

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 — Monuments of special historic interest

Chapter 5 — Enforcement of controls relating to scheduled monuments

Section 30 — Offence of carrying out unauthorised works or breaching condition of consent

111. **Section 30(1)** makes it an offence for a person to carry out unauthorised works to a scheduled monument, or to cause or permit such works to be carried out. Authorisation may be provided by section 12, which authorises specific classes of works, or under section 13, which provides for the grant of scheduled monument consent by the Welsh Ministers.
112. If scheduled monument consent has been granted, subsection (2)(b) provides that it is an offence for a person to fail to comply with a condition of a consent in carrying out works, or in causing or permitting the works to be carried out. This will apply to all conditions attached to a scheduled monument consent, including, for instance, those for publication of the results after the completion of an archaeological investigation.
113. In subsections (1) and (2), a “person” may be anyone who undertakes works to a monument, be that an owner or occupier of a monument, a contractor or subcontractor or other third party.
114. If works are undertaken without authorisation or in breach of a condition, an offence is committed whether a person:
 - a. carries out those works personally,
 - b. instructs or employs someone else to undertake them, or
 - c. permits such works.
115. The last point means that a person cannot turn a blind eye to what happens on a scheduled monument and fail to take reasonable steps to prevent unauthorised works.
116. Subsection (4) provides a person with a defence in proceedings for a subsection (1) offence relating to a monument under interim protection where the person can prove that the person did not know and could not reasonably have been expected to know that the monument was subject to interim protection. Where the defence is raised by a person on whom a notice should have been served under section 5(2), it is for the prosecution to prove that the notice was served on the person.
117. Information on monuments under interim protection should be readily available. Section 5(2) to (4) requires the Welsh Ministers to serve notice if they propose to add a monument to the schedule or add to the area of an existing scheduled monument. The notice, which must be served on every owner and occupier of the monument amongst

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

other persons, has to specify the date upon which interim protection begins and explain its effect. A list of monuments under interim protection is published on the Cadw website in accordance with section 6(4) (see paragraph 39 above) and Cof Cymru also identifies monuments under interim protection.

118. Subsection (7) provides a similar defence in proceedings for an offence under this section for works that have resulted in the demolition or destruction of, or any damage to, a scheduled monument or flooding or tipping operations on land in, on or under which a scheduled monument is located. A person will have a defence if the person can prove that, prior to the works, the person took all reasonable steps to determine if a scheduled monument was in the area to be affected by the works and that the person did not know and had no reason to believe that the monument was in the area, or, as the case may be, that it was a scheduled monument.
119. Such reasonable steps might include checking Cof Cymru, where accurate and up-to-date information on the location and extent of all scheduled monuments in Wales is available. Other sites — for example, Archwilio, the online portal of the Welsh historic environment records, or DataMapWales — also incorporate information on scheduled monuments derived from Cof Cymru.
120. A long-term owner or occupier of a scheduled monument is likely to be aware of its status and extent because Cadw field monument wardens visit all scheduled monuments in Wales on a rolling programme to record their condition. New owners should discover their acquisition of a scheduled monument in the conveyancing title search, since an entry in the schedule is a local land charge under section 3(5).
121. Subsection (8) provides a person with a defence in proceedings for an offence under this section if works were undertaken to address urgent health and safety needs. However, the defence is only available where the works are limited to the minimum measures immediately necessary to secure health and safety and notice was given to the Welsh Ministers with detailed justification for the works as soon as reasonably practicable.
122. Subsection (9) provides that the penalty for an offence under this section is an unlimited fine, whether on summary conviction or conviction by indictment.