

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

507. [Chapter 5](#) provides various powers for the acquisition and preservation of historic buildings of special interest. They offer a suite of measures that may be used when listed buildings fall into disrepair, either through a lack of investment or will from owners, or, in some cases, through deliberate neglect or abandonment. In most cases, the powers are exercisable by the Welsh Ministers and either the relevant planning authority or the local authority.
508. [Sections 137 to 142](#), for instance, provide for the compulsory acquisition of a listed building by a planning authority (with authorisation from the Welsh Ministers) or by the Welsh Ministers themselves. These compulsory powers may be needed if there is no alternative but to acquire a listed building that has fallen into disrepair, so other arrangements can be made for its preservation. On the rare occasions when compulsory acquisition is considered necessary, the acquiring authority must first serve a repairs notice to provide every owner with a final opportunity to undertake reasonable steps for a building’s preservation (section 138).
509. Compensation will be payable to an owner following a compulsory acquisition, but the Chapter allows an acquiring authority to make a direction for minimum compensation if it is satisfied that a building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site or any adjoining site. It also sets out the procedures any person with an interest in the building would need to follow to challenge such a direction (sections 140 and 141).
510. Local authorities or the Welsh Ministers may also undertake urgent works necessary for the preservation of a listed building and may take measures to recover the costs of these works, including through a local land charge (sections 144 to 146). In practice, urgent works tend to be temporary interventions, such as shelters or covers, to provide immediate protection from wind and rain damage. They are often intended to allow time to develop and agree long-term conservation plans for the building.
511. The Chapter provides further steps for the preservation of listed buildings in disrepair by giving the Welsh Ministers powers to make regulations that may, in particular, provide for a “preservation notice” requiring owners of a listed building to carry out works to secure its proper preservation (section 147).
512. The Chapter also enables local authorities and the Welsh Ministers to offer financial support for the maintenance and repair of historic buildings and gardens, and to recover funds in certain circumstances (sections 148 to 150).
513. The Welsh Ministers have published non-statutory, best-practice guidance, which is kept under review, to support the management of listed buildings that have fallen into

disrepair. The guidance at the time of writing these notes, *Managing Listed Buildings at Risk in Wales* (2018), outlines the roles and responsibilities of owners, the Welsh Government and local authorities when managing listed buildings that have fallen into disrepair. It shows how policies and programmes to manage listed buildings at risk can be successful.

Section 136 — Power of planning authority to acquire building by agreement

514. [Section 136](#) provides that a planning authority may acquire by agreement any building that is wholly or mainly in Wales that it considers to be of special architectural or historic interest. While such a building may be listed, it is not necessary. The acquiring planning authority must only be satisfied that the building is “of special architectural or historic interest”.
515. The acquisition of a building might be motivated by a local authority’s concern for its immediate preservation, but it could equally be prompted by other aims, for instance securing the future of a building of special interest and providing public access.
516. Associated land may be included in the acquisition provided the conditions in subsection (2) are met.
517. Subsection (3) applies standard provisions governing the exercise of compulsory purchase from Part 1 of the [Compulsory Purchase Act 1965 \(c. 56\)](#), so far as they are relevant, to an acquisition by agreement.
518. Subsection (4) provides that, where lessees are entitled to compensation for certain damage because of the execution of works, it includes damage from works carried out under section 203 of the Housing and [Planning Act 2016 \(c. 22\)](#).

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 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.

Section 139 — Application to stop compulsory acquisition

529. When a compulsory purchase order for the acquisition of a listed building has been made by a planning authority (but not yet confirmed by the Welsh Ministers) or prepared in draft by the Welsh Ministers (but not yet put into effect), section 139 permits anyone with an interest in the building to apply to a magistrates’ court for an order to halt further progress on the compulsory purchase (subsection (2)).
530. Subsection (3) provides that the application must be made within 28 days after the day notice of the compulsory acquisition is served under the 1981 Act. The application would be made on the ground that reasonable steps had been taken for properly preserving the listed building, and subsection (4) requires the magistrates’ court to make

the applied for order if it is satisfied that such steps have been taken. An appeal against the magistrates' court decision can be made to the Crown Court (subsection (5)).

Section 140 — Direction for minimum compensation where building deliberately allowed to fall into disrepair

Section 141 — Application for removal of direction for minimum compensation

531. If an acquiring authority considers that a listed building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site or any adjoining site, under section 140 a compulsory purchase order relating to the building may contain a direction for minimum compensation. The effect of the direction is that the compensation payable for damage or loss caused by the acquisition will be assessed on the basis that planning permission and listed building consent would only be granted for the works which are necessary for the conservation of the building and its maintenance in a proper state of repair, and not for any development of the site. This would prevent any development value of the building/land from being considered as part of the compensation assessment.
532. According to section 210, the definition of “development” that applies to this Act is the definition in section 55 of the 1990 Planning Act. It is broadly framed and includes any building or other operations (including demolition and rebuilding) and any material change in the use of land.
533. **Section 141** allows any person with an interest in a listed building in relation to which a direction for minimum compensation has been made to apply to a magistrates' court for an order for the direction to be removed. The application would be made on the ground that the building had not been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site. The application must be made within 28 days after the day of the service of the compulsory acquisition notice. An appeal against the decision of the magistrates' court can be made to the Crown Court.

Section 142 — Ending of rights over land acquired compulsorily

534. **Section 142(1)** provides that, on the completion of a compulsory acquisition of land under section 137, all private rights of way over the land and all rights to keep apparatus installed on the land cease. Moreover, the acquiring authority becomes entitled to any apparatus on, under or over the land.
535. Subsection (2), however, makes important exceptions in those cases where the right or apparatus is:
- a. a statutory undertaker's,
 - b. conferred or installed for the purposes of an electronic communications code network, or
 - c. specified in a direction given by the acquiring authority.
536. Subsection (3) provides that subsection (1) is also subject to any agreement between the parties.
537. Subsections (4) and (5) provide that a person who suffers loss by the ceasing of a right or the transfer of apparatus is entitled to compensation from the acquiring authority, determined in accordance with the 1961 Act.

Section 143 — Management, use and disposal of building acquired under this Chapter

538. **Section 143** makes provision for the management, use and disposal of buildings acquired under this Chapter. Subsection (1) makes provision about a building or other land acquired by a planning authority under this Chapter — whether by agreement or by compulsory acquisition. The authority may make any arrangements for the management, use or disposal of the building or land that it considers appropriate for the purpose of preserving the building or land. Subsection (3) makes similar provision in relation to a building or land acquired compulsorily by the Welsh Ministers, but permits them to make “any arrangements that they consider appropriate for the management, custody or use of the building or land” or dispose or deal with the building or land in any other way.
539. There are a number of options available to an authority acquiring a building under this Chapter. In the simplest arrangement, the authority would purchase the building, undertake the required repairs and either use it for its own purposes or sell it to a new owner. Alternatively, the authority could sell it unrepaired subject to a condition for its repair. For larger or more complex buildings, the acquiring authority might establish a “back-to-back” agreement, possibly with ownership passing to a building preservation trust or another charitable body set up with the specific objective to conserve the building that has been acquired.

Section 144 — Urgent works to preserve listed building

540. **Section 144(1) to (4)** enables local authorities and the Welsh Ministers to carry out works that they consider urgently necessary for the preservation of listed buildings. These may include works to a building that is in residential use as long as it does not interfere unreasonably with that use. Such urgent works might include:
- a. relatively minor works to arrest a building’s decline and remove the need for more extensive work at a later date
 - b. works to provide temporary shelter or support for a building to keep it weatherproof or safe from collapse
 - c. actions to prevent vandalism or theft.
541. Urgent works are often intended to be short-term and designed to allow time to develop and agree long-term conservation plans for a building.
542. Subsections (5) and (6) provide that, prior to any urgent works being carried out, at least 7 days’ written notice must be given to every owner of the listed building and to every occupier (if any part of the building is in residential use). This notice must include a description of the proposed works.
543. Subsection (7) establishes that the powers in this section may not be used to carry out urgent works on: an building which is also a scheduled monument, an exempt religious building (defined in section 156) or a listed building on Crown land (defined in section 207).

Section 145 — Power to require owner to meet costs of preservation works

544. If a local authority or the Welsh Ministers incur costs in undertaking urgent works to a listed building, section 145 allows them to serve a notice on any owner of the listed building requiring the owner to meet the costs of the works.
545. Subsection (2) makes specific provision for the recovery of costs for continuing expenditure involved in ongoing works to provide temporary support or shelter. Such expenditure might be required, for example, to pay for the hire of scaffolding and

sheeting erected to keep a building weatherproof while long-term conservation plans are finalised.

546. Under subsection (3), an owner may, within 28 days after the day a notice of costs is served, complain in writing to the Welsh Ministers that:
- a. some or all of the works were unnecessary for the preservation of the listed building;

The owner would have to be able to show that the works undertaken went beyond those needed for temporary support or shelter or the immediate preservation of the listed building, for instance that they incorporated precautionary or preventative works that were not strictly necessary.
 - b. temporary arrangements to provide support or shelter have continued for an unreasonable length of time;

For instance, an owner might complain about continuing expenditure on scaffolding and other materials used to provide temporary support and shelter if a more permanent solution for a listed building did not follow urgent works.
 - c. the amount specified for recovery is unreasonable; or
 - d. the recovery of the amount would cause hardship to the owner.
547. Should the Welsh Ministers determine that the complaint is well-founded, they may, under subsection (5), reduce the amount that may be recovered or even decide that nothing may be recovered, if all the works were unnecessary.
548. Under subsection (6), an owner or local authority on whom a notice of the Welsh Ministers' determination is served may appeal to the county court within 28 days after the day the notice is served.

Section 146 — Further provision about recovery of costs of preservation work

549. [Section 146](#) makes additional provision about the recovery of costs incurred by a local authority or the Welsh Ministers in undertaking urgent works. The recovery of costs may, in practice, prove to be a protracted process, so subsection (1) provides that any recoverable sums carry interest at a rate specified in regulations made by the Welsh Ministers. Interest is applied from the time the notice requiring the owner to meet the costs of urgent works under section 145(1) becomes operative (subsection (7)) until all outstanding amounts are recovered by the relevant authority.
550. Under subsection (2), the costs and any interest are recoverable as a debt. A local authority, or, as the case may be, the Welsh Ministers, would, therefore, be able to employ all available mechanisms for the recovery of a debt, including a claim in the county court.
551. Furthermore, from the time the section 145(1) notice becomes operative, the costs and any accrued interest become a charge on the land on which the listed building stands. This is a legal charge — a debt secured by the property — and a local land charge and will remain in place until the costs and interest are entirely recovered (subsections (3) and (4)).
552. For the purposes of enforcing the charge, subsection (5) gives the recovering authority the same powers and remedies as a mortgagee by deed under the [Law of Property Act 1925 \(c. 20\)](#). The authority may appoint a receiver if one month or more has passed since the charge took effect. The recovering authority also has powers to lease or sell land to recover sums, but such measures are likely to be rarely used.

Section 147 — Steps for preservation of listed buildings in disrepair

553. [Section 147](#) enables the Welsh Ministers to make regulations to confer power on local authorities or the Welsh Ministers to take steps for the proper preservation of listed buildings that have fallen into disrepair. Subsection (2) allows the regulations to make particular provision for “preservation notices” requiring owners to undertake specified works to secure the proper preservation of such buildings. The regulations may also make provision for appeals against preservation notices and offences for failure to comply with the notices.
554. [Paragraph 186](#) of Schedule 13 (minor and consequential amendments and repeals) amends the [Regulatory Enforcement and Sanctions Act 2008 \(c. 13\)](#) (“the 2008 Regulatory Enforcement Act”) to enable civil sanctions to be imposed in respect of offences in regulations made under this section. The kinds of civil sanctions that may be imposed are those contained in Part 3 of the 2008 Regulatory Enforcement Act, for example, fixed monetary penalties or notices imposing requirements to take specified steps.

Section 148 — Grant or loan by local authority for repair or maintenance of building

Section 149 — Recovery of grant made by local authority

555. [Section 148](#) enables a county or county borough council, a National Park authority or a joint planning board (referred to collectively in this section as relevant local authorities) to offer financial support for incurred or planned expenditure for the repair and maintenance of historic buildings and associated gardens. Under the definition in section 210, a building for the purposes of section 148 may include plant or machinery forming part of the structure.
556. Under subsection (1), a relevant local authority may contribute towards any expenditure for the repair or maintenance of a listed building in or near its authority area or for the repair or maintenance of a building in its authority area that is not listed but that the authority considers to be of special architectural or historic interest. Subsection (2) further permits an authority to extend any funding to include a contribution to the maintenance of a garden associated with a historic building.
557. Subsection (3) allows a contribution under this section to be made by a grant or a loan. Subsections (4) and (6) provide that a relevant local authority may make loans and grants subject to conditions. For example, the authority might set a condition requiring the recipient to provide some form of public access to the building and/or an associated garden.
558. [Section 149](#) provides that where a condition of a grant made by a relevant local authority under section 148 is not complied with, the authority may recover the amount of the grant, or any part of it (subsection (2))
559. Subsections (3) to (5) provide that if the recipient of the grant disposes of all or part of the interest that they have in the property within 3 years of the day on which the grant was made, a relevant local authority may recover all or part of the grant.
560. These recovery powers might be used if, for example, a building’s value increases as a result of the grant-funded works, and the grant recipient then sells the building in order to capitalise.

Section 150 — Grant by Welsh Ministers for repair or maintenance of building, garden etc.

561. [Section 150\(1\)](#) enables the Welsh Ministers to make grants towards expenditure incurred, or to be incurred, in:

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

- a. the repair or maintenance of a building which they consider to be of special architectural or historic interest;

While the building may be listed, it is not required. The Welsh Ministers need only be satisfied that the building is of “special architectural or historic interest” to make a grant.

- b. the maintenance of any land associated with building;

This will permit grants to support the maintenance of land associated with a building for purposes such as access or the provision of amenities.

- c. the repair or maintenance of objects ordinarily kept in such a building; or

This would permit the funding of the conservation of objects found in a historic building. These could range from fittings and furniture to ornaments and works of art.

- d. the maintenance of a garden or other land which they consider to be of special historic interest.

In contrast to paragraph (b), the expenditure in this paragraph is limited to the maintenance of a garden or other land considered to be of special historic interest. This might include parkland, some other designed landscape or, perhaps, a relict industrial landscape providing the setting for a building of special architectural or historic interest.

562. The section’s remaining provisions apply where the grant under subsection (1) is made on terms which provide for it to be recoverable. In order for it to be recoverable, either before or at the time of making the grant the Welsh Ministers must give notice in writing to the recipient. They must also specify a “recovery period” of no more than ten years after the day the grant is made during which the grant will be recoverable under subsections (4) to (6) (subsection (2)).

563. Subsection (3) provides that the Welsh Ministers may recover all or part of the grant if the recipient fails to comply with any condition imposed on the grant.

564. Subsections (4) to (6) provide the Welsh Ministers with powers to recover all or part of a grant in the event of a disposal during the recovery period of the whole or part of the interest that the grant recipient held in the building, land or objects to which the grant relates on the day that the grant was made. A disposal may be made by sale, by exchange or by lease for a term of at least 21 years.

565. These recovery powers might be used if, for example, a building’s value increases as a result of the grant-funded works, and the grant recipient then sells the building in order to capitalise. These powers are equivalent to those provided for local authorities in section 149(3)–(5).

Section 151 — Acceptance by Welsh Ministers of endowment for upkeep of building

566. **Section 151** makes provision about the Welsh Ministers accepting a gift of property on endowment trust to use the income from the property for the repair and maintenance of a building which the Welsh Ministers consider to be of special historic or architectural interest. The building must be one in which the Welsh Ministers have or are about to have an interest or which is or is shortly to be under their control or management. In particular, the section makes provision about the validity of the gift and trust, the Welsh Ministers’ powers, and the consequences of the Welsh Ministers ceasing to have an interest in, or control or management of, the building to which the trust relates.