



# Historic Environment (Wales) Act 2016

2016 anaw 4

## PART 2

### ANCIENT MONUMENTS ETC

#### *Schedule of monuments*

### 3 Amendments relating to the Schedule

- (1) After section 1A of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) insert—

#### **“1AA Duty to consult on certain amendments relating to the Schedule**

- (1) This section applies where the Welsh Ministers are proposing—
- (a) to include a monument in the Schedule;
  - (b) to exclude a monument from the Schedule; or
  - (c) in the case of a monument which is identified in the Schedule by reference to a map maintained by the Welsh Ministers, to make a material amendment in relation to the monument.
- (2) The Welsh Ministers must—
- (a) serve notice of the proposed inclusion, exclusion or amendment on the appropriate persons; and
  - (b) invite those persons to submit written representations about the proposal.
- (3) The appropriate persons are—
- (a) the owner of the monument;
  - (b) if the owner is not the occupier, the occupier of the monument;
  - (c) each local authority in whose area the monument is situated; and
  - (d) any other person who appears to the Welsh Ministers appropriate as having special knowledge of, or interest in, the monument, or

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in monuments of special historic or archaeological interest more generally.

- (4) A notice under subsection (2) must—
  - (a) specify the proposed inclusion, exclusion or amendment;
  - (b) specify the period within which representations about the proposal may be made, which must be at least 28 days beginning with the day on which the notice is served; and
  - (c) in the case of a proposed inclusion or a proposed amendment of the kind described in subsection (5)(a)—
    - (i) include a statement of the effect of section 1AB; and
    - (ii) specify the date on which interim protection takes effect under subsection (2) of that section.
- (5) For the purposes of this section an amendment in relation to a monument in the Schedule is “material” if it—
  - (a) adds to the area shown for the monument on the map referred to in subsection (1)(c); or
  - (b) reduces the area so shown.
- (6) The Welsh Ministers may by regulations amend subsection (3) by adding a description of person to the list of appropriate persons in that subsection; and where the Welsh Ministers do so, they may also make such amendments to this Act as they consider appropriate in consequence of the amendment to subsection (3).

#### **1AB Interim protection pending decisions on certain amendments relating to the Schedule**

- (1) This section applies where the Welsh Ministers consult under section 1AA on a proposal to—
  - (a) include a monument in the Schedule; or
  - (b) make a material amendment of the kind described in section 1AA(5) (a) in relation to a monument in the Schedule.
- (2) The provisions of this Act have effect in relation to the monument, from the beginning of the day specified for the purposes of section 1AA(4)(c)(ii)—
  - (a) in the case of a proposal to include a monument in the Schedule, as if the monument were a scheduled monument; and
  - (b) in the case of a proposal to make a material amendment in relation to a monument in the Schedule, as if the amendment were made.
- (3) The protection conferred on a monument or area by virtue of subsection (2) is referred to in this Act as “interim protection”.
- (4) Interim protection conferred by virtue of subsection (2)(a) ceases to have effect—
  - (a) where the Welsh Ministers include the monument in the Schedule, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or

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- (b) where the Welsh Ministers decide not to include the monument in the Schedule, from the beginning of the day specified in a notice issued to—
    - (i) the owner of the monument;
    - (ii) if the owner is not the occupier, the occupier of the monument; and
    - (iii) each local authority in whose area the monument is situated.
- (5) Interim protection conferred by virtue of subsection (2)(b) ceases to have effect—
  - (a) where the Welsh Ministers make the material amendment, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
  - (b) where the Welsh Ministers decide not to make the material amendment, from the beginning of the day specified in a notice issued to—
    - (i) the owner of the monument;
    - (ii) if the owner is not the occupier, the occupier of the monument; and
    - (iii) each local authority in whose area the monument is situated.
- (6) The Welsh Ministers—
  - (a) must publish by electronic means a list containing particulars of each monument in relation to which interim protection has effect; and
  - (b) must, on request, provide a copy of the notice served under section 1AA(2) in respect of such a monument.

### **1AC Provisions applicable on lapse of interim protection**

Schedule A1 has effect with respect to the lapse of interim protection.

### **1AD Compensation for loss or damage caused by interim protection**

- (1) This section applies where interim protection in respect of a monument ceases to have effect as a result of the issue of a notice by the Welsh Ministers under section 1AB(4)(b) or (5)(b).
- (2) Any person who, at the time when the interim protection took effect, had an interest in the monument is, on making a claim to the Welsh Ministers within the prescribed time and in the prescribed manner, entitled to be paid compensation by the Welsh Ministers in respect of any loss or damage directly attributable to the effect of the protection.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the monument on account of the interim protection having effect.

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

- (1) This section applies where the Welsh Ministers—
  - (a) include a monument in the Schedule; or

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- (b) make a material amendment of the kind described in section 1AA(5) (a) in relation to a monument in the Schedule.
- (2) When the Welsh Ministers inform the owner and (if the owner is not the occupier) the occupier of the monument under section 1(6) or (6B) that they have taken that action, they must also serve on that person or those persons a notice which—
  - (a) specifies the date on which the Welsh Ministers did so (and on which interim protection under section 1AB(2) ceased to have effect); and
  - (b) states that the person may make an application to the Welsh Ministers requesting them to review their decision to do so.
- (3) Where the owner or occupier of the monument makes such an application, the Welsh Ministers must—
  - (a) carry out the review requested;
  - (b) make a decision on the review; and
  - (c) make such amendment to the Schedule or the map referred to in section 1AA(1)(c) as they consider appropriate to give effect to that decision.
- (4) Except as provided in section 55, the validity of any decision taken by the Welsh Ministers on the review is not to be questioned in any legal proceedings.
- (5) The Welsh Ministers must carry out a review under this section in such one or more of the following ways as appears to them to be appropriate—
  - (a) by means of a public local inquiry;
  - (b) by means of a hearing;
  - (c) on the basis of written representations.
- (6) The Welsh Ministers must by regulations make provision about—
  - (a) the grounds on which an application for a review under this section may be made;
  - (b) the information that must be provided to, or may be required by, the Welsh Ministers in connection with such an application;
  - (c) the form and manner in which such an application must be made; and
  - (d) the period within which such an application must be made.
- (7) The Welsh Ministers may by regulations make further provision in connection with reviews under this section, including provision about costs that may be required to be paid in connection with a review.
- (8) Regulations made by virtue of subsection (6) or (7) may confer power on the Welsh Ministers—
  - (a) to determine matters of a description specified in the regulations; and
  - (b) to give directions in relation to those matters.
- (9) Schedule A2 applies to reviews under this section.”
- (2) In section 2 of that Act (control of works affecting scheduled monuments), after subsection (6) insert—
  - “(6A) In any proceedings for an offence under subsection (1) in relation to a monument or anything else on which interim protection is conferred (which

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is, as a result of section 1AB(2), treated as a scheduled monument or part of such a monument)—

- (a) it is a defence for the accused to prove that the accused 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 1AA(2), it is for the prosecution to prove that the notice was served on the person.”

- (3) Before Schedule 1 to that Act insert the Schedules A1 and A2 set out in Schedule 1 to this Act.

#### Commencement Information

- I1** [S. 3](#) in force at Royal Assent for specified purposes, see [s. 41\(1\)\(c\)](#)
- I2** [S. 3](#) in force at 31.5.2017 in so far as not already in force by [S.I. 2017/633](#), [art. 5\(a\)](#) (with [art. 6\(1\)](#))

## 4 Amendments relating to the Schedule: consequential provision

- (1) In section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (schedule of monuments), after subsection (5) insert—

“(5A) Section 1AA makes provision about consultation by the Welsh Ministers on proposals to include or exclude a monument or to make a material amendment in relation to a scheduled monument.”

- (2) After subsection (6A) of that section insert—

“(6B) As soon as may be after making a material amendment of the kind described in section 1AA(5) in relation to a monument identified in the Schedule by reference to a map, the Welsh Ministers must—

- (a) inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the action taken; and
- (b) send to those persons a copy of the amended map.

(6C) Section 1AE(2) makes further provision about information that the Welsh Ministers must provide after making certain amendments in relation to the Schedule.”

- (3) In section 27 of that Act (general provisions as to compensation for depreciation under Part 1 of the Act), in subsection (2), for “section 7 or 9” substitute “section 1AD, 7, 9”.

- (4) In section 51 of that Act (ecclesiastical property), in subsection (3), after “under section” insert “1AD, ”.

- (5) In section 55 of that Act (proceedings for questioning validity of certain orders, etc), after subsection (3) insert—

“(3A) This section applies to a decision on a review under section 1AE (review by Welsh Ministers or appointed person).”

- (6) In section 61 of that Act (interpretation), in subsection (1), insert at the appropriate place—

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““interim protection” has the meaning given by section 1AB(3);”.

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**Commencement Information**

**I3** [S. 4](#) in force at 31.5.2017 by [S.I. 2017/633](#), [art. 4\(a\)](#) (with [art. 6\(1\)](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act repealed by [2023 asc 3 Sch. 13 para. 193](#)