



Historic Environment (Wales) Act 2023

2023 asc 3

PART 2

MONUMENTS OF SPECIAL HISTORIC INTEREST

PROSPECTIVE

CHAPTER 6

ACQUISITION, GUARDIANSHIP AND PUBLIC ACCESS

Acquisition of monuments of special historic interest

43 Compulsory acquisition of monuments of special historic interest

- (1) The Welsh Ministers may acquire compulsorily any monument of special historic interest for the purpose of securing its preservation.
- (2) The [Acquisition of Land Act 1981 \(c. 67\)](#) applies to an acquisition under this section.
- (3) Subsection (4) applies for the purpose of assessing compensation for any acquisition under this section of a monument which is a scheduled monument immediately before the day the compulsory purchase order is made.
- (4) Where this subsection applies, it is to be assumed that scheduled monument consent would not be granted for any works which would or might result in the demolition, destruction or removal of the monument or any part of it.

Commencement Information

- II** S. 43 not in force at Royal Assent, see [s. 212\(2\)](#)

Status: Point in time view as at 15/06/2023. This version of this chapter contains provisions that are prospective.
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44 Acquisition by agreement or gift of monuments of special historic interest

- (1) The Welsh Ministers may acquire by agreement any monument of special historic interest.
- (2) A local authority may acquire by agreement any monument of special historic interest in or in the vicinity of its area.
- (3) The Welsh Ministers or any local authority may accept a gift (whether by deed or will) of any monument of special historic interest.
- (4) Part 1 of the [Compulsory Purchase Act 1965 \(c. 56\)](#) applies (so far as relevant) to an acquisition under this section, other than sections 4 to 8, section 10 and section 31 of that Act.

Commencement Information

- I2** S. 44 not in force at Royal Assent, see [s. 212\(2\)](#)

Guardianship of monuments of special historic interest

45 Power to place monument of special historic interest under guardianship

- (1) A person with a qualifying interest in a monument of special historic interest may, with the agreement of the Welsh Ministers, appoint them by deed as guardians of the monument.
- (2) A person with a qualifying interest in a monument of special historic interest may, with the agreement of any local authority in or in the vicinity of whose area the monument is situated, appoint the authority by deed as guardian of the monument.
- (3) A person who is not the occupier of a monument may not establish guardianship of the monument under this section unless the occupier is also a party to the deed.
- (4) Any other person who has an interest in the monument may be a party to the deed in addition to the person establishing the guardianship of the monument and (where the latter is not the occupier) the occupier.
- (5) The following interests in a monument are qualifying interests for the purposes of this section—
 - (a) a freehold estate;
 - (b) a leasehold estate, or interest in possession, which—
 - (i) has at least 45 years left to run, or
 - (ii) is renewable for at least 45 years;
 - (c) an interest in possession for the person’s own life or the life of another person, or for lives (whether or not including the person’s own life), under any existing or future trust of land where the estate or interest subject to the trust falls within paragraph (a) or (b).
- (6) In subsection (5)(c) “trust of land” has the same meaning as in the [Trusts of Land and Appointment of Trustees Act 1996 \(c. 47\)](#).
- (7) In this Chapter “guardianship deed” means a deed executed under subsection (1) or (2).

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Commencement Information

I3 S. 45 not in force at Royal Assent, see [s. 212\(2\)](#)

46 Supplementary provision about guardianship deeds

- (1) A guardianship deed is a local land charge.
- (2) Every person deriving title to a monument of special historic interest from, through or under any person who has executed a guardianship deed is bound by the deed unless the person derives title by virtue of any disposal made by the person who executed the deed before the date of the deed.
- (3) The Welsh Ministers or a local authority may not become guardians of a building or structure occupied as a dwelling by any person other than the caretaker of the building or structure or a member of the caretaker's family.
- (4) Any person who has any estate or interest in a monument under guardianship has the same right and title to, and estate or interest in, the monument in all respects as if the monument were not under guardianship; but this is subject to any provision to the contrary in this Part.

Commencement Information

I4 S. 46 not in force at Royal Assent, see [s. 212\(2\)](#)

47 General functions of guardians

- (1) The guardian of a monument must maintain it, and may do anything the guardian considers necessary for its maintenance.
- (2) The guardian of a monument has full control and management of it, and may do anything the guardian considers necessary for its proper control and management.
- (3) The powers in subsections (1) and (2) include power to—
 - (a) make any examination of the monument;
 - (b) open up the monument or make excavations of it for the purpose of examination or otherwise;
 - (c) remove the whole or any part of the monument to another place for the purposes of preserving it.
- (4) The power in subsection (2) includes power to require the payment of a charge in connection with any use of the monument.
- (5) The guardian of a monument may enter the site of the monument for the purpose of exercising any of the guardian's powers under this section in relation to it (and may authorise any other person to enter the site and exercise those powers on the guardian's behalf).
- (6) Subsections (2) to (4) are subject to any provision to the contrary in the guardianship deed.

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Commencement Information

I5 S. 47 not in force at Royal Assent, see [s. 212\(2\)](#)

48 Termination of guardianship

- (1) The guardian of a monument may agree with the persons who are for the time being immediately affected by the operation of the guardianship deed—
 - (a) to exclude any part of the monument from the guardianship, or
 - (b) to renounce guardianship of the monument.
- (2) In the absence of such an agreement, a monument remains under guardianship (unless it is acquired by its guardian) until an occupier of the monument who is entitled to terminate the guardianship gives notice in writing to that effect to the guardian of the monument.
- (3) An occupier of a monument is entitled to terminate the guardianship of the monument if the occupier—
 - (a) has a qualifying interest (within the meaning of section 45(5)) in the monument, and
 - (b) is not bound by the guardianship deed.
- (4) A local authority must consult the Welsh Ministers before making an agreement under subsection (1).
- (5) The guardian of a monument may not make an agreement under subsection (1) unless the guardian is satisfied, with respect to the part or whole of the monument (as the case may be)—
 - (a) that satisfactory arrangements have been made for ensuring its preservation after termination of the guardianship, or
 - (b) that it is no longer practicable to preserve it (whether because of the cost of preserving it or otherwise).
- (6) An agreement under subsection (1) must be made under seal.
- (7) For the purposes of subsection (1) a person is immediately affected by the operation of a guardianship deed relating to a monument if the person is bound by that deed and is in possession or occupation of the monument.

Commencement Information

I6 S. 48 not in force at Royal Assent, see [s. 212\(2\)](#)

*Acquisition and guardianship of land in the vicinity
 of a monument of special historic interest etc.*

49 Acquisition and guardianship of land in the vicinity of a monument

- (1) References in sections 43 to 46 to a monument of special historic interest include any land adjoining or in the vicinity of the monument which the Welsh Ministers consider,

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or (as the case may be) a local authority considers, to be reasonably required for any of the purposes mentioned in subsection (2).

- (2) The purposes are—
- (a) the maintenance of the monument or its amenities;
 - (b) the storage of equipment or materials for the maintenance of the monument or its amenities;
 - (c) providing or facilitating access to the monument;
 - (d) the proper control or management of the monument;
 - (e) the provision of facilities and services for the public for or in connection with providing public access to the monument.
- (3) The power of compulsory acquisition in section 43(1), as it applies by virtue of subsection (1) of this section, is to be read as if for “the purpose of securing its preservation” there were substituted “any of the purposes mentioned in section 49(2)”.
- (4) Land may be acquired or taken into guardianship by virtue of this section either at the same time as the monument or later.
- (5) A person who is the guardian of any land by virtue of this section has full control and management of the land, and may do anything the guardian considers necessary—
- (a) for its proper control and management (including requiring the payment of a charge in connection with any use of the land), and
 - (b) for the use of the land for any of the purposes relating to the monument mentioned in subsection (2).
- (6) A person who is the guardian of any land by virtue of this section may enter the land for the purpose of exercising the guardian’s powers under subsection (5) (and may authorise any other person to enter the site and to exercise those powers on the guardian’s behalf).
- (7) Section 48(1) to (4) and (7) apply in relation to any land taken into guardianship by virtue of this section as they apply in relation to a monument.
- (8) Apart from any termination of guardianship by virtue of section 48, guardianship of any such land also ends if the monument in question—
- (a) ceases to be under guardianship otherwise than by virtue of being acquired by its guardians, or
 - (b) ceases to exist.
- (9) Where a monument is owned by, or under the guardianship of, the Welsh Ministers or a local authority by virtue of this Chapter, references in this Chapter to land associated with that monument (or to associated land) are references to—
- (a) any land acquired or taken into guardianship by virtue of this section for a purpose mentioned in subsection (2), or
 - (b) any land appropriated for any such purpose under a power conferred by any other enactment.

Commencement Information

I7 S. 49 not in force at Royal Assent, see [s. 212\(2\)](#)

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50 Acquisition of easements and other similar rights over land in the vicinity of a monument

- (1) The Welsh Ministers may acquire an easement over land adjoining or in the vicinity of any monument which is under their ownership by virtue of this Chapter, if they consider the easement to be necessary—
 - (a) for any of the purposes mentioned in section 49(2) relating to that monument, or
 - (b) for the use of any land associated with that monument for any of those purposes.
- (2) An acquisition under subsection (1) may be made by agreement or compulsorily.
- (3) A local authority may acquire an easement over land adjoining or in the vicinity of any monument which is under its ownership by virtue of this Chapter, if the easement appears to it to be necessary—
 - (a) for any of the purposes mentioned in section 49(2) relating to that monument, or
 - (b) for the use of any land associated with that monument for any of those purposes.
- (4) An acquisition under subsection (3) may only be made by agreement.
- (5) The guardian of a monument or of any land may acquire, for the benefit of the monument or land, a relevant right over land adjoining or in the vicinity of the monument or land, if the guardian considers the right to be necessary—
 - (a) for any of the purposes mentioned in section 49(2) relating to that monument or land, or
 - (b) for the use of any land associated with that monument or land for any of those purposes.
- (6) For the purposes of subsection (5) “relevant right” means a right (of any description) which would, if acquired by an owner of the monument or land in question, be an easement.
- (7) The acquisition of a right under subsection (5)—
 - (a) in the case of the Welsh Ministers, may be made by agreement or compulsorily;
 - (b) in the case of a local authority, may be made only by agreement.
- (8) A right acquired under subsection (5)—
 - (a) is to be treated for the purposes of its acquisition under this section and in all other respects as if it were a legal easement, and
 - (b) may be enforced by the guardians for the time being of the monument or land for whose benefit it was acquired as if they were the freehold owner in possession of that monument or land.
- (9) If the condition in subsection (10) is met in relation to a monument, a right which under subsection (5) is acquired by agreement —
 - (a) may be revoked by the grantor, subject to any provision to the contrary in the agreement under which it was acquired, and
 - (b) may be revoked by any successor in title of the grantor as respects any of the land over which it is exercisable in which the the successor has an interest.

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- (10) The condition mentioned in subsection (9) is that the monument—
 - (a) ceases to be under guardianship otherwise than by virtue of being acquired by its guardians, or
 - (b) ceases to exist.
- (11) A right acquired under subsection (5) is a local land charge.
- (12) The powers of acquisition in this section include power to acquire an easement or right by the grant of a new right.
- (13) The [Acquisition of Land Act 1981 \(c. 67\)](#) applies to any compulsory acquisition under this section.
- (14) Part 1 of the [Compulsory Purchase Act 1965 \(c. 56\)](#) applies (so far as relevant) to an acquisition by agreement under this section, other than sections 4 to 8, section 10 and section 31 of that Act.

Commencement Information

18 S. 50 not in force at Royal Assent, see [s. 212\(2\)](#)

Agreements with occupiers of monuments or adjoining etc. land

51 Agreements concerning management of monuments of special historic interest and land in their vicinity

- (1) The Welsh Ministers may make an agreement under this section with—
 - (a) any occupier of a monument of special historic interest, or
 - (b) any occupier of land adjoining or in the vicinity of such a monument.
- (2) A local authority may make an agreement under this section with—
 - (a) any occupier of a monument of special historic interest in or in the vicinity of its area, or
 - (b) any occupier of land adjoining or in the vicinity of any such monument.
- (3) An agreement under this section is referred to in this Part as a “management agreement”.
- (4) Any person who has an interest in a monument of special historic interest or in any land adjoining or in the vicinity of such a monument may be a party to a management agreement (in addition to the occupier).
- (5) A management agreement may—
 - (a) make provision about the maintenance and preservation of the monument and its amenities (including, where an agreement is made by the Welsh Ministers, provision granting scheduled monument consent under section 13(1) for specified works of maintenance or preservation);
 - (b) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the monument or land;
 - (c) provide for public access to the monument or land and the provision of associated facilities, information or services to the public;
 - (d) restrict access to, or use of, the monument or land;

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- (e) prohibit the doing of any specified thing in relation to the monument or land;
 - (f) provide for the Welsh Ministers or the local authority (as the case may be) to make payments of specified amounts and on specified terms—
 - (i) for or towards the cost of any work provided for under the agreement, or
 - (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.
- (6) A management agreement may also contain incidental and consequential provision.
- (7) Where a management agreement made by the Welsh Ministers grants scheduled monument consent subject to conditions, the agreement must specify those conditions.
- (8) Subsection (9) applies where a management agreement expressly provides that the agreement as a whole or any restriction, prohibition or obligation arising under it is to be binding on the successors of any party to the agreement.
- (9) Every person deriving title to the monument or land in question from, through or under that party is bound by the agreement, or by that restriction, prohibition or obligation, unless the title is derived by virtue of any disposal made by that party before the date of the agreement.
- (10) Section 84 of the [Law of Property Act 1925 \(c. 20\)](#) (power of Upper Tribunal to discharge or modify restrictive covenants) does not apply to a management agreement.
- (11) In this section “specified” means specified or described in a management agreement.

Commencement Information

19 S. 51 not in force at Royal Assent, see [s. 212\(2\)](#)

Powers of limited owners

52 Powers of limited owners for purposes of sections 45, 50 and 51

- (1) A person may establish guardianship of a monument or land under section 45 or join in executing a guardianship deed under that section, despite being a limited owner of the monument or land.
- (2) A person may grant an easement or other right over land which the Welsh Ministers are or any local authority is authorised to acquire under section 50, despite being a limited owner of the land.
- (3) A person may make a management agreement under section 51 with respect to a monument or land, despite being a limited owner of the monument or land.
- (4) For the purposes of this section—
 - (a) a body corporate or corporation sole is a limited owner of any land in which it has an interest, and
 - (b) any other persons are limited owners of land in which they have an interest if they hold that interest in any of the ways mentioned in subsection (5).
- (5) The ways of holding an interest in land referred to in subsection (4)(b) are—

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- (a) as tenant for life or statutory owner (within the meaning of the [Settled Land Act 1925 \(c. 18\)](#));
 - (b) as trustees of land (within the meaning of the [Trusts of Land and Appointment of Trustees Act 1996 \(c. 47\)](#));
 - (c) as trustees for charities or commissioners or trustees for ecclesiastical, collegiate or other public purposes.
- (6) Where a person who is a limited owner of any land by virtue of holding an interest in the land in any of the ways mentioned in subsection (5) executes a guardianship deed in relation to the land, the guardianship deed binds every successive owner of any estate or interest in the land.
- (7) But where the land is, at the date of the deed, subject to any incumbrance not capable of being overreached by the limited owner in exercise of any powers of sale or management conferred on the limited owner by law or under any settlement or other instrument, the deed does not bind the incumbrancer.
- (8) Where a management agreement under section 51 to which a limited owner is a party expressly provides that the agreement as a whole or any restriction, prohibition or obligation arising under the agreement binds the limited owner's successors, subsections (9) and (10) apply to the agreement or (as the case may be) to the restriction, prohibition or obligation in question.
- (9) Where a person is a limited owner by virtue of holding an interest in any of the ways mentioned in subsection (5), the agreement or restriction, prohibition or obligation binds every successive owner of any estate or interest in the land.
- (10) But where the land is, at the date of the agreement, subject to any incumbrance not capable of being overreached by the limited owner in exercise of powers of sale or management conferred on the limited owner by law or under any settlement or other instrument, the agreement or restriction, prohibition or obligation does not bind the incumbrancer.

Commencement Information

I10 S. 52 not in force at Royal Assent, see [s. 212\(2\)](#)

Transfer of ownership or guardianship and disposal of land

53 Transfer of monuments of special historic interest between local authorities and the Welsh Ministers

- (1) Where the Welsh Ministers are the owners or guardians of a monument or associated land, they may transfer the ownership or guardianship of that monument or land to any local authority.
- (2) Where a local authority is the owner or guardian of a monument or associated land, it may transfer the ownership or guardianship of that monument or land—
 - (a) to the Welsh Ministers, or
 - (b) to another local authority.
- (3) But the Welsh Ministers or a local authority may not transfer the guardianship of a monument or associated land under this section without the agreement of the persons

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who are for the time being immediately affected by the operation of the guardianship deed.

- (4) For the purposes of subsection (3) a person is immediately affected by the operation of a guardianship deed relating to a monument or land if the person is bound by that deed and is in possession or occupation of the monument or land.

Commencement Information

I11 S. 53 not in force at Royal Assent, see [s. 212\(2\)](#)

54 Disposal of land acquired under this Chapter

- (1) The Welsh Ministers may dispose of any land acquired by them under section 43, 44 or 53.
- (2) A local authority may dispose of any land acquired by it under section 44 or 53, but must consult the Welsh Ministers before doing so.
- (3) Where the land disposed of under this section is or includes a monument, the disposal must be made on terms the person disposing of the land considers will ensure the preservation of the monument.
- (4) But subsection (3) does not apply if the person disposing of the land considers that it is no longer practicable to preserve the monument (whether because of the cost of preserving it or otherwise).

Commencement Information

I12 S. 54 not in force at Royal Assent, see [s. 212\(2\)](#)

Public access to monuments under public control

55 Public access to monuments under public control

- (1) The Welsh Ministers and any local authority must ensure the public has access to any monument which is under their or its ownership or guardianship by virtue of this Chapter; but this is subject to—
- (a) the following provisions of this section,
 - (b) any regulations or byelaws made under section 56, and
 - (c) any provision to the contrary included in any agreement relating to the monument made under section 25 or 51 (scheduled monument partnership agreements and management agreements).
- (2) In relation to any monument under guardianship, the duty imposed by subsection (1) is also subject to any provision to the contrary in the guardianship deed.
- (3) References in the following subsections to a monument are—
- (a) in relation to the Welsh Ministers, to a monument which—
 - (i) is under their ownership or guardianship by virtue of this Chapter;

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- (ii) is under their control or management otherwise than by virtue of this Chapter;
 - (b) in relation to a local authority, to a monument which is under its ownership or guardianship by virtue of this Chapter.
- (4) The Welsh Ministers or a local authority may control the times of normal public access to a monument.
- (5) The Welsh Ministers or a local authority may exclude the public from access to a monument, or to any part of it, for any period they consider or it considers necessary—
- (a) in the interests of safety;
 - (b) for its maintenance or preservation;
 - (c) in connection with events held or other organised activities carried out in or on it.
- (6) The Welsh Ministers or a local authority may also impose other restrictions or controls on public access to a monument, or to any part of it, for a purpose mentioned in subsection (5).
- (7) The Welsh Ministers or a local authority may charge the public for admission to a monument.
- (8) The Welsh Ministers or a local authority may refuse a person admission to a monument if they have or it has reason to believe that the person is likely to do anything likely to damage the monument or its amenities or to disturb the public in their enjoyment of it.

Commencement Information

I13 S. 55 not in force at Royal Assent, see [s. 212\(2\)](#)

56 Power to make regulations and byelaws in connection with public access to monuments under public control

- (1) The Welsh Ministers may regulate public access to any monument under their ownership or guardianship by virtue of this Chapter by making regulations that prohibit or regulate any act or thing likely to damage the monument or its amenities or disturb the public in their enjoyment of it.
- (2) Regulations under subsection (1) may also make provision in relation to any monument under the control or management of the Welsh Ministers otherwise than by virtue of this Chapter.
- (3) A local authority may regulate public access to any monument under its ownership or guardianship by virtue of this Chapter by making byelaws that prohibit or regulate any act or thing likely to damage the monument or its amenities or disturb the public in their enjoyment of it.
- (4) A person who fails to comply with provision made by regulations or byelaws under this section commits an offence.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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- (6) Byelaws made under this section may make different provision in relation to different monuments or different descriptions of monument.
- (7) Byelaws under this section do not take effect unless they are confirmed by the Welsh Ministers.
- (8) The Welsh Ministers may confirm the byelaws with or without modifications.

Commencement Information

I14 S. 56 not in force at Royal Assent, see [s. 212\(2\)](#)

57 Provision of facilities for the public in connection with monuments of special historic interest

- (1) The Welsh Ministers may provide facilities, information and other services to the public for or in connection with providing public access—
 - (a) to any monument under their ownership or guardianship by virtue of this Chapter, or
 - (b) to any monument otherwise under their control or management.
- (2) A local authority may provide facilities, information and other services to the public for or in connection with providing public access to any monument under its ownership or guardianship by virtue of this Chapter.
- (3) Facilities and information or other services for the public may be provided under this section in or on the monument itself or on any land associated with the monument.
- (4) The Welsh Ministers or a local authority may charge for the use of any facility or service provided by them or it under this section.

Commencement Information

I15 S. 57 not in force at Royal Assent, see [s. 212\(2\)](#)

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