

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 — Monuments of special historic interest

12. There are tens of thousands of known archaeological sites across Wales, and many more yet to be discovered that are buried and hidden from sight. The great majority of the known sites are recorded on the statutory historic environment records for each local authority area, maintained by the Welsh archaeological trusts on behalf of the Welsh Ministers (section 194). The concept of a “monument” is central to the management and protection of this archaeological heritage. Monuments can comprise a wide range of archaeological sites including: scatters of prehistoric artefacts; buried remains; prehistoric funerary and ritual monuments and defensive earthworks; Roman roads, forts and villas; and medieval settlements, abbeys and castles.
13. The term “monument of special historic interest” is now preferred to the previously used “ancient monument” to reflect the fact that many monuments considered to be of public interest date from the more recent past, such as the remains of eighteenth- and nineteenth-century industry or twentieth-century military defences.
14. The Welsh Ministers have a duty to compile and maintain a schedule of monuments that they consider to be of national importance. Not all nationally important monuments or archaeological sites are currently on the schedule and new sites can be found by chance or as the result of systematic archaeological surveys. The complete up-to-date schedule is published on Cof Cymru — National Historic Assets of Wales, the online database of designated historic assets in Wales maintained by Cadw (“Cof Cymru”).
15. The legislation relating to monuments and archaeological sites is supported by planning policy and advice and best-practice guidance, notably TAN 24 and *Managing Scheduled Monuments in Wales* (2018). These documents explain that, while the Welsh Ministers are responsible for scheduling monuments, in practice the process is managed by Cadw acting on their behalf.
16. At the time of writing these notes, 131 monuments are in the care of the Welsh Ministers including early Neolithic burial monuments that are over 5,000 years old, many of the great castles and abbeys of medieval Wales and monuments from our more recent industrial past. In practice, these monuments are conserved, maintained and presented to the public by Cadw on behalf of the Welsh Ministers. Of those 131 monuments, 108 are currently in guardianship. This is a voluntary arrangement whereby the guardian (in this case the Welsh Ministers) agrees to accept responsibility for the management of the monument and acquires certain rights over the property but does not take on its ownership.
17. The concepts of “scheduled monument” and “guardianship” date from the first legislation relating to the historic environment to be passed in Great Britain and Ireland, the [Ancient Monuments Protection Act 1882 \(c. 73\)](#). Three prehistoric monuments in Wales were included in the very first schedule in 1882. As of April 2023, there were 4,229 scheduled monuments in Wales. The first monument in Wales to be taken into

guardianship was the Neolithic burial monument at Pentre Ifan in north Pembrokeshire in 1884, and the most recent was the medieval castle at Caergwrlle in Flintshire in 2020.

Chapter 1 — Key terms

18. The concept of a “monument” is central to the legislation for the designation, management and protection of the archaeological heritage of Wales. Chapter 1 therefore provides fundamental definitions relating to monuments at the beginning of the Part.

Section 2 — Meaning of “monument” and “site of monument”

19. The five categories defined in section 2(1)(a) to (e) will accommodate a wide range of “monuments” in both the terrestrial and marine historic environments.
20. In paragraphs (a) and (b), “work” refers to anything constructed by or as a result of human activity. This would include prehistoric and later earthworks, such as the early medieval Offa’s Dyke.
21. Paragraph (e) provides that the site of any thing or group of things that evidences previous human activity may be considered a monument (as long as it is not already captured in paragraph (b), (c) or (d)). This could include, for example, sites without buildings or works where scatters of artefacts — perhaps prehistoric flint tools or, from more recent times, rejects from pottery kilns or other industrial processes — offer archaeological evidence of past human activity.
22. Subsection (3) removes from consideration as a monument any religious building that is currently used for religious purposes. While a place of worship being used for services could not be deemed a monument, a derelict or ruined place of worship could.
23. Subsection (3) would not prevent artefacts that have been brought into a place of worship for protection and display from being classed as monuments if they fall within the definition in subsection (1). These artefacts could be crosses, inscribed stones and other similar artefacts. Even if an artefact of this kind is fixed to a floor or wall of a church, it may be recognised as a monument if it could be removed with minimal disruption to the building.
24. Subsection (5) explains that the “site of a monument” includes not only the land in, on or under which the monument is situated, but any other land that is essential for the monument’s support and preservation. Whether other land is essential for this purpose would be determined either by the Welsh Ministers or a local authority, depending on which of the two parties was exercising a function under this Part in relation to the monument. Such additional land might, for instance, provide access to the monument necessary for ongoing management and conservation.
25. Subsection (8) establishes that in this section “remains” includes any trace or sign of the previous existence of the thing in question. Crop marks discovered during an aerial survey or information obtained from 3-D laser scanning (lidar), ground-penetrating radar or other scientific techniques for the survey of archaeological sites often reveal the existence of otherwise undetected monuments.

Chapter 2 — Schedule of monuments of national importance

26. This Chapter requires the Welsh Ministers to maintain a schedule of monuments of national importance. In practice, this is maintained by Cadw on behalf of the Welsh Ministers. For the purposes of the transition from the 1979 Act to this Act, the schedule of monuments currently maintained by the Welsh Ministers under section 1 of the 1979 Act will become the schedule maintained for the purposes of section 3 of the Act.
27. Inclusion of a monument on the schedule — “scheduling” — renders it subject to the consent regime, enforcement procedures and other provisions contained in later Chapters of this Part of the Act.

28. This Chapter requires consultation before the Welsh Ministers amend the schedule (section 5) and gives owners and occupiers the opportunity to request a review of the Welsh Ministers' decision to add a monument or an additional part of a monument to the schedule (sections 9 and 10). It also establishes that, during the consultation period, a monument being considered for scheduling enjoys interim protection as if it were already a scheduled monument. If the Welsh Ministers decide not to amend the schedule, a person with an interest in a monument who suffers loss or damage as a direct result of interim protection may claim compensation from the Welsh Ministers (sections 6 to 8).

Section 3 — Duty to maintain and publish schedule of monuments

29. **Section 3(1)** provides that the Welsh Ministers must maintain a schedule of monuments and must publish the up-to-date schedule. The Welsh Ministers publish the up-to-date schedule on Cof Cymru.
30. The Welsh Ministers use selection criteria contained in Annex A of TAN 24 to assess whether a monument is of national importance and determine if scheduling is appropriate. These criteria are not, however, definitive; rather they are indicators that contribute to a wider judgement based on the individual circumstances of a case. For example, scheduling may not be the best approach for a site soon to be lost to coastal erosion; full excavation is likely to be the only way to record the historic asset's importance. So, although section 3 requires the Welsh Ministers to maintain a schedule of monuments that they consider to be of national importance, the effect of subsection (1) is that they are not required to include all monuments that meet the criteria. It's also worth noting that, where the Welsh Ministers do schedule a monument, they are able to schedule part of the monument, without scheduling the monument in its entirety. And section 2(6)(c) of the Act provides that references in the Act to a monument include references to any part of it.
31. Subsection (2) requires every entry in the schedule to include a map maintained by the Welsh Ministers identifying the monument's area. A definitive map will be included in the entry provided when the Welsh Ministers fulfil the notification requirements in section 4(3). The entry for every monument on Cof Cymru also provides access to a printable map.
32. Subsection (3) provides that, in addition to scheduling additional monuments under subsection (1), the Welsh Ministers may remove a monument from the schedule — “descheduling” — or amend an existing entry. The latter could involve, for example, increasing or decreasing the scheduled area of a monument. The Welsh Ministers may also make any other changes that may be needed to an entry in the schedule. For example, if archaeological or historical investigations were to provide new information about a monument, the entry in the schedule could be amended to reflect this. Descheduling will only be considered in exceptional cases. Reasons for descheduling might include severe loss to a monument or its site, perhaps through coastal erosion.
33. Subsection (5) establishes that an entry in the schedule recording the inclusion of a monument is a local land charge. A local land charge will alert a purchaser to the restrictions imposed on the use of the land by the scheduling of the monument.

Section 4 — Notification of owner etc. where the schedule is amended

34. This section sets out how the Welsh Ministers must serve notice after they have amended the schedule by adding a monument, removing a monument or amending the entry for a monument. Notice must be served on the specified recipients as soon as possible after an amendment is made to raise awareness of its implications — owners and occupiers, for instance, need to be alerted that scheduling imposes certain prohibitions on unauthorised works. Unless the amendment removes a monument from the schedule, the notice must specify the date that the Welsh Ministers made

the amendment and be accompanied by a copy of the entry or amended entry in the schedule.

Section 5 — Consultation before adding or removing monument to or from the schedule

Section 6 — Interim protection pending decision on certain amendments relating to the schedule

35. **Section 5** puts in place a formal structure for consultation on the Welsh Ministers' proposals to amend the schedule. It provides that the Welsh Ministers must serve a notice of a proposed amendment on specified recipients and allow those persons at least 28 days to make written representations.
36. The service of a notice of a proposal to amend the schedule by adding a monument or adding anything as part of a monument will trigger interim protection under section 6. In that case, section 5(4)(b) requires the notice to explain the effect of interim protection and specify the date on which interim protection takes effect.
37. From that time, and until interim protection ends in accordance with section 7, this Part of the Act will have effect as if a monument being considered for addition to the schedule were already scheduled or a proposed amendment were already made.
38. Where a monument is subject to interim protection it is an offence to undertake works to it without consent (section 30) or to damage the monument (section 58). This means, for example, that a person carrying out demolition works without consent in relation to a monument under interim protection would commit an offence, unless a relevant defence was available to the person. Interim protection is designed to afford protection to a monument during the consultation period. This may be protection, for instance, from an owner who could otherwise have an incentive to deliberately damage or destroy a historic asset during the consultation period in an effort to undermine the protection that scheduling would otherwise have provided.
39. Subsection (4) of section 6 requires the Welsh Ministers to publish a list of monuments subject to interim protection and provide a copy of the notice served under section 5(2) to any person who requests one. At the time of writing these notes, the list is included on the "Statutory scheduled monument consultation notices" page in the "Scheduled monuments" section of the Cadw website and is also represented as a distinct category on Cof Cymru.

Section 7 — When interim protection ends

Schedule 1 — End of interim protection for monuments

40. **Section 7** sets out how and when interim protection comes to an end.
41. If the Welsh Ministers decide to add a monument to the schedule or add a new part to an existing monument in the schedule, interim protection ends at the beginning of the day specified in the notice that the Welsh Ministers are required to give under section 4 (see subsections (1)(a) and (2)(a) of section 7).
42. If, on the other hand, the Welsh Ministers decide not to add a monument to the schedule or add a new part to an existing monument in the schedule, they must serve notice of their decision on every owner and occupier and every local authority in whose area the monument is situated. Interim protection will cease at the beginning of the day specified in that notice (see subsections (1)(b), (2)(b) and (3)).
43. **Schedule 1** — which is introduced by this section — applies when interim protection comes to an end as a result of the service of a notice under section 7(1)(b) or (2)(b); it sets out how the end of interim protection affects various actions taken while interim protection was in effect (including enforcement action and criminal liability).

Section 8 — Compensation for loss or damage caused by interim protection

44. If the Welsh Ministers serve notice of the end of interim protection under section 7(1)(b) or (2)(b), indicating that they have decided not to schedule a monument or an additional part of a monument, a person who had an interest in the monument when the interim protection took effect may claim compensation for any loss or damage suffered that is directly attributable to the interim protection. This section sets out how a claim must be made to the Welsh Ministers.
45. **Section 202** makes additional provision about claims for compensation, and in particular allows the Welsh Ministers to extend the period for making a claim for compensation in a particular case if they are satisfied that there is good reason for doing so. Any disputes about compensation under this Act will be referred to the Upper Tribunal under section 203. The Upper Tribunal (Lands Chamber) Rules make provision for the reference of a case to the Tribunal and its handling.

Section 9 — Review of decision to add monument to the schedule etc.

Section 10 — Supplementary provision about reviews

Schedule 2 — Decision on review by person appointed by the Welsh Ministers

Schedule 6 — Proceedings under Part 2

46. If the Welsh Ministers add a monument to the schedule or amend an existing entry in the schedule to include an additional part to an existing scheduled monument, section 9 requires them to afford any owner or occupier of the monument an opportunity to request a review of their scheduling decision.
47. Subsection (2) of section 9 provides that the ground for a review is that the monument (or part, if an extension to an existing entry for a monument has been made) is not of national importance. This reflects that, under section 3(1), national importance is the basis for the Welsh Ministers' inclusion of a monument in the schedule. Subsection (6) of section 9 provides that the Welsh Ministers may make regulations to specify other grounds for review in the future.
48. Under subsection (3) of section 9, the Welsh Ministers must appoint a person to carry out the review and make a decision on it. Ordinarily, this will be an inspector of Planning and Environment Decisions Wales (previously Planning Inspectorate Wales). However, subsection (4) provides that the Welsh Ministers may specify descriptions of cases in which they will conduct and decide a review themselves, instead of appointing a person to do so.
49. **Section 10** makes provision about the administration of reviews under section 9. This is supplemented by Schedules 2 and 6. Schedule 2 makes provision about the functions of persons appointed by the Welsh Ministers to carry out reviews. It covers various administrative matters, including the appointment of an assessor to assist an appointed person and the delegation of functions by an appointed person to another person. Schedule 6 makes provision permitting appointed persons to issue summonses in connection with local inquiries held for the purposes of this section and gives the Welsh Ministers powers in relation to the recovery or payment of costs incurred in connection with those inquiries or any other proceedings held for the purposes of this section.

Chapter 3 — Control of works affecting scheduled monuments

50. **Chapter 3** sets out that particular types of works may only be carried out to scheduled monuments if the works are authorised (section 11). The provisions of this Chapter themselves give authorisation (at section 12 and Schedule 3) for certain descriptions of

works. The Chapter (at section 13) also provides that works may be authorised by grant of scheduled monument consent.

51. The bulk of the provisions in the Chapter are about scheduled monument consent: the application process (sections 14 to 16), the grant of consent (sections 17 to 19) and the modification and revocation of consent (section 20 and Schedule 4). The closing sections of the Chapter deal with the compensation that can be claimed in certain circumstances if scheduled monument consent is refused, granted subject to conditions or subsequently modified or revoked (sections 21 to 24).
52. The Welsh Ministers have published guidance, which is kept under review, to support the management of scheduled monuments. The guidance at the time of writing these notes, *Managing Scheduled Monuments in Wales* (2018), sets out the general principles to follow when managing and making changes to scheduled monuments. It explains how to apply for scheduled monument consent, including the roles and responsibilities of owners and Cadw.

Section 11 — Requirement for works to be authorised

53. This section provides that a wide range of works affecting a scheduled monument, extending from demolition to repair, may only be carried out with authorisation under this Chapter. In practice, this means that almost any works to a scheduled monument — including those that will benefit the asset, such as repairing masonry, filling in erosion scars or conducting archaeological investigations — will require authorisation. The authorisation may be either by scheduled monument consent under section 13, or, in certain narrowly defined circumstances, as works falling within a description of a class of works under section 12.
54. Subsection (1) of this section states that a person must not carry out, cause or permit the relevant works to be carried out unless those works are authorised. In addition to prohibiting a person from undertaking works personally or commissioning or employing others to conduct them, this provision stops a person from allowing works to proceed without taking action to prevent them. A landowner cannot, therefore, deliberately turn a blind eye to unauthorised works taking place on a scheduled monument on the landowner's property.
55. If a person carries out, causes or permits any works to a scheduled monument in breach of subsection (1), it constitutes an offence under section 30(1).

Section 12 — Authorisation of classes of works

Schedule 3 — Authorisation for classes of works

56. [Section 12\(1\)](#) authorises works to a scheduled monument if the works fall within a description of a class of works in the table in Schedule 3.
57. [Schedule 3](#) restates, with modifications, classes of consent from the Ancient Monuments (Class Consents) Order 1994, [SI 1994/1381](#). The incorporation of these well-established provisions from secondary legislation brings together the relevant legislation about the authorisation of works. Regulation-making powers in paragraph 1 of Schedule 3, however, give the Welsh Ministers flexibility to amend the Schedule.
58. [Schedule 3](#) sets out eight classes of works that are authorised by section 12(1). These works are not normally damaging and therefore can proceed without the need for the detailed consideration of the scheduled monument consent process.
59. Class 1 comprises agricultural, horticultural and forestry works of the same kind as works carried out lawfully on the same spot within the previous six years. By permitting the same activity to occur in the same place, any further disruption to the scheduled monument from the ongoing works will be minimised. For example, where a scheduled site has been lawfully ploughed within the previous six years, ploughing may continue

provided it goes no deeper than it did during that six-year period. The works specified in paragraphs (a) to (f) of the Class 1 entry have all been excluded from authorisation because of the threats that they would pose to undisturbed archaeology or the standing remains of a scheduled monument.

60. If agricultural, horticultural or forestry works have not taken place on a scheduled monument for more than six years, the possibility of authorisation under section 12(1) lapses and it cannot be revived. Thereafter such works would require scheduled monument consent under section 13.
61. Class 5 has been included to provide authorisation should the Historic Buildings and Monuments Commission for England (**Historic England**) be undertaking works on Offa's Dyke or some other cross-border scheduled monument and inadvertently or by prior agreement carry the works across the border into Wales.
62. Class 6 permits works of archaeological evaluation to be carried out by or on behalf of someone who has applied for scheduled monument consent. Such works will be limited, for instance test pits or trial trenches, and be carried out to assess the archaeological resource and potential of the monument in order to inform the determination of the scheduled monument consent. These works must be undertaken in accordance with a written specification approved by Cadw.

Section 13 — Authorisation of works by scheduled monument consent

63. **Section 13** provides for the authorisation of works by the grant of scheduled monument consent.
64. Subsection (1) sets out that works are authorised if written consent has been granted by the Welsh Ministers and the works are carried out in accordance with the terms of the consent, which may include conditions. Sections 18 and 19 make further provision about conditions attached to scheduled monument consents. In practice, Cadw, acting on behalf of the Welsh Ministers, administers the scheduled monument consent process and grants consent.
65. Under subsection (2), the Welsh Ministers may grant written consent for unauthorised works already carried out to a scheduled monument or land in, on or under which there is such a monument. In such cases, the works are only authorised from the grant of the consent. Any potential criminal liability arising from the unauthorised works prior to the consent remains and could be the basis for subsequent proceedings. In practice, retrospective consent is rarely granted and only in cases where the unauthorised works are beneficial to the monument.

Section 14 — Applying for scheduled monument consent

66. **Section 14** puts in place the fundamental structure for the scheduled monument consent application process.
67. It prescribes how an application must be made to the Welsh Ministers, sets out its required content and provides the Welsh Ministers with powers to make regulations on further aspects of the application procedure (subsections (1) to (3)).
68. Subsections (4) and (5) allow for a simplified application procedure for scheduled monument consent where works are of a minor nature. Such works might include: localised erosion repairs, replacing short stretches of fencing, re-bedding loose stones, or installing plaques or signs. In cases where proposed minor works will have a neutral or positive impact on a monument, Cadw may agree the works during a site visit and dispense with the need for a formal application. In all cases, even where a written application is not required, works will only be authorised on receipt of written scheduled monument consent, which is granted under section 13(1).

Section 15 — Declarations of ownership in respect of monument

69. This section enables the Welsh Ministers to refuse to consider an application for scheduled monument consent if it is not accompanied by a declaration of ownership signed by or on behalf of the applicant. The declaration relates to the ownership of the monument at the beginning of the 21-day period that ends on the day of the application. It must confirm that the applicant either was then the sole owner of the monument, or has given notice to all other owners of the monument or taken all reasonable steps to do so (subsection (1)). In practice, the applicant can be an owner, occupier, agent or another person.

Section 17 — Procedure for determining applications and effect of grant of consent

Schedule 6 — Proceedings under Part 2

70. **Section 17**, with Schedule 6, regulates the procedure for determining applications and granting scheduled monument consent.
71. Subsection (2) provides that, before determining an application for scheduled monument consent, the Welsh Ministers may:
- a. cause a local inquiry to be held;
 - b. appoint a person to hold a hearing;
 - c. appoint a person to receive written representations; or
 - d. employ any combination of these proceedings.
72. At the time of writing these notes, the Welsh Ministers would appoint an inspector from Planning and Environment Decisions Wales to conduct such proceedings.
73. In practice, various informal actions are taken before the Welsh Ministers might exercise their power under subsection (2). In the majority of cases, Cadw will provide pre-application advice to the prospective applicant. This might be of particular importance where there is likely to be a requirement to engage archaeological expertise. Following receipt of an application, normally Cadw (acting on behalf of the Welsh Ministers) will issue an interim decision letter, which includes details of any proposed conditions or the reasons for any proposed refusal. This provides the applicant with the opportunity to make representations, which may include providing additional information relevant to the application. A Cadw officer will receive and consider these representations. It is at that point, if there are unresolved issues, that the Welsh Ministers may exercise their power under subsection (2).
74. Subsection (5) establishes that, unless its terms make some other contrary provision, a scheduled monument consent has effect for the benefit of the monument and all persons for the time being with an interest in it. If, for example, the ownership of a scheduled monument were to change while consented works were underway, the new owner would not need to apply for a new scheduled monument consent in order to continue the works (provided there were no provision to the contrary in the terms of the consent).
75. **Schedule 6** makes provision for summonses to require evidence or attendance at local inquiries and about the recovery or payment of costs incurred during inquiries or hearings.

Section 18 — Power to grant consent subject to conditions

Section 19 — Condition about period within which works must start

76. **Section 18** allows scheduled monument consents to be granted subject to conditions. The section provides two examples of conditions, but these are not exhaustive.

Conditions may relate directly to the way in which works are carried out or they may impose other requirements, such as a programme of archaeological recording and reporting or the publication of results after the completion of archaeological excavations and any necessary post-excavation analysis.

77. **Section 19(1)** requires a scheduled monument consent to be granted subject to a condition that the works must start before the end of a period specified in the condition. If the consented works do not start within that period, the consent will lapse. Where works are started within the specified period, a consent will have effect as provided by section 17(5).
78. Subsection (2) sets out that if a consent is granted without a condition specifying a period within which works must begin, the works must begin within five years of the day on which consent was granted.
79. Subsection (3) provides that this section does not apply in relation to three classes of scheduled monument consents:
- a. scheduled monument consents that cease to have effect at the end of a specified period (irrespective of whether works have started)

Such consents often relate to short-term events or activities at a monument for which a very specific period may be defined. The period of a consent could also be specified, for instance, in order to limit the impact of works on protected species.
 - b. scheduled monument consents granted under section 13(2) for works carried out before consent was granted

Since the consent authorises works that have already been completed, a requirement for works to begin is unnecessary.
 - c. scheduled monument consents granted by a scheduled monument partnership agreement.

Scheduled monument partnership agreements may run for ten to fifteen years and the consents that they grant last for the lifetime of the agreements, irrespective of when works begin.

Section 20 — Modification and revocation of consent

Schedule 4 — Procedure for orders modifying or revoking scheduled monument consent

Schedule 6 — Proceedings under Part 2

80. **Section 20** provides the Welsh Ministers with powers to revoke or modify a scheduled monument consent by order. Subsection (2) sets out that an order under this section may not be made to modify or revoke a scheduled monument consent granted either for the retention of works under section 13(2) or by a scheduled monument partnership agreement. Scheduled monument partnership agreements incorporate separate mechanisms (section 27 and Schedule 5) that permit the Welsh Ministers to terminate all or part of an agreement, including consents, by order.
81. **Schedule 4** sets out the procedure that must be followed in making orders, which includes provision for holding local inquiries or hearings in certain circumstances. Schedule 6 makes provision for summonses to require evidence or attendance at local inquiries and about the recovery or payment of costs incurred during inquiries or hearings.

Section 21 — Compensation for refusal of scheduled monument consent or grant of consent subject to conditions

82. **Section 21** makes provision, subject to certain conditions, for the payment of compensation where a person with an interest in a monument suffers loss or damage if scheduled monument consent is refused or granted subject to conditions.
83. Subsection (7) identifies two matters to be considered in the calculation of the amount of loss or damage consisting of depreciation of the value of an interest in land (meaning the extent to which the value of the interest is effectively diminished by the limitations on works imposed by the refusal of scheduled monument consent or its grant subject to conditions).
- a. It is to be assumed that any subsequent application for scheduled monument consent for works of a similar description would be determined by the Welsh Ministers in the same way.
 - b. In the case of a refusal of consent, if the Welsh Ministers, on refusing that consent, undertook to grant consent for other works affecting the monument if an application were made, that undertaking should be taken into account. An undertaking might allow for some other viable use of the land, thereby reducing the depreciation for the purposes of calculating the amount of compensation payable.

Section 22 — Recovery of compensation paid under section 21 on subsequent grant of consent

84. **Section 22** gives the Welsh Ministers powers to recover compensation paid under section 21 if they subsequently grant consent for, or modify or remove conditions that affected, any or all of the works in respect of which compensation was paid.
85. This section only applies if the Welsh Ministers have served notice of the payment of compensation on the council of each county or county borough in which the monument is located (subsection (2)). The required details of the notice are set out in subsection (5) and subsection (6) makes the notice a local land charge.
86. Subsection (3) provides that when granting or modifying a scheduled monument consent in a case to which this section applies, the Welsh Ministers may specify that works for which compensation had been paid cannot proceed until the “recoverable amount” (defined in section 23) has been repaid or satisfactorily secured.

Section 23 — Determination of amount recoverable under section 22

87. **Section 23(1)** requires the Welsh Ministers to specify the “recoverable amount” of the compensation paid under section 21 when giving notice of their decision to grant or modify scheduled monument consent in a case under section 22.
88. If a person with an interest in the monument disputes the amount specified by the Welsh Ministers, that person may seek a determination of the amount from the Upper Tribunal. The Upper Tribunal (Lands Chamber) Rules make provision for the reference of a case to the Tribunal and its handling. If a dispute is referred to the Upper Tribunal, the recoverable amount will be the amount that it determines (subsections (2) and (3)).

Section 24 — Compensation where works affecting a scheduled monument cease to be authorised

89. This section provides for compensation to be paid if works previously authorised cease to be so authorised. Subsection (1) provides that this may happen if:

- a. an authorisation under section 12 ceases to apply when a class of works specified in Schedule 3 is amended or the Welsh Ministers direct that section 12(1) does not apply to a scheduled monument;
 - b. scheduled monument consent is modified or revoked by an order made under section 20; or
 - c. authorisation is cancelled following the service of a notice of proposed modification or revocation of scheduled monument consent as set out in paragraph 2 of Schedule 4.
90. Any person with an interest in the monument is entitled, on making a claim for compensation to the Welsh Ministers, to be paid compensation by them for any expenditure incurred in carrying out works which become abortive by the cessation of authorisation or any other loss or damage directly attributable to that cessation. For the purposes of this section, expenditure incurred on carrying out works includes expenditure on preparatory matters, which might include, but are not limited to, site surveys, the preparation of plans or a heritage impact statement or the production of detailed specifications of materials and methodologies (subsections (2) and (4)).
91. [Sections 202, 203](#) and [204](#) make additional provisions about claims for compensation under this Act.

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).

Chapter 5 — Enforcement of controls relating to scheduled monuments

110. This Chapter sets out that it is an offence to carry out, or cause or permit to be carried out, unauthorised works in relation to a scheduled monument (section 30). It provides the Welsh Ministers with the powers to issue a temporary stop notice to put an immediate halt to works that either breach section 11 or a condition of a consent (sections 31 to 34). It also provides for an enforcement notice, which may be used to specify steps to be taken to remedy the effects of unauthorised works and provision is made for the service and taking effect of a notice as well as for an appeal against it (sections 35 to 41). The Chapter also provides for injunctions to restrain actual or expected breaches of section 11 or failures to comply with scheduled monument consent conditions (section 42).

Section 30 — Offence of carrying out unauthorised works or breaching condition of consent

111. **Section 30(1)** makes it an offence for a person to carry out unauthorised works to a scheduled monument, or to cause or permit such works to be carried out. Authorisation may be provided by section 12, which authorises specific classes of works, or under

section 13, which provides for the grant of scheduled monument consent by the Welsh Ministers.

112. If scheduled monument consent has been granted, subsection (2)(b) provides that it is an offence for a person to fail to comply with a condition of a consent in carrying out works, or in causing or permitting the works to be carried out. This will apply to all conditions attached to a scheduled monument consent, including, for instance, those for publication of the results after the completion of an archaeological investigation.
113. In subsections (1) and (2), a “person” may be anyone who undertakes works to a monument, be that an owner or occupier of a monument, a contractor or subcontractor or other third party.
114. If works are undertaken without authorisation or in breach of a condition, an offence is committed whether a person:
 - a. carries out those works personally,
 - b. instructs or employs someone else to undertake them, or
 - c. permits such works.
115. The last point means that a person cannot turn a blind eye to what happens on a scheduled monument and fail to take reasonable steps to prevent unauthorised works.
116. Subsection (4) provides a person with a defence in proceedings for a subsection (1) offence relating to a monument under interim protection where the person can prove that the person did not know and could not reasonably have been expected to know that the monument was subject to interim protection. Where the defence is raised by a person on whom a notice should have been served under section 5(2), it is for the prosecution to prove that the notice was served on the person.
117. Information on monuments under interim protection should be readily available. Section 5(2) to (4) requires the Welsh Ministers to serve notice if they propose to add a monument to the schedule or add to the area of an existing scheduled monument. The notice, which must be served on every owner and occupier of the monument amongst other persons, has to specify the date upon which interim protection begins and explain its effect. A list of monuments under interim protection is published on the Cadw website in accordance with section 6(4) (see paragraph 39 above) and Cof Cymru also identifies monuments under interim protection.
118. Subsection (7) provides a similar defence in proceedings for an offence under this section for works that have resulted in the demolition or destruction of, or any damage to, a scheduled monument or flooding or tipping operations on land in, on or under which a scheduled monument is located. A person will have a defence if the person can prove that, prior to the works, the person took all reasonable steps to determine if a scheduled monument was in the area to be affected by the works and that the person did not know and had no reason to believe that the monument was in the area, or, as the case may be, that it was a scheduled monument.
119. Such reasonable steps might include checking Cof Cymru, where accurate and up-to-date information on the location and extent of all scheduled monuments in Wales is available. Other sites — for example, Archwilio, the online portal of the Welsh historic environment records, or DataMapWales — also incorporate information on scheduled monuments derived from Cof Cymru.
120. A long-term owner or occupier of a scheduled monument is likely to be aware of its status and extent because Cadw field monument wardens visit all scheduled monuments in Wales on a rolling programme to record their condition. New owners should discover their acquisition of a scheduled monument in the conveyancing title search, since an entry in the schedule is a local land charge under section 3(5).

121. Subsection (8) provides a person with a defence in proceedings for an offence under this section if works were undertaken to address urgent health and safety needs. However, the defence is only available where the works are limited to the minimum measures immediately necessary to secure health and safety and notice was given to the Welsh Ministers with detailed justification for the works as soon as reasonably practicable.
122. Subsection (9) provides that the penalty for an offence under this section is an unlimited fine, whether on summary conviction or conviction by indictment.

Section 31 — Power of Welsh Ministers to issue temporary stop notice

Section 32 — Duration etc. of temporary stop notice

Section 33 — Offence of breaching temporary stop notice

123. **Section 31** gives the Welsh Ministers powers to issue a temporary stop notice to put an immediate halt to any or all works to a scheduled monument that they consider to be unauthorised or to breach a condition of a scheduled monument consent. The Welsh Ministers may only do so if they consider that the works ought to be stopped immediately, having regard to the effect of the works on the monument as one of national importance.
124. Subsections (2) to (5) specify the required contents of a temporary stop notice and make provision for service of a notice. Subsections (3) and (4) require the Welsh Ministers to display a copy of the notice on the monument or land, or, where it is not reasonably practicable to display a copy of the notice on the monument or land or doing so could damage the monument, in a prominent location nearby. Subsection (5) then provides that a copy of the notice may be served on the persons identified in that subsection — including a person whom the Welsh Ministers consider is carrying out the works or causing or permitting them to be carried out.
125. While the Welsh Ministers will endeavour to serve individual copies on interested parties under subsection (5), public display of a copy of the temporary stop notice provides a mechanism for alerting all involved in the specified works affecting the scheduled monument that those works must be suspended immediately.
126. **Section 66** makes provision for an authorised person to enter land to display a temporary stop notice and for related purposes.
127. **Section 32** sets out that a temporary stop notice takes effect when a copy of it is first displayed in accordance with section 31, will remain in effect for 28 days (unless a shorter period is specified) and may be withdrawn by the Welsh Ministers before its expiry.
128. Once a temporary stop notice is in effect, section 33 makes it an offence for a person to undertake works prohibited by the notice or cause or permit another person to do so.

Section 34 — Compensation for loss or damage caused by temporary stop notice

129. **Section 34** provides that any person with an interest in a monument or land to which a temporary stop notice relates may be entitled to compensation from the Welsh Ministers for loss or damage directly attributable to the effect of a temporary stop notice.
130. Subsection (1) provides that compensation is only payable where:
 - a. the works specified in the notice did not breach section 11 at the time the notice took effect (that is, they were either authorised or did not require authorisation); or
 - b. the works specified in the notice did not breach a condition of a scheduled monument consent at the time the notice took effect; orthe Welsh Ministers withdrew the temporary stop notice after it took effect.

However, subsection (2) further provides that no compensation is payable if the Welsh Ministers withdraw a notice after granting a scheduled monument consent that will allow the works specified in the notice to proceed.

131. Subsection (5) also excludes any claim for loss or damage that might have been avoided if the claimant had provided information required by the Welsh Ministers regarding interests in the land under section 197 or had otherwise cooperated with the Welsh Ministers.
132. Sections 202 and 203 make additional provisions about claims for compensation under this Act (see paragraph 45 above).

Section 35 — Power of Welsh Ministers to issue enforcement notice

133. Section 35 gives the Welsh Ministers powers to issue an enforcement notice to stop specified unauthorised works to a scheduled monument and/or require steps to be taken to:
 - a. restore the monument or land to its condition before the unauthorised works took place;

The steps required would be likely to include appropriate archaeological investigation of the damaged area to recover and record historical evidence before further specified operations proceed.
 - b. alleviate the effect of the works, if restoration is not reasonably practicable or desirable; or

In the event of serious or extensive damage to a scheduled monument, restoration might be unviable and could, in fact, cause further harm to surviving archaeological evidence. In such a case, the Welsh Ministers would specify steps to stabilise the monument in its altered state to protect it and the information it contains for the future.
 - c. put the monument or land in the condition it would have been in if the terms and conditions of a granted scheduled monument consent had been fulfilled.
134. Under subsection (5) the Welsh Ministers must maintain an up-to-date list of scheduled monument enforcement notices that are in effect. At the time of writing these notes, the list is included on the “Statutory scheduled monument consultation notices” page in the “Scheduled monuments” section of the Cadw website.

Section 36 — Service and taking effect of enforcement notice

135. Section 36 sets out the requirements for service of a copy of an enforcement notice and when a notice takes effect.
136. Subsection (2) provides that an enforcement notice will take effect at the beginning of the day specified in the notice. Should an appeal be made to a magistrates’ court against the notice under section 39, section 39(4) provides that the notice will not take effect until the appeal is determined or withdrawn.
137. Subsection (3) allows an enforcement notice to set different periods for stopping different works or taking different steps. Such flexibility enables an enforcement notice to make appropriate provision for the conservation requirements of a monument. For instance, a phased series of steps might be set out to achieve the satisfactory restoration or stabilisation of a monument damaged by unauthorised works.
138. Subsection (4) requires a copy of the notice to be served on every owner and occupier of the monument or land to which it relates, to any lessee (if appropriate) and to any

other person who has an interest in the monument or land which the Welsh Ministers consider to be materially affected by the notice.

139. Subsection (5) requires a copy of the notice to be served before the end of 28 days after the day on which it was issued, and at least 28 days before the date specified in the notice as the date on which it is to take effect. “Issued” here means when the enforcement notice was agreed by a delegated officer of the Welsh Ministers.
140. Section 66 makes provision for an authorised person to enter land to serve an enforcement notice and for related purposes.

Section 38 — Effect of granting scheduled monument consent on enforcement notice

141. Section 38 provides for a situation where, after an enforcement notice is issued, scheduled monument consent is granted to authorise:
- a. works to which the notice relates that had been carried out in breach of section 11, or
 - b. works that had breached a condition of a previous scheduled monument consent.
142. Subsection (2) provides that steps specified in the notice that are inconsistent with the new consent cease to have effect. However, subsection (3) sets out that a person remains liable for any earlier offence arising from a failure to comply with an enforcement notice, even though part or all of the notice subsequently ceases to have effect under this section. Failing to comply with an enforcement notice (section 41) is a separate offence from carrying out unauthorised works (section 30) and proceedings for the offences may be pursued independently.

Section 39 — Appeal against enforcement notice

143. Section 39 permits anyone upon whom a copy of an enforcement notice has been served or with an interest in the monument or land to which the notice relates to appeal against the notice to a magistrates’ court.
144. Subsection (2) lists the grounds for an appeal and subsection (3) requires that it is made before the date specified in the notice as the date on which the notice takes effect. Subsection (2)(b) provides for an appeal on the basis that the works did not constitute a breach of section 11 or of a condition of a scheduled monument consent. Perhaps this might be because the works occurred outside the area of the scheduled monument or they did, in fact, comply with an authorisation provided by section 12 or 13 and any attached conditions.
145. Subsection (6) provides that the court may uphold a notice in spite of a failure to serve the notice on a person who was required to be served, if it is satisfied that the person has not been significantly disadvantaged by the failure.

Section 40 — Powers to enter land and take steps required by enforcement notice

Section 41 — Offence of failing to comply with enforcement notice

146. Section 40 provides for a situation in which a required step has not been taken within the time prescribed in an enforcement notice. In that case, a person authorised in writing by the Welsh Ministers may enter the land, take that step and recover the costs incurred from any owner or lessee of the monument or land. This allows necessary conservation works to secure the future of the scheduled monument that are detailed in the enforcement notice to take place in a timely fashion. Otherwise, a damaged monument might be left to deteriorate, leading to further damage to the monument and the loss of any archaeological information that it contains.

147. If the power of entry in subsection (1) is to be exercised on occupied land, section 69(2) (a) requires at least 14 days' notice to be given to every occupier.
148. Should an occupier prevent an owner from undertaking works required by an enforcement notice, subsection (3) enables a magistrates' court, on application from the owner, to issue a warrant authorising the owner to enter the land and carry out the work. This provides important legal recourse for an owner since section 41(1) places any liability for an offence for a failure to comply with an enforcement notice on an owner of the scheduled monument or land. An owner may also have a defence under section 41(3) if, in spite of all reasonable efforts to take steps set out in an enforcement notice, an occupier obstructs their execution.
149. [Section 70](#) allows any person with an interest in land to make a claim for compensation for any damage to land or other property caused by the exercise of powers under this section.
150. [Section 41](#) establishes that if, after the end of the period prescribed in an enforcement notice, works specified in the notice have not stopped or a required step has not been taken, an owner of the scheduled monument or land to which the notice relates will be guilty of an offence.

Section 42 — Injunction to restrain unauthorised works or failure to comply with condition of consent

151. [Section 42](#) allows the Welsh Ministers to apply to the High Court or the county court for an injunction to restrain actual or expected breaches of section 11 (requirement for works to be authorised) or actual or expected failures to comply with a condition of a scheduled monument consent.

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.

Chapter 7 — General

192. This Chapter deals with miscellaneous matters relating to monuments of special historic interest. Several provisions treat damage to monuments (sections 58 to 60). Expenditure on monuments is covered under sections 62 to 64. Sections 65 to 71 treat powers of entry and supplementary provisions are included in sections 72 to 75.

Section 58 — Offence of damaging certain monuments of special historic interest

193. [Section 58](#) provides that it is an offence to destroy or damage a protected monument, as defined in subsection (2), without a lawful excuse (subsection (1)).
194. Subsection (1) establishes two tests to determine if a person who has destroyed or damaged a protected monument is guilty of an offence. The first is did the person know or ought the person reasonably to have known that the monument was a protected monument. Accurate and up-to-date information on the location and extent of all scheduled monuments in Wales is available on Cof Cymru.
195. The second test requires that the person intended to destroy or damage the monument or was reckless as to whether the monument would be destroyed or damaged.
196. Subsection (2) includes within the definition of a “protected monument” not just a scheduled monument (section 3) but also a monument under the ownership or guardianship of the Welsh Ministers or a local authority. In many cases the area under such ownership or guardianship extends beyond the area that is included in the schedule.
197. Subsection (3) clarifies that this section applies to anything done by or under the authority of the owner other than the excepted works that are defined in subsection (4). In the case of a monument under guardianship the owner will be different to the guardian.
198. The excepted works in subsection (3) include works authorised under Chapter 3 and works for which development consent has been granted under the [Planning Act 2008 \(c. 29\)](#) (“the 2008 Act”). Development consent under the 2008 Act is required for the categories of projects described in Part 3 of that Act. Not all categories include projects in Wales. Section 150 of the 2008 Act enables an order granting development consent under the 2008 Act to remove a requirement for certain consents, which are prescribed in secondary legislation (Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, [SI 2015/462](#)), if the consenting body agrees.

Section 60 — Restrictions on use of metal detectors

199. This section deals with the offence of using a “metal detector” (any device designed or adapted for detecting or locating any metal or mineral in the ground) without consent on a protected place. Consent is defined for the purposes of this section as the written consent of the Welsh Ministers. A “protected place” is defined in subsection (1) as the site of any scheduled monument or the site of any monument under the ownership or guardianship of the Welsh Ministers or a local authority.
200. In recent decades, the unauthorised use of metal detectors on protected places, often under the cover of darkness when it is frequently referred to as “nighthawking”, has become increasingly common. The resulting removal of objects of archaeological or historical interest from their buried archaeological context leads to the loss of irreplaceable archaeological and historical evidence.
201. Four separate offences are therefore identified at subsections (2) to (5) which can be committed by a person using a metal detector in a protected place. A person found guilty on summary conviction or a conviction on indictment is liable to a fine, which depends on the nature of the offence. These fines are set out in subsections (8) and (9).

202. Subsections (6) and (7) set out the defences available to a person in the event of any proceedings for an offence under subsections (2) or (4). In any proceedings for an offence under subsection (2) it is a defence for a person to prove that the metal detector was used for a purpose other than detecting or locating objects of archaeological or historical interest. Further, in any proceedings for an offence under subsection (2) or (4) it is a defence for a person to prove that all reasonable steps had been taken to find out whether the place in which the metal detector was used was a protected place and they did not know, and had no reason to believe that the place was a protected place. Information on the location and extent of all scheduled monuments is available on Cof Cymru.

Section 61 — Works for preservation of scheduled monument in cases of urgency

203. **Section 61** permits the Welsh Ministers to enter the site of a scheduled monument and undertake any works requiring authorisation under section 11 that the Welsh Ministers consider to be urgently necessary for its preservation. They must, however, have given 7 clear days' written notice of their intention to every owner and occupier of the monument (subsection (2)). Subsection (4) provides that works carried out under this section are to be treated as authorised for the purposes of Chapter 3.
204. If works are carried out under this section to repair damage to a scheduled monument, any compensation order previously made in respect of the damage in favour of someone other than the Welsh Ministers under Chapter 2 of Part 7 of the Sentencing Code is enforceable (to the extent it has not already been complied with) as if it had been made in favour of the Welsh Ministers. Such a situation might arise, for instance, if a court were to make a compensation order in favour of a monument's owner after the conviction of an offender for causing damage by unauthorised off-road driving. If the Welsh Ministers considered that the damage made urgent works necessary and undertook those works, any outstanding compensation would be transferred to the Welsh Ministers to defray the cost of the emergency intervention.

Section 62 — Expenditure on acquisition and preservation of monuments of special historic interest etc.

205. **Section 62** provides the Welsh Ministers with powers to meet or contribute towards the costs associated with the acquisition of a monument of special historic interest (section 75(6)) by any person. The Welsh Ministers or a local authority may, at an owner's request, also assist with, or contribute towards, the costs associated with preserving a monument of special historic interest.
206. Cadw, acting on behalf of the Welsh Ministers, regularly offers grants towards the conservation and preservation of monuments of special historic interest. Cadw will also consider requests for a contribution towards the costs of relocating a monument of special historic interest to secure its long-term preservation.

Section 63 — Advice and supervision of work by Welsh Ministers

207. **Section 63** allows the Welsh Ministers to provide advice about the treatment of any monument of special historic interest (subsection (1)) or to supervise any work in connection with a monument of special historic interest if invited to do so by the owner (subsection (2)). However, they must supervise work in connection with a scheduled monument, if they consider it advisable (subsection (3)). Cadw, acting behalf of the Welsh Ministers, employ regional inspectors of monuments and field monument wardens who undertake regular visits to discuss and advise on the management and conservation of scheduled monuments with their owners and/or occupiers.
208. Although the provisions allow the Welsh Ministers to recover the costs of such advice or supervision (subsection (4)), they have rarely done so. The discussions with Cadw inspectors and field monument wardens are more likely to include advice on the

availability of financial support for any required expenditure, including from the Welsh Ministers under section 62.

Section 64 — Expenditure by local authorities on archaeological investigation

209. [Section 64](#) provides powers to local authorities to carry out or assist in, or meet or contribute towards the costs of, any archaeological investigations in or in the vicinity of an authority's area.
210. At the time of writing these notes, only a small number of local authorities in Wales employ specialist archaeologists, so this power is normally exercised through archaeological contractors or through one of the Welsh archaeological trusts. Details of any archaeological investigations undertaken under this section, and of the findings of those investigations, must be added to the historic environment record for that local authority area (section 194).

Section 65 — Powers of entry for inspection of scheduled monuments etc.

211. This section provides powers for a person authorised in writing by the Welsh Ministers to enter any land for the inspection of a scheduled monument for the purposes set out in the section.
212. In practice, such inspections are normally undertaken either by specialist Cadw staff or by specialist archaeologists working for other organisations, such as one of the regional Welsh archaeological trusts.
213. These powers of entry are subject to supplementary provisions set out in section 69. Section 69(1) provides that the power of entry may be exercised at any reasonable time.
214. An exception to the requirement for entry at any reasonable time is made in section 69(1) for section 65(5), which provides for the erection of notice boards and marker posts. However, section 65(6) stipulates that the power in section 65(5) may only be exercised with the agreement of every owner and occupier.
215. [Section 69\(2\)](#) requires that, if the land is occupied, notice of the intended entry must be served on every occupier. For the purposes of inspection, at least 24 hours' notice of intended entry is required (section 69(2)(b)). If a notice board or marker post is to be erected under section 65(5) this constitutes works and at least 14 days' notice to every occupier is needed (section 69(2)(a)).
216. [Section 70](#) makes provision for compensation for damage caused by the exercise of powers of entry under this section.

Section 66 — Powers of entry relating to enforcement of controls on works

217. [Section 66](#) gives Welsh Ministers the power to authorise a person in writing to enter land for purposes relating to temporary stop notices and enforcement notices.
218. Subsection (1) relates to powers of entry to determine whether a temporary stop notice should be issued, to display or attach a copy of a temporary stop notice, or assess whether a notice has been complied with.
219. Subsection (2) relates to powers of entry to determine if an enforcement notice should be issued, to attach a copy of an enforcement notice or to assess whether an enforcement notice has been complied with.
220. These powers of entry are subject to the supplementary provisions in section 69 (which include that they may be exercised at any reasonable time). In the case of an enforcement notice and where the land is occupied, section 69(2)(b) provides that for the purposes specified in section 66(2) notice must be given at least 24 hours before the day of the intended entry. No such notice is required when powers of entry are exercised in relation

to a temporary stop notice (section 69(3)(b)). This will allow timely action to assess the condition of a monument and, if necessary, intervention to halt further damage.

221. An authorised person might be a Welsh Government staff member, such as a Cadw inspector or field monument warden, or an archaeological or conservation specialist working under contract to the Welsh Government or working for one of the regional Welsh archaeological trusts. On occasion, the person might need to be accompanied by the police, depending on circumstances.

Section 67 — Power of entry on land believed to contain monument of special historic interest

222. **Section 67** provides the Welsh Ministers with the power to authorise a person to enter land that they know, or have reason to believe, contains a monument of special historic interest (section 75(6)). The person must be authorised in writing (subsection (5)).
223. The purpose of entering the land must be for the inspection of the land with a view to recording any matters of archaeological or historical interest and for the identification of monuments of special historic interest including those that might be added to the schedule of monuments under section 3.
224. Subsection (2) provides that the authorised person may carry out excavations of the land for the purpose of archaeological investigations (section 75(2)), subject to agreements — for example, with the owner and occupier— that would normally be required for excavation works (subsection (3)). Such prior agreement is not required if the Welsh Ministers know or have reason to believe that a monument of special historic interest in, on or under the land is under threat of imminent damage or destruction (subsection (4)).
225. In practice, inspections under this section are undertaken either by specialist Cadw staff or by specialist archaeologists working for other organisations, such as one of the regional Welsh archaeological trusts. In recent decades, several thousand visits have been made to inspect land believed to contain monuments. In the vast majority of cases, the visits have been made with the prior agreement of the owner or the occupier of the land (or both). In many cases, the visits have resulted in amendments to the schedule of monuments (section 3) through the addition of monuments of national importance.
226. The power of entry conferred by this section is subject to supplementary provisions set out in section 69. They state that the power of entry may be exercised at any reasonable time, but that at least 24 hours’ notice of intended entry needs to be given to every occupier of the monument, including for works relating to excavation under subsection (2).

Section 69 — Supplementary provision about powers of entry under this Part

227. This section sets out supplementary provisions about the exercise of powers of entry relating to monuments of special historic interest. Subsection (1) sets out that such powers may be exercised at any reasonable time, but this does not apply to section 65(5).
228. The following subsections of section 69 identify a number of qualifications to the powers of entry.
229. Subsection (2) provides that, where any land is occupied, a notice of the intended entry must be given to every occupier prior to entry on to the land. Where the purpose of the entry is to carry out works (other than excavations under section 67) such a notice must be given at least 14 days before the date of the intended entry. In any other case, including excavations under section 67, a notice must be given at least 24 hours before the date of intended entry.
230. Subsection (3) further provides that the requirements set out in subsection (2) do not apply in the following circumstances:

- a. entry under section 61 where 7 clear days' written notice to every owner and occupier of a monument is required before executing urgent works for the preservation of a scheduled monument
 - b. in relation to the powers of entry for temporary stop notices (section 66(1)), where no notice is required to occupiers.
231. Subsections (11) and (12) of section 69 provide that a person who intentionally obstructs a person exercising a power of entry under Part 2 commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 71 — Treatment and preservation of finds

232. This section provides for the treatment and preservation of any objects of archaeological or historic interest that are taken into temporary custody by a person, while engaged in the activities mentioned in subsection (1)(a) to (c).
233. This power allows archaeologists and finds specialists, acting on behalf of an appropriate authority as defined in subsection (4), to properly conserve and analyse any objects recovered. Such objects are of archaeological and historical value in their own right but can also provide valuable information about the nature and date of the monument of special historic interest from which they derive. They can assist the Welsh Ministers and local authorities in the exercise of their responsibilities and powers under this Part.
234. Subsection (5) clarifies that this section does not affect any right of the Crown under the [Treasure Act 1996 \(c. 24\)](#) ("the 1996 Act"). Under the 1996 Act there is an obligation to report objects which constitute treasure (as defined in that legislation) to the local coroner within 14 days who will then hold an inquest in order to determine the object's status.

Section 72 — Validity of certain decisions and orders under this Part

Section 73 — Application to High Court for statutory review of decision or order

235. [Section 72](#) provides that the validity of a decision of the Welsh Ministers on an application for a scheduled monument consent, a decision on a review under section 9, or an order under section 20 modifying or revoking a scheduled monument consent may not be questioned in any legal proceedings except for a statutory review under section 73.
236. [Section 73](#) provides that a person who is aggrieved by a decision or order listed in section 72 may make an application to the High Court for a statutory review. An application for a statutory review must be made before the end of the 6 weeks beginning with the day after the day the decision or order to which the application relates is made.
237. The question of whether or not a person is aggrieved will vary dependent on the individual case, but aggrieved persons may include the owner or occupier, the applicant or any other party who has been involved or has an interest in the decision or order. The authority directly concerned with the decision or order may also make an application for statutory review.

Section 74 — Crown land

238. [Section 74](#) sets out how this Part applies to Crown land. A monument on Crown land may be scheduled. Any restrictions imposed and powers conferred by this Part apply to Crown lands, but not so as to affect any interest of the Crown in the land. In practice, this means that prior to granting scheduled monument consent on Crown land, Cadw, acting on behalf of the Welsh Ministers, would consult with the appropriate Crown authority to check if its interest in the land would be affected.

239. Subsection (4) does not permit a person to exercise a power of entry on Crown land without the consent of the appropriate Crown authority. Nor does it permit the compulsory purchase of an interest in Crown land held otherwise than by or on behalf of the Crown without such consent.
240. “Crown land” and “appropriate Crown authority” are defined in section 207.

Section 75 — Interpretation of this Part

241. [Section 75](#) clarifies the meaning of many of the terms used in this Part. In particular it provides a definition of “monument of special historic interest” in subsection (6).
242. “Monument of special historic interest” captures any scheduled monument and any other monument wholly or mainly in Wales that the Welsh Ministers consider to be of public interest by reason of its historic, architectural, traditional, artistic, or archaeological interest. This definition is only employed in Chapters 6 and 7 of this Part. Amongst other things, this definition permits the Welsh Ministers to bring monuments that are of public interest, but do not meet the criteria for scheduling, into guardianship.
243. Subsection (7) provides that the definition in subsection (6)(b) does not include a monument situated in, on or under the bed of the sea below the low water mark. This limits the area in which the Welsh Ministers may recognise monuments of special historic interest to that covered by the Welsh counties and county boroughs including the adjacent seashore to the low water mark (as provided for in section 46 of the [Local Government \(Democracy\) \(Wales\) Act 2013 \(anaw 4\)](#)). Consequently, the Welsh Ministers may recognise wrecks, fish traps and other remains in the intertidal zone as monuments of special historic interest, but cannot do the same if similar remains are permanently submerged beyond the low water mark.