



Historic Environment (Wales) Act 2023

2023 asc 3

PROSPECTIVE

PART 2

MONUMENTS OF SPECIAL HISTORIC INTEREST

CHAPTER 1

KEY TERMS

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

- (1) In this Act “monument” means—
- any building, structure or work (whether above or below the surface of the land) and any cave or excavation;
 - the site of the remains of any building, structure or work or of the remains of any cave or excavation;
 - the site of any vehicle, vessel, aircraft or other moveable structure, or part of such an object, which neither constitutes nor forms part of any work which is a monument within paragraph (a);
 - the site of the remains of any object or part of an object mentioned in paragraph (c);
 - the site of any thing, or group of things, that evidences previous human activity (other than a site falling within paragraph (b), (c) or (d)).
- (2) For the purposes of subsection (1) any machinery attached to a monument is to be treated as part of the monument if it could not be detached without being dismantled.
- (3) Subsection (1)(a) does not apply to any religious building for the time being used for religious purposes; but this is subject to any exceptions specified in regulations made by the Welsh Ministers.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
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- (4) Subsections (1)(c) and (d) do not apply to—
- (a) the site of any object or its remains unless the position of that object or its remains in that particular site is a matter of public interest;
 - (b) the site of any vessel or its remains which is protected by an order under section 1 of the [Protection of Wrecks Act 1973 \(c. 33\)](#) designating an area around the site as a restricted area.
- (5) For the purposes of this Act the site of a monument includes not only the land in, on or under which it is situated but also any land comprising or adjoining that land which appears to the Welsh Ministers or a local authority, in the exercise in relation to that monument of any of their or its functions under this Part, to be essential for the monument's support and preservation.
- (6) References in this Act to a monument include—
- (a) the site of the monument in question,
 - (b) a group of monuments, and
 - (c) any part of a monument or group of monuments.
- (7) References in this Act to the site of a monument—
- (a) are to the monument itself where it consists of a site, and
 - (b) in any other case include the monument itself.
- (8) In this section “remains” includes any trace or sign of the previous existence of the thing in question.

Commencement Information

II S. 2 not in force at Royal Assent, see [s. 212\(2\)](#)

CHAPTER 2

SCHEDULE OF MONUMENTS OF NATIONAL IMPORTANCE

Schedule of monuments

3 Duty to maintain and publish schedule of monuments

- (1) The Welsh Ministers must maintain a schedule of monuments in Wales which they consider to be of national importance, and must publish the up-to-date schedule.
- (2) An entry in the schedule for a monument must include a map maintained by the Welsh Ministers that identifies the area of the monument.
- (3) The Welsh Ministers may amend the schedule by—
 - (a) adding a monument;
 - (b) removing a monument;
 - (c) amending the entry for a monument (whether by removing anything previously included as part of the monument or adding anything not previously included, or otherwise).

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- (4) The Welsh Ministers may not add to the schedule any 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.
- (5) An entry in the schedule recording the inclusion of a monument is a local land charge.
- (6) In this Part “the schedule” means the schedule maintained under this section.
- (7) In this Act “scheduled monument” means a monument included in the schedule.

Commencement Information

I2 S. 3 not in force at Royal Assent, see [s. 212\(2\)](#)

4 Notification of owner etc. where the schedule is amended

- (1) Subsection (2) applies where the Welsh Ministers amend the schedule by—
 - (a) adding a monument,
 - (b) removing a monument, or
 - (c) amending the entry for a monument.
- (2) As soon as possible after amending the schedule the Welsh Ministers must serve notice that they have done so on—
 - (a) every owner and occupier of the monument, and
 - (b) every local authority in whose area the monument is situated.
- (3) Where the Welsh Ministers have added a monument to the schedule or amended the entry in the schedule for a monument—
 - (a) the notice must specify the date on which they did so, and
 - (b) they must include with the notice a copy of the entry or amended entry for the monument in the schedule.

Commencement Information

I3 S. 4 not in force at Royal Assent, see [s. 212\(2\)](#)

Proposals to add or remove monument to or from the schedule: consultation and interim protection

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

- (1) Subsection (2) applies where the Welsh Ministers are proposing to amend the schedule by—
 - (a) adding a monument,
 - (b) removing a monument, or
 - (c) amending the entry for a monument to remove anything previously included as part of the monument or add anything not previously included.
- (2) The Welsh Ministers must serve a notice on the persons mentioned in subsection (3) which—

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- (a) sets out the proposed amendment, and
 - (b) invites those persons to make written representations about the proposal.
- (3) The persons are—
- (a) every owner and occupier of the monument,
 - (b) every local authority in whose area the monument is situated, and
 - (c) any other persons the Welsh Ministers consider appropriate as having special knowledge of, or special interest in, the monument or in monuments of historic or archaeological interest more generally.
- (4) A notice under subsection (2) must—
- (a) specify the period within which representations may be made, and
 - (b) in the case of a proposal to add a monument or to add anything as part of a monument—
 - (i) include a statement of the effect of section 6 (interim protection), and
 - (ii) specify the date on which interim protection takes effect under that section.
- (5) The period specified under subsection (4)(a) must be at least 28 days beginning with the day the notice is served.

Commencement Information

I4 S. 5 not in force at Royal Assent, see [s. 212\(2\)](#)

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

- (1) This section applies where the Welsh Ministers serve notice under section 5(2) of a proposal to amend the schedule by—
- (a) adding a monument, or
 - (b) amending the entry for a monument by adding anything as part of the monument.
- (2) From the beginning of the day specified under section 5(4)(b)(ii) this Act has effect—
- (a) in the case of a proposal to add a monument to the schedule, as if the monument were a scheduled monument;
 - (b) in the case of a proposal to amend the entry for a monument, as if the amendment were made.
- (3) The protection conferred by virtue of subsection (2) is referred to in this Part as “interim protection”.
- (4) The Welsh Ministers must—
- (a) publish a list of the monuments subject to interim protection, and
 - (b) provide a copy of the notice served under section 5(2) in respect of such a monument to any person who requests one.

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Commencement Information

I5 S. 6 not in force at Royal Assent, see [s. 212\(2\)](#)

7 When interim protection ends

- (1) Interim protection conferred by section 6(2)(a) (proposed addition of monument to the schedule) ends in relation to a monument—
 - (a) where the Welsh Ministers add the monument to the schedule, at the beginning of the day specified in the notice under section 4(2), or
 - (b) where the Welsh Ministers decide not to add the monument to the schedule, at the beginning of the day specified in a notice served by them on the persons mentioned in subsection (3).
- (2) Interim protection conferred by section 6(2)(b) (proposed amendment of entry in the schedule relating to a monument) ends in relation to a monument—
 - (a) where the Welsh Ministers amend the entry in the schedule, at the beginning of the day specified in the notice under section 4(2), or
 - (b) where the Welsh Ministers decide not to amend the entry in the schedule, at the beginning of the day specified in a notice served by them on the persons mentioned in subsection (3).
- (3) The persons referred to in subsections (1)(b) and (2)(b) are—
 - (a) every owner and occupier of the monument, and
 - (b) every local authority in whose area the monument is situated.
- (4) Schedule 1 makes provision about the effect of interim protection coming to an end under subsections (1)(b) and (2)(b).

Commencement Information

I6 S. 7 not in force at Royal Assent, see [s. 212\(2\)](#)

8 Compensation for loss or damage caused by interim protection

- (1) This section applies where interim protection ends in relation to a monument because of a notice under section 7(1)(b) or (2)(b).
- (2) Any person who had an interest in the monument when the interim protection took effect is entitled, on making a claim to the Welsh Ministers, to be paid compensation by them for any loss or damage suffered by the person that is directly attributable to the interim protection.
- (3) The loss or damage for which compensation is payable includes any amount payable by the claimant in respect of a breach of contract caused by the need to stop or cancel works to the monument because of the interim protection.
- (4) A claim for compensation under this section must be made in writing within 6 months beginning when the interim protection ends.

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Commencement Information

I7 S. 8 not in force at Royal Assent, see [s. 212\(2\)](#)

Review of decisions to amend schedule to add monuments etc.

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

- (1) Where the Welsh Ministers—
 - (a) add a monument to the schedule, or
 - (b) amend the entry in the schedule for a monument to add anything as part of the monument,
 the notice under section 4(2) must state that any owner or occupier of the monument may make an application to the Welsh Ministers requesting a review of the decision.
- (2) An application may be made only on the ground that the monument or part (as the case may be) is not of national importance.
- (3) Where an owner or occupier makes an application for a review, the Welsh Ministers must appoint a person to—
 - (a) carry out the review, and
 - (b) make a decision on the review.
- (4) The Welsh Ministers may by regulations specify descriptions of cases in which they, instead of a person appointed by them, must carry out and make a decision on a review.
- (5) The Welsh Ministers must make any amendment to the schedule they consider appropriate to give effect to the decision on a review.
- (6) The Welsh Ministers may by regulations amend subsection (2) to—
 - (a) add a ground of review;
 - (b) modify a ground of review;
 - (c) remove a ground of review.

Commencement Information

I8 S. 9 not in force at Royal Assent, see [s. 212\(2\)](#)

10 Supplementary provision about reviews

- (1) The Welsh Ministers must by regulations make provision about—
 - (a) the form and way in which an application under section 9 must be made;
 - (b) the information that must be provided to, or may be required by, the Welsh Ministers in connection with an application;
 - (c) the period within which an application must be made.
- (2) A review under section 9 must be carried out in one or more of the following ways (as determined by the person carrying out the review)—
 - (a) by means of a local inquiry;
 - (b) by means of a hearing;

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- (c) on the basis of written representations.
- (3) The Welsh Ministers may by regulations make further provision in connection with reviews under section 9.
- (4) Regulations under subsection (1) or (3) may authorise the Welsh Ministers or persons appointed under section 9(3)—
 - (a) to determine matters of a description specified in the regulations, and
 - (b) to give directions in relation to those matters.
- (5) Schedules 2 and 6 make further provision about reviews under section 9.

Commencement Information

I9 S. 10 not in force at Royal Assent, see [s. 212\(2\)](#)

CHAPTER 3

CONTROL OF WORKS AFFECTING SCHEDULED MONUMENTS

Authorisation of works

11 Requirement for works to be authorised

- (1) A person must not carry out works to which this section applies, or cause or permit such works to be carried out, unless the works are authorised under this Chapter.
- (2) This section applies to—
 - (a) works resulting in the demolition or destruction of, or any damage to, a scheduled monument;
 - (b) works for the purpose of removing or repairing a scheduled monument or any part of it, or of making any alterations or additions to the monument or any part of it;
 - (c) flooding or tipping operations on land in, on or under which a scheduled monument is situated.

Commencement Information

I10 S. 11 not in force at Royal Assent, see [s. 212\(2\)](#)

12 Authorisation of classes of works

- (1) Works to which section 11 applies are authorised if the works are within a class of works described in the table in Schedule 3.
- (2) An authorisation under subsection (1) is subject to any exceptions or conditions specified in the table in relation to works of a particular class.
- (3) The Welsh Ministers may direct that subsection (1) does not apply to any scheduled monument specified in the direction.

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- (4) A direction under subsection (3) does not take effect until notice of it has been served on every owner and occupier of the monument in question.
- (5) Subsection (1) does not authorise works contrary to any exception or condition attached to a scheduled monument consent.
- (6) An authorisation under subsection (1) has effect for the benefit of the monument and of all persons for the time being interested in the monument; but this is subject to any provision to the contrary in Schedule 3.

Commencement Information

I11 S. 12 not in force at Royal Assent, see [s. 212\(2\)](#)

13 Authorisation of works by scheduled monument consent

- (1) Works to which section 11 applies are authorised if—
 - (a) written consent to carry them out has been granted by the Welsh Ministers, and
 - (b) the works are carried out in accordance with the terms of the consent (including any conditions attached to it).
- (2) Where—
 - (a) works to which section 11 applies have been carried out without being authorised under this Chapter, and
 - (b) the Welsh Ministers grant written consent for the works,
 the works are authorised from the grant of the consent.
- (3) Consent under subsection (1) or (2) is referred to in this Part as scheduled monument consent.

Commencement Information

I12 S. 13 not in force at Royal Assent, see [s. 212\(2\)](#)

Applications for scheduled monument consent

14 Applying for scheduled monument consent

- (1) An application for scheduled monument consent must be made to the Welsh Ministers.
- (2) An application must—
 - (a) identify the area of land to which it relates,
 - (b) describe the works to which it relates and the likely impact of the works on the monument, and
 - (c) contain any other information required by the Welsh Ministers.
- (3) The Welsh Ministers may by regulations make provision about—
 - (a) the form and content of an application (which may include provision for using a form to be published or provided by the Welsh Ministers);
 - (b) how an application must be made;

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- (c) documents or other materials that must be included with an application.
- (4) The Welsh Ministers may agree with an applicant that an application may be made otherwise than in accordance with subsection (2) or any provision made under subsection (3), if the application relates to works to which subsection (5) applies.
- (5) This subsection applies to minor works carried out for the purpose of—
 - (a) removing or repairing a scheduled monument or any part of it, or
 - (b) making any alterations or additions to the monument.
- (6) The Welsh Ministers may by regulations specify additional cases in which an application for scheduled monument consent may be made otherwise than in accordance with subsection (2) or any provision made under subsection (3); and the regulations may confer a discretion on the Welsh Ministers.

Commencement Information

113 S. 14 not in force at Royal Assent, see [s. 212\(2\)](#)

15 Declarations of ownership in respect of monument

- (1) The Welsh Ministers may refuse to consider an application for scheduled monument consent unless one of the following declarations signed by or on behalf of the applicant is included with the application—
 - (a) a declaration that, at the beginning of the 21 days ending with the day of the application, no person other than the applicant was the owner of the monument,
 - (b) a declaration that the applicant has given notice to all the persons (other than the applicant) who, at the beginning of that period, were owners of the monument, of the things required by subsection (2) and any regulations under subsection (3),
 - (c) a declaration that the applicant—
 - (i) is unable to make a declaration under paragraph (a) or (b),
 - (ii) has given notice to such of the persons mentioned in paragraph (b) as are named in the declaration, of the things required by subsection (2) and any regulations under subsection (3), but
 - (iii) has been unable to find out the names and addresses of the rest of those persons, despite taking all reasonable steps to do so, or
 - (d) a declaration that the applicant—
 - (i) is unable to make a declaration under paragraph (a), and
 - (ii) has, despite taking all reasonable steps to do so, been unable to find out the names and addresses of any of the persons mentioned in paragraph (b).
- (2) A notice for the purposes of subsection (1)(b) or (c)(ii) must—
 - (a) identify the monument to which it relates (including the address or location of the monument, and its name (if any)),
 - (b) state that an application for scheduled monument consent is to be made in relation to the monument,
 - (c) identify the person making the application (and, where the applicant is making an application on someone's behalf, identify the other person), and

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- (d) describe the works to which the application relates.
- (3) The Welsh Ministers may by regulations specify additional things which must be included in a notice.
- (4) It is an offence for a person in purported compliance with this section—
- (a) to make a declaration which the person knows to be false or misleading in a material respect, or
 - (b) to recklessly make a declaration which is false or misleading in a material respect.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) In this section “owner” means—
- (a) an owner of the freehold estate, or
 - (b) a tenant under a lease granted or extended for a fixed term that has at least 7 years left to run.

Commencement Information

I14 S. 15 not in force at Royal Assent, see [s. 212\(2\)](#)

16 Power to refuse to consider similar applications

- (1) The Welsh Ministers may refuse to consider an application for scheduled monument consent if—
- (a) in the 2 years ending with the day the application is received, the Welsh Ministers have refused a similar application, and
 - (b) they consider that there has been no significant change in any relevant considerations since the similar application was refused.
- (2) The Welsh Ministers may refuse to consider an application for scheduled monument consent if the application is made at a time when a similar application is under consideration.
- (3) For the purposes of this section an application is similar to another application if (and only if) the Welsh Ministers consider that the works to which the applications relate are the same or substantially the same.

Commencement Information

I15 S. 16 not in force at Royal Assent, see [s. 212\(2\)](#)

Determining applications for scheduled monument consent

17 Procedure for determining applications and effect of grant of consent

- (1) The Welsh Ministers may grant scheduled monument consent in respect of all or any part of the works to which an application relates.

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- (2) Before determining whether to grant scheduled monument consent on an application, the Welsh Ministers may do one or more of the following—
 - (a) cause a local inquiry to be held,
 - (b) give the applicant, and any other person, an opportunity to appear before and be heard by a person appointed by the Welsh Ministers, or
 - (c) give the applicant, and any other person, an opportunity to make written representations to a person appointed by the Welsh Ministers.
- (3) Before determining whether to grant scheduled monument consent on an application, the Welsh Ministers must—
 - (a) in every case, consider any representations made by any person with respect to that application, and
 - (b) if an inquiry or hearing has been held or representations have been made in accordance with subsection (2)(c), consider the report of the person who held the inquiry or hearing or to whom the representations were made.
- (4) The Welsh Ministers must serve notice of their decision with respect to the application on the applicant and on every person who has made representations with respect to the application.
- (5) Scheduled monument consent has effect for the benefit of the monument and of all persons for the time being interested in the monument; but this is subject to the terms of the consent.
- (6) Schedule 6 applies in relation to proceedings held under subsection (2).

Commencement Information

I16 S. 17 not in force at Royal Assent, see [s. 212\(2\)](#)

Grant of scheduled monument consent subject to conditions

18 Power to grant consent subject to conditions

- (1) Scheduled monument consent may be granted subject to conditions.
- (2) A condition may, for example—
 - (a) impose requirements with respect to the way in which or the persons by whom the works or any of the works are to be carried out;
 - (b) require that a person authorised by the Welsh Ministers be given an opportunity, before any works start, to examine the monument and its site and to carry out such excavations as the Welsh Ministers consider to be desirable for the purpose of archaeological investigation.

Commencement Information

I17 S. 18 not in force at Royal Assent, see [s. 212\(2\)](#)

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19 Condition about period within which works must start

- (1) Scheduled monument consent must be granted subject to the condition that the works to which it relates must start before the end of a period which is specified in the condition and begins with the day the consent is granted.
- (2) If consent is granted without the condition required by subsection (1), it is to be treated as having been granted subject to the condition that the works to which it relates must start within 5 years beginning with the day it was granted.
- (3) This section does not apply to—
 - (a) scheduled monument consent which provides that it ceases to have effect at the end of a period specified in the consent (irrespective of whether any works have started),
 - (b) consent granted under section 13(2) (consent for works already carried out), or
 - (c) consent granted by a scheduled monument partnership agreement or a management agreement (see sections 25 and 51).

Commencement Information

I18 S. 19 not in force at Royal Assent, see [s. 212\(2\)](#)

Modification and revocation of scheduled monument consent

20 Modification and revocation of consent

- (1) The Welsh Ministers may by order modify or revoke a scheduled monument consent to any extent.
- (2) An order under this section may not be made in relation to—
 - (a) scheduled monument consent granted under section 13(2) (consent for works already carried out), or
 - (b) consent granted by a scheduled monument partnership agreement (see Chapter 4).
- (3) Schedules 4 and 6 make provision in connection with orders under this section.

Commencement Information

I19 S. 20 not in force at Royal Assent, see [s. 212\(2\)](#)

Compensation

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

- (1) This section applies where—
 - (a) an application for scheduled monument consent for works of a description mentioned in subsection (3) is refused, or

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- (b) an application for scheduled monument consent for works of such a description is granted subject to conditions.
- (2) Any person who has an interest in the monument in question is entitled, on making a claim to the Welsh Ministers, to be paid compensation by them for any expenditure incurred or other loss or damage suffered by the person that is directly attributable to the effect of the decision on the application; but this is subject to the following provisions of this section.
- (3) The works in respect of which compensation is payable under this section are—
- (a) works which are reasonably necessary for carrying out any development for which planning permission—
 - (i) had been granted (otherwise than by a general development order) before the monument in question became a scheduled monument, and
 - (ii) was still effective when the application for scheduled monument consent was made,
 - (b) works constituting development for which planning permission is granted by a general development order,
 - (c) works which do not constitute development, and
 - (d) works which are reasonably necessary for the continuation of a use of the monument for a purpose for which it was in use immediately before the date of the application for scheduled monument consent (but ignoring any use in breach of any legal restrictions applying to the use of the monument).
- (4) The compensation payable under this section in respect of works within subsection (3)
- (a) is limited to compensation for expenditure incurred or other loss or damage suffered by virtue of the fact that, in consequence of the Welsh Ministers' decision, development for which the planning permission in question was granted could not be carried out without breaching section 11 (requirement for works to be authorised).
- (5) A person is not entitled to compensation under this section in respect of any works within subsection (3)(b) or (c) if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument.
- (6) Where scheduled monument consent is granted subject to conditions, a person is not entitled to compensation under this section in respect of any works within subsection (3)(d) unless compliance with those conditions would in effect make it impossible to use the monument for the purpose for which it was in use before the date of the application.
- (7) In assessing any compensation payable under this section for loss or damage consisting of depreciation of the value of an interest in land—
- (a) it is to be assumed that any subsequent application for scheduled monument consent for works of a similar description would be determined in the same way, but
 - (b) in the case of a refusal of scheduled monument consent, if the Welsh Ministers, on refusing that consent, undertook to grant consent for other works affecting the monument in the event of an application being made, regard must be had to that undertaking.
- (8) A claim for compensation under this section must be made in writing within 6 months beginning with the day of—
- (a) the notice of refusal of scheduled monument consent, or

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(b) the grant of scheduled monument consent.

(9) In this section “general development order” means a development order under section 59 of the [Town and Country Planning Act 1990 \(c. 8\)](#) that applies to all land in Wales (subject to any exceptions specified in the order).

Commencement Information

I20 S. 21 not in force at Royal Assent, see [s. 212\(2\)](#)

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

- (1) This section applies where—
- (a) in a case where compensation under section 21 was paid in consequence of the refusal of scheduled monument consent, the Welsh Ministers subsequently grant scheduled monument consent for all or any of the works in respect of which the compensation was paid, and
 - (b) in a case where compensation under that section was paid in consequence of the grant of scheduled monument consent subject to conditions, the Welsh Ministers subsequently—
 - (i) modify the consent so that the conditions, or any of them, no longer apply to all or any of the works in respect of which the compensation was paid, or
 - (ii) grant a new consent for all or any of those works free from those conditions, or any of them.
- (2) This section does not apply in any case unless the Welsh Ministers have served notice of the payment of compensation on the council of every county or county borough in which the monument is situated.
- (3) In granting or modifying a scheduled monument consent in a case to which this section applies, the Welsh Ministers may do so on terms that no works in respect of which the compensation was paid are to be carried out under the consent until the recoverable amount has been repaid to the Welsh Ministers or secured to their satisfaction.
- (4) In subsection (3) “recoverable amount” has the meaning given by section 23.
- (5) A notice under subsection (2) must specify—
- (a) the decision which gave rise to the entitlement to compensation,
 - (b) the monument affected by the decision, and
 - (c) the amount of the compensation.
- (6) A notice under subsection (2) is a local land charge, and for the purposes of the [Local Land Charges Act 1975 \(c. 76\)](#) the council served with a notice under that subsection is to be treated as the originating authority as respects the charge.

Commencement Information

I21 S. 22 not in force at Royal Assent, see [s. 212\(2\)](#)

Status: This version of this part contains provisions that are prospective.
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23 Determination of amount recoverable under section 22

- (1) The “recoverable amount” for the purposes of section 22 means an amount specified by the Welsh Ministers in giving notice of their decision on the application for scheduled monument consent or in the order modifying the consent (as the case may be); but this is subject to subsection (3).
- (2) Where a person who has an interest in a monument objects to the amount specified by the Welsh Ministers, the person may require the determination of the amount to be referred to the Upper Tribunal.
- (3) Where a reference is made to the Upper Tribunal under subsection (2) the recoverable amount is the amount the Tribunal determines.
- (4) The amount specified or determined as the recoverable amount under this section may be an amount representing all or any part of the compensation paid under section 21.

Commencement Information

I22 S. 23 not in force at Royal Assent, see [s. 212\(2\)](#)

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

- (1) This section applies where works affecting a scheduled monument which were previously authorised under this Chapter cease to be authorised—
 - (a) because an authorisation under section 12 ceases to apply (whether because of an amendment to the table in Schedule 3 or a direction given under subsection (3) of that section),
 - (b) because of the modification or revocation of a scheduled monument consent by an order made under section 20, or
 - (c) in accordance with paragraph 2 of Schedule 4, because of the service of a notice of proposed modification or revocation of a scheduled monument consent under paragraph 1 of that Schedule.
- (2) Any person who has an interest in the monument is entitled, on making a claim to the Welsh Ministers, to be paid compensation by them for—
 - (a) any expenditure incurred by the person in carrying out works which become abortive because further works cease to be authorised, or
 - (b) any other loss or damage suffered by the person which is directly attributable to that fact.
- (3) A person is not entitled to compensation under this section in a case within subsection (1)(a) unless, on an application for scheduled monument consent for the works in question, consent is refused, or is granted subject to conditions other than those which previously applied by virtue of section 12.
- (4) For the purposes of this section expenditure incurred in the preparation of plans for the purposes of any works, or on other similar matters preparatory to any works, is to be treated as expenditure incurred in carrying out the works.
- (5) Subject to that, no compensation is payable under this section in respect of—

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (a) works carried out before an authorisation under section 12 applied in relation to the works or before the scheduled monument consent in question was granted (as the case may be), or
 - (b) other loss or damage (other than loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before that authorisation applied or that consent was granted.
- (6) A claim for compensation under this section must be made in writing within 6 months beginning with the day the works cease to be authorised.

Commencement Information

I23 S. 24 not in force at Royal Assent, see [s. 212\(2\)](#)

CHAPTER 4

SCHEDULED MONUMENT PARTNERSHIP AGREEMENTS

25 Scheduled monument partnership agreements

- (1) The Welsh Ministers may make an agreement under this section (a “scheduled monument partnership agreement”) with—
- (a) any owner of a scheduled monument, or
 - (b) any owner of land adjoining or in the vicinity of such a monument (“associated land”).
- (2) Any of the following persons may also be a party to the agreement (in addition to the owner and the Welsh Ministers)—
- (a) any occupier of the monument or its associated land;
 - (b) any other person who has an interest in the monument or its associated land;
 - (c) any person involved in the management of the monument or its associated land;
 - (d) any local authority in whose area the monument or its associated land is situated;
 - (e) any local authority which, by virtue of Chapter 6, is a guardian of the monument or its associated land;
 - (f) any other person the Welsh Ministers consider appropriate as having special knowledge of, or special interest in, the monument or in monuments of historic or archaeological interest more generally.
- (3) A scheduled monument partnership agreement may grant scheduled monument consent under section 13(1) for specified works for the purpose of—
- (a) removing or repairing the monument to which the agreement relates, or
 - (b) making any alterations or additions to the monument.
- (4) Where a scheduled monument partnership agreement grants scheduled monument consent subject to conditions, the agreement must specify those conditions.
- (5) A scheduled monument partnership agreement may also—

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (a) specify works that would, or would not, in the view of the parties, be works to which section 11 applies;
 - (b) make provision about the maintenance and preservation of the monument or its associated land;
 - (c) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the monument or its associated land;
 - (d) provide for public access to the monument or its associated land and the provision of associated facilities, information or services to the public;
 - (e) restrict access to, or use of, the monument or its associated land;
 - (f) prohibit the doing of any specified thing in relation to the monument or its associated land;
 - (g) provide for the Welsh Ministers, or any local authority in whose area the monument or its associated land is situated, to make payments of specified amounts and on specified terms—
 - (i) for or towards the cost of any works provided for under the agreement, or
 - (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.
- (6) A scheduled monument partnership agreement may relate to more than one monument or more than one piece of associated land.
- (7) In this section “specified” means specified or described in a scheduled monument partnership agreement.

Commencement Information

I24 S. 25 not in force at Royal Assent, see [s. 212\(2\)](#)

26 Further provision about scheduled monument partnership agreements

- (1) A scheduled monument partnership agreement must be in writing.
- (2) A scheduled monument partnership agreement must—
 - (a) identify the monument or associated land to which it relates;
 - (b) describe any works to which it relates;
 - (c) specify the date on which it takes effect and its duration;
 - (d) make provision for the parties to review the terms of the agreement at intervals specified in it;
 - (e) make provision for its variation (but this is subject to regulations made under subsection (5));
 - (f) make provision for its termination (but this is subject to section 27).
- (3) A scheduled monument partnership agreement may contain incidental and consequential provision.
- (4) The Welsh Ministers may by regulations specify other terms that must be included in a scheduled monument partnership agreement.
- (5) The Welsh Ministers must by regulations make provision about—

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
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- (a) the consultation that must take place before a scheduled monument partnership agreement is made or varied;
 - (b) the publicity that must be given to a scheduled monument partnership agreement before or after it is made or varied.
- (6) Regulations under subsection (5)(a) must require the Welsh Ministers to consult the following persons before making a scheduled monument partnership agreement—
- (a) every owner and occupier of the monument or associated land to which the proposed agreement relates;
 - (b) every local authority in whose area the monument or associated land is situated;
 - (c) any local authority which by virtue of Chapter 6 is a guardian of the monument or associated land.
- (7) A scheduled monument partnership agreement may not impose any obligation or liability, or confer any right, on a person who is not a party to the agreement; and scheduled monument consent granted by such an agreement has effect only for the benefit of the parties to it.
- (8) The Welsh Ministers may by regulations disapply, apply or reproduce with or without modifications, any provision of this Part for the purposes of scheduled monument partnership agreements.

Commencement Information

I25 S. 26 not in force at Royal Assent, see [s. 212\(2\)](#)

27 Termination of agreement or provision of agreement

- (1) The Welsh Ministers may by order terminate a scheduled monument partnership agreement or any provision of such an agreement.
- (2) An order under subsection (1) may contain supplementary, incidental, transitory, transitional or saving provision.
- (3) An order under this section terminating a provision which grants scheduled monument consent for any works may be made at any time before the works are completed, but does not affect scheduled monument consent for works carried out before the order takes effect.
- (4) Schedule 5 and paragraph 1 of Schedule 6 make further provision in connection with making orders under this section (including provision for notices of proposed termination).
- (5) The Welsh Ministers may by regulations amend Schedule 5 or 6, and the regulations may make consequential amendments to any other provision of this Act.

Commencement Information

I26 S. 27 not in force at Royal Assent, see [s. 212\(2\)](#)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

28 Compensation in relation to termination

- (1) This section applies where the Welsh Ministers—
 - (a) serve a notice of proposed termination, or
 - (b) make an order under section 27,in relation to a scheduled monument partnership agreement.
- (2) Any party to the agreement who has an interest in the monument or land to which the agreement applies is entitled, on making a claim to the Welsh Ministers, to be paid compensation by them for—
 - (a) any expenditure incurred by the party in carrying out works which become abortive because of the notice or order;
 - (b) any other loss or damage suffered by the party which is directly attributable to the notice or order.
- (3) For the purposes of this section expenditure incurred in the preparation of plans for the purposes of any works, or on other similar matters preparatory to any works, is to be treated as expenditure incurred in carrying out the works.
- (4) Subject to that, no compensation is payable under this section in respect of—
 - (a) works carried out before the scheduled monument partnership agreement, or the relevant provision of the agreement, took effect, or
 - (b) other loss or damage (other than loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the agreement or provision took effect.
- (5) A claim for compensation under this section must be made in writing within 6 months beginning with the day the notice of proposed termination or order takes effect (as the case may be).

Commencement Information

I27 S. 28 not in force at Royal Assent, see [s. 212\(2\)](#)

29 Interpretation

In this Chapter—

“associated land” (*“tir cysylltiedig”*), in relation to a monument, has the meaning given by section 25(1)(b);

“notice of proposed termination” (*“hysbysiad o derfyniad arfaethedig”*) has the meaning given by paragraph 1 of Schedule 5;

“owner” (*“perchennog”*) means—

- (a) an owner of the freehold estate, or
- (b) a tenant under a lease granted or extended for a fixed term that has at least 7 years left to run;

“scheduled monument partnership agreement” (*“cytundeb partneriaeth heneb gofrestredig”*) has the meaning given by section 25(1).

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

Commencement Information

I28 S. 29 not in force at Royal Assent, see [s. 212\(2\)](#)

CHAPTER 5

ENFORCEMENT OF CONTROLS RELATING TO SCHEDULED MONUMENTS

Offences relating to unauthorised works

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

- (1) A person commits an offence if the person carries out, or causes or permits to be carried out, works in relation to a scheduled monument in breach of section 11 (requirement for works to be authorised).
- (2) A person also commits an offence if the person—
 - (a) carries out, or causes or permits to be carried out, works in relation to a scheduled monument, and
 - (b) fails to comply with a condition subject to which scheduled monument consent has been granted for the works.
- (3) Subsection (2) does not limit what may be an offence under subsection (1).
- (4) In proceedings against a person for an offence under subsection (1) in relation to a monument on which interim protection is conferred—
 - (a) it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, that the interim protection had been conferred, and
 - (b) 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.
- (5) In proceedings against a person for an offence under subsection (2), it is a defence for the person to prove that the person took all reasonable precautions and exercised all due diligence to avoid breaching the condition.
- (6) In proceedings against a person for an offence under this section in relation to works within section 11(2)(a), it is a defence for the person to prove that the person took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument.
- (7) In proceedings against a person for an offence under this section in relation to works within section 11(2)(a) or (c), it is a defence for the person to prove that—
 - (a) before carrying out the works or before causing or permitting the works to be carried out, the person had taken all reasonable steps to find out whether there was a scheduled monument in the area affected by the works, and
 - (b) the person did not know, and had no reason to believe, that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (8) In proceedings against a person for an offence under this section it is a defence for the person to prove that—
- (a) the works were urgently necessary in the interests of safety or health,
 - (b) the works carried out were limited to the minimum measures immediately necessary, and
 - (c) notice in writing justifying in detail the carrying out of the works was given to the Welsh Ministers as soon as reasonably practicable.
- (9) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.

Commencement Information

I29 S. 30 not in force at Royal Assent, see [s. 212\(2\)](#)

Temporary stop notices

31 Power of Welsh Ministers to issue temporary stop notice

- (1) The Welsh Ministers may issue a temporary stop notice if they consider—
- (a) that works have been or are being carried out in relation to a scheduled monument which involve a breach of section 11 (requirement for works to be authorised) or of a condition subject to which scheduled monument consent has been granted, and
 - (b) that the works (or any of them) ought to be stopped immediately, having regard to the effect of the works on the monument as one of national importance.
- (2) A temporary stop notice must—
- (a) specify the works to which it relates,
 - (b) prohibit the carrying out of the works (or any of them specified in the notice),
 - (c) set out the Welsh Ministers' reasons for issuing the notice, and
 - (d) state the effect of section 33 (offence of breaching temporary stop notice).
- (3) The Welsh Ministers must display a copy of a temporary stop notice on the monument or land to which it relates, and the copy must specify the date on which it is first displayed.
- (4) But if—
- (a) it is not reasonably practicable to display a copy of the notice on the monument or land, or
 - (b) the Welsh Ministers consider that displaying a copy of the notice on the monument or land might damage the monument,
- the Welsh Ministers may instead display a copy in a prominent place as near to the monument or land as is reasonably practicable.
- (5) The Welsh Ministers may serve a copy of the notice on any person they consider—
- (a) to be carrying out the works that the notice prohibits or causing or permitting them to be carried out,
 - (b) to be an occupier of the monument or land to which the notice relates, or
 - (c) to have an interest in the monument or land.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

Commencement Information

I30 S. 31 not in force at Royal Assent, see [s. 212\(2\)](#)

32 Duration etc. of temporary stop notice

- (1) A temporary stop notice takes effect when a copy of it is first displayed in accordance with section 31.
- (2) A temporary stop notice ceases to have effect—
 - (a) at the end of 28 days beginning with the day the copy of it is first displayed in accordance with section 31, or
 - (b) if it specifies a shorter period beginning with that day, at the end of that period.
- (3) But if the Welsh Ministers withdraw the notice before the end of the period for which it would otherwise have effect, the notice ceases to have effect when it is withdrawn.
- (4) The Welsh Ministers may not issue a second or subsequent temporary stop notice in relation to the same works unless they have, since issuing the previous notice, taken other enforcement action in relation to the breach referred to in section 31(1)(a).
- (5) In subsection (4) the reference to taking other enforcement action is a reference to—
 - (a) issuing an enforcement notice under section 35, or
 - (b) obtaining an injunction under section 42.

Commencement Information

I31 S. 32 not in force at Royal Assent, see [s. 212\(2\)](#)

33 Offence of breaching temporary stop notice

- (1) A person commits an offence if, at any time when a temporary stop notice has effect, the person carries out works prohibited by the notice or causes or permits such works to be carried out.
- (2) A person may be charged with an offence under this section by reference to a day or a longer period, and may be convicted of more than one offence in relation to the same temporary stop notice by reference to different periods.
- (3) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the temporary stop notice.
- (4) In proceedings for an offence under this section, it is a defence to prove that—
 - (a) the works were urgently necessary in the interests of safety or health,
 - (b) the works carried out were limited to the minimum measures immediately necessary, and
 - (c) notice in writing justifying in detail the carrying out of the works was given to the Welsh Ministers as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (6) In determining the amount of the fine, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

Commencement Information

I32 S. 33 not in force at Royal Assent, see [s. 212\(2\)](#)

34 Compensation for loss or damage caused by temporary stop notice

- (1) This section applies where—
- (a) the works specified in a temporary stop notice do not, at the time the notice takes effect, involve a breach of section 11 (requirement for works to be authorised) or of a condition subject to which scheduled monument consent has been granted, or
 - (b) the Welsh Ministers withdraw a temporary stop notice after it has taken effect.
- (2) This section does not apply by virtue of subsection (1)(b) where—
- (a) scheduled monument consent is granted for the works specified in the temporary stop notice after the notice has taken effect, and
 - (b) the Welsh Ministers withdraw the notice after the grant of that consent.
- (3) Any person who has an interest in the monument or land to which the notice relates at the time the notice takes effect is entitled, on making a claim to the Welsh Ministers, to be paid compensation by them for any loss or damage suffered by the person that is directly attributable to the effect of the notice.
- (4) The loss or damage for which compensation is payable includes any amount payable by the claimant in respect of a breach of contract caused by taking action necessary to comply with the notice.
- (5) No compensation is payable under this section for loss or damage that the claimant could have avoided by—
- (a) providing information that the claimant was required to provide by an information notice served by the Welsh Ministers under section 197, or
 - (b) co-operating with the Welsh Ministers in any other way when responding to such a notice.
- (6) A claim for compensation under this section must be made in writing within 6 months beginning—
- (a) in a case falling within subsection (1)(a) but not within subsection (1)(b), with the day the temporary stop notice takes effect;
 - (b) in a case falling within subsection (1)(b), with the day the notice is withdrawn.

Commencement Information

I33 S. 34 not in force at Royal Assent, see [s. 212\(2\)](#)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

Enforcement notices

35 Power of Welsh Ministers to issue enforcement notice

- (1) The Welsh Ministers may issue an enforcement notice if they consider—
 - (a) that works which involve a breach of section 11 (requirement for works to be authorised) or of a condition subject to which scheduled monument consent was granted have been or are being carried out in relation to a scheduled monument or land in, on or under which the monument is situated, and
 - (b) that it is appropriate to issue the notice, having regard to the effect of the works on the monument as one of national importance.
- (2) An enforcement notice must—
 - (a) specify the alleged breach, and
 - (b) require works specified in the notice to be stopped, or require steps specified in the notice to be taken for one or more of the purposes set out in subsection (3).
- (3) The purposes are—
 - (a) restoring the monument or land to its condition before the breach took place,
 - (b) if the Welsh Ministers consider that restoration would not be reasonably practicable or would be undesirable, carrying out further works to alleviate the effect of the breach, or
 - (c) putting the monument or land in the condition it would have been in if the terms of any scheduled monument consent for the works to which the notice relates (including any conditions attached to the consent) had been complied with.
- (4) Where an enforcement notice imposes a requirement under subsection (3)(b), scheduled monument consent is to be treated as having been granted for any works carried out in compliance with the requirement.
- (5) The Welsh Ministers must—
 - (a) maintain a list of every monument in respect of which an enforcement notice is in effect and publish the up-to-date list, and
 - (b) provide a copy of the enforcement notice relating to a monument in the list to any person who requests one.

Commencement Information

I34 S. 35 not in force at Royal Assent, see [s. 212\(2\)](#)

36 Service and taking effect of enforcement notice

- (1) An enforcement notice must specify—
 - (a) the date on which it is to take effect, and
 - (b) the period within which the works specified in the notice must be stopped or the steps specified in it must be taken.
- (2) The notice takes effect at the beginning of the day specified under subsection (1)(a); but where an appeal is made against the notice under section 39, this is subject to subsection (4) of that section.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (3) An enforcement notice may specify different periods for stopping different works or taking different steps.
- (4) Where the Welsh Ministers issue an enforcement notice, they must serve a copy of the notice on—
 - (a) every owner and occupier of the monument or land to which the notice relates,
 - (b) if the monument or land is let but the lessee is not the occupier, the lessee, and
 - (c) any other person who has an interest in the monument or land which the Welsh Ministers consider to be materially affected by the notice.
- (5) Each copy of the notice must be served—
 - (a) before the end of 28 days after the day the notice is issued, and
 - (b) at least 28 days before the date specified in the notice as the date on which it is to take effect.

Commencement Information

I35 S. 36 not in force at Royal Assent, see [s. 212\(2\)](#)

37 Variation and withdrawal of enforcement notice

- (1) Where the Welsh Ministers have issued an enforcement notice, they may—
 - (a) withdraw the notice;
 - (b) waive or relax any requirement of the notice, and in particular extend the period within which the notice requires any works to be stopped or any step to be taken.
- (2) The Welsh Ministers may exercise the powers in subsection (1) whether or not the notice has taken effect.
- (3) The withdrawal of an enforcement notice does not prevent the Welsh Ministers from issuing another enforcement notice.
- (4) Subsection (5) applies where the Welsh Ministers had served copies of the enforcement notice under section 36(4) before exercising the powers in subsection (1).
- (5) Immediately after exercising any of those powers, the Welsh Ministers must give notice that they have done so to every person who was served with a copy of the enforcement notice (or who would be served with a copy of the notice if it were reissued).

Commencement Information

I36 S. 37 not in force at Royal Assent, see [s. 212\(2\)](#)

38 Effect of granting scheduled monument consent on enforcement notice

- (1) This section applies if, after an enforcement notice has been issued, scheduled monument consent is granted under section 13(2)—
 - (a) authorising any works to which the notice relates that have been carried out in breach of section 11, or

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
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- (b) authorising works which involve a breach of a condition subject to which a previous consent was granted.
- (2) The notice ceases to have effect (or does not take effect) so far as it—
 - (a) requires steps to be taken that are inconsistent with the authorisation of the works, or
 - (b) requires steps to be taken for complying with the condition.
- (3) The fact that an enforcement notice has wholly or partly ceased to have effect by virtue of this section does not affect the liability of any person for an offence in respect of a previous failure to comply with the notice (see section 41).

Commencement Information

I37 S. 38 not in force at Royal Assent, see [s. 212\(2\)](#)

39 Appeal against enforcement notice

- (1) A person on whom a copy of an enforcement notice is served, or any other person with an interest in the monument or land to which the notice relates, may appeal to a magistrates' court against the notice.
- (2) An appeal may be made on one or more of the following grounds—
 - (a) that the matters alleged to constitute a breach of section 11 or of a condition of scheduled monument consent have not occurred;
 - (b) that those matters (if they occurred) do not constitute such a breach;
 - (c) that the following conditions are met—
 - (i) works to the monument or land were urgently necessary in the interests of safety or health,
 - (ii) the works carried out were limited to the minimum measures immediately necessary, and
 - (iii) written notice justifying in detail the need for the works was given to the Welsh Ministers as soon as reasonably practicable;
 - (d) that a copy of the enforcement notice was not served on a person as required by section 36;
 - (e) that the period within which the notice requires any works to be stopped or any steps to be taken is unreasonably short.
- (3) An appeal must be made before the date specified in the notice as the date on which it is to take effect.
- (4) Where an appeal is made, the notice has no effect until the appeal is finally determined or withdrawn.
- (5) On an appeal under this section, a magistrates' court may uphold the notice or quash it.
- (6) The court may uphold a notice even if a copy of it was not served on a person who was required by section 36 to be served, if the court is satisfied that the person has not been substantially prejudiced by the failure.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

Commencement Information

I38 S. 39 not in force at Royal Assent, see [s. 212\(2\)](#)

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

- (1) If the period within which an enforcement notice requires any step to be taken has ended and the step has not been taken, a person authorised in writing by the Welsh Ministers may—
 - (a) enter the land in, on or under which the monument is situated and take the step, and
 - (b) recover from a person who is then an owner or lessee of the monument or land the costs incurred in doing so.
- (2) The liability under subsection (1) of a person who is the owner of a monument or land merely by virtue of being entitled to receive the rack rent as trustee for another person is limited to the total amount of money the person has or has had by virtue of that entitlement.
- (3) Where, on an application by way of complaint made by an owner of a scheduled monument or land, a magistrates' court is satisfied that an occupier of the monument or land is preventing the owner from taking steps required by an enforcement notice, the court may by warrant authorise the owner to enter the land and take the steps.

Commencement Information

I39 S. 40 not in force at Royal Assent, see [s. 212\(2\)](#)

41 Offence of failing to comply with enforcement notice

- (1) Where, at any time after the end of the period within which an enforcement notice requires any works to be stopped or any step to be taken, the works are being carried out or the step has not been taken, a person who is at that time an owner of the scheduled monument or land to which the notice relates is guilty of an offence.
- (2) A person may be charged with an offence under this section by reference to a day or a longer period, and a person may be convicted of more than one offence in relation to the same enforcement notice by reference to different periods.
- (3) In proceedings against a person for an offence under this section, it is a defence for the person to prove—
 - (a) that the person did everything the person could be expected to do to secure that the works specified in the notice were stopped or the steps required by the notice were taken, or
 - (b) that the person did not know, and could not reasonably have been expected to know, of the existence of the enforcement notice.
- (4) A person guilty of an offence under this section is liable on summary conviction, or on conviction for indictment, to a fine.

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- (5) In determining the amount of the fine, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

Commencement Information

I40 S. 41 not in force at Royal Assent, see [s. 212\(2\)](#)

Injunctions

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

- (1) The Welsh Ministers may apply to the High Court or the county court for an injunction restraining—
- (a) an actual or expected breach of section 11 (requirement for works to be authorised) in relation to a scheduled monument or land in, on or under which there is a scheduled monument, or
 - (b) an actual or expected failure to comply with a condition of scheduled monument consent for works to a scheduled monument.
- (2) The Welsh Ministers may make an application whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
- (3) The court may grant an injunction on any terms it considers appropriate for the purpose of restraining the breach.

Commencement Information

I41 S. 42 not in force at Royal Assent, see [s. 212\(2\)](#)

CHAPTER 6

ACQUISITION, GUARDIANSHIP AND PUBLIC ACCESS

Acquisition of monuments of special historic interest

43 Compulsory acquisition of monuments of special historic interest

- (1) The Welsh Ministers may acquire compulsorily any monument of special historic interest for the purpose of securing its preservation.
- (2) The [Acquisition of Land Act 1981 \(c. 67\)](#) applies to an acquisition under this section.
- (3) Subsection (4) applies for the purpose of assessing compensation for any acquisition under this section of a monument which is a scheduled monument immediately before the day the compulsory purchase order is made.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (4) Where this subsection applies, it is to be assumed that scheduled monument consent would not be granted for any works which would or might result in the demolition, destruction or removal of the monument or any part of it.

Commencement Information

I42 S. 43 not in force at Royal Assent, see [s. 212\(2\)](#)

44 Acquisition by agreement or gift of monuments of special historic interest

- (1) The Welsh Ministers may acquire by agreement any monument of special historic interest.
- (2) A local authority may acquire by agreement any monument of special historic interest in or in the vicinity of its area.
- (3) The Welsh Ministers or any local authority may accept a gift (whether by deed or will) of any monument of special historic interest.
- (4) Part 1 of the [Compulsory Purchase Act 1965 \(c. 56\)](#) applies (so far as relevant) to an acquisition under this section, other than sections 4 to 8, section 10 and section 31 of that Act.

Commencement Information

I43 S. 44 not in force at Royal Assent, see [s. 212\(2\)](#)

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 version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (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).

Commencement Information

I44 S. 45 not in force at Royal Assent, see [s. 212\(2\)](#)

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.

Commencement Information

I45 S. 46 not in force at Royal Assent, see [s. 212\(2\)](#)

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.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (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.

Commencement Information

I46 S. 47 not in force at Royal Assent, see [s. 212\(2\)](#)

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.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

Commencement Information

I47 S. 48 not in force at Royal Assent, see [s. 212\(2\)](#)

Acquisition and guardianship of land in the vicinity of a monument of special historic interest etc.

49 Acquisition and guardianship of land in the vicinity of a monument

- (1) References in sections 43 to 46 to a monument of special historic interest include any land adjoining or in the vicinity of the monument which the Welsh Ministers consider, or (as the case may be) a local authority considers, to be reasonably required for any of the purposes mentioned in subsection (2).
- (2) The purposes are—
 - (a) the maintenance of the monument or its amenities;
 - (b) the storage of equipment or materials for the maintenance of the monument or its amenities;
 - (c) providing or facilitating access to the monument;
 - (d) the proper control or management of the monument;
 - (e) the provision of facilities and services for the public for or in connection with providing public access to the monument.
- (3) The power of compulsory acquisition in section 43(1), as it applies by virtue of subsection (1) of this section, is to be read as if for “the purpose of securing its preservation” there were substituted “any of the purposes mentioned in section 49(2)”.
- (4) Land may be acquired or taken into guardianship by virtue of this section either at the same time as the monument or later.
- (5) A person who is the guardian of any land by virtue of this section has full control and management of the land, and may do anything the guardian considers necessary—
 - (a) for its proper control and management (including requiring the payment of a charge in connection with any use of the land), and
 - (b) for the use of the land for any of the purposes relating to the monument mentioned in subsection (2).
- (6) A person who is the guardian of any land by virtue of this section may enter the land for the purpose of exercising the guardian’s powers under subsection (5) (and may authorise any other person to enter the site and to exercise those powers on the guardian’s behalf).
- (7) Section 48(1) to (4) and (7) apply in relation to any land taken into guardianship by virtue of this section as they apply in relation to a monument.
- (8) Apart from any termination of guardianship by virtue of section 48, guardianship of any such land also ends if the monument in question—
 - (a) ceases to be under guardianship otherwise than by virtue of being acquired by its guardians, or
 - (b) ceases to exist.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (9) Where a monument is owned by, or under the guardianship of, the Welsh Ministers or a local authority by virtue of this Chapter, references in this Chapter to land associated with that monument (or to associated land) are references to—
- (a) any land acquired or taken into guardianship by virtue of this section for a purpose mentioned in subsection (2), or
 - (b) any land appropriated for any such purpose under a power conferred by any other enactment.

Commencement Information

I48 S. 49 not in force at Royal Assent, see [s. 212\(2\)](#)

50 Acquisition of easements and other similar rights over land in the vicinity of a monument

- (1) The Welsh Ministers may acquire an easement over land adjoining or in the vicinity of any monument which is under their ownership by virtue of this Chapter, if they consider the easement to be necessary—
- (a) for any of the purposes mentioned in section 49(2) relating to that monument, or
 - (b) for the use of any land associated with that monument for any of those purposes.
- (2) An acquisition under subsection (1) may be made by agreement or compulsorily.
- (3) A local authority may acquire an easement over land adjoining or in the vicinity of any monument which is under its ownership by virtue of this Chapter, if the easement appears to it to be necessary—
- (a) for any of the purposes mentioned in section 49(2) relating to that monument, or
 - (b) for the use of any land associated with that monument for any of those purposes.
- (4) An acquisition under subsection (3) may only be made by agreement.
- (5) The guardian of a monument or of any land may acquire, for the benefit of the monument or land, a relevant right over land adjoining or in the vicinity of the monument or land, if the guardian considers the right to be necessary—
- (a) for any of the purposes mentioned in section 49(2) relating to that monument or land, or
 - (b) for the use of any land associated with that monument or land for any of those purposes.
- (6) For the purposes of subsection (5) “relevant right” means a right (of any description) which would, if acquired by an owner of the monument or land in question, be an easement.
- (7) The acquisition of a right under subsection (5)—
- (a) in the case of the Welsh Ministers, may be made by agreement or compulsorily;
 - (b) in the case of a local authority, may be made only by agreement.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (8) A right acquired under subsection (5)—
- (a) is to be treated for the purposes of its acquisition under this section and in all other respects as if it were a legal easement, and
 - (b) may be enforced by the guardians for the time being of the monument or land for whose benefit it was acquired as if they were the freehold owner in possession of that monument or land.
- (9) If the condition in subsection (10) is met in relation to a monument, a right which under subsection (5) is acquired by agreement —
- (a) may be revoked by the grantor, subject to any provision to the contrary in the agreement under which it was acquired, and
 - (b) may be revoked by any successor in title of the grantor as respects any of the land over which it is exercisable in which the the successor has an interest.
- (10) The condition mentioned in subsection (9) is that the monument—
- (a) ceases to be under guardianship otherwise than by virtue of being acquired by its guardians, or
 - (b) ceases to exist.
- (11) A right acquired under subsection (5) is a local land charge.
- (12) The powers of acquisition in this section include power to acquire an easement or right by the grant of a new right.
- (13) The [Acquisition of Land Act 1981 \(c. 67\)](#) applies to any compulsory acquisition under this section.
- (14) Part 1 of the [Compulsory Purchase Act 1965 \(c. 56\)](#) applies (so far as relevant) to an acquisition by agreement under this section, other than sections 4 to 8, section 10 and section 31 of that Act.

Commencement Information

I49 S. 50 not in force at Royal Assent, see [s. 212\(2\)](#)

Agreements with occupiers of monuments or adjoining etc. land

51 Agreements concerning management of monuments of special historic interest and land in their vicinity

- (1) The Welsh Ministers may make an agreement under this section with—
 - (a) any occupier of a monument of special historic interest, or
 - (b) any occupier of land adjoining or in the vicinity of such a monument.
- (2) A local authority may make an agreement under this section with—
 - (a) any occupier of a monument of special historic interest in or in the vicinity of its area, or
 - (b) any occupier of land adjoining or in the vicinity of any such monument.
- (3) An agreement under this section is referred to in this Part as a “management agreement”.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (4) Any person who has an interest in a monument of special historic interest or in any land adjoining or in the vicinity of such a monument may be a party to a management agreement (in addition to the occupier).
- (5) A management agreement may—
 - (a) make provision about the maintenance and preservation of the monument and its amenities (including, where an agreement is made by the Welsh Ministers, provision granting scheduled monument consent under section 13(1) for specified works of maintenance or preservation);
 - (b) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the monument or land;
 - (c) provide for public access to the monument or land and the provision of associated facilities, information or services to the public;
 - (d) restrict access to, or use of, the monument or land;
 - (e) prohibit the doing of any specified thing in relation to the monument or land;
 - (f) provide for the Welsh Ministers or the local authority (as the case may be) to make payments of specified amounts and on specified terms—
 - (i) for or towards the cost of any work provided for under the agreement, or
 - (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.
- (6) A management agreement may also contain incidental and consequential provision.
- (7) Where a management agreement made by the Welsh Ministers grants scheduled monument consent subject to conditions, the agreement must specify those conditions.
- (8) Subsection (9) applies where a management agreement expressly provides that the agreement as a whole or any restriction, prohibition or obligation arising under it is to be binding on the successors of any party to the agreement.
- (9) Every person deriving title to the monument or land in question from, through or under that party is bound by the agreement, or by that restriction, prohibition or obligation, unless the title is derived by virtue of any disposal made by that party before the date of the agreement.
- (10) Section 84 of the [Law of Property Act 1925 \(c. 20\)](#) (power of Upper Tribunal to discharge or modify restrictive covenants) does not apply to a management agreement.
- (11) In this section “specified” means specified or described in a management agreement.

Commencement Information

I50 S. 51 not in force at Royal Assent, see [s. 212\(2\)](#)

Powers of limited owners

52 Powers of limited owners for purposes of sections 45, 50 and 51

- (1) A person may establish guardianship of a monument or land under section 45 or join in executing a guardianship deed under that section, despite being a limited owner of the monument or land.

Status: This version of this part contains provisions that are prospective.

*Changes to legislation: There are currently no known outstanding effects for the
 Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)*

- (2) A person may grant an easement or other right over land which the Welsh Ministers are or any local authority is authorised to acquire under section 50, despite being a limited owner of the land.
- (3) A person may make a management agreement under section 51 with respect to a monument or land, despite being a limited owner of the monument or land.
- (4) For the purposes of this section—
 - (a) a body corporate or corporation sole is a limited owner of any land in which it has an interest, and
 - (b) any other persons are limited owners of land in which they have an interest if they hold that interest in any of the ways mentioned in subsection (5).
- (5) The ways of holding an interest in land referred to in subsection (4)(b) are—
 - (a) as tenant for life or statutory owner (within the meaning of the [Settled Land Act 1925 \(c. 18\)](#));
 - (b) as trustees of land (within the meaning of the [Trusts of Land and Appointment of Trustees Act 1996 \(c. 47\)](#));
 - (c) as trustees for charities or commissioners or trustees for ecclesiastical, collegiate or other public purposes.
- (6) Where a person who is a limited owner of any land by virtue of holding an interest in the land in any of the ways mentioned in subsection (5) executes a guardianship deed in relation to the land, the guardianship deed binds every successive owner of any estate or interest in the land.
- (7) But where the land is, at the date of the deed, subject to any incumbrance not capable of being overreached by the limited owner in exercise of any powers of sale or management conferred on the limited owner by law or under any settlement or other instrument, the deed does not bind the incumbrancer.
- (8) Where a management agreement under section 51 to which a limited owner is a party expressly provides that the agreement as a whole or any restriction, prohibition or obligation arising under the agreement binds the limited owner's successors, subsections (9) and (10) apply to the agreement or (as the case may be) to the restriction, prohibition or obligation in question.
- (9) Where a person is a limited owner by virtue of holding an interest in any of the ways mentioned in subsection (5), the agreement or restriction, prohibition or obligation binds every successive owner of any estate or interest in the land.
- (10) But where the land is, at the date of the agreement, subject to any incumbrance not capable of being overreached by the limited owner in exercise of powers of sale or management conferred on the limited owner by law or under any settlement or other instrument, the agreement or restriction, prohibition or obligation does not bind the incumbrancer.

Commencement Information

I51 S. 52 not in force at Royal Assent, see [s. 212\(2\)](#)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

Transfer of ownership or guardianship and disposal of land

53 Transfer of monuments of special historic interest between local authorities and the Welsh Ministers

- (1) Where the Welsh Ministers are the owners or guardians of a monument or associated land, they may transfer the ownership or guardianship of that monument or land to any local authority.
- (2) Where a local authority is the owner or guardian of a monument or associated land, it may transfer the ownership or guardianship of that monument or land—
 - (a) to the Welsh Ministers, or
 - (b) to another local authority.
- (3) But the Welsh Ministers or a local authority may not transfer the guardianship of a monument or associated land under this section without the agreement of the persons who are for the time being immediately affected by the operation of the guardianship deed.
- (4) For the purposes of subsection (3) a person is immediately affected by the operation of a guardianship deed relating to a monument or land if the person is bound by that deed and is in possession or occupation of the monument or land.

Commencement Information

I52 S. 53 not in force at Royal Assent, see [s. 212\(2\)](#)

54 Disposal of land acquired under this Chapter

- (1) The Welsh Ministers may dispose of any land acquired by them under section 43, 44 or 53.
- (2) A local authority may dispose of any land acquired by it under section 44 or 53, but must consult the Welsh Ministers before doing so.
- (3) Where the land disposed of under this section is or includes a monument, the disposal must be made on terms the person disposing of the land considers will ensure the preservation of the monument.
- (4) But subsection (3) does not apply if the person disposing of the land considers that it is no longer practicable to preserve the monument (whether because of the cost of preserving it or otherwise).

Commencement Information

I53 S. 54 not in force at Royal Assent, see [s. 212\(2\)](#)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

Public access to monuments under public control

55 Public access to monuments under public control

- (1) The Welsh Ministers and any local authority must ensure the public has access to any monument which is under their or its ownership or guardianship by virtue of this Chapter; but this is subject to—
 - (a) the following provisions of this section,
 - (b) any regulations or byelaws made under section 56, and
 - (c) any provision to the contrary included in any agreement relating to the monument made under section 25 or 51 (scheduled monument partnership agreements and management agreements).
- (2) In relation to any monument under guardianship, the duty imposed by subsection (1) is also subject to any provision to the contrary in the guardianship deed.
- (3) References in the following subsections to a monument are—
 - (a) in relation to the Welsh Ministers, to a monument which—
 - (i) is under their ownership or guardianship by virtue of this Chapter;
 - (ii) is under their control or management otherwise than by virtue of this Chapter;
 - (b) in relation to a local authority, to a monument which is under its ownership or guardianship by virtue of this Chapter.
- (4) The Welsh Ministers or a local authority may control the times of normal public access to a monument.
- (5) The Welsh Ministers or a local authority may exclude the public from access to a monument, or to any part of it, for any period they consider or it considers necessary—
 - (a) in the interests of safety;
 - (b) for its maintenance or preservation;
 - (c) in connection with events held or other organised activities carried out in or on it.
- (6) The Welsh Ministers or a local authority may also impose other restrictions or controls on public access to a monument, or to any part of it, for a purpose mentioned in subsection (5).
- (7) The Welsh Ministers or a local authority may charge the public for admission to a monument.
- (8) The Welsh Ministers or a local authority may refuse a person admission to a monument if they have or it has reason to believe that the person is likely to do anything likely to damage the monument or its amenities or to disturb the public in their enjoyment of it.

Commencement Information

I54 S. 55 not in force at Royal Assent, see [s. 212\(2\)](#)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

56 Power to make regulations and byelaws in connection with public access to monuments under public control

- (1) The Welsh Ministers may regulate public access to any monument under their ownership or guardianship by virtue of this Chapter by making regulations that prohibit or regulate any act or thing likely to damage the monument or its amenities or disturb the public in their enjoyment of it.
- (2) Regulations under subsection (1) may also make provision in relation to any monument under the control or management of the Welsh Ministers otherwise than by virtue of this Chapter.
- (3) A local authority may regulate public access to any monument under its ownership or guardianship by virtue of this Chapter by making byelaws that prohibit or regulate any act or thing likely to damage the monument or its amenities or disturb the public in their enjoyment of it.
- (4) A person who fails to comply with provision made by regulations or byelaws under this section commits an offence.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) Byelaws made under this section may make different provision in relation to different monuments or different descriptions of monument.
- (7) Byelaws under this section do not take effect unless they are confirmed by the Welsh Ministers.
- (8) The Welsh Ministers may confirm the byelaws with or without modifications.

Commencement Information

I55 S. 56 not in force at Royal Assent, see [s. 212\(2\)](#)

57 Provision of facilities for the public in connection with monuments of special historic interest

- (1) The Welsh Ministers may provide facilities, information and other services to the public for or in connection with providing public access—
 - (a) to any monument under their ownership or guardianship by virtue of this Chapter, or
 - (b) to any monument otherwise under their control or management.
- (2) A local authority may provide facilities, information and other services to the public for or in connection with providing public access to any monument under its ownership or guardianship by virtue of this Chapter.
- (3) Facilities and information or other services for the public may be provided under this section in or on the monument itself or on any land associated with the monument.
- (4) The Welsh Ministers or a local authority may charge for the use of any facility or service provided by them or it under this section.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

Commencement Information

I56 S. 57 not in force at Royal Assent, see [s. 212\(2\)](#)

CHAPTER 7

GENERAL

Damage to monuments

58 Offence of damaging certain monuments of special historic interest

- (1) A person who without lawful excuse destroys or damages a protected monument is guilty of an offence if the person—
 - (a) knew or ought reasonably to have known that it was a protected monument, and
 - (b) intended to destroy or damage the monument or was reckless as to whether the monument would be damaged or destroyed.
- (2) In subsection (1) “protected monument” means—
 - (a) a scheduled monument, or
 - (b) a monument under the ownership or guardianship of the Welsh Ministers or a local authority by virtue of this Chapter.
- (3) This section applies to anything done by or under the authority of the owner of the monument, other than an act for the carrying out of excepted works, as it applies to anything done by any other person.
- (4) In subsection (3) “excepted works” means—
 - (a) works authorised under Chapter 3;
 - (b) works for which development consent has been granted under the [Planning Act 2008 \(c. 29\)](#).
- (5) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine or imprisonment for a term not exceeding the applicable limit under section 224(1A)(b) of the Sentencing Code, or both;
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years, or both.

Commencement Information

I57 S. 58 not in force at Royal Assent, see [s. 212\(2\)](#)

59 Compensation orders for damage to monuments under guardianship

- (1) Subsection (2) applies where an owner or any other person is convicted of an offence involving damage to a monument which was at the time of the offence under the guardianship of the Welsh Ministers or any local authority by virtue of Chapter 6.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (2) Any compensation order made under Chapter 2 of Part 7 of the Sentencing Code (compensation orders against convicted persons) in respect of that damage is to be made in favour of the Welsh Ministers or the local authority in question (as the case may require).

Commencement Information

I58 S. 59 not in force at Royal Assent, see [s. 212\(2\)](#)

60 Restrictions on use of metal detectors

- (1) In this section—
- “consent” (“*cydsyniad*”) means the written consent of the Welsh Ministers;
 - “metal detector” (“*datgelydd metel*”) means any device designed or adapted for detecting or locating any metal or mineral in the ground;
 - “protected place” (“*man gwarchoddedig*”) means—
 - (a) the site of any scheduled monument, or
 - (b) the site of any monument under the ownership or guardianship of the Welsh Ministers or a local authority by virtue of Chapter 6.
- (2) A person commits an offence if the person uses a metal detector in a protected place without consent to do so.
- (3) A person given consent to use a metal detector in a protected place commits an offence if the person, in using the metal detector in that place, fails to comply with any condition attached to the consent.
- (4) A person commits an offence if the person, without consent to do so, removes any object of archaeological or historical interest which the person has discovered by the use of a metal detector in a protected place.
- (5) A person given consent to remove or otherwise deal with any object which the person discovers by the use of a metal detector in a protected place commits an offence if, in removing or otherwise dealing with the object, the person fails to comply with any condition attached to the consent.
- (6) In any proceedings for an offence under subsection (2) it is a defence for a person to prove that the person used the metal detector for a purpose other than detecting or locating objects of archaeological or historical interest.
- (7) In any proceedings for an offence under subsection (2) or (4) it is a defence for a person to prove that the person—
- (a) had taken all reasonable steps to find out whether the place in which the metal detector was used was a protected place, and
 - (b) did not know, and had no reason to believe, that the place was a protected place.
- (8) A person guilty of an offence under subsection (2) or (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) A person guilty of an offence under subsection (4) or (5) is liable on summary conviction, or on conviction on indictment, to a fine.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

Commencement Information

I59 S. 60 not in force at Royal Assent, see [s. 212\(2\)](#)

Urgent works for preservation of scheduled monument

61 Works for preservation of scheduled monument in cases of urgency

- (1) If it appears to the Welsh Ministers that any works to which section 11 (requirement for works to be authorised) applies are urgently necessary for the preservation of a scheduled monument, they may enter the site of the monument and carry out those works.
- (2) Before exercising the power in subsection (1) the Welsh Ministers must give at least 7 clear days' written notice to every owner and occupier of the monument.
- (3) Where the Welsh Ministers carry out works under this section for repairing any damage to a scheduled monument—
 - (a) any compensation order previously made in respect of that damage under Chapter 2 of Part 7 of the Sentencing Code in favour of any other person is enforceable (so far as not already complied with) as if it had been made in favour of the Welsh Ministers, and
 - (b) any such order subsequently made in respect of that damage must be made in favour of the Welsh Ministers.
- (4) Where works are carried out under this section, the works are to be treated as authorised works for the purposes of Chapter 3 (control of works affecting scheduled monuments).

Commencement Information

I60 S. 61 not in force at Royal Assent, see [s. 212\(2\)](#)

Expenditure and advice in relation to monuments

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

- (1) The Welsh Ministers may meet or contribute towards the cost of the acquisition by any person of any monument of special historic interest.
- (2) The Welsh Ministers may—
 - (a) remove or assist in the removal of any monument of special historic interest or any part of any such monument to another place for the purpose of preserving it;
 - (b) meet or contribute towards the cost of the removal of any such monument or any part of any such monument to another place for the purpose of preserving it.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (3) The Welsh Ministers may at the request of an owner of any monument of special historic interest—
 - (a) undertake or assist in the preservation, maintenance and management of the monument;
 - (b) meet or contribute towards the cost of the preservation, maintenance and management of the monument.
- (4) The Welsh Ministers may contribute towards the cost of the provision of facilities or services for the public by a local authority under section 57.
- (5) A local authority may at the request of an owner of any monument of special historic interest in or in the vicinity of its area—
 - (a) undertake or assist in the preservation, maintenance and management of the monument;
 - (b) meet or contribute towards the cost of the preservation, maintenance and management of the monument.
- (6) Neither the Welsh Ministers nor a local authority may incur expenditure under this section in connection with any building or structure which is occupied as a dwelling by any person other than the caretaker of the building or structure or a member of the caretaker's family.

Commencement Information

I61 S. 62 not in force at Royal Assent, see [s. 212\(2\)](#)

63 Advice and supervision of work by Welsh Ministers

- (1) The Welsh Ministers may give advice about the treatment of any monument of special historic interest.
- (2) The Welsh Ministers may also supervise any work in connection with any monument of special historic interest if invited to do so by an owner of the monument.
- (3) The Welsh Ministers must supervise work in connection with any scheduled monument, if they consider it advisable (whether asked to do so by an owner or not).
- (4) The Welsh Ministers may charge for giving advice or supervising work under this section.

Commencement Information

I62 S. 63 not in force at Royal Assent, see [s. 212\(2\)](#)

64 Expenditure by local authorities on archaeological investigation

- (1) If a local authority considers that any land in or in the vicinity of its area may contain a monument of special historic interest, or anything else of archaeological or historical interest, the authority may—
 - (a) carry out or assist in an archaeological investigation of the land, or

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Changes to legislation: There are currently no known outstanding effects for the
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- (b) meet or contribute towards the cost of an archaeological investigation of the land.
- (2) A local authority may publish the results of any archaeological investigation carried out, assisted or wholly or partly funded by it under this section.
- (3) The powers in subsection (1) may be exercised in relation to any land forming part of the sea bed within the seaward limits of the territorial sea adjacent to Wales.

Commencement Information

I63 S. 64 not in force at Royal Assent, see [s. 212\(2\)](#)

Powers of entry

65 Powers of entry for inspection of scheduled monuments etc.

- (1) An authorised person may enter any land to inspect a scheduled monument in, on or under the land to assess its condition and assess—
 - (a) whether any works affecting the monument are being carried out in breach of section 11 (requirement for works to be authorised), or
 - (b) whether it has been or is likely to be damaged (by such works or otherwise).
- (2) An authorised person may enter any land to inspect a scheduled monument in, on or under the land in connection with—
 - (a) an application for scheduled monument consent for works affecting that monument,
 - (b) a proposal to modify or revoke a scheduled monument consent for any such works, or
 - (c) a proposal to make an order under section 27 (termination of scheduled monument partnership agreement or provision of agreement).
- (3) An authorised person may enter any land to assess whether any works to which a scheduled monument consent or an authorisation under section 12 relates are or have been carried out in accordance with the terms of the consent or authorisation (including any conditions).
- (4) An authorised person may enter any land on which any works to which a scheduled monument consent or an authorisation under section 12 relates are being carried out to—
 - (a) inspect the land (including any buildings or other structures on the land) to record any matters of archaeological or historical interest, or
 - (b) observe the carrying out of those works with a view to—
 - (i) examining and recording any objects or other material of archaeological or historical interest discovered during the course of those works, and
 - (ii) recording any matters of archaeological or historical interest discovered during the course of those works.
- (5) An authorised person may enter any land in, on or under which a scheduled monument is situated to erect and maintain on or near the site of the monument any notice boards

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

and marker posts the Welsh Ministers consider to be desirable to protect the monument from accidental or deliberate damage.

- (6) The power in subsection (5) may not be exercised without the agreement of every owner and occupier of the land.
- (7) In this section “authorised person” means a person authorised in writing by the Welsh Ministers.

Commencement Information

I64 S. 65 not in force at Royal Assent, see [s. 212\(2\)](#)

66 Powers of entry relating to enforcement of controls on works

- (1) An authorised person may enter any land to—
 - (a) determine whether a temporary stop notice should be issued;
 - (b) display a copy of a temporary stop notice in accordance with section 31 or attach it for the purpose of service in accordance with section 206(5)(c);
 - (c) assess whether a temporary stop notice has been complied with.
- (2) An authorised person may enter any land to—
 - (a) determine whether an enforcement notice should be issued;
 - (b) attach an enforcement notice for the purpose of service in accordance with section 206(5)(c);
 - (c) assess whether an enforcement notice has been complied with.
- (3) In this section “authorised person” means a person authorised in writing by the Welsh Ministers.

Commencement Information

I65 S. 66 not in force at Royal Assent, see [s. 212\(2\)](#)

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

- (1) An authorised person may enter any land in, on or under which the Welsh Ministers know or have reason to believe there is a monument of special historic interest to inspect the land (including any building or other structure on it) with a view to recording any matters of archaeological or historical interest.
- (2) An authorised person entering any land in exercise of the power in subsection (1) may carry out excavations in the land for the purposes of archaeological investigation.
- (3) An excavation under subsection (2) requires the agreement of every person whose agreement to the making of the excavation would be required apart from this section.
- (4) But subsection (3) does not apply if the Welsh Ministers know or have reason to believe that a monument of special historic interest they know or believe to be in, on or under the land is or may be at risk of imminent damage or destruction.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (5) In this section “authorised person” means a person authorised in writing by the Welsh Ministers.

Commencement Information

I66 S. 67 not in force at Royal Assent, see [s. 212\(2\)](#)

68 Power of entry for survey and valuation in connection with claim for compensation

- (1) An authorised person may enter any land to survey it, or estimate its value, in connection with a claim for compensation under this Part for any damage to that land or any other land.
- (2) In this section “authorised person” means—
- (a) an officer of the Valuation Office of His Majesty’s Revenue and Customs, or
 - (b) a person authorised in writing by the Welsh Ministers.
- (3) The power to survey land under this section includes power to search and bore to determine the nature of the subsoil or the presence of minerals.

Commencement Information

I67 S. 68 not in force at Royal Assent, see [s. 212\(2\)](#)

69 Supplementary provision about powers of entry under this Part

- (1) A power to enter land under this Part may be exercised at any reasonable time; but this subsection does not apply to section 65(5).
- (2) A person authorised to enter land under this Part may not demand admission as of right to any land which is occupied unless notice of the intended entry has been given to every occupier—
- (a) where the purpose of the entry is to carry out any works on the land (other than excavations in exercise of the power under section 67), at least 14 days before the day of the intended entry, or
 - (b) in any other case (including excavations in exercise of the power under section 67), at least 24 hours before the day of the intended entry.
- (3) Subsection (2) does not apply to entry under—
- (a) section 61 (but see subsection (2) of that section), or
 - (b) section 66(1).
- (4) A person authorised to enter land under this Part may not enter any building or structure or part of a building or structure occupied as a dwelling without the agreement of every occupier; but this subsection does not apply to the power in section 68.
- (5) A person authorised to enter land under this Part must—

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Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

- (a) if required to do so by or on behalf of an owner or occupier of the land, produce evidence of the person’s authorisation and state the purpose of the entry before entering the land;
 - (b) if leaving the land at a time when no owner or occupier is present, leave it as effectively secured against trespassers as the person found it.
- (6) A person entering land in exercise of a power of entry under this Part may take assistance or equipment reasonably required for the purpose to which the entry relates.
- (7) Where a person carries out any archaeological investigation or examination of land in the exercise of a power of entry under this Part, the person may take and remove any samples which appear to the person to be reasonably required for the purpose of archaeological analysis.
- (8) Where—
- (a) a power of entry under this Part is exercisable by a person (“P1”) in relation to any land, and
 - (b) works are being carried out on the land by another person (“P2”),
- P1 must, in exercising the power of entry, comply with any reasonable requirements or conditions imposed by P2 for the purpose of preventing interference or delay to the works.
- (9) Subsection (8) does not apply where the works in question are being carried out in breach of section 11 (requirement for works to be authorised).
- (10) For the purposes of subsection (8), a requirement or condition is not reasonable if complying with it would frustrate the exercise of the power of entry or the purpose of entry.
- (11) A person who intentionally obstructs a person exercising a power of entry under this Part commits an offence.
- (12) A person guilty of an offence under subsection (11) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (13) Where a person—
- (a) in the exercise of the power of entry under section 68, proposes to carry out works authorised by subsection (3) of that section, and
 - (b) is required to give notice of the intended entry under subsection (2)(a) of this section,
- the person may not carry out the works unless the notice of intended entry includes notice of the person’s intention to carry them out.
- (14) Where—
- (a) in the exercise of the power of entry under section 68, a person proposes to carry out any works authorised by subsection (3) of that section on land that belongs to a statutory undertaker, and
 - (b) the undertaker objects to the proposal on the ground that carrying out of the works would be seriously detrimental to the carrying on of its undertaking,
- the person may not carry out the works without the agreement of the Welsh Ministers.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

Commencement Information

I68 S. 69 not in force at Royal Assent, see [s. 212\(2\)](#)

70 Compensation for damage caused by exercise of certain powers under this Part

- (1) This section applies to any power to enter, or to do anything on, any land under section 40 or sections 65 to 68.
- (2) Any person interested in land is entitled, on making a claim to the Welsh Ministers, to be paid compensation by them for any damage caused to the land or to property on it in the exercise of a power to which this section applies.
- (3) A claim for compensation under this section must be made in writing within 6 months beginning with the day the damage was caused (or if the damage was caused over more than one day, the last day it was caused).

Commencement Information

I69 S. 70 not in force at Royal Assent, see [s. 212\(2\)](#)

71 Treatment and preservation of finds

- (1) This section applies where a person enters land in exercise of a power of entry under this Part—
 - (a) to carry out excavations in the land or works affecting a monument of special historic interest situated in, on or under the land,
 - (b) to assess or observe works on the land under section 65(3) or (4)(b), or
 - (c) to carry out an archaeological examination of the land.
- (2) The person may—
 - (a) take temporary custody of any object of archaeological or historical interest discovered during the course of the excavations, works or examination, and
 - (b) remove the object from its site for the purpose of examining, testing, treating, recording or preserving it.
- (3) The appropriate authority may not, without the agreement of every owner, retain the object for longer than is reasonably required to—
 - (a) examine and record it, and
 - (b) carry out any test or treatment which appears to the authority to be desirable—
 - (i) for the purpose of archaeological investigation or analysis, or
 - (ii) to restore or preserve the object.
- (4) In subsection (3) “appropriate authority” means—
 - (a) in a case where the power of entry was exercised by or on behalf of the Welsh Ministers, the Welsh Ministers, and
 - (b) in a case where the power of entry was exercised by or on behalf of a local authority, that authority.
- (5) This section does not affect any right of the Crown under the [Treasure Act 1996 \(c. 24\)](#).

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

Commencement Information

I70 S. 71 not in force at Royal Assent, see [s. 212\(2\)](#)

Supplementary

72 Validity of certain decisions and orders under this Part

- (1) The validity of a decision or order to which this section applies may not be questioned in any legal proceedings except an application for statutory review under section 73.
- (2) The decisions to which this section applies are—
 - (a) a decision of the Welsh Ministers on an application for scheduled monument consent, and
 - (b) a decision on a review under section 9.
- (3) This section applies to an order under section 20 modifying or revoking a scheduled monument consent.
- (4) This section does not prevent any court exercising any jurisdiction in relation to a refusal or failure to make a decision to which this section applies.

Commencement Information

I71 S. 72 not in force at Royal Assent, see [s. 212\(2\)](#)

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

- (1) A person aggrieved by a decision or order to which section 72 applies may make an application for statutory review.
- (2) An application for statutory review is an application to the High Court questioning the validity of the decision or order on the grounds that—
 - (a) it is not within the powers conferred by this Act, or
 - (b) a relevant requirement has not been complied with in relation to the decision or order.
- (3) An application for statutory review must be made before the end of 6 weeks beginning with the day after the day the decision or order to which the application relates is made.
- (4) On any application for statutory review the High Court—
 - (a) may make an interim order suspending the operation of the decision or order to which the application relates, until the proceedings are finally determined;
 - (b) may quash that decision or order if satisfied that—
 - (i) it is not within the powers conferred by this Act, or
 - (ii) the interests of the applicant have been substantially prejudiced by a failure to comply with a relevant requirement in relation to the decision or order.
- (5) In this section “relevant requirement” means any requirement of—
 - (a) this Act or the [Tribunals and Inquiries Act 1992 \(c. 53\)](#), or

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Changes to legislation: There are currently no known outstanding effects for the
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- (b) any subordinate legislation made under this Act or under that Act.

Commencement Information

I72 S. 73 not in force at Royal Assent, see [s. 212\(2\)](#)

74 Crown land

- (1) This Part applies in relation to Crown land only to the extent set out below.
- (2) A monument situated in, on or under Crown land may be included in the schedule.
- (3) Any restrictions or powers imposed or conferred by this Part apply and are exercisable in relation to Crown land and in relation to anything done on Crown land otherwise than by or on behalf of the Crown, but not so as to affect any interest of the Crown in the land.
- (4) This section does not permit—
- (a) a power under this Part to enter, or to do anything on, any land to be exercised in relation to Crown land, or
 - (b) an interest in Crown land held otherwise than by or on behalf of the Crown to be acquired compulsorily under this Part,
- without the agreement of the appropriate Crown authority.

Commencement Information

I73 S. 74 not in force at Royal Assent, see [s. 212\(2\)](#)

75 Interpretation of this Part

- (1) In this Part—
- “archaeological examination” (*“archwiliad archaeolegol”*) has the meaning given by subsection (3);
 - “archaeological investigation” (*“ymchwiliad archaeolegol”*) has the meaning given by subsection (2);
 - “enforcement notice” (*“hysbysiad gorfodi”*) means an enforcement notice issued under section 35;
 - “flooding operations” (*“gweithrediadau i foddi tir”*) means covering land with water or another liquid or partially liquid substance;
 - “guardian” (*“gwarcheidwad”*) is to be interpreted in accordance with sections 45 and 49;
 - “guardianship deed” (*“gweithred warcheidiaeth”*) has the meaning given by section 45(7);
 - “interim protection” (*“gwarchodaeth interim”*) has the meaning given by section 6(3);
 - “local authority” (*“awdurdod lleol”*) means—
 - (a) a county council or county borough council in Wales, and
 - (b) a National Park authority in Wales;

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)

“monument of special historic interest” (“*heneb o ddiddordeb hanesyddol arbennig*”) has the meaning given by subsection (6);

“possession” (“*meddiant*”) includes receipt of rents and profits or the right to receive rents and profits (if any);

“the schedule” (“*y gofrestr*”) has the meaning given by section 3;

“scheduled monument consent” (“*cydsyniad heneb gofrestredig*”) has the meaning given by section 13;

“temporary stop notice” (“*hysbysiad stop dros dro*”) means a temporary stop notice issued under section 31;

“tipping operations” (“*gweithrediadau tipio*”) means tipping soil or spoil or depositing building or other materials or matter (including waste) on any land;

“works” (“*gwaith*”) includes—

- (a) flooding or tipping operations,
- (b) any operations carried out for the purposes of agriculture (within the meaning of the [Town and Country Planning Act 1990 \(c. 8\)](#)) or forestry (including afforestation), and
- (c) operations of any other description.

(2) In this Part “archaeological investigation” means any investigation of land, objects or other material for the purpose of obtaining and recording any information of archaeological or historical interest and includes in the case of an archaeological investigation of land—

- (a) any investigation for the purpose of discovering and revealing and (where appropriate) recovering and removing any objects or other material of archaeological or historical interest situated in, on or under the land, and
- (b) examining, testing, treating, recording and preserving any such objects or material discovered during the course of any excavations or inspections carried out for the purposes of any such investigation.

(3) In this Part “archaeological examination”, in relation to land, means any examination or inspection of the land (including buildings or other structures on the land) for the purpose of obtaining and recording any information of archaeological or historical interest.

(4) In this Part (other than in Chapter 4) references to land associated with a monument (or to associated land) are to be interpreted in accordance with section 49(9).

(5) In this Part references to a monument, in relation to the acquisition or transfer of any monument (whether under this Part or otherwise), include any interest in or right over the monument.

(6) In this Part “monument of special historic interest” means—

- (a) any scheduled monument, and
- (b) any other monument wholly or mainly in Wales which the Welsh Ministers consider to be of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it.

(7) But the reference to a monument in subsection (6)(b) does not include a monument situated in, on or under the bed of the sea below the low water mark.

Status: This version of this part contains provisions that are prospective.

*Changes to legislation: There are currently no known outstanding effects for the
Historic Environment (Wales) Act 2023, PART 2. (See end of Document for details)*

Commencement Information

I74 S. 75 not in force at Royal Assent, see [s. 212\(2\)](#)

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, PART 2.