



# Historic Environment (Wales) Act 2016

2016 anaw 4

## PART 2

### ANCIENT MONUMENTS ETC

#### *Scheduled monuments: enforcement*

#### **12 Enforcement notices**

- (1) In the Ancient Monuments and Archaeological Areas Act 1979 (c.46), after section 9ZB (inserted by section 11) insert—

#### *“Scheduled monument enforcement notices*

##### **9ZC Scheduled monument enforcement notice**

- (1) This section applies where it appears to the Welsh Ministers that works affecting a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument have been or are being carried out in contravention of section 2(1) or (6).
- (2) The Welsh Ministers may issue a notice under this section (referred to in this Part as a “scheduled monument enforcement notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient to do so.
- (3) A scheduled monument enforcement notice must be in writing and must specify—
  - (a) the date on which the notice takes effect (see subsection (4));
  - (b) the alleged contravention;
  - (c) where the Welsh Ministers require works to cease, the works concerned and the period within which the Welsh Ministers require them to cease; and

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- (d) where the Welsh Ministers require steps of a kind referred to in subsection (5) to be taken, the steps concerned and the period within which the Welsh Ministers require them to be taken.
- (4) A scheduled monument enforcement notice takes effect on the date specified in the notice for the purposes of subsection (3)(a); and the date so specified must be at least 28 days after the date on which the notice is served in accordance with section 9ZD.
- (5) The steps mentioned in subsection (3)(d) are—
  - (a) steps for restoring the monument or land to its former state;
  - (b) if the Welsh Ministers consider restoration would not be practicable or desirable, steps for executing such further works as they consider are required to alleviate in a manner acceptable to them the effect of the works carried out without scheduled monument consent;
  - (c) if scheduled monument consent for the works has been granted, steps for bringing the monument or land to the state it would have been in if the conditions of the consent had been complied with.
- (6) A scheduled monument enforcement notice may specify different periods for different works or different steps.
- (7) Where works of the kind mentioned in subsection (5)(b) are carried out, scheduled monument consent is to be treated as having been granted in respect of the works.

#### **9ZD Scheduled monument enforcement notice: supplementary provision**

- (1) A copy of a scheduled monument enforcement notice must be served on—
  - (a) the owner of the monument or land concerned;
  - (b) if the owner is not the occupier, the occupier;
  - (c) if the monument or land is let but the lessee is not the occupier, the lessee; and
  - (d) every other person with an interest in the monument or land which is, in the opinion of the Welsh Ministers, materially affected by the notice.
- (2) The Welsh Ministers may at any time withdraw a scheduled monument enforcement notice; but that does not affect the power to issue another notice under section 9ZC.
- (3) The Welsh Ministers may at any time waive or relax any requirement imposed by a scheduled monument enforcement notice (including the length of a period specified in the notice for the purposes of section 9ZC(3)(c) or (d)).
- (4) The Welsh Ministers must, immediately after exercising the power under subsection (2) or (3), give notice of the exercise of the power to every person who has been served with a copy of the notice under subsection (1) (or who would be if the notice were to be reissued).
- (5) The Welsh Ministers—
  - (a) must publish by electronic means a list containing particulars of each monument in respect of which a scheduled monument enforcement notice has effect; and

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- (b) must, on request, provide a copy of a scheduled monument enforcement notice the particulars of which are contained in the list.

#### **9ZE Scheduled monument enforcement notice: appeal**

- (1) A person on whom a scheduled monument enforcement notice is served, or any other person with an interest in the monument or land concerned, may appeal to a magistrates' court against the notice.
- (2) An appeal under this section must be brought before the date specified in the notice for the purposes of section 9ZC(3)(a).
- (3) An appeal under this section may be brought on any of the following grounds—
  - (a) that the matters alleged to constitute the contravention specified for the purposes of section 9ZC(3)(b) have not occurred;
  - (b) that those matters, in so far as they have occurred, do not constitute a contravention of section 2(1) or (6);
  - (c) that works to the monument or land were urgently necessary in the interests of safety or health and that—
    - (i) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter;
    - (ii) the works carried out were limited to the minimum measures immediately necessary; and
    - (iii) written notice justifying in detail the need for the works was given to the Welsh Ministers as soon as reasonably practicable;
  - (d) that a copy of the notice was not served as required by section 9ZD;
  - (e) that a period specified for the purposes of section 9ZC(3)(c) or (d) falls short of what should reasonably be allowed.
- (4) Where an appeal under this section is brought, the notice is of no effect until the appeal is finally determined or withdrawn.
- (5) On an appeal under this section, a magistrates' court may uphold the notice or quash it.
- (6) The court may uphold a notice even if copies of it have not been served in accordance with section 9ZD if the court is satisfied that no person on whom a copy should have been, but was not, served has been substantially prejudiced by the failure.

#### **9ZF Scheduled monument enforcement notice: power of entry**

- (1) A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes?—
  - (a) ascertaining whether a scheduled monument enforcement notice should be served;
  - (b) securing that a scheduled monument enforcement notice is affixed for the purposes of service in accordance with section 56(2)(b);
  - (c) ascertaining whether a scheduled monument enforcement notice has been complied with.

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- (2) If steps specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(d) have not been taken within the period so specified, a person duly authorised by the Welsh Ministers may—
  - (a) at any reasonable time enter the land in, on or under which the monument is situated and take the steps concerned; and
  - (b) recover from the person who is then the owner or lessee of the monument or land expenses incurred by them in doing so.
- (3) The liability under subsection (2)(b) of a person who is the owner of a monument or land merely by virtue of being entitled to receive the rack rent as trustee for another person is limited to the total amount of money the person has or has had by virtue of that entitlement.
- (4) Where, on a claim by the owner of a scheduled monument or land, it appears to a magistrates' court that the occupier of the monument or land is preventing the owner from carrying out the work required by a scheduled monument enforcement notice, the court may by warrant authorise the owner to enter the land and carry out the work.

#### **9ZG Failure to comply with scheduled monument enforcement notice**

- (1) This section applies where after the end of a period specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(c) or (d)—
  - (a) the works specified as being required to cease have not ceased; or
  - (b) the steps specified as being required to be taken have not been taken.
- (2) The person who is for the time being owner of the scheduled monument or of the land in, on or under which it is situated is in breach of the notice.
- (3) If the owner of a monument or land is in breach of a scheduled monument enforcement notice, the owner is guilty of an offence.
- (4) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same scheduled monument enforcement notice, be convicted of more than one offence under this section by reference to different periods.
- (5) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did everything the person could be expected to do to secure that—
  - (a) in a case concerning works required to cease, the works did cease; or
  - (b) in a case concerning steps required to be taken, the steps were taken.
- (6) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the scheduled monument enforcement notice.
- (7) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (8) In determining the amount of a fine to be imposed on a person convicted under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence

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of the execution of the works to which the scheduled monument enforcement notice relates.

### **9ZH Effect of scheduled monument consent on notice**

- (1) This section applies if, after the issue of a scheduled monument enforcement notice, consent is granted under section 2(3A)—
  - (a) for the retention of any work to which the notice relates; or
  - (b) permitting the retention of works without complying with a condition subject to which a previous scheduled monument consent was granted.
- (2) The notice ceases to have effect in so far as it—
  - (a) requires the work or works to cease;
  - (b) requires steps to be taken involving the works not being retained; or
  - (c) requires steps to be taken for complying with that condition.”
- (2) In section 46 of that Act (compensation for damage caused by exercise of certain powers), in subsection (3), after “section 6, 6A,” insert “ 9ZF, ”.

## **13 Temporary stop notices**

- (1) In the Ancient Monuments and Archaeological Areas Act 1979 (c.46), after section 9ZH (inserted by section 12) insert—

*“Scheduled monuments: temporary stop notices*

### **9ZI Temporary stop notice**

- (1) This section applies where it appears to the Welsh Ministers that works affecting a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument have been or are being carried out in contravention of section 2(1) or (6).
- (2) The Welsh Ministers may issue a notice under this section (referred to in this Part as a “temporary stop notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient that the works are stopped immediately (or that part of them is).
- (3) A temporary stop notice must be in writing and must—
  - (a) specify the works in question;
  - (b) prohibit execution of the works (or so much of them as is specified in the notice);
  - (c) set out the Welsh Ministers' reasons for issuing the notice; and
  - (d) include a statement of the effect of section 9ZK.
- (4) A temporary stop notice may be served on a person who appears to the Welsh Ministers—
  - (a) to be carrying out the works or causing them to be carried out; or
  - (b) to have an interest in the monument or land.

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- (5) The Welsh Ministers must display a copy of the notice on the monument or land (except where doing so might damage the monument, in which case it is sufficient to display the notice in a prominent position as close to the monument or land as is reasonably practicable); and the copy must specify the date on which it is first displayed.
- (6) A temporary stop notice takes effect when the copy of it is first displayed in accordance with subsection (5).
- (7) A temporary stop notice ceases to have effect—
  - (a) at the end of the period of 28 days beginning with the day on which the copy of it is first displayed in accordance with subsection (5); or
  - (b) if the notice specifies a shorter period beginning with that day, at the end of that period.
- (8) But if the Welsh Ministers withdraw the notice before the time when it would otherwise cease to have effect under subsection (7), the notice ceases to have effect on its withdrawal.
- (9) The Welsh Ministers may not issue a subsequent temporary stop notice in relation to the same works unless they have, since issuing the previous notice, taken other enforcement action in relation to the contravention referred to in subsection (1).
- (10) The reference in subsection (9) to taking other enforcement action includes a reference to obtaining an injunction under section 9ZM.

#### **9ZJ Temporary stop notice: power of entry**

A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes?—

- (a) ascertaining whether a temporary stop notice should be served;
- (b) securing the display of a temporary stop notice or securing that it is affixed for the purposes of service in accordance with section 56(2)(b);
- (c) ascertaining whether a temporary stop notice has been complied with;
- (d) considering a claim for compensation under section 9ZL.

#### **9ZK Temporary stop notice: offence**

- (1) A person is guilty of an offence if the person contravenes, or causes or permits a contravention of, a temporary stop notice—
  - (a) which has been served on the person; or
  - (b) a copy of which has been displayed in accordance with section 9ZI(5).
- (2) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different periods.
- (3) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the temporary stop notice.

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- (4) In proceedings against a person for an offence under this section, it is a defence for the person to prove—
  - (a) that the works were urgently necessary in the interests of safety or health; and
  - (b) that notice in writing of the need for the works was given to the Welsh Ministers as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (6) In determining the amount of a fine to be imposed on a person convicted under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

### **9ZL Temporary stop notice: compensation**

- (1) A person who, on the day when a temporary stop notice is first displayed in accordance with section 9ZI(5), has an interest in the monument or land concerned is, on making a claim to the Welsh Ministers within the prescribed time and manner, entitled to be paid compensation by them in respect of any loss or damage directly attributable to the effect of the notice.
  - (2) But subsection (1) applies only if—
    - (a) the works specified in the notice do not contravene section 2(1) or (6); or
    - (b) the Welsh Ministers withdraw the notice other than following the grant of scheduled monument consent, after the day mentioned in subsection (1), which authorises the works.
  - (3) The loss or damage in respect of which compensation is payable under this section includes a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the notice.
  - (4) No compensation is payable under this section in the case of loss or damage suffered by a claimant if—
    - (a) the claimant was required to provide information under section 57, and
    - (b) the loss or damage could have been avoided if the claimant had provided the information or otherwise co-operated with the Welsh Ministers when responding to the notice.”
- (2) In section 27 of that Act (general provisions as to compensation for depreciation under Part 1 of the Act), in subsection (2), after “section 1AD, 7, 9” (inserted by section 4) insert “ or 9ZL ”.
  - (3) In section 44 of that Act (supplementary provisions with respect to powers of entry), in subsection (2), at the end insert—

“, or in relation to the power of entry under section 9ZJ of this Act where it is exercised for any of the purposes mentioned in paragraphs (a) to (c) of that section.”

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- (4) In section 46 of that Act (compensation for damage caused by exercise of certain powers), in subsection (3), after “9ZF,” (inserted by section 12) insert “ 9ZJ, ”.
- (5) In section 51 of that Act (ecclesiastical property), in subsection (3), after “1AD,” (inserted by section 4) insert “ 9ZL, ”.

## **14 Injunctions**

In the Ancient Monuments and Archaeological Areas Act 1979 (c.46), after section 9ZL (inserted by section 13) insert—

*“Scheduled monuments: injunctions*

### **9ZM Injunctions**

- (1) This section applies where the Welsh Ministers consider it necessary or expedient for any actual or apprehended contravention of section 2(1) or (6) in respect of a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument to be restrained by injunction.
- (2) The Welsh Ministers may apply to the High Court or the county court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Act.
- (3) On an application under subsection (2), the court may grant such an injunction as it thinks appropriate for the purpose of restraining the contravention.”



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