



Historic Environment (Wales) Act 2016

2016 anaw 4

PART 2

ANCIENT MONUMENTS ETC

Overview

2 Overview of this Part

- (1) This Part is primarily about the protection of ancient monuments in Wales. It makes provision—
- (a) for the Welsh Ministers to consult before making certain changes to the Schedule under the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (“the 1979 Act”) or certain amendments relating to monuments in the Schedule (section 3);
 - (b) to give a monument statutory protection while the Welsh Ministers decide whether to include it in the Schedule or, in the case of a monument already included in the Schedule, to make certain amendments relating to it (section 3);
 - (c) for the Welsh Ministers to review a decision of theirs to include a monument in the Schedule or to make certain amendments relating to a monument in the Schedule (section 3);
 - (d) to amend the procedure relating to scheduled monument consent and the provision for compensation for the refusal of such consent (sections 5 to 10);
 - (e) for the Welsh Ministers to enter into an agreement with the owner of a monument included in the Schedule about matters such as consent for works to the monument (section 11);
 - (f) for the Welsh Ministers to issue an enforcement notice or a temporary stop notice, or to apply to court for an injunction, in a case involving certain works to a monument included in the Schedule (sections 12 to 14);
 - (g) to modify the application of certain offences, including by the creation of a due diligence defence (sections 15 to 17);

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- (h) about the power to enter land believed to contain an ancient monument (section 19);
 - (i) about the circumstances in which a monument in the territorial sea is to be treated as being situated in Wales (section 20);
 - (j) to enable notices and other documents required or authorised to be served under the 1979 Act to be served by electronic communication (section 21);
 - (k) to amend the definition of “monument” in the 1979 Act (section 22).
- (2) This Part also makes provision for the Welsh Ministers to compile and maintain a register of historic parks and gardens (section 18).

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 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

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- (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
 - (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

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- (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
 - (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.

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- (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 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.

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Annotations:

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—

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

Annotations:

Commencement Information

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

Status: This version of this part contains provisions that are prospective.
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Scheduled monument consent

5 Simplification of process

- (1) In section 2 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (control of works affecting scheduled monuments), after subsection (5) insert—

“(5A) In the case of a monument situated in Wales, the reference in subsection (3) (a) to the granting of written consent includes a reference to the granting of consent in such other manner as may be prescribed by the Welsh Ministers.

(5B) The Welsh Ministers may by regulations make provision as to the form and content of consent under this section in relation to a monument situated in Wales.”

- (2) In Part 1 of Schedule 1 to that Act (applications for scheduled monument consent), at the end of paragraph 1 insert—

“(3) The Welsh Ministers may by regulations make provision as to cases in which an applicant for scheduled monument consent in relation to a monument situated in Wales may make the application otherwise than in the form provided for under sub-paragraph (1); and such provision may confer a discretion on the Welsh Ministers.”

Annotations:

Commencement Information

I4 S. 5 in force at Royal Assent for specified purposes, see s. 41(1)(c)

I5 S. 5 in force at 31.5.2017 in so far as not already in force by S.I. 2017/633, art. 5(b)

6 Grant of consent for unauthorised works

- (1) In section 2 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (control of works affecting scheduled monuments), after subsection (3) insert—

“(3A) If works to which this section applies have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument without being authorised under this Part, and the Welsh Ministers grant consent for the retention of the works, the works are authorised under this Part from the grant of the consent.

(3B) References in this Act to scheduled monument consent (other than in section 4) include a reference to consent under subsection (3A).”

- (2) In section 61(1) of that Act (interpretation), in the definition of “scheduled monument”, after “section 2(3)” insert “ and (3B) ”.

7 Offence of false information on application

In Part 1 of Schedule 1 to the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (applications for scheduled monument consent), in paragraph 2(4), after “the requirements of this paragraph” insert “ or of regulations made by the Welsh Ministers under it ”.

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8 Refusal of repeat applications etc

In Part 1 of Schedule 1 to the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (applications for scheduled monument consent), after paragraph 2A insert—

- “2B (1) The Welsh Ministers may refuse to entertain an application for scheduled monument consent if—
- (a) within the period of 2 years ending with the date on which the application is received, the Welsh Ministers have refused a similar application; and
 - (b) in their opinion, there has been no significant change in any material considerations since the similar application was refused.
- (2) The Welsh Ministers may refuse to entertain an application for scheduled monument consent if the application is made at a time when a similar application is under consideration.
- (3) For the purposes of this paragraph, an application for scheduled monument consent is to be taken to be similar to another such application only if the works to which the applications relate are, in the Welsh Ministers' opinion, the same or substantially the same.”

9 Procedure for determining applications

- (1) In Part 1 of Schedule 1 to the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (applications for scheduled monument consent), in paragraph 3, after subparagraph (4) insert—

“(5) This paragraph does not apply to applications for scheduled monument consent in respect of works to a scheduled monument situated in Wales.”

- (2) After paragraph 3 of that Schedule insert—

- “3A (1) This paragraph applies to applications for scheduled monument consent in respect of works to a scheduled monument situated in Wales.
- (2) The Welsh Ministers may grant scheduled monument consent in respect of all or any part of the works to which an application relates.
- (3) Before determining whether or not to grant scheduled monument consent on an application, the Welsh Ministers may—
- (a) cause a public local inquiry to be held; or
 - (b) afford to the applicant, and to any other person to whom it appears to the Welsh Ministers expedient to do so—
 - (i) an opportunity to appear before and be heard by a person appointed by the Welsh Ministers for that purpose; or
 - (ii) an opportunity to make representations to a person appointed by the Welsh Ministers for that purpose.
- (4) Before determining whether or not to grant scheduled monument consent on an application, the Welsh Ministers—
- (a) must, in every case, consider any representations made by any person with respect to that application; and

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- (b) must also, if an inquiry or hearing has been held or representations have been made in accordance with sub-paragraph (3), consider the report of the person who held the inquiry or hearing or to whom the representations were made.
- (5) The Welsh Ministers must serve notice of their decision with respect to the application on the applicant and on every person who has made representations with respect to the application.”

PROSPECTIVE

10 Compensation for refusal of scheduled monument consent

- (1) In section 7 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46), in subsection (4), at the beginning insert “ In the case of a monument situated in England, ”.
- (2) After that subsection insert—
 - “(4A) In the case of a monument situated in Wales, a person is not entitled to compensation under this section by virtue of subsection (2)(b) if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument, unless those works consist solely of operations involved in or incidental to the use of the site of the monument for purposes specified by the Welsh Ministers by regulations.”

Agreements relating to scheduled monuments

11 Heritage partnership agreements

- (1) After section 9 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) insert—

“Agreements concerning scheduled monuments etc: Wales

9ZA Heritage partnership agreement

- (1) The Welsh Ministers may enter into an agreement under this section (a “heritage partnership agreement”) with the owner of—
 - (a) a scheduled monument situated in Wales; or
 - (b) any land adjoining or in the vicinity of such a scheduled monument (“associated land”).
- (2) Any of the following may also be a party to a heritage partnership agreement (in addition to the owner and the Welsh Ministers)—
 - (a) any occupier of the scheduled monument or its associated land;
 - (b) any person with an interest in the scheduled monument or its associated land;
 - (c) any person involved in the management of the scheduled monument or its associated land;

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- (d) any local authority in whose area the scheduled monument or its associated land is situated;
 - (e) any local authority which is a guardian of the scheduled monument or its associated land by virtue of this Act;
 - (f) any other person who appears to the Welsh Ministers appropriate as having a special knowledge of, or interest in, the scheduled monument, or in monuments of special historic or archaeological interest more generally.
- (3) A heritage partnership agreement may contain provision—
- (a) granting scheduled monument consent under section 2(3) for specified works for the purpose of removing or repairing the scheduled monument to which the agreement relates or any part of it, or of making any alterations or additions to the monument; and
 - (b) specifying any conditions to which the consent is subject (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).
- (4) A heritage partnership agreement may also—
- (a) specify or describe works that would, or would not, in the view of the parties to the agreement, constitute works to which section 2 applies;
 - (b) make provision about the maintenance and preservation of the scheduled monument or its associated land;
 - (c) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the scheduled monument or its associated land;
 - (d) provide for public access to the scheduled monument or its associated land and the provision of associated facilities, information or services to the public;
 - (e) restrict access to, or use of, the scheduled monument or its associated land;
 - (f) prohibit the doing of any specified thing in relation to the scheduled monument or its associated land;
 - (g) provide for the Welsh Ministers, or any local authority in whose area the scheduled monument or its associated land is situated, to make payments of specified amounts and on specified terms—
 - (i) for, or towards, the cost of any works provided for under the agreement; or
 - (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.
- (5) In this section “specified” means specified or described in the heritage partnership agreement.
- (6) In this section and in section 9ZB “owner”, in relation to a scheduled monument or its associated land, means a person who is for the time being—
- (a) the estate owner in respect of the fee simple in the monument or its associated land (as the case may be); or
 - (b) entitled to a tenancy of the monument or its associated land (as the case may be) for a term of years certain of which not less than 7 years remains unexpired.

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- (7) Where more than one person is the owner of a scheduled monument or its associated land, the references in subsection (1) and in section 9ZB(2)(b) to the owner are to any one or more of those persons.

9ZB Heritage partnership agreement: supplemental

- (1) A heritage partnership agreement—
- (a) must be in writing;
 - (b) must make provision for the parties to review its terms at intervals specified in the agreement;
 - (c) must make provision for its termination and variation; and
 - (d) may contain incidental and consequential provision.
- (2) A heritage partnership agreement may relate to more than one scheduled monument, provided that the following are parties to the agreement in each case—
- (a) the Welsh Ministers; and
 - (b) the owner of the scheduled monument or the owner of land adjoining or in the vicinity of the scheduled monument.
- (3) The Welsh Ministers must by regulations make provision—
- (a) about the consultation that must take place before a heritage partnership agreement is made or varied;
 - (b) about the publicity that must be given to a heritage partnership agreement before or after it is made or varied;
 - (c) specifying terms that must be included in a heritage partnership agreement; and
 - (d) enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an agreement.
- (4) Regulations made under subsection (3)(a) must require the Welsh Ministers to consult the following persons before entering into a heritage partnership agreement under section 9ZA(1)(a)—
- (a) the owner of the scheduled monument to which the proposed agreement relates;
 - (b) any occupier of the scheduled monument;
 - (c) any local authority in whose area the scheduled monument is situated;
 - (d) any local authority which is a guardian of the scheduled monument.
- (5) Regulations made under subsection (3)(a) must require the Welsh Ministers to consult the following persons before entering into a heritage partnership agreement under section 9ZA(1)(b)—
- (a) the owner of the land to which the proposed agreement relates;
 - (b) any occupier of the land;
 - (c) any local authority in whose area the land is situated;
 - (d) any local authority which is a guardian of the land by virtue of this Act.
- (6) Regulations made under section (3)(d) may specify provision that may be included in an order made by virtue of that paragraph, including provision

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enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision.

(7) The Welsh Ministers may by regulations make provision disapplying, or applying or reproducing with or without modifications, any provision of this Act for the purposes of heritage partnership agreements.

(8) A heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not a party to the agreement (and, accordingly, scheduled monument consent granted by such an agreement enures only for the benefit of the parties to the agreement).”

(2) In section 61 of that Act (interpretation)—

(a) in subsection (1), in the definition of “owner”, after “(except for the purposes of” insert “ sections 9ZA and 9ZB and ”;

(b) in subsection (6), after “In this Act” insert “ (other than in section 9ZA) ”.

Annotations:

Commencement Information

I6 S. 11 in force at Royal Assent for specified purposes, see s. 41(1)(c)

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.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2016, PART 2 . (See end of Document for details)

- (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.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2016, PART 2 . (See end of Document for details)

- (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.”

Modifications relating to offences

15 Control of works affecting scheduled monuments

- (1) Section 2 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (control of works affecting scheduled monuments) is amended as follows.
- (2) In subsection (8), after “works within subsection (2)(a) or (c) above” insert “ which have been executed in relation to a scheduled monument situated in England or land in, on or under which there is such a scheduled monument ”.
- (3) After that subsection insert—
 - “(8A) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) which have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument, it is a defence for the accused to prove that, before executing the works or before causing or permitting their execution (as the case may be), the accused?—
 - (a) had taken all reasonable steps to find out whether there was a scheduled monument in the area affected by the works; and
 - (b) did not know, and had no reason to believe, that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.”

Status: This version of this part contains provisions that are prospective.

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16 Damaging certain ancient monuments

- (1) Section 28 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (offence of damaging certain ancient monuments) is amended as follows.
- (2) In subsection (1), after “any protected monument” insert “situated in England”.
- (3) After that subsection insert—
 - “(1A) A person who without lawful excuse destroys or damages a protected monument situated in Wales is guilty of an offence if the person—
 - (a) knew or ought reasonably to have known that it was a protected monument; and
 - (b) intended to destroy or damage the monument or was reckless as to whether the monument would be damaged or destroyed.”

17 Restrictions on use of metal detectors

- (1) Section 42 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (restrictions on use of metal detectors) is amended as follows.
- (2) In subsection (7), after “an offence under subsection (1) or (3) above” insert “relating to a protected place situated in England”.
- (3) After that subsection insert—
 - “(8) In proceedings for an offence under subsection (1) or (3) relating to a protected place situated in Wales, it is a defence for the accused to prove that the accused—
 - (a) had taken all reasonable steps to find out whether the place in which the metal detector was used was a protected place; and
 - (b) did not know, and had no reason to believe, that the place was a protected place.”

PROSPECTIVE

Historic parks and gardens

18 Register of historic parks and gardens

- (1) At the beginning of Part 3 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (miscellaneous provisions) insert—

“Register of historic parks and gardens in Wales

41A Register of historic parks and gardens in Wales

- (1) The Welsh Ministers must compile and maintain a register (to be known as “the register of historic parks and gardens”) of such of the following grounds in Wales as appear to them to be of special historic interest—
 - (a) parks;
 - (b) gardens;

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- (c) designed ornamental landscapes;
 - (d) places of recreation;
 - (e) other designed grounds.
- (2) The Welsh Ministers must decide whether, or to what extent, it would be appropriate to include as part of the registration of grounds of a description referred to in subsection (1)—
- (a) any building or water on, or adjacent or contiguous to, those grounds; or
 - (b) any land adjacent or contiguous to those grounds.
- (3) For the purpose of maintaining the register, the Welsh Ministers may from time to time modify it by—
- (a) adding an entry;
 - (b) removing an entry; or
 - (c) amending an entry.
- (4) As soon as reasonably practicable after including grounds in the register or modifying the register, the Welsh Ministers must inform—
- (a) the owner of the grounds in question;
 - (b) if the owner is not the occupier, the occupier; and
 - (c) each local authority or National Park authority in whose area the grounds are situated.
- (5) Where the Welsh Ministers include grounds in the register or modify the register under subsection (3)(a) or (c), the duty to inform under subsection (4) also includes a duty to send each of the persons concerned a copy of the entry or modified entry (as the case may be).
- (6) The Welsh Ministers must publish the up-to-date register in such manner as they think appropriate.”
- (2) In section 50 of that Act (application of Act to Crown land), after subsection (3) insert —
- “(3A) Crown land may be included in the register of historic parks and gardens (see section 41A).”

Miscellaneous

19 Land believed to contain an ancient monument: power of entry

In section 26 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (power of entry on land believed to contain ancient monument), at the end insert—

- “(4) But subsection (3) does not apply in relation to excavations in the land by a person authorised by the Welsh Ministers under subsection (1) if the Welsh Ministers know or have reason to believe that an ancient monument they know or believe to be in, on or under the land is or may be at risk of imminent damage or destruction.”

Status: This version of this part contains provisions that are prospective.

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20 Monuments in territorial waters

- (1) In section 53 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (monuments in territorial waters), in subsection (2), after “shall describe the monument as lying off the coast of England, or of Scotland, or of Wales; and” insert “, subject to subsection (2B),”.
- (2) After subsection (2) of that section insert—
- “(2A) The functions under this Act conferred on the Welsh Ministers by the Historic Environment (Wales) Act 2016 (as well as those already transferred to them) are exercisable in relation to Wales within the meaning of the Government of Wales Act 2006 (which includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea (see section 158(1) of that Act)).
- (2B) Accordingly, a monument is not to be treated by virtue of section 53(2) as being in Wales unless it is situated in Wales within the meaning of section 158(1) of the Government of Wales Act 2006.”

21 Service of documents by electronic communication

- (1) In section 56 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (service of documents), in subsection (1), after paragraph (c) insert—
- “(ca) in a case where—
- (i) the notice or other document relates to a monument situated in Wales or land in Wales; and
- (ii) an address for service using electronic communications has been given by that person,
- by sending it using an electronic communication, in accordance with the condition set out in subsection (1A); or”.
- (2) After subsection (1) of that section insert—
- “(1A) The condition mentioned in subsection (1)(ca) is that the notice or document must be—
- (a) capable of being accessed by the person mentioned in that provision;
- (b) legible in all material respects; and
- (c) in a form sufficiently permanent to be used for subsequent reference; and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.”
- (3) After subsection (2) of that section insert—
- “(3) In this section, “Wales” has the same meaning as in the Government of Wales Act 2006 (see section 158(1) of that Act).”
- (4) In section 61 of that Act (interpretation), in subsection (1), insert at the appropriate place?—
- ““address”, in relation to electronic communications, means a number or address used for the purposes of such communications;”;

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2016, PART 2 . (See end of Document for details)

““electronic communication” has the same meaning as in the Electronic Communications Act 2000;”.

(5) After subsection (2A) of that section insert—

“(2B) Where—

(a) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of this Act; and

(b) the communication is received by that person outside that person's business hours,

it is to be treated as having been received on the next working day; and in this subsection “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.”

22 Meaning of “monument” in the Ancient Monuments and Archaeological Areas Act 1979

(1) Section 61 of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (interpretation) is amended as follows.

(2) In subsection (7)—

(a) omit the “and” after paragraph (b);

(b) after paragraph (c) insert “and

(d) any site in Wales (other than one falling within paragraph (b) or (c) above) comprising any thing, or group of things, that evidences previous human activity;”.

(3) After subsection (7) insert—

“(7A) In subsection (7)(d) “Wales” has the meaning given by section 158(1) of the Government of Wales Act 2006.”

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Historic Environment (Wales) Act 2016, PART 2 .