



Llywodraeth Cymru
Welsh Government

Welsh Government

Consultation on a proposal for regulations required by the Historic Environment (Wales) Act 2016 and four guidance documents

Annex 2

Draft

Managing Listed Buildings at Risk in Wales

The Historic Environment (Wales) Act 2016 was enacted to make important improvements to the existing systems for the protection and management of the Welsh historic environment. It also stands at the centre of an integrated package of secondary legislation, new and updated planning policy and advice, and best-practice guidance on a wide range of topics. Taken together, these will support and promote the careful management of change in the historic environment in accordance with current conservation philosophy and practice.

This draft document has been published as part of a twelve-week consultation on a proposal for regulations and various guidance documents linked to the implementation of the Historic Environment (Wales) Act 2016. It will close on 13 January 2017. The consultation document, the response form and all of the associated draft guidance documents are available from the Welsh Government's consultation web pages (<https://consultations.gov.wales/>).

This document has been prepared alongside a revised chapter 6, 'The Historic Environment', of *Planning Policy Wales* and the new *Technical Advice Note 24: The Historic Environment*. It can profitably be read in conjunction with them.

A public consultation on chapter 6 of *Planning Policy Wales* closed on 13 June 2016. The chapter is still available on the consultation web page (<https://consultations.gov.wales/consultations/proposed-changes-planning-policy-wales-chapter-6-historic-environment>) and any citations of *Planning Policy Wales* in the current document refer to this version. A final version of chapter 6, incorporating any changes arising from the consultation, will be published later this year.

A public consultation on *Technical Advice Note 24* closed on 3 October 2016 and the analysis of the responses has begun. *Technical Advice Note 24* is still available on the consultation web page (<https://consultations.gov.wales/consultations/proposed-technical-advice-note-tan-24-historic-environment>) and any citations of *Technical Advice Note 24* in the current document refer to this version. A final version of the technical advice note, incorporating any changes arising from the consultation, is expected in spring 2017.

19 October 2016

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

19 October 2016

DRAFT

Managing Listed Buildings at Risk in Wales

Buildings at Risk

Statement of Purpose

Managing Listed Buildings at Risk in Wales explains why listed buildings are important to us all and how they contribute to our well-being. It outlines the critical relationship between a building's condition, use and ownership, and how the careful balance between these elements can be managed to ensure a sustainable future.

Managing Listed Buildings at Risk in Wales also outlines the roles and responsibilities of owners, the Welsh Government and local authorities. It shows how policies and programmes to manage listed buildings at risk can be successful, but also explains the statutory powers that can be used to protect listed buildings at risk where appropriate.

Although the guidance focuses on listed buildings at risk, the principles can be applied to managing any historic building at risk, such as those identified as locally important. Some of the statutory powers apply only to listed buildings.

Managing Listed Buildings at Risk in Wales is aimed primarily at local authority conservation, planning, housing, regeneration and development departments, as well as Welsh Government departments. It may also be of interest to owners, occupiers and agents, as well as local communities and third sector organisations that have a vital role in caring for listed buildings at risk.

Managing Listed Buildings at Risk in Wales is best-practice guidance, which supports *Planning Policy Wales* — Chapter 6: The Historic Environment¹ and *Technical Advice Note 24: The Historic Environment*.²

¹ *Planning Policy Wales* — Chapter 6: The Historic Environment

² *Technical Advice Note 24: The Historic Environment*

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Fast Facts

- Listed buildings are a valuable and irreplaceable resource, and contribute to our well-being.
- There are 30,000 listed buildings in Wales. Although most owners keep their listed buildings in good repair, buildings can quickly become vulnerable or at risk.
- The right combination of use, condition and ownership can help prevent risk to listed buildings.
- Owners, public authorities and other interested agencies working together can best safeguard listed buildings at risk.
- Statutory powers can be used to protect listed buildings at risk.

Introduction

Listed buildings are a precious part of our heritage. They are essential to the character of our landscapes and townscapes, and provide an important connection to our past. They also offer distinctive environments in which to live and work, and to visit and enjoy. In short, properly used and cared for listed buildings contribute to the well-being of our communities. The condition of our listed buildings in Wales — along with other designated historic assets — is one of the indicators of our cultural well-being.³ Promoting and protecting our listed buildings in a stable or improving condition helps to achieve the goals of the Well-being of Future Generations (Wales) Act 2015.⁴

Listed buildings in use are assets in the fullest sense of the word. They represent an investment of energy, materials, skill, labour and knowledge that cannot be replicated. But, to realise their full value, they also need to be kept in good condition and supported by types of ownership that can sustain them for the long term. Fortunately, most of our listed buildings are already well used and kept in good repair by their owners.

Nevertheless, there are empty or neglected listed buildings in Wales. These are wasted assets that spoil the quality of their surroundings and can damage social and economic vibrancy. It is those listed buildings that are at risk through neglect and decay that are the focus of this guidance.

Here, we look at the identification of problems and their causes, and how to manage them through positive action where possible, or enforcement measures where necessary. Our aim is to bring listed buildings into a stable condition, beneficial use and appropriate ownership.

³ [How to measure a nation's progress? National indicators for Wales](#)

⁴ [Well-being of Future Generations \(Wales\) Act 2015](#)

1. Players and Partners

The historic environment is a shared resource, so the fate of our listed buildings matters to us all. Whatever their ownership, there is a strong public interest in the protection of listed buildings. This means that public authorities, as well as private owners, have a stake in managing listed buildings.

1.1 Owners

Owners of listed buildings have a vital part to play in managing our heritage. Like all building owners, they are responsible for maintaining their property and for keeping it in good repair, though they are under no specific legal obligation to do so. With the right care, most listed buildings can fulfil a useful role in the modern world.⁵ Most are cherished and well cared for by their owners who are proud to look after our heritage for their own benefit and for the benefit of future generations.

1.2 The Welsh Government

The Welsh Government recognises the contribution of the historic environment to economic vitality and culture, civic pride, local distinctiveness and the quality of Welsh life. It seeks the conservation and enhancement of historic assets, including listed buildings. The condition of the historic environment is one of the indicators used to help measure progress towards the achievement of the well-being goals established under the Well-being of Future Generations Act (Wales) 2015.⁶

The Welsh Government’s Historic Environment Service (Cadw) commissions a condition and use survey of listed buildings, which provides useful data about those buildings at risk. Cadw also:

- supports organisations that can help with the management of listed buildings at risk, such as the United Kingdom Association of Building Preservation Trusts, the Architectural Heritage Fund and the Prince’s Regeneration Trust
- provides some direct funding support, for example, through capital grants for historic buildings
- gets involved in the development of strategies and partnerships to safeguard listed buildings at risk, such as the Strategic Action Plan for Places of Worship.⁷

Planning Policy Wales sets out the general framework within which local authorities prepare their development plans and carry out development management.⁸ In addition to the conservation of the historic environment, there are several policy areas which can assist with the successful

⁵ *Managing Change to Listed Buildings in Wales*, Welsh Government, Cadw, forthcoming

⁶ [Well-being of Future Generations \(Wales\) Act 2015, How to measure a nation's progress? National indicators for Wales](#)

⁷ [Strategic Action Plan for Places of Worship](#), Welsh Government, Cadw, 2015

⁸ [Planning Policy Wales](#) 2016

management of listed buildings at risk, including planning for sustainability and planning for retail and town centres.

Listed buildings at risk may also benefit from other Welsh Government support, such as targeted regeneration investment, or the Houses into Homes scheme which offers a loans fund designed to bring empty homes back into use.⁹

1.3 Local Authorities

Caring for the historic environment is a key aspect of a local authority's sustainable development responsibilities and contributes to the Welsh Government's seven well-being goals for a sustainable Wales.

Local planning authorities have an important role in the protection and conservation of the historic environment through helping it to accommodate and remain responsive to present-day needs.

In considering whether to grant planning permission which affects a listed building or its setting, local planning authorities have a statutory duty to have special regard to the desirability of preserving such buildings and their settings.¹⁰ This means protecting them from harm, as well as discharging their development management functions appropriately.

Local planning authorities are also well placed to act as advocates for conservation and have a range of tools to help them do this effectively. They can use development plan policies with supporting guidance and strategies to help manage listed buildings at risk.

This might include:

- locally specific policies for the protection or enhancement of listed buildings and conservation areas
- the development of specific strategies and action plans for listed buildings at risk, adopted as supplementary planning guidance
- policies for the reuse of redundant listed buildings, for example, the conversion of farm buildings, the reuse of places of worship or other community assets such as schools.

Local planning authorities can also:

- monitor listed buildings in their area to get early warning of those suffering from a lack of maintenance
- work with owners and other stakeholders to help find a solution when listed buildings are at risk
- provide practical and technical information, advise on maintenance and repair, and promote good practice in the care of listed buildings

⁹ [Houses into Homes scheme](#), Welsh Government

¹⁰ [Planning \(Listed Buildings and Conservation Areas\) Act 1990, section 66](#)

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- take into account the long-term viability of listed buildings when making decisions about change
- be prepared to be flexible in the application of planning control and building regulations to enable appropriate renovation or reuse.

Where positive support fails, there is a range of statutory measures which can help local planning authorities to take remedial action. When used proportionately and incrementally, these measures can help local planning authorities to bring listed buildings at risk back to useful life (see annex).

In addition to the activity of specialist conservation services, local authorities can also contribute to the management of listed buildings at risk through more general policies for:

- the management of local authority-owned buildings, including disposal where appropriate
- urban regeneration and town centre management that encourage the reuse of vacant or underused buildings¹¹
- actions for empty homes, including the development of empty property strategies and the use of empty dwelling management orders, which enable local authorities to take management control of privately owned empty homes so they can secure occupation of them.¹²

1.4 Other Organisations

There are several other agencies that have specific roles to play in managing listed buildings at risk:

- The Architectural Heritage Fund offers advice, grants and loans to projects that have the potential to deliver social and economic benefits to their communities¹³
- The Prince's Regeneration Trust works with community groups, public bodies, private owners and developers to help give new life to old buildings at risk, with a focus on support for project planning¹⁴
- funders, such as the Heritage Lottery Fund, also have an important role to play¹⁵
- there is a network of building preservation trusts across Wales with the capability to deliver successful projects that rescue listed buildings at risk¹⁶
- voluntary organisations and friends groups may be able to help promote and care for some aspects of local heritage

¹¹ [Planning Policy Wales — Chapter 10: Planning for Retail and Town Centres](#), paras 10.2.5 and 10.2.8, 10.3.17

¹² [The Housing Act 2004, part 4, chapter 2](#)

¹³ [The Architectural Heritage Fund](#) <http://ahfund.org.uk/>

¹⁴ [The Prince's Regeneration Trust](#) <http://www.princes-regeneration.org/>

¹⁵ [Heritage Lottery Fund](#) <https://www.hlf.org.uk/>

¹⁶ [UK Association of Preservation Trusts Wales](#) <http://www.ukapt.org.uk/apt-wales>

- amenity societies and national pressure groups can also be helpful, for example, SAVE Britain's Heritage campaigns for threatened buildings (see contacts for more information).

Other organisations that do not have a specific heritage remit can also be important players. Housing associations, for example, have been able to help tackle empty properties and provide new uses for listed buildings. Where they exist, Business Improvement Districts can help by reducing the numbers of vacant properties through attracting new businesses and pop-up schemes, for example, and working to improve the appearance of vacant or derelict property.

As a general principle, the effectiveness of strategies to manage listed buildings at risk will depend on a partnership approach between any or all of these organisations.

2. Assessing Risk

A listed building at risk is one that is suffering through neglect and decay.¹⁷ This means that the balance between its condition, use and ownership is no longer able to sustain it for the long term.

To help prevent a listed building from reaching this state, it is good practice for owners to carry out routine maintenance and regular condition surveys which help to identify problems before they become serious.

But, when listed buildings are already at risk, it is important to keep an accurate and up-to-date record of what is at risk. This assessment will provide the baseline evidence for managing the risks so that priorities can be set and resources targeted to match. It is just as important to assess risk whether considering a single building, or developing a strategy for an entire area.

Regular condition surveys of listed buildings have been carried out across Wales since the mid-1990s. These surveys not only provide a valuable overview of changes in the condition and use of our listed buildings, but also offer a consistent method for assessing pressures and risks. Data about basic condition and occupancy is collected. In addition, information about the condition of the main building elements is gathered. Local authorities should monitor the data for their areas and supplement it where necessary.

This data shows where levels of risk and vulnerability are highest, both geographically and as specific building types. It also helps to identify trends of change over time and enables predictions about the rate of change to be made. It can help to determine priorities for intervention and identify where it is needed to prevent further deterioration — anything from normal maintenance to full-scale conservation and repair projects. This snapshot

¹⁷ Unsympathetic alterations which can compromise the historic interest and technical performance of listed buildings are not included within the scope of this guidance. See instead *Managing Change to Listed Buildings in Wales*, Welsh Government, Cadw, forthcoming

information needs to be supplemented by more detailed survey when considering specific interventions.

Knowing *what* is going wrong with a listed building and what practical measures could help put it right are important. But, it is equally important to understand *why* things have gone wrong — why is the building empty or neglected? The answer to this question will help to identify the best next steps.

3. Identifying Causes and Solutions

Condition, use and ownership are the three critical factors that determine whether a listed building is at risk, or whether it has a secure future. All three factors need to be balanced to achieve its long-term sustainability.

Wherever possible, listed buildings need to be used in order to survive. Beneficial use is a use which is good for the building and will fund its care and maintenance for the long term.

Listed buildings are especially likely to be at risk when they are functionally redundant because their original purpose has come to an end. This may apply to former industrial and agricultural buildings or to some places of worship, for example. In town centres, vacant or underused commercial premises may be a particular challenge. Many of these buildings may be capable of adaptation to a beneficial new use, but are likely to need more positive input. Equally, listed buildings that could still be used for their original purposes may be in a poor condition and at risk, such as neglected or empty houses which still have the potential to be homes.

Poor condition could result from owners who are absent, or cannot afford repairs. If the backlog of repairs is very high, buildings may need significant investment to tackle the conservation deficit and get them on a sound footing again. Action to encourage repair, to promote investment for reuse or new use, or perhaps even new ownership may be necessary to give a listed building a new lease of life.

It is vital to understand the underlying reasons why a listed building is at risk to be able to identify the most appropriate course of action.

4. Managing Risk

The management of risk needs to address condition, use and ownership if it is to be successful.

When establishing priorities for action, the significance of the building should be a factor, as well as the severity of its condition and the rate of its deterioration. It is also important to take into account the likelihood and benefits of a successful result based on an evaluation of the risks and opportunities associated with particular uses or ownership.

4.1 Condition

Listed buildings are a valuable and finite resource, and contribute to our well-being. Their stable or improving condition is not only a measure of well-being, but also crucial for their long-term survival, so it is important to prevent risk caused by neglect or decay.

- It is vital to keep risk at bay through regular maintenance and repair. Minor repairs and routine maintenance can avoid the need for more expensive work, and help give listed buildings an indefinite life. This is normally the responsibility of owners, but local authorities may be able to provide advice and encouragement.
- Listed buildings can be put at risk through inappropriate repair. Understanding the characteristics of listed buildings and promoting the use of traditional building skills are important components in managing risk. For more information, see *Managing Change in Listed Buildings in Wales*.¹⁸
- When buildings are already at risk because they are in a poor condition, local authorities should be able to provide advice about the nature of the risk and what work is needed to reduce or remove it.
- It is important to understand the significance of a listed building before drawing up proposals for repair. This can help establish priorities for action and is particularly important where fabric is likely to be lost or damaged in the course of any repairs. For more information about significance see, *Managing Change in Listed Buildings in Wales*.¹⁹ Individual listed building records are available on Cadw's online historic asset database — Cof Cymru.²⁰ The Royal Commission on the Ancient and Historical Monuments of Wales may also be able to help.²¹
- Where costly repairs are needed, external funding may be required. Access to particular sources of funding may depend on the owner and also on the intended use of the building. For example, trusts and community enterprises will be able to tap into some sources of funding that are not available to private owners. A good place to look for advice on funding is the Architectural Heritage Fund's directory of funds for historic buildings.²²
- In some circumstances, there may be a case for enabling development to help secure the long-term future of a listed building and its continued use for a sympathetic purpose. Tests setting out when enabling development might be acceptable are given in *Conservation Principles*

¹⁸ *Managing Change in Listed Buildings in Wales*, Welsh Government, Cadw, forthcoming

¹⁹ *Managing Change in Listed Buildings in Wales*, Welsh Government, Cadw, forthcoming

²⁰ [Cof Cymru – National Historic Assets of Wales](#)

²¹ [The Royal Commission on the Ancient and Historical Monuments of Wales](#)

²² The Architectural Heritage Fund — [Funds for historic buildings](#)

*for the Sustainable Management of the Historic Environment in Wales.*²³

- It may be realistic to consider a phased programme of works. This can help buy time: bringing a building back into use incrementally may help with the financing of complex and expensive projects.
- Where poor condition is the main barrier to sustainable use, but encouragement and influence have failed, and working with the owner is no longer possible, local authorities may pursue enforcement action as a last resort. This can be used to secure the building pending further intervention, to trigger the necessary repairs, or to bring about a change in ownership where one is needed.
- When considering repair (whether voluntary or as a result of enforcement action), it is important to be clear about the outcome. If works of repair are undertaken, will the building be capable of beneficial use again or will greater intervention be needed?

4.2 Use

Beneficial use funds the long-term maintenance of a listed building, either directly or indirectly. Taking action to keep a building in beneficial use, or to secure a new use if necessary, is vital.

- If the original use is no longer able to sustain the building, investigate the introduction of new uses to replace or supplement it. This means identifying opportunities and working out whether the building has the capacity for change to realise them. Identify any barriers to introducing a new use or reintroducing an old one — including the local planning policy framework, access and infrastructure — and consider whether they can be overcome. The Heritage Lottery Fund’s guidance on viability appraisal may be helpful.²⁴
- Consider the scope for meanwhile uses to help keep a building going while a sustainable, long-term solution is secured.
- If necessary, consider mothballing a building (managed vacancy) as a short-term stopgap. This means carrying out urgent repairs, making a building wind- and watertight, protecting vulnerable features, and putting in place a system of regular inspection and maintenance.
- Grants and loans that can help bring a building back into beneficial use may be available, for example, the Welsh Government’s Houses into Homes scheme.²⁵

²³ [Conservation Principles for the Sustainable Management of the Historic Environment in Wales](#), Cadw, Welsh Assembly Government, 2011

²⁴ Heritage Lottery Fund [Viability and development appraisal guidance](#)

²⁵ [Houses into Homes scheme](#), Welsh Government

- The best long-term use for a listed building may not be the one that generates the maximum financial return. Non-financial and wider regeneration benefits, including environmental, social and cultural benefits, should be taken into account.
- Building up a volunteer group can help with the maintenance of structures, such as railings and milestones, that have no long-term use, but are not particularly expensive to look after.
- Not all buildings and structures are capable of beneficial use that can directly fund their long-term maintenance. The contribution of structures, such as boundary walls, bridges and limekilns, to local distinctiveness and the quality of the environment may justify investment in their care and maintenance.

4.3 Ownership

Appropriate ownership is the third factor necessary to secure long-term sustainability for listed buildings. In tackling buildings at risk, the building owner is a key player. In certain circumstances, a change of owner or ownership type may be necessary.

- It is vital to make sure that owners are aware of the condition of their buildings and give them an opportunity to remedy the situation.
- Making information available about buildings at risk can help generate interest and encourage potential new owners to come forward.
- Where ownership is problematic, enforcement to trigger a change of owner may be appropriate, for example, via enforced sale or compulsory purchase accompanied by a back-to-back agreement with a building preservation trust.
- Not-for-profit organisations, such as community groups and social enterprises including building preservation trusts, have access to sources of funding and advice which are not necessarily available to private owners. These can be an important resource, whether working alone or in partnership with the private sector.
- Community asset transfer can be an important way of securing a future for listed buildings in public ownership, provided that the transfer is properly resourced. The Welsh Government and public bodies have a responsibility to support it wherever possible and to ensure that it is sustainable. *Community Asset Transfer in Wales: A Best Practice Guide* has useful links to sources of grant and loan finance. The case studies include several listed buildings which have found new uses through this route.²⁶

²⁶ [*Community Asset Transfer in Wales: A Best Practice Guide*](#), Welsh Government, 2016

Where buildings are changing hands, responsible disposal policies have a major part to play in minimising or mitigating risk. Local authorities and other public bodies can lead by example when disposing of buildings in their ownership by applying the following general principles:

- consider the significance of the building — is it historic and does it meet the criteria for listing or is it of special local interest?
- consider the viability of options for reuse before deciding to sell
- consider alternative methods of sale to make sure that historic buildings find an appropriate new owner: maximising receipts should not necessarily be the overriding aim
- take reasonable steps to ensure that purchasers have the resources to maintain historic buildings
- avoid splitting sites up which can be damaging to long-term sustainability. This could take the form of damage to the setting of a listed building, for example, or the loss of development opportunities which might be part of a sustainable business model.

Third sector or other bodies taking on historic buildings will need to make sure that they have the most appropriate model of ownership. They will also need a realistic financial strategy for capital development and ongoing management and maintenance. This will need to take into account the condition of the building and its capacity for change, the costs of capital work, options for fund raising and future revenue streams.

5. Measuring Success

Managing listed buildings at risk is a painstaking process. Although bringing buildings back into beneficial and sustainable use is our ultimate aim, it is important to recognise and record all the components of active management, which are at least as important as enforcement actions. These can include:

- contact between stakeholders
- repair and maintenance work
- feasibility studies
- grant and loan offers
- sales and other transactions.

Make sure that success stories are shared. Positive examples can be an inspiration for further action and wider involvement.

Further Information

Legislation

- [Building Act 1984](#)
- [Historic Environment \(Wales\) Act 2016](#)
- [Housing Act 2004](#)
- [Law of Property Act 1925](#)
- [Local Land Charges Act 1975](#)
- [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#)
- [The Housing \(Empty Dwelling Management Orders\) \(Prescribed Exceptions and Requirements\) \(Wales\) Order 2006](#)
- [Town and Country Planning Act 1990](#)
- [Well-being of Future Generations \(Wales\) Act 2015](#)

Planning Policy and Guidance

- [Planning Policy Wales](#)
- [Planning Policy Wales — Chapter 6: The Historic Environment](#)
- [Planning Policy Wales — Chapter 10: Planning for Retail and Town Centres](#)
- [Technical Advice Note 24: The Historic Environment](#)

Best-Practice Guidance

- [Community Asset Transfer in Wales: A Best Practice Guide](#), Welsh Government, 2016
- [Conservation Principles for the Sustainable Management of the Historic Environment in Wales](#), Cadw, Welsh Assembly Government, 2011
- [Managing Change to Listed Buildings Wales](#), Welsh Government, Cadw, forthcoming
- [Stopping the Rot](#), Historic England, 2016

Conservation Guidance

- [BS7913 Guide to the Conservation of Historic Buildings](#)
- Institute of Historic Building Conservation www.ihbc.org.uk/Maintenance_Matters!

Historical Information

- [Archives Wales](#) — An online catalogue that allows you to search information in more than 7,000 collections of historical records in the holdings of 21 archives in Wales.
- [Archwilio](#) — The core historic environment records of the Welsh archaeological trusts.
- [Coflein](#) — The online index for the National Monuments Record of Wales, the national collection of information about the historic environment of Wales.
- [Cof Cymru](#) — Cadw's online record of the national historic assets of Wales, which includes listed buildings, scheduled monuments, protected wrecks, World Heritage Sites and registered historic landscapes.²⁷
- Historic Wales portal www.historicwales.gov.uk

²⁷ Registered historic parks and gardens will be added to Cof Cymru during 2017.

Contacts

Welsh Government

Historic Environment Service (Cadw)
Plas Carew, Unit 5/7 Cefn Coed, Parc Nantgarw, Cardiff CF15 7QQ
Tel. 01443 336000
cadw@wales.gsi.gov.uk
gov.wales/cadw

Local Authorities

Local authorities' contact details can be found on their individual websites.

The Royal Commission on the Ancient and Historical Monuments of Wales

Ffordd Penglais, Aberystwyth, Ceredigion, SY23 3BU
Tel. 01970 621200
nmr.wales@rcahmw.gov.uk
www.rcahmw.gov.uk

Heritage Lottery Fund

<https://www.hlf.org.uk/>

United Kingdom Association of Building Preservation Trusts — Wales

<http://www.ukapt.org.uk/apt-wales>

The Architectural Heritage Fund

<http://ahfund.org.uk/>

The Prince's Regeneration Trust

<http://www.princes-regeneration.org/>

Georgian Society

www.georgiangroup.org.uk

Victorian Society

www.victoriansociety.org.uk

Twentieth Century Society

www.c20society.org.uk

Council for British Archaeology

<http://new.archaeologyuk.org/>

SAVE Britain's Heritage

<http://www.savebritainheritage.org/>

Society for the Protection of Ancient Buildings

www.spab.org.uk/

Annex: Managing Listed Buildings at Risk — Measures and Powers

Local authorities have a range of measures and powers which they can use when the condition of a listed building is affecting amenity and the public interest adversely. These powers should be used only when ‘soft’ powers of encouragement and negotiation to tackle the issue have failed. In these circumstances, timely and proportionate enforcement can help to give listed buildings at risk a second chance.

In deciding whether or not to make use of these powers, local authorities should have clear objectives and justification for their use, which should be focused on remedying a problem. They should consider:

- will intervention be in the public interest?
- is it likely to be effective?
- is it the best available means of preventing further deterioration?
- have all other avenues been exhausted?

When intervention is necessary, it should always be preceded and accompanied by talking with the owner. In many cases, talking can be enough to spur owners into taking action themselves.

The powers available to local authorities include several measures which are specific to listed buildings. Others, which relate to general amenity, and public health and safety, may also be helpful in tackling the challenge of listed buildings at risk. The most important of these powers are summarised below for information. There is more detail about these powers in other publications, for example, *Stopping the Rot*.²⁸ This information is not definitive and should not be used in place of legal advice.

The primary purpose of these measures is to address the condition of a building. In some instances, this is directly related to securing a beneficial use and, in many cases, notices can be the first step in a process that results in a change in ownership.

A1. Urgent Works: Planning (Listed Buildings and Conservation Areas) Act 1990, sections 54 and 55;²⁹ (as amended, and as prospectively amended, by the Historic Environment (Wales) Act 2016, section 30³⁰)

According to the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act) (as amended by the Historic Environment (Wales) Act 2016), if a local authority or the Welsh Ministers consider that works are urgently necessary to preserve a listed building, they may, having given prior notice to the owner, carry them out and recover the costs. The works are generally limited to what is urgently necessary to keep a building wind- and weatherproof, and safe from collapse. The owner must be given at least

²⁸ [Stopping the Rot](#), Historic England, 2016

²⁹ [Planning \(Listed Buildings and Conservation Areas\) Act 1990, sections 54 and 55](#)

³⁰ [Historic Environment \(Wales\) Act 2016, section 30](#)

seven days written notice of the intention to carry out works, and the notice must describe the works that are proposed.

If the whole or part of a building is in residential use, works may not interfere unreasonably.

Local authorities may recover costs by imposing a land charge, which can be followed by enforced sale procedures (see below). Interest can also be charged on outstanding costs. The owner has a right of appeal against the costs.

Urgent works address the condition of a building and can also initiate a change of ownership.

A2. Compulsory Purchase Orders and Repairs Notices: Planning (Listed Buildings and Conservation Areas) Act 1990, sections 47–50³¹

Under section 48 of the 1990 Act, a local authority or the Welsh Ministers can serve a repairs notice which specifies works that it considers reasonably necessary to bring a listed building into the state of repair needed for its proper preservation. If, after a period of not less than two months, there has been no material change in the building's condition, the local authority can begin compulsory purchase proceedings under section 47 (see below). There is no provision for works to be carried out in default, but a repairs notice does not commit the authority to proceed to compulsory purchase action. Both the repairs notice and the compulsory purchase order can be withdrawn at any time if circumstances change.

When compulsory purchase proceedings are initiated, reasonable compensation must be offered to the owner. However, if there is reason to believe that a building has been deliberately allowed to fall into disrepair to justify its demolition and the development, or redevelopment, of the site or any adjoining site, the local authority can ask the Welsh Ministers for a direction for minimum compensation. Compulsory purchase orders must be confirmed by the Welsh Ministers.

Repairs notices address the condition of a building in the first instance, but the capacity to follow them with a compulsory purchase order means that they may also initiate a change in ownership.

A3. Preservation Notices: Planning (Listed Buildings and Conservation Areas) Act 1990, Section 56A (as prospectively amended by the Historic Environment (Wales) Act 2016, Section 31³²)

Section 56A of the 1990 Act provides the Welsh Ministers with the power to introduce preservation notices that will allow local authorities to require owners to undertake specified works to listed buildings that have fallen into

³¹ [Planning \(Listed Buildings and Conservation Areas\) Act 1990, sections 47–50](#)

³² [Historic Environment \(Wales\) Act 2016, section 31](#)

disrepair. The provisions require the introduction of secondary legislation before they can be brought into force.

Further guidance on the use of preservation notices will be issued once the necessary secondary legislation has been introduced.

A4. Section 215 Notices: Town and Country Planning Act 1990, Section 215³³

The purpose of these notices is to remedy the adverse effect on amenity caused by the detrimental condition of any land or building. They can only be used to secure improvements to the external visible appearance of a building or land, but can be served on any building or land, whether designated or not, or whether occupied or vacant, and are useful in helping to tackle dereliction and neglect. They can specify a variety of works including planting, clearance, tidying, enclosure, external repairs and repainting. They should not specify works which would require planning permission or listed building consent. Their great merit is that they can be used proactively to stop deterioration before it gets out of hand — timely use of these notices can avoid the need for further intervention.

The notice requires the owner to carry out works within a specified period and non-compliance is punishable by a fine on conviction. The owner has a right of appeal. If the works are not carried out by the date specified, the local planning authority may carry out the works in default and recover expenses from the owner. A land charge can then be imposed on any outstanding debt, which can be followed by an enforced sale.

Section 215 notices address the condition of buildings in the first instance, but because they can trigger enforced sale proceedings, they may also initiate a change of ownership.

A5. Dangerous Buildings and Structures: Building Act 1984, Sections 77–79³⁴

Under the Building Act 1984 (the 1984 Act), local authorities can take action regarding buildings in a dangerous or ruinous state. But, before taking any steps under sections 77 and 79 of the 1984 Act, a local planning authority is required by section 56 of the 1990 Act³⁵ to consider whether urgent works or a repairs notice should be used instead.

Section 77 of the 1984 Act enables local authorities to apply to a magistrates' court for a dangerous structures order requiring the owner to make a building safe or to demolish it. If the owner fails to comply within a specified time, the local authority can execute the order itself and recover costs. Works are subject to listed building control so listed building consent may be needed.

³³ [Town and Country Planning Act 1990, Section 215](#)

³⁴ [Building Act 1984, sections 77–79](#)

³⁵ [Planning \(Listed Buildings and Conservation Areas\) Act 1990, section 56](#)

Section 78 of the 1984 Act relates to emergency measures when a local authority considers that a building or structure, or part of a building or structure, is dangerous and that *immediate* action should be taken to remove the danger. Local authorities must give notice before exercising their powers, if practical, and they may recover their costs. Because immediate action is permissible, the requirement to first consider the use of urgent works or a repairs notice does not apply. Immediate action does not have to mean demolition and, if a listed building is involved, alternatives such as partial removal of the dangerous part of the building, or a road closure order can be suggested.

Section 79 of the 1984 Act can be used where a building or structure is, by reason of its ruinous or dilapidated condition, seriously detrimental to the amenities of the neighbourhood. It enables the local authority to serve a notice on the owner requiring works of repair or restoration necessary in the interest of amenity, or to demolish the building. The notice should specify the nature of the works and the time within which they are to be carried out. The owner has a right of appeal, but subject to that, the local authority can carry out work and recover costs.

Where listed buildings are concerned, it is likely that it will be more appropriate to undertake urgent works or serve a repairs notice.

Where a local authority has carried out works in default, the cost is a charge on the property, which means that the enforced sale procedure can also be used.

Action taken under the Building Act 1984 primarily addresses the condition of the building, but, because it can trigger enforced sale, it may also initiate a change of ownership.

A6. Empty Dwelling Management Orders: Housing Act 2004, Section 132³⁶

As part of their housing powers, local authorities have the power to issue empty dwelling management orders (EDMOs) to enable them to take over management control of a residential property. The power exists to help local authorities tackle the issue of empty properties, and contribute to local housing need and regeneration.

Other sections of the Housing Act 2004 may also be relevant, for example, sections 11 and 12,³⁷ which relate to improvement notices, and section 40,³⁸ which relates to emergency remedial action.

EDMOs address the condition of a building and are designed to bring buildings back into use without forcing a change in ownership.

³⁶ [Housing Act 2004, section 132](#)

³⁷ [Housing Act 2004, sections 11 and 12](#)

³⁸ [Housing Act 2004, section 40](#)

A7. Acquisition of Land for Housing Purposes: Housing Act 1985, Section 17³⁹

Section 17 of the Housing Act 1985 enables local authorities to acquire houses or buildings, which could be made suitable as houses, by agreement or by a compulsory purchase order authorised by the Welsh Ministers following a compulsory purchase order enquiry. This is a useful tool for tackling properties that have been empty for a long time, or are uninhabitable, in order to bring them back into beneficial housing use.

Action under section 17 of the Housing Act 1985 addresses the condition of a building and is intended to bring buildings back into use, accompanied by a change in ownership.

A8. Enforced Sale Procedure: Law of Property Act 1925,⁴⁰ Local Land Charges Act 1975⁴¹

This procedure is a useful tool to strengthen other enforcement activity and can also support regeneration and empty homes strategies. It can be used for empty properties, occupied dwellings and commercial premises where a local authority has carried out work in default, and where the debt is registered as a charge on the property. It gives the local authority all the powers and remedies available to a mortgagee, including a power to force the sale of the property either by public auction or to a preferred buyer, in order to recover the debt.

This is a key tool for dealing with empty homes as it can be considerably quicker to implement than a compulsory purchase order, it does not incur the payment of compensation to the owner and enables the local authority to recover its expenditure on any previous notices. The procedure can stimulate renovation and reoccupation in circumstances where both the condition of a building and its ownership have been problematic.

³⁹ [Housing Act 1985, section 17](#)

⁴⁰ [Law of Property Act 1925](#)

⁴¹ [Local Land Charges Act 1975](#)