



# Historic Environment (Wales) Act 2023

2023 asc 3

## PART 2

### MONUMENTS OF SPECIAL HISTORIC INTEREST

#### CHAPTER 7

##### GENERAL

###### *Damage to monuments*

#### **58 Offence of damaging certain monuments of special historic interest**

- (1) A person who without lawful excuse destroys or damages a protected monument is guilty of an offence if the person—
  - (a) knew or ought reasonably to have known that it was a protected monument, and
  - (b) intended to destroy or damage the monument or was reckless as to whether the monument would be damaged or destroyed.
- (2) In subsection (1) “protected monument” means—
  - (a) a scheduled monument, or
  - (b) a monument under the ownership or guardianship of the Welsh Ministers or a local authority by virtue of this Chapter.
- (3) This section applies to anything done by or under the authority of the owner of the monument, other than an act for the carrying out of excepted works, as it applies to anything done by any other person.
- (4) In subsection (3) “excepted works” means—
  - (a) works authorised under Chapter 3;
  - (b) works for which development consent has been granted under the [Planning Act 2008 \(c. 29\)](#).

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- (5) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine or imprisonment for a term not exceeding the applicable limit under section 224(1A)(b) of the Sentencing Code, or both;
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years, or both.

## **59 Compensation orders for damage to monuments under guardianship**

- (1) Subsection (2) applies where an owner or any other person is convicted of an offence involving damage to a monument which was at the time of the offence under the guardianship of the Welsh Ministers or any local authority by virtue of Chapter 6.
- (2) Any compensation order made under Chapter 2 of Part 7 of the Sentencing Code (compensation orders against convicted persons) in respect of that damage is to be made in favour of the Welsh Ministers or the local authority in question (as the case may require).

## **60 Restrictions on use of metal detectors**

- (1) In this section—
  - “consent” (“*cydsyniad*”) means the written consent of the Welsh Ministers;
  - “metal detector” (“*datgelydd metel*”) means any device designed or adapted for detecting or locating any metal or mineral in the ground;
  - “protected place” (“*man gwarchoddedig*”) means—
    - (a) the site of any scheduled monument, or
    - (b) the site of any monument under the ownership or guardianship of the Welsh Ministers or a local authority by virtue of Chapter 6.
- (2) A person commits an offence if the person uses a metal detector in a protected place without consent to do so.
- (3) A person given consent to use a metal detector in a protected place commits an offence if the person, in using the metal detector in that place, fails to comply with any condition attached to the consent.
- (4) A person commits an offence if the person, without consent to do so, removes any object of archaeological or historical interest which the person has discovered by the use of a metal detector in a protected place.
- (5) A person given consent to remove or otherwise deal with any object which the person discovers by the use of a metal detector in a protected place commits an offence if, in removing or otherwise dealing with the object, the person fails to comply with any condition attached to the consent.
- (6) In any proceedings for an offence under subsection (2) it is a defence for a person to prove that the person used the metal detector for a purpose other than detecting or locating objects of archaeological or historical interest.
- (7) In any proceedings for an offence under subsection (2) or (4) it is a defence for a person to prove that the person—
  - (a) had taken all reasonable steps to find out whether the place in which the metal detector was used was a protected place, and

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- (b) did not know, and had no reason to believe, that the place was a protected place.
- (8) A person guilty of an offence under subsection (2) or (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) A person guilty of an offence under subsection (4) or (5) is liable on summary conviction, or on conviction on indictment, to a fine.

#### *Urgent works for preservation of scheduled monument*

### **61 Works for preservation of scheduled monument in cases of urgency**

- (1) If it appears to the Welsh Ministers that any works to which section 11 (requirement for works to be authorised) applies are urgently necessary for the preservation of a scheduled monument, they may enter the site of the monument and carry out those works.
- (2) Before exercising the power in subsection (1) the Welsh Ministers must give at least 7 clear days' written notice to every owner and occupier of the monument.
- (3) Where the Welsh Ministers carry out works under this section for repairing any damage to a scheduled monument—
  - (a) any compensation order previously made in respect of that damage under Chapter 2 of Part 7 of the Sentencing Code in favour of any other person is enforceable (so far as not already complied with) as if it had been made in favour of the Welsh Ministers, and
  - (b) any such order subsequently made in respect of that damage must be made in favour of the Welsh Ministers.
- (4) Where works are carried out under this section, the works are to be treated as authorised works for the purposes of Chapter 3 (control of works affecting scheduled monuments).

#### *Expenditure and advice in relation to monuments*

### **62 Expenditure on acquisition and preservation of monuments of special historic interest etc.**

- (1) The Welsh Ministers may meet or contribute towards the cost of the acquisition by any person of any monument of special historic interest.
- (2) The Welsh Ministers may—
  - (a) remove or assist in the removal of any monument of special historic interest or any part of any such monument to another place for the purpose of preserving it;
  - (b) meet or contribute towards the cost of the removal of any such monument or any part of any such monument to another place for the purpose of preserving it.
- (3) The Welsh Ministers may at the request of an owner of any monument of special historic interest—

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- (a) undertake or assist in the preservation, maintenance and management of the monument;
  - (b) meet or contribute towards the cost of the preservation, maintenance and management of the monument.
- (4) The Welsh Ministers may contribute towards the cost of the provision of facilities or services for the public by a local authority under section 57.
- (5) A local authority may at the request of an owner of any monument of special historic interest in or in the vicinity of its area—
- (a) undertake or assist in the preservation, maintenance and management of the monument;
  - (b) meet or contribute towards the cost of the preservation, maintenance and management of the monument.
- (6) Neither the Welsh Ministers nor a local authority may incur expenditure under this section in connection with any building or structure which is occupied as a dwelling by any person other than the caretaker of the building or structure or a member of the caretaker's family.

### **63 Advice and supervision of work by Welsh Ministers**

- (1) The Welsh Ministers may give advice about the treatment of any monument of special historic interest.
- (2) The Welsh Ministers may also supervise any work in connection with any monument of special historic interest if invited to do so by an owner of the monument.
- (3) The Welsh Ministers must supervise work in connection with any scheduled monument, if they consider it advisable (whether asked to do so by an owner or not).
- (4) The Welsh Ministers may charge for giving advice or supervising work under this section.

### **64 Expenditure by local authorities on archaeological investigation**

- (1) If a local authority considers that any land in or in the vicinity of its area may contain a monument of special historic interest, or anything else of archaeological or historical interest, the authority may—
  - (a) carry out or assist in an archaeological investigation of the land, or
  - (b) meet or contribute towards the cost of an archaeological investigation of the land.
- (2) A local authority may publish the results of any archaeological investigation carried out, assisted or wholly or partly funded by it under this section.
- (3) The powers in subsection (1) may be exercised in relation to any land forming part of the sea bed within the seaward limits of the territorial sea adjacent to Wales.

*Powers of entry*

**65 Powers of entry for inspection of scheduled monuments etc.**

- (1) An authorised person may enter any land to inspect a scheduled monument in, on or under the land to assess its condition and assess—
  - (a) whether any works affecting the monument are being carried out in breach of section 11 (requirement for works to be authorised), or
  - (b) whether it has been or is likely to be damaged (by such works or otherwise).
- (2) An authorised person may enter any land to inspect a scheduled monument in, on or under the land in connection with—
  - (a) an application for scheduled monument consent for works affecting that monument,
  - (b) a proposal to modify or revoke a scheduled monument consent for any such works, or
  - (c) a proposal to make an order under section 27 (termination of scheduled monument partnership agreement or provision of agreement).
- (3) An authorised person may enter any land to assess whether any works to which a scheduled monument consent or an authorisation under section 12 relates are or have been carried out in accordance with the terms of the consent or authorisation (including any conditions).
- (4) An authorised person may enter any land on which any works to which a scheduled monument consent or an authorisation under section 12 relates are being carried out to—
  - (a) inspect the land (including any buildings or other structures on the land) to record any matters of archaeological or historical interest, or
  - (b) observe the carrying out of those works with a view to—
    - (i) examining and recording any objects or other material of archaeological or historical interest discovered during the course of those works, and
    - (ii) recording any matters of archaeological or historical interest discovered during the course of those works.
- (5) An authorised person may enter any land in, on or under which a scheduled monument is situated to erect and maintain on or near the site of the monument any notice boards and marker posts the Welsh Ministers consider to be desirable to protect the monument from accidental or deliberate damage.
- (6) The power in subsection (5) may not be exercised without the agreement of every owner and occupier of the land.
- (7) In this section “authorised person” means a person authorised in writing by the Welsh Ministers.

**66 Powers of entry relating to enforcement of controls on works**

- (1) An authorised person may enter any land to—
  - (a) determine whether a temporary stop notice should be issued;
  - (b) display a copy of a temporary stop notice in accordance with section 31 or attach it for the purpose of service in accordance with section 206(5)(c);

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- (c) assess whether a temporary stop notice has been complied with.
- (2) An authorised person may enter any land to—
  - (a) determine whether an enforcement notice should be issued;
  - (b) attach an enforcement notice for the purpose of service in accordance with section 206(5)(c);
  - (c) assess whether an enforcement notice has been complied with.
- (3) In this section “authorised person” means a person authorised in writing by the Welsh Ministers.

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

- (1) An authorised person may enter any land in, on or under which the Welsh Ministers know or have reason to believe there is a monument of special historic interest to inspect the land (including any building or other structure on it) with a view to recording any matters of archaeological or historical interest.
- (2) An authorised person entering any land in exercise of the power in subsection (1) may carry out excavations in the land for the purposes of archaeological investigation.
- (3) An excavation under subsection (2) requires the agreement of every person whose agreement to the making of the excavation would be required apart from this section.
- (4) But subsection (3) does not apply if the Welsh Ministers know or have reason to believe that a monument of special historic interest they know or believe to be in, on or under the land is or may be at risk of imminent damage or destruction.
- (5) In this section “authorised person” means a person authorised in writing by the Welsh Ministers.

**68 Power of entry for survey and valuation in connection with claim for compensation**

- (1) An authorised person may enter any land to survey it, or estimate its value, in connection with a claim for compensation under this Part for any damage to that land or any other land.
- (2) In this section “authorised person” means—
  - (a) an officer of the Valuation Office of His Majesty’s Revenue and Customs, or
  - (b) a person authorised in writing by the Welsh Ministers.
- (3) The power to survey land under this section includes power to search and bore to determine the nature of the subsoil or the presence of minerals.

**69 Supplementary provision about powers of entry under this Part**

- (1) A power to enter land under this Part may be exercised at any reasonable time; but this subsection does not apply to section 65(5).
- (2) A person authorised to enter land under this Part may not demand admission as of right to any land which is occupied unless notice of the intended entry has been given to every occupier—

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- (a) where the purpose of the entry is to carry out any works on the land (other than excavations in exercise of the power under section 67), at least 14 days before the day of the intended entry, or
  - (b) in any other case (including excavations in exercise of the power under section 67), at least 24 hours before the day of the intended entry.
- (3) Subsection (2) does not apply to entry under—
  - (a) section 61 (but see subsection (2) of that section), or
  - (b) section 66(1).
- (4) A person authorised to enter land under this Part may not enter any building or structure or part of a building or structure occupied as a dwelling without the agreement of every occupier; but this subsection does not apply to the power in section 68.
- (5) A person authorised to enter land under this Part must—
  - (a) if required to do so by or on behalf of an owner or occupier of the land, produce evidence of the person’s authorisation and state the purpose of the entry before entering the land;
  - (b) if leaving the land at a time when no owner or occupier is present, leave it as effectively secured against trespassers as the person found it.
- (6) A person entering land in exercise of a power of entry under this Part may take assistance or equipment reasonably required for the purpose to which the entry relates.
- (7) Where a person carries out any archaeological investigation or examination of land in the exercise of a power of entry under this Part, the person may take and remove any samples which appear to the person to be reasonably required for the purpose of archaeological analysis.
- (8) Where—
  - (a) a power of entry under this Part is exercisable by a person (“P1”) in relation to any land, and
  - (b) works are being carried out on the land by another person (“P2”),P1 must, in exercising the power of entry, comply with any reasonable requirements or conditions imposed by P2 for the purpose of preventing interference or delay to the works.
- (9) Subsection (8) does not apply where the works in question are being carried out in breach of section 11 (requirement for works to be authorised).
- (10) For the purposes of subsection (8), a requirement or condition is not reasonable if complying with it would frustrate the exercise of the power of entry or the purpose of entry.
- (11) A person who intentionally obstructs a person exercising a power of entry under this Part commits an offence.
- (12) A person guilty of an offence under subsection (11) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (13) Where a person—
  - (a) in the exercise of the power of entry under section 68, proposes to carry out works authorised by subsection (3) of that section, and

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(b) is required to give notice of the intended entry under subsection (2)(a) of this section,

the person may not carry out the works unless the notice of intended entry includes notice of the person's intention to carry them out.

(14) Where—

(a) in the exercise of the power of entry under section 68, a person proposes to carry out any works authorised by subsection (3) of that section on land that belongs to a statutory undertaker, and

(b) the undertaker objects to the proposal on the ground that carrying out of the works would be seriously detrimental to the carrying on of its undertaking, the person may not carry out the works without the agreement of the Welsh Ministers.

## **70 Compensation for damage caused by exercise of certain powers under this Part**

(1) This section applies to any power to enter, or to do anything on, any land under section 40 or sections 65 to 68.

(2) Any person interested in land is entitled, on making a claim to the Welsh Ministers, to be paid compensation by them for any damage caused to the land or to property on it in the exercise of a power to which this section applies.

(3) A claim for compensation under this section must be made in writing within 6 months beginning with the day the damage was caused (or if the damage was caused over more than one day, the last day it was caused).

## **71 Treatment and preservation of finds**

(1) This section applies where a person enters land in exercise of a power of entry under this Part—

(a) to carry out excavations in the land or works affecting a monument of special historic interest situated in, on or under the land,

(b) to assess or observe works on the land under section 65(3) or (4)(b), or

(c) to carry out an archaeological examination of the land.

(2) The person may—

(a) take temporary custody of any object of archaeological or historical interest discovered during the course of the excavations, works or examination, and

(b) remove the object from its site for the purpose of examining, testing, treating, recording or preserving it.

(3) The appropriate authority may not, without the agreement of every owner, retain the object for longer than is reasonably required to—

(a) examine and record it, and

(b) carry out any test or treatment which appears to the authority to be desirable—

(i) for the purpose of archaeological investigation or analysis, or

(ii) to restore or preserve the object.

(4) In subsection (3) “appropriate authority” means—

(a) in a case where the power of entry was exercised by or on behalf of the Welsh Ministers, the Welsh Ministers, and



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- (b) in a case where the power of entry was exercised by or on behalf of a local authority, that authority.
- (5) This section does not affect any right of the Crown under the [Treasure Act 1996 \(c. 24\)](#).

### *Supplementary*

## **72 Validity of certain decisions and orders under this Part**

- (1) The validity of a decision or order to which this section applies may not be questioned in any legal proceedings except an application for statutory review under section 73.
- (2) The decisions to which this section applies are—
  - (a) a decision of the Welsh Ministers on an application for scheduled monument consent, and
  - (b) a decision on a review under section 9.
- (3) This section applies to an order under section 20 modifying or revoking a scheduled monument consent.
- (4) This section does not prevent any court exercising any jurisdiction in relation to a refusal or failure to make a decision to which this section applies.

## **73 Application to High Court for statutory review of decision or order**

- (1) A person aggrieved by a decision or order to which section 72 applies may make an application for statutory review.
- (2) An application for statutory review is an application to the High Court questioning the validity of the decision or order on the grounds that—
  - (a) it is not within the powers conferred by this Act, or
  - (b) a relevant requirement has not been complied with in relation to the decision or order.
- (3) An application for statutory review must be made before the end of 6 weeks beginning with the day after the day the decision or order to which the application relates is made.
- (4) On any application for statutory review the High Court—
  - (a) may make an interim order suspending the operation of the decision or order to which the application relates, until the proceedings are finally determined;
  - (b) may quash that decision or order if satisfied that—
    - (i) it is not within the powers conferred by this Act, or
    - (ii) the interests of the applicant have been substantially prejudiced by a failure to comply with a relevant requirement in relation to the decision or order.
- (5) In this section “relevant requirement” means any requirement of—
  - (a) this Act or the [Tribunals and Inquiries Act 1992 \(c. 53\)](#), or
  - (b) any subordinate legislation made under this Act or under that Act.

## **74 Crown land**

- (1) This Part applies in relation to Crown land only to the extent set out below.

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- (2) A monument situated in, on or under Crown land may be included in the schedule.
- (3) Any restrictions or powers imposed or conferred by this Part apply and are exercisable in relation to Crown land and in relation to anything done on Crown land otherwise than by or on behalf of the Crown, but not so as to affect any interest of the Crown in the land.
- (4) This section does not permit—
  - (a) a power under this Part to enter, or to do anything on, any land to be exercised in relation to Crown land, or
  - (b) an interest in Crown land held otherwise than by or on behalf of the Crown to be acquired compulsorily under this Part,
 without the agreement of the appropriate Crown authority.

## 75 Interpretation of this Part

- (1) In this Part—
  - “archaeological examination” (*“archwiliad archaeolegol”*) has the meaning given by subsection (3);
  - “archaeological investigation” (*“ymchwiliad archaeolegol”*) has the meaning given by subsection (2);
  - “enforcement notice” (*“hysbysiad gorfodi”*) means an enforcement notice issued under section 35;
  - “flooding operations” (*“gweithrediadau i foddi tir”*) means covering land with water or another liquid or partially liquid substance;
  - “guardian” (*“gwarcheidwad”*) is to be interpreted in accordance with sections 45 and 49;
  - “guardianship deed” (*“gweithred warcheidiaeth”*) has the meaning given by section 45(7);
  - “interim protection” (*“gwarchodaeth interim”*) has the meaning given by section 6(3);
  - “local authority” (*“awdurdod lleol”*) means—
    - (a) a county council or county borough council in Wales, and
    - (b) a National Park authority in Wales;
  - “monument of special historic interest” (*“heneb o ddiddordeb hanesyddol arbennig”*) has the meaning given by subsection (6);
  - “possession” (*“meddiant”*) includes receipt of rents and profits or the right to receive rents and profits (if any);
  - “the schedule” (*“y gofrestr”*) has the meaning given by section 3;
  - “scheduled monument consent” (*“cydsyniad heneb gofrestredig”*) has the meaning given by section 13;
  - “temporary stop notice” (*“hysbysiad stop dros dro”*) means a temporary stop notice issued under section 31;
  - “tipping operations” (*“gweithrediadau tipio”*) means tipping soil or spoil or depositing building or other materials or matter (including waste) on any land;
  - “works” (*“gwaith”*) includes—
    - (a) flooding or tipping operations,

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- (b) any operations carried out for the purposes of agriculture (within the meaning of the [Town and Country Planning Act 1990 \(c. 8\)](#)) or forestry (including afforestation), and
  - (c) operations of any other description.
- (2) In this Part “archaeological investigation” means any investigation of land, objects or other material for the purpose of obtaining and recording any information of archaeological or historical interest and includes in the case of an archaeological investigation of land—
  - (a) any investigation for the purpose of discovering and revealing and (where appropriate) recovering and removing any objects or other material of archaeological or historical interest situated in, on or under the land, and
  - (b) examining, testing, treating, recording and preserving any such objects or material discovered during the course of any excavations or inspections carried out for the purposes of any such investigation.
- (3) In this Part “archaeological examination”, in relation to land, means any examination or inspection of the land (including buildings or other structures on the land) for the purpose of obtaining and recording any information of archaeological or historical interest.
- (4) In this Part (other than in Chapter 4) references to land associated with a monument (or to associated land) are to be interpreted in accordance with section 49(9).
- (5) In this Part references to a monument, in relation to the acquisition or transfer of any monument (whether under this Part or otherwise), include any interest in or right over the monument.
- (6) In this Part “monument of special historic interest” means—
  - (a) any scheduled monument, and
  - (b) any other monument wholly or mainly in Wales which the Welsh Ministers consider to be of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it.
- (7) But the reference to a monument in subsection (6)(b) does not include a monument situated in, on or under the bed of the sea below the low water mark.