



# Historic Environment (Wales) Act 2023

2023 asc 3

## PART 3

### BUILDINGS OF SPECIAL ARCHITECTURAL OR HISTORIC INTEREST

PROSPECTIVE

## CHAPTER 5

### ACQUISITION AND PRESERVATION OF BUILDINGS OF SPECIAL INTEREST

#### *Acquisition by agreement of buildings of special interest*

#### **136 Power of planning authority to acquire building by agreement**

- (1) A planning authority may acquire by agreement—
  - (a) any building wholly or mainly in Wales that it considers to be of special architectural or historic interest, and
  - (b) any land in respect of which the conditions in subsection (2) are met.
- (2) The conditions are that—
  - (a) the land includes, adjoins or is adjacent to the building, and
  - (b) the planning authority considers that the land is required—
    - (i) for preserving the building or its amenities,
    - (ii) for providing or facilitating access to it, or
    - (iii) for its proper control or management.
- (3) 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.

*Status: This version of this chapter contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the*  
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- (4) References in that Part to the execution of the works are to be read in relation to an acquisition under this section as including the carrying out of building or maintenance work authorised by section 203 of the [Housing and Planning Act 2016 \(c. 22\)](#) (power to override easements and other rights).

#### Commencement Information

- II** S. 136 not in force at Royal Assent, see [s. 212\(2\)](#)

### *Compulsory acquisition of listed buildings in need of repair*

#### **137 Powers to acquire listed building compulsorily for purpose of preservation**

- (1) This section applies if the Welsh Ministers—
- (a) consider that reasonable steps are not being taken for properly preserving a listed building, and
  - (b) are satisfied that there is a compelling case in the public interest for the building to be acquired compulsorily for the purpose of preserving it.
- (2) The Welsh Ministers—
- (a) may authorise the planning authority in whose area the listed building is situated to acquire compulsorily the building and any land in respect of which the conditions in subsection (3) are met, or
  - (b) may themselves acquire the building and land compulsorily.
- (3) The conditions are that—
- (a) the land includes, adjoins or is adjacent to the building, and
  - (b) the Welsh Ministers consider that the land is required—
    - (i) for preserving the building or its amenities,
    - (ii) for providing or facilitating access to it, or
    - (iii) for its proper control or management.
- (4) This section does not permit the acquisition of—
- (a) a building which is a scheduled monument (but see section 43), or
  - (b) an exempt religious building.
- (5) This section does not permit the acquisition of an interest in Crown land unless—
- (a) the interest is held otherwise than by or on behalf of the Crown, and
  - (b) the appropriate Crown authority agrees to the acquisition.
- (6) The [Acquisition of Land Act 1981 \(c. 67\)](#) applies to an acquisition under this section.
- (7) In this Chapter “acquiring authority” means—
- (a) in the case of an acquisition or proposed acquisition under subsection (2)(a), the planning authority that acquires or proposes to acquire the listed building or land;
  - (b) in the case of an acquisition or proposed acquisition under subsection (2)(b), the Welsh Ministers.

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#### Commencement Information

**I2** S. 137 not in force at Royal Assent, see [s. 212\(2\)](#)

### **138 Requirement to serve repairs notice before starting compulsory acquisition**

- (1) An acquiring authority may not start the compulsory acquisition of a listed building under section 137 unless—
  - (a) the authority has served a repairs notice on every owner of the building,
  - (b) the 2 months beginning with the day the repairs notice was served have ended, and
  - (c) the repairs notice has not been withdrawn.
- (2) A repairs notice is a notice—
  - (a) specifying the works the authority considers reasonably necessary for the proper preservation of the listed building, and
  - (b) explaining the effect of sections 137 to 141 of this Act and section 49 of the [Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c. 9\)](#) (assumption about listed building consent when assessing compensation for compulsory acquisition).
- (3) If—
  - (a) a listed building is demolished after a repairs notice has been served in respect of it, but
  - (b) the Welsh Ministers are satisfied that they would have confirmed or made a compulsory purchase order in respect of the building had it not been demolished,the demolition of the building does not prevent the compulsory acquisition of the site of the building under section 137.
- (4) An acquiring authority may at any time withdraw a repairs notice it has served on any person; and if it does do so, it must immediately give the person notice of the withdrawal.
- (5) For the purposes of subsection (1) an acquiring authority starts a compulsory acquisition when it serves the notice required by section 12 of the [Acquisition of Land Act 1981 \(c. 67\)](#) or paragraph 3(1) of Schedule 1 to that Act.

#### Commencement Information

**I3** S. 138 not in force at Royal Assent, see [s. 212\(2\)](#)

### **139 Application to stop compulsory acquisition**

- (1) This section applies where a compulsory purchase order for the acquisition of a listed building under section 137 is made by a planning authority or prepared in draft by the Welsh Ministers.
- (2) Any person who has an interest in the listed building may apply to a magistrates' court for an order that no further steps may be taken in relation to the compulsory purchase order.

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- (3) The application must be made within 28 days after the day the notice required by section 12 of the [Acquisition of Land Act 1981 \(c. 67\)](#) or paragraph 3(1) of Schedule 1 to that Act is served.
- (4) If the magistrates' court is satisfied that reasonable steps have been taken for properly preserving the listed building, it must make the order applied for.
- (5) Any person aggrieved by the decision of the magistrates' court on the application may appeal against the decision to the Crown Court.

#### Commencement Information

**I4** S. 139 not in force at Royal Assent, see [s. 212\(2\)](#)

### **140 Direction for minimum compensation where building deliberately allowed to fall into disrepair**

- (1) A compulsory purchase order for the acquisition of a listed building under section 137 may include a direction for minimum compensation if the acquiring authority is satisfied that the building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development of the site or any adjoining site.
- (2) A direction for minimum compensation is a direction that, in assessing compensation for the compulsory acquisition of the listed building, it is to be assumed—
  - (a) that planning permission would not be granted for any development of the site of the building, and
  - (b) that listed building consent would not be granted for any works for the demolition, alteration or extension of the building other than works necessary for restoring it to and maintaining it in a proper state of repair.
- (3) Where a direction for minimum compensation is included in an order made by a planning authority or prepared in draft by the Welsh Ministers, the statement of the effect of the order in the notice required by section 12 of the [Acquisition of Land Act 1981 \(c. 67\)](#) or paragraph 3(1) of Schedule 1 to that Act must—
  - (a) include a statement that the direction has been included, and
  - (b) explain the effect of the direction.
- (4) If the Welsh Ministers confirm or make a compulsory purchase order which includes a direction for minimum compensation, the compensation for the compulsory acquisition is to be assessed in accordance with the direction, despite anything to the contrary in—
  - (a) the [Land Compensation Act 1961 \(c. 33\)](#),
  - (b) the [Town and Country Planning Act 1990 \(c. 8\)](#),
  - (c) section 49 of the [Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c. 9\)](#), or
  - (d) this Act.

#### Commencement Information

**I5** S. 140 not in force at Royal Assent, see [s. 212\(2\)](#)

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

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#### **141 Application for removal of direction for minimum compensation**

- (1) This section applies where a direction for minimum compensation is included in a compulsory purchase order for the acquisition of a listed building under section 137 that is made by a planning authority or prepared in draft by the Welsh Ministers.
- (2) Any person who has an interest in the listed building may apply to a magistrates' court for an order that no direction for minimum compensation is to be included in the compulsory purchase order as confirmed or made by the Welsh Ministers.
- (3) The application must be made within 28 days after the day the notice required by section 12 of the [Acquisition of Land Act 1981 \(c. 67\)](#) or paragraph 3(1) of Schedule 1 to that Act is served.
- (4) If the magistrates' court is satisfied that the listed building has not been deliberately allowed to fall into disrepair for the purpose mentioned in section 140(1), it must make the order applied for.
- (5) Any person aggrieved by the decision of the magistrates' court on the application may appeal against the decision to the Crown Court.
- (6) The rights conferred by this section are in addition to, and do not limit, the rights conferred by section 139.

#### **Commencement Information**

**I6** S. 141 not in force at Royal Assent, see [s. 212\(2\)](#)

#### **142 Ending of rights over land acquired compulsorily**

- (1) On the completion of a compulsory acquisition of land under section 137—
  - (a) all private rights of way over the land are extinguished,
  - (b) all rights to install, keep or maintain apparatus on, under or over the land are extinguished, and
  - (c) the acquiring authority becomes entitled to any apparatus on, under or over the land.
- (2) Subsection (1) does not apply to—
  - (a) any right to which a statutory undertaker is entitled, or apparatus belonging to a statutory undertaker, for the purpose of carrying on its undertaking,
  - (b) any right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network, or any electronic communications apparatus installed for the purposes of such a network, or
  - (c) any right or apparatus specified by the acquiring authority in a direction given before the completion of the acquisition.
- (3) Subsection (1) is also subject to any agreement (whether made before or after the completion of the acquisition) between the acquiring authority and the person who is entitled to the right or to whom the apparatus belongs.
- (4) Any person who suffers loss by the extinguishment of a right or the transfer of apparatus under this section is entitled to be paid compensation by the acquiring authority.

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(5) Compensation under this section is to be determined in accordance with the [Land Compensation Act 1961 \(c. 33\)](#).

(6) In subsection (2)(b)—

“electronic communications code” (“*cod cyfathrebu electronig*”) means the code set out in Schedule 3A to the [Communications Act 2003 \(c. 21\)](#);

“operator” (“*gweithredwr*”), “electronic communications code network” (“*rhwydwaith cod cyfathrebu electronig*”) and “electronic communications apparatus” (“*cyfarpar cyfathrebu electronig*”) have the meanings given by paragraph 1(1) of Schedule 17 to the Communications Act 2003.

#### Commencement Information

**I7** S. 142 not in force at Royal Assent, see [s. 212\(2\)](#)

### *Management, use and disposal of buildings*

#### **143 Management, use and disposal of building acquired under this Chapter**

- (1) Where a planning authority acquires a building or other land under this Chapter, it may make any arrangements for the management, use or disposal of the building or land that it considers appropriate for the purpose of preserving the building or land.
- (2) For further provision about the use of land that a planning authority acquires by agreement under section 136, see sections 232, 233 and 235 (appropriation, disposal and development), 242 (overriding rights of possession) and 243 (joint body to hold land) of the [Town and Country Planning Act 1990 \(c. 8\)](#).
- (3) Where the Welsh Ministers acquire a building or other land under section 137, they may—
  - (a) make any arrangements they consider appropriate for the management, custody or use of the building or land, and
  - (b) dispose of the building or land, or deal with the building or land in any other way.
- (4) For provision removing restrictions on the use of certain types of land acquired under this Chapter, see sections 238 to 240 (consecrated land and burial grounds) and 241 (commons, open spaces and fuel or field garden allotments) of the Town and Country Planning Act 1990.

#### Commencement Information

**I8** S. 143 not in force at Royal Assent, see [s. 212\(2\)](#)

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### *Urgent preservation of listed buildings*

#### **144 Urgent works to preserve listed building**

- (1) A local authority may carry out any works it considers urgently necessary for the preservation of a listed building in its area.
- (2) The Welsh Ministers may carry out any works they consider urgently necessary for the preservation of any listed building.
- (3) The works that may be carried out under this section include works to provide temporary support or shelter for the listed building.
- (4) If the listed building or any part of it is in residential use, works may be carried out under this section only if they would not interfere unreasonably with that use.
- (5) At least 7 clear days' written notice of the intention to carry out works under this section must be given—
  - (a) to every owner of the listed building, and
  - (b) if the building or any part of it is in residential use, every occupier of the building.
- (6) The notice must describe the works proposed to be carried out.
- (7) Works may not be carried out under this section in relation to—
  - (a) a building which is a scheduled monument (but see section 61),
  - (b) an exempt religious building, or
  - (c) a listed building on Crown land.

#### **Commencement Information**

**I9** S. 144 not in force at Royal Assent, see [s. 212\(2\)](#)

#### **145 Power to require owner to meet costs of preservation works**

- (1) Where works for the preservation of a listed building have been carried out by a local authority or the Welsh Ministers under section 144, the local authority or (as the case may be) the Welsh Ministers may serve notice on any owner of the listed building requiring the owner to meet the costs of the works.
- (2) Where the works consist of or include works to provide temporary support or shelter for the listed building—
  - (a) the costs that may be recovered include any continuing expenditure involved in making available the equipment or materials used, and
  - (b) notices under subsection (1) may be given from time to time in respect of that continuing expenditure.
- (3) Subsection (4) applies if, within 28 days after the day a notice under subsection (1) is served, the owner complains in writing to the Welsh Ministers—
  - (a) that some or all of the works were unnecessary for the preservation of the listed building,
  - (b) in the case of works to provide temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time,



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- (c) that the amount specified in the notice is unreasonable, or
  - (d) that the recovery of that amount would cause hardship to the owner.
- (4) The Welsh Ministers must—
- (a) determine to what extent the owner’s complaint is well-founded, and
  - (b) serve notice of their determination on—
    - (i) the owner, and
    - (ii) if the notice under subsection (1) was given by a local authority, that authority.
- (5) The notice of the Welsh Ministers’ determination must state—
- (a) the reasons for the determination, and
  - (b) the amount that they have decided may be recovered.
- (6) An owner or local authority on whom notice is served under subsection (4)(b) may, within 28 days after the day the notice is served, appeal to the county court against the Welsh Ministers’ decision.

#### **Commencement Information**

**I10** S. 145 not in force at Royal Assent, see [s. 212\(2\)](#)

#### **146 Further provision about recovery of costs of preservation works**

- (1) The costs which a local authority or the Welsh Ministers may recover under section 145 carry interest, at the rate specified in regulations made by the Welsh Ministers, from the time when the notice under subsection (1) of that section becomes operative until all of the amounts due under that section are recovered.
- (2) The costs and any interest are recoverable by the local authority or (as the case may be) the Welsh Ministers as a debt.
- (3) The costs and any interest are, from the time when the notice under section 145(1) becomes operative until they are recovered, a charge on the land on which the listed building in question is situated.
- (4) The charge takes effect, at the time when the notice becomes operative, as a legal charge which is a local land charge.
- (5) For the purpose of enforcing the charge, the local authority or (as the case may be) the Welsh Ministers have the same powers and remedies under the [Law of Property Act 1925 \(c. 20\)](#) and otherwise as if they were a mortgagee by deed with powers to sell the land, make leases, accept surrenders of leases and appoint a receiver.
- (6) The power to appoint a receiver is exercisable at any time after the end of 1 month beginning with the day the charge takes effect.
- (7) For the purposes of this section a notice under section 145(1) becomes operative—
  - (a) where no complaint is made to the Welsh Ministers within the period referred to in section 145(3), at the end of that period;
  - (b) where a complaint is made but no appeal is made to the county court within the period referred to in section 145(6), at the end of that period;



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- (c) where an appeal is made and the decision on the appeal confirms the Welsh Ministers' determination under section 145(4) (with or without variation), at the time of the decision;
- (d) where an appeal is made but is withdrawn, at the time of the withdrawal.

#### Commencement Information

**I11** S. 146 not in force at Royal Assent, see [s. 212\(2\)](#)

#### *Further provision about preservation of listed buildings*

### **147 Steps for preservation of listed buildings in disrepair**

- (1) The Welsh Ministers may by regulations make provision for and in connection with conferring powers on local authorities or the Welsh Ministers to take steps to secure the proper preservation of listed buildings which have fallen into disrepair.
- (2) The regulations may, in particular, provide for—
  - (a) notices requiring owners of listed buildings which have fallen into disrepair to carry out works to secure their proper preservation (“preservation notices”);
  - (b) appeals against preservation notices;
  - (c) offences for failure to comply with preservation notices.
- (3) Regulations under this section—
  - (a) may disapply, or apply or reproduce with or without modifications, any provision of this Part or Part 5 or 7;
  - (b) may amend this Part or those Parts.
- (4) Regulations under this section may not make any provision that binds the Crown.

#### Commencement Information

**I12** S. 147 not in force at Royal Assent, see [s. 212\(2\)](#)

#### *Finance for repair and maintenance of buildings of special interest etc.*

### **148 Grant or loan by local authority for repair or maintenance of building**

- (1) A relevant local authority may contribute towards any expenditure incurred, or to be incurred, in the repair or maintenance of—
  - (a) a listed building which is situated in or in the vicinity of the authority's area, or
  - (b) a building in the authority's area which is not a listed building but which the authority considers to be of special architectural or historic interest.
- (2) At the same time as making such a contribution, the authority may also contribute towards any expenditure incurred, or to be incurred, in the maintenance of any garden which—
  - (a) is occupied with the building, and
  - (b) adjoins or is adjacent to it.

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- (3) A contribution under this section may be made by grant or loan.
- (4) A relevant local authority may make a loan under this section on any terms and conditions that it determines, which may for example include a term that the loan is free of interest.
- (5) A relevant local authority—
  - (a) may renounce its right to repayment of a loan or any outstanding interest, and
  - (b) may agree with the borrower to vary any of the terms and conditions of a loan.
- (6) A relevant local authority may make a grant under this section subject to any conditions it considers appropriate, which may for example include a condition that the recipient of the grant must make an agreement with the authority for the purpose of securing public access to all or part of the building or garden to which the grant relates.
- (7) In this section and section 149, “relevant local authority” means—
  - (a) a county council or county borough council in Wales;
  - (b) a National Park authority in Wales;
  - (c) a joint planning board constituted under section 2(1B) of the [Town and Country Planning Act 1990 \(c. 8\)](#).

#### **Commencement Information**

**I13** S. 148 not in force at Royal Assent, see [s. 212\(2\)](#)

### **149 Recovery of grant made by local authority**

- (1) This section applies where a relevant local authority makes a grant under section 148.
- (2) If any condition imposed on the making of the grant is not complied with, the authority may recover the amount of the grant, or any part of that amount, from the recipient of the grant.
- (3) Subsections (4) and (5) apply if, during the 3 years beginning with the day the grant is made—
  - (a) there is a disposal of the whole or part of the interest that the recipient of the grant held in the building or garden to which the grant relates on the day the grant was made (“the relevant interest”), and
  - (b) the disposal is made by sale, by exchange or by lease for a term of at least 21 years.
- (4) If the disposal is made by the recipient of the grant or by a person to whom the recipient of the grant has given part of the relevant interest, the relevant local authority may recover the amount of the grant, or any part of that amount, from the recipient of the grant.
- (5) If the disposal is made by a person to whom the recipient of the grant has given the whole of the relevant interest, the authority may recover the amount of the grant, or any part of that amount, from the person to whom the gift was made.
- (6) A relevant local authority may not recover amounts under this section which in aggregate exceed the amount of the grant.

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- (7) In this section references to giving an interest to a person are references to giving it to the person directly or indirectly, other than on the death of the holder of the interest.

#### Commencement Information

**I14** S. 149 not in force at Royal Assent, see [s. 212\(2\)](#)

### **150 Grant by Welsh Ministers for repair or maintenance of building, garden etc.**

- (1) The Welsh Ministers may make grants to meet any expenditure incurred, or to be incurred, in—
- (a) the repair or maintenance of a building which they consider to be of special architectural or historic interest,
  - (b) the maintenance of any land which includes, adjoins or is adjacent to such a building,
  - (c) the repair or maintenance of any objects ordinarily kept in such a building, or
  - (d) the maintenance of a garden or other land which they consider to be of special historic interest.
- (2) The following provisions of this section apply where—
- (a) the Welsh Ministers make a grant under subsection (1) on terms which provide for it to be recoverable under this section, and
  - (b) before or on making the grant the Welsh Ministers give notice in writing to the recipient of the grant which—
    - (i) summarises the effect of this section, and
    - (ii) specifies a period, beginning with the day the grant is made and ending not more than 10 years after that day, during which the grant is to be recoverable in accordance with subsections (4) to (6) (“the recovery period”).
- (3) If any condition imposed on the making of the grant is not complied with, the Welsh Ministers may recover the amount of the grant, or any part of that amount, from the recipient of the grant.
- (4) Subsections (5) and (6) apply if during the recovery period—
- (a) there is a disposal of the whole or part of the interest that the recipient of the grant held in the building, land or objects to which the grant relates on the day the grant was made (“the relevant interest”), and
  - (b) the disposal is made by sale, by exchange or by lease for a term of at least 21 years.
- (5) If the disposal is made by the recipient of the grant or by a person to whom the recipient of the grant has given a part of the relevant interest, the Welsh Ministers may recover the amount of the grant, or any part of that amount, from the recipient of the grant.
- (6) If the disposal is made by a person to whom the recipient of the grant has given the whole of the relevant interest, the Welsh Ministers may recover the amount of the grant, or any part of that amount, from the person to whom the gift was made.
- (7) The Welsh Ministers may not recover amounts under this section which in aggregate exceed the amount of the grant.

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- (8) In this section references to giving an interest to a person are references to giving it to the person directly or indirectly, other than on the death of the holder of the interest.

#### Commencement Information

**I15** S. 150 not in force at Royal Assent, see [s. 212\(2\)](#)

### 151 Acceptance by Welsh Ministers of endowment for upkeep of building

- (1) This section applies where—
- (a) an instrument contains a provision purporting to be a gift of property of any kind to the Welsh Ministers on trust to use the income of the property (either for a limited time or indefinitely) for or towards the repair and maintenance of a relevant building, or of a relevant building together with other property,
  - (b) the provision does not create a charitable trust, and
  - (c) the Welsh Ministers accept the gift.
- (2) In this section—
- “endowment trust” (*“ymddiriedolaeth waddol”*) means the trust referred to in subsection (1)(a);
- “relevant building” (*“adeilad perthnasol”*) means—
- (a) a building which the Welsh Ministers consider to be of special architectural or historic interest and—
    - (i) in which, at the time when the trust instrument comes into operation, they are or soon will be entitled to an interest, or
    - (ii) which at that time is or soon will be under their control or management, or
  - (b) a building which at that time is or soon will be under their guardianship under Chapter 6 of Part 2;
- “trust fund” (*“cronfa’r ymddiriedolaeth”*) means the property given to the Welsh Ministers and any property for the time being representing that property.
- (3) The validity of the gift and of the endowment trust is not affected, and is to be treated as never having been affected, by any rule of law or equity which would not have affected their validity if the trust had been charitable.
- (4) While the endowment trust continues the Welsh Ministers have the same powers of management, disposition and investment in relation to the trust fund as are conferred by law on trustees of land in relation to the land and the proceeds of its sale.
- (5) The powers conferred by subsection (4) are in addition to, and do not limit, any powers conferred on the Welsh Ministers by the trust instrument.
- (6) If, while the endowment trust continues, an event happens—
- (a) which has the immediate effect that the Welsh Ministers are not entitled to any interest in the building to which the trust relates and do not have the building under their control or management, and
  - (b) which would not otherwise cause the endowment trust to come to an end or be treated as having failed,

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on the happening of that event the endowment trust comes to an end and the trust fund passes as it would on a failure of the trust.

- (7) Subsection (8) applies if the trust instrument contains a provision purporting to give the trust fund, or to direct the trust fund to be held, on trust for charitable purposes if the endowment trust fails or comes to an end.
- (8) The validity of the gift or direction is not, and is to be treated as never having been, affected by any rule of law or equity relating to perpetuities.
- (9) In subsection (4) “trustees of land” has the same meaning as in the [Trusts of Land and Appointment of Trustees Act 1996 \(c. 47\)](#) (see section 1(1) of that Act).

#### **Commencement Information**

**I16** S. 151 not in force at Royal Assent, see [s. 212\(2\)](#)

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, CHAPTER 5.