

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 — Monuments of special historic interest

Chapter 6 — Acquisition, guardianship and public access

152. This Chapter provides powers for the Welsh Ministers and local authorities to bring monuments of special historic interest into their care.
153. Monuments may be taken into care through acquisition. The Chapter provides that the Welsh Ministers may acquire monuments of special historic interest either by compulsory acquisition or by agreement or gift (sections 43 and 44), and that local authorities may acquire monuments by agreement or gift (section 44).
154. Monuments may also be taken into care through guardianship; the Chapter sets out arrangements that allow a person with a qualifying legal interest in a monument of special historic interest to appoint either the Welsh Ministers or a local authority as guardian of the monument (sections 45 to 48). Under these voluntary arrangements, the guardian agrees to accept responsibility for the management of the monument and acquires certain rights over the property.
155. Further sections of this Chapter relate to land in the vicinity of a monument in the guardianship of the Welsh Ministers or local authorities (sections 49 and 50), management agreements relating to monuments of special historic interest (section 51) and the arrangements for public access to monuments under the control of the Welsh Ministers or local authorities (sections 55 to 57).

Section 43 — Compulsory acquisition of monuments of special historic interest

156. [Section 43](#) allows the Welsh Ministers to acquire a monument of special historic interest by compulsory acquisition for the purpose of its preservation, whether the monument is included in the schedule of monuments under section 3 or not. “Monument of special historic interest” is defined in section 75(6) (see paragraph 242 below).
157. Subsection (2) provides that the [Acquisition of Land Act 1981 \(c. 67\)](#) (“the 1981 Act”) applies to a compulsory acquisition under this section. One of the effects is that compensation is payable on the acquisition. Subsections (3) and (4) further provide that when assessing compensation for the acquisition of a monument that is scheduled at the time of the acquisition, it is to be assumed that scheduled monument consent would not be granted for any work which would or might result in the demolition, destruction or removal of the monument or any part of it. The effect is that the compensation payable may be less than would otherwise be the case.
158. None of the monuments in the care of the Welsh Ministers at the time of writing these notes have been acquired by compulsory acquisition. However, the Welsh Ministers might consider compulsory acquisition of a monument of special historic interest in exceptional circumstances, but only if other methods of acquisition (through agreement

or gift) or guardianship had not proved possible and no other options were available for its preservation. The Welsh Government's *Compulsory Purchase Order (CPO) Manual* (2021), which is kept under review, provides guidance on compulsory acquisition.

Section 44 — Acquisition by agreement or gift of monuments of special historic interest

159. **Section 44** provides the Welsh Ministers and local authorities with the power to acquire, by agreement or gift, a monument of special historic interest. In the case of a local authority the power to acquire a monument by agreement is limited to monuments in, or in the vicinity of, its area (subsection (2)). In Wales, a number of monuments have been acquired by the Welsh Ministers through agreement or gift including Neath Abbey, Dolforwyn Castle and Blaenavon Ironworks. The most recent is the medieval royal court of the princes of Gwynedd, Llys Rhosyr on Anglesey, acquired in 2023. Several local authorities have similarly acquired monuments either through gift, such as Cardiff Castle (Cardiff City Council), or purchase agreement, such as Caldicot Castle (Monmouthshire County Council).

Section 45 — Power to place monument of special historic interest under guardianship

160. **Section 45** enables a person with a particular type of legal interest in a monument of special historic interest to place it into the guardianship of the Welsh Ministers or a local authority (where the monument is in, or in the vicinity of, the local authority's area). The types of legal interest required are set out in subsection (5). In practice, this means that monuments are usually placed into guardianship by a freeholder or a person holding a long-term lease. The transaction is undertaken through the execution of a "guardianship deed".
161. Guardianship transfers responsibility for the maintenance and conservation of the monument, and wide-ranging control of the management of the monument, to the guardian. See section 47.
162. The Welsh Ministers are, at the time of writing these notes, the guardians for 108 monuments, including many of the most outstanding prehistoric and medieval monuments in Wales.

Section 46 — Supplementary provision about guardianship deeds

163. **Section 46(1)** establishes that a guardianship deed is a local land charge. The title to the property will therefore alert any purchaser of the existence of the deed, and the restrictions imposed by the terms of the deed.
164. Subsection (2) provides for a situation where person A derives title to a monument of special historic interest from person B who has executed a guardianship deed. Person A will be bound by the guardianship deed unless person A's title to the monument was derived from a disposal made by person B before the execution of the guardianship deed.
165. Subsection (3) provides that the Welsh Ministers or a local authority may not become guardians of a monument occupied as a dwelling, apart from where the occupier is the caretaker or a member of the caretaker's family.

Section 47 — General functions of guardians

166. **Section 47** requires the guardian of a monument to maintain it. The guardian may do anything considered necessary for the maintenance of the monument (subsection (1)). This is effectively a wide-ranging responsibility to keep the monument conserved, well-managed and in good condition.

167. To comply with this duty, the section gives the guardian of the monument wide powers to exercise control and management and to do everything that is necessary for the monument's maintenance (subsection (2)).
168. Subsection (3) clarifies that the powers in subsections (1) and (2) include power to make an examination of the monument, including through excavations, or to remove all or part of a monument elsewhere for the purposes of preserving it. In many cases, there has been a need to undertake archaeological excavations as part of the requirement to maintain and conserve a monument in guardianship. These powers have been used to relocate parts of guardianship monuments into museums or stores to ensure their preservation. For example, this has included moving a large, engraved stone, which is part of the prehistoric burial monument at Bryn Celli Ddu, Anglesey, to a museum where it is protected from damage.
169. Subsection (4) makes clear that the power in subsection (2) includes power for the guardian to make a charge in connection with the use of a monument in guardianship. This may be required to provide appropriate supervision and control during activities or events. This has frequently enabled monuments in guardianship to be used as a "stage" for a variety of activities such as filming, live theatre and concerts.

Section 48 — Termination of guardianship

170. **Section 48(1)** provides that the guardian of a monument may, by agreement with the persons immediately affected by the guardianship deed, terminate the guardianship of all or part of the monument.
171. Subsection (5) provides that a guardian may not make an agreement to terminate a guardianship unless the guardian is satisfied that alternative arrangements are in place for the monument's preservation, or that it is no longer practicable, because of cost or otherwise, to preserve it.
172. The Welsh Ministers have, on occasion, terminated guardianship. This has sometimes occurred when the guardianship has been replaced by an acquisition through agreement or gift (section 44). Neath Abbey, for instance, was the subject of a guardianship deed in 1944, but this was subsequently terminated when it was converted into a deed of gift in 1949. On other occasions, the Welsh Ministers acted as temporary guardians of a monument while other arrangements were put in place for its preservation.

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

173. **Section 49** allows for land adjoining or in the vicinity of a monument of special historic interest to be acquired or taken into guardianship by the Welsh Ministers or local authorities in certain circumstances. Land may only be taken into guardianship if the monument itself has been, or is being, taken into guardianship.
174. Subsection (1) provides that references in sections 43 to 46 to a monument of special historic interest include any land adjoining it or in its vicinity if, in the estimation of the Welsh Ministers or a local authority, that land is reasonably required for one or more of the purposes listed in subsection (2), which include maintaining the monument and facilitating public access to it. The adjoining land might accommodate routes for access, storage yards, parking areas or visitor facilities.
175. The powers relating to the guardianship of land in the vicinity of a monument are similar to those for guardianship of the monument itself, including powers that allow full control and management (subsection (5)) and powers of entry (subsection (6)).
176. Subsections (7) and (8) make provision for termination of guardianship. It is terminated in the same circumstances as when guardianship of a monument is terminated under section 48, and also when guardianship of the monument is terminated or the monument ceases to exist.

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

177. **Section 50** sets out powers for the Welsh Ministers and local authorities to acquire easements and other rights over land in the vicinity of a monument that is either in their ownership or in their guardianship. This would allow the use of part of an adjoining property for certain purposes, such as to discharge duties relating to the maintenance of the monument or to facilitate access.

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

178. **Section 51(1) to (3)** enables the Welsh Ministers or local authorities to make a “management agreement” with an occupier of a monument of special historic interest or of land adjoining or in the vicinity of a monument. Any other person with an interest in the monument or land may also be a party to the agreement (subsection (4)).
179. Management agreements may make any of the provisions listed in subsection (5). A management agreement entered into by Cadw (on behalf of the Welsh Ministers) may grant scheduled monument consent for specified works of maintenance or preservation (and attach conditions to which the consent is subject). The consented works are generally minor works of maintenance and repair for the benefit of the monument and cannot extend to demolition or flooding or tipping operations. Management agreements are frequently created to allow for the management or conservation of a monument or to facilitate public access, and are used for some of Cadw’s jointly managed guardianship sites operated by other parties. Management agreements are usually of a fixed duration, normally for a period of 3 to 5 years.

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

180. **Section 52** provides that a person may establish guardianship of monuments or land (section 45), grant easements or other rights over land in the vicinity of a monument (section 50) or make a management agreement (section 51) despite the person being a limited owner of the monument or land.

Section 55 — Public access to monuments under public control

181. **Section 55** places a requirement on the Welsh Ministers and local authorities to provide public access to monuments in their ownership or guardianship subject to the provisions of this section, any regulations or byelaws made under section 56 and any provision to the contrary contained in a scheduled monument partnership agreement (section 25), a management agreement (section 51) or a guardianship deed (section 45) (subsections (1) and (2)).
182. Under this section, Cadw (acting for the Welsh Ministers) or local authorities, where they are the owners or guardians of a monument, may:
- a. control opening times (subsection (4));
 - b. limit public access to all or part of a monument in the interests of safety, for maintenance or conservation works or for the holding of activities or events (subsection (5));
 - c. impose other restrictions or controls on public access (subsection (6));
 - d. charge admission (subsection (7)); and
 - e. refuse admission if it is felt that a person poses a threat to the monument or to the public enjoyment of the monument (subsection (8)).
183. At the time of writing these notes, the majority of the 131 monuments under Cadw’s care and control are unstaffed, non-charging sites with advertised opening times. Access

to the indoor parts of unstaffed sites tends to be more restricted for safety reasons and due to the threat of damage posed by unaccompanied access. Admission is charged at fewer than 30 of Cadw's monuments.

184. Local authorities have around 400 scheduled monuments in their ownership or guardianship. They range from prehistoric monuments through medieval remains to buildings of the Industrial Revolution.

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

185. **Section 56** provides that the Welsh Ministers and local authorities may regulate access to monuments in their ownership or guardianship by making, respectively, regulations (subsection (1)) or byelaws (subsection (3)) that prohibit or regulate any act or thing likely to:
- a. damage the monument or its amenities, or
 - b. disturb the public in their enjoyment of it.
186. These regulations or byelaws could be used to address issues of antisocial behaviour, such as vandalism or out-of-hours gatherings on site.
187. Subsection (2) also applies regulations made under subsection (1) to monuments that are under the control or management of the Welsh Ministers, but not by virtue of their ownership or guardianship.
188. Failure to comply with the regulations or byelaws made under this section constitutes an offence that, on summary conviction, is subject to a fine not exceeding level 2 on the standard scale (subsections (4) and (5)).

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

189. **Section 57(1)** gives the Welsh Ministers powers to provide facilities, information and other services to the public in conjunction with providing public access to monuments in their ownership or guardianship or otherwise under their control or management.
190. Subsection (2) gives local authorities comparable powers for monuments in their ownership or guardianship.
191. Under subsection (3), the Welsh Ministers or local authorities may provide these public facilities and services in or on the monument itself or on any associated land. This allows for the establishment of kiosks, cafes or stalls that might sell guidebooks, refreshments or other products, and for the erection of signage and interpretation panels in connection with providing public access and enhancing the public enjoyment and understanding of a monument. Such services might be provided on associated land, such as in an adjacent car park or building.