

SL(6)519 – The Listed Buildings (Partnership Agreements) (Wales) Regulations 2024

Background and Purpose

These Regulations are part of a package of secondary legislation which brings into force and implements the Historic Environment (Wales) Act 2023 (“the 2023 Act”).

The 2023 Act received Royal Assent in June 2023. It is a consolidation Act designed to restate primary and secondary legislation, and incorporate some related caselaw and practice. The package of regulations restate secondary legislation relating to the designation, protection and management of the historic environment in Wales. They also make consequential amendments to secondary legislation.

These Regulations make provision about partnership agreements relating to listed buildings in Wales, specifically about consultation and publicity requirements on making or varying such agreements. They replace the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021, which are revoked by regulation 7 of these Regulations.

A partnership agreement is an agreement between the owner of a listed building in Wales and either the planning authority or the Welsh Ministers or both. There may also be additional parties to a partnership agreement, including any person who has special knowledge of or special interest in the listed building, generally or specifically. A partnership agreement may grant listed building consent under section 89(1) of the 2023 Act in respect of a programme of works specified in the agreement. The works may only be for the alteration or extension of the listed building to which the agreement applies, although a partnership agreement may relate to more than one listed building. That consent may be subject to conditions.

Procedure

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following 3 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation



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The term “partnership agreement” is defined in regulation 2. However, there are numerous instances in these Regulations where variations to this term are used, specifically “agreement” and “existing agreement”. For example, “existing agreement” is used in regulations 3(2) and 6(b), and “agreement” is used in regulations 3(2)(b) and (3), and 6(b)(i) and (ii).

Similarly, the term “planning authority” is defined in regulation 2. However, there are instances where the term “authority” is used, such as in regulation 5(2)(d)(iii) and (5).

Finally, there are three instances in regulation 5(9), in the definition of “owner”, where the term “building”, rather than the defined term “listed building”, is used. There are other instances where the term “buildings” is used, rather than the defined term “listed building”, which appear appropriate as they are not used in the context of a listed building, such as when describing “buildings of architectural or historic interest more generally” in regulation 5(2)(d)(iii) and (7).

Whilst it appears in each of these instances that the intention of the relevant provision remains clear despite the use of a variant term, and it may be possible to rely on section 9 of the Legislation (Wales) Act 2019 to interpret these variations in accordance with the defined terms in regulation 2, it may have been helpful for consistency if the defined terms had been used throughout the Regulations.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 5(2)(d), for clarity it would have been helpful for the opening text to have read, “give a copy of the notice **specified in sub-paragraph (c)** to-” (additional text emphasised), given that regulation 5(2) does not only deal with the provision of a notice and the information it must contain. For example, regulation 5(2)(a) concerns the making of certain documents available for public inspection, rather than the provision of a notice.

3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 5(9), a “long-term tenant” is defined as meaning “a tenant under a lease which is granted or extended for a fixed term that has at least **2 years** left to run” (emphasis added).

Similarly, an “owner” is defined in the same regulation as including (as well as the owner of the freehold estate) “a tenant under a lease of the building or part granted or extended for a fixed term that has at least **7 years** left to run” (emphasis added).

This appears to create a situation where a tenant under a lease for a fixed term that has at least 7 years left to run may be captured by both the definition of “long-term tenant” and “owner”, as the definition of “long-term tenant” is not limited to tenants subject to a fixed term lease of at least 2 years but less than 7 years.

It is noted that this does not appear to create any inequitable consequences in practice as a planning authority is required to give a copy of a notice set out in regulation 5(2)(d) to any “long-term tenant” and/or “owner” who is not a proposed party to the draft agreement or



draft variation. But it is noted that a planning authority who is the “owner” of a listed building or buildings to which a draft agreement or draft variation relates is subject to regulation 5(7), in accordance with regulation 5(6). This does not apply to a planning authority who is a “long-term tenant”.

The Welsh Government is asked to clarify whether the intention behind regulation 5(9) is that tenants under a lease for a fixed term that has at least 7 years left to run will be captured by both the definition of “long-term tenant” and “owner” and, if that is the case, whether there are any consequences to which the Committee should be made aware.

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd

Regulation 4(4) provides that, during the consultation period specified under regulation 4(2)(b), the Welsh Ministers may give notice to the planning authority that they require further time in which to consider the draft agreement or draft variation. Regulation 4(5) provides that, if the Welsh Ministers give this notice, the consultation period is extended for the period specified in that notice.

It does not appear that any statutory limitation is placed on this power to extend the consultation period by notice. For example, no provision is made for a maximum period by which the consultation period may be extended by the Welsh Ministers.

Whilst it is acknowledged that regulation 5(4) and (5) is a restatement of the provision set out in regulation 5(4) and (5) of the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021, the Welsh Government is asked to clarify how this power is used in practice and whether any consideration has been given to the placing of a statutory limitation on it.

5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd

It is noted that some of the provisions of the 2023 Act referred to in these Regulations were not in force on the date that these Regulations were made. As an example, this includes section 76(5) of the 2023 Act, which is referred to in the definition of “listed building” in regulation 2.

However, in accordance with the Historic Environment (Wales) Act 2023 (Commencement) Order 2024, the remaining provisions of the 2023 Act (except section 147, which is not referenced in these Regulations) will come into force on 4 November 2024, the same date on which these Regulations come into force.

Welsh Government response

A Welsh Government response is required in relation to reporting points 1-4.



Legal Advisers
Legislation, Justice and Constitution Committee
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