

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 — Buildings of special architectural or historic interest

Chapter 5 — Acquisition and preservation of buildings of special interest

Section 137 — Powers to acquire listed building compulsorily for purpose of preservation

Section 138 — Requirement to serve repairs notice before starting compulsory acquisition

519. Together sections 137 and 138 provide for the compulsory acquisition of a listed building for the purpose of preservation by an acquiring authority — a planning authority or the Welsh Ministers. Section 138 sets out that the acquiring authority must first serve a repairs notice before employing the compulsory acquisition powers in section 137.
520. *Section 137* provides powers for the compulsory acquisition of a listed building if it is not being properly preserved. In order for these powers to be used, subsection (1) requires that two separate tests must be met in the estimation of the Welsh Ministers. First, the Welsh Ministers must consider that reasonable steps are not being taken for properly preserving a listed building. While reasonable steps encompass routine maintenance and repairs, they may also include other works that will vary from building to building, depending upon the nature of the structure and its current condition. Second, the Welsh Ministers must be satisfied that there is a compelling case in the public interest for the compulsory acquisition of the building for the purpose of preservation. In arriving at their conclusion, the Welsh Ministers may take into account the significance of the building (including its curtilage structures and objects), previous attempts to find a sustainable basis for the management of the building and the likelihood of negotiating a viable way forward, any other available legal solutions and the risk of loss or irreparable damage to part or all of the listed building. The Welsh Government's *Compulsory Purchase Order (CPO) Manual* (2021), which is kept under review, provides guidance on compulsory acquisition.
521. If both tests are met, under subsection (2) the Welsh Ministers may authorise the planning authority in whose area the listed building is situated to undertake a compulsory acquisition of the building and associated land. The same subsection also allows the Welsh Ministers themselves to acquire the building and land compulsorily.
522. Subsection (3) sets out the conditions that must be met for associated land to be included in the compulsory acquisition. These are that the land includes, adjoins or is adjacent to the building, and that the Welsh Ministers consider that the land is required for the purposes of preserving the building or its amenities, accessing it or its proper control and management. Provision is made for including associated land in the compulsory

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

acquisition because without such land it might not be possible to undertake effective conservation and management of the building.

523. Subsections (4) and (5) exempt from the operation of this section: any building which is also a scheduled monument, any exempt religious building (defined in section 156) and interests in Crown land (defined in section 207), except as specified.
524. Subsection (6) applies the 1981 Act to an acquisition under this section. The 1981 Act provides for compulsory acquisitions of land to be authorised by compulsory purchase orders and sets out the procedures for making those orders. They include provision for notice to be given of orders, for the consideration of objections, and for orders made by local authorities to be confirmed by Ministers.
525. [Section 138\(1\)](#) provides that an acquiring authority may not serve notice of an intended compulsory acquisition under the 1981 Act — the start of the formal process for compulsory acquisition — unless a “repairs notice” has been served on every owner of the building in question and two months have passed.
526. Under subsection (2), a repairs notice must specify the works the authority considers reasonably necessary for the proper preservation of the building. The works specified in the repairs notice might be those necessary for the preservation of the building in the state in which it was at the date of listing, rather than at the date of the notice. The service of the notice provides a final opportunity for every owner to take reasonable steps for the building’s preservation and forestall the compulsory acquisition process.
527. Subsection (2) also provides that the repairs notice must explain the effect of sections 137 to 141 of the Act and section 49 of the 1990 Listed Buildings Act. The effect of section 49 is that when calculating compensation it will be assumed that listed building consent would be granted for any works for the alteration or extension of the building or for its demolition under certain circumstances. This assumption will apply in addition to the general provisions about assessing compensation in the 1961 Act. However, the repairs notice will also need to explain the possibility of the payment of minimum compensation under section 140 if a building has been deliberately allowed to fall into disrepair.
528. Where a repairs notice is served on an owner, section 111(5) bars the owner from serving a purchase notice on the authority for three months or, if compulsory purchase proceedings are started within that three-month period, at any time until they are concluded.