

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 — Buildings of special architectural or historic interest

Chapter 3 — Listed building partnership agreements

409. This Chapter provides for the making of a listed building partnership agreement. This is a voluntary agreement between a planning authority or the Welsh Ministers, a listed building owner and other parties for the long-term conservation and management of one or more listed buildings. A listed building partnership agreement may grant listed building consent for an agreed programme of works to be carried out during the lifetime of the agreement. Provision is made for comparable scheduled monument partnership agreements in Part 1, Chapter 4.
410. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the preparation of heritage partnership agreements including those for listed buildings. 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 113 — Listed building partnership agreements

411. [Section 113](#) sets out the possible parties to a listed building partnership agreement and what such an agreement may do.
412. Subsections (1) and (3) establish that an owner of a listed building or part of a listed building may enter into a listed building partnership agreement with the planning authority in whose area the building is situated or the Welsh Ministers.
413. In practice, listed building partnership agreements will routinely be made between owners and their respective planning authorities. Although agreements between owners and the Welsh Ministers are permitted by the legislation, at the time of writing they are only likely to be made when local authorities are the owners of the listed buildings. While a planning authority may, in some situations, determine its own listed building consent applications (see paragraph 362 above), it might still wish to enter a listed building partnership agreement with the Welsh Ministers to benefit from the long-term efficiency savings that an agreement can offer.
414. Other persons with an interest in the listed building, as identified in subsections (2) and (4), may also be parties to the agreement.
415. Subsection (6) provides that a listed building partnership agreement may grant listed building consent under section 89(1) for specified works for the alteration or extension of the listed building to which it relates. This power is used to grant permission for beneficial works for the conservation and management of the listed building. The works

specified will need to be negotiated and agreed by the parties to the agreement and conditions may be attached to the consent (and subsection (7) provides that any such conditions must be specified in the agreement).

416. An agreement cannot, however, grant consent for the demolition of a listed building. Demolition works would require separate listed building consent obtained through the routine application procedure.
417. A listed building consent contained in a listed building partnership agreement is not subject to the provisions in section 98 about when works must start. A consent for works that have not been started will remain valid for the lifetime of the agreement, which may last for 10 to 15 years.
418. Subsection (8) sets out a wide range of matters relating to maintenance, conservation and management that the parties may also agree to include in a listed building partnership agreement. Paragraph (a) permits the parties to specify works that in their view would or would not affect the character of a listed building as a building of special architectural or historic interest and consequently would or would not require listed building consent. This would allow the parties to identify clearly routine maintenance works or like-for-like repairs (with details of methods and materials) that could proceed without consent since there would be no loss of historic fabric or effect on the character of the building. Equally, the parties would be able to outline more substantial works — for instance, the restoration or reconstruction of elements of the listed building, or major additions or alterations — which, due to their complexity or sensitivity, could not be adequately provided for in a listed building partnership agreement. Those works would require the full consideration of the separate listed building consent procedure (sections 90 to 98).

Section 114 — Further provision about listed building partnership agreements

419. Subsections (1) and (2) of section 114 provide that listed building partnership agreements must be in writing and specify essential elements of an agreement.
420. Subsection (2)(e) requires a listed building partnership agreement to make provision for its variation. Since an agreement will last for years, it is likely that adjustments will be required. The parties, therefore, must incorporate in the agreement agreed working arrangements for approving necessary variations into the agreement. Depending on the nature of the variations, they may be subject to the consultation and publicity requirements prescribed by the regulations under subsection (5).
421. The requirement in subsection (2)(f) provides for a mechanism for a negotiated termination to a listed building partnership agreement should it no longer serve the mutual interests of the parties or has, for some other reason, broken down. This is distinct from any termination of an agreement or a provision of an agreement by order of a planning authority or the Welsh Ministers as provided for under section 115.
422. When considering whether to make or vary a listed building partnership agreement that incorporates listed building consent, a planning authority or the Welsh Ministers must have the same special regard to the desirability of preserving the building, its features and its setting as when granting or refusing listed building consent under section 96. See the discussion in paragraph 336 above.
423. Subsection (7) provides that a listed building partnership agreement will only be binding on the parties to the agreement. Future owners of a listed building will not be bound by an agreement, nor will they be able to benefit from any listed building consent granted by an agreement. Unless all parties agree to continue an agreement with a new owner, a listed building partnership agreement will, therefore, cease to have effect with a change of ownership.

Section 115 — Termination of agreement or provision of agreement

Schedule 10 — Procedure for orders terminating listed building partnership agreements

424. **Section 115(1)** allows a planning authority to make an order to terminate a listed building partnership agreement to which it is a party or any provision of such an agreement. Subsection (2) gives the Welsh Ministers comparable powers, but they do not have to be party to an agreement. Termination by order is only likely to occur in exceptional cases — if, for example, works unauthorised by the agreement take place and relations between the parties break down to such an extent that negotiated termination becomes impossible.
425. A termination order may be made at any time before the conclusion of the affected works, but it will have no effect on the consent for works already completed.
426. **Schedule 10** puts in place the procedures for making the termination orders. These procedures are derived from those for making an order to modify or revoke listed building consent in Schedule 8.
427. **Part 1** of the Schedule makes provision about termination orders made by planning authorities. Paragraph 1(1) requires that a planning authority's termination order must be confirmed by the Welsh Ministers before it will take effect.
428. **Paragraph 1(2)** requires a planning authority that has submitted an order to the Welsh Ministers for confirmation to give notice of the submission to:
- a. the other parties to the agreement;
 - b. any other person occupying the listed building to which the agreement relates under a lease that has at least two years to run; and
 - c. any other person the authority thinks will be affected by the order.
429. **Paragraph 1(2)(b)** has been framed to require consultation with longer-term occupants of a listed building that will be affected by a termination order. More transient occupiers, for instance students in a university hall of residence, will not be captured by the provision.
430. The recipients of the notice must be given at least 28 days to make a written request to the Welsh Ministers for a hearing before an appointed person, who will usually be an inspector from Planning and Environment Decisions Wales. The period of at least 28 days must begin with the day after the day the notice is served. If a hearing is requested, each planning authority that is party to the agreement will be given the opportunity to attend (paragraph 1(3)–(5)).
431. **Part 2** of the Schedule makes provision about termination orders made by the Welsh Ministers. Under paragraph 2(1) the Welsh Ministers must serve notice of the proposed termination order on the parties to the listed building partnership agreement and the other individuals listed in paragraph 430 above.
432. Before the Welsh Ministers can make the order, the recipients of the notice must be afforded the opportunity to appear before and be heard by an appointed person. The procedures in paragraph 2(2)–(4) mirror those in paragraph 1(3)–(5).

Section 116 — Compensation where agreement or provision is terminated

433. If a listed building partnership agreement, or a provision of such an agreement, is terminated by order and a person suffers loss or damage as a direct result, section 116 provides for the payment of compensation.

*These notes refer to the Historic Environment (Wales) Act
2023 (c.3) which received Royal Assent on 14 June 2023*

434. These provisions are similar in many respects to those providing for compensation if listed building consent is modified or revoked by order under section 108. Just as in that earlier section, section 116(3) provides that expenditure incurred in carrying out works includes the preparation of plans and other preparatory matters. Such other matters might include, but not be limited to, site surveys and investigations, the preparation of heritage impact statements and the production of detailed specifications of methodologies and materials.
435. The compensation claim must be made in writing either to the planning authority that made the order, or, in the case of an order made by the Welsh Ministers, to the planning authority in whose area the listed building is situated. It must be made within six months of the termination order taking effect (subsections (5) and (6)).
436. If a planning authority is liable to pay compensation under section 116, section 171(3) (a) permits the Welsh Ministers to contribute towards the payment of the compensation in certain circumstances. Section 171(4)–(6) allows the Welsh Ministers to direct any other authority that was or is party to the listed building partnership agreement to defray some or all of the compensation. This acknowledges that a complex agreement — for instance, one for listed buildings associated with a transport corridor— could involve a number of local authorities. While a single authority or the Welsh Ministers might serve the termination order, it might be reasonable to share the burden of compensation between some or all of the other authorities party to the agreement. However, under section 171(6) the Welsh Minister may only give such a direction if they have consulted with all the planning authorities that were or are party to the agreement.
437. [Sections 202](#) and [203](#) make additional provisions about claims for compensation under this Act (see paragraph 45 above).