

**NATIONAL ASSEMBLY FOR WALES**

**COMMUNITIES, EQUALITY AND LOCAL GOVERNMENT COMMITTEE: 2 JULY 2015**

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**HISTORIC ENVIRONMENT (WALES) BILL**

**EVIDENCE BY DR CHARLES MYNORS, FRTPI, FRICS, IHBC, BARRISTER**

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**Introduction**

1. I am a barrister in private practice in London, specialising in planning law and, in particular, the law as it relates to the historic environment, trees and forestry, outdoor advertising, and ecclesiastical law. Before being called to the Bar I was a planning officer in a London borough for nine years, dealing with design, historic buildings and planning policy. I am also a lecturer in historic buildings law at Oxford Brookes University (where I am a visiting professor) and at the University of Bath. And I am Chancellor of the Diocese of Worcester.
2. I have degrees in architecture, and town and regional planning, and a diploma in law. I am a Fellow of the RTPI and the RICS, a founder member of the IHBC, and called to the Bar in England and Wales and in Northern Ireland. I was awarded a doctorate (in law) by the University of Cambridge in 2010.
3. I have for many years been the leading authority on the law relating to the historic environment, and my text book *Listed Buildings, Conservation Areas and Monuments* (first edition, 1989; fourth edition, 2006) is the leading authority in the field. The fifth edition will be published by Sweet & Maxwell (under the title *Listed Buildings and Other Heritage Assets*) in late 2015.
4. I am also actively involved in law reform, and am working with the DCLG in London, the Office of Parliamentary Counsel, the Welsh Government and the Law Commission on a project to consolidate and codify planning law in England and Wales – to replace the 63 statutes dealing with this area of activity with, at most, nine for England and nine for Wales. Attached is the text of a paper delivered at a conference in Liverpool in 2014, and more recently at the Statute Law Society in London (updated to incorporate the result of the recent General Election).
5. Although I am associated in various capacities with the organisations referred to above, and others, my views do not necessarily represent those of any particular organisation.

## **The Bill as drafted**

6. The general principles of the Bill are sensible. If historic buildings are to be protected, that protection should be effective; the management of the historic environment should be sustainable; and all decisions should be transparent and accountable.

### *Scheduling and listing procedure*

7. In terms of transparency, it seems desirable that there should be consultation on scheduling and listing, although it will lead to a number of unmeritorious claims that particular monuments and buildings – especially the latter – are not worthy of protection. But that is better than court action that almost always fails.
8. The proposals to require consultation on proposed scheduling (**clauses 3 and 4**) and listing (**clauses 24 to 26**) therefore seem sensible, provided that interim protection is provided in the meanwhile, and compensation in the event of the item not being scheduled or listed.
9. Making statutory the register of parks and gardens (**clause 18**) is sensible – although it is noticeable that the existing non-statutory register seems to function satisfactorily. It might be worth considering extending it to other forms of assets, including battlefields – which would seem to be more appropriately designated by a national body (Cadw) rather than by local authorities (see **clause 33(2)(e)**).

### *Selection of buildings etc to be protected*

10. Clearly one critical element in any system of protecting the historic environment is to be clear as to what is being protected, and why. That will largely be a matter of policy, as every building is from the moment of its first occupation a historic building – it has a history – the question is whether it has significance sufficient to justify its protection being a material consideration in planning decisions. But that will be a matter of planning policy, not law – and a balance will have to be struck between a number of competing factors.
11. As for which monuments and buildings should be selected for special protection, that has to be a matter for Ministers, on the basis of specialist advice. But the statutory criterion – special architectural or historic interest – should remain intact, and should not be watered down, for example by the inclusion of the particular circumstances of the owner (financial or otherwise). Such factors can perfectly properly be taken into

account when a particular proposal is being put forward, but should not affect in any way the initial decision to protect.

12. Proposed section 1AE(6)(a) of the 1979 Act (to be introduced by **clause 3(1)** of the Bill) and section 2D(6)(a) of the 1990 Act (to be introduced by **clause 24(1)**) should be considered accordingly. Removal from a schedule or a list should be justifiable if it can be shown that there was an administrative error (for example, the wrong building was included – it happens!) or if it can be demonstrated that the monument is not of national importance or that the building is not of special architectural or historic interest.

#### *Scheduled monument consent*

13. The existing scheduled monument consent legislation is poorly drafted – the Bill was apparently the last one to be considered by Parliament before the 1979 election – but the relevant provisions are not much used in practice, and so there is no great imperative to improve them. However, the various provisions in the Bill designed to tighten up controls over works to scheduled monuments and related offences (**clauses 5 to 10, 12, and 15 to 17**) seem perfectly sensible.
14. The miscellaneous provisions relating to archaeology (**clauses 17, 19 to 22**) also seem reasonable.

#### *Injunctions and temporary stop notices for monuments and listed buildings*

15. A specific power for the Ministers to serve an injunction (**Clause 14**) in relation to monuments may be useful, since courts are more likely to be sympathetic to the use of specific powers rather than more generalised powers relating to criminal activity.
16. However, given that unauthorised works to scheduled monuments and listed buildings already constitute a criminal offence, and are or will be subject to specific powers as to injunctions, there seems little point in introducing temporary stop notices (**clauses 13 and 29**).

#### *Non-listing certificates and heritage partnership agreements*

17. The extension to Wales of the changes to the certificates of non-listing (**clause 27**) introduced by the 2013 Act seems sensible enough, although it is not clear why a separate section 6A is required – but that is merely a drafting point.

18. The introduction of heritage partnership agreements (**clause 28**) seems sensible in principle. Again, given that legislation already exists for this in England, it might have been more straightforward simply to adopt that into the law of Wales.
19. And extending the same idea to monuments seems reasonable (**clause 11**).

#### *Other provisions*

20. The changes relating to urgent works notices (in **clause 30**) seems to be sensible; it will be interesting to see whether they are in due course extended to England..
21. The provisions as to historic environment records (**clauses 33, 34**) are to be welcomed. Here too, it would be helpful to have a corresponding provision for England.

#### **Other provisions that could be considered**

22. The Bill as drafted is thus in general perfectly satisfactory. It is noticeable that some of its provisions are simply adopting those made for England by the 2013 Act, but are none the worse for that.
23. But it is perhaps worth considering whether this is not a unique opportunity to go further and have a system in Wales that is actually better than the one operating in England. The attached Annex accordingly makes a number of suggestions as to additional provisions that might be worth considering for inclusion. They are inevitably detailed, and I would be more than happy to discuss them with the relevant officials of the Welsh Government.

#### *General duties in relation to heritage assets*

24. There already exists a general duty in relation to the exercise of stay functions with respect to conservation areas, but this could usefully be extended to relate to any enactment, and to take into account the special considerations that apply in relation to land near the boundary of an area. But the existing duty in respect of listed buildings is, surprisingly, much more narrowly drafted, and could with advantage be extended. These two provisions – in the form of amendments to the Planning (Listed Buildings and Conservation Areas) Act 1990 – are in clause 1 in the Annex.
25. There is at present no similar duty in relation to scheduled monuments. This could be introduced into the Ancient Monuments [etc] Act 1979 – see clause 3 in the Annex.

26. These duties are specifically referred to in the context of the determination of planning applications in a proposed amendment to section 70 of the Town and Country Planning Act (TCPA) 1990, to be introduced by clause 5 in the Annex.
27. It would also be possible to introduce a new duty in relation to world heritage sites, which are currently hardly mentioned in UK primary legislation. This could perhaps be in the body of the Bill, rather than being in the form of an amendment to existing legislation. The precise wording of such a duty would need to be carefully considered.

#### *Listing procedure*

28. It is perhaps unfortunate that the opportunity has not been taken to clarify the status of buildings and structures ancillary to those buildings included in the list, the significance of listing grades, and the date when the curtilage of a listed building is to be examined – all of which are issues that cause problems in practice.
29. The provisions of Schedule 1 in the Annex insert new sections 1A and 1B into the P(LBCA)A 1990, to provide a basic procedure for listing in Wales, and an improved definition of a “listed building”. Care would be needed to mesh these provisions with the section 2A to be introduced by clause 24.

#### *The control of works to listed buildings*

30. In England, the 2013 Act abolished the need for “conservation area consent” to be obtained for the demolition of unlisted buildings in a conservation area, and instead introduced a new offence of failing to obtain planning permission for such demolition – which is of course already development by virtue of TCPA 1990, section 55(1A)(a). It is noticeable that the present Bill has not adopted that approach.
31. But it would be possible to adopt that approach not only in relation to demolition in a conservation area, but also in respect of all works to listed buildings and scheduled monuments. At present, any works to a heritage asset require not only planning permission but also either listed building consent, scheduled monument consent, or (in Wales) conservation area consent. This is hugely wasteful of resources, since in practice either both types of consent are granted or both are refused. But there have to be two applications, two sets of drawings, two committee reports, two decisions, two appeals, and two enforcement notices. And no fee is payable for the extra application.

32. To avoid this, all that is necessary is to amend slightly the definition of development that requires planning permission. Clause 4 in the Annex thus inserts a definition of “heritage development” (as a new section 55(5A) of the TCPA 1990), which essentially encompasses all the works that currently require any of the “special” consents. And Clause 6 extends section 196D of the TCPA 1990 to include all heritage development – thus ensuring that there is no loss of control over such works.
33. Once the scope of “development” has thus been extended to include such works, there is then no need for the separate parallel consent regimes of listed building consent, scheduled monument consent and conservation area consent, which can simply be done away with – see clauses 7 and 8 in the Annex.
34. There would need to be a series of detailed consequential amendments, principally to the TCPA 1990, to ensure that the special features of those regimes are imported into the mainstream planning permission regime – again, to ensure that there is no loss of control. The necessary provisions are set out in Schedule 2 in the Annex. This looks complex, as it is necessary to retain the existing regime in relation to England; but if England were to follow suit it would be possible simply to repeal the greater part of the P(LBCA)A 1990 without further ado.
35. The result of these changes would be to simplify hugely the overall control system, so that only one application was needed for any works to a listed building, with one committee report, one appeal, and one enforcement notice.

#### *Areas of archaeological importance*

36. The Government undertook some years ago to scrap these – which have never been used in Wales in any event. This would be a good opportunity to fulfil that promise – see clause 9 in the Annex.

#### **Consolidation**

37. A number of those who have responded to this Bill and to other pieces of legislation proposed in either England or Wales have commented that it is surely time for amending legislation of this kind to be followed by a major exercise of consolidation. But this is a much larger exercise than just looking at the legislation affecting the historic environment. The paper attached explores one way in which this might be achieved.

38. The law in Wales is a key element in this, as a significant element in the justification for a major consolidation exercise is to produce two parallel statutory codes – one for England, and one for Wales – initially similar but distinct, and maybe gradually diverging over the coming years.
39. This fits in with the aim of the Law Commission to improve planning law in Wales generally.

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## ANNEX.

### ADDITIONAL PROVISIONS TO BE INSERTED INTO THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

#### 1. General duties relating to listed buildings and conservation areas

- (1) The Planning (Listed Buildings and Conservation Areas) Act 1990 shall be amended as follows.
- (2) After section 6, insert –

##### **“6A General duty as respects listed buildings in Wales**

- (1) This section applies where any powers under any enactment are exercised with respect to –
  - (a) a listed building situated in Wales; or
  - (b) any land that forms part of the setting of such a building.
- (2) In any case to which this section applies, special attention shall be paid to the desirability of preserving and enhancing the building, its setting and any features of special architectural or historic interest which it possesses.”
- (3) After section 71, insert –

##### **“71A General duty as respects conservation areas in Wales**

- (1) This section applies where any powers under any enactment are exercised with respect to any buildings or other land in or in the immediate vicinity of a conservation area in Wales.
- (2) In any case to which this section applies, special attention shall be paid to the desirability of preserving and enhancing –
  - (a) the character and appearance of the relevant area and
  - (b) every building in the relevant area, its setting and any features of special architectural or historic interest which it possesses.
- (3) The “relevant area” referred to in subsection (2) is –
  - (a) the conservation area containing the buildings or other land with respect to which the powers referred to in subsection (1) are to be exercised;
  - (b) the part of that conservation area containing those buildings or that land;
  - (c) any other conservation area whose character or appearance will be affected by the exercise of those powers; and
  - (d) any part of any conservation area mentioned in paragraph (c) whose character or appearance will be affected by the exercise of those powers.
- (4) Sections 56 and 90(2) to (4) shall have effect in relation to buildings in conservation areas in Wales as they have effect in relation to listed buildings, subject to such exceptions and modifications as may be prescribed by regulations.”



## 2. Listing procedure

- (1) The amendments to the Planning (Listed Buildings and Conservation Areas) Act 1990 in Schedule 1 shall have effect.

## 3. General duties relating to scheduled monuments

- (1) After section 1A of the Ancient Monuments and Archaeological Areas Act 1979, insert –

### **“1B General duty as respects scheduled monuments in Wales**

- (1) This section applies where any powers under any enactment are exercised with respect to –
  - (a) a scheduled monument in Wales; or
  - (b) any land that forms part of the setting of such a monument.
- (2) In any case to which this section applies, special attention shall be paid to the desirability of preserving and enhancing the monument, its setting and any features of special historic, architectural traditional, artistic or archaeological interest which it possesses.”

## 4. Heritage development

- (1) Section 55 of the Town and Country Planning Act 1990 is amended as follows.
- (2) In the title of the section, after “of “development”” insert “, “heritage development””.
- (3) After subsection (1A) insert:

“(1B) For the purposes of this Act, the carrying out of any works consisting of or including heritage development shall be taken to be development.”
- (4) At the start of subsection (2) insert “Subject to subsection (1B), ”
- (5) After subsection (5) insert –

“(5A) In this Act “heritage development” means the carrying out of works in Wales –

  - (a) for the demolition of a listed building;
  - (b) for the alteration or extension of –
    - (i) the exterior of a listed building, or
    - (ii) the interior of a principal listed building, within the meaning of section 1(5)(a) of the Planning (Listed Buildings and Conservation Areas) Act 1990,in any manner which would affect its character as a building of special architectural or historic interest;
  - (c) for the demolition of a building in a conservation area;
  - (d) resulting in the demolition or destruction of or any damage to a scheduled monument;

- (e) for the purpose of removing or repairing a scheduled monument or any part of it or making any alterations or additions to it;
- (f) any flooding or tipping operations on land in, on or under which there is a scheduled monument.”

## 5. Determination of planning applications

- (1) For subsection 70(3) of the Town and Country Planning Act 1970 substitute –
  - “(3) Subsection (1) has effect subject to –
    - (a) the following provisions of this Act;
    - (b) section 11 of the Countryside Act 1968;
    - (c) in England, sections 66, 67, 72 and 73 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
    - (d) in Wales, sections 6A and 71A of that Act and section 1B of the Ancient Monuments and Archaeological Areas Act 1979; and
    - (e) section 149 of the Equality Act 2010.
  - (3A) Section 39 of the Planning and Compulsory Purchase Act 2004 shall apply to the carrying out by an authority in Wales of their functions under this section as it applies to the carrying out of the functions referred to in subsection (1) of that section.”

## 6. Unauthorised heritage development

- (1) Section 196D of the Town and Country Planning Act 1990 is amended as follows.
- (2) For the heading above the section, substitute –
  - “Conservation areas and heritage development*
  - 196D Offence of failing to obtain planning permission for demolition in conservation areas in England and heritage development in Wales”**
- (3) In subsection (1), for “relevant demolition” substitute “works to which this section applies”.
- (4) In subsection (2), for “relevant demolition” substitute “such works”, and after that subsection insert:
  - “(2) This section applies to the carrying out of works for:
    - (a) relevant demolition in England; and
    - (b) heritage development in Wales, within the meaning of section 55(5A).”
- (5) In subsection (4)(a) and (c), for “relevant demolition was” substitute “works were”; and in subsection (4)(d), for “relevant demolition” substitute “works”.

## 7. Listed building consent not required

- (1) The following provisions of Part I of the Planning (Listed Buildings and Conservation Areas) Act shall not apply in relation to works to listed buildings wholly within Wales:
- (a) sections 7 to 26 (authorisation of works affecting listed buildings);
  - (b) sections 26C to 26G (orders granting listed building consent);
  - (c) sections 26H to 26K (certificates of lawfulness);
  - (d) sections 28, 28A and 30(1)(b) (compensation);
  - (e) sections 32 to 37 (listed building purchase notices);
  - (f) Chapter IV (enforcement);
  - (g) Chapter VI (miscellaneous and supplemental);
  - (h) Schedule 2A (local listed building consent orders: procedure).

## **8. Scheduled monument consent not required**

- (1) Sections 2, 3 and 4 of and Schedule 1 to the Ancient Monuments and Archaeological Areas Act 1979 (control of works to scheduled monuments) shall not apply in relation to works to scheduled monuments wholly within Wales.

## **9. Areas of archaeological importance**

- (1) Part II of the Ancient Monuments and Archaeological Areas Act 1979 (areas of archaeological importance) and Schedule 2 to that Act (designation orders) shall be repealed.

## **10. Consequential amendments**

- (1) The amendments in Schedule 2 shall have effect, being amendments to ensure that the abolition of listed building consent and scheduled monument consent do not lead to any loss of protection for listed buildings and scheduled monuments.

## SCHEDULE 1. LISTING PROCEDURE

1. The Planning (Listed Buildings and Conservation Areas) Act is amended as follows.
2. (1) Section 1 (listing of buildings of special architectural or historic interest) is amended as follows:
  - (a) At the end of the heading, insert “in England”;
  - (b) In subsection (1), after “historic interest”, insert “in England”;
  - (c) Omit subsection (2);
  - (d) In subsection (4), omit “in relation to buildings which are situated in England, ”.
- (2) After section 1 of that section insert –

**“1A. Listing of buildings of special architectural or historic interest in Wales**

  - (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 Welsh Ministers shall compile lists of such buildings, or approve, with or without modifications, such lists compiled by other persons or bodies of persons, and may amend any list so compiled or approved.
  - (2) In considering whether to include a building in a list compiled or approved under this section, the Welsh Ministers 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 manmade object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.
  - (3) Before compiling, approving (with or without modifications) or amending any list under this section the Welsh Ministers shall consult 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.
  - (4) In this Act and in the planning Acts, subject to the provisions of this section –
    - (a) “listed building” means, in relation to a building situated in Wales, a building which is for the time being included in a list compiled or approved by the Welsh Ministers under this section 1 (referred to in this Act as a “principal listed building”), and
    - (b) any object or structure –
      - (i) that is by its nature, location and function ancillary to a principal listed building, and has been so since before the date on which that building was first included in the list, and
      - (ii) that is one to which subsection (5) applies,shall, subject to subsection (8), be treated as part of the building.

- (5) An object or structure is one to which this subsection applies if –
  - (a) it is not fixed to a principal listed building but –
    - (i) is within its curtilage, and has been so since before the date on which it was first included in the list, and
    - (ii) forms part of the land, and has done so since before 1 July 1948; or
  - (b) it is fixed either to a principal listed building or to a building that is one to which paragraph (a) applies, and has been continuously so fixed since before the date on which the principal listed building was included in the list.
- (6) Each principal listed building in Wales shall be identified in the list by means of a description, and shall be assigned a grade.
- (7) The description of a building in the list shall be only for the purpose of enabling its identification, and it shall not be assumed that any object, structure or feature mentioned in that description is necessarily itself of special architectural or historic interest or that any object, structure or feature not so mentioned is necessarily not of any such interest.”
- (8) In a list compiled or approved under this section, an entry for a building situated in Wales may provide—
  - (a) that an object or structure mentioned in subsection (4)(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.

3. After section 1, insert –

**“1B Amendment of list in Wales**

- (1) The Welsh Ministers may amend any list compiled or approved under this section 1 in relation to buildings situated in Wales, and such an amendment may consist of –
  - (a) the inclusion of a building in a list;
  - (b) the exclusion of a building from a list;
  - (c) the amendment of the description identifying a building in a list or of the grade assigned to it; or
  - (d) the amendment of the entry in relation to the matters referred to in subsection 1A(8).
- (2) In considering whether to make any such amendment, the Welsh Ministers shall take into account the matters mentioned in section 1A(2),
- (3) Before amending any list under this section the Welsh Ministers shall consult with the persons or bodies mentioned in section 1A(3).
- (4) Where an amendment is made under paragraphs (c) or (d) of subsection (1) with respect to the listing of any building, the references in section 1A(4) and (5) to the date on which the building was included in the list shall have effect as if they were to the date of any such amendment.”

## SCHEDULE 2. HERITAGE DEVELOPMENT: CONSEQUENTIAL AMENDMENTS

### *Ancient Monuments and Archaeological Areas Act 1979 (c. 46)*

1. The Ancient Monuments and Archaeological Areas Act 1979 is amended as follows.
2.
  - (1) Section 2 (control of works affecting scheduled monuments) is amended as follows.
  - (2) In subsection (2), after “following works” insert “carried out in relation to a scheduled monument other than one which is wholly within Wales”.
  - (3) For subsections (8) to (11) substitute –
    - “(8) In proceedings for an offence under this section, it shall be a defence to prove all of the following matters –
      - (a) that works to the monument were urgently necessary in the interests of safety or health or for the preservation of the monument;
      - (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the monument by works 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 either to the local planning authority or (in Scotland) to the Secretary of State as soon as reasonably practicable.
    - (9) Where works to which this section applies are executed without first having been authorised, and, scheduled monument consent is subsequently granted by the Secretary of State under section 2A of this Act, that grant of consent shall not effect the liability of any person to be prosecuted for an offence under this section.
    - (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 imprisonment for a term not exceeding six months or a fine not exceeding £20,000 or both; or
      - (b) on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
    - (11) 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 which appears likely to accrue to him in consequence of the offence, or which at the time the offence was committed appeared likely to accrue to him in consequence of it.”
3. After section 2 insert –

**“2A Scheduled monument consent**

  - (1) Scheduled monument consent may be granted either unconditionally or subject to conditions.

- (2) Without prejudice to the generality of subsection (1), conditions attached to a scheduled monument consent may include
  - (a) conditions with respect to the manner in which or the persons by whom the works or any of the works are to be exercised; and
  - (b) a condition requiring that the Secretary of State or a person authorised by him be afforded an opportunity, before any works authorised by the permission are begun, to examine the monument and its site and carry out such excavations as appear to be desirable for the purposes of archaeological excavation.
- (3) Part I of Schedule 1 to this Act shall have effect with respect to applications for, and the effect of, scheduled monument consent.”

4. After section 7 (compensation for refusal of scheduled monument consent), insert –

**“7A Compensation for refusal of planning permission**

Sections 7 to 9 of this Act shall apply in relation to a scheduled monument within Wales as if reference to scheduled monument consent were a reference to planning permission that is necessary only because the monument in question is a scheduled monument.”

*Town and Country Planning Act 1990 (c. 8)*

5. The Town and Country Planning Act 1990 is amended as follows.

6. In subsection 57(7) (planning permission required for development), after “subject to” insert “the provisions of section 317A (which relate to ecclesiastical buildings) and those of”.

7. After section 65 insert –

**“65A Publicity for applications for heritage development**

- (1) This section applies where an application for planning permission (other than permission under section 73A) for any development of land in Wales is made to a local planning authority and the development would, in the opinion of the authority, affect –
  - (a) a listed building or its setting;
  - (b) a scheduled monument or its setting; or
  - (c) the character or appearance of a conservation area.
- (2) The local planning authority shall –
  - (a) post on its website; and
  - (b) for not less than seven days display on or near the land,  
a notice indicating the nature of the development in question and naming a place within the locality where a copy of the application, and of all plans and other

documents associated with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice under paragraph (a) or, if later, the posting of the notice under paragraph (c).

- (3) Regulations under section 62 may make provision in relation to applications to which this section applies or to particular categories of such applications –
- (a) requiring local planning authorities to notify some or all applications to the Welsh Ministers, or to other persons as may be so specified, by sending to them such details as may be specified;
  - (b) specifying a period or periods starting with the date of such notification within which authorities are not to grant permission; and
  - (c) requiring authorities to send to those who were notified of applications the decision taken by the authorities on those applications.”

8. In section 77 (reference of applications to Secretary of State), after subsection (2) insert –

“(2A) Without prejudice to the generality of subsection (2), a direction under that subsection may require applications for planning permission to be referred to the Welsh Ministers instead of being dealt with by the local planning authority in any case where the permission is required for heritage development included in an application for an order under section 1 or 3 of the Transport and Works Act 1992.”

9. In section 78 (right to appeal against planning decisions etc), after subsection (4) insert –

“(4A) In the case of an appeal which relates to:

- (a) a listed building in Wales; or
- (b) a building in Wales that is for the time being subject to a building preservation order under section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990,

the appellant may include as the ground or one of the grounds of 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 Welsh Ministers under section 1A of that Act or, as the case may be, should not be included in such a list.

- (4B) In the case of an appeal which relates to a monument in Wales that is included in a schedule compiled and maintained by the Secretary of State under section 1 of the Ancient Monuments and Archaeological Areas Act 1979, the appellant may include as the ground or one of the grounds of appeal a claim that the monument is not of national importance and ought to be removed from the schedule.”

10. After section 79 insert –



**“79A Determination of appeals: supplementary**

- (1) In the case of an appeal such as is mentioned in section 78(4A)(a), the Welsh Ministers may exercise their power under section 1B of the Planning (Listed Buildings and Conservation Areas) Act 1990 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.
  - (2) In the case of an appeal such as is mentioned in section 78(4A)(b), the Secretary of State may exercise –
    - (a) his power under section 1 of that Act to amend the list compiled or approved under that section by including in it the building to which the appeal relates, or
    - (b) his power under section 3 of that Act to notify the local planning authority that he does not propose to include that building in that list.
  - (3) In the case of an appeal such as is mentioned in section 78(4B), the Secretary of State may exercise his power under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 to exclude from the schedule compiled under that section the monument to which the appeal relates.”
11. In section 143(4)(b) (effect of Secretary of State’s action in relation to purchase notice), after “of this Act or” insert “, in England,”.
12. In section 171B (appeal against enforcement notice), in subsection (2), after “relevant demolition (within the meaning of section 196D)” insert “in England or heritage development in Wales”.
13. In section 173 (contents and effect of enforcement notices), for subsection (12) substitute –  
“(12) Where –
  - (a) an enforcement notice requires steps to be taken which amount to or include development for which planning permission would otherwise be required; and
  - (b) all the requirements of the notice with regard to those steps have been complied with,planning permission shall be treated as having been granted by virtue of section 73A in respect of that development.
14. (1) Section 174 (appeal against enforcement notice) is amended as follows.  
(2) After subsection (2) insert –  
“(2A) In the case of an appeal against a notice which relates to:
  - (a) a listed building in Wales; or

- (b) a building in Wales that is for the time being subject to a building preservation order under section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990,

the appellant may include as the ground or one of the grounds of 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 Welsh Ministers under section 1A of that Act or, as the case may be, should not be included in such a list.

- (2B) In the case of an appeal against a notice which relates to a monument in Wales that is included in a schedule compiled and maintained by the Welsh Ministers under section 1 of the Ancient Monuments and Archaeological Areas Act 1979, the appellant may include as the ground or one of the grounds of appeal a claim that the monument is not of national importance and ought to be removed from the schedule.

- (2BA) In the case of an appeal against a notice which relates to works to a building in a conservation area in Wales, the appellant may include as the ground or one of the grounds of appeal a claim that the restoration of the building to the condition in which it was prior to the carrying out of the works, or that the carrying out of the works required by the notice, is not necessary in the interests of the preservation or enhancement of the character and appearance of the area.

- (c) in subsection (2C) –

- (i) after “relevant demolition (within the meaning of section 196D)” insert “in England or heritage development in Wales”; and
- (ii) for “relevant demolition was”, in both places where it occurs, substitute “works were”.

15. After section 176(2A) (determination of appeals) insert –

- “(2B) In the case of an appeal such as is mentioned in section 174(2A)(a), the Welsh Ministers may exercise their power under section 1A of the Planning (Listed Buildings and Conservation Areas) Act 1990 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.
- (2C) In the case of an appeal such as is mentioned in section 174(2A)(b), the Welsh Ministers may exercise –
  - (a) their power under section 1A of that Act to amend the list compiled or approved under that section by including in it the building to which the appeal relates, or
  - (b) their power under section 3 of that Act to notify the local planning authority that they does not proposes to include that building in that list.
- (2D) In the case of an appeal such as is mentioned in section 174(2B), the Welsh Ministers may exercise their power under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 to exclude from the schedule compiled under that section the monument to which the appeal relates.”

16. Before section 318 (ecclesiastical property), insert:

**“317A Exceptions for certain ecclesiastical buildings**

- (1) Subject to the following provisions of this section, planning permission is not required for the carrying out of heritage development if it affects only the interior of an ecclesiastical building in Wales which is for the time being used for ecclesiastical purposes.
- (2) For the purposes of subsection (1) –
  - (a) a building shall be taken to be used for the time being for ecclesiastical purposes if it would be so used but for the carrying out of the development in question; and
  - (b) a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office shall be treated as not being an ecclesiastical building.
- (3) The Welsh Ministers may by regulations provide that subsection (1) shall only apply in such cases as may be specified, and such regulations may –
  - (a) make provision for buildings generally, for descriptions of buildings or for particular buildings;
  - (b) make different provision for buildings in different areas, for buildings of different religious faiths or denominations or buildings in different uses;
  - (c) make such provision in relation to part of a building as may be made in relation to a building, and may make different provision for different parts of the same building;
  - (d) make different provision with respect to works of different descriptions or according to the extent of the works.
- (4) Regulations under this section may contain such supplementary and incidental provisions, including consequential adaptations or modifications of the operation of any provision of this Act, or of any instrument made under this Act, as may appear to the Secretary of State appropriate.”

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

17. The Planning (Listed Buildings and Conservation Areas) Act 1990 shall be amended as follows.

18. In section 7(1), after “listed building” insert “in England”.

19. In section 66(1) (general duty as respects listed buildings),

- (a) in the heading to the section, after “listed buildings” insert “in England”.
- (b) in subsection (1), after “a listed building” insert “in England”;
- (c) in subsection (2), after “a local authority” insert “in England”.

20. In section 72(1) (general duty as respects conservation areas)
  - (a) in the heading to the section, after “conservation areas” insert “in England”; and
  - (b) in subsection (1), after “a conservation area” insert “in England”.
  
21. In section 73 (publicity for applications affecting conservation areas),
  - (a) in the heading to the section, after “conservation areas” insert “in England”.
  - (b) in subsection (1), after “a conservation area” insert “in England”.
  
22. In section 75(11) (cases in which section 75 does not apply), for “demolition of unlisted etc buildings in conservation area” substitute “heritage development”.