

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 40 — Powers to enter land and take steps required by enforcement notice

Section 41 — Offence of failing to comply with enforcement notice

146. **Section 40** provides for a situation in which a required step has not been taken within the time prescribed in an enforcement notice. In that case, a person authorised in writing by the Welsh Ministers may enter the land, take that step and recover the costs incurred from any owner or lessee of the monument or land. This allows necessary conservation works to secure the future of the scheduled monument that are detailed in the enforcement notice to take place in a timely fashion. Otherwise, a damaged monument might be left to deteriorate, leading to further damage to the monument and the loss of any archaeological information that it contains.
147. If the power of entry in subsection (1) is to be exercised on occupied land, section 69(2) (a) requires at least 14 days' notice to be given to every occupier.
148. Should an occupier prevent an owner from undertaking works required by an enforcement notice, subsection (3) enables a magistrates' court, on application from the owner, to issue a warrant authorising the owner to enter the land and carry out the work. This provides important legal recourse for an owner since section 41(1) places any liability for an offence for a failure to comply with an enforcement notice on an owner of the scheduled monument or land. An owner may also have a defence under section 41(3) if, in spite of all reasonable efforts to take steps set out in an enforcement notice, an occupier obstructs their execution.
149. **Section 70** allows any person with an interest in land to make a claim for compensation for any damage to land or other property caused by the exercise of powers under this section.
150. **Section 41** establishes that if, after the end of the period prescribed in an enforcement notice, works specified in the notice have not stopped or a required step has not been taken, an owner of the scheduled monument or land to which the notice relates will be guilty of an offence.