

# 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***

9. **Section 3(1)** inserts new sections 1AA to 1AE into the 1979 Act. These place a requirement on the Welsh Ministers to consult on certain amendments to the schedule of monuments (“the Schedule”); introduce interim protection for monuments pending decisions on certain amendments relating to the Schedule; and provide for the review of decisions on certain amendments relating to the Schedule.

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

10. New section 1AA places a requirement on the Welsh Ministers to consult on proposals to include a monument in the Schedule, exclude a monument from the Schedule or make a material amendment relating to an entry in the Schedule.
11. A Schedule entry contains only the name of the monument, but is accompanied by a map identifying the exact extent of the monument that is protected. Section 1AA(5) defines a “material amendment” as one that adds to or reduces the area shown for the monument on such a map. If it is proposed to increase or reduce the area shown for a monument on the map, the Welsh Ministers must consult on the change.
12. The Welsh Ministers must carry out the consultation by serving notice of the proposal on the appropriate persons, as defined in section 1AA(3). Section 1AA(6) provides regulation-making powers to allow the Welsh Ministers to add further appropriate persons to the list in subsection (3) and make any consequential amendments to the Act that may be necessary as a result.
13. Section 1AA(4) requires the notice to include specific information, including:
- the date by which the appropriate persons must make their written representations about the proposed scheduling (which must be at least 28 days from the date that the notice is served);
  - an explanation that interim protection will apply where the proposal is to include a monument in the Schedule, or to make a material amendment in relation to an entry in the Schedule which would increase the area of land that is scheduled. The monument will then be protected as though it were scheduled in accordance with the proposal until a further notice is served on the owner, occupier and local authority. Any unauthorised works to the monument in the meantime will be a criminal offence; and
  - the date that the interim protection takes effect, which may be the same date as that on which the notice of consultation is served on the appropriate persons (under section 1AA(2)).

14. Section 56 of the 1979 Act sets out how documents may be served under the Act, and its provisions apply to the delivery of notices to the appropriate persons under new section 1AA.

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

15. New section 1AB makes provision for monuments and areas of land to be given interim protection pending the decision of the Welsh Ministers on the making of certain amendments relating to the Schedule.
16. While a monument is being considered and consulted upon for scheduling, it needs to be protected from destruction, alterations or damage that may compromise its significance. Similarly, if the Welsh Ministers are considering an addition to the area of a scheduled monument, that land will need to be protected so that its significance cannot be compromised before a decision is made.
17. Section 1AB(1) specifies that interim protection will apply where the Welsh Ministers have served a notice of a proposal either to include a monument in the Schedule, or to make a material amendment that increases the area shown for a monument on a map that accompanies the monument's entry in the Schedule.
18. Section 1AB(2) sets out the date from which the interim protection will apply. The provisions of the 1979 Act have effect from that date as though the monument were in the Schedule, or as though the amendment to the map were made.
19. Section 1AB(4) and (5) makes provision for interim protection to cease when the Welsh Ministers:
- include the monument in the Schedule;
  - serve notice on the owner, occupier and local authority that the monument will not be included on the Schedule;
  - make a material amendment that increases the area shown for the monument on a map that accompanies the monument's entry in the Schedule; or
  - serve notice on the owner, occupier and local authority that a material amendment of that kind will not be made.
20. Section 1AB(6) requires the Welsh Ministers to publish electronically a list of all monuments in relation to which interim protection has effect, and to provide a copy of any notice served under section 1AA(2) on request.

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

21. New section 1AC introduces Schedule A1 into the 1979 Act. The Schedule contains provisions which apply where interim protection ceases to have effect as a result of the Welsh Ministers' decision 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 the monument's entry in the Schedule.

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

22. New section 1AD makes provision for compensation to be paid for loss or damage caused by interim protection if the Welsh Ministers decide 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 the monument's entry in 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 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.