

# **HISTORIC ENVIRONMENT (WALES) ACT 2016**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2: Ancient Monuments Etc**

#### ***Section 3 – Amendments relating to the Schedule***

##### **1AE Review of decisions on certain amendments relating to the Schedule**

23. New section 1AE contains provision for the review of the Welsh Ministers' decisions to make certain amendments relating to the Schedule. The amendments in question are those that include a monument in the Schedule, or that add to the area shown for a monument on a map that accompanies the monument's entry in the Schedule.
24. Where such an amendment is made, section 1AE(2) requires the Welsh Ministers to serve a notice on the owner and occupier (if the owner is not the occupier) informing them that the monument has been included in the Schedule, or that an amendment has been made that adds to the area shown for the monument, and that an application may be made to the Welsh Ministers requesting a review of the decision.
25. Section 1AE(3) requires the Welsh Ministers to undertake a review on request and to give effect to their decision on the review by amending the Schedule or map appropriately.
26. Section 1AE(4) specifies that a review decision can only be challenged in the High Court by way of section 55 of the 1979 Act (proceedings for questioning validity of certain orders). The only permitted grounds for a challenge under section 55 are that the decision was not within the powers of the 1979 Act or that relevant requirements had not been complied with.
27. Section 1AE(5) requires the Welsh Ministers to carry out the review by means of a local inquiry, a hearing or written representations. The Welsh Ministers may decide which procedure is the most appropriate.
28. Section 1AE(6) requires the Welsh Ministers to make regulations setting out: the grounds on which a review may be requested, the information that must be provided in connection with an application for a review, the form and manner of an application for a review, and the period within which an application must be made.
29. Section 1AE(7) enables the Welsh Ministers to make further provision in regulations in connection with reviews, including provision about costs.
30. Section 1AE(9) introduces Schedule A2 into the 1979 Act which allows the Welsh Ministers to appoint a person to make decisions on reviews.
31. **Section 3(2)** inserts new section 2(6A) into the 1979 Act, which provides a defence for a person who is accused of carrying out unauthorised works to a monument on which interim protection has been conferred. The defence applies where the accused can prove that he or she did not know, and could not reasonably have been expected to know, that

*These notes refer to the Historic Environment (Wales) Act  
2016 (c.4) which received Royal Assent on 21 March 2016*

interim protection had been conferred on the monument. If such a defence is raised, the prosecution will have to prove that, if an interim protection notice should have been served on the accused under section 1AA(2), it had been served.