



Historic Environment (Wales) Act 2023

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PART 2

MONUMENTS OF SPECIAL HISTORIC INTEREST

CHAPTER 6

ACQUISITION, GUARDIANSHIP AND PUBLIC ACCESS

Guardianship of monuments of special historic interest

45 Power to place monument of special historic interest under guardianship

- (1) A person with a qualifying interest in a monument of special historic interest may, with the agreement of the Welsh Ministers, appoint them by deed as guardians of the monument.
- (2) A person with a qualifying interest in a monument of special historic interest may, with the agreement of any local authority in or in the vicinity of whose area the monument is situated, appoint the authority by deed as guardian of the monument.
- (3) A person who is not the occupier of a monument may not establish guardianship of the monument under this section unless the occupier is also a party to the deed.
- (4) Any other person who has an interest in the monument may be a party to the deed in addition to the person establishing the guardianship of the monument and (where the latter is not the occupier) the occupier.
- (5) The following interests in a monument are qualifying interests for the purposes of this section—
 - (a) a freehold estate;
 - (b) a leasehold estate, or interest in possession, which—
 - (i) has at least 45 years left to run, or

Status: This is the original version (as it was originally enacted).

- (ii) is renewable for at least 45 years;
 - (c) an interest in possession for the person’s own life or the life of another person, or for lives (whether or not including the person’s own life), under any existing or future trust of land where the estate or interest subject to the trust falls within paragraph (a) or (b).
- (6) In subsection (5)(c) “trust of land” has the same meaning as in the [Trusts of Land and Appointment of Trustees Act 1996 \(c. 47\)](#).
- (7) In this Chapter “guardianship deed” means a deed executed under subsection (1) or (2).

46 Supplementary provision about guardianship deeds

- (1) A guardianship deed is a local land charge.
- (2) Every person deriving title to a monument of special historic interest from, through or under any person who has executed a guardianship deed is bound by the deed unless the person derives title by virtue of any disposal made by the person who executed the deed before the date of the deed.
- (3) The Welsh Ministers or a local authority may not become guardians of a building or structure occupied as a dwelling by any person other than the caretaker of the building or structure or a member of the caretaker’s family.
- (4) Any person who has any estate or interest in a monument under guardianship has the same right and title to, and estate or interest in, the monument in all respects as if the monument were not under guardianship; but this is subject to any provision to the contrary in this Part.

47 General functions of guardians

- (1) The guardian of a monument must maintain it, and may do anything the guardian considers necessary for its maintenance.
- (2) The guardian of a monument has full control and management of it, and may do anything the guardian considers necessary for its proper control and management.
- (3) The powers in subsections (1) and (2) include power to—
 - (a) make any examination of the monument;
 - (b) open up the monument or make excavations of it for the purpose of examination or otherwise;
 - (c) remove the whole or any part of the monument to another place for the purposes of preserving it.
- (4) The power in subsection (2) includes power to require the payment of a charge in connection with any use of the monument.
- (5) The guardian of a monument may enter the site of the monument for the purpose of exercising any of the guardian’s powers under this section in relation to it (and may authorise any other person to enter the site and exercise those powers on the guardian’s behalf).
- (6) Subsections (2) to (4) are subject to any provision to the contrary in the guardianship deed.

48 Termination of guardianship

- (1) The guardian of a monument may agree with the persons who are for the time being immediately affected by the operation of the guardianship deed—
 - (a) to exclude any part of the monument from the guardianship, or
 - (b) to renounce guardianship of the monument.
- (2) In the absence of such an agreement, a monument remains under guardianship (unless it is acquired by its guardian) until an occupier of the monument who is entitled to terminate the guardianship gives notice in writing to that effect to the guardian of the monument.
- (3) An occupier of a monument is entitled to terminate the guardianship of the monument if the occupier—
 - (a) has a qualifying interest (within the meaning of section 45(5)) in the monument, and
 - (b) is not bound by the guardianship deed.
- (4) A local authority must consult the Welsh Ministers before making an agreement under subsection (1).
- (5) The guardian of a monument may not make an agreement under subsection (1) unless the guardian is satisfied, with respect to the part or whole of the monument (as the case may be)—
 - (a) that satisfactory arrangements have been made for ensuring its preservation after termination of the guardianship, or
 - (b) that it is no longer practicable to preserve it (whether because of the cost of preserving it or otherwise).
- (6) An agreement under subsection (1) must be made under seal.
- (7) For the purposes of subsection (1) a person is immediately affected by the operation of a guardianship deed relating to a monument if the person is bound by that deed and is in possession or occupation of the monument.