

# HISTORIC ENVIRONMENT (WALES) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 1*

249. [Schedule 1](#) is introduced by section 3(3) of the Act, and inserts Schedule A1 and Schedule A2 into the 1979 Act.

#### **Schedule A1 Lapse of interim protection**

250. Schedule A1 contains provision which applies where interim protection ceases to have effect as a result of a decision by the Welsh Ministers:
- not to include a monument in the Schedule, or
  - not to make a material amendment that increases the area shown for a monument on a map that accompanies its entry in the Schedule.
251. Even after interim protection has lapsed, a person can still be prosecuted for certain offences committed while it was in effect. The Welsh Ministers may also recover expenses incurred in undertaking work under section 9ZF(2) of the 1979 Act following a failure to comply with an enforcement notice which was served while the interim protection had effect. However, various other matters done under the 1979 Act cease to have effect on the lapse of interim protection: for example, scheduled monument consent, enforcement notices and temporary stop notices.

#### **Schedule A2 Decisions on reviews by person appointed by Welsh Ministers**

252. Paragraph 1 of Schedule A2 allows the Welsh Ministers to make regulations setting out the classes of reviews on which decisions are to be made by a person appointed by the Welsh Ministers.
253. [Paragraph 2](#) sets out the powers and duties of an appointed person. The appointed person has the same powers and duties as the Welsh Ministers to carry out the review, to make a decision on the review and to decide on the procedures and conduct of the review and the costs associated with it.
254. A decision of an appointed person cannot be challenged except by way of section 55 of the 1979 Act (proceedings for questioning validity of certain orders). In addition, an application to the High Court under section 55 cannot be made on the grounds that the decision should have been made by the Welsh Ministers instead of the appointed person, unless the appointed person's power to make the decision was challenged before the decision on the review was taken.
255. [Paragraph 3](#) makes provisions for the Welsh Ministers to revoke an appointed person's authority and appoint another person to undertake the review.
256. [Paragraph 4](#) allows an appointed person to appoint an assessor to provide advice on any matters arising at a local inquiry or hearing, or in written representations made

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

in connection with the review. Sub-paragraph (2) applies provisions of the Local Government Act 1972 which allow an appointed person to summon a person to attend and provide evidence at an inquiry. Refusal to attend will render a person liable, on summary conviction, to a fine not exceeding level 3 on the standard scale, imprisonment for a term not exceeding six months, or both.

257. [Paragraph 5](#) allows the Welsh Ministers to direct that anything that should have been done by the appointed person, with the exception of making a decision on a review, may be done instead by the Welsh Ministers. This enables the Welsh Ministers to direct that matters such as the notification of a review, the circulation of representations or evidence, and the notification of a decision are to be undertaken by them.
258. [Paragraph 6](#) allows an appointed person to delegate to another person anything that would fall to be done by the appointed person except for the conduct of a local inquiry or hearing or the making of a decision on the review. This enables the appointed person to delegate administrative tasks, such as the notification of a review application, the notification of hearing/inquiry timetables and details, and the circulation of statements and representations.
259. [Paragraph 7](#) provides that, where the Welsh Ministers appoint a member of staff of the Welsh Government to carry out their functions in relation to a review, those functions are to be treated as functions of the Welsh Government for the purposes of the Public Services Ombudsman (Wales) Act 2005. This will enable the Public Services Ombudsman for Wales to investigate any allegations of maladministration made in relation to the appointed person's discharge of those functions.