

HISTORIC ENVIRONMENT (WALES) ACT 2023

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 — Monuments of special historic interest

Chapter 7 — General

192. This Chapter deals with miscellaneous matters relating to monuments of special historic interest. Several provisions treat damage to monuments (sections 58 to 60). Expenditure on monuments is covered under sections 62 to 64. Sections 65 to 71 treat powers of entry and supplementary provisions are included in sections 72 to 75.

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.

Section 60 — Restrictions on use of metal detectors

199. This section deals with the offence of using a “metal detector” (any device designed or adapted for detecting or locating any metal or mineral in the ground) without consent

on a protected place. Consent is defined for the purposes of this section as the written consent of the Welsh Ministers. A “protected place” is defined in subsection (1) as the site of any scheduled monument or the site of any monument under the ownership or guardianship of the Welsh Ministers or a local authority.

200. In recent decades, the unauthorised use of metal detectors on protected places, often under the cover of darkness when it is frequently referred to as “nighthawking”, has become increasingly common. The resulting removal of objects of archaeological or historical interest from their buried archaeological context leads to the loss of irreplaceable archaeological and historical evidence.
201. Four separate offences are therefore identified at subsections (2) to (5) which can be committed by a person using a metal detector in a protected place. A person found guilty on summary conviction or a conviction on indictment is liable to a fine, which depends on the nature of the offence. These fines are set out in subsections (8) and (9).
202. Subsections (6) and (7) set out the defences available to a person in the event of any proceedings for an offence under subsections (2) or (4). In any proceedings for an offence under subsection (2) it is a defence for a person to prove that the metal detector was used for a purpose other than detecting or locating objects of archaeological or historical interest. Further, in any proceedings for an offence under subsection (2) or (4) it is a defence for a person to prove that all reasonable steps had been taken to find out whether the place in which the metal detector was used was a protected place and they did not know, and had no reason to believe that the place was a protected place. Information on the location and extent of all scheduled monuments is available on Cof Cymru.

Section 61 — Works for preservation of scheduled monument in cases of urgency

203. **Section 61** permits the Welsh Ministers to enter the site of a scheduled monument and undertake any works requiring authorisation under section 11 that the Welsh Ministers consider to be urgently necessary for its preservation. They must, however, have given 7 clear days’ written notice of their intention to every owner and occupier of the monument (subsection (2)). Subsection (4) provides that works carried out under this section are to be treated as authorised for the purposes of Chapter 3.
204. If works are carried out under this section to repair damage to a scheduled monument, any compensation order previously made in respect of the damage in favour of someone other than the Welsh Ministers under Chapter 2 of Part 7 of the Sentencing Code is enforceable (to the extent it has not already been complied with) as if it had been made in favour of the Welsh Ministers. Such a situation might arise, for instance, if a court were to make a compensation order in favour of a monument’s owner after the conviction of an offender for causing damage by unauthorised off-road driving. If the Welsh Ministers considered that the damage made urgent works necessary and undertook those works, any outstanding compensation would be transferred to the Welsh Ministers to defray the cost of the emergency intervention.

Section 62 — Expenditure on acquisition and preservation of monuments of special historic interest etc.

205. **Section 62** provides the Welsh Ministers with powers to meet or contribute towards the costs associated with the acquisition of a monument of special historic interest (section 75(6)) by any person. The Welsh Ministers or a local authority may, at an owner’s request, also assist with, or contribute towards, the costs associated with preserving a monument of special historic interest.
206. Cadw, acting on behalf of the Welsh Ministers, regularly offers grants towards the conservation and preservation of monuments of special historic interest. Cadw will also consider requests for a contribution towards the costs of relocating a monument of special historic interest to secure its long-term preservation.

Section 63 — Advice and supervision of work by Welsh Ministers

207. **Section 63** allows the Welsh Ministers to provide advice about the treatment of any monument of special historic interest (subsection (1)) or to supervise any work in connection with a monument of special historic interest if invited to do so by the owner (subsection (2)). However, they must supervise work in connection with a scheduled monument, if they consider it advisable (subsection (3)). Cadw, acting behalf of the Welsh Ministers, employ regional inspectors of monuments and field monument wardens who undertake regular visits to discuss and advise on the management and conservation of scheduled monuments with their owners and/or occupiers.
208. Although the provisions allow the Welsh Ministers to recover the costs of such advice or supervision (subsection (4)), they have rarely done so. The discussions with Cadw inspectors and field monument wardens are more likely to include advice on the availability of financial support for any required expenditure, including from the Welsh Ministers under section 62.

Section 64 — Expenditure by local authorities on archaeological investigation

209. **Section 64** provides powers to local authorities to carry out or assist in, or meet or contribute towards the costs of, any archaeological investigations in or in the vicinity of an authority's area.
210. At the time of writing these notes, only a small number of local authorities in Wales employ specialist archaeologists, so this power is normally exercised through archaeological contractors or through one of the Welsh archaeological trusts. Details of any archaeological investigations undertaken under this section, and of the findings of those investigations, must be added to the historic environment record for that local authority area (section 194).

Section 65 — Powers of entry for inspection of scheduled monuments etc.

211. This section provides powers for a person authorised in writing by the Welsh Ministers to enter any land for the inspection of a scheduled monument for the purposes set out in the section.
212. In practice, such inspections are normally undertaken either by specialist Cadw staff or by specialist archaeologists working for other organisations, such as one of the regional Welsh archaeological trusts.
213. These powers of entry are subject to supplementary provisions set out in section 69. Section 69(1) provides that the power of entry may be exercised at any reasonable time.
214. An exception to the requirement for entry at any reasonable time is made in section 69(1) for section 65(5), which provides for the erection of notice boards and marker posts. However, section 65(6) stipulates that the power in section 65(5) may only be exercised with the agreement of every owner and occupier.
215. **Section 69(2)** requires that, if the land is occupied, notice of the intended entry must be served on every occupier. For the purposes of inspection, at least 24 hours' notice of intended entry is required (section 69(2)(b)). If a notice board or marker post is to be erected under section 65(5) this constitutes works and at least 14 days' notice to every occupier is needed (section 69(2)(a)).
216. **Section 70** makes provision for compensation for damage caused by the exercise of powers of entry under this section.

Section 66 — Powers of entry relating to enforcement of controls on works

217. **Section 66** gives Welsh Ministers the power to authorise a person in writing to enter land for purposes relating to temporary stop notices and enforcement notices.

218. Subsection (1) relates to powers of entry to determine whether a temporary stop notice should be issued, to display or attach a copy of a temporary stop notice, or assess whether a notice has been complied with.
219. Subsection (2) relates to powers of entry to determine if an enforcement notice should be issued, to attach a copy of an enforcement notice or to assess whether an enforcement notice has been complied with.
220. These powers of entry are subject to the supplementary provisions in section 69 (which include that they may be exercised at any reasonable time). In the case of an enforcement notice and where the land is occupied, section 69(2)(b) provides that for the purposes specified in section 66(2) notice must be given at least 24 hours before the day of the intended entry. No such notice is required when powers of entry are exercised in relation to a temporary stop notice (section 69(3)(b)). This will allow timely action to assess the condition of a monument and, if necessary, intervention to halt further damage.
221. An authorised person might be a Welsh Government staff member, such as a Cadw inspector or field monument warden, or an archaeological or conservation specialist working under contract to the Welsh Government or working for one of the regional Welsh archaeological trusts. On occasion, the person might need to be accompanied by the police, depending on circumstances.

Section 67 — Power of entry on land believed to contain monument of special historic interest

222. **Section 67** provides the Welsh Ministers with the power to authorise a person to enter land that they know, or have reason to believe, contains a monument of special historic interest (section 75(6)). The person must be authorised in writing (subsection (5)).
223. The purpose of entering the land must be for the inspection of the land with a view to recording any matters of archaeological or historical interest and for the identification of monuments of special historic interest including those that might be added to the schedule of monuments under section 3.
224. Subsection (2) provides that the authorised person may carry out excavations of the land for the purpose of archaeological investigations (section 75(2)), subject to agreements — for example, with the owner and occupier— that would normally be required for excavation works (subsection (3)). Such prior agreement is not required if the Welsh Ministers know or have reason to believe that a monument of special historic interest in, on or under the land is under threat of imminent damage or destruction (subsection (4)).
225. In practice, inspections under this section are undertaken either by specialist Cadw staff or by specialist archaeologists working for other organisations, such as one of the regional Welsh archaeological trusts. In recent decades, several thousand visits have been made to inspect land believed to contain monuments. In the vast majority of cases, the visits have been made with the prior agreement of the owner or the occupier of the land (or both). In many cases, the visits have resulted in amendments to the schedule of monuments (section 3) through the addition of monuments of national importance.
226. The power of entry conferred by this section is subject to supplementary provisions set out in section 69. They state that the power of entry may be exercised at any reasonable time, but that at least 24 hours' notice of intended entry needs to be given to every occupier of the monument, including for works relating to excavation under subsection (2).

Section 69 — Supplementary provision about powers of entry under this Part

227. This section sets out supplementary provisions about the exercise of powers of entry relating to monuments of special historic interest. Subsection (1) sets out that such powers may be exercised at any reasonable time, but this does not apply to section 65(5).

228. The following subsections of section 69 identify a number of qualifications to the powers of entry.
229. Subsection (2) provides that, where any land is occupied, a notice of the intended entry must be given to every occupier prior to entry on to the land. Where the purpose of the entry is to carry out works (other than excavations under section 67) such a notice must be given at least 14 days before the date of the intended entry. In any other case, including excavations under section 67, a notice must be given at least 24 hours before the date of intended entry.
230. Subsection (3) further provides that the requirements set out in subsection (2) do not apply in the following circumstances:
- a. entry under section 61 where 7 clear days' written notice to every owner and occupier of a monument is required before executing urgent works for the preservation of a scheduled monument
 - b. in relation to the powers of entry for temporary stop notices (section 66(1)), where no notice is required to occupiers.
231. Subsections (11) and (12) of section 69 provide that a person who intentionally obstructs a person exercising a power of entry under Part 2 commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 71 — Treatment and preservation of finds

232. This section provides for the treatment and preservation of any objects of archaeological or historic interest that are taken into temporary custody by a person, while engaged in the activities mentioned in subsection (1)(a) to (c).
233. This power allows archaeologists and finds specialists, acting on behalf of an appropriate authority as defined in subsection (4), to properly conserve and analyse any objects recovered. Such objects are of archaeological and historical value in their own right but can also provide valuable information about the nature and date of the monument of special historic interest from which they derive. They can assist the Welsh Ministers and local authorities in the exercise of their responsibilities and powers under this Part.
234. Subsection (5) clarifies that this section does not affect any right of the Crown under the [Treasure Act 1996 \(c. 24\)](#) (“the 1996 Act”). Under the 1996 Act there is an obligation to report objects which constitute treasure (as defined in that legislation) to the local coroner within 14 days who will then hold an inquest in order to determine the object’s status.

Section 72 — Validity of certain decisions and orders under this Part

Section 73 — Application to High Court for statutory review of decision or order

235. [Section 72](#) provides that the validity of a decision of the Welsh Ministers on an application for a scheduled monument consent, a decision on a review under section 9, or an order under section 20 modifying or revoking a scheduled monument consent may not be questioned in any legal proceedings except for a statutory review under section 73.
236. [Section 73](#) provides that a person who is aggrieved by a decision or order listed in section 72 may make an application to the High Court for a statutory review. An application for a statutory review must be made before the end of the 6 weeks beginning with the day after the day the decision or order to which the application relates is made.
237. The question of whether or not a person is aggrieved will vary dependent on the individual case, but aggrieved persons may include the owner or occupier, the applicant

or any other party who has been involved or has an interest in the decision or order. The authority directly concerned with the decision or order may also make an application for statutory review.

Section 74 — Crown land

238. [Section 74](#) sets out how this Part applies to Crown land. A monument on Crown land may be scheduled. Any restrictions imposed and powers conferred by this Part apply to Crown lands, but not so as to affect any interest of the Crown in the land. In practice, this means that prior to granting scheduled monument consent on Crown land, Cadw, acting on behalf of the Welsh Ministers, would consult with the appropriate Crown authority to check if its interest in the land would be affected.
239. Subsection (4) does not permit a person to exercise a power of entry on Crown land without the consent of the appropriate Crown authority. Nor does it permit the compulsory purchase of an interest in Crown land held otherwise than by or on behalf of the Crown without such consent.
240. “Crown land” and “appropriate Crown authority” are defined in section 207.

Section 75 — Interpretation of this Part

241. [Section 75](#) clarifies the meaning of many of the terms used in this Part. In particular it provides a definition of “monument of special historic interest” in subsection (6).
242. “Monument of special historic interest” captures any scheduled monument and any other monument wholly or mainly in Wales that the Welsh Ministers consider to be of public interest by reason of its historic, architectural, traditional, artistic, or archaeological interest. This definition is only employed in Chapters 6 and 7 of this Part. Amongst other things, this definition permits the Welsh Ministers to bring monuments that are of public interest, but do not meet the criteria for scheduling, into guardianship.
243. Subsection (7) provides that the definition in subsection (6)(b) does not include a monument situated in, on or under the bed of the sea below the low water mark. This limits the area in which the Welsh Ministers may recognise monuments of special historic interest to that covered by the Welsh counties and county boroughs including the adjacent seashore to the low water mark (as provided for in section 46 of the [Local Government \(Democracy\) \(Wales\) Act 2013 \(anaw 4\)](#)). Consequently, the Welsh Ministers may recognise wrecks, fish traps and other remains in the intertidal zone as monuments of special historic interest, but cannot do the same if similar remains are permanently submerged beyond the low water mark.