

HISTORIC ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Ancient Monuments Etc

Section 13 – Temporary stop notices

90. **Section 13** inserts new sections 9ZI to 9ZL into the 1979 Act to allow a temporary stop notice to be issued where it appears that unauthorised works have been or are being carried out to scheduled monuments.
91. A temporary stop notice will allow the Welsh Ministers to require an immediate halt to unauthorised works before a scheduled monument suffers further damage or destruction. It will also provide a period of time to allow the Welsh Ministers to assess the situation and to put in place arrangements for informal resolution, enforcement or prosecution.

9ZI Temporary stop notice

92. Section 9ZI(1) and (2) gives the Welsh Ministers the power to issue a temporary stop notice. A temporary stop notice may be issued where any works have been, or are being, executed to a scheduled monument or to land in, on or under which a monument is situated if it appears to the Welsh Ministers that the works are unauthorised or fail to comply with a condition attached to a scheduled monument consent and the Welsh Ministers consider it expedient to stop the works immediately, having regard to the effect of the works on the monument as one of national importance.
93. Section 9ZI(3) states that a temporary stop notice must: be in writing, specify the works that are to stop, explain why the notice has been issued, and state that contravention of the notice is an offence.
94. Section 9ZI(4) and (5) sets out the arrangements for bringing a temporary stop notice to public attention. It must be displayed on the monument, or nearby if display on the monument might cause damage, and specify the date on which it is first displayed. The temporary stop notice takes effect on that date. In addition, the Welsh Ministers may serve the temporary stop notice on any person who appears to the Welsh Ministers to be carrying out the works or causing them to be carried out, or on any person who has an interest in the monument or land. Section 56 of the 1979 Act (service of documents) applies to the service of the notice.
95. Section 9ZI(7) states that the temporary stop notice ceases to have effect after a period of 28 days, or any shorter period that is specified in the notice. Section 9ZI(8) allows the Welsh Ministers to withdraw the temporary stop notice before the end of the 28-day period (or any shorter period specified). Section 9ZI(9) prohibits the issue of a further temporary stop notice in relation to the same works unless the Welsh Ministers have taken some other enforcement action in relation to the contravention, such as the service of an enforcement notice or the obtaining of an injunction under section 9ZM.

9ZJ Temporary stop notice: power of entry

96. Section 9ZJ allows the Welsh Ministers to authorise a person in writing to enter land to ascertain whether a temporary stop notice should be served, to display a notice, to determine if a notice has been complied with, and to consider a claim for compensation. The authorised person may only enter the land at a reasonable time and does not require the explicit permission of the owner to do so.

9ZK Temporary stop notice: offence

97. Section 9ZK(1) and (2) sets out the circumstances in which a person is guilty of an offence for contravening a temporary stop notice and allows a person to be convicted of different offences by reference to different days or periods. It will be possible, therefore, for a person to be convicted for more than one offence in relation to a temporary stop notice if it is breached repeatedly.
98. Section 9ZK(3) and (4) sets out the defences to an offence under this section.
99. Section 9ZK(5) provides that the penalty for the offence of contravening a temporary stop notice is an unlimited fine. Since deliberate damage to a monument may be prompted by the prospect of financial gain, the courts are to have regard to any financial benefit the person convicted may have received or be likely to receive as a result of the offence when determining the amount of any fine to be imposed.

9ZL Temporary stop notice: compensation

100. Section 9ZL(1) and (2) sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the effect of a temporary stop notice. Compensation is only available in particular circumstances. It may be claimed if the works specified in a temporary stop notice do not contravene subsections (1) or (6) of section 2 of the 1979 Act (control of works affecting scheduled monuments) because scheduled monument consent is not required or has been granted on or before the date the notice is first displayed. It may also be claimed if the Welsh Ministers withdraw the temporary stop notice other than following the grant of scheduled monument consent authorising the works, because, for example, it is discovered that the works were not unauthorised and that the notice should not have been displayed.
101. Section 9ZL(4) specifies that no compensation will be payable for loss or damage if the claimant was required to provide information regarding the ownership of interests in the land in question under section 57 of the 1979 Act and the loss or damage could have been avoided if the claimant had provided that information or had otherwise cooperated with the Welsh Ministers when responding to the temporary stop notice.
102. [Section 13\(2\)](#) applies section 27 of the 1979 Act, which makes provision about compensation payable in respect of loss or damage consisting of depreciation of the value of an interest in land, to the compensation payable under section 9ZL for loss or damage attributable to the effect of a temporary stop notice.
103. [Section 13\(3\)](#) amends section 44 of the 1979 Act, which contains supplementary provisions with respect to powers of entry, to remove the requirement to give 24 hours' notice prior to the use of the power of entry to ascertain whether a temporary stop notice should be served, to display a notice or to ascertain compliance with a notice.
104. [Section 13\(4\)](#) amends subsection (3) of section 46 of the 1979 Act, which provides for compensation for damage arising from the exercise of certain powers under the Act, so that it will apply in cases of damage arising from the exercise of the new power of entry conferred by section 9ZJ.
105. [Section 13\(5\)](#) applies section 51 of the 1979 Act (ecclesiastical property) to any compensation paid as a result of the service of a temporary stop notice which relates to a scheduled monument on land that is ecclesiastical property.