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it in a pre-paid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.

(1A) The condition mentioned in subsection (1)(ca) is that the notice or document must be—

- (a) capable of being accessed by the person mentioned in that provision;
- (b) legible in all material respects; and
- (c) in a form sufficiently permanent to be used for subsequent reference;

S 21(2)

and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

- (2) Where any such notice or document is required or authorised to be served on any person as being the owner or occupier of any monument or other land--

- (a) it may be addressed to the "owner" or (as the case may require) to the "occupier" of that monument or land (describing it) without further name or description; and
- (b) if the usual or last known place of abode of the person in question cannot be found, it may be served by being affixed conspicuously to the monument or to some object on the site of the monument or (as the case may be) on the land.

(3) In this section, “Wales” has the same meaning as in the Government of Wales Act 2006 (c. 32) (see section 158(1) of that Act).

S 21(3)

**57 Power to require information as to interests in land**

- (1) For the purpose of enabling the Secretary of State or the Commission or a local authority to exercise any function under this Act, the Secretary of State or the Commission or the local authority may require the occupier of any land and any person who, either directly or indirectly, receives rent in respect of any land to state in writing the nature of his interest therein, and the name and address of any other person known to him as having an interest therein, whether as a freeholder, owner . . . mortgagee, lessee, or otherwise.
- (2) Any person who, having been required under this section to give any information, fails without reasonable excuse to give that information, shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.
- (3) Any person who, having been so required to give any information, knowingly makes any mis-statement in respect of it, shall be guilty of an offence and liable--
  - (a) on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment to a fine.

**58 Offences by corporations**

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against accordingly.
- (2) In subsection (1) above the expression "director", in relation to any body corporate established by or under an enactment for the purpose of carrying on under national ownership an industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of that body corporate.

**59 Prosecution of offences: Scotland**

Notwithstanding anything in section 136 of the Criminal Procedure

(Scotland) Act 1995, summary proceedings in Scotland for an offence under this Act may be commenced at any time within one year from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings came to his knowledge; and a certificate purporting to be signed by the prosecutor stating that date shall be conclusive.

## 60 Regulations and orders

- (1) Any order or regulations made under this Act may make different provision for different cases to which the order or (as the case may be) the regulations apply.

(1A) Any power of the Welsh Ministers to make regulations or an order under this Act includes power to make such incidental, supplemental, consequential, transitory, transitional or saving provision as the Welsh Ministers consider appropriate. S 39(1)

- (2) Any power of the Secretary of State to make regulations under this Act, and the power to make orders under sections 3, 37, 52, 61 and 65 of this Act shall be exercisable by statutory instrument; and any statutory instrument containing any such regulations or order, other than one containing regulations under section 19 of this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Any power of the Welsh Ministers to make regulations under this Act or an order under section 3, 37 or 61 is exercisable by statutory instrument.

(4) A statutory instrument containing regulations under section 1AA or 9ZB may not be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

(5) Any other statutory instrument containing such regulations or an order made by the Welsh Ministers under this Act, other than regulations under section 19, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

S 39(2)

## 61 Interpretation

- (1) In this Act—

“address”, in relation to electronic communications, means a number or address used for the purposes of such communications; S 21(4)

"ancient monument" has the meaning given by subsection (12) below;

"area of archaeological importance" means an area designated as such under section 33 of this Act;

"the Commission" means the Historic Buildings and Monuments Commission for England;

"designation order" means an order under that section;

"development consent" means development consent under the Planning Act 2008;

"electronic communication" has the same meaning as in the Electronic Communications Act 2000; S 21(4)

"enactment" includes an enactment in any local or private Act of Parliament, and an order, rule, regulation, byelaw or scheme made under an Act of Parliament;

"flooding operations" means covering land with water or any other liquid or partially liquid substance;

"functions" includes powers and duties;

"guardianship deed" has the meaning given by section 12(6) of this Act;

"interim protection" has the meaning given by section 1AB(3); S 4(5)

"land" means--

(a) in England and Wales, any corporeal hereditament;

(b) in Scotland, any heritable property;

including a building or a monument and, in relation to any acquisition of land, includes any interest in or right over land;

"local authority" means--

(a) in England . . . , the council of a county or district, . . . the council of a London borough, and the Common Council of the City of London;

(aa) in Wales, the council of a county or county borough; and

(b) in Scotland, the planning authority within the meaning of Part IX of the Local Government (Scotland) Act 1973;

"monument" has the meaning given by subsection (7) below;

"owner", in relation to any land in England and Wales means (except for the purposes of sections 9ZA and 9ZB and paragraph 2(1) of Schedule 1 to this Act and any regulations made for the purposes of that paragraph) a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or S 11(2)(a)

where the land is not let at a rack rent, would be so entitled if it were so let;

"possession" includes receipt of rents and profits or the right to receive rents and profits (if any);

"prescribed" means prescribed by regulations made by the Secretary of State;

"the Schedule" has the meaning given by section 1(1) of this Act;

"scheduled monument" has the meaning given by section 1(11) of this Act and references to "scheduled monument consent" shall be construed in accordance with section 2(3) and (3B) and 3(5) of this Act; S 6(2)

"tipping operations" means tipping soil or spoil or depositing building or other materials or matter (including waste materials or refuse) on any land; and

"universal postal service provider" means a universal service provider within the meaning of Part 3 of the Postal Services Act 2011; and references to the provision of a universal postal service shall be construed in accordance with that Part;

"works" includes operations of any description and, in particular (but without prejudice to the generality of the preceding provision) flooding or tipping operations and any operations undertaken for purposes of agriculture (within the meaning of the Town and Country Planning Act 1990 or, as regards Scotland, the Town and Country Planning (Scotland) Act 1997) or forestry (including afforestation).

(2) In this Act "statutory undertakers" means--

- (a) persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of . . . , . . . or hydraulic power;
- (b) . . . the Civil Aviation Authority, . . . a universal postal service provider in connection with the provision of a universal postal service and any other authority, body or undertakers which by virtue of any enactment are to be treated as statutory undertakers for any of the purposes of the Town and Country Planning Act 1990 or of the Town and Country Planning (Scotland) Act 1997; and
- (c) any other authority, body or undertakers specified in an order made by the Secretary of State under this paragraph.

(2A) The undertaking of a universal postal service provider so far as

relating to the provision of a universal postal service shall be taken to be his statutory undertaking for the purposes of this Act; and references in this Act to his undertaking shall be construed accordingly.

(2B) Where—

(a) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of this Act; and

(b) the communication is received by that person outside that person's business hours,

it is to be treated as having been received on the next working day; and in this subsection "working day" means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

S 21(5)

- (3) For the purposes of sections 14(1) and 21(2) of this Act and paragraph 6(1)(b) and (2)(b) of Schedule 3 to this Act a person shall be taken to be immediately affected by the operation of a guardianship deed relating to any land if he is bound by that deed and is in possession or occupation of the land.
- (4) For the purposes of this Act "archaeological investigation" means any investigation of any land, objects or other material for the purpose of obtaining and recording any information of archaeological or historical interest and (without prejudice to the generality of the preceding provision) includes in the case of an archaeological investigation of any land--
  - (a) any investigation for the purpose of discovering and revealing and (where appropriate) recovering and removing any objects or other material of archaeological or historical interest situated in, on or under the land; and
  - (b) examining, testing, treating, recording and preserving any such objects or material discovered during the course of any excavations or inspections carried out for the purposes of any such investigation.
- (5) For the purposes of this Act, an archaeological examination of any land means any examination or inspection of the land (including any buildings or other structures thereon) for the purpose of obtaining and recording any information of archaeological or historical interest.
- (6) In this Act (other than in section 9ZA) references to land associated with any monument (or to associated land) shall be construed in accordance with section 15(6) of this Act.
- (7) "Monument" means (subject to subsection (8) below)--

S11(2)(b)

- (a) any building, structure or work, whether above or below the surface of the land, and any cave or excavation;
- (b) any site comprising the remains of any such building, structure or work or of any cave or excavation; **and** S 22(2)(a)
- (c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part thereof which neither constitutes nor forms part of any work which is a monument within paragraph (a) above; **and**
- (d) any site in Wales (other than one falling within paragraph (b) or (c) above) comprising any thing, or group of things, that evidences previous human activity; } S 22(2)(b)

and any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled.

(7A) In subsection (7)(d) "Wales" has the meaning given by section 158(1) of the Government of Wales Act 2006 (c. 32). S 22(3)

- (8) Subsection (7)(a) above does not apply to any ecclesiastical building for the time being used for ecclesiastical purposes, and subsection (7)(c) above does not apply--
  - (a) to a site comprising any object or its remains unless the situation of that object or its remains in that particular site is a matter of public interest;
  - (b) to a site comprising, or comprising the remains of, any vessel which is protected by an order under section 1 of the Protection of Wrecks Act 1973 designating an area round the site as a restricted area.
- (9) For the purposes of this Act, the site of a monument includes not only the land in or on which it is situated but also any land comprising or adjoining it which appears to the Secretary of State or the Commission or a local authority, in the exercise in relation to that monument of any of their functions under this Act, to be essential for the monument's support and preservation.
- (10) References in this Act to a monument include references--
  - (a) to the site of the monument in question; and
  - (b) to a group of monuments or any part of a monument or group of monuments.
- (11) References in this Act to the site of a monument--
  - (a) are references to the monument itself where it consists of a site; and

- (b) in any other case include references to the monument itself.
- (12) "Ancient monument" means--
- (a) any scheduled monument, and
  - (b) any other monument which in the opinion of the Secretary of State is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it.
- (13) In this section "remains" includes any trace or sign of the previous existence of the thing in question.

### SCHEDULE A1

*introduced by section 1AC*

#### LAPSE OF INTERIM PROTECTION

- 1 This Schedule applies where interim protection ceases to have effect in relation to a monument as a result of the issue of a notice under section 1AB(4)(b) or (5)(b).
- 2 The fact that the interim protection has ceased to have effect does not affect the liability of any person to be prosecuted and punished for an offence under section 2, 9ZG, 9ZK, 28 or 42 committed with respect to the monument while the interim protection had effect.
- 3 Any proceedings on or arising out of an application for scheduled monument consent with respect to the monument lapse, in so far as they relate to consent required by virtue of the interim protection; and any such consent granted lapses to the same extent.
- 4 (1) Any scheduled monument enforcement notice served by the Welsh Ministers with respect to the monument ceases to have effect, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.  
  
(2) Any proceedings on or arising out of such a notice under section 9ZE or 9ZF(4) lapse, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.  
  
(3) Notwithstanding sub-paragraph (1), section 9ZF(2) continues to have effect as respects any expenses incurred by a person authorised by the Welsh Ministers as mentioned in section 9ZF(1), and with respect to any sums paid on account of such expenses.
- 5 Any temporary stop notice served by the Welsh Ministers with

S 3(3) and  
Schedule 1

respect to the monument ceases to have effect, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.

- 6 Any proceedings on an application made by the Welsh Ministers under section 9ZM with respect to the monument lapse, in so far as they relate to the restraint of any actual or apprehended contravention in relation to anything in respect of which the interim protection had effect.

## SCHEDULE A2

*introduced by section 1AE*

### DECISIONS ON REVIEWS BY PERSON APPOINTED BY WELSH MINISTERS

#### *Decisions on reviews by appointed persons*

- 1 (1) The Welsh Ministers may by regulations prescribe the classes of reviews under section 1AE on which a decision is to be made by a person appointed by the Welsh Ministers for the purpose instead of by the Welsh Ministers.
- (2) Decisions on reviews of a prescribed class are to be made accordingly.
- (3) This paragraph does not affect any provision in this Act or any instrument made under it that an application for a review is to be made to the Welsh Ministers.
- (4) A person appointed under this paragraph is referred to in this Schedule as “an appointed person”.

#### *Powers and duties of appointed person*

- 2 (1) An appointed person has the same powers and duties in relation to a review under section 1AE as the Welsh Ministers have under—
- (a) subsections (3)(a) and (b) and (5) of that section; and
- (b) regulations made by virtue of subsection (6)(e), (f) or (g) of that section.
- (2) Where an appointed person makes a decision on a review, the decision is to be treated as that of the Welsh Ministers.
- (3) Except as provided by section 55, the validity of that decision is not to be questioned in any legal proceedings.
- (4) No application may be made to the High Court under section 55 on

S 3(3) and  
Schedule 1

the ground that a decision on a review ought to have been made by the Welsh Ministers and not by an appointed person unless the person who made the application for the review challenges the appointed person's power to make the decision before the decision is made.

Appointment of another person to make a decision on a review

- 3 (1) At any time before an appointed person has made a decision on a review under section 1AE the Welsh Ministers may—
- (a) revoke the person's appointment; and
  - (b) appoint another person under paragraph 1 to make the decision instead.
- (2) Where such a new appointment is made, the review, and any inquiry or other hearing in connection with the review, must be begun afresh.
- (3) Nothing in sub-paragraph (2) requires any person to be given an opportunity to make fresh representations or to modify or withdraw any representations already made.

Public local inquiries, hearings and written representations

- 4 (1) An appointed person may appoint an assessor to provide advice on—
- (a) any matters arising at a public local inquiry or hearing held by the appointed person in connection with a review under section 1AE or in consequence of such an inquiry or hearing;
  - or
  - (b) any matters arising in written representations made to the appointed person in connection with such a review or in consequence of such representations.
- (2) Section 250(2) and (3) of the Local Government Act 1972 (c.70) (local inquiries: evidence) applies to a public local inquiry held by an appointed person.

Directions

- 5 (1) The Welsh Ministers may direct that anything that would fall to be done by an appointed person in connection with a review under section 1AE, other than the making of a decision on the review under subsection (3)(b) of that section, is to be done instead by the Welsh Ministers.

S 3(3) and  
Schedule 1

(2) A direction given under sub-paragraph (1) may be amended or withdrawn by a further direction.

Delegation

6 (1) An appointed person may delegate to another person anything that would fall to be done by the appointed person in connection with a review under section 1AE, other than—

(a) the conduct of a public local inquiry or hearing; and

(b) the making of a decision on the review under subsection (3)(b) of that section.

(2) A delegation under sub-paragraph (1) is to be to the extent, and on the terms, that the appointed person determines and may be amended or revoked.

S 3(3) and  
Schedule 1

Supplementary provision

7 Where an appointed person is a member of the staff of the Welsh Government, the functions of making a decision on a review and doing anything in connection with it conferred on the person by this Schedule are to be treated for the purposes of the Public Services (Ombudsman) Wales Act 2005 (c.10) as functions of the Welsh Government.

## SCHEDULE 1

### CONTROL OF WORKS AFFECTING SCHEDULED MONUMENTS

Sections 2, 4

#### Part I

#### Applications for Scheduled Monument Consent

- 1 (1) Provision may be made by regulations under this Act with respect to the form and manner in which applications for scheduled monument consent are to be made, the particulars to be included therein and the information to be provided by applicants or (as the case may be) by the Secretary of State in connection therewith.
- (2) Any scheduled monument consent (including scheduled monument consent granted by order under section 3 of this Act) shall (except so far as it otherwise provides) enure for the benefit of the monument and of all persons for the time being interested therein.

(3) The Welsh Ministers may by regulations make provision as to cases in which an applicant for scheduled monument consent in relation to a monument situated in Wales may make the application otherwise than in the form provided for under sub-paragraph (1); and such provision may confer a discretion on the Welsh Ministers.

S 5(2)

- 2 (1) The Secretary of State may refuse to entertain an application for scheduled monument consent unless it is accompanied by one or other of the following certificates signed by or on behalf of the applicant, that is to say--
- (a) a certificate stating that, at the beginning of the period of twenty-one days ending with the application, no person other than the applicant was the owner of the monument;
  - (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons other than the applicant who, at the beginning of that period, were owners of the monument;
  - (c) a certificate stating that the applicant is unable to issue a certificate in accordance with either of the preceding paragraphs, that he has given the requisite notice of the application to such one or more of the persons mentioned in paragraph (b) above as are specified in the certificate, that he has taken such steps as are reasonably open to him to ascertain the names and addresses of the remainder of those persons and that he has been unable to do so;
  - (d) a certificate stating that the applicant is unable to issue a certificate in accordance with paragraph (a) above, that he has taken such steps as are reasonably open to him to ascertain the names and addresses of the persons mentioned in paragraph (b) above and that he has been unable to do so.
- (2) Any certificate issued for the purposes of sub-paragraph (1) above--
- (a) shall contain such further particulars of the matters to which the certificate relates as may be prescribed by regulations made for the purposes of this paragraph; and
  - (b) shall be in such form as may be so prescribed,
- and any reference in that sub-paragraph to the requisite notice is a reference to a notice in the form so prescribed.
- (3) Regulations made for the purposes of this paragraph may make provision as to who, in the case of any monument, is to be treated

as the owner for those purposes.

- (4) If any person issues a certificate which purports to comply with the requirements of this paragraph or of regulations made by the Welsh Ministers under it and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.

S 7

**2A** As soon as practicable after receiving an application for scheduled monument consent in relation to a monument situated in England, the Secretary of State shall send a copy of the application to the Commission.

**2B (1)** The Welsh Ministers may refuse to entertain an application for scheduled monument consent if—

(a) within the period of 2 years ending with the date on which the application is received, the Welsh Ministers have refused a similar application; and

(b) in their opinion, there has been no significant change in any material considerations since the similar application was refused.

(2) The Welsh Ministers may refuse to entertain an application for scheduled monument consent if the application is made at a time when a similar application is under consideration.

(3) For the purposes of this paragraph, an application for scheduled monument consent is to be taken to be similar to another such application only if the works to which the applications relate are, in the Welsh Ministers' opinion, the same or substantially the same.

S 8

**3 (1)** The Secretary of State may grant scheduled monument consent in respect of all or any part of the works to which an application for scheduled monument consent relates.

(2) Before determining whether or not to grant scheduled monument consent on any application therefor, the Secretary of State shall either--

(a) cause a public local inquiry to be held; or

(b) afford to the applicant, and to any other person to whom it appears to the Secretary of State expedient to afford it, an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(2A) In the application of this paragraph to the Welsh Ministers, subparagraph (2) has effect as if for “shall” there were substituted “may”. S 9

- (3) Before determining whether or not to grant scheduled monument consent on any application therefor the Secretary of State--
    - (a) shall in every case consider any representations made by any person with respect to that application before the time when he considers his decision thereon (whether in consequence of any notice given to that person in accordance with any requirements of regulations made by virtue of paragraph 2 above or of any publicity given to the application by the Secretary of State, or otherwise);
    - (b) shall also, if any inquiry or hearing has been held in accordance with sub-paragraph (2) above, consider the report of the person who held it and
    - (c) shall, if the monument in question is situated in England, consult with the Commission.
  - (4) The Secretary of State shall serve notice of his decision with respect to the application on the applicant and on every person who has made representations to him with respect to the application.
- 4**
- (1) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (evidence and costs at local inquiries) shall apply to a public local inquiry held in pursuance of paragraph 3(2) above in relation to a monument situated in England and Wales as they apply where a Minister or the Secretary of State causes an inquiry to be held under subsection (1) of that section.
  - (2) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (evidence and expenses at local inquiries) shall apply to a public local inquiry held in pursuance of paragraph 3(2) above in relation to a monument situated in Scotland as they apply where a Minister or the Secretary of State causes an inquiry to be held under subsection (1) of that section.

## Part II

### Modification and Revocation of Scheduled Monument Consent

- 5** (1) Before giving a direction under section 4 of this Act modifying or revoking a scheduled monument consent the Secretary of State shall serve a notice of proposed modification or revocation on--

- (a) the owner of the monument and (if the owner is not the occupier) the occupier of the monument, and
  - (b) any other person who in the opinion of the Secretary of State would be affected by the proposed modification or revocation.
- (1A) Where the monument in question is situated in England, the Secretary of State shall consult with the Commission before serving a notice under this paragraph, and on serving such a notice he shall send a copy of it to the Commission.
- (2) A notice under this paragraph shall--
  - (a) contain a draft of the proposed modification or revocation and a brief statement of the reasons therefor; and
  - (b) specify the time allowed by sub-paragraph (5) below for making objections to the proposed modification or revocation and the manner in which any such objections can be made.
- (3) Where the effect of a proposed modification (or any part of it) would be to exclude any works from the scope of the scheduled monument consent in question or in any manner to affect the execution of any of the works to which the consent relates, the notice under this paragraph relating to that proposed modification shall indicate that the works affected must not be executed after the receipt of the notice or (as the case may require) must not be so executed in a manner specified in the notice.
- (4) A notice of proposed revocation under this paragraph shall indicate that the works to which the scheduled monument consent in question relates must not be executed after receipt of the notice.
- (5) A person served with a notice under this paragraph may make an objection to the proposed modification or revocation at any time before the end of the period of twenty-eight days beginning with the date on which the notice was served.
- 6** (1) If no objection to a proposed modification or revocation is duly made by a person served with notice thereof in accordance with paragraph 5 above, or if all objections so made are withdrawn, the Secretary of State may give a direction under section 4 of this Act modifying or revoking the scheduled monument consent in question in accordance with the notice.
- (2) If any objection duly made as mentioned in sub-paragraph (1) above is not withdrawn, then, before giving a direction under section 4 of this Act with respect to the proposed modification or revocation, the Secretary of State shall either--

- (a) cause a public local inquiry to be held; or
  - (b) afford to any such person an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (3) If any person by whom an objection has been made avails himself of the opportunity of being heard, the Secretary of State shall afford to each other person served with notice of the proposed modification or revocation in accordance with paragraph 5 above, and to any other person to whom it appears to the Secretary of State expedient to afford it, an opportunity of being heard on the same occasion.
- (4) Before determining in a case within sub-paragraph (2) above whether to give a direction under section 4 of this Act modifying or revoking the scheduled monument consent in accordance with the notice, the Secretary of State--
- (a) shall in every case consider any objections duly made as mentioned in sub-paragraph (1) above and not withdrawn; and
  - (b) shall also, if any inquiry or hearing has been held in accordance with sub-paragraph (2) above, consider the report of the person who held it.
- (5) After considering any objections and report he is required to consider in accordance with sub-paragraph (4) above the Secretary of State may give a direction under section 4 of this Act modifying or revoking the scheduled monument consent either in accordance with the notice or with any variation appearing to him to be appropriate.
- 7** As soon as may be after giving a direction under section 4 of this Act the Secretary of State shall send a copy of the direction to each person served with notice of its proposed effect in accordance with paragraph 5 above and to any other person afforded an opportunity of being heard in accordance with paragraph 6(3) above.
- 8** (1) Where in accordance with sub-paragraph (3) of paragraph 5 above a notice under that paragraph indicates that any works specified in the notice must not be executed after receipt of the notice, the works so specified shall not be regarded as authorised under Part I of this Act at any time after the relevant service date.
- (2) Where in accordance with that sub-paragraph a notice under that paragraph indicates that any works specified in the notice must not be executed after receipt of the notice in a manner so specified, the works so specified shall not be regarded as authorised under

Part I of this Act if executed in that manner at any time after the relevant service date.

- (3) Where in accordance with sub-paragraph (4) of paragraph 5 above a notice under that paragraph indicates that the works to which the scheduled monument consent relates must not be executed after receipt of the notice, those works shall not be regarded as authorised under Part I of this Act at any time after the relevant service date.
  - (4) The preceding provisions of this paragraph shall cease to apply in relation to any works affected by a notice under paragraph 5 above--
    - (a) if within the period of twenty-one months beginning with the relevant service date the Secretary of State gives a direction with respect to the modification or revocation proposed by that notice in accordance with paragraph 6 above, on the date when he gives that direction;
    - (b) if within that period the Secretary of State serves notice on the occupier or (if there is no occupier) on the owner of the monument that he has determined not to give such a direction, on the date when he serves that notice; and
    - (c) in any other case, at the end of that period.
  - (5) In this paragraph "the relevant service date" means, in relation to a notice under paragraph 5 above with respect to works affecting any monument, the date on which that notice was served on the occupier or (if there is no occupier) on the owner of the monument.
- 9**
- (1) Subject to sub-paragraph (2) below, subsections (2) to (5) of section 250 of the Local Government Act 1972 (evidence and costs at local inquiries) shall apply to a public inquiry held in pursuance of paragraph 6(2) above as they apply where a Minister or the Secretary of State causes an inquiry to be held under sub-section (1) of that section.
  - (2) Subsection (4) of that section (costs of the Minister causing the inquiry to be held to be defrayed by such local authority or party to the inquiry as the Minister may direct) shall not apply except in so far as the Secretary of State is of opinion, having regard to the object and result of the inquiry, that his costs should be defrayed by any party thereto.
  - (3) In the application of this paragraph to Scotland, in sub-paragraph (1) for the words " subsections (2) to (5) of section 250 of the Local Government Act 1972 (evidence and costs at local inquiries)" there shall be substituted the words " subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (evidence and

expenses at local inquiries)", and in sub-paragraph (2) for the words " subsection (4) of that section (costs" there shall be substituted the words " subsection (7) of that section (expenses".

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

# Agenda Item 3

Constitutional and Legislative Affairs Committee  
Statutory Instruments with Clear Reports  
8 June 2015

**CLA535 - The Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2015**

**Procedure:** Negative

These Regulations lay down the procedure and time limits in connection with the determination of certain prescribed applications that are referred to the Welsh Ministers and appeals where the matters are to be considered on the basis of written representations.

They revoke and replace, with some changes, the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, subject to transitional and saving provisions.

**CLA536 - The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2015**

**Procedure:** Negative

This Order amends the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. The detailed amendments are explained in the Explanatory Note to the Order.

**CLA537 - The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2015**

**Procedure:** Negative

These Regulations amend the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (“the principal Regulations”).

Regulation 2(2) and (3) amends regulation 12 of the principal Regulations by removing the six month time limit for lodging an appeal following the failure of a local planning authority to determine an application for listed building consent within the determination period prescribed in regulation 3(5) of the principal Regulations.

Regulation 2(4) inserts a provision into the principal Regulations prescribing an additional period of four weeks for the purposes of section 20A of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Regulation 3 makes transitional provisions.

# Agenda Item 4.1

## Constitutional and Legislative Affairs Committee

### CLA538 – The Care and Support (Care Planning) (Wales) (Regulations 2015

#### Procedure: Negative

The Social Services and Well-being Act 2014 (“the 2014 Act”) imposes a duty on local authorities to prepare and maintain a care and support plan for an adult or child to whom it owes a duty to meet identified needs and to create a support plan for a carer to whom it owes a duty to meet identified needs. These Regulations set out the functions of local authorities with respect to care and support planning and review arrangements.

#### 1. Technical Scrutiny

*No points are identified for reporting under Standing Order 21.2.*

#### 2. Merits Scrutiny

*The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.*

These Regulations, which set out the functions of local authorities with respect to care and support planning and review arrangements, form part of a suite of regulations made to implement the 2014 Act.

The current legislative framework relating to meeting identified needs is complex. The following Acts legislate separately for adults, children and carers:–

The NHS and community Care Act 1990

The children Act 1989

The Adoption and Children Act 2002

The Carers (recognition and Services) Act 1995

The Carers and Disabled Children Act 2000

The Carers (Equal opportunities) Act 2004.

This is considered to lead to inefficiencies and fragmentation within the current system causing difficulties for service users, practitioners, regulators and the judiciary in seeking to apply the law fairly and equitably.

The 2014 Act introduces greater consistency of practice across Wales by introducing changes to the way care and support plans are prepared and maintained for adults and children, and the way support plans are prepared for carers.

## **Legal Services**

**1 June 2015**

**2015 No. 1335 (W. 126)**

**SOCIAL CARE, WALES**

**The Care and Support (Care  
Planning) (Wales) Regulations  
2015**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 54 of the Social Services and Well-being (Wales) Act 2014 imposes a duty on a local authority to prepare and maintain a care and support plan for an adult or child to whom it owes a duty to meet needs under section 35 or 37 of the Act and to prepare a support plan for a carer to whom it owes a duty to meet needs under section 40 or 42 of the Act. These Regulations make further provision about such plans.

Regulation 2 makes provision about the training and expertise of persons who prepare, maintain or revise plans.

Regulation 3 makes provision about the content of plans, including where some or all of the person's needs are to be met by the making of direct payments.

Regulation 4 makes provision about the review of plans and the circumstances in which a local authority must review a plan. Regulation 5 makes provision for who can request a review of a plan and the circumstances in which the local authority must comply with such a request and the circumstances in which it may refuse to do so.

Regulation 6 makes provision for the action the local authority must take following a review, depending on whether it is decided to confirm, revise or close the plan. Regulations 7 and 8 make provision for the persons to whom copies of the plan, revised plan, closure statements and other records must be given.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained by contacting the Department for Health and Social Services, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

**2015 No. 1335 (W. 126)**

**SOCIAL CARE, WALES**

**The Care and Support (Care  
Planning) (Wales) Regulations  
2015**

*Made* 21 May 2015

*Laid before the National Assembly for Wales*

1 June 2015

*Coming into force* 6 April 2016

The Welsh Ministers, in exercise of the powers conferred by sections 54(5), 54(6), 55 and 126(3) of the Social Services and Well-being (Wales) Act 2014(1), make the following Regulations:

**Title, commencement, application and interpretation**

1.—(1) The title of these Regulations is The Care and Support (Care Planning) (Wales) Regulations 2015.

(2) These Regulations come into force on 6 April 2016 and apply in relation to Wales.

(3) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Social Services and Well-being (Wales) Act 2014.

“care and support plan” (“*cynllun gofal a chymorth*”) means a plan which a local authority is required to prepare and maintain under section 54(1) of the Act;

“eligible needs” (“*anghenion cymwys*”) in relation to a person means those needs which the local authority is required to meet under section 35, 37, 40 or 42 of the Act;

“personal outcomes” (“*canlyniadau personol*”) means the outcomes which have been identified in

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(1) 2014 anaw 4

relation to a person in accordance with an assessment under section 19, 21 or 24 of the Act;  
“support plan” (“*cynllun cymorth*”) means a plan which a local authority is required to prepare and maintain under section 54(2) of the Act.

### **Training and skills**

2. A local authority must ensure that any person responsible for preparing, reviewing or revising a care and support plan or support plan—

- (a) has the skills, knowledge and competence to do so, and
- (b) has received appropriate training.

### **Content of plans**

3.—(1) A care and support plan and a support plan must contain a description of—

- (a) the person’s eligible needs,
- (b) the personal outcomes,
- (c) the actions to be taken by the local authority and the actions to be taken by other persons to help the person achieve the personal outcomes or to otherwise meet their eligible needs,
- (d) the arrangements for monitoring the extent to which the personal outcomes have been achieved, and
- (e) the arrangements for the review of the plan.

(2) Where some or all of the person’s needs are to be met by making direct payments, a care and support plan and a support plan must also contain a description of—

- (a) the eligible needs which are to be met by direct payments<sup>(1)</sup>, and
- (b) the amount and frequency of the direct payments.

(3) Where enquiries have been made by the local authority in accordance with its duty under section 126(1) of the Act (adults at risk), the care and support plan for the individual who is the subject of those enquiries must contain a record of the conclusion of the enquiries.

### **Review of plans**

4.—(1) The local authority must review a care and support plan or a support plan if it appears to the authority that the plan is not meeting the eligible needs of the person to whom the plan relates.

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(1) Regulations under sections 50 to 53 of the Act may require or allow a local authority to make payments to a person towards the cost of meeting their needs. Such payments are referred to in the Act as “direct payments”.

(2) Where the plan contains details of direct payments in accordance with regulation 3(2), the plan must be reviewed at the same time as any review of the direct payments in accordance with regulations under section 53(1).

### **Requests for review of plans**

**5.—**(1) The following persons may request a review of a care and support plan or support plan (as the case may be)—

- (a) where the plan relates to meeting the needs of an adult (including the needs of an adult carer)—
  - (i) the adult, and
  - (ii) any person authorised to act on behalf of the adult;
- (b) where the plan relates to meeting the needs of a child (including the needs of a child carer)—
  - (i) the child,
  - (ii) any person with parental responsibility for the child, and
  - (iii) any person authorised to act on behalf of the child.

(2) The local authority must comply with the request if it is satisfied that the plan is not meeting the eligible needs of the person to whom the plan relates.

(3) The local authority may refuse to comply with the request if it is satisfied that the plan is meeting the eligible needs of the person to whom the plan relates.

(4) In this regulation, and in regulations 7 and 8, a person is authorised to act on behalf of an adult or a child if—

- (a) the adult or the child has requested the person to act on their behalf, or
- (b) the adult or child lacks capacity and the person is authorised under the Mental Capacity Act 2005(1) (whether in general or in specific terms) to make decisions about how the person's needs are to be met.

### **Action following review**

**6.—**(1) Following the review, the local authority must consider whether to confirm, revise or close the care and support plan or support plan (as the case may be).

(2) In deciding whether to confirm, revise or close the plan, the local authority must have regard in particular to the following—

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(1) 2005 c. 9

- (a) any changes to the personal outcomes or the person's circumstances,
- (b) any changes to the person's eligible needs,
- (c) whether the actions taken by the authority or other persons are helping the person to achieve the personal outcomes or to otherwise meet their eligible needs, and
- (d) whether there are other ways in which the local authority or other persons can help the person to achieve the personal outcomes or to otherwise meet their eligible needs.

(3) If the local authority decide to confirm the plan, the authority must record the decision and the reasons for the decision.

(4) If the local authority decide to revise the plan, the authority must prepare a revised plan.

(5) If the local authority decide to close the plan, the authority must prepare a closure statement.

(6) A closure statement is a document which contains the following information—

- (a) the reasons for the closure of the plan,
- (b) an evaluation of the extent to which the personal outcomes were achieved, and
- (c) where the local authority is still satisfied that the person to whom the plan relates has needs for care and support, confirmation that the authority is satisfied that the person's needs can be met by the provision of information, advice or assistance, preventative services or anything else that may be available in the community.

### **Copies of care and support plans etc**

7.—(1) The local authority must give a copy of the care and support plan to the persons described in paragraph (5).

(2) If, following a review of a care and support plan, the local authority decides to revise the plan it must give a copy of the revised plan to the persons described in paragraph (5).

(3) If, following a review of a care and support plan, the local authority decides to confirm the plan it must give a copy of the record of the decision and the reasons for the decision to the persons described in paragraph (5).

(4) If, following a review of a care and support plan, the local authority decides to close the plan, it must give a copy of the closure statement to the persons described in paragraph (5).

(5) For the purposes of paragraphs (1) to (4) the persons are—

- (a) if the care and support plan has been prepared for an adult—
  - (i) the adult for whom the plan has been prepared,
  - (ii) any person authorised to act on behalf of the adult, and
  - (iii) where the adult lacks capacity to be able to request a person to act on their behalf and there is no person authorised to act on their behalf, any person who the local authority considers to be acting in the best interests of the adult;
- (b) if the care and support plan has been prepared for a child—
  - (i) the child for whom the plan has been prepared,
  - (ii) any person with parental responsibility for the child, unless this would be inconsistent with the child's well-being,
  - (iii) any person authorised to act on behalf of the child, and
  - (iv) where the child lacks capacity or is not competent to request a person to act on their behalf and there is no person authorised to act on their behalf, any person who the local authority considers to be acting in the best interest of the child.

**Copies of support plans etc.**

8.—(1) The local authority must give a copy of the support plan to the persons described in paragraph (5).

(2) If, following a review of a support plan, the local authority decides to revise the plan it must give a copy of the revised plan to the persons described in paragraph (5).

(3) If, following a review of a support plan, the local authority decides to confirm the plan it must give a copy of the record of the decision and the reasons for the decision to the persons described in paragraph (5).

(4) If, following a review of a support plan, the local authority decides to close the plan, it must give a copy of the closure statement to the persons described in paragraph (5).

(5) For the purposes of paragraphs (1) to (4) the persons are—

- (a) if the support plan has been prepared for an adult carer—
  - (i) the adult carer for whom the plan has been prepared,

- (ii) any person authorised to act on behalf of the adult carer, and
  - (iii) where the adult carer lacks capacity to be able to request a person to act on their behalf and there is no person authorised to act on their behalf, any person who the local authority considers to be acting in the best interests of the adult carer;
- (b) if the support plan has been prepared for a child carer—
- (i) the child carer for whom the plan has been prepared,
  - (ii) any person with parental responsibility for the child carer, unless this would be inconsistent with the child carer's well-being,
  - (iii) any person authorised to act on behalf of the child carer, and
  - (iv) where the child carer lacks capacity or is not competent to request a person to act on their behalf and there is no person authorised to act on their behalf, any person who the local authority considers to be acting in the best interest of the child carer.

*Mark Drakeford*

Minister for Health and Social Services, one of the  
Welsh Ministers

21 May 2015

## **Explanatory Memorandum to The Care and Support (Care Planning) (Wales) Regulations 2015**

This Explanatory Memorandum has been prepared by the Department of Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Care and Support (Care Planning) (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford  
Minister for Health and Social Services

21 May 2015

## **Part 1 – OVERVIEW**

### **1. Description**

The Social Services and Well-being (Wales) Act 2014 provides a single Act that brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support and carers who need support. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

These regulations impose a duty on local authorities to prepare and maintain a care and support plan for an adult or child to whom it owes a duty to meet needs under section 35 or 37 of the Act and to prepare a support plan for a carer to whom it owes a duty to meet needs under section 40 or 42 of the Act.

This Explanatory Memorandum should be read in conjunction with Explanatory Memorandum to The Care and Support (Eligibility) (Wales) Regulations 2015 and the Explanatory Memorandum to the Care and Support (Assessment) (Wales) Regulations 2015.

### **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

No specific matters identified.

### **3. Legislative background**

The powers enabling these Regulations to be made are contained in sections 54 (5) and (6) of the Social Services and Well-being (Wales) Act 2014. The Act imposes a duty on the local authority to prepare and maintain a care and support plan for an adult or child to whom it owes a duty to meet needs under section 35 or 37 of the Act, and to create a support plan for a carer to whom it owes a duty to meet needs under section 40 or 42 of the Act.

This instrument is subject to the annulment procedure by the National Assembly for Wales (the negative procedure).

The regulations will come into force in April 2016.

### **4. Purpose & intended effect of the legislation**

#### Current legislation

The current legislative framework is complex and the provision for social care is currently found within a number of Acts, which legislate separately for children and adults.

## Adults

Section 47 (1) (b) of the NHS and Community Care Act 1990 places a duty on local authorities to decide whether, following assessment, an adult's needs require a service to be provided.

The basis for that decision is provided in statutory guidance only - in Wales we published *"Creating a Unified and Fair System for Assessing and Managing Care"* (WAG 2002) issued under section 7 of the Local Authority Social Services Act (LASSA) 1970. Paragraphs 2.40 to 2.49 and chapters 6 and 7 of that guidance set out the requirements for personal plans of care for adults. For adults over 65 that guidance has been replaced by *"Integrated Assessment, Planning and Review Arrangements for Older People"* issued under section 7 of LASSA 1970 in December 2013. No primary vires exist in relation to care plans or the review of plans.

The guidance is broad in its scope and there are many assessment and care planning frameworks in operation in Wales for people with health, care and support, and well-being needs to be met. Many of these are used by specific professional disciplines (e.g. occupational therapy) or for people with certain identified needs (e.g. substance misuse) and are considered fit for purpose.

The guidance provides at minimum what should be in the plan, who should be involved in the production of the plan, and guidance about the review of the plan. The guide recommends an initial review at three months of the provision of services and annually thereafter.

Local authorities are also bound by duties under the Mental Health Measure and respective regulations prescribe care and treatment plans and the review of those plans (section 18 of the Mental Health (Wales) Measure 2010).

## Children

For Children, section 17, Part 3 of the Children's Act 1989 and regulations made under that Part, set out the assessment, care planning, placement and case review procedures to provide a framework for local authorities to discharge their duties in respect of children. Section 31A of the 1989 Act places a duty on local authorities to plan for the future care of the child in the case of a child in care. This is also the plan that must be provided to court for consideration under care proceedings. Section 31A also has the power to prescribe in regulations the content of the care plan. In Wales we have not exercised this power. Regulations have been in place in England since April 2011.

For children accommodated under section 20 or 21 of the Adoption and Children Act 2002, section 26 (2) (f) CA 89 [as amended by section 118 ACA 2002] provides powers to require local authorities to prepare a plan for the future care of the child. Like section 31A regulations, we have not in Wales enacted these powers but relied on the requirements for planning under the statutory guidance: *Framework for Assessment of Children in Need and their Families (2001)*, and *"Safeguarding Children: Working*

*Together Under the Children Act 2004” (2006).* Through these guides local authorities are required to prepare a number of plans for; a child in need of protection, a child in need, and a child who is looked after. Additionally, since the introduction of the Children and Families (Wales) Measure 2010, statutory guidance under section 65 of the Measure and section 7 of LASSA 1970 requires Family Plans for children and families that are subject to IFSS.

## Carers

There are three Acts of Parliament directly concerned with the needs of Carers.

- Carers (Recognition and Services) Act 1995
- Carers and Disabled Children Act 2000
- Carers (Equal Opportunities) Act 2004

Each of these pieces of legislation places duties on local authorities with respect to the right of carers to an assessment of their needs. However there are no current statutory duties to provide services to carers, although there are powers to provide services which a) the local authority sees fit to provide and b) will in the local authority’s view help the carer care for the person cared for (section 2 of the Carers and Disabled Children Act 2000). As there is no statutory duty to provide services there is no statutory duties with respect to the planning or review of those services.

## Proposed legislation

The new legislation will introduce greater consistency of practice across Wales by introducing changes to the way care and support plans are prepared and maintained for adults and children, and the way support plans are prepared for carers.

The regulations set out the duties and functions on local authorities with respect to care and support planning and the review arrangements. A local authority must prepare and maintain a care and support plan for an adult or child, and prepare a support plan for a carer whose needs the local authority is required to meet. If the local authority believes that a person’s circumstances have changed in a way that affects the plan, it must conduct a review and such assessments as it considers appropriate and revise the plan in the light of those assessments.

The regulations make provision:

- about the training and expertise of persons who prepare, maintain and revise plans;
- about the content of plans;
- about the review of plans;
- for who can request a review of a plan;
- for the action a local authority must take following a review; and
- for the persons to whom copies of the plan, revised plan closure statements and other records must be given.

## Intended effect of the Regulations

The overall effect of the regulations is to require local authorities to prepare, maintain, and keep under review, a care and support plan, or a support plan in the case of a carer, for those whose needs the local authority is required to meet. The regulations will provide greater clarity, consistency and quality of care and support plans for adults and children, and support plans for carers.

The regulations enable care and support planning to be the process by which a local authority helps a person (and any carer they may have) to decide which services will best meet their assessed needs.

A care and support plan is created when an assessment identifies that services cannot be delivered without a plan or where the service can be delivered without a plan but the individual needs on-going support to access these services.

It records a person's assessed and 'eligible needs' and describes how a local authority plans to meet, or make arrangements to meet, those needs. Plans are reviewed to ensure that they remain effective and current.

A care and support plan must identify the personal outcomes and set out the best way to help achieve them. It is not the intention to try to replace existing local and specialist arrangements for care and support planning, nor to require a single national template for a 'care and support plan', although there will be certain minimum requirements about the content. The complexity or severity of the individual's need will determine the scope and detail of the care and support plan and the range of interventions.

The current care management and review of services for children and adults has been criticised as disjointed and often producing overlapping arrangements. In her review of Child Protection<sup>1</sup>, Professor Eileen Munro states: "Invariably the social worker has to work with a range of these other agencies to construct a care package for each child or family, which requires skills in negotiating, persuading and influencing as well as in monitoring and reviewing the care plan and actions of those partners".

This has led to inefficiencies and fragmentation within the current system causing difficulties for services users, as well as for practitioners, regulators and the judiciary in seeking to apply the law fairly and equitably.

The Assessment and Planning Technical Group<sup>2</sup> noted the many different local or specialist assessment and care planning arrangements currently in operation in Wales for people with different health, care and support, and well-being needs and recommended: "... the purpose of regulations and code of practice should not be to replace such arrangements, but rather seek to set an overall framework within which these specialist assessment and care planning arrangements should be expected to operate, and be linked together".

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1 The Munro Review of Child Protection, Part One: A Systems Analysis - Professor Eileen Munro. DfE 2010

2 Assessment and Planning Technical Group – Final Report – Welsh Government - September 2014

The regulations address these concerns through the introduction of a simplified (and where possible common) approach to care and support planning.

These provisions create an opportunity to reduce overlapping arrangements and will ensure integrated planning and delivery of care to individuals to enable them to maximise their well-being. The aim is to simplify an individual's journey to receiving care and support that is better tailored to their needs, and more likely to achieve their identified outcomes.

Care planning is the central tool of care management and is intrinsically linked to the assessment of people's needs for care and support and the determination of eligibility for local authorities to meet those needs. Together these three processes form the structure of the delivery of care and support to individuals and to families. The cost of the current model for delivering these 'core processes' is currently too great. The care planning regulations will support a whole system change designed to enable the delivery of a more sustainable approach to meeting people's needs for care and support. The regulations are designed to simplify the process of care and support planning, and thereby contribute to the sustainability of the Care and Support system as a whole.

### Consultation

Draft regulations were consulted upon on, together with other regulations, and codes of practice relating to assessing and meeting needs as part of a 12 week consultation that ran from 6 November 2014 to 2 February 2015.

The draft regulations issued for consultation were informed by the report of the Assessment and Care Planning Technical Group<sup>3</sup> which advised that "... the Welsh Government should not, through the development of regulations under the Act, try to replace existing local and specialist arrangements for care and support planning, nor should it produce a single national template for a 'care and support plan'. However, it is recommended that the regulations require that such care and support planning – by which it is meant any planning process involving a public agency and pertaining to the care support of an individual, their family or a carer – should be required to meet a set of criteria". The regulations and associated Code of Practice have been informed by the set of criteria recommended in the report.

There were 300+ substantive written responses to the consultations received, from a wide range of individuals, representative groups, duty bearers and professional organisations. Overall response to the consultations was positive and there was a clear level of interest in and commitment to the changes we are taking forward.

Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

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<sup>3</sup> Assessment and Care Planning Technical Group (Welsh Government) (September 2014)

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

This Regulatory Impact Assessment should be read in conjunction with the Regulatory Impact Assessment for the Care and Support (Eligibility) (Wales) Regulations 2015 and the Regulatory Impact Assessment for the Care and Support (Assessment) (Wales) Regulations 2015.

Care planning is intrinsically linked to the assessment of people's needs for care and support and the determination of eligibility for local authorities to meet those needs. Together these three processes form the structure of the delivery of care and support to individuals and to families.

The proposed new process for care and support planning refine existing practice to create a more simplified and nationally consistent model for care and support planning which will be applied proportionately through a person centred process.

Research shows that social workers currently spend more time on administrative work and less time on face to face contact with service users. A UNISON survey indicated that 96% of practitioners felt that too much of their time was spent with paper work. Of those surveyed, 73% felt the time they had available to spend with service users was "insufficient" or "very insufficient".<sup>4</sup>

The new process will enable resources currently focussed on process and paperwork to be re-invested in supporting people to meet their identified personal well-being outcomes.

The Regulatory Impact Assessment presents two different options in relation to the policy objectives of the proposed Regulations. Both of the options are analysed in terms of how far they would achieve the Welsh Government's objectives, along with the risks associated with each. Both options have been explored to identify the costs and benefits. However, it is recognised that there are limitations and challenges with projecting future demand for social care in Wales.

- Option 1: Do the minimum and retain the current approach to care planning.
- Option 2: Introduce the new regulations, and create a simplified and national system for care and support planning for both carers and those in need of care

### **Options**

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<sup>4</sup> UNISON, *Not Waving But Drowning: Paperwork and Pressures in Adult Social Work Services* (2009), <http://www.unison.org.uk/acrobat/B4710a.pdf> (last visited 4 April 2011). These figures relate to all social work, not just adult social care. We see no reason to suppose there is a significant difference between child work and adult work.

### **Option 1: Do the minimum and retain the current approach to care planning.**

Under this option the current approach to Care Planning will remain, with the exception of the introduction of the process in relation to carers. Primary legislation, contained in sections 40 and 42 of the Act, sets out additional duties to meet the support needs of carers and the Act introduces a wider definition of carers. The regulations reflect this primary legislation.

On the whole, if the current approach is retained, there will be no positive impact on the costliness and complexity of the care planning process and the process will not complement the new proportionate approach to assessment and meeting needs which is designed to support people to achieve their well-being outcomes, enable people to maintain their independence or support families to stay together.

The Assessment, Eligibility and the Care Planning Regulations are intrinsically linked so as to effect a whole-system change to the delivery of social care in Wales. The regulations for Assessment and Eligibility will directly impact the Care Planning process. If the regulations for care planning do not complement the regulations for assessment and eligibility there will be no requirement for local authorities to change their current practice; variations in what service users can expect in different parts of the country will remain and the service provided to individuals in Wales whose needs meet the eligibility criteria will be inconsistent.

#### Costs

In the short term this option would avoid all transitional costs associated with implementing a new system, which include costs to local authorities associated with training and may include changes to system processes. However, in the longer term costs will be intensified as not making the whole systems change will result in more individuals receiving directly provided or arranged local authority social care services. In the last decade the gross expenditure of adult social services has risen by 67%. There is no additional funding available sufficient to meet this predicted rise in expenditure should this trend continue.

The process of care planning is intrinsically linked with the models of eligibility and assessment that supports it. An analysis of the impact of any change in the approach to eligibility and assessment must factor in the impact of the required changes to the care planning process that enables the delivery of that eligibility framework.

## Assessment and Care Management Expenditure

Based on the data provided in Table 5, Option 1 is likely to preserve the 11.1% of gross expenditure being spent on assessment and care management combined at an annual cost of £154,000,000.

The Local Government Association estimated that there would be a spending gap in the budget for adult social care in England of 29% by 2019/20<sup>5</sup>. Using the same assumptions, and applying this figure of 29% to Wales's budgets, this would represent an additional shortfall of £44m that local authorities would need to find.

## Population Projections

As evidenced in table 2, the population is rising, particularly in relation to the age group of over 65s. It is crucial that local authority social care becomes more efficient to ensure that all those who require services are provided with good quality services. The cost of providing these services to the growing population is too great. A transformation in the delivery of social care services is required to meet the needs of the ageing population and to respond to the changing burden of rising public expectations.

If no changes are made to the care and support system the cost of providing care and support plans to all those who are eligible to receive local authority social care services will rise significantly. It is difficult to accurately predict the increase in this expenditure, as evidenced in the report by the Institute for Fiscal Studies<sup>6</sup>. If it is assumed that there will be no significant changes to the adult social services budget in Wales, there would need to be a decrease in the estimated spend per head of adults receiving local authority social care services – if no other changes in service design or provision are effected.

The continuing cost of providing social care for adults in Wales is considered high, particularly in relation to those aged over 85 years and expected to receive local authority social care services in 2030<sup>7</sup>. The projections currently estimate that the number of those aged 85 years and over and in need of social care will increase by 45% between 2013 and 2030. As shown in annex 1 the estimated total cost of care management for all adults is likely to increase by £56m between 2013 and 2030 (see Annex 1, Table 7).

## Carers

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5 Adult social care funding: 2014 state of the nation report – Local Government Association - October 2014 - [http://www.local.gov.uk/publications/-/journal\\_content/56/10180/6659174/PUBLICATION](http://www.local.gov.uk/publications/-/journal_content/56/10180/6659174/PUBLICATION)

6 Scenarios for the Welsh Government , Budget to 2025-26, Institute for Fiscal Studies

7 Lord Filkin, Chair of the Lords Committee on Public Service and Demographic Change.

Irrespective of the regulations for care and support planning being introduced, a new duty to provide services to meet the needs of a carer for support will be placed upon local authorities. The duty is comparable to that for the people they support and has removed the existing requirement that the carer must be providing “a substantial amount of care on a regular basis”. From April 2016 it will be sufficient only that the carer “provides, or intends to provide, care”. This change in primary legislation will provide all carers with the right to an assessment and a determination of eligibility for local authority provided or arranged support. Therefore the approach to providing support plans for carers will need to mirror the approach to providing care and support plans.

Table 2b in annex 1 shows the population receiving local authority social care services by age. This table has been interpreted as not including those people who receive support services solely as a carer. The current legal situation is that local authorities are required to assess the needs of carers, but there is no commensurate legal requirement to meet those identified needs. It is therefore unlikely that the amount of the population predicted to receive local authority social care services has included any increase in demand as a result of carers requiring support plans.

In Wales there are 30,000 individuals providing unpaid care<sup>8</sup>. In 2001 it was estimated that in Wales the care that unpaid carers provide would cost £5.69 billion per year to deliver through paid support.<sup>9</sup> If the process for providing social care for carers is to remain the same, with no preventative work put in place, it is probable that an unintended consequence of this is likely to be many of the individuals providing care, without any support in place, will come to need social care services themselves provided through care and support plans or support plans.

However, it is not possible to quantify these effects other than to note that following the introduction of the Carers Strategies (Wales) Measure in 2010/11 there was an increase in the number of carers requesting an assessment, presumably due to a sharp rise in people’s awareness of their rights as carers. There was, however a significant decrease in the numbers the following year after the first ‘wave’ of assessment requests had subsided. It is reasonable to assume that the same pattern will occur with the implementation of the Act, but we have no comparative experience of the relationship between the request for an assessment and the requirement for a support plan as there has been no previous legislative requirement to provide services to carers.

### Benefits

There are no extensive benefits under this option, other than if the system remains the same it will not place any additional burdens on local authorities nor require any further training of staff that are already working in the social care system.

### Risks

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<sup>8</sup> Office for National Statistics - 2011 Census: Provision of unpaid care  
<sup>9</sup> Carers, Employment and Services in Wales - Carers UK - 2011

If the current system remains it will continue to provide complexities for the social worker or social care professional when carrying out an assessment for individuals. The Independent Commission on Social Services in Wales<sup>10</sup> commented that “Proper assessment and proper records are important but it is about finding the right balance in professionals’ workloads, particularly at a time of rising demand and shrinking resources. In our view there are important opportunities for streamlining the processes.” and recommended that the Welsh Government should “review ..... systems for both adults and children as a significant contribution to improved efficiency and the better use of professional time and skills”.

As currently designed the suite of care and support processes (assessment, eligibility, and care planning) cannot deliver Welsh Government commitments to equality of provision set out in the Sustainable Social Services framework. The different systems for children, adult and carers do not provide an integrated service for all people. If the system is not changed, in light of the evidence for the need for change, there is a risk of reputational damage for the Welsh Government.

Retaining the existing system may create further unnecessary burdens on local authorities and impede individuals in accessing support services. The Report of the Independent Commission on Social Services in Wales<sup>11</sup>: “From Vision to Action” observed that “Helping to make service users co-producers in their own solutions wherever possible is also much more likely to help people to retain or regain whatever degree of independence is achievable rather than allow them to slip into avoidable dependency. Avoidable dependency is a poor outcome for individuals as well as a continuing drain on resources.

Without a more simplified and nationally consistent model for care and support planning the current weaknesses within the system are likely to become more evident as more people are anticipated to be receiving social care services in the future. This in turn may lead to resources becoming more limited and may lead to more care and support needs being judged as ineligible as local authorities attempt to manage their limited resources. The Care and Social Services Inspectorate Wales (CSSIW) has already reported this trend in their publication *National Review of Access and Eligibility Criteria in Adult Social Care, Sept 2010*<sup>12</sup> where it was reported that the current system is a potential barrier to individuals receiving services and screening individuals out of eligibility.

Ultimately, the current system is unlikely to cope with an increased number of people needing care and support, and the pressure on the system, in future years, will result in system failure and people not being supported to achieve their outcomes.

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10 From Vision to Action: The Report of the Independent Commission on Social Services in Wales, November 2010

11 “From Vision to Action”: The Report of the of the Independent Commission on Social Services in Wales – November 2010

12 National Review of Access and Eligibility Criteria in Adult Social Care, Care and Social Services Inspectorate Wales, September 2010

## **Option 2: Introduce the new regulations, and create a simplified and national system for care and support planning for both carers and those in need of care**

Under this option new duties will be contained in regulations to promote a simplified (and where possible common) approach to care and support planning.

Introducing the regulations will enable Ministers to meet their legislative duties under section 32 of the Act. The overall effect of the regulations is to require local authorities to prepare and maintain a care and support plan, or a support plan in the case of a carer, which must be kept under review.

The new duties will ensure greater consistency for care and support plans for adults and children, and support plans for carers. The regulations will introduce clarity around the content, review and closure of the plans. It will introduce a process for care and support planning based on transparency and promoting voice and control for the service user.

When enacted alongside new regulations regarding assessment and eligibility, the introduction of the regulations for care planning will promote a nationally consistent approach to the delivery of care and support for adults, children and carers.

The Care and Support plan will be person centred and must be proportionate to the individual's needs. Additionally, the care and support plan will be owned by the individual whose needs are being met through that plan.

### Costs

Although demands on social services are increasing, there is no commensurate increase in the routine funding to support service delivery. The current financial settlement for 2015-2016 has been decreased by 3.4% compared to 2014/15, as a consequence of the large scale budget reductions by the UK Government.

The Association of Directors of Social Services outlined the challenges with projecting future demand for social care in Wales. The report recognised the complexities within the process and recognised that the projections may be affected in part by the way in which local authorities shape their services.

Making assumptions for the future delivery of social care is complex on multiple levels. However, as a basis for making projections to the future expenditure of social care under each scenario, the actual expenditure for 2010/2011 (as reported on in the Community Care Statistics report<sup>13</sup>) and 2013/14 (most recent data collection) have been used to make estimates on the predicted expenditure for 2030, to correspond with baseline projections by the House of Lords Committee on Public Service and Demographic Change<sup>14</sup>.

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<sup>13</sup> Community Care Statistics, Social Services Activity, England - 2013-14

<sup>14</sup> <http://www.parliament.uk/business/committees/committees-a-z/lords-select/public-services-committee/report-ready-for-ageing/overview/>

Under this option the Welsh Government considers that there will be long term cost savings through an approach to preparing and agreeing care and support plans that is proportionate to the presenting needs and circumstances of the individual. Also through a whole systems approach to meeting needs which will reduce the number of people requiring care and support plans by supporting individuals and families at an earlier stage through the Information, Advice and Assistance Service and preventative services.

All local authorities in Wales currently operate an information system, although these differ in structure and approach.<sup>15</sup> Although there is an expectation that local authorities will need to invest to further to develop and expand these into an Information, Advice and Assistance Service as detailed under the Act it has not been possible to quantify what this will mean because the starting points for local authorities will be different.

### Adults

As noted in annex 1, currently on average 48% of adults over the age of 85 receive local authority social care services all having completed the Unified Assessment Process, which is known to be time consuming for both individuals and practitioners<sup>16</sup>. By 2030 the numbers of individuals requiring a care and support plan is likely to equate to around 160,000 individuals (table 2). The proposed new model will deliver efficiencies by simplifying the structure of the assessment process and by placing a focus on early intervention and prevention services. It is therefore predicted that the percentage of these individuals who will receive local authority social care services will be reduced. The 2011 SSIA Report: *“Better Support at Lower Cost”* concluded that “Typically, a council which has an effective domiciliary care re-ablement service can expect to see a 10% reduction in demand for domiciliary care through a combination of [preventative] measures”

Annex 1 shows the cost savings that could be reached if local authorities reduced expenditure on assessment and care management (which includes care and support planning) from the current 11.1% to 8%. Under Option 2, the expectation is that local authorities in Wales would follow this pattern and realise similar efficiencies. If these efficiencies can be met, they could represent savings amounting to £43m based on the gross social services expenditure in Wales in 2013/14. This is the difference between spending at 8% and spending at 11.1% of the gross expenditure for adult social services as at 2013/14 (Table 5). If these savings were realised then these costs could be reallocated for service delivery.

### Children

The new care and support planning process proposed under Option 2 for children is considered to be in keeping with the process that is currently in place under the Children Act 1989. As a result it is anticipated that costs for children’s services will not be expected to alter significantly.

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15 Provision of Information Advice and Assistance on Social Services and Well-being across Wales – SSIA – April 2014

16 UNISON, *Not Waving But Drowning: Paperwork and Pressures in Adult Social Work Services* (2009)

## Carers

In practice, the proposed system under Option 2 could address the needs of many carers through the initial Information Advice and Assistance service. Carers will be provided with access to relevant, accurate, high quality and timely information, advice and assistance, which may meet their needs without the requirement for a support plan. Where support plans are required these will be proportionate in scale and complexity to the circumstances and presenting support needs of the carer; but there are no specific costs that can be evidenced.

## Benefits

The critical benefit, under Option 2, is the expectation that there will be fewer individuals needing to receive a disproportionately complex plan for care and support, or support if they are a carer. The proposed approach will offer a proactive approach which encourages people to seek help earlier and supports them to help themselves to retain their independence in a proportionate way.

Individuals will be provided with a greater voice and control over their care and support arrangements and there will be an expected reduction in the amount of time practitioners spend in completing paper work. Research from Portsmouth in 2013, demonstrates that it is possible to achieve a 70% reduction in the time practitioners spend on assessment meetings and associated paperwork<sup>17</sup>.

The first report of the Review of Child Protection undertaken for the Department of Education in England by Professor Eileen Munro<sup>18</sup> commented that: “social workers are required to spend too much time completing documentation ....”

The proposed regulations will bring greater clarity, consistency and improved quality of care and support for all individuals.

The approach will support people to remain in control of decisions about their own care and how they will be supported to achieve their outcomes.

## Risks

The proposals under Option 2 are based on a new model of social care, for which there is no precedent. This includes the assumptions that have been made in Annex 1, which are based on data that has not been fully tested. The risk is that potential outcomes may differ from those that have been predicted. However, we know that the current model of assessment and care and support planning is too costly, with respect both to its operation and to its effectiveness as a method for ensuring that people are accessing the right care, in the right place, at the right time. The cost and efficacy of the existing processes is a significant factor in the analysis that leads to the conclusion that the current model for identifying needs and delivering social care is not a sustainable model in the long term.

Preparing the workforce and the population is a key element to ensuring that there is a

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<sup>17</sup> <http://www.communitycare.co.uk/blogs/adult-care-blog/2013/09/saying-goodbye-to-unnecessary-paperwork-in-personalisation/>

<sup>18</sup> The Munro Review of Child Protection. Part One: A Systems Analysis - Professor Eileen Munro – Department of Education 2010

smooth transition to the new system. There will be considerable transitional costs associated with the training / re-training of local authority staff and producing associated supporting resources associated with this option. As the care and support planning process is such a fundamental part of the proposed new social care system, the costs of introducing these regulations will consume a greater proportion of the overall transitional costs.

To militate against this risk Welsh Government has commissioned the Care Council for Wales to lead on the development and implementation of a national learning and development strategy.

The strategy is critical to the implementation of the Act and will need sustained, deliberate and high-profile leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

The Care Council has developed this work with key stakeholders to ensure that the strategy covers all of those involved in the provision of social care, together with their key partners, and that it is delivered jointly and in collaboration with those partners.

The strategy includes a training deployment plan and the development of a one-stop-shop resource hub, playing a key supporting role for the sector in readiness for the changes and a place where Care Council for Wales can host their training resources. The Care Council for Wales will also update and promote the basic awareness raising materials. These awareness raising materials will be a common tool for use across partners to support and encourage delivery. The resources and material developed by the Care Council will be made available free of charge to all organisations and will be published online.

These developments have been supported by £1m in 2015/16 through the Social Care Workforce Development Programme (SCWDP). A further £7.1m has been made available through the programme, in previous years, together with the local authority match funding - making a total of some £11m which will support the development and implementation of cross-sector regional training plans, which align with both the national strategy and regional implementation plans.

In 2013/14 and 2014/15, a Delivering Transformation Grant was made available to the six regional partnerships, and selected national partners, to enable local government and its partners to put in place the requirements of the new Act. The Welsh Government has doubled the funding available through this grant to £3m in 2015/16. This is in addition to the £20m already announced this year to carry on the work of projects funded through the Intermediate Care Fund, and the £10m increase in the Revenue Support Grant for Social Services. To ensure that support for implementation of the Act evolves into support for the embedding process post April 2016 a further £3m in grant funding will be made available in 2016/17, subject to budgetary decisions.

The Welsh Government intends to commission an evaluation to enable the impact of the new national model of assessment and eligibility to be considered.

## **Summary and preferred option**

Welsh Government considers that Option 1 - retaining the current model, is not sustainable. The costs of providing social care using the current model are too high and the option does not meet the requirements or principles of the Social Services and Well-being (Wales) Act 2014 and does not support the enactment of the Care and Support (Eligibility) (Wales) Regulations 2015 and the Care and Support (Assessment) (Wales) Regulations 2015.

The Welsh Government considers Option 2 to be the preferred option to ensure greater clarity, consistency and quality of care and support planning for adults, children and carers.

The current framework of guidance requires the use of care and support planning and new regulations are necessary to ensure that the practice of care and support planning is in keeping with both the text and the spirit of the Social Services and Well-being (Wales) Act 2014. New regulations are also required to complement the regulations for eligibility and assessment. Option 2 requires local authorities to refine existing practice rather than to introduce systems that are fundamentally new or different from existing arrangements - the new duties with respect to support plans for carers being the exception. For this reason both impacts and costs are anticipated to be minimal, although some savings are expected through the introduction of a more integrated, streamlined and proportionate system of care and support planning and through a whole systems change designed to reduce the proportion of people whose needs are met through the care and support planning process.

The care planning regulations will support a whole system change designed to enable the delivery of a more sustainable approach to meeting people's needs for care and support and will simplify the process of care and support planning, thereby contributing to the sustainability of the Care and Support system as a whole.

The introduction of the regulations will ensure that the care and support planning process is proportionately applied, so that it is appropriate to the needs of the individual, and considers the individual's circumstances.

The regulations introduce a simplified (and where possible common) approach to care and support planning, that will reduce fragmentation within the system and enable arrangements for care planning across the sector to dovetail so as to be easier to use and understand for both practitioner and service user. They will support integrated planning and delivery of care to individuals to enable them to maximise their well-being, and simplify an individual's journey to receiving care and support that is better tailored to their needs, and more likely to achieve their identified outcomes.

Option 2 is also consistent with case for change as set out in the reports that have been referenced in the Explanatory Memorandum.

	<b>Current model: at 2013/14</b>	<b>Option 1: at 2030</b>	<b>Option 2: at 2030</b>
Total cost for Assessment and Care Management expenditure (noted in table 1)	£153m	£235m	£110m

## Consultation

The Welsh Government undertook a 12 week consultation on the regulations between 6 November 2014 and 2 February 2015. The consultation on parts 3 and 4 covered 'assessing the needs of individuals, eligibility, direct payments and care planning'.

There were 103 responses received from a variety of stakeholders, including the Welsh Local Government Association (WLGA), The Children's Commissioner, The Older People's Commissioner, Social Services Improvement Agency (SSIA), Local Government representatives and Third Sector Organisations

There was general support for the proposed system change to an outcomes-based approach with a simplified assessment and care planning process and greater integration of services.

The responses supported the approach to eligibility, assessment, and care planning with general agreement that it is clear and simple to apply. There was strong support for this statement from both statutory services and voluntary organisations

In response to points raised during the consultation process, amendments were made to the regulations, and the codes of practice were re-drafted to ensure that the process for care planning is clear to follow.

The Care Council for Wales, as the lead body for workforce development, has been commissioned to lead on the development and implementation of a national learning and development strategy. The strategy is critical to the implementation of the Act and will need sustained, deliberate with high-profile leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

Following the consultation process the following changes were made to the regulations:

- Regulations 5 (1) (a) and 5 (1) (b) have been made clearer to set out that carers are entitled to request a review of a carers support plan.
- Regulation 6 (2) has been amended to include confirmation and closure of plans, alongside revision of plans as actions which must be informed by the stipulated considerations.
- Regulation 6 has been amended to require the local authority to prepare a revised plan where a decision to revise a plan has been made.

- Regulations 7 and 8 have been amended to require that where the adult lacks capacity to be able to request a person to act on their behalf and there is no person authorised to act on their behalf, the local authority must give a copy of the care and support plan (or care plan) to any person who the local authority considers to be acting in the best interests of the adult, child or carer.

A detailed consultation response report is being published on the Welsh Government's website.

## Competition Assessment

<b>Competition Filter Test</b>	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

## **Post implementation review**

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow for Ministers to monitor functions of the Act carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these regulations.

The Welsh Government intends to commission an evaluation to enable the impact of the new national model of assessment and eligibility to be considered.

Additionally, the Welsh Government will continue to monitor the impact of the regulation on areas such as the Welsh language, the UN rights of the child and Older People and Equality.

Annex 1  
Evidence Paper

## **Annex 1. Evidence Paper**

### **The Care and Support (Care Planning) (Wales) Regulations 2015**

The Regulatory Impact Assessment presents two different options in relation to the policy objectives of the proposed Regulations. Both of the options are analysed in terms of how far they would achieve the Welsh Government's objectives, along with the risks associated with each. Both options have been explored to identify the costs and benefits. However, it is recognised that there are limitations and challenges with projecting future demand for social care in Wales.

- Option 1: Do the minimum and retain the current approach to care planning.
- Option 2: Introduce the new regulations, and create a simplified and national system for care and support planning for both carers and those in need of care

#### **Option 1: Do the minimum and retain the current approach to care planning.**

Under this option the current approach to care planning will remain, with the exception of the process in relation to carers. Primary legislation, contained in sections 40 and 42 of the Act, sets out additional duties to meet the support needs of carers. This primary legislation will be introduced regardless of the regulations being introduced.

Together the Assessment, Eligibility and the Care Planning Regulations will ensure a full system change. The regulations for Assessment and Eligibility will directly impact the Care Planning process. Therefore if the regulations are not introduced there will be an inconsistent service provided to individuals in Wales who meet the eligibility criteria

Section 32 of the Act requires regulations to be made. Not making regulations will place the Ministers in a position of not meeting their legislative duties and would have the effect that the Act is not implemented

If these regulations are not introduced there will be no requirement for local authorities to change their current practice. Variations in what service users can expect in different parts of the country will remain, as evidenced by the Independent Commission on Social Services in Wales and the Care and Social Services Inspectorate for Wales.

#### **Option 2: Introduce the new regulations, and create a simplified and national system for care and support planning for both carers and those in need of care**

Under this option the new duties will introduce greater consistency of practice across Wales by introducing changes to the way care and support plans are prepared and maintained for adults and children, and the way support plans are prepared for carers.

The overall effect of the regulations is to require local authorities to prepare and maintain a care and support plan, or a support plan in the case of a carer, for those whose needs they are required to meet, and to keep this plan under review.

A fundamental change which has been introduced through the Social Services and Well-being (Wales) Act 2014 is that, for the first time, a carer with needs for support will be eligible for a support plan in their own right. The regulations need to reflect this new right.

Introducing the regulations will allow Ministers to meet their legislative duties under section 32 of the Act. The introduction of the regulations will promote a nationally consistent approach to the delivery of care and support when enacted alongside new regulations regarding assessment and eligibility.

The regulations support an approach to care and support planning that is person centred and appropriate to the needs of each individual. A fundamental principle is that the care and support plan is owned by the individual whose needs are being met through that plan.

Ultimately, the proposed new model will simplify the current process for the planning of care and support.

### **Baseline Evidence and Projections**

Although demands on social services are increasing, there is no commensurate increase in the routine funding to support service delivery. The current financial settlement for 2015/16 has decreased by 3.4% compared to 2014/15, as a consequence of the large scale budget reductions.

A 2011 report from the Social Services Improvement Agency (SSIA)<sup>19</sup> outlined the challenges in projecting future demand for social care in Wales. The report recognised the complexities within the process and recognised that the projections may be affected, in part, by the way in which local authorities shape their services. The report also suggested that building a care and support system that focuses on keeping older people out of residential care, and using re-ablement models of care, may assist not only in achieving better outcomes for individuals, but also in reducing demand for services.

A report by the Institute for Fiscal Studies<sup>20</sup> summarises the challenges in predicting the allocation of funding for social care. The report outlined that there is substantial uncertainty about how much the Welsh Government will have to spend over the next 12 years. The most optimistic scenario is that the Welsh block grant will only be around 8% higher in real terms in 2025/26 than in 2010/11: this represents an annual average growth rate of just 0.5%. Given population growth, the block grant available per person would be just 1% higher per person than 15 years earlier. With regard to social care, the projections are subject to wide margins of error, reflecting uncertainty about future demands for health and social care, and the future costs of providing these services.

It is recognised, therefore, that making assumptions for the future delivery of social care is complex on multiple levels. However, as a basis for making projections about the future expenditure of social care under each option, the actual expenditure for 2010/11 (as reported on in the Community Care Statistics report<sup>21</sup>) and 2013/14 (most recent

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<sup>19</sup> Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales - SSIA – April 2011  
<sup>20</sup> Scenarios for the Welsh Government, Budget to 2025/26, Institute for Fiscal Studies – September 2013

data collection) have been used to make estimates on the predicted expenditure for 2030. These projections correspond with baseline projections by House of Lords Committee on Public Service and Demographic Change<sup>22</sup> used in its 2013 report “Ready for Ageing”<sup>23</sup>.

To date, England and Wales have used the same legislation and virtually the same model for care planning in social care. Based on these similarities, and for the purposes of illustrating cost savings and expenses, assumptions have been based on Welsh figures wherever possible. Where these figures are not available, the most comparable English data sets have been used.

Calculations have been based on data provided by StatsWales,<sup>24</sup> Health and Social Care Information Centre (HSCIC)<sup>25</sup>, and on direct comparisons to calculations made for the Care Act 2014 in England, much of which have been based on HSCIC data. Information based on the existing Fairer Access to Care (FACS) model has also been used.

The following sections convey the population projections which have been used to make assumptions on expenditure for both options 1 and 2.

As a baseline, data for 2013/14 has been used (as it is the most recent available).

## Population Projections for Wales

### Adults

Projections<sup>26</sup> show that by 2030 there will be twice the number of people aged over 65 than there were in 2010 living in England. If existing rates of prevalence, for various health conditions and care needs, are applied to this changing demographic, then this implies that there will be a significant increase in the demand for social care services in the future. However, improvements in health and care services, including better prevention, could play a role in counteracting some of these pressures<sup>27</sup>.

The census collection for Wales was reported on in 2011 and the population projections for 2013 and 2030 have been used to make assumptions of the population.

## **Table 1: Population projections for Wales (Adults)**

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21 Community Care Statistics, Social Services Activity, England – 2013/14 – July 2014

22 <http://www.parliament.uk/business/committees/committees-a-z/lords-select/public-services-committee/report-ready-for-ageing/overview/>

23 <http://www.parliament.uk/business/committees/committees-a-z/lords-select/public-services-committee/report-ready-for-ageing/overview/>

24 Welsh Government’s online repository for detailed statistical data for Wales. The data is updated by the Knowledge and Analytic Services (KAS), Welsh Government.

25 Health and Social Care Information Centre (HSCIC) - The national provider of information, data and IT systems for health and social care in England

26 Report: Ready for ageing? | Committee on Public Service and Demographic Change | House of Lords - 2012/13 (Lord Filkin, chairman of the Lords Committee on Public Service and Demographic Change)

27 Future of Paying for Social Care in Wales – LE Wales – April 2014

	2011 <sup>28</sup>	2012	2013	2014	2015	2030 (Estimated)
Number of adults aged 18-64 living in Wales	1,867,505	1,857,283	1,853,049	1,851,715	1,852,593	1,814,014
Number of adults aged 65 – 74 living in Wales	300,550	318,140	329,161	337,726	345,293	380,617
Number of adults aged 75 – 84 living in Wales	187,434	190,806	193,832	197,447	200,549	286,975
Number of adults aged over 85 living in Wales	74,560	76,932	77,332	78,952	80,972	141,037
<b>Total</b>	<b>2,430,049</b>	<b>2,443,161</b>	<b>2,453,374</b>	<b>2,465,840</b>	<b>2,479,407</b>	<b>2,622,643</b>

The figures in table 1 demonstrate that there is expected to be a 55% rise in those aged over 65 years, living in Wales from 2011 to 2030. These estimates are consistent with the projections for England, where there is a predicted 50% increase of those aged over the age of 65 years living in England.

The predictions also show that there is likely to be a slight decline (-3%) in the number of adults aged 18 - 65 years living in Wales between 2011 and 2030.

On average, about 1.5% of adults aged 18-64 years, and about 14% of over 65s in Wales receive local authority social care services. For the group of people aged 65 and over there is significant variation across age bands in the proportion of individuals receiving local authority social care services: the ratio share of the population aged 65-74, 75-84 and 85+ years is around 5%, 16% and 48% respectively. These ratios have stayed broadly constant over the last six or seven years.<sup>29</sup>

Table 2 has used these average projections to estimate the population who are likely to receive a local authority social care service in the years between 2011 and 2015, and then used these figures to estimate the population receiving local authority social care services in 2030.

**Table 2: Population projections for adults receiving local authority social care services – using 2011 census as base.**

<sup>28</sup> Stats Wales: 2011 Census: Usual resident population by single year of age and sex, Wales  
<sup>29</sup> Future of Paying for Social Care in Wales – LE Wales – April 2014

	2011 <sup>30</sup>	2012	2013	2014	2015	2030 (Estimated)
Number of adults aged 18-64 living in Wales (1.5% of population)	28,013	27,859	27,796	27,776	27,789	27,210
Number of adults aged 65 – 74 living in Wales (0.5% of population)	15,028	15,907	16,458	16,886	17,265	19,031
Number of adults aged 75 – 84 living in Wales (16% of population)	29,989	30,529	31,013	31,592	32,088	45,916
Number of adults aged over 85 living in Wales (48% of population)	35,789	36,927	37,119	37,897	38,867	67,698
Total Predicted numbers of adults receiving local authority social care services	108,818	111,223	112,386	114,151	116,008	159,855

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30 Stats Wales: 2011 Census: Usual resident population by single year of age and sex, Wales

**Table 2b: Actual numbers of adults receiving local authority social care services<sup>31</sup>**

	2011 <sup>32</sup>	2012	2013	2014	2015	2030
Actual total number of adults receiving local authority social care services	109,334	111,810	110,895	110,415	Not known	Not known

If the current model of social care remains, overall there is like to be a 45% increase in those receiving local authority social care services between 2011 and 2030 (as noted in table 2).

Table 2 has used the average projections as noted in the *Future of Paying for Social Care in Wales* report<sup>33</sup> to work out the percentage of the population who are likely to receive a local authority social care service in the years between 2011 and 2015, and then used these figures to estimate the proportion of population receiving local authority social care services in 2030.

Table 2b reflects the actual number of adults receiving local authority social care services, as reported upon by Stats Wales.

The figures in both tables are broadly consistent; therefore the estimates from the report on the *Future of Paying for Social Care in Wales* have been used to illustrate variations in expenditure when the options are applied in practice. These variations have been used throughout the Regulatory Impact Assessment to provide cost effectiveness of the proposed options.

### Children

**Table 3 - Population projections for Wales (Children)**

	2011 <sup>34</sup>	2012	2013	2014 <sup>35</sup>	2015	2030 (Estimated)
Number of children aged 0-18 living in Wales	632,433	630,906	630,211	629,235	627,758	652,571

The figures in table 3 demonstrate that between 2011 to 2030 there is expected to be a 3% rise in those aged under 18 years and living in Wales.

31 Stats Wales – CARE0013: Adults assessed and care plans reviewed during the year

32 Stats Wales: 2011 Census: Usual resident population by single year of age and sex, Wales

33 Future of Paying for Social Care in Wales – LE Wales – April 2014

34 Stats Wales: National level population estimates by year, age and UK country

Mid-Year population estimates (1991 onwards), by Welsh local authorities, English regions and UK countries, for single year of age and gender (2011, 2102 and 2013 data)

35 Stats Wales: Population projections - 2012-based national population projections for Wales, 2012-2037

**Table 4 - The rate of looked after children per 10,000 under 18 years in England and Wales**

<b>Years</b>	<b>Wales</b>	<b>England</b>
<u>2003</u>	64	Not known
<u>2004</u>	66	Not known
<u>2005</u>	67	Not known
<u>2006</u>	70	Not known
<u>2007</u>	72	Not known
<u>2008</u>	72	Not known
<u>2009</u>	73	54
<u>2010</u>	81	57
<u>2011</u>	85	58
<u>2012</u>	90	59
<u>2013</u>	91	60
<b><u>2014 (As of 31 March 2014)</u></b>	<b>91</b>	<b>60</b>

Table 4 demonstrates that the rate of ‘Looked After’ children per 10,000 people under 18 years has risen steadily in Wales in the last 10 years, and is around 50% higher than the rate in England<sup>36</sup>.

This is a significant cost to the Welsh public purse: Estimates in England gives the annual cost of a Looked after Child in 2013-14 as £36,524.<sup>37</sup> If that cost is replicated in Wales it would represent an annual expenditure of over £210m.

#### Assessment and Care Management Expenditure

Based on evidence from the Audit Commission (2012)<sup>38</sup> report spending on assessment and care management in English local authorities represented an average of 12% of gross spending on adult social services. It further stated that this spend varied across local authorities, between 8% and 17%.

Using data provided by StatsWales the following table 5 explores the different levels of spending on assessment and care management that local authorities could work towards achieving in Wales. On average Welsh local authorities currently spend 11.1% of their gross adult social care budget on Assessment and Care Management, at £153m annually.

36 British Association for Adoption and Fostering (BAFF) - <http://www.baaf.org.uk/res/stats>

37 Children's Services Estimates England , Chartered Institute of Public Finance and Accounting

38 Value for money in assessments and reviews - Audit Commission – August 2012

**Table 5: Gross Social Service expenditure<sup>39</sup> in Wales 2013 /14: £1,380m**

<b>Total spend on assessment and care management<sup>40</sup> at:</b>	
8% of expenditure	£110m
10% of expenditure	£138m
11.1% of expenditure (current position in Wales)	£153m
12% of expenditure	£166m
17 % of expenditure	£235m

**Table 6 – The cost of Assessment and Care Management**

	<b>Wales 2013/14</b>	<b>English comparable data (2013/14)<sup>41</sup></b>
Gross Social Service expenditure (for all adults in Wales, over the age of 18, including carers)	£1,400,000,000 <sup>42</sup>	£17,250,000,000
Gross expenditure for adult cost of Assessment and Care Management <sup>43</sup> (for all adults in Wales, over the age of 18, including carers)	£153,000,000 <sup>44</sup>	£2,070,000,000
Percentage of gross Social Services expenditure used for adult assessment and care management (see text below)	11.1%	12%
The number of adults assessed during the year	96,547 <sup>45</sup>	1,193,540
Estimated cost of assessment and care management per adult receiving a service in Wales	£1,585 <sup>46</sup>	£1,734

39 Stats Wales – Revenue outturn expenditure: Social Services – 2013/14

40 Stats Wales - LGFS0015: Social services revenue expenditure by client group (£ thousand)

41 Community Care Statistics, Social Services Activity, England - 2013-14, Final release  
<http://www.hscic.gov.uk/catalogue/PUB16133>

42 Stats Wales –Revenue outturn expenditure – Social Services. <https://statswales.wales.gov.uk/Catalogue/Local-Government/Finance/Revenue/Social-Services/social-services-socialservicesrevenueexpenditure-by-clientgroup> - to the nearest million

43 Assessment and care management - Include costs of commissioning services for older people, specifically the process of receiving referrals, assessing needs, defining eligibility and arranging for packages of care to be provided and reviewing the quality of and continued relevance of that care for older people. This includes field social work costs (including hospital social workers); other social services staff based in primary healthcare settings; occupational therapy services to older people; and relevant support staff costs.

44 Future Paying for Social Care in Wales – LE Wales – 2014 - <https://statswales.wales.gov.uk/Catalogue/Health-and-Social-Care/Social-Services/Adult-Services/Service-Provision/AdultsReceivingServices-by-LocalAuthority-Measure>

45 Stats Wales – CARE0013: Adults assessments plus carers assessments or reviews

46 This cost for calculation – as the cost for care planning only is unknown

The data available through StatsWales reports details the costs of assessment and care management across authorities and for particular categories of needs. However this data is not separated into the cost of assessment as distinct from care management. To address this question, an approach has been taken to identify the average costs of assessment, and this cost has then been used to identify the cost of care management. The cost of care management includes, but is not limited to, the cost of care and support planning. Based on the data in table 6 the average expenditure of providing assessment and care management for each individual receiving an assessment in Wales is £1,585<sup>47</sup>. Based on the comparable data of England it is estimated that the expenditure in England represents £1,734<sup>48</sup>.

The Impact Assessment of the Care Act 2014<sup>49</sup> states that the average cost of assessment in England is £450. Based on the calculations (Table 6) for England, this cost is 26% of the estimated cost of assessment and care management expenditure of £1,734.

If the same assumptions are applied to the Welsh figures it can be estimated that the average cost of an assessment for care and support per adult receiving a service in Wales is £412 (26% of £1,585).

The cost of assessment has, at £412, has been subtracted from the cost of assessment of care management to establish a cost for providing care management (care and support planning). Therefore the estimated cost of providing care management per adult in Wales is estimated to be £1,173.

### **Social worker time**

Research shows that social workers currently spend a great deal of time on administrative work and less time on face to face contact with service users. A UNISON survey indicated that 96% of practitioners felt that too much of their time was spent with paper work. Of those surveyed, 73% felt the time they had available to spend with service users was “insufficient” or “very insufficient”.<sup>50</sup>

Similarly, research from 2003 found that three of the activities most frequently reported by social workers were office-based paperwork relating to caseload, negotiating and arranging social services for users, and completing assessment documentation in the office.<sup>51</sup>

Professor Eileen Munro in her review of Child Protection<sup>52</sup> argued that “There is a need to strip away much of the top-down bureaucracy that previous reforms have put in the way of frontline services. Giving professionals greater opportunity for responsible innovation and space for professional judgment is fundamental if the child protection

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47 £153,000,000/96,547

48 £2,070,000,000/1,193,540

49 The Care Act: Impact Assessment number 6107. <http://www.legislation.gov.uk/ukpga/2014/23/impacts>

50 UNISON, *Not Waving But Drowning: Paperwork and Pressures in Adult Social Work Services* (2009), <http://www.unison.org.uk/acrobat/B4710a.pdf> (last visited 4 April 2011). These figures relate to all social work, not just adult social care. We see no reason to suppose there is a significant difference between child work and adult work.

51 A Weinberg and others, “What Do Care Managers Do? A Study of Working Practice in Older Peoples’ Services” (2003) 33 *British Journal of Social Work* 901, 914.

52 The Munro Review of Child Protection: Final Report A child-centred system - Professor Eileen Munro - Department of Education – May 2011

system is to realise the improvements that have been lacking following previous reforms” and referenced a London School of Economics and Human Reliability evaluation which identified that a reduction of bureaucratic constraints on practice enables practitioners to spend more time (working) with families. Professor Munro also referenced a 2010 study showed that some social workers were spending up to 80 per cent of their time on paperwork but this had developed gradually making it hard for those involved to notice<sup>53</sup>.

## Cost

### Option 1

As illustrated in tables 1 and 2 there is predicted to be a significant rise in the adult population who received social care services by 2030. An assessment cost and care management cost of £1,173 (see table 6) has been used to predict the possible increase in expenditure required to provide care management to the increased population<sup>54</sup>.

**Table 7: Total predicted cost of assessment and care management for all adults receiving social care services**

	<b>Total predicted number of adults receiving local authority social care services (as illustrated in table 2)</b>	<b>Total predicted cost of care management for all adults receiving social care services</b>
2011	108,818	127,643,514
2012	111,223	130,464,579
2013	112,386	131,828,778
2014	114,151	133,899,123
2015	116,008	136,077,384
2030	159,855	187,509,915

As illustrated above the estimated cost of the total amount of care management for all adults is likely to increase by around £56m between 2013 and 2030.

Table 5 and the assumptions derived from it, shows that by retaining the current approach to assessment and care management it is expected that 11.1% of gross

53 White, S., Wastell, D., Broadhurst, K. & Hall, C. (2010), 'When policy o'erleaps itself: The 'tragic tale' of the Integrated Children's System', *Critical Social Policy*, 30, pp405–429.

54 Any financial projections in this Impact Assessment are based on the most recent identified costs - adjustments for inflation have not been taken in to account.

expenditure on adult social services will be spent on assessment and care management. However, given the predicted large increase in the population of those over the age of 85, there is likely to be a larger proportion of the overall social services budget requiring to be spent on assessment and care management. On this basis, if the current approach remains, local authorities may need to use larger proportions of the budget in order to provide services to all those that require them. If the proportion of spending on assessment and care management in Wales reached the highest level (17%) currently reported in England, this element of the service would have cost an extra £82m across Wales in the year 2013/14.

### Children

Although the data collected for Children's Services is not directly comparable to Adult Services it is likely that there will be similar patterns followed. The census collection for Wales was reported on in 2011, and the population projections for 2013 and 2030 have been used to make assumptions of the population of those aged 18 and under.

**Table 8 – Number of Looked After Children in Wales**

	2011 <sup>55</sup>	2012	2013	2014 <sup>56</sup>	2030 (Estimated)
Number of children aged 0-18 living in Wales	632,433	630,906	630,211	629,235	652,571
The rate of looked after children per 10,000 under 18 years in Wales (as demonstrated in table 4)	85	90	91	91	135
Estimated number of children under the age of 18 expected to be considered 'looked after children' (based on table 4).	5,376	5,678	5,735	5,726	8,810 <sup>57</sup>
Estimated cost of care and support planning for Looked after Children in Wales (based on table 3 - £1,173)	6,306,048	6,660,294	6,727,155	6,716,598	10,334,130 <sup>58</sup>

<sup>55</sup> Stats Wales: National level population estimates by year, age and UK country Mid-Year population estimates (1991 onwards), by Welsh local authorities, English regions and UK countries, for single year of age and gender (2011, 2102 and 2013 data)

<sup>56</sup> Stats Wales: Population projections - 2012-based national population projections for Wales, 2012-2037

<sup>57</sup> Calculated – using the no of children, divided by 10,000 then multiplied by the rate of LAC

<sup>58</sup> Calculated the estimated number of LAC by 1585 (cost of assessment and care management)

The Welsh Government's Children in Need Census reported that there were 20,145 children in need at 31 March 2014<sup>59</sup>, which accounts for 3% of the under 18s population in Wales. The data in the first row in table 8 demonstrates that between 2011/12 to 2030 there will be a 3% rise in those living in Wales aged 18 years and under. Therefore, if the approach to assessment remains static, it can be expected that there will be a proportionate rise in the number of children entering the social care system by 2030.

As demonstrated in table 4 the rate of 'Looked After' children per 10,000 people under 18 has risen in Wales over the last 10 years. In the period between 2003 and 2013 the number has risen by 26 per 10,000, an average of 2.6 children (per 10,000) per year. If it was assumed that a similar increase would continue over the next 15 years, the rate could reach 135 per 10,000 children by 2030, and will result in the number of Looked after Children rising to 8,810.

However, there is no evidence that the rate of Looked after Children will continue to increase at a linear rate. The rate has levelled out since 2012, at 90-91 per 10,000 children. If the rate has reached its peak and the current level of 91 per 10,000 children is to remain static, there will be no significant impact on the cost of providing social care to Looked after Children in Wales.

## Carers

Irrespective of the regulations for care and support planning being introduced, a new duty to provide services to meet the needs of a carer for support will be placed upon local authorities. The duty is comparable to that for the people they support and has removed the existing requirement that the carer must be providing "a substantial amount of care on a regular basis". From April 2016 it will be sufficient only that the carer "provides, or intends to provide, care". This change in primary legislation will provide all carers with the right to an assessment and a determination of eligibility for local authority provided or arranged support. Therefore the approach to providing support plans for carers will need to mirror the approach to providing care and support plans.

In Wales, there are 30,000 individuals providing unpaid care<sup>60</sup>. In 2001 it was estimated that in Wales the care that unpaid carers provide would cost £5.69 billion per year to deliver if using paid support<sup>61</sup>. If the process for assessing carers' needs for support is not amended to fit with the whole system change introduced through the Act, it is probable that the consequence will be that many carers, without any support in place, will need the provision of substantial support to meet their own needs following an extensive and bureaucratic assessment that does not emphasise supporting carers through preventative and early intervention approaches.

A similar projection to the ones used above can be used to estimate the rising costs of assessment and care management for carers.

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59 Stats Wales: Summary of Children in Need data

60 Office for National Statistics - 2011 Census: Provision of unpaid care

61 Carers, Employment and Services in Wales - Carers UK - 2011

Welsh Government collected data on the number of carers of adults who had an assessment or review of their needs in their own right during the year (first data collection 2008/09). The data shows that there was an increase in carers requesting an assessment following the introduction of the Carers Strategies (Wales) Measure 2010 and this is evidenced in table 10. No figures are available for the number of carers receiving support plans as this is not currently a statutory duty.

**Table 9: Carers assessments**

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Number of carers of adults who had an assessment or review of their needs in their own right during the year	5,484	5,916	6,335	6,978	6,968	7,163
Annual % rise in adults who had an assessments or review of their needs in their own right during the year	NA	8%	7%	10%	0%	3%
Number of carers or adults who were assessed or reassessed in their own right during the year and who were provided with a service	2,281	2,755	3,690	4,298	4,373	4,570
Percentage of carers assessed or reassessed in their own right during the year and who were provided with a service	42%	47%	72%	62%	59%	57%

## **Option 2: Create a national system for care planning for both users and carers through regulations**

Under this option Welsh Government considers that there will be long term cost savings as individuals will be supported at an earlier stage through the Information, Advice and Assistance service and through preventative services. Wider access to a more supportive and open system will enable people to get the help they need earlier. As a result fewer individuals will need to have a care plan. This argument is reinforced by the Social Services Improvement Agency (SSIA)<sup>62</sup> report which sets out that early intervention and prevention will help local authorities to meet their savings targets whilst improving outcomes for individuals.

The cost of the current assessment and care management processes is too great.

In the last decade the gross expenditure of adult social services has risen by 53%<sup>63</sup>. There is no additional funding available to meet this predicted rise in expenditure should this trend continue. As demand and service user expectation increases, and budgets are constrained, the current approach to social services has to be changed.

### Population Projections

#### Adults

As noted in table 7, the continuing cost of providing social care for adults in Wales is too high, particularly in relation to those estimated to be aged over 85 years, and expected to receive local authority social care services in 2030. The projections currently estimate the number of those aged 85 years and over to increase by 45% between 2013 and 2030.

The proposed approach to assessment and care management that will be introduced through the regulations will recognise that needs can be met not only through support and services provided by the local authority but also through a person's abilities to support themselves or with support from their friends, family, and / or preventative and community based services focused on helping people to meet well-being outcomes. Table 2 identified a relatively consistent ratio of 48% of the population aged over 85 as needing to use directly provided or arranged local authority social care services in the future.

The proposed approach to care planning will encourage local authorities to assist individuals to access preventative well-being community based services themselves or support people to develop the skills and confidence they need through early intervention and prevention.

The report to Welsh Local Government Association and NHS Confederation on the transitional and longer-term implications of the Social Services and Well-being (Wales) Bill<sup>64</sup> commented:

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62 Social Services Improvement Agency – Better Support at Lower Cost - Improving efficiency and effectiveness in services - for older people in Wales - 2011

63 Stats Wales – Revenue outturn expenditure: Social Services

64 Transitional and longer-term implications of the Social Services and Well-being (Wales) Bill 2013 – Welsh Local Government Association and NHS Confederation – IPC September 2013.

“Notwithstanding the potential impact anyway of the likely increase in the numbers of people requiring assessments, due to the projected increase in older people across Wales, there is no reason to assume that changes in assessment requirements will inevitably lead to greater costs in the longer term for local authorities. Indeed, it could lead to downward pressure on overall costs:

- More responsive information services, early support, informal assessments and preventative community support will result in fewer people needing to secure a formal care and support assessment and plan, thus reducing transaction costs.
- Better quality early intervention and prevention services will reduce the need for more costly acute and substitute care”.

### Assessment and Care Management Expenditure

The Audit Commission (2012)<sup>65</sup> reported that the total spend on assessment and care management represented 12% of the gross adult social care budget. It further evaluated that this varied across local authorities, with some local authorities working at 8% spending on Assessment and Care Management. The report evidenced that 8% is an achievable target for local authorities to work to and that it is feasible to reduce expenditure to 8% by streamlining processes, reducing bureaucracy and applying assessment proportionately. As evidenced by the Social Services Improvement Agency (SSIA)<sup>66</sup> early intervention and prevention helps local authorities to meet their savings targets whilst improving outcomes for individuals. The introduction of the regulations will assist local authorities in this agenda, with the likelihood that the spending on assessment and care management will move closer to 8% of the gross expenditure on adult social care.

The data provided in Table 5 demonstrates the cost savings that could be reached if local authorities reduced the expenditure on assessment and care management to 8%. Under option 2 the expectation is that local authorities in Wales would follow this pattern and realise similar efficiencies. If these efficiencies can be met, they could represent savings amounting to £43m in 2013/14, and these costs could be reallocated to the £44m funding gap, as evidenced earlier.

The Association of Directors of Social Services<sup>67</sup> reported that local authorities can meet their savings targets whilst improving outcomes for users by planning to deliver more cost effective services. The report stated that the main approach for achieving such savings is through preventive services focusing on helping people stay out of longer term care, consequently reducing the demand for longer term care.

### Children

The assessment and care planning process proposed under Option 2 for children is considered to be in keeping with the process that is currently in place under the Childrens Act 1989. As a result Welsh Government do not anticipate that costs for

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47 Value for money in assessments and reviews - Audit Commission –August 2012

66 Social Services Improvement Agency – Better Support at Lower Cost - Improving efficiency and effectiveness in services - for older people in Wales - 2011

67 Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales - ADSS Cymru – April 2011

children's services will alter significantly except that the regulations are designed to promote a model of early intervention and prevention that will reduce the numbers of children who are looked after by their local authority. If the rate of children who are 'looked after' in Wales could be brought in line with the rate of Looked After Children in England expenditure on Looked After Children could be reduced by up to a third. If the costs of maintaining children as looked after in Wales is comparable to the costs estimated for this in England, this would result in an annual saving to Wales of £70m (see notes and commentary to table 4 above)

### Carers

It is anticipated that more carers will be eligible for a care and support plan under the new legislation. Even so, it is not estimated that the aggregated cost of providing the care and support plans will increase in direct proportion to the increase in the number of people seeking assessment. It is anticipated that carers will be supported through early intervention, the provision of Information, Advice and Assistance, and preventative services as referred to under the earlier section on adults. This earlier intervention will reduce the number of people needing to access managed care and support.

StatsWales provides data on the number of carers of adults who had an assessment or review of their needs in their own right during the year. This data shows that there was an increase in carers requesting an assessment following the introduction of the Carers Measure – but national figures are not available for the numbers of carers who receive a support plan following assessment as this is not currently a statutory responsibility of local authorities.

In practice, the proposed system under Option 2 could address the needs of many carers through the initial Information Advice and Assistance service. Carers will be provided with access to relevant, accurate, high quality and timely information, advice and assistance. Even where carers support needs are being met by the delivery of support plans the regulations enable support plans that are proportionate in scale to the need being met and the process of reviewing these plans is also underscored by the principle of proportionality.

# Agenda Item 5

Lesley Griffiths AC / AM

Y Gweinidog Cymunedau a Threchgu Tlodi  
Minister for Communities and Tackling Poverty



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: LF/LG/0556/15

David Melding  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff  
CF99 1NA

2 June 2015

Dear David,

## Renting Homes (Wales) Bill

At the recent meeting of the Constitutional and Legislative Affairs Committee, I offered to send the Committee a note on the definition of key workers under paragraph 15 of Schedule 3 to the Bill.

Schedule 3 to the Bill sets out the circumstances where community landlords may choose to issue a standard contract, instead of the default requirement to issue a secure contract which would usually apply. Paragraph 15 of that Schedule enables accommodation which is being provided for purposes other than social housing, to be provided under a standard contract, where that accommodation is provided to a key worker. It provides for regulations to be made by the Welsh Ministers which define what constitutes a 'key worker'.

For example, a social worker could be defined as a 'key worker' and so be housed by the employing Local Authority under a standard contract, instead of needing to be given a secure contract. The regulations will not refer to private landlords because there is no need to exempt private landlords from issuing a secure contract as the standard contract is the default contract issued by private landlords under the Bill.

Regards  
Lesley

Lesley Griffiths AC / AM

Y Gweinidog Cymunedau a Threchgu Tlodi  
Minister for Communities and Tackling Poverty

Bae Caerdydd • Cardiff Bay

Caerdydd • Cardiff

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Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

Pack Page 238

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Mark Drakeford AC / AM  
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: LF/MD/0392/15

David Rees AM  
Chair of the Health and Social Care Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

19 May 2015

*Dear David,*

### **Regulation and Inspection of Social Care (Wales) Bill**

I would like to thank you and the Committee for the opportunity to discuss the Regulation and Inspection of Social Care (Wales) Bill on 25 March 2015.

I am pleased to provide the Committee with further information on the following issues which were raised during the session:

- a.) the costs associated with registering domiciliary care workers and adult residential care workers;
- b.) information on what a Market Stability Report might look like; and
- c.) an indication of the expected timescales for publication of draft regulations under section 60(6) and 60(7) relating to Ministers' ability under section 60 to assess the financial sustainability of a service provider.

### **Registering Domiciliary Care Workers**

The Regulatory Impact Assessment provides the costs and benefits associated with extending mandatory registration across the whole of the social care workforce. Two options are presented for extending registration:

- i. extending registration using the existing fee structure; and
- ii. extending registration using an increased fee structure.

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*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)*

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The supplementary analysis set out below discusses the costs and benefits of applying these options to two groups of the workforce: domiciliary care workers and adult residential care workers.

There are an estimated 47,163 domiciliary care workers and adult residential care workers in Wales (see table one below for a breakdown). The current cost to the Care Council for Wales of registering care and support workers is £273.31 per registrant (see table two below). The current registration fee for domiciliary care workers and adult residential care workers, where they choose to register voluntarily, is £10. The Care Council for Wales suggested in discussions with officials during the preparation of the RIA that due to economies of scale extending mandatory registration across the whole of the social care and support workforce would cost £85.24 per registrant (see table three below). In addition, the Care Council for Wales suggested increasing fees to enable mandatory registration to be extended without additional cost to the public purse. The Council proposed an increased fee for domiciliary care workers and adult residential care workers of £25.

**Table one: number of care workers by sector and role**

<b>Sector</b>	<b>Role</b>	<b>Number</b>
Local authority	Domiciliary care worker (adult services)	5,109
Local authority	Senior Domiciliary care worker (adult services)	359
Independent sector	Domiciliary care worker (adult services)	11,831
Independent sector	Senior domiciliary care worker (adult services)	831
Local authority	Domiciliary care worker (children's services)	411
Local authority	Senior domiciliary care worker (children's services)	11
Independent sector	Domiciliary care worker (children's services)	955
Independent sector	Senior domiciliary care worker (children's services)	30
Local authority	Care workers (residential homes for adults)	2,855
Independent sector	Care workers (residential homes for adults)	24,771
	<b>Total</b>	<b>47,163</b>

**Table two: current cost of mandatory registration**

Year	Estimated Cost	Number of registrants	Cost per registrant	Income from fees (existing rates)	Grant in aid required
2012-13	3,170,175	11,599	273.31	264,350	2,905,825

**i. Extending registration to domiciliary care workers and adult residential care workers using the existing fee structure of £10**

**Table three: cost of extending mandatory registration to domiciliary care workers and adult residential care workers using existing fee structure of £10**

Year	Number of registrants	Cost per registrant	Estimated Cost	Estimated income from fees (existing fee of £10)	Estimated grant in aid required	Current grant in aid (2012-13)	Additional cost to the public purse (existing fees)
2017-18	47,163	85.24	4,020,174	471,630	3,548,544	2,905,825	642,719
2017-18	47,163	130.00	6,131,190	471,630	5,659,560	2,905,825	2,753,735
2017-18	47,163	273.31	12,890,120	471,630	12,418,490	2,905,825	9,512,665

Where economies of scale are realised and the consequent cost per registrant is £85.24, extending mandatory registration to domiciliary care workers and adult residential care workers, based on the existing fee of £10, would result in an additional cost of £642,719 per annum to the public purse (see table three above).

If no economies of scale are realised and the cost per registrant remains at £273.31, extending mandatory registration to domiciliary care workers and adult residential care workers, based on the existing fee of £10, would result in an additional cost of £9,512,665 per annum to the public purse.

It is likely that some economies of scale will be realised by extending registration. For illustrative purposes, a cost per registrant of £130 has, therefore, been assumed. Using this cost and the existing fee of £10, this would result in an additional cost of £2,753,735 to the public purse.

**ii. Extending registration to domiciliary care workers and adult residential care workers using an increased fee structure**

Where economies of scale are realised and the consequent cost per registrant is £85.24, extending mandatory registration to domiciliary care workers and adult residential care workers using the increased fee of £25, would result in a saving to the public purse of £64,726 per annum (see table four below).

If no economies of scale are realised and the cost per registrant remains at £273.31, extending mandatory registration to domiciliary care workers and adult residential care workers, using the increased fee of £25, would result in an additional cost of £8,805,220 to the public purse.

It is likely that some economies of scale will be realised by extending registration. For illustrative purposes, a cost per registrant of £130 has been assumed. Using this cost and the increased fee of £25, this would result in an additional cost of £2,046,290 to the public purse.

The significant assumption of the figures provided by the Council is the delivery of significant savings in terms of economies of scale. It has also no calculation of other effects of these changes such as the impact on the supply of the workforce and costs to employers, for example in enabling their staff to achieve the required qualifications.

**Table four: extending mandatory registration to domiciliary care workers and adult residential care workers using increased fees of £25**

Year	Number of registrants	Cost per registrant	Estimated Cost	Estimated income from fees (increased fee of £25)	Estimated grant in aid required	Current grant in aid (2012-13)	Additional cost to the public purse (increased fees)
2017-18	47,163	85.24	4,020,174	1,179,075	2,841,099	2,905,825	-64,726
2017-18	47,163	130.00	6,131,190	1,179,075	4,952,115	2,905,825	2,046,290
2017-18	47,163	273.31	12,890,120	1,179,075	11,711,045	2,905,825	8,805,220

## **Market Stability Reports**

As promised, I have enclosed a link to the guidance paper drafted by the Institute of Public Care at Oxford Brookes University on behalf of the Social Services Improvement Agency (SSIA), "Developing a Market Position Statement: A Commissioner's Toolkit," which shows that local authorities in Wales have already given careful consideration to the issue of market stability reports. A copy of this document is enclosed for ease of reference at **Annex A** and further copies can be found at:

<http://ipc.brookes.ac.uk/publications/index.php?absid=796>. As you will notice, the toolkit recognises that there is currently no statutory requirement for local authorities to produce Market Position Statements (MPS), although many authorities are currently collecting this information. The guidance also sets out what questions an MPS should seek to address as well as outlining what it should look like. It reiterates our sentiments why such statements are beneficial to local authorities and their stakeholders (at page 11) stating that:

*"Putting together an effective MPS is not easy. It requires good information, succinct analysis and a willingness to engage with many different stakeholders in a way which promotes a genuine and meaningful dialogue. It can be worth the effort, however, in helping local authorities and their partners secure the kind of services that will be needed to meet the needs of its local population into the future."*

I would reiterate that this is provided for illustrative purposes only. It is likely that any such statement would, following engagement and consultation, differ from this model. However I hope it is helpful in providing a flavour of such a report.

The rationale for legislating in this area is twofold: firstly by making it a statutory duty we will ensure compliance and improve consistency across Wales; and secondly, it will provide local authorities with the levers to more readily bring partners around the table to develop a more collaborative approach to identifying and meeting the specific needs of their communities. Our intention is not to use this information to highlight bad practice or failures in local government, but ensure that commissioners have the ability to readily identify and source the necessary service providers to fill gaps in the market in their communities and help the sector identify areas for greater opportunities.

## **Timescales for publication of draft regulations under section 60(6) and 60(7).**

It would be my intention to undertake early consultation on these matters, and to bring forward draft regulations in 2016.

## **Amendments to Transcript of Health & Social Care Committee meeting of 23 March 2015**

Following on from the receipt of the draft transcript of the meeting, my officials noted some minor factual amendments that were needed to the transcript and I thought it might be useful to remind the Committee what these were and provide a short rationale for them:

- In paragraphs 11 and 14, I made reference to the Health and Social Care Act. The formal name of the legislation to which I was referring is the Health and Social Care (Community Health and Standards) Act 2003;

- In paragraph 38 there was some confusion regarding the organisation that regulates Occupational Therapists. For clarity, this is the Health and Care Professions Council (HCPC), not the College of Occupational Therapists (which is also not a Royal College as stated);
- In paragraph 39 it was suggested that the groups of workers to be regulated are named on the face of the Bill. In fact, the Bill currently only requires a register for Social Work to be maintained and the requirement for a register of other groups is a matter for regulations;
- In paragraph 57 it was stated that the HCPC haven't introduced a form of negative registration. For absolute clarity, it is noted that there is a scheme that relates to social work students currently in operation; and
- In paragraph 131, I stated that the Inspectorate would have the power to require information following a due diligence exercise. In fact, the powers to require information are not reliant on such an exercise and would be used to facilitate such a due diligence exercise.

#### **Other information requested**

Your letter also sought my views on a number of areas that Committee members felt would help them with their consideration of the Bill:

#### **Commissioning of services**

1. *The provisions in section 26 of the Bill and section 9 of the Social Services and Well-being (Wales) Act 2014, and whether it is your intention to provide for a specific quality standard for the commissioning of services in regulations made under section 26 of the Bill?*

I understand the Committee's rationale for this suggestion - members will recall my own comments regarding this area in our session. However I am not yet fully persuaded that additional standards under section 26 of this Bill would be helpful. Section 26 is the regulation making power to impose requirements on providers of regulated services. Commissioning is a function of local authorities and it is they who must be held accountable for how it is carried out. The regulations under section 26 will not apply to local authorities.

Local Authorities are currently and will continue to be regulated with regard to the exercise of their social services functions that are set out in Schedule 2 to the 2014 Act. Section 9 place a duty on Welsh Ministers to issue codes to set out how local authorities can achieve well being outcomes and section 145 provides a power to Welsh Ministers to issue a Code in relation to the exercise of social services functions. I believe it would be much more helpful to focus our legislation in this area on the codes being established under the Social Services and Well-being (Wales) Act 2014. These will establish the requirement for local authorities to ensure that the care and support provided to a citizen in their home adequately meets their needs. The role of the Inspectorate will be to ensure that local authorities are meeting these requirements.

2. *The provisions in section 26(4) of the Bill, which refers to codes under section 9 of the Social Services and Well-being (Wales) Act 2014, and whether there should be similar references to sections 34(3) and (4) of the Act (which provide that a local authority must be satisfied that care visits to a person's home are of sufficient length and that guidelines to this effect must be included in the code of practice under section 145) to ensure inspection against these provisions?*

In a similar line of reasoning, I am not yet persuaded that a 'double lock' on the provision of domiciliary care would be the best approach to avoid inappropriately short visits. This double lock would place, through regulations, a similar obligation on providers to that placed on local authorities by the 2014 Act to ensure that there is sufficient time to deliver quality care during home visits to meet people's needs. I believe this would complicate the accountabilities in our system. It is local authorities that are required to ensure visits are of a suitable length, and this should be reflected through their commissioning. The local authority has a responsibility to be satisfied that its contractual requirements are being met, and I am not convinced that the Inspectorate should act, effectively, as their contract managers in this case.

In any event, the standards that will be developed in regulations made under section 26 will ensure that care must be provided with reference to a service user's well being outcomes. The general system that will be established under regulations will therefore ensure that the service regulator inspects a provider with regard to the quality of the care that is provided without the need for a specific provision to be made on this.

### ***Changes to service provision/provider failure***

3. *Whether the Bill will provide sufficient protection for people in receipt of social care services if or when the provider of their services decides to change or cease the services they provide?*

Protection to service users when a provider fails is afforded through the Social Services and Well-being (Wales) Act 2014. Section 189 of that Act sets out how, in addition to similar duties already in place for children, a local authority must for so long as it considers necessary (and in so far as it is not already required to do so) meet;

- a.) those of an adult's needs for care and support, and
- b.) those of a relevant carer's needs for support,

This Bill supports that protection by providing powers to Welsh Ministers to inspect against how any local authority is meeting its duties, including this one.

If there is a proposed change to service provision, then the proposed new provider will have to make an application for registration in the normal way. The service regulator will need to be satisfied that the new provider is fit and suitable to provide the service that it is proposed that they take over. New providers of regulated services who take over an existing service will not be able to circumvent the requirements for registration that exist on the face of the Bill.

4. *Whether the Bill provides adequate powers of intervention for the regulator when social care services are failing to meet the required standards, including your views on the use of interim managers or improvement notices?*

I believe the Bill strengthens the powers of the regulator in terms of its enforcement options. Sections 14 and 15 provide the regulator with the power to issue statutory Improvement Notices and the ability to, effectively, provide a time limit for improvements to be made. In terms of the use of interim managers, I do not believe it is the role of the Inspectorate to take over failing services. The response to such a situation is one for the local authority and whilst the Inspectorate has a role to play in providing information and advice, ultimately it should not become a direct deliverer of services by default.

5. *The extent to which the Bill enables the regulator - when making decisions in relation to social care services that are failing to meet the required standards - to take into account the impact on people in receipt of that service and the local market for that service?*

The Welsh Ministers are and will continue to be the service regulator and are required to make decisions that are reasonable and proportionate in the circumstances. Under the current system the service regulator does take into account the impact on service users of enforcement action and I would expect that to continue under the arrangements set out in this Bill. However, the service regulator has as its general objective under section 4 of the Bill to 'protect, promote and maintain the safety and well-being of people who use regulated services' and in that light I would expect that on occasions enforcement action is the best possible way to achieve that objective.

***Public engagement;***

6. *Whether the provisions in sections 39, 40 and 70 in relation to public engagement with regulation and inspection are sufficient to achieve your policy intentions?*

I firmly believe that this Bill clearly sets out our expectation that our regulators must work closely with citizens in carrying out their work. However, I feel that it would be inappropriate and unhelpful to be overly prescriptive on how this is achieved on the face of the Bill, as there is a danger that this would constrain rather than encourage greater citizen involvement.

Our service and workforce regulators, CSSIW and the Care Council for Wales are already taking steps to involve citizens in their work, through a variety of ways. For example, members of the Committee will be aware of the newly established CSSIW National Advisory Board following its presentation of evidence on this Bill, and they will also be aware of the long-standing lay-led approach to regulation of the Care Council. The Bill will further this work and place a new duty on both regulators to publish a policy on their engagement with citizens and to report annually on how this been achieved. At this stage I believe this is the right approach, because it allows the regulators to adapt their approach as they learn how and when citizens want to be involved, and what works well. It also allows the regulator to adapt their approach dependent upon the group of citizens most directly involved in a particular service area.

## **Inspections**

7. *The provisions in the Bill in relation to the involvement of lay inspectors, and whether the Bill could be more explicit?*

Whilst there is no specific mention of them in the Bill, we do recognise that lay inspectors can, in appropriate circumstances, make an effective contribution to the inspection process. Indeed, CSSIW has used lay inspectors in their work. However I do not intend to restrict the regulator to a particular approach on the face of the Bill. The understanding of lay inspection, and what a lay inspector is, differs across our sector. Ultimately I do not believe that the Bill is the place to provide this level of operational detail. However, the requirement to publish plans in this area and report on their delivery by regulators will ensure you, and the general public, will have an opportunity to scrutinise and comment on whether the regulators are meeting expectations in this area.

8. *The Older People's Commissioner's recommendation that Community Health Councils should be given a formal role in carrying out inspections?*

I agree with the Committee that there may well be merit in utilising the expertise of Community Health Councils (CHCs) in the inspection process. I recognise that they provide an important link between health, social care and citizens and I am aware that the Commission on Public Service Governance and Delivery has also identified a number of ways that CHCs could be utilised to improve oversight. The Bill as it stands does not prevent CHCs from being involved in the inspection process. However, I am not convinced that placing such a requirement on the face of primary legislation is appropriate. As I mentioned in Committee, I will be issuing a Green Paper on a number of aspects that relate to health and social care before the summer recess; and I am confident that the issue around the involvement of CHCs will be a part of the discussion that flows from that process.

9. *Whether regulations made under section 38(1) would enable the regulator to charge service providers for the inspection, or re-inspection, of their services?*

This would be possible under the Bill as drafted.

## **Joint working**

10. *Whether Part 9 of the Bill is sufficiently broad in focus to enable joint working between relevant regulators in the health and social care sector?*

I am confident that the Bill strengthens information sharing between regulators, and with other bodies. Ultimately, getting organisations to work collaboratively is not a matter simply for law. However, through this Bill we will ensure that there can be no excuses for these organisations failing to work in partnership and failing to share information, where this is appropriate. I believe that section 180 of the Bill, for example, is a powerful new duty on our regulators to share information if well-being is at risk.

Part 9 of the Bill makes a distinction between regulatory bodies and relevant authorities in order to distinguish the powers and duties that are placed on the social care regulators whose functions are set out in this Bill; and those powers and duties that are to be placed

on those bodies that are connected in some way to, and may have a role in, assisting the social care regulators in Wales in relation to those functions. The regulatory bodies named in the Bill are limited to the Welsh Ministers exercising their functions under this Bill and Social Care Wales; and all of the powers and duties that are within Part 9 are placed on those regulatory bodies. That includes making it clear that co-operation between these two is mandatory in carrying out their functions (section 176(1)) and the ability to exercise their functions jointly (section 177).

The Bill currently only includes at section 175 a range of relevant authorities that are Wales-only bodies. Our intention is for this legislation to include in the list those bodies in the UK which are integral to social care regulation in Wales, for example, Care Quality Commission (CQC) and Health and Care Professions Council (HCPC). Discussions are taking place with the UK Government as to how best to achieve this intention.

### **Preventative services**

*11. The extent to which this Bill will provide for effective scrutiny of the preventative services developed under section 16 of the Social Services and Well-being (Wales) Act 2014?*

I am confident that we have provided for the effective scrutiny of preventative services, as they have been set out in the Social Services and Well-being Act 2014.

Section 15 of the 2014 Act will place a duty on local authorities to provide or arrange for the provision of preventative services in their areas. This duty is a social services function within the meaning of Schedule 2 of the 2014 Act and falls within the scope of the inspection powers of Welsh Ministers as set out in this Bill which inserts section 149B into the 2014 Act, and therefore members can be confident that they can and will be scrutinised.

### **Financial implications**

*12. The anticipated economic and financial impact of the regulatory framework established by the Bill on small-scale social care providers?*

### **Economic and financial implications for small-scale service providers**

In Wales, the data available indicates the greater majority of care and support providers are small-scale. This profile provides diversity in provision and a more community centred approach.

The financial impact of the Bill from 2017/18 for care and support providers in the RIA is estimated to be approximately an additional £50 per annum. It is anticipated that much of this, if not all, will be absorbed through providers utilising existing time, and thus have no direct cash impact on businesses. The information on which the calculations were based was provided by the UK Homecare Association, an organisation which represents providers of domiciliary care.

Any use of the power to set fees will be done in a proportionate way to ensure small-scale providers are not unfairly penalised.

*13. How the increased costs of £9.2 million to the Care and Social Services Inspectorate Wales between 2016-17 and 2020-21 will be funded, from which other departments these funds will be drawn, and whether this has any implications for the affordability of the Bill?*

The RIA sets out costs that will fall to CSSIW, both to cover transition and those required on a year by year basis.

In terms of **transition costs**, the Welsh Government is already investing significantly in the changes required by Sustainable Social Services generally, and the Social Services and Well-being (Wales) Act 2014 specifically. Members will be aware that in the current year, the Welsh Government is providing £3 million to the sector directly to support transition and in particular the implementation of the Social Services and Well-being (Wales) Act 2014. This funding has always been earmarked to support the overall change agenda in social care, and therefore should be available for transition costs under this Bill.

In terms of ongoing costs, the RIA identifies approximately £1.7m annually for CSSIW. The overwhelming majority of this (£1.4m) is due to the implementation of ratings, a Quality Judgement Framework, and in particular the additional time required by Inspectors to make these judgements. However I think these costs for ratings are likely to be reduced as we understand more about how the system might work, given that Inspectors are already undertaking inspections and making judgements about compliance. Secondly this is a power not a duty. Any introduction could only take place after detailed regulations which will have their own Regulatory Impact Assessment. The Assembly will therefore have an opportunity, through affirmative procedure, to assess whether the system has been costed accurately and will be resourced appropriately. And, of course, the Welsh Government will not introduce ratings if they are not value for money.

The other cost of significance is the delivery of the market stability and oversight provisions by the regulator. This has been estimated by CSSIW to be £200,000, although given that similar work is already undertaken by other Welsh Government departments, and a closely aligned scheme of oversight is underway in England, I am sure there are opportunities for economies in this area.

I am sure the Committee will also appreciate the wider picture, and those factors in play that will ultimately affect any resource requirements.

As the Committee will be aware, CSSIW is not only responsible for social care regulation, it also oversees early years and childcare. Therefore, the work of CSSIW follows the policy directions set out by my Cabinet colleagues, the Minister for Education and Minister for Communities and Tackling Poverty. Significant changes in that area are currently being consulted on, for example increasing the age of compulsory registration of childcare from eight years up to 16 or 17 years in the case of disabled children.

As a Welsh Government we work across portfolios, including that if the Minister for Public Services who is responsible for the administrative management of CSSIW, to deliver the most cost-effective way of running the Inspectorate.

The Green Paper I have committed to publish later this year will consider the way that HIW and CSSIW work together, and where they are located. The outcome of that debate will also have a significant impact on the costs of any change.

I can confirm that under current arrangements the Welsh Government will be able to fund the costs that fall on CSSIW as a result of this Bill.

*14. Anticipated timescales for the provision of more detailed cost benefit analyses of the proposed subordinate legislation?*

The Regulatory Impact Assessment continues to be reviewed. Members will be aware that prior to my recent attendance at the Finance Committee I set out in correspondence some minor changes to the calculations within it that had emerged through this reviewing process. I will lay a revised version at the appropriate stage.

In terms of the impact of secondary legislation, these will be developed in consultation with stakeholders so that full and robust RIAs will be presented alongside the draft regulations.

### ***Human Rights implications***

*15. The analysis which has been undertaken in the drafting of the Bill and preparation of the Explanatory Memorandum of the Human Rights implications for actions proposed under the Bill?*

I am satisfied that the provisions of the Bill are compatible with the rights contained in the European Convention on Human Rights. As you will be aware to be within competence, the provisions in the Bill must be compatible with the Convention. Human rights issues were considered as part of the overall legal advice which I received and which enabled me to make the declaration in the Explanatory Memorandum that the Bill is within the legislative competence of the Assembly.

The Presiding Officer has also determined that the Bill is within the legislative competence of the Assembly.

I hope that the information provided in this letter answers the questions raised by Committee members and I look forward to answering any further questions from members in due course.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

*Best wishes,*

*Mark*

**Mark Drakeford AC / AM**

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

Minister for Health and Social Services

# ssia

Improving Social Care in Wales  
Gwella Gofal Cymdeithasol yng Nghymru

## Developing a Market Position Statement: A Commissioner's Toolkit

[See Contents](#)



Pack Page 252

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institute of  
public care

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UNIVERSITY

SSIA would like to thank IPC, Oxford Brookes University who were essential in the development of this toolkit.

We would also like to acknowledge the special contribution from Steve Vaughan (Welsh Government), the Association of Directors of Social Services Cymru Commissioning Policy Advisory Group and Local Authority commissioning staff.

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## 1. Introduction

The Welsh Local Government Implementation Plan for Sustainable Social Services includes a commitment to facilitate meaningful dialogue with commissioners and providers, to build a clear picture of current markets, and determine where these need to be reshaped to achieve the best outcomes for users and carers.

To support this, the Institute of Public Care at Oxford Brookes University (IPC) was asked by the Social Services Improvement Agency ('SSIA') to produce guidance for commissioners of adult and children's social care on how to develop a market position statement.

There is no statutory requirement to develop market position statements in Wales. However, developing an accurate picture of need and markets is a key activity for effective commissioning and this toolkit offers support for commissioners in developing market position statements for the social care market. It has been developed following an initial series of workshops on market facilitation and a consultation workshop which was attended by commissioners from across Wales in spring 2013. It contains the following:

- A summary of key national policy and guidance.
- An evaluation of the key ideas informing market facilitation.
- An overview of what should be included in a market position statement.
- Frequently asked questions.
- Example market position statements for both adults and children's social care.



## 2. The national context

There are 2 key policy documents from the Welsh Government which are particularly relevant to effective commissioning and market facilitation in social care.

Firstly, in 2010, the Welsh Government issued Section 7 Guidance to local authorities on commissioning social care services. '*Fulfilled Lives Supportive Communities Commissioning Framework and Guidance (2010)*' recognises that commissioning for social care is one of the most important activities undertaken by a local authority. The Guidance includes standards, which centre on the development and delivery of evidence-based, outcome-focused, commissioning plans. It highlights the need for commissioners to make judgements, based on their analysis of the existing market, about the most appropriate approaches to market development and procurement in their local area, including different contract forms, grants or in-house provision.

Secondly, '*Sustainable Social Services for Wales: a Framework for Action*' was published in 2011. It sets out the Government's aspirations for the transformation of social care and is a response to the changing needs of citizens, as well as the reduction in public finances. In particular it highlights:

- Greater citizen control.
- A focus on outcomes and prevention.
- The need for better integration and collaborative working, which avoids duplication and focuses on the needs of citizens.
- A shared approach between the public, private and voluntary sectors.

In the framework the Welsh Government articulates its view that national and local government must drive improvements in the market, rather than simply respond to the existing range of services. Commissioners are encouraged to work in dialogue with providers to ensure that social care is delivered within a public service ethos.

Commissioners can access support in implementing '*Fulfilled Lives Supportive Communities Commissioning Framework (2010)* and *Sustainable Social Services for Wales: a Framework for Action (2011)*' via the SSIA and Welsh Local Government Association programme of support described in '*The Local Government Implementation Plan (2012)*'.

In addition to existing guidance, at the current time the Social Services and Well-being Bill (Wales) 2013 is proceeding through legislative scrutiny. The Bill includes a number of important elements relevant to the development of local care markets in Wales including:

- Promoting the range of services to support the well-being of people who need care and support, and their carers.
- Better understanding the needs of the local population and the ability and capacity of local services to meet that need.
- Promoting the development of new models of delivery through social enterprises, co-operatives, user led and third sector services.
- Promoting the availability of preventative services from the third sector in the arrangements it makes for providing care and support and informing people in its area about what services are available.
- Securing the provision of an information, advice and assistance service to provide people with information and advice relating to care and support and provide assistance to them in accessing it. Providing information and advice about the care and support system provided for under this Bill, the type of care and support available in a local authority area and how to access it and how to raise concerns about people who appear to have needs for care and support or support.

Assuming the continued passage of the Bill through to an Act in 2014 this will have significant further implications for the roles of the local authority and its key partners as facilitators of the market.

### 3. Defining market facilitation

A market position statement is only one element in a range of activities which local authorities and their partners need to undertake if they are to be successful in promoting the successful development of services to best meet the needs of the local population. This range of activities is called market facilitation, and can be defined as follows<sup>1</sup> :

*“Based on a good understanding of need and demand, market facilitation is the process by which strategic commissioners ensure there is diverse, appropriate and affordable provision available to meet needs and deliver effective outcomes both now and in the future.”*

Looking at some of the phrases in the definition in more detail:

Phrase	Comments
Understanding of need and demand	Many local authorities routinely collect population needs information within Joint Strategic Needs Assessments or similar documents. They may also have information which gives a view of demand. However, the task is more than a simple matching of existing services to populations. Understanding demand is also about understanding what approaches work best, with whom and when. It involves asking where interventions might best be targeted and understanding which situations might deteriorate leading to poor outcomes for the individual and high, potentially avoidable, costs for public care. Finally, strategic commissioners must relate their understanding of demand to that of actual and potential users of care services.
Strategic commissioners	In the past this would probably have meant the commissioning and contracting functions in social care. However, taking a holistic view of the market means also encompassing those involved in housing, planning and community development, as well as, for example, health and education.

<sup>1</sup> Some of the concepts explored in this paper have been derived from earlier work by IPC with the National Market Development Forum (NMDF). The NMDF is a work stream of the Think Local, Act Personal Partnership and further information is available at [www.thinklocalactpersonal.org.uk](http://www.thinklocalactpersonal.org.uk)

Phrase	Comments
Diverse, appropriate and affordable provision	<p>There is a balance to be struck here:</p> <p>Diverse may mean a choice of providers or a choice of different services from one provider. It does not mean a market where there are many providers all offering the same service.</p> <p>'Appropriate' may have a wide range of interpretation; for example, an older person's rehabilitation service may not be appropriate for a young physically disabled adult; a foster carer may offer an ideal care environment but be too far from a child's original home to be acceptable.</p> <p>Affordable does not mean 'at any price' but equally, it does not always mean the lowest price. This is the case whether the purchaser is a local authority or an individual buying independently, or through a direct payment.</p>
Deliver effective outcomes	<p>The word 'outcomes' is being used more extensively in public care. However, there is a difference between simply stating a set of outcomes that are desired, as compared to paying for that service by the achievement of those outcomes. An example may be where the purchase of home care moves from purchasing by cost and volume to one where the purchase is based around a set of rehabilitative or re-ablement goals.</p>
Now and in the future	<p>Market facilitation needs to combine both short and long term strategic approaches. Of immediate concern will be day to day issues over supply and demand. However, as most providers assert, the key to a successful market is about consistency of demand and price. Investment requires predictability about how the market will behave and longevity if new ideas are to mature and develop.</p>

In the 'Fulfilled Lives Supportive Communities Commissioning Framework and Guidance (2010)' commissioning is described as essentially a sequential series of activities centred around 4 quadrants:



Market facilitation and the MPS form part of the 'securing services' quadrant, intended to contribute realistically and constructively to ensuring that the relationships between commissioners, providers and services is constructive, mature and above all valuable for service users. They are only part of the overall commissioning task, but are increasingly important as local authorities aim to work constructively with all of the many different providers of services in their local communities to best meet the care and support needs of their citizens.

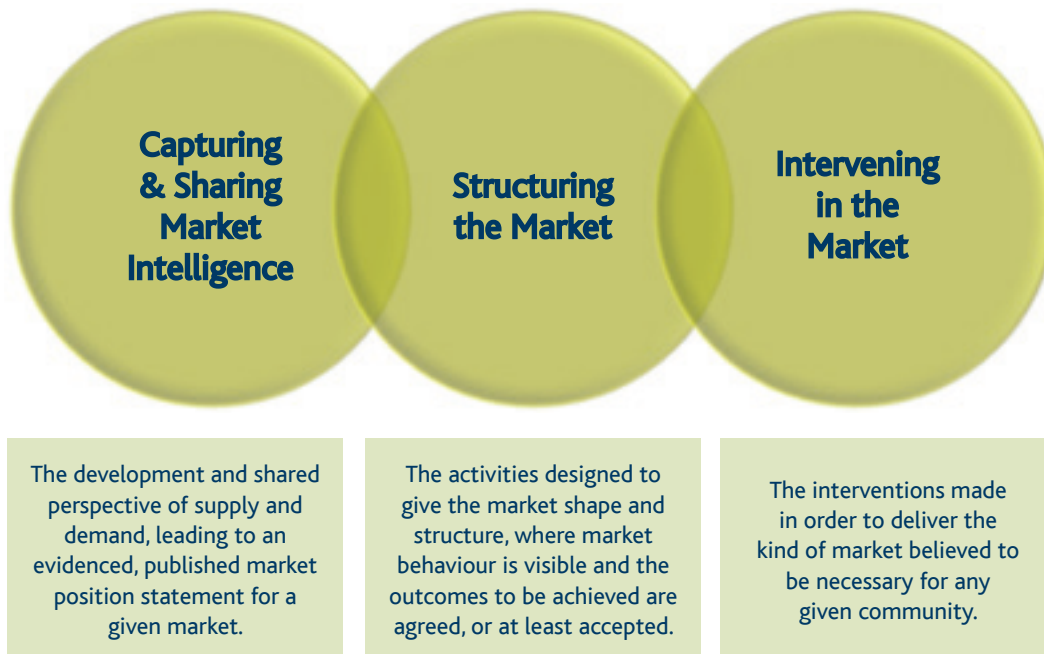
As Wales looks to build further on its legacy of community-based services and promote and encourage citizen-directed service models<sup>2</sup> and social enterprises<sup>3</sup>, local authorities will need to use the discipline of commissioning to ensure that its resources promote service choice and that the social care market in the local area is vigorous and able to offer real choice to citizens. Potentially more and more services will develop and grow through direct provision to individual citizens, and the local authority role will be less to do with contract management on behalf of citizens, and more about helping to ensure that the local area has a range of providers who understand and can meet the needs of the population. Systematic market facilitation through shared intelligence and on-going dialogue will be a key way in which this takes place.

<sup>2</sup> See for example the Wales Alliance for Citizen Directed Support <http://wacds.org.uk/>

<sup>3</sup> See for example specific provisions in the Social Services and Well-being (Wales) Bill 2013

## 4. Market facilitation activities

The market facilitation task is complex, and it requires a new set of activities and skills from commissioners.



Considering each of these in turn:

### 4.1 Capturing and sharing market intelligence

This involves ensuring that the local authority is well informed about the market, understands the factors that influence demand and supply and has a clear vision of what good quality care looks like and the outcomes that it will achieve. A commissioner would naturally want to know, for any market, who provides what, where, to whom and at what price. However, they would also need to answer some of the following questions:

- What does quality look like?
- How sustainable are the care businesses that serve the local area?
- Is there sufficient diversity and flexibility of services to meet local need or is the market dependent on very few providers, where the service is delivered at the provider's convenience rather than that of the consumer?
- What are the deficiencies in current provision?
- What do consumer surveys tell us about the future shape of provision?

The social care market has close interaction and interdependence with the markets for health, education, housing, transport and leisure and can have a significant impact on local economies. Therefore, a full understanding of the market should involve working with other public care commissioners in gathering and sharing data, wherever possible. It is vitally important that this information is not just seen as belonging to the local authority. It is valuable information which if shared with providers and potential providers can help them make good business decisions and develop their services to meet the future needs of the population. The local authority needs to use the intelligence to explain to all stakeholders the current status of the social care market and to identify what it should look like at a fixed point in the future.

Once data has been captured and analysed it forms the basis of a market position statement (MPS). The MPS is intended primarily for providers, although it can be of interest to consumers, to help them understand and respond to a local authority's commissioning intentions. We will look at the contents of the MPS in more detail later in this document.

## 4.2 Structuring the market

Structuring the market involves making explicit how the local authority intends to perform and behave to influence the market. For example, an activity that supports providers to change the shape of purchasing from 'cost and volume' to 'commissioning outcomes' would be market structuring activity.

Structuring the market may involve work with other key stakeholders such as health, housing and planning colleagues. Other examples of market structuring could involve working with planners to produce guidance that reflects long term demand for care homes and supported housing in the context of older people or learning disability. It may also mean identifying and removing barriers to market entry faced by specific providers; developing channels to gather ideas from providers about new models of care, or piloting innovative approaches.

Market structuring may also involve the local authority developing the skills and competencies of its own staff so that they are better equipped to facilitate the market.

## 4.3 Market intervention

Market intervention brings the results of the intelligence gathering and analysis and the market structuring together to deliver the desired market. This may include, for example, stimulating particular parts of the market with financial incentives; offering specialist training; supporting providers with business planning; working with providers and consumers in order to deliver good quality information; creating vehicles for consumer feedback on service provision; or, setting up not for profit ventures.

## 5. What is a market position statement?

So, within the overall market facilitation task, a market position statement is a key product to help with capturing and sharing market intelligence. It has the following characteristics:

- It presents a picture of current demand and supply and possible future trends.
- It is a brief, analytical document that is clear about the distinction between description and analysis. It explains the local authority's priorities based on an evaluation of the data and evidence.
- It supports its analysis by bringing together material from a range of sources such as Joint Strategic Needs Assessments, surveys, contract monitoring, market reviews and statistics into a single document. The data presented should help providers to develop effective business plans.
- An MPS should cover all potential and actual users of services in the local area, not just those accessing state funds.



## 6. What questions does an MPS need to address?

As a succinct and authoritative analysis of the local market, the MPS is likely to need to address some or all of the following questions if it is to be effective. Some of these questions will be straightforward, and it will be easy to secure and analyse the relevant data. To answer other questions however, new data and new approaches will be needed.

<b>Demand</b>	<ul style="list-style-type: none"> <li>● What are the broad population trends and which sectors of that population will grow the fastest?</li> <li>● Are there geographical distinctions in the way populations are distributed?</li> <li>● What is the relationship between the whole population and people who currently receive a service? Is it possible to distinguish between populations that are known, those that we should know and those that are likely to remain unknown? Are there changes in demand that providers are experiencing and are these quantifiable?</li> <li>● Are there market sectors where there are particular problems in meeting need?</li> <li>● How might past trends over time match the future trajectory of demand?</li> <li>● What surveys of the general public and of service users have been conducted? Can these be brought together with material from inspection reports and national research into clear indications about future trends and desires?</li> </ul>
<b>Supply</b>	<ul style="list-style-type: none"> <li>● What is the current distribution of services in relation to the population? What does service take up look like over time?</li> <li>● Have we been able to identify those who fund their own care and support and if so what is the distribution between the state funded and the person funded service?</li> <li>● Is this a stable market, a market that is growing or a market that is in decline and what are the consequences of any of these positions?</li> <li>● What is considered to be the threshold of quality, how good is local performance as shown through complaints, inspections and so on?</li> <li>● Are there services that we would currently see as over, or under supplied and why?</li> <li>● Which services are financially vulnerable, which have grown and which diminished?</li> <li>● Are there some providers who have a significant market share?</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>● What sensitivity is there to price and what relationship has been established between price and service quality. Are there sectors of the market where people would be prepared to pay more for enhanced provision?</li> <li>● Have we outlined what we would consider a good service to look like, in what volumes to match demand and explained why the local authority has come to that conclusion?</li> <li>● Have we been clear about the likely future level of resourcing by the local authority both in terms of estimating likely future service purchase and the resources the Authority might offer to the sector, eg, training, etc,</li> <li>● Is there a clear plan for how the MPS might be used and a process by which providers can respond to the Local Authorities market analysis?</li> </ul>

## 7. What might an MPS actually look like?

An MPS will of course have to be developed to meet the needs of specific population groups, and length and detail will vary. Nevertheless there are some common characteristics and the table below outlines what might typically be contained in an MPS for social care.

Section	Key Elements
A summary of the direction the local authority and its commissioning partners wish to take and the purpose of the document	<ul style="list-style-type: none"> <li>Summarises the outcomes to be achieved and any elements of policy, legislation and regulation which will have an impact on the market.</li> <li>Contains a summary of the key elements of the analysis presented in the individual sections below.</li> <li>This section should be written last of all and ideally be no more than one page.</li> </ul>
The local authority's predictions of future demand, identifying key pressure points	<ul style="list-style-type: none"> <li>An analysis of the current population and anticipated projections for the coming 5 to 10 years for the relevant market sector. It will identify the impact any population change may have on future demand for services.</li> <li>The analysis should cover the whole population of potential service users, including those who fund services themselves and those funded by the local authority either in part or in total. Consumer perspectives should be represented here.</li> <li>Highlights particular aspects of demand now and in the future; for example, by geography (which wards have high density) and by nature (dementia, profound and multiple disabilities et cetera), and whether this is likely to increase, remain the same or diminish. This analysis will include the rationale on which such estimates are being made.</li> </ul>
The local authority's picture of the current state of supply covering strengths and weaknesses within the market	<ul style="list-style-type: none"> <li>A review of current spend on services across the relevant market including public private and voluntary sector resources.</li> <li>A quantitative picture of supply, looking at what services are provided, to whom, where and in what volume. Particular issues to look out for could be: does the profile of service provision match likely future demand; are services located in the areas of highest need: do the services available offer genuine choice?</li> <li>A qualitative picture of current supply indicating those areas where services appear not to be meeting required standards or user's requirements or outcomes. These may be based on reports, of complaints, of user surveys mystery shopper exercises and the like.</li> </ul>
Identified models of practice the local authority and its partners will encourage	<ul style="list-style-type: none"> <li>A review of how the commissioning organisation understands supply in terms of the latest evidence about the best approaches and methodologies.</li> <li>An explanation of the desired models of care and an analysis of whether they are matched by current provision.</li> <li>Suggestions about how the market might deliver change.</li> <li>A statement about whether commissioners will provide or directly purchase any services; whether they will seek framework agreements with providers and whether these will be based on outcomes.</li> <li>An explanation of areas where the local authority will seek to influence the inspectorate, service users, carers, or national government.</li> </ul>

Section	Key Elements
The likely future level of resourcing	<ul style="list-style-type: none"> <li>● The local authority's priorities: where it wishes to see services develop and those areas where it would be less likely to purchase.</li> <li>● A description of likely future public care resourcing, and how this might drive the vision identified in the previous section.</li> <li>● If less funding is to be made available, an explanation about this and of the opportunities for the market to propose or be involved in ideas for service re-design and new delivery models. If particular service areas are vulnerable to funding reduction, an analysis of the likely service areas which might be de-commissioned or discouraged and how the local authority will seek to achieve these changes.</li> </ul>
The support the local authority will offer towards meeting its identified model	<ul style="list-style-type: none"> <li>● An analysis of what the authority anticipates will be the impact of more service users purchasing or negotiating their own care, and the impact this might have on the market.</li> <li>● Opportunities to shape future thinking and also any particular offers that may be available to providers; for example, outcome based contracts, land availability, help with planning consent, guaranteed or underwritten take up of services, training and development, business and management support.</li> </ul>

Putting together an effective MPS is not easy. It requires good information, succinct analysis and a willingness to engage with many different stakeholders in a way which promotes a genuine and meaningful dialogue. It can be worth the effort, however, in helping local authorities and their partners secure the kind of services that will be needed to meet the needs of its local population into the future.



## 8. Frequently asked questions

Many authorities across England, Scotland and Wales are working on market position statements at the current time. Some of the most frequently asked questions from their work are outlined below, along with suggested answers:

### 8.1 Must we produce a market position statement?

There is no statutory requirement for any local authority in Wales to produce a market position statement. However, developing an accurate picture of need and markets is a key activity within the Local Government Implementation Plan and the development of market position statements for the social care market is considered good practice.

### 8.2 Can we co-produce the market position statement in partnership with providers?

While the analysis of demand and supply can be developed jointly, the local authority needs to be clear about its approach to facilitating the market. For example, the local authority needs to communicate clearly the level of resourcing available; its expectations about models of service delivery and the outcomes required. Essentially, the market position statement is a clear statement of public sector plans for the health and social care market.

### 8.3 Our providers stretch across more than one local authority boundary, can we produce a joint market position statement?

In some instances it may make sense for authorities to work together in producing a market position statement. This may provide mutual support to its authors. More importantly, it may also reflect local provider communities; for example, where regional contracts are in place. However, where there are differences, such as in demand, or in terms of the shape of future support, or in approach to best practice between authorities, these would need to be identified clearly and explicitly.

The regional collaborative agenda is developing a pace in Wales and many local authorities are engaged in regional initiatives to improve their capacity to manage

the commissioning of social care services. For some markets, such as looked after children placements, specialist care for people with mental health problems or learning disabilities, or complex substance misuse problems for example, regional collaboratives might be an ideal place where regional MPS could be developed.

### 8.4 How do we define a market or are we talking about all social care?

The definition needs to focus on the provider's own definition of their market, rather than on how the local authority defines its functions. Therefore, if providers feel they serve a market defined by their consumers, such as older people learning disability, then a market position statement should be produced for each of those market areas. It is important to describe what is within, and sometimes beyond, the scope of a market position statement. For example, some market position statements will focus on particular populations, such as all older people; others will focus on sections of the population, such as older people with dementia.

### 8.5 What is meant by market facing?

This is a document that should be written for people who provide services in a particular market, whether state, private or voluntary sector. Therefore, it should aim to give its readers information they may not already know and which would be helpful in their future business planning. It should offer a clear picture of what gaps there are in the existing care market and identify what consumers and potential consumers are saying about services. It should be a document that encourages dialogue between the local authority and its providers.

### 8.6 We already have plenty of information about demand, why do we need to do more analysis?

In understanding demand, it can be unhelpful to simply extrapolate population data without applying more subtle and detailed analysis. For example, population trends may vary over time; evidence-based practice may influence and change perspectives on the most appropriate types of intervention for client groups; or legislation and policy direction may change.

## 8.7 What is meant by 'whole populations'?

Previously many social care strategies have looked only at known and state-funded populations. In considering the 'whole market' it is important to broaden the analysis. For example, we may know how many older people in residential care are being funded by the state but it might also be helpful to know how many people are self-funding and to consider the future implications for the market. Some authorities may not have ready access to such information. However, it can be helpful if the market position statement provides clarity about current knowledge and indicates what the local authority wishes to better understand in the future.

## 8.8 Why does the local authority need to do anything, if in the future social care consumers will drive demand and supply?

The market facilitation process recognises the potential changing role of the local authority from the provider of services to one where it seeks to influence, develop and encourage the market towards the provision of good quality care.

## 8.9 Do we still need commissioning strategies?

The answer to this question is 'sometimes'! The commissioning strategy is likely to be a more wide ranging, extensive and detailed strategic document which indicates broad commissioning intentions and is supported by a detailed needs assessment which offers a statement of demand. The market position statement primarily describes the key elements of a strategy in terms of the local authority approach to suppliers, an approach to supply. The diagram in Appendix 1 illustrates the relationship between Commissioning Strategies, market position statements and Procurement Plans.

## 8.10 How should we disseminate a market position statement?

Local Authorities are increasingly establishing 'Provider Forums' to ensure they have regular and direct dialogue with their providers. This can be an obvious and useful starting point for disseminating market position statements. Others are developing dedicated areas on their corporate websites which can be used to indicate

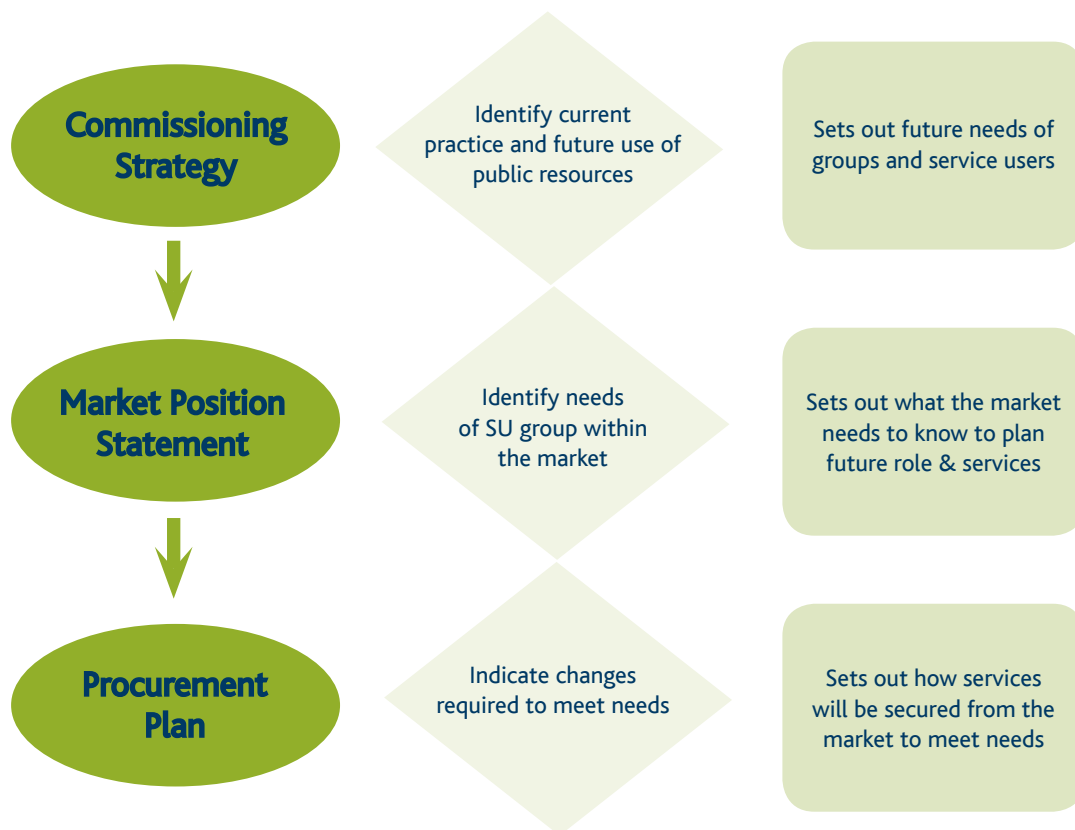
commissioning intentions and related information such as a market position statement.

## 9. Finally

The role of local authorities is changing and current and future policy both suggest that its task in facilitating and supporting the development of the social care market will become increasingly important. This is a complex and demanding task and commissioners will need new skills and new tools to help them address them. Developing and using Market Position Statements to build a good picture of the market, and then work with providers to help them respond to need is not the only way in which this can be done, but it is certainly one approach that is already proving useful



## Appendix 1: The relationship between a commissioning strategy, market position statement and a procurement plan



## Appendix 2: Example materials for adult social care

The following is an illustrative market position statement based on information provided by a number of authorities in Wales.

### Adult Social Care Market Position Statement for Dragonshire

#### **A summary of the direction the local authority and its commissioning partners wish to take and the purpose of the document**

This document is aimed at existing and potential providers of adult social care and support. It represents the start of a dialogue, between the Council, people who use services, carers, providers and others about the vision for the future of social care markets. We are committed to stimulating a diverse, active market where innovation and energy is encouraged and rewarded and where poor practice is actively discouraged.

#### **The local authority's predictions of future demand, identifying key pressure points**

The future of Adult Social Care is going to see significant change. By 2030 nearly 20% of the population will be aged 65 or over (*source : Daffodil*) The demand for services to older people will increase as the shape of local and national populations changes as a result of advances in medical science meaning more people are living longer. The rise in demand will not be matched by Government Funding meaning a new approach is needed to how social care and support is delivered. Regardless of funding, people will want more choice about how their needs are met. A recent customer survey indicated that a priority is to support people to live independently and stay at home longer.

#### **The local authority's picture of the current state of supply covering strengths and weaknesses within the market**

There are seventy three registered care homes for older people in the area, providing around 2,900 places. 4 of these homes are operated by the Council, the remainder by the independent sector. The Council's information systems indicate that the authority currently purchases around 60% of all places on behalf of its residents.

Twenty four of the care homes (with 741 beds) qualify for the Council's additional fee for dementia payments. There are a further 80 Dementia beds within two of the Council run care homes.

There are a number of care homes that are in single ownership and some of these providers have stated that when the property market improves, they intend to retire and sell their property. It has already been identified that some of these homes are not viable mainly due to size but some are in a poor state of maintenance.

#### **Identified models of practice the local authority and its partners will encourage**

We are developing a new way of helping people who have lost life skills to regain their independence through a joint health, social care and support service. We have piloted this in a rural part of the authority by creating integrated teams of health, social care and domiciliary workers.

Referrals are received direct from GPs or therapists based in hospitals, or re-directed from our call centre. There are no waiting lists and no criteria, as these immediately create barriers.

The service is free of charge, is available for up to six weeks and maximises a persons' independence so that, ideally, no on-going support is needed. However, it is recognised that, at times, long term care and support may need to be delivered following and episode of reablement.

This service helps prevent hospital admissions and facilitates timely discharges so that a customer can return home straight from an acute hospital without the need for a transfer to a community hospital.

We would like providers to support reablement by offering services which demonstrate:

- Flexible and integrated care and support provision to achieve customer outcomes.
- Workforce development, including contributing to assessments and reviews in order to better respond to customer needs.
- Consistency of carers and care.
- Working with a reablement ethos to enable independence.
- Connecting customers with wider community opportunities.
- Staff training and development of services to respond to the increasing numbers of customers with dementia.
- Transport and simple pricing structure.
- It is looking to work with providers of services who are able to develop services which will be cost-effective and of high quality in a highly rural and geographically dispersed area.
- That they can deliver services using the medium of the Welsh Language equally as well as those delivered in English.

### **The likely future level of resourcing**

- The adults, health and community well-being budget in 2011/12 was 5.9% less than the previous year; the budget available in 2012/13 is a further 4.5% less; and in 2013/14 a further 4.1% less.
- Last year the Council spent £76 million (net) with over 590 organisations on social care services for older people in 2010/11 which constituted 55% of the total adult social care spend, 3% higher than the national average.
- As can be seen from the table there has been a consistent proportionate increase in expenditure on residential care for older people. We need to change this balance so that a greater proportion of the budget is spent on preventative services and through cash payments and a smaller proportion spent on registered care.

### **The support the local authority will offer towards meeting its identified model**

The Council wants to support voluntary sector providers via infrastructure organisations to come together to build more social capital in the district. It also wants to reduce requirements placed on providers to work within complex contractual arrangements and to make it easier for existing and new providers to enter the market and work with us. The Council aims to continue to encourage local people to help influence local commissioning decisions and will always consult with its residents to shape the services they want.

## Appendix 3: An example market position statement for children’s services

This example is taken from ‘Commissioning for Families with Complex Needs’ developed by IPC as part of the Commissioning Support Programme on behalf of the Children’s Improvement Board. It can be found at <http://ipc.brookes.ac.uk/>

The participants in the all Wales consultation workshop felt this worked example is helpful when producing market position statements for Children’s Service. It illustrates how to describe:

- The audience for the market position statement.
- An analysis of demand.
- The current state of supply.
- The models of best practice which the commissioners wish to encourage.
- Any significant and specific changes to service delivery required by the local authority.
- The likely levels of funding.
- A description of how the local authority will support providers to deliver the desired outcomes.

This worked example is illustrative of a market position statement for children’s centre services. It is not a policy model, but is used here to show how these guidelines might be used in practice.

### Market Position Statement for Children’s Centres in Anytown’

Children’s centres are the lynchpin of our provision for vulnerable families with younger children. We must look to make best use of our total local resource to ensure the best outcomes for all children aged 0–5 including, in particular, our most vulnerable children.

This market position statement is aimed at:

- organisations interested in providing children’s centre services – what kinds of services we are looking to support.
- families – how we intend to shape the local children’s centre market to best meet your needs, and how you might be encouraged to participate.

It represents the start of a dialogue about the future of local children’s centre markets. We aim to give a clear insight into the ways in which we propose to commission children’s centre services and our vision for how other key services, such as health visiting, speech and language services, and early years education can work together with and use children’s centres as a vital local hub for more vulnerable families.

It takes into consideration the findings of the recent review of children’s centre and allied services, which was shared with local families and providers, our Commissioning Strategy for Early Years Services, and our knowledge of good or emerging practice. It also takes account of national developments in relation to health services overall as well as recent national reviews such as the Kennedy Report (2010), the Review of the Early Years Foundation Stage (2011), the Allen Review (2011) and the Munro Review of Child Protection Services (2011).

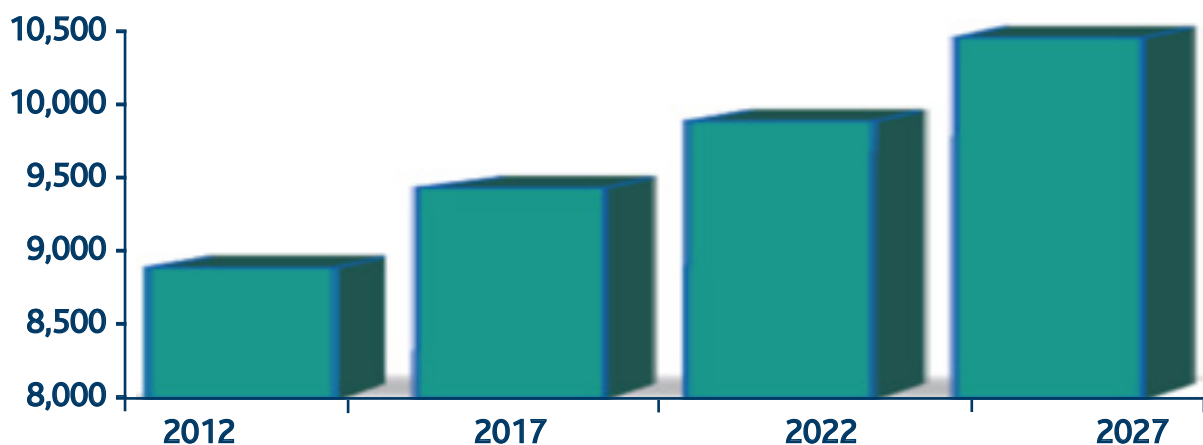
We are committed to stimulating a diverse, active market where innovation and energy is encouraged and rewarded and where poor practice is actively discouraged. This is an important role for the Children and Young People’s Partnership. It is a key part of shaping a place where all families, but particularly those with emerging additional needs, can engage in and benefit from services that build on family strengths, and address difficulties, with the important ultimate aim of improving outcomes for children.

Organisations interested in providing children’s centres can learn about our intentions as a purchaser of services, and our vision for how services might respond to the national drive for greater targeting of the more vulnerable families.

### Likely future demand and pressure points

Our population of children aged 0–5 years old is set to grow slowly over the next 10 to 15 years.

**The population aged 0-5**



Families currently registered with and using children’s centre services come from a range of backgrounds and some centres are succeeding in attracting a greater diversity and number of vulnerable families. However, overall the balance is too much in favour of parents who could get by without additional help, and we are not succeeding in stimulating sufficient demand for services aimed at supporting more vulnerable families, for example:

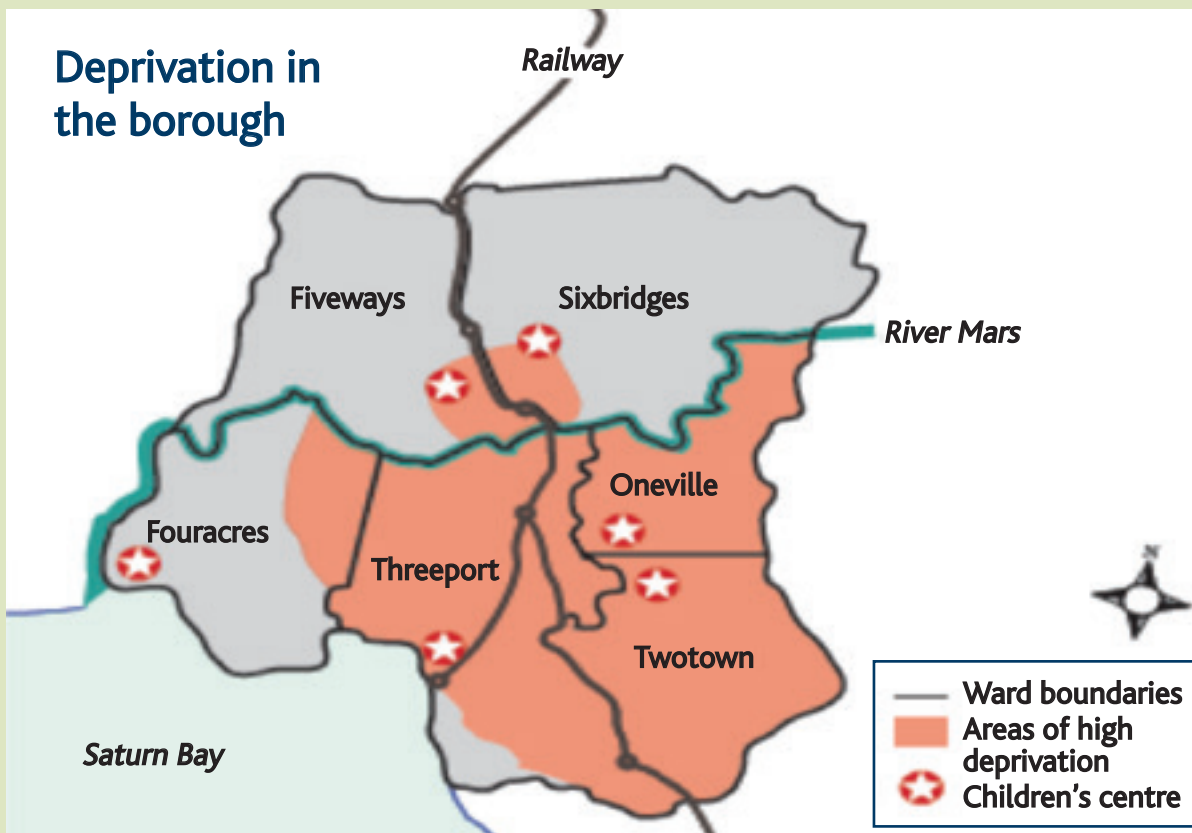
- families who have children with disabilities.
- younger parents, including in particular teenage parents.
- families with parental mental ill-health.
- families with parents who drink too much or take drugs .
- families where there is domestic violence.

Demand for key aspects of children’s centre services such as parenting education classes is high but, again, insufficient numbers of families with additional needs are being supported to attend these.

Families – including vulnerable families accessing children’s centres – travel; they don’t necessarily choose to access their local centre.

Wards that are more deprived and have a greater number of indicators of family vulnerability currently include: Oneville, Twotown and Threeport although there are pockets of deprivation and vulnerable families in all of our six wards.

## Deprivation in the borough



Although our local breastfeeding rates are high overall compared with the national picture, rates for vulnerable groups such as younger mums remain stubbornly low.

Vulnerable families do access Team around the Family locally, but in much greater numbers for older children and young people. We have very low demand for in Team around the Family arrangements for families of 0–5 year olds. There is no clear record of the extent to which Team around the Family families are accessing children's centre services and little connection between the two.

Demand for specialist children in need services for under 5s continues to grow locally, but not as steeply as in other areas.

Our recent children's centre parents' survey has revealed that many existing users are happy with the services on offer but would like more flexible opening hours including more evening and weekend activities, more groups for fathers, more welcoming reception areas, and greater one-to-one support where appropriate.

### The current state of supply

We currently fund a children's centre in each of the six wards. There is a mixed economy of provision, with some centres and services delivered by the council and some by the voluntary and community sector.

The 'offer' and activity type and level varies greatly from centre to centre. Most have standard offers such as nursery provision, parent and toddler groups, employment advice and general family support. However, not all centres offer evidence-based parenting programmes, which we know are central to effective early intervention, or more intensive and tailored support for families identified as being vulnerable, or outreach services that can target and support families who might find it difficult to ask for help.

Services provided by the more successful children’s centres include a combination of relatively open-access and attractive services such as nursery provision, baby massage and parent and toddler groups with:

- evidence-based parenting programmes such as Webster Stratton.
- dads’ groups.
- parents’ forum.
- outreach services.
- breastfeeding support.
- access to other services, such as counselling and other mental health support services, housing and debt advice.
- young parents’ group.
- bespoke family support.
- community activities.
- activities for disabled children and their families.

### **Models of practice we will encourage and support**

We retain a commitment to commissioning children’s centre services, focusing resources in particular on areas where there is greatest deprivation and need. Children’s centres will continue to need to deliver a ‘core’ offer including:

- energetic and visionary leadership.
- welcoming reception areas and easy access information, advice and support services.
- working together with families and involving of parents in shaping delivery.
- services to support a range of good outcomes for children – seen through the eyes of the child.
- contribution to the sufficiency of good quality child care locally.
- targeted family support.

### **Particular changes we are seeking to achieve over the period 2012–15**

1. A shift away from focusing on growing registrations from across the overall population of 0–5 year olds to extending the number of vulnerable children and their families accessing outcomes-focused, flexible, and evidence-based support. Particular target groups include:

- families where housing, debt, parental mental ill-health, substance misuse, disability, social isolation and/or domestic violence or a combination of these are impacting or likely to impact on parenting capacity.
- younger parents, including in particular teenage parents.
- fathers.
- children with disabilities – particularly those with emerging behavioural or speech and language problems.

These services will not need to be delivered exclusively by children's centre staff. They will need to be developed with and complement other targeted services locally including those commissioned by the local authority to support children in need, and community health services. Services should focus on increasing child resilience and preventing or reducing risk factors including parent and environmental factors. They will need to be well planned and for sufficient duration to make a difference.

2. A further extension of outreach activities – including evidence-based engagement with and planned programmes of support for vulnerable families. Again, these services will need to complement and not duplicate others including community health services.
3. A greater focus on parenting skills development, including evidence-based group and individual programmes of support designed to enable consistency, capacity and motivation of parents to nurture children.
4. A further extension of children's centres as hubs for other services, including in particular community health services such as health visiting, speech and language therapy and midwifery.
5. Facilitation of parent or community-led universal activities and consideration of charging mechanisms for open access provision – to ensure that these services remain viable and provide a bridge into more targeted or specialist services if necessary.
6. A shift towards maximising the use of children's centre 'space' for a range of activities relevant to children and young people as well as the wider community. This will include stimulating grass roots including parent-led groups or individuals to make creative use of the space and support networks of parents.
7. Greater focus on the facilitation of and support for crucial integrated systems to help vulnerable families move smoothly through and across services – for example CAF, Team around the Family, lead or key professional activities. This may involve children's centre staff sometimes 'holding onto the baton' and so taking the lead on these systems and activities.

We would also like to explore the extent to which children's centres can become hubs for integrated workforce learning and continuous improvement in early childhood services – and would welcome the views of all concerned about how this could work in practice.



## Likely future level of resources

Our income from central government for children's centre services is reducing overall from £2 million per annum for the period 2010–2011 to £1.8 million per annum for the periods 2011–12 and 2012–15. Central government funding thereafter is uncertain.

We have in the past supplemented the central government grant for children's centre services with a local authority contribution of £600,000 per annum for allied family support services. In keeping with overall council reductions, we will need to reduce this spend on children's centre related family support services to £400,000 per annum for the period 2012–13.

We will therefore have approximately £2.2 million to spend on children's centre services in the year 2012–13, compared with £2.4 million in 2011–12 and £2.6 million in 2010–11.

We will need to ensure that this money works as hard as it can in the next period of time, and that we make best use of the total resource available locally to ensure the future applicability, effectiveness and sustainability of services. In this context, we will wish to prioritise our direct spend on:

- activities that are evidence-based, particularly for more vulnerable families, for example centres offering parenting education classes.
- improved engagement with vulnerable families, in order to support them to access and benefit from children's centre services.
- activities that draw other services in to support vulnerable families, such as Team around the Family, lead professional services or contributions to Team around the Family, access to facilities for peripatetic workers who need to meet with families and access to drop-in clinics for community health professionals.

We anticipate that children's centres will also need to and indeed can realistically attract and increase their income from a number of other sources, including:

- families accessing universal offers such as nursery, parent and toddler groups, baby massage and parenting education.
- the wider community, for example by offering space to let to community groups.
- professional groups and organisations, for example through the provision of training for groups of practitioners in relation to areas of children's centre expertise, such as:
  - building family capabilities and resilience.
  - how to engage with harder to reach families, and keep them engaged for long enough to make a difference.
  - improving communication and language development in early years by all professionals – the significance of and tools to support this area of development.
  - use of local tools and systems to consistently and effectively identify and act on early signs of need.

## What we can offer to support innovation and change

### The support we will offer families

Information and advice about the services on offer at children's centres, including those services that will no longer be on offer or no longer free of charge, and the rationale for the change(s).

Information about the services they can expect to receive from each children's centre and their likely cost.

Support to develop parent or community-led groups to organise and access funding for services to be delivered in or run from children's centres, including activities for disabled children, peer support for vulnerable parents and community events.

Information and advice to individual families about accessing services or funding for services particularly for vulnerable groups, such as nursery provision, short breaks and specific grants via our Family Information Service (FIS).

To support effective integrated services we will continue to share information about the needs of vulnerable families and communities across the local authority area and by Clinical Commissioning Group.

We will encourage statutory agencies to use children's centre premises and services as local area 'hubs' to meet with families, professionals and teams and to access training.

We will support Team around the Family arrangements in relation to vulnerable families who have needs greater than one agency can address and who would benefit from this approach.

### The support we will offer providers

A transparent tendering process for all children's centre services to commence in April 2012 including: provider involvement in developing the detailed specification for local authority funded services; outcome-based procurement processes and contracts; and the award of contracts for a 3 year period (from 2012 to 2015).

One-off time limited funding and complementary advice for all commissioned children's centres to develop, or further develop, aspects of the 'offer' that may be currently underdeveloped, such as training, Team around the Family lead professional work, parenting education and outreach services.

Direct advice, support and coaching from our Business and Innovation Unit for all providers to identify and grow legitimate sources of income from other sources, including families, the wider community and professional groups or organisations, and to develop their business plans.

Direct marketing and brokerage of children's centre offers that include paid-for services, for example through our Family Information Service (FIS) or with our partner organisations interested in early intervention and prevention services for families.

Information for existing users about the changes in services we are making across the local authority area, and why.

Continued access for key children's centre staff, including children's centre leaders to our own workforce development programme.



# Agenda Item 6.1

By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 6.2

By virtue of paragraph(s) vi of Standing Order 17.42

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