

# HISTORIC ENVIRONMENT (WALES) ACT 2023

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 — Monuments of special historic interest**

##### ***Chapter 4 — Scheduled monument partnership agreements***

92. This Chapter provides for the making of scheduled monument partnership agreements. These are voluntary agreements between the Welsh Ministers, owners of scheduled monuments and other parties for the long-term management of one or more scheduled monuments. A scheduled monument partnership agreement may grant scheduled monument consent for an agreed programme of works to be carried out during the lifetime of the agreement. Provision is made for comparable listed building partnership agreements in Part 3, Chapter 3.
93. The Welsh Ministers have published guidance, which is kept under review, to support the preparation of heritage partnership agreements including those for scheduled monuments. The guidance at the time of writing these notes, *Heritage Partnership Agreements in Wales* (2021), sets out the elements required in an agreement and identifies best practice to promote consistency in the implementation of works as well as regular monitoring and review. The guidance includes a template to provide a framework for new agreements.

##### ***Section 25 — Scheduled monument partnership agreements***

94. **Section 25(1)** specifies the essential parties for any scheduled monument partnership agreement:
- a. the Welsh Ministers — as the relevant consenting authority — and
  - b. any owner of a scheduled monument to which the agreement relates, or
  - c. any owner of any land adjoining or in the vicinity of such a monument, referred to as “associated land”.
95. Other persons with an interest in a monument, as identified in subsection (2), may also join as parties to the agreement.
96. A scheduled monument partnership agreement may grant scheduled monument consent under section 13(1) for an agreed programme of works specified in the agreement. The consent may authorise works for the purpose of removing or repairing a monument or making any alterations or additions to it (subsections (3) and (7)). This will permit maintenance, conservation or management works that will be beneficial for the monument or monuments covered by the agreement.
97. A scheduled monument partnership agreement cannot grant consent for works resulting in the demolition or destruction of, or any damage to, a monument or for any flooding or tipping operations on land in, on or under which a scheduled monument is situated (section 11(2)(a) and (c)). Any of these excluded works would require separate

scheduled monument consent obtained through the routine application process (sections 14 to 19).

98. A scheduled monument consent contained in a scheduled monument partnership agreement is not subject to the provisions in section 19 about when works must start and will remain valid for the lifetime of the agreement, which may last for 10 to 15 years.
99. Subsection (5)(a) permits the parties to an agreement to specify works to which section 11 would or would not apply, and which, therefore, would or would not require authorisation. This might allow the parties to identify certain minor works — for example, an agreed programme of vegetation clearance and management — that could proceed without authorisation. They could also specify more substantial works that could not be accommodated within the scheduled monument partnership agreement and would therefore require the full consideration of the separate scheduled monument consent procedure.

### ***Section 26 — Further provision about scheduled monument partnership agreements***

100. This section prescribes required components for a scheduled monument partnership agreement (subsections (1) and (2)), requires the Welsh Ministers to make provision, by regulations, for the consultation and publicity that must take place before an agreement is made or varied (subsections (5) and (6)) and limits the effect of an agreement and of any consent granted (subsection (7)).
101. Subsection (2)(e) requires a scheduled monument partnership agreement to make provision for its variation. Since an agreement will last for years, it is likely that adjustments will be required from time to time. The parties, therefore, must incorporate in the agreement agreed working arrangements for approving necessary variations. In some instances, variations will be subject to the consultation and publicity requirements prescribed by regulations under subsection (5).
102. The provision for termination of the agreement required by subsection (2)(f) calls for a mechanism for a negotiated termination should the agreement no longer serve the mutual interests of the parties or it has otherwise broken down. This is distinct from any termination of an agreement or a provision of an agreement by order of the Welsh Ministers under section 27.
103. Subsection (7) provides that a scheduled monument partnership agreement will only be binding on the parties to that agreement. Future owners of the scheduled monument will not be bound by an agreement, nor will they be able to benefit from any scheduled monument consent granted by the agreement. Consequently, unless all the parties agree to continue an agreement with a new owner, a scheduled monument partnership agreement will cease to have effect with a change of ownership.

### ***Section 27 — Termination of agreement or provision of agreement***

#### ***Schedule 5 — Termination by order of scheduled monument partnership agreement***

#### ***Schedule 6 — Proceedings under Part 2***

104. **Section 27** allows the Welsh Ministers to terminate a scheduled monument partnership agreement or any provision of such an agreement by order. It is likely that this will only happen in exceptional cases, for instance, if unauthorised works take place and relations between the parties break down to such an extent that negotiated termination becomes impossible. Alternatively, significant archaeological discoveries might require the cessation of certain works against the wishes of an owner and prompt the Welsh Ministers to terminate a portion of an agreement by order.

105. [Section 27\(4\)](#) provides that Schedule 5 and paragraph 1 of Schedule 6 make provision in connection with making orders under this section.
106. [Schedule 5](#) puts in place the procedure for making an order to terminate a scheduled monument partnership agreement or a provision of such an agreement. This procedure is very similar to the procedure for making an order to modify or revoke scheduled monument consent in Schedule 4.

***Section 28 — Compensation in relation to termination***

107. Under section 28, any party to a scheduled monument partnership agreement with an interest in a monument or associated land who suffers loss or damage as a direct result of the cessation of works caused by the service of a notice of proposed termination or the making of a termination order is, on making a claim for compensation to the Welsh Ministers, entitled to be paid compensation from the Welsh Ministers.
108. Claims may be made for expenditure incurred on works rendered abortive by the notice or order and on plans and other matters preparatory to the works (subsections (2)(a) and (3)). Such preparatory matters could include the development of the detailed plans needed for a scheduled monument partnership agreement. Claims may also be made for any other loss or damage suffered by the person that is directly attributable to the notice or order.
109. [Sections 202](#) and [203](#) make additional provisions about claims for compensation under this Act (see paragraph 45 above).