

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 — Monuments of special historic interest

Chapter 7 — General

Section 58 — Offence of damaging certain monuments of special historic interest

193. **Section 58** provides that it is an offence to destroy or damage a protected monument, as defined in subsection (2), without a lawful excuse (subsection (1)).
194. Subsection (1) establishes two tests to determine if a person who has destroyed or damaged a protected monument is guilty of an offence. The first is did the person know or ought the person reasonably to have known that the monument was a protected monument. Accurate and up-to-date information on the location and extent of all scheduled monuments in Wales is available on Cof Cymru.
195. The second test requires that the person intended to destroy or damage the monument or was reckless as to whether the monument would be destroyed or damaged.
196. Subsection (2) includes within the definition of a “protected monument” not just a scheduled monument (section 3) but also a monument under the ownership or guardianship of the Welsh Ministers or a local authority. In many cases the area under such ownership or guardianship extends beyond the area that is included in the schedule.
197. Subsection (3) clarifies that this section applies to anything done by or under the authority of the owner other than the excepted works that are defined in subsection (4). In the case of a monument under guardianship the owner will be different to the guardian.
198. The excepted works in subsection (3) include works authorised under Chapter 3 and works for which development consent has been granted under the [Planning Act 2008 \(c. 29\)](#) (“the 2008 Act”). Development consent under the 2008 Act is required for the categories of projects described in Part 3 of that Act. Not all categories include projects in Wales. Section 150 of the 2008 Act enables an order granting development consent under the 2008 Act to remove a requirement for certain consents, which are prescribed in secondary legislation (Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, [SI 2015/462](#)), if the consenting body agrees.