

HISTORIC ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Ancient Monuments Etc

Section 2 – Overview of this Part

8. **Section 2** provides an overview of the provisions within this Part of the Act, which makes amendments to the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”).

Section 3 – Amendments relating to the Schedule

9. **Section 3(1)** inserts new sections 1AA to 1AE into the 1979 Act. These place a requirement on the Welsh Ministers to consult on certain amendments to the schedule of monuments (“the Schedule”); introduce interim protection for monuments pending decisions on certain amendments relating to the Schedule; and provide for the review of decisions on certain amendments relating to the Schedule.

1AA Duty to consult on certain amendments relating to the Schedule

10. New section 1AA places a requirement on the Welsh Ministers to consult on proposals to include a monument in the Schedule, exclude a monument from the Schedule or make a material amendment relating to an entry in the Schedule.
11. A Schedule entry contains only the name of the monument, but is accompanied by a map identifying the exact extent of the monument that is protected. Section 1AA(5) defines a “material amendment” as one that adds to or reduces the area shown for the monument on such a map. If it is proposed to increase or reduce the area shown for a monument on the map, the Welsh Ministers must consult on the change.
12. The Welsh Ministers must carry out the consultation by serving notice of the proposal on the appropriate persons, as defined in section 1AA(3). Section 1AA(6) provides regulation-making powers to allow the Welsh Ministers to add further appropriate persons to the list in subsection (3) and make any consequential amendments to the Act that may be necessary as a result.
13. Section 1AA(4) requires the notice to include specific information, including:
- the date by which the appropriate persons must make their written representations about the proposed scheduling (which must be at least 28 days from the date that the notice is served);
 - an explanation that interim protection will apply where the proposal is to include a monument in the Schedule, or to make a material amendment in relation to an entry in the Schedule which would increase the area of land that is scheduled. The monument will then be protected as though it were scheduled in accordance with the proposal until a further notice is served on the owner, occupier and local

authority. Any unauthorised works to the monument in the meantime will be a criminal offence; and

- the date that the interim protection takes effect, which may be the same date as that on which the notice of consultation is served on the appropriate persons (under section 1AA(2)).

14. Section 56 of the 1979 Act sets out how documents may be served under the Act, and its provisions apply to the delivery of notices to the appropriate persons under new section 1AA.

1AB Interim protection pending decisions on certain amendments relating to the Schedule

15. New section 1AB makes provision for monuments and areas of land to be given interim protection pending the decision of the Welsh Ministers on the making of certain amendments relating to the Schedule.
16. While a monument is being considered and consulted upon for scheduling, it needs to be protected from destruction, alterations or damage that may compromise its significance. Similarly, if the Welsh Ministers are considering an addition to the area of a scheduled monument, that land will need to be protected so that its significance cannot be compromised before a decision is made.
17. Section 1AB(1) specifies that interim protection will apply where the Welsh Ministers have served a notice of a proposal either to include a monument in the Schedule, or to make a material amendment that increases the area shown for a monument on a map that accompanies the monument's entry in the Schedule.
18. Section 1AB(2) sets out the date from which the interim protection will apply. The provisions of the 1979 Act have effect from that date as though the monument were in the Schedule, or as though the amendment to the map were made.
19. Section 1AB(4) and (5) makes provision for interim protection to cease when the Welsh Ministers:
- include the monument in the Schedule;
 - serve notice on the owner, occupier and local authority that the monument will not be included on the Schedule;
 - make a material amendment that increases the area shown for the monument on a map that accompanies the monument's entry in the Schedule; or
 - serve notice on the owner, occupier and local authority that a material amendment of that kind will not be made.
20. Section 1AB(6) requires the Welsh Ministers to publish electronically a list of all monuments in relation to which interim protection has effect, and to provide a copy of any notice served under section 1AA(2) on request.

1AC Provisions applicable on lapse of interim protection

21. New section 1AC introduces Schedule A1 into the 1979 Act. The Schedule contains provisions which apply where interim protection ceases to have effect as a result of the Welsh Ministers' decision not to include a monument in the Schedule or not to make a material amendment that increases the area shown for a monument on a map that accompanies the monument's entry in the Schedule.

1AD Compensation for loss or damage caused by interim protection

22. New section 1AD makes provision for compensation to be paid for loss or damage caused by interim protection if the Welsh Ministers decide not to include a monument in the Schedule or not to make a material amendment that increases the area shown for a monument on a map that accompanies the monument's entry in the Schedule.

1AE Review of decisions on certain amendments relating to the Schedule

23. New section 1AE contains provision for the review of the Welsh Ministers' decisions to make certain amendments relating to the Schedule. The amendments in question are those that include a monument in the Schedule, or that add to the area shown for a monument on a map that accompanies the monument's entry in the Schedule.
24. Where such an amendment is made, section 1AE(2) requires the Welsh Ministers to serve a notice on the owner and occupier (if the owner is not the occupier) informing them that the monument has been included in the Schedule, or that an amendment has been made that adds to the area shown for the monument, and that an application may be made to the Welsh Ministers requesting a review of the decision.
25. Section 1AE(3) requires the Welsh Ministers to undertake a review on request and to give effect to their decision on the review by amending the Schedule or map appropriately.
26. Section 1AE(4) specifies that a review decision can only be challenged in the High Court by way of section 55 of the 1979 Act (proceedings for questioning validity of certain orders). The only permitted grounds for a challenge under section 55 are that the decision was not within the powers of the 1979 Act or that relevant requirements had not been complied with.
27. Section 1AE(5) requires the Welsh Ministers to carry out the review by means of a local inquiry, a hearing or written representations. The Welsh Ministers may decide which procedure is the most appropriate.
28. Section 1AE(6) requires the Welsh Ministers to make regulations setting out: the grounds on which a review may be requested, the information that must be provided in connection with an application for a review, the form and manner of an application for a review, and the period within which an application must be made.
29. Section 1AE(7) enables the Welsh Ministers to make further provision in regulations in connection with reviews, including provision about costs.
30. Section 1AE(9) introduces Schedule A2 into the 1979 Act which allows the Welsh Ministers to appoint a person to make decisions on reviews.
31. [Section 3\(2\)](#) inserts new section 2(6A) into the 1979 Act, which provides a defence for a person who is accused of carrying out unauthorised works to a monument on which interim protection has been conferred. The defence applies where the accused can prove that he or she did not know, and could not reasonably have been expected to know, that interim protection had been conferred on the monument. If such a defence is raised, the prosecution will have to prove that, if an interim protection notice should have been served on the accused under section 1AA(2), it had been served.

Section 4 – Amendments relating to the Schedule: consequential provision

32. [Section 4](#) makes consequential amendments to the 1979 Act as a result of introducing the consultation, interim protection and review provisions.
33. [Section 4\(1\)](#) inserts new subsection (5A) into section 1 of the 1979 Act (schedule of monuments), signposting the new provisions about consultation by the Welsh Ministers on proposals to include a monument in the Schedule, exclude a monument from the Schedule or make a material amendment in relation to the Schedule.

34. **Section 4(2)** inserts new subsections (6B) and (6C) into section 1 of the 1979 Act. Section 1(6B) requires the Welsh Ministers to inform the owner and the occupier of a monument, and the local authority in whose area the monument is situated, where an amendment has been made to the area shown for the monument on the scheduling map, and to send them a copy of the amended map. Section 1(6C) signposts provisions about additional information that needs to be provided to owners and/or occupiers when certain amendments are made in relation to the Schedule, namely information about the right to request a review of the decision to make the amendment.
35. **Section 4(3)** applies section 27 of the 1979 Act, which sets out the manner in which compensation for the depreciation of the value of an interest in land is to be assessed, to the compensation payable under section 1AD for loss or damage caused by interim protection.
36. **Section 4(4)** applies subsection (3) of section 51 of the 1979 Act (ecclesiastical property) to any compensation for loss or damage caused by interim protection for a monument on land that is ecclesiastical property. “Ecclesiastical property”, in this context, means land belonging to the Church of England, and the effect of the provision is to require any such compensation to be paid to the Diocesan Board of Finance for the diocese in which the land is situated.
37. **Section 4(5)** applies section 55 of the 1979 Act (proceedings for questioning validity of certain orders) to a review decision under section 1AE, so that a decision taken by the Welsh Ministers on a review may only be referred to the High Court on certain grounds.

Section 5 – Simplification of process

38. **Section 5(1)** inserts new subsections (5A) and (5B) into section 2 of the 1979 Act (control of works affecting scheduled monuments) and section 5(2) inserts paragraph 1(3) into Part 1 of Schedule 1 to that Act (applications for scheduled monument consent). The new provisions enable regulations to be made to simplify the process by which scheduled monument consent is applied for and granted.
39. Section 2 of the 1979 Act states that scheduled monument consent is required for:
 - any works resulting in damage to or demolition of a scheduled monument,
 - any works to remove or repair such a monument or part of it or any alterations or additions to it, and
 - any flooding or tipping operations on land in, on or under which there is a scheduled monument.
40. New section 2(5A) and (5B) allows the Welsh Ministers to make regulations on the form and content of scheduled monument consent and removes the requirement that consent must be granted in writing.
41. Regulations made under paragraph 1(1) of Part 1 of Schedule 1 to the 1979 Act set out the form and manner in which applications for scheduled monument consent are to be made.
42. New paragraph 1(3) of Part 1 of Schedule 1 enables regulations to be made by the Welsh Ministers to allow applications for scheduled monument consent to be made in other ways. Those regulations may give the Welsh Ministers discretion to decide on the application procedure that may be appropriate.
43. A significant proportion of scheduled monument consent applications involve straightforward proposals, for example the like-for-like replacement of a stile, or the simple repair of erosion scars. These regulation-making powers will enable the Welsh Ministers to introduce simplified scheduled monument consent procedures for straightforward proposals for unobtrusive minor works. For instance, elements of the process, such as the submission of a written application or the applicant’s acceptance

of an interim decision, could be omitted in cases where both the Welsh Ministers and the applicant are content to employ a simplified procedure.

Section 6 – Grant of consent for unauthorised works

44. **Section 6** inserts new subsections (3A) and (3B) into section 2 of the 1979 Act (control of works affecting scheduled monuments). These provisions allow scheduled monument consent to be granted for works already executed.
45. Section 2 of the 1979 Act makes it an offence to carry out specified works to a scheduled monument unless they are authorised under Part I of that Act, including by the grant of written scheduled monument consent by the Welsh Ministers.
46. In certain circumstances, it may be better to retain unauthorised works to a monument than to require their reversal, particularly if reversal could lead to further damage. For instance, works to remove the foundations constructed for a building or to reinstate a track could lead to further ground disturbance. The grant of scheduled monument consent to authorise works already carried out and to control, through conditions, their completion would resolve uncertainties about the lawfulness of retaining the works and eliminate the prospect of future prosecution or other sanctions.

Section 7 – Offence of false information on application

47. **Paragraph 2(1)** of Part 1 of Schedule 1 to the 1979 Act (applications for scheduled monument consent) allows the Welsh Ministers to refuse to entertain an application for scheduled monument consent unless it is accompanied by a specified certificate. Paragraph 2(2) gives the Welsh Ministers power to make regulations regarding the form of such certificates and the further particulars that they must contain. Paragraph 2(4) makes it an offence to issue a certificate that purports to comply with the requirements of paragraph 2 of Part 1 of Schedule 1, but which contains a statement which is false or misleading in a significant detail.
48. **Section 7** amends paragraph 2(4) to make it an offence, in addition, to issue a certificate that purports to comply with any requirements contained in regulations made by the Welsh Ministers under paragraph 2 of Part 1 of Schedule 1, but which contains a statement that is false or misleading in a significant detail.

Section 8 – Refusal of repeat applications etc

49. **Section 8** inserts new paragraph 2B into Part 1 of Schedule 1 to the 1979 Act (applications for scheduled monument consent), which enables the Welsh Ministers to decline to consider a scheduled monument consent application where:
 - the application is similar to an application made within the previous two years and the Welsh Ministers consider that there has been no significant change in any material consideration since the similar application was refused; or
 - the application is made while a similar application is under consideration by the Welsh Ministers.

Section 9 – Procedure for determining applications

50. **Section 9** introduces new procedures for determining scheduled monument consent applications.
51. **Section 9(1)** restricts the application of paragraph 3 in Part 1 of Schedule 1 of the 1979 Act (applications for scheduled monument consent) to scheduled monuments in England.

52. **Section 9(2)** inserts paragraph 3A into Part 1 of Schedule 1. This paragraph applies to applications for scheduled monument consent to carry out works to scheduled monuments in Wales.
53. Paragraph 3A sets out that, before determining whether or not to grant scheduled monument consent, the Welsh Ministers may hold a public local inquiry or give persons an opportunity to appear before and be heard by a person appointed by the Welsh Ministers or to make representations to such a person.
54. Paragraph 3A(4) obliges the Welsh Ministers to take account of any representations made with respect to an application and to consider any report made by a person appointed to hold an inquiry or hearing or receive representations.
55. Paragraph 3A(5) requires the Welsh Ministers to serve notice of their decision on the applicant and on every person who has made representations about the scheduled monument consent application.

Section 10 – Compensation for refusal of scheduled monument consent

56. **Section 10** amends section 7 of the 1979 Act, which requires compensation to be paid in certain circumstances if an applicant for scheduled monument consent suffers loss or damage as a result of its refusal or its grant subject to conditions.
57. The section restricts the application of section 7(4) of the 1979 Act to England and inserts new subsection (4A). The new subsection sets out that in Wales no compensation will be payable if the works for which scheduled monument consent was sought would or might result in the total or partial demolition of a monument, unless those works would only have entailed operations directly related or incidental to the use of the monument's site for purposes specified in regulations made by the Welsh Ministers.

Section 11 – Heritage partnership agreements

58. **Section 11** inserts new sections 9ZA and 9ZB into the 1979 Act which make provision for heritage partnership agreements in Wales. In broad terms, heritage partnership agreements are agreements between the Welsh Ministers and the owners of scheduled monuments which may grant scheduled monument consent for a programme of specified works, negating the need to apply for separate consent for each set of works.

9ZA Heritage partnership agreement

59. Section 9ZA(1) sets out that the parties to an agreement must include the Welsh Ministers and the owner of a scheduled monument or of land adjoining or in the vicinity of a scheduled monument. Section 9ZA(2) allows additional persons to be parties to an agreement, including any person with an interest in the asset, such as a community group, or any person involved in the management of the asset, such as a site manager.
60. A heritage partnership agreement may grant scheduled monument consent for specified works for the purpose of:
 - removing or repairing the scheduled monument, or
 - making any alterations or additions to the monument.
61. An agreement may also specify any conditions attached to that consent.
62. A heritage partnership agreement may not grant scheduled monument consent for works that result in the demolition or destruction of, or any damage to, a scheduled monument (section 2(2)(a) of the 1979 Act) or for any flooding or tipping operations on land in, on or under which there is a scheduled monument (section 2(2)(c) of the 1979 Act).

63. Section 9ZA(4) sets out the range of additional matters for which a heritage partnership agreement may make provision, including the specification of works that the parties agree would not require scheduled monument consent.
64. Section 9ZA(6) and (7) defines "owner" for the purpose of heritage partnership agreements and allows the Welsh Ministers to enter into an agreement with any one or more of the owners of a scheduled monument that is in multiple ownership, without having to enter into an agreement with all such owners.

9ZB Heritage partnership agreement: supplemental

65. New section 9ZB makes supplemental provision in relation to heritage partnership agreements. Section 9ZB(1) specifies that such agreements must be in writing and must make provision for review, termination and variation by the parties.
66. Section 9ZB(2) makes it clear that more than one scheduled monument can be the subject of an agreement, provided that in each case the Welsh Ministers and the owner are parties to the agreement.
67. Section 9ZB(3) places a duty upon the Welsh Ministers to make regulations to provide for: the consultation and publicity required for the creation or variation of a heritage partnership agreement; terms that must be included in a heritage partnership agreement; and the termination of a heritage partnership agreement or any provision thereof.
68. Section 9ZB(4) and (5) specifies the persons who must be consulted under the consultation arrangements for the creation or variation of a heritage partnership agreement. The consultation arrangements differ for a heritage partnership agreement that covers a scheduled monument and for one that covers land adjoining or in the vicinity of a scheduled monument.
69. Section 9ZB(6) provides that the regulations made by the Welsh Ministers enabling the termination by order of a heritage partnership agreement can contain supplementary, incidental, transitory, transitional or saving provision.
70. Section 9ZB(7) allows the regulations to disapply, apply or reproduce, with or without modification, any provisions of the 1979 Act for the purpose of heritage partnership agreements.
71. Section 9ZB(8) provides that heritage partnership agreements will only be binding on parties to those agreements. Future owners of the scheduled monument will not be bound by a heritage partnership agreement, nor will they be able to benefit from any scheduled monument consent granted by the agreement.

Section 12 – Enforcement notices

72. [Section 12](#) inserts new sections 9ZC to 9ZH into the 1979 Act, which allow the Welsh Ministers to issue scheduled monument enforcement notices.

9ZC Scheduled monument enforcement notice

73. Section 9ZC(1) and (2) allows the Welsh Ministers to serve enforcement notices in respect of unauthorised works that have been carried out, or are being carried out, to a scheduled monument or to land in, on or under which there is a scheduled monument. In considering whether to issue an enforcement notice, the Welsh Ministers must have regard to the effects of the works on the monument as one of national importance.
74. Section 9ZC(3) requires the enforcement notice to specify the alleged contravention and the works that are to cease and/or the steps that the Welsh Ministers require to be taken. These may be steps to restore the monument or land to its former state. If the Welsh Ministers consider that the restoration of the monument or land to its former state is not practicable or desirable, the enforcement notice may specify the steps required to

alleviate the effect of the unauthorised works. If scheduled monument consent for the works has been granted, an enforcement notice may also specify the steps required for bringing the monument or land to the state it would have been in if the conditions of the scheduled monument consent had been complied with.

75. The enforcement notice must also set the period within which the Welsh Ministers require the works to cease and the period within which any steps required by the notice must be carried out. Given that a range of works of differing urgency may be required, section 9ZC(6) allows the notice to specify different periods for compliance for different works or steps. For example, the notice may require immediate archaeological investigation followed by the subsequent production of a report.

9ZD Scheduled monument enforcement notice: supplementary provision

76. Section 9ZD(1) specifies on whom a copy of the scheduled monument enforcement notice must be served. Section 56 of the 1979 Act (service of documents) applies to the service of the notice.
77. Section 9ZD(2) states that the Welsh Ministers may withdraw an enforcement notice and, if necessary, issue another. Section 9ZD(3) also enables the Welsh Ministers to amend the requirements imposed by an enforcement notice, for example by extending the deadline for compliance. However, the Welsh Ministers cannot amend an enforcement notice to impose more onerous requirements; if they wish to impose such requirements, they will need to withdraw the notice and issue a new notice.
78. Section 9ZD(5) requires the Welsh Ministers to publish a list of enforcement notices that have been issued and are still in effect, as well as to provide a copy of a notice on request.

9ZE Scheduled monument enforcement notice: appeal

79. This section sets out the process and grounds for appeal against an enforcement notice. A person on whom an enforcement notice has been served under section 9ZD(1), or any other person with an interest in the monument or land in question, may challenge the notice by appeal to a magistrates' court. The grounds for appeal are set out in section 9ZE(3).
80. The appeal must be made before the date on which the notice takes effect under section 9ZC(3)(a). Once an appeal has been lodged, the enforcement notice has no effect until the appeal is withdrawn or finally determined.
81. Section 9ZE(6) allows an enforcement notice to be upheld even if it has not been served in accordance with section 9ZD, provided that no one with an interest in the monument or land is substantially prejudiced by the failure.

9ZF Scheduled monument enforcement notice: power of entry

82. Section 9ZF(1) gives a person authorised in writing by the Welsh Ministers the power: to enter land at a reasonable time to ascertain whether an enforcement notice should be served; to secure an enforcement notice to the monument or to some object on the site of the monument or on the land (if the usual or last known place of abode of the owner or occupier cannot be found); and to ascertain whether an enforcement notice has been complied with.
83. Section 9ZF(2) allows a person authorised by the Welsh Ministers to enter the land at a reasonable time to undertake any works required by the notice if the works have not been carried out within the period for compliance stated in the notice. It also provides for the recovery of expenses incurred in carrying out such works from the owner or lessee of the monument or land.

84. Section 9ZF(3) limits the recovery of costs from owners receiving rent as a trustee for another person to the amount of money the trustee has or has had in their hands on behalf of the beneficiary.
85. If an occupier of a monument prevents an owner from undertaking works required by an enforcement notice, section 9ZF(4) permits the owner to apply to a magistrates' court for a warrant authorising entry to the land and the execution of the works.

9ZG Failure to comply with scheduled monument enforcement notice

86. Section 9ZG provides that, where an enforcement notice has not been complied with within the period specified, the owner of the monument or land is in breach of the notice and is guilty of an offence. A person may be convicted of more than one offence in relation to the same enforcement notice if the breach continues.
87. Section 9ZG(5) and (6) sets out the defences to the offence, and section 9ZG(7) makes provision for the imposition of financial penalties on summary conviction or on conviction on indictment. Section 9ZG(8) states that the courts are to have regard to any financial benefit the person convicted may have received or be likely to receive as a result of the offence when determining the amount of any fine to be imposed.

9ZH Effect of scheduled monument consent on notice

88. Section 9ZH applies where a scheduled monument enforcement notice has been issued, and scheduled monument consent is then granted under new section 2(3A) of the 1979 Act for the retention of works (see section 6 above). In those circumstances, the enforcement notice will no longer have effect in so far as it requires: the cessation of such works; steps in which the works are not retained; or steps to comply with any condition attached to a previous scheduled monument consent.
89. [Section 12\(2\)](#) amends subsection 3 of section 46 of the 1979 Act, which provides for compensation for damage arising from the exercise of certain powers under the Act, so that it will apply in cases of damage arising from the exercise of the new power of entry conferred by section 9ZF.

Section 13 – Temporary stop notices

90. [Section 13](#) inserts new sections 9ZI to 9ZL into the 1979 Act to allow a temporary stop notice to be issued where it appears that unauthorised works have been or are being carried out to scheduled monuments.
91. A temporary stop notice will allow the Welsh Ministers to require an immediate halt to unauthorised works before a scheduled monument suffers further damage or destruction. It will also provide a period of time to allow the Welsh Ministers to assess the situation and to put in place arrangements for informal resolution, enforcement or prosecution.

9ZI Temporary stop notice

92. Section 9ZI(1) and (2) gives the Welsh Ministers the power to issue a temporary stop notice. A temporary stop notice may be issued where any works have been, or are being, executed to a scheduled monument or to land in, on or under which a monument is situated if it appears to the Welsh Ministers that the works are unauthorised or fail to comply with a condition attached to a scheduled monument consent and the Welsh Ministers consider it expedient to stop the works immediately, having regard to the effect of the works on the monument as one of national importance.
93. Section 9ZI(3) states that a temporary stop notice must: be in writing, specify the works that are to stop, explain why the notice has been issued, and state that contravention of the notice is an offence.

94. Section 9ZI(4) and (5) sets out the arrangements for bringing a temporary stop notice to public attention. It must be displayed on the monument, or nearby if display on the monument might cause damage, and specify the date on which it is first displayed. The temporary stop notice takes effect on that date. In addition, the Welsh Ministers may serve the temporary stop notice on any person who appears to the Welsh Ministers to be carrying out the works or causing them to be carried out, or on any person who has an interest in the monument or land. Section 56 of the 1979 Act (service of documents) applies to the service of the notice.
95. Section 9ZI(7) states that the temporary stop notice ceases to have effect after a period of 28 days, or any shorter period that is specified in the notice. Section 9ZI(8) allows the Welsh Ministers to withdraw the temporary stop notice before the end of the 28-day period (or any shorter period specified). Section 9ZI(9) prohibits the issue of a further temporary stop notice in relation to the same works unless the Welsh Ministers have taken some other enforcement action in relation to the contravention, such as the service of an enforcement notice or the obtaining of an injunction under section 9ZM.

9ZJ Temporary stop notice: power of entry

96. Section 9ZJ allows the Welsh Ministers to authorise a person in writing to enter land to ascertain whether a temporary stop notice should be served, to display a notice, to determine if a notice has been complied with, and to consider a claim for compensation. The authorised person may only enter the land at a reasonable time and does not require the explicit permission of the owner to do so.

9ZK Temporary stop notice: offence

97. Section 9ZK(1) and (2) sets out the circumstances in which a person is guilty of an offence for contravening a temporary stop notice and allows a person to be convicted of different offences by reference to different days or periods. It will be possible, therefore, for a person to be convicted for more than one offence in relation to a temporary stop notice if it is breached repeatedly.
98. Section 9ZK(3) and (4) sets out the defences to an offence under this section.
99. Section 9ZK(5) provides that the penalty for the offence of contravening a temporary stop notice is an unlimited fine. Since deliberate damage to a monument may be prompted by the prospect of financial gain, the courts are to have regard to any financial benefit the person convicted may have received or be likely to receive as a result of the offence when determining the amount of any fine to be imposed.

9ZL Temporary stop notice: compensation

100. Section 9ZL(1) and (2) sets out the compensation entitlement in respect of any loss or damage which can be directly attributed to the effect of a temporary stop notice. Compensation is only available in particular circumstances. It may be claimed if the works specified in a temporary stop notice do not contravene subsections (1) or (6) of section 2 of the 1979 Act (control of works affecting scheduled monuments) because scheduled monument consent is not required or has been granted on or before the date the notice is first displayed. It may also be claimed if the Welsh Ministers withdraw the temporary stop notice other than following the grant of scheduled monument consent authorising the works, because, for example, it is discovered that the works were not unauthorised and that the notice should not have been displayed.
101. Section 9ZL(4) specifies that no compensation will be payable for loss or damage if the claimant was required to provide information regarding the ownership of interests in the land in question under section 57 of the 1979 Act and the loss or damage could have been avoided if the claimant had provided that information or had otherwise cooperated with the Welsh Ministers when responding to the temporary stop notice.

102. **Section 13(2)** applies section 27 of the 1979 Act, which makes provision about compensation payable in respect of loss or damage consisting of depreciation of the value of an interest in land, to the compensation payable under section 9ZL for loss or damage attributable to the effect of a temporary stop notice.
103. **Section 13(3)** amends section 44 of the 1979 Act, which contains supplementary provisions with respect to powers of entry, to remove the requirement to give 24 hours' notice prior to the use of the power of entry to ascertain whether a temporary stop notice should be served, to display a notice or to ascertain compliance with a notice.
104. **Section 13(4)** amends subsection (3) of section 46 of the 1979 Act, which provides for compensation for damage arising from the exercise of certain powers under the Act, so that it will apply in cases of damage arising from the exercise of the new power of entry conferred by section 9ZJ.
105. **Section 13(5)** applies section 51 of the 1979 Act (ecclesiastical property) to any compensation paid as a result of the service of a temporary stop notice which relates to a scheduled monument on land that is ecclesiastical property.

Section 14 – Injunctions

106. **Section 14** inserts new section 9ZM into the 1979 Act, which permits the Welsh Ministers to apply to the High Court or the county court for an injunction if they consider it necessary or expedient to restrain an actual or apprehended contravention of subsections (1) or (6) of section 2 of the 1979 Act (control of works affecting scheduled monuments).

Section 15 – Control of works affecting scheduled monuments

107. **Section 15** inserts new section 2(8A) into the 1979 Act to modify one of the defences to the offence of carrying out unauthorised works to a scheduled monument.
108. Section 2 of the 1979 Act provides for the control of works affecting scheduled monuments through the requirement for scheduled monument consent and is supported, in subsections (1) and (6), by criminal offences. Under section 2(8), it is a defence to some of those offences for the accused to prove, on the balance of probabilities, that he or she did not know and had no reason to believe that the monument was within the area affected by the works, or that the monument was scheduled.
109. **Section 15** disapplies the section 2(8) defence in relation to Wales and replaces it with the new defence in section 2(8A). This new defence requires a person accused of executing, causing or permitting unauthorised works in relation to a scheduled monument in Wales to prove, in addition, that he or she took all reasonable steps to find out whether the area affected by the works contained a scheduled monument. Such steps might include, for example, checking Cadw's publicly accessible online information on the location and extent of a scheduled monument.

Section 16 – Damaging certain ancient monuments

110. **Section 16** amends section 28 of the 1979 Act (offence of damaging certain ancient monuments) by inserting a new subsection (1A), which modifies the offence of destroying or damaging a protected monument. A "protected monument" is a monument which is:
 - i. a scheduled monument, or
 - ii. a monument under the ownership or guardianship of the Welsh Ministers or a local authority by virtue of the 1979 Act.
111. Under section 28(1), a person who without lawful excuse destroys or damages any protected monument, knowing that it is protected and intending to destroy or damage

the monument, or being reckless as to whether the monument would be destroyed or damaged, is guilty of an offence. No offence will be committed if the person did not know that the monument was a protected monument.

112. **Section 16** disapplies the section 28(1) offence in relation to Wales and replaces it with the new offence in section 28(1A). Under the new offence, a person who destroys or damages a protected monument without lawful excuse is guilty of an offence if the person knew or ought reasonably to have known that it was a protected monument and intended to damage the monument or was reckless as to whether it would be damaged or destroyed.

Section 17 – Restrictions on use of metal detectors

113. Under section 42 of the 1979 Act (restrictions on use of metal detectors) it is an offence to use a metal detector in a protected place in Wales without the written consent of the Welsh Ministers. A “protected place” is a place which is:
- i. the site of a scheduled monument or a monument which is under the ownership or guardianship of the Welsh Ministers or a local authority by virtue of the 1979 Act, or
 - ii. situated in an area of archaeological importance.
114. Under section 42(7), it is a defence for the accused to prove that he or she had taken all reasonable precautions to find out whether the place where the metal detector was used was protected and did not believe that it was. This defence places responsibility on the accused to show that appropriate precautions were taken, but does not test whether the accused’s belief that the site was not protected was a reasonable belief.
115. **Section 17** disapplies the section 42(7) defence in relation to Wales and replaces it with the new defence in section 42(8), which requires the accused 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 that he or she did not know, and had no reason to believe, that it was a protected place.

Section 18 – Register of historic parks and gardens

116. **Section 18(1)** inserts a new section 41A into Part 3 of the 1979 Act, which places a duty on the Welsh Ministers to compile and maintain a register of historic parks and gardens of special historic interest. This register supersedes the non-statutory register of parks and gardens which was previously compiled by the Welsh Government.

41A Register of historic parks and gardens in Wales

117. The definition of historic parks and gardens is included in section 41A(1) and (2). It includes parks, gardens, designed ornamental landscapes, places of recreation and other designed grounds, which could include, for example, cemeteries. In identifying parks and gardens of special historic interest, the Welsh Ministers are required by subsection (2) to decide whether to include land adjacent or contiguous to the grounds being registered, or any building or water on or adjacent or contiguous to those grounds. This will allow the exercise of professional judgement in the definition of the most logical boundary line. For example, a grand splayed entrance to a driveway, which is outside the walls of an estate but clearly part of the design, could be included in a register entry. Alternatively, a modern greenhouse or stable block could be excluded from an entry.
118. Section 41A(3) and (4) provides the Welsh Ministers with the power to add, remove or amend entries to the register, but when doing so they must inform the owner, the occupier and the relevant local authority or National Park authority. Section 56 of the 1979 Act (service of documents) applies to any notification under subsection (4).

119. Section 41A(6) requires the Welsh Ministers to publish the up-to-date register. The register will be supported by a publicly accessible, map-based, online record on which all nationally designated and registered historic assets will be depicted.
120. [Section 18\(2\)](#) amends section 50 of the 1979 Act (application to Crown land) to allow parks and gardens of special historic interest on Crown land to be included on the register of historic parks and gardens in Wales.

Section 19 – Land believed to contain an ancient monument: power of entry

121. [Section 19](#) inserts new section 26(4) into the 1979 Act to relax the requirement upon a person authorised by the Welsh Ministers to obtain consent before exercising the power of entry to carry out excavations.
122. Section 26(1) of the 1979 Act provides the Welsh Ministers with a power to authorise entry to any land where they know or have reason to believe there is an ancient monument (which may be, but need not be, a scheduled monument) for the purpose of inspecting the land to record matters of archaeological or historical interest. Section 26(2) allows a person exercising the power of entry to carry out excavations in the land for the purposes of archaeological investigation. But the power to carry out excavations is limited in section 26(3) by the requirement for the consent of the owner prior to any excavation.
123. New section 26(4) restricts the application of section 26(3) and enables a person authorised by the Welsh Ministers to enter land to undertake archaeological excavations without the consent of the landowner if an ancient monument is known, or believed, to be at risk of imminent damage or destruction. Such circumstances could arise as a result of unauthorised works or natural damage, for instance, damage caused by coastal erosion that leaves archaeological remains exposed or vulnerable.

Section 20 – Monuments in territorial waters

124. [Section 20](#) amends section 53 of the 1979 Act (monuments in territorial waters) to clarify the circumstances in which a monument in territorial waters is to be treated as being in Wales for the purposes of the Act. New subsection (2B) states that a monument in territorial waters is not to be treated as being in Wales unless it is situated in Wales as defined in section 158 of the Government of Wales Act 2006. This definition of Wales includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.

Section 21 – Service of documents by electronic communication

125. Section 56 of the 1979 Act makes provision for the service of a document by:
 - delivering it to the person on whom it is to be served;
 - leaving it at the usual or last known place of abode of that person;
 - sending it in a pre-paid registered letter or by recorded delivery; or
 - affixing it to the monument or to some object on the site of the monument, when the usual or last known address of the person cannot be found.
126. [Section 21](#) amends section 56 of the 1979 Act by making provision for the service of documents by electronic means.
127. [Section 21\(1\)](#) inserts new section 56(1)(ca) into the 1979 Act, which allows a document or notice under the Act to be served by electronic means in specified circumstances.
128. [Section 21\(2\)](#) inserts new section 56(1A) into the 1979 Act, which sets out specific requirements with which documents served electronically must comply.

*These notes refer to the Historic Environment (Wales) Act
2016 (c.4) which received Royal Assent on 21 March 2016*

***Section 22 – Meaning of “monument” in the Ancient Monuments and
Archaeological Areas Act 1979***

129. **Section 22** amends the definition of a monument in subsection (7) of section 61 of the 1979 Act (interpretation) to include sites that provide evidence of past human activity but are devoid of structures or works.
130. Many important archaeological sites in Wales, particularly those from the distant Palaeolithic and Mesolithic periods, consist of nothing more than artefact scatters or other insubstantial traces of human activity.
131. New section 61(7)(d) will enable sites of national importance that provide evidence of past human activity to be designated as scheduled monuments by the Welsh Ministers.
132. **Section 22(3)** applies the Government of Wales Act 2006 definition of “Wales” to allow the scheduling of non-structural sites out as far as the seaward boundary of the territorial sea.