



# Historic Environment (Wales) Act 2023

2023 asc 3

## PART 2

### MONUMENTS OF SPECIAL HISTORIC INTEREST

#### CHAPTER 5

##### ENFORCEMENT OF CONTROLS RELATING TO SCHEDULED MONUMENTS

###### *Offences relating to unauthorised works*

#### **30 Offence of carrying out unauthorised works or breaching condition of consent**

- (1) A person commits an offence if the person carries out, or causes or permits to be carried out, works in relation to a scheduled monument in breach of section 11 (requirement for works to be authorised).
- (2) A person also commits an offence if the person—
  - (a) carries out, or causes or permits to be carried out, works in relation to a scheduled monument, and
  - (b) fails to comply with a condition subject to which scheduled monument consent has been granted for the works.
- (3) Subsection (2) does not limit what may be an offence under subsection (1).
- (4) In proceedings against a person for an offence under subsection (1) in relation to a monument on which interim protection is conferred—
  - (a) it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, that the interim protection had been conferred, and
  - (b) 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.

- (5) In proceedings against a person for an offence under subsection (2), it is a defence for the person to prove that the person took all reasonable precautions and exercised all due diligence to avoid breaching the condition.
- (6) In proceedings against a person for an offence under this section in relation to works within section 11(2)(a), it is a defence for the person to prove that the person took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument.
- (7) In proceedings against a person for an offence under this section in relation to works within section 11(2)(a) or (c), it is a defence for the person to prove that—
  - (a) before carrying out the works or before causing or permitting the works to be carried out, the person had taken all reasonable steps to find out whether there was a scheduled monument in the area affected by the works, and
  - (b) the person did not know, and had no reason to believe, that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.
- (8) In proceedings against a person for an offence under this section it is a defence for the person to prove that—
  - (a) the works were urgently necessary in the interests of safety or health,
  - (b) the works carried out were limited to the minimum measures immediately necessary, and
  - (c) notice in writing justifying in detail the carrying out of the works was given to the Welsh Ministers as soon as reasonably practicable.
- (9) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.

#### *Temporary stop notices*

### **31 Power of Welsh Ministers to issue temporary stop notice**

- (1) The Welsh Ministers may issue a temporary stop notice if they consider—
  - (a) that works have been or are being carried out in relation to a scheduled monument which involve a breach of section 11 (requirement for works to be authorised) or of a condition subject to which scheduled monument consent has been granted, and
  - (b) that the works (or any of them) ought to be stopped immediately, having regard to the effect of the works on the monument as one of national importance.
- (2) A temporary stop notice must—
  - (a) specify the works to which it relates,
  - (b) prohibit the carrying out of the works (or any of them specified in the notice),
  - (c) set out the Welsh Ministers' reasons for issuing the notice, and
  - (d) state the effect of section 33 (offence of breaching temporary stop notice).
- (3) The Welsh Ministers must display a copy of a temporary stop notice on the monument or land to which it relates, and the copy must specify the date on which it is first displayed.
- (4) But if—

- (a) it is not reasonably practicable to display a copy of the notice on the monument or land, or
- (b) the Welsh Ministers consider that displaying a copy of the notice on the monument or land might damage the monument,

the Welsh Ministers may instead display a copy in a prominent place as near to the monument or land as is reasonably practicable.

- (5) The Welsh Ministers may serve a copy of the notice on any person they consider—
  - (a) to be carrying out the works that the notice prohibits or causing or permitting them to be carried out,
  - (b) to be an occupier of the monument or land to which the notice relates, or
  - (c) to have an interest in the monument or land.

### **32 Duration etc. of temporary stop notice**

- (1) A temporary stop notice takes effect when a copy of it is first displayed in accordance with section 31.
- (2) A temporary stop notice ceases to have effect—
  - (a) at the end of 28 days beginning with the day the copy of it is first displayed in accordance with section 31, or
  - (b) if it specifies a shorter period beginning with that day, at the end of that period.
- (3) But if the Welsh Ministers withdraw the notice before the end of the period for which it would otherwise have effect, the notice ceases to have effect when it is withdrawn.
- (4) The Welsh Ministers may not issue a second or subsequent temporary stop notice in relation to the same works unless they have, since issuing the previous notice, taken other enforcement action in relation to the breach referred to in section 31(1)(a).
- (5) In subsection (4) the reference to taking other enforcement action is a reference to—
  - (a) issuing an enforcement notice under section 35, or
  - (b) obtaining an injunction under section 42.

### **33 Offence of breaching temporary stop notice**

- (1) A person commits an offence if, at any time when a temporary stop notice has effect, the person carries out works prohibited by the notice or causes or permits such works to be carried out.
- (2) A person may be charged with an offence under this section by reference to a day or a longer period, and may be convicted of more than one offence in relation to the same temporary stop notice by reference to different periods.
- (3) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the temporary stop notice.
- (4) In proceedings for an offence under this section, it is a defence to prove that—
  - (a) the works were urgently necessary in the interests of safety or health,
  - (b) the works carried out were limited to the minimum measures immediately necessary, and

- (c) notice in writing justifying in detail the carrying out of the works was given to the Welsh Ministers as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (6) In determining the amount of the fine, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

### **34 Compensation for loss or damage caused by temporary stop notice**

- (1) This section applies where—
  - (a) the works specified in a temporary stop notice do not, at the time the notice takes effect, involve a breach of section 11 (requirement for works to be authorised) or of a condition subject to which scheduled monument consent has been granted, or
  - (b) the Welsh Ministers withdraw a temporary stop notice after it has taken effect.
- (2) This section does not apply by virtue of subsection (1)(b) where—
  - (a) scheduled monument consent is granted for the works specified in the temporary stop notice after the notice has taken effect, and
  - (b) the Welsh Ministers withdraw the notice after the grant of that consent.
- (3) Any person who has an interest in the monument or land to which the notice relates at the time the notice takes effect is entitled, on making a claim to the Welsh Ministers, to be paid compensation by them for any loss or damage suffered by the person that is directly attributable to the effect of the notice.
- (4) The loss or damage for which compensation is payable includes any amount payable by the claimant in respect of a breach of contract caused by taking action necessary to comply with the notice.
- (5) No compensation is payable under this section for loss or damage that the claimant could have avoided by—
  - (a) providing information that the claimant was required to provide by an information notice served by the Welsh Ministers under section 197, or
  - (b) co-operating with the Welsh Ministers in any other way when responding to such a notice.
- (6) A claim for compensation under this section must be made in writing within 6 months beginning—
  - (a) in a case falling within subsection (1)(a) but not within subsection (1)(b), with the day the temporary stop notice takes effect;
  - (b) in a case falling within subsection (1)(b), with the day the notice is withdrawn.

#### *Enforcement notices*

### **35 Power of Welsh Ministers to issue enforcement notice**

- (1) The Welsh Ministers may issue an enforcement notice if they consider—
  - (a) that works which involve a breach of section 11 (requirement for works to be authorised) or of a condition subject to which scheduled monument consent

- was granted have been or are being carried out in relation to a scheduled monument or land in, on or under which the monument is situated, and
- (b) that it is appropriate to issue the notice, having regard to the effect of the works on the monument as one of national importance.
- (2) An enforcement notice must—
- (a) specify the alleged breach, and
- (b) require works specified in the notice to be stopped, or require steps specified in the notice to be taken for one or more of the purposes set out in subsection (3).
- (3) The purposes are—
- (a) restoring the monument or land to its condition before the breach took place,
- (b) if the Welsh Ministers consider that restoration would not be reasonably practicable or would be undesirable, carrying out further works to alleviate the effect of the breach, or
- (c) putting the monument or land in the condition it would have been in if the terms of any scheduled monument consent for the works to which the notice relates (including any conditions attached to the consent) had been complied with.
- (4) Where an enforcement notice imposes a requirement under subsection (3)(b), scheduled monument consent is to be treated as having been granted for any works carried out in compliance with the requirement.
- (5) The Welsh Ministers must—
- (a) maintain a list of every monument in respect of which an enforcement notice is in effect and publish the up-to-date list, and
- (b) provide a copy of the enforcement notice relating to a monument in the list to any person who requests one.

### **36 Service and taking effect of enforcement notice**

- (1) An enforcement notice must specify—
- (a) the date on which it is to take effect, and
- (b) the period within which the works specified in the notice must be stopped or the steps specified in it must be taken.
- (2) The notice takes effect at the beginning of the day specified under subsection (1)(a); but where an appeal is made against the notice under section 39, this is subject to subsection (4) of that section.
- (3) An enforcement notice may specify different periods for stopping different works or taking different steps.
- (4) Where the Welsh Ministers issue an enforcement notice, they must serve a copy of the notice on—
- (a) every owner and occupier of the monument or land to which the notice relates,
- (b) if the monument or land is let but the lessee is not the occupier, the lessee, and
- (c) any other person who has an interest in the monument or land which the Welsh Ministers consider to be materially affected by the notice.
- (5) Each copy of the notice must be served—
- (a) before the end of 28 days after the day the notice is issued, and

- (b) at least 28 days before the date specified in the notice as the date on which it is to take effect.

### **37 Variation and withdrawal of enforcement notice**

- (1) Where the Welsh Ministers have issued an enforcement notice, they may—
  - (a) withdraw the notice;
  - (b) waive or relax any requirement of the notice, and in particular extend the period within which the notice requires any works to be stopped or any step to be taken.
- (2) The Welsh Ministers may exercise the powers in subsection (1) whether or not the notice has taken effect.
- (3) The withdrawal of an enforcement notice does not prevent the Welsh Ministers from issuing another enforcement notice.
- (4) Subsection (5) applies where the Welsh Ministers had served copies of the enforcement notice under section 36(4) before exercising the powers in subsection (1).
- (5) Immediately after exercising any of those powers, the Welsh Ministers must give notice that they have done so to every person who was served with a copy of the enforcement notice (or who would be served with a copy of the notice if it were reissued).

### **38 Effect of granting scheduled monument consent on enforcement notice**

- (1) This section applies if, after an enforcement notice has been issued, scheduled monument consent is granted under section 13(2)—
  - (a) authorising any works to which the notice relates that have been carried out in breach of section 11, or
  - (b) authorising works which involve a breach of a condition subject to which a previous consent was granted.
- (2) The notice ceases to have effect (or does not take effect) so far as it—
  - (a) requires steps to be taken that are inconsistent with the authorisation of the works, or
  - (b) requires steps to be taken for complying with the condition.
- (3) The fact that an enforcement notice has wholly or partly ceased to have effect by virtue of this section does not affect the liability of any person for an offence in respect of a previous failure to comply with the notice (see section 41).

### **39 Appeal against enforcement notice**

- (1) A person on whom a copy of an enforcement notice is served, or any other person with an interest in the monument or land to which the notice relates, may appeal to a magistrates' court against the notice.
- (2) An appeal may be made on one or more of the following grounds—
  - (a) that the matters alleged to constitute a breach of section 11 or of a condition of scheduled monument consent have not occurred;
  - (b) that those matters (if they occurred) do not constitute such a breach;

- (c) that the following conditions are met—
    - (i) works to the monument or land were urgently necessary in the interests of safety or health,
    - (ii) the works carried out were limited to the minimum measures immediately necessary, and
    - (iii) written notice justifying in detail the need for the works was given to the Welsh Ministers as soon as reasonably practicable;
  - (d) that a copy of the enforcement notice was not served on a person as required by section 36;
  - (e) that the period within which the notice requires any works to be stopped or any steps to be taken is unreasonably short.
- (3) An appeal must be made before the date specified in the notice as the date on which it is to take effect.
- (4) Where an appeal is made, the notice has no effect until the appeal is finally determined or withdrawn.
- (5) On an appeal under this section, a magistrates' court may uphold the notice or quash it.
- (6) The court may uphold a notice even if a copy of it was not served on a person who was required by section 36 to be served, if the court is satisfied that the person has not been substantially prejudiced by the failure.

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

- (1) If the period within which an enforcement notice requires any step to be taken has ended and the step has not been taken, a person authorised in writing by the Welsh Ministers may—
- (a) enter the land in, on or under which the monument is situated and take the step, and
  - (b) recover from a person who is then an owner or lessee of the monument or land the costs incurred in doing so.
- (2) The liability under subsection (1) of a person who is the owner of a monument or land merely by virtue of being entitled to receive the rack rent as trustee for another person is limited to the total amount of money the person has or has had by virtue of that entitlement.
- (3) Where, on an application by way of complaint made by an owner of a scheduled monument or land, a magistrates' court is satisfied that an occupier of the monument or land is preventing the owner from taking steps required by an enforcement notice, the court may by warrant authorise the owner to enter the land and take the steps.

#### **41 Offence of failing to comply with enforcement notice**

- (1) Where, at any time after the end of the period within which an enforcement notice requires any works to be stopped or any step to be taken, the works are being carried out or the step has not been taken, a person who is at that time an owner of the scheduled monument or land to which the notice relates is guilty of an offence.

- (2) A person may be charged with an offence under this section by reference to a day or a longer period, and a person may be convicted of more than one offence in relation to the same enforcement notice by reference to different periods.
- (3) In proceedings against a person for an offence under this section, it is a defence for the person to prove—
  - (a) that the person did everything the person could be expected to do to secure that the works specified in the notice were stopped or the steps required by the notice were taken, or
  - (b) that the person did not know, and could not reasonably have been expected to know, of the existence of the enforcement notice.
- (4) A person guilty of an offence under this section is liable on summary conviction, or on conviction for indictment, to a fine.
- (5) In determining the amount of the fine, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

### *Injunctions*

#### **42 Injunction to restrain unauthorised works or failure to comply with condition of consent**

- (1) The Welsh Ministers may apply to the High Court or the county court for an injunction restraining—
  - (a) an actual or expected breach of section 11 (requirement for works to be authorised) in relation to a scheduled monument or land in, on or under which there is a scheduled monument, or
  - (b) an actual or expected failure to comply with a condition of scheduled monument consent for works to a scheduled monument.
- (2) The Welsh Ministers may make an application whether or not they have exercised or are proposing to exercise any of their other powers under this Part.
- (3) The court may grant an injunction on any terms it considers appropriate for the purpose of restraining the breach.