

# HISTORIC ENVIRONMENT (WALES) ACT 2023

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 — Monuments of special historic interest**

##### *Chapter 2 — Schedule of monuments of national importance*

26. This Chapter requires the Welsh Ministers to maintain a schedule of monuments of national importance. In practice, this is maintained by Cadw on behalf of the Welsh Ministers. For the purposes of the transition from the 1979 Act to this Act, the schedule of monuments currently maintained by the Welsh Ministers under section 1 of the 1979 Act will become the schedule maintained for the purposes of section 3 of the Act.
27. Inclusion of a monument on the schedule — “scheduling” — renders it subject to the consent regime, enforcement procedures and other provisions contained in later Chapters of this Part of the Act.
28. This Chapter requires consultation before the Welsh Ministers amend the schedule (section 5) and gives owners and occupiers the opportunity to request a review of the Welsh Ministers’ decision to add a monument or an additional part of a monument to the schedule (sections 9 and 10). It also establishes that, during the consultation period, a monument being considered for scheduling enjoys interim protection as if it were already a scheduled monument. If the Welsh Ministers decide not to amend the schedule, a person with an interest in a monument who suffers loss or damage as a direct result of interim protection may claim compensation from the Welsh Ministers (sections 6 to 8).

##### *Section 3 — Duty to maintain and publish schedule of monuments*

29. **Section 3(1)** provides that the Welsh Ministers must maintain a schedule of monuments and must publish the up-to-date schedule. The Welsh Ministers publish the up-to-date schedule on Cof Cymru.
30. The Welsh Ministers use selection criteria contained in Annex A of TAN 24 to assess whether a monument is of national importance and determine if scheduling is appropriate. These criteria are not, however, definitive; rather they are indicators that contribute to a wider judgement based on the individual circumstances of a case. For example, scheduling may not be the best approach for a site soon to be lost to coastal erosion; full excavation is likely to be the only way to record the historic asset’s importance. So, although section 3 requires the Welsh Ministers to maintain a schedule of monuments that they consider to be of national importance, the effect of subsection (1) is that they are not required to include all monuments that meet the criteria. It’s also worth noting that, where the Welsh Ministers do schedule a monument, they are able to schedule part of the monument, without scheduling the monument in its entirety. And section 2(6)(c) of the Act provides that references in the Act to a monument include references to any part of it.

31. Subsection (2) requires every entry in the schedule to include a map maintained by the Welsh Ministers identifying the monument's area. A definitive map will be included in the entry provided when the Welsh Ministers fulfil the notification requirements in section 4(3). The entry for every monument on Cof Cymru also provides access to a printable map.
32. Subsection (3) provides that, in addition to scheduling additional monuments under subsection (1), the Welsh Ministers may remove a monument from the schedule — “descheduling” — or amend an existing entry. The latter could involve, for example, increasing or decreasing the scheduled area of a monument. The Welsh Ministers may also make any other changes that may be needed to an entry in the schedule. For example, if archaeological or historical investigations were to provide new information about a monument, the entry in the schedule could be amended to reflect this. Descheduling will only be considered in exceptional cases. Reasons for descheduling might include severe loss to a monument or its site, perhaps through coastal erosion.
33. Subsection (5) establishes that an entry in the schedule recording the inclusion of a monument is a local land charge. A local land charge will alert a purchaser to the restrictions imposed on the use of the land by the scheduling of the monument.

#### ***Section 4 — Notification of owner etc. where the schedule is amended***

34. This section sets out how the Welsh Ministers must serve notice after they have amended the schedule by adding a monument, removing a monument or amending the entry for a monument. Notice must be served on the specified recipients as soon as possible after an amendment is made to raise awareness of its implications — owners and occupiers, for instance, need to be alerted that scheduling imposes certain prohibitions on unauthorised works. Unless the amendment removes a monument from the schedule, the notice must specify the date that the Welsh Ministers made the amendment and be accompanied by a copy of the entry or amended entry in the schedule.

#### ***Section 5 — Consultation before adding or removing monument to or from the schedule***

#### ***Section 6 — Interim protection pending decision on certain amendments relating to the schedule***

35. **Section 5** puts in place a formal structure for consultation on the Welsh Ministers' proposals to amend the schedule. It provides that the Welsh Ministers must serve a notice of a proposed amendment on specified recipients and allow those persons at least 28 days to make written representations.
36. The service of a notice of a proposal to amend the schedule by adding a monument or adding anything as part of a monument will trigger interim protection under section 6. In that case, section 5(4)(b) requires the notice to explain the effect of interim protection and specify the date on which interim protection takes effect.
37. From that time, and until interim protection ends in accordance with section 7, this Part of the Act will have effect as if a monument being considered for addition to the schedule were already scheduled or a proposed amendment were already made.
38. Where a monument is subject to interim protection it is an offence to undertake works to it without consent (section 30) or to damage the monument (section 58). This means, for example, that a person carrying out demolition works without consent in relation to a monument under interim protection would commit an offence, unless a relevant defence was available to the person. Interim protection is designed to afford protection to a monument during the consultation period. This may be protection, for instance, from an owner who could otherwise have an incentive to deliberately damage or destroy

a historic asset during the consultation period in an effort to undermine the protection that scheduling would otherwise have provided.

39. Subsection (4) of section 6 requires the Welsh Ministers to publish a list of monuments subject to interim protection and provide a copy of the notice served under section 5(2) to any person who requests one. At the time of writing these notes, the list is included on the “Statutory scheduled monument consultation notices” page in the “Scheduled monuments” section of the Cadw website and is also represented as a distinct category on Cof Cymru.

### ***Section 7 — When interim protection ends***

#### ***Schedule 1 — End of interim protection for monuments***

40. **Section 7** sets out how and when interim protection comes to an end.
41. If the Welsh Ministers decide to add a monument to the schedule or add a new part to an existing monument in the schedule, interim protection ends at the beginning of the day specified in the notice that the Welsh Ministers are required to give under section 4 (see subsections (1)(a) and (2)(a) of section 7).
42. If, on the other hand, the Welsh Ministers decide not to add a monument to the schedule or add a new part to an existing monument in the schedule, they must serve notice of their decision on every owner and occupier and every local authority in whose area the monument is situated. Interim protection will cease at the beginning of the day specified in that notice (see subsections (1)(b), (2)(b) and (3)).
43. **Schedule 1** — which is introduced by this section — applies when interim protection comes to an end as a result of the service of a notice under section 7(1)(b) or (2)(b); it sets out how the end of interim protection affects various actions taken while interim protection was in effect (including enforcement action and criminal liability).

### ***Section 8 — Compensation for loss or damage caused by interim protection***

44. If the Welsh Ministers serve notice of the end of interim protection under section 7(1)(b) or (2)(b), indicating that they have decided not to schedule a monument or an additional part of a monument, a person who had an interest in the monument when the interim protection took effect may claim compensation for any loss or damage suffered that is directly attributable to the interim protection. This section sets out how a claim must be made to the Welsh Ministers.
45. **Section 202** makes additional provision about claims for compensation, and in particular allows the Welsh Ministers to extend the period for making a claim for compensation in a particular case if they are satisfied that there is good reason for doing so. Any disputes about compensation under this Act will be referred to the Upper Tribunal under section 203. The Upper Tribunal (Lands Chamber) Rules make provision for the reference of a case to the Tribunal and its handling.

### ***Section 9 — Review of decision to add monument to the schedule etc.***

#### ***Section 10 — Supplementary provision about reviews***

#### ***Schedule 2 — Decision on review by person appointed by the Welsh Ministers***

#### ***Schedule 6 — Proceedings under Part 2***

46. If the Welsh Ministers add a monument to the schedule or amend an existing entry in the schedule to include an additional part to an existing scheduled monument, section 9 requires them to afford any owner or occupier of the monument an opportunity to request a review of their scheduling decision.

*These notes refer to the Historic Environment (Wales) Act  
2023 (c.3) which received Royal Assent on 14 June 2023*

47. Subsection (2) of section 9 provides that the ground for a review is that the monument (or part, if an extension to an existing entry for a monument has been made) is not of national importance. This reflects that, under section 3(1), national importance is the basis for the Welsh Ministers' inclusion of a monument in the schedule. Subsection (6) of section 9 provides that the Welsh Ministers may make regulations to specify other grounds for review in the future.
48. Under subsection (3) of section 9, the Welsh Ministers must appoint a person to carry out the review and make a decision on it. Ordinarily, this will be an inspector of Planning and Environment Decisions Wales (previously Planning Inspectorate Wales). However, subsection (4) provides that the Welsh Ministers may specify descriptions of cases in which they will conduct and decide a review themselves, instead of appointing a person to do so.
49. [Section 10](#) makes provision about the administration of reviews under section 9. This is supplemented by Schedules 2 and 6. Schedule 2 makes provision about the functions of persons appointed by the Welsh Ministers to carry out reviews. It covers various administrative matters, including the appointment of an assessor to assist an appointed person and the delegation of functions by an appointed person to another person. Schedule 6 makes provision permitting appointed persons to issue summonses in connection with local inquiries held for the purposes of this section and gives the Welsh Ministers powers in relation to the recovery or payment of costs incurred in connection with those inquiries or any other proceedings held for the purposes of this section.