

The Historic Environment (Wales) Act 2016 — Fact Sheet 3

Listed buildings — Designation, certificates of immunity from listing, temporary stop notices and urgent works

The Historic Environment (Wales) Act 2016 ('the 2016 Act') is the first legislation enacted specifically for the historic environment of Wales. It makes important changes to the Planning (Listed Building and Conservation Areas) Act 1990 ('the 1990 Act' — <http://www.legislation.gov.uk/ukpga/1990/9/contents>) that affect how Welsh listed buildings are designated, protected and managed. The full text of the 2016 Act and its accompanying Explanatory Notes are available on: <http://www.legislation.gov.uk/anaw/2016/4/contents>

Consultation, interim protection and right of review (sections 24 and 25)

Consultation

The 2016 Act has introduced a requirement for formal consultation if the Welsh Ministers are proposing to:

- list a building, or
- delist a building.

The Welsh Ministers must serve notice of their proposal on: a building's owner and occupier, the relevant local authority and any other person whom they believe to have special knowledge of or interest in buildings of architectural or historic interest. At least 28 days must be allowed for the return of written representations.

Interim protection

From the beginning of a consultation on a proposal by the Welsh Ministers to list a building, that building will enjoy interim protection as if already listed. It will be an offence to damage it or undertake works that alter its character without listed building consent.

Interim protection will last until the Welsh Ministers reach a decision on the designation and communicate it to the owner, occupier and relevant local authority. A list of buildings under interim protection is published on the Cadw website (<http://cadw.gov.wales/historicenvironment/policy/historicenvironmentbill/statutorynotices/?lang=en>).

If the Welsh Ministers choose not to list a building, any person with an interest in it when interim protection took effect may claim compensation for loss or damage directly attributable to its operation. Under the procedures set out in the Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment No. 2) Regulations 2017 (<http://www.legislation.gov.uk/wsi/2017/638/contents/made>), a written claim for compensation must be submitted to the Welsh Ministers within six months from the date that interim protection ceased.

Right of review

If the Welsh Ministers decide to list a building, the 2016 Act gives the owner or occupier the right to request a review of the decision. The Listed Buildings (Review of Listing Decisions) (Wales) Regulations 2017 (<http://www.legislation.gov.uk/wsi/2017/644/contents/made>) supplement the Act's provisions by setting out the grounds for reviews and detailed procedural matters.

A review may only be sought on the grounds that a building is not of special architectural or historic interest. The Planning Inspectorate has been appointed to undertake all reviews on behalf of the Welsh Ministers.

An application for a review, including full particulars of the applicant's case, must be made within 12 weeks of the receipt of the Welsh Ministers' notice of designation. Any interested parties who contributed to the original consultation and any other persons or bodies considered appropriate by the Planning Inspectorate must be informed of the review and may make representations. The Planning Inspectorate may elect to use one or more of the following methods in conducting a review:

- written representations,
- a hearing, or
- a public local inquiry.

Once the Planning Inspectorate has gathered sufficient evidence and reached a decision, it must inform all of the participants in the review of its findings. The Welsh Ministers must make any amendments to the listing that they deem appropriate to implement the review decision.

Application conditions for certificates of immunity from listing (section 27)

An application for a certificate of immunity from listing — which provides assurance that a historic building will not be listed for 5 years — can now be made at any time. Planning permission, either granted or applied for, is no longer a prerequisite.

Temporary stop notices (section 29)

While the 1990 Act incorporated an enforcement notice for listed buildings, it provided no powers to require an immediate stop to unauthorised works. The 2016 Act remedies that omission by giving powers to Welsh local planning authorities to issue temporary stop notices for listed buildings.

The notice will require specified works to be stopped for 28 days from the date it is first posted on the building. If an agreed resolution to the situation cannot be reached while the works are suspended, the notice can be followed by further enforcement action or prosecution. Failure to comply with a temporary stop notice constitutes an offence in addition to any offence arising from the unauthorised works.

If a temporary stop notice is incorrectly served or withdrawn without the grant of listed building consent, a person with an interest in the building concerned may claim compensation from the local planning authority for any loss or damage arising directly from the effect of the notice. A written claim must be submitted within six

months in accordance with the procedures set out in the Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment No. 2) Regulations 2017 (<http://www.legislation.gov.uk/wsi/2017/638/contents/made>).

Amendments to urgent works (section 30)

Local authorities and the Welsh Ministers can use urgent works powers to take measures urgently necessary for the preservation of a listed building. The 2016 Act has significantly broadened the scope of urgent works so that they can be applied to any listed building provided that they do not unreasonably interfere with residential use. If a building is in residential use, the local authority must give the occupier at least seven day's notice of its intention to undertake urgent works.

Any expenses incurred by a local authority during urgent works will now attract interest at Bank of England Base Rate plus 2% (as set out in the Listed Buildings (Urgent Works) (Interest on Expenses) Order 2017 — <http://www.legislation.gov.uk/wsi/2017/640/contents/made>) until recovery. The 2016 Act also makes the costs of urgent works and any accrued interest a charge on the land on which the building stands. A local authority may enforce this local land charge by a number of means, including the appointment of a receiver or an enforced sale.

Disclaimer

This fact sheet does not provide an authoritative legal interpretation of the provisions of the Historic Environment (Wales) Act 2016. For any legal matters, direct reference should be made to the text of the Act, which is available on <http://www.legislation.gov.uk/anaw/2016/4/contents>