



Historic Environment (Wales) Act 2023

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PART 2

MONUMENTS OF SPECIAL HISTORIC INTEREST

CHAPTER 3

CONTROL OF WORKS AFFECTING SCHEDULED MONUMENTS

Compensation

21 Compensation for refusal of scheduled monument consent or grant of consent subject to conditions

- (1) This section applies where—
 - (a) an application for scheduled monument consent for works of a description mentioned in subsection (3) is refused, or
 - (b) an application for scheduled monument consent for works of such a description is granted subject to conditions.
- (2) Any person who has an interest in the monument in question is entitled, on making a claim to the Welsh Ministers, to be paid compensation by them for any expenditure incurred or other loss or damage suffered by the person that is directly attributable to the effect of the decision on the application; but this is subject to the following provisions of this section.
- (3) The works in respect of which compensation is payable under this section are—
 - (a) works which are reasonably necessary for carrying out any development for which planning permission—
 - (i) had been granted (otherwise than by a general development order) before the monument in question became a scheduled monument, and
 - (ii) was still effective when the application for scheduled monument consent was made,

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- (b) works constituting development for which planning permission is granted by a general development order,
 - (c) works which do not constitute development, and
 - (d) works which are reasonably necessary for the continuation of a use of the monument for a purpose for which it was in use immediately before the date of the application for scheduled monument consent (but ignoring any use in breach of any legal restrictions applying to the use of the monument).
- (4) The compensation payable under this section in respect of works within subsection (3) (a) is limited to compensation for expenditure incurred or other loss or damage suffered by virtue of the fact that, in consequence of the Welsh Ministers’ decision, development for which the planning permission in question was granted could not be carried out without breaching section 11 (requirement for works to be authorised).
- (5) A person is not entitled to compensation under this section in respect of any works within subsection (3)(b) or (c) if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument.
- (6) Where scheduled monument consent is granted subject to conditions, a person is not entitled to compensation under this section in respect of any works within subsection (3)(d) unless compliance with those conditions would in effect make it impossible to use the monument for the purpose for which it was in use before the date of the application.
- (7) In assessing any compensation payable under this section for loss or damage consisting of depreciation of the value of an interest in land—
- (a) it is to be assumed that any subsequent application for scheduled monument consent for works of a similar description would be determined in the same way, but
 - (b) in the case of a refusal of scheduled monument consent, if the Welsh Ministers, on refusing that consent, undertook to grant consent for other works affecting the monument in the event of an application being made, regard must be had to that undertaking.
- (8) A claim for compensation under this section must be made in writing within 6 months beginning with the day of—
- (a) the notice of refusal of scheduled monument consent, or
 - (b) the grant of scheduled monument consent.
- (9) In this section “general development order” means a development order under section 59 of the [Town and Country Planning Act 1990 \(c. 8\)](#) that applies to all land in Wales (subject to any exceptions specified in the order).

22 Recovery of compensation paid under section 21 on subsequent grant of consent

- (1) This section applies where—
- (a) in a case where compensation under section 21 was paid in consequence of the refusal of scheduled monument consent, the Welsh Ministers subsequently grant scheduled monument consent for all or any of the works in respect of which the compensation was paid, and
 - (b) in a case where compensation under that section was paid in consequence of the grant of scheduled monument consent subject to conditions, the Welsh Ministers subsequently—

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- (i) modify the consent so that the conditions, or any of them, no longer apply to all or any of the works in respect of which the compensation was paid, or
 - (ii) grant a new consent for all or any of those works free from those conditions, or any of them.
- (2) This section does not apply in any case unless the Welsh Ministers have served notice of the payment of compensation on the council of every county or county borough in which the monument is situated.
- (3) In granting or modifying a scheduled monument consent in a case to which this section applies, the Welsh Ministers may do so on terms that no works in respect of which the compensation was paid are to be carried out under the consent until the recoverable amount has been repaid to the Welsh Ministers or secured to their satisfaction.
- (4) In subsection (3) “recoverable amount” has the meaning given by section 23.
- (5) A notice under subsection (2) must specify—
 - (a) the decision which gave rise to the entitlement to compensation,
 - (b) the monument affected by the decision, and
 - (c) the amount of the compensation.
- (6) A notice under subsection (2) is a local land charge, and for the purposes of the [Local Land Charges Act 1975 \(c. 76\)](#) the council served with a notice under that subsection is to be treated as the originating authority as respects the charge.

23 Determination of amount recoverable under section 22

- (1) The “recoverable amount” for the purposes of section 22 means an amount specified by the Welsh Ministers in giving notice of their decision on the application for scheduled monument consent or in the order modifying the consent (as the case may be); but this is subject to subsection (3).
- (2) Where a person who has an interest in a monument objects to the amount specified by the Welsh Ministers, the person may require the determination of the amount to be referred to the Upper Tribunal.
- (3) Where a reference is made to the Upper Tribunal under subsection (2) the recoverable amount is the amount the Tribunal determines.
- (4) The amount specified or determined as the recoverable amount under this section may be an amount representing all or any part of the compensation paid under section 21.

24 Compensation where works affecting a scheduled monument cease to be authorised

- (1) This section applies where works affecting a scheduled monument which were previously authorised under this Chapter cease to be authorised—
 - (a) because an authorisation under section 12 ceases to apply (whether because of an amendment to the table in Schedule 3 or a direction given under subsection (3) of that section),
 - (b) because of the modification or revocation of a scheduled monument consent by an order made under section 20, or

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- (c) in accordance with paragraph 2 of Schedule 4, because of the service of a notice of proposed modification or revocation of a scheduled monument consent under paragraph 1 of that Schedule.
- (2) Any person who has an interest in the monument is entitled, on making a claim to the Welsh Ministers, to be paid compensation by them for—
- (a) any expenditure incurred by the person in carrying out works which become abortive because further works cease to be authorised, or
 - (b) any other loss or damage suffered by the person which is directly attributable to that fact.
- (3) A person is not entitled to compensation under this section in a case within subsection (1)(a) unless, on an application for scheduled monument consent for the works in question, consent is refused, or is granted subject to conditions other than those which previously applied by virtue of section 12.
- (4) For the purposes of this section expenditure incurred in the preparation of plans for the purposes of any works, or on other similar matters preparatory to any works, is to be treated as expenditure incurred in carrying out the works.
- (5) Subject to that, no compensation is payable under this section in respect of—
- (a) works carried out before an authorisation under section 12 applied in relation to the works or before the scheduled monument consent in question was granted (as the case may be), or
 - (b) other loss or damage (other than loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before that authorisation applied or that consent was granted.
- (6) A claim for compensation under this section must be made in writing within 6 months beginning with the day the works cease to be authorised.