



Ancient Monuments and Archaeological Areas Act 1979

1979 CHAPTER 46

PART II

ARCHAEOLOGICAL AREAS

38 Powers of investigating authority to enter and excavate site of operations covered by an operations notice.

- (1) Where an operations notice is served with respect to any operations, the investigating authority for the area of archaeological importance in which the site of the operations is situated shall thereupon have a right to enter, at any reasonable time, the site and any land giving access to the site, for either or both of the following purposes, that is to say—
- (a) for the purpose of inspecting the site (including any buildings or other structures on the site) with a view to recording any matters of archaeological or historical interest and determining whether it would be desirable to carry out any excavations in the site; and
 - (b) for the purpose of observing any operations carried out on the site with a view to examining and recording any objects or other material of archaeological or historical interest, and recording any matters of archaeological or historical interest, discovered during the course of those operations.
- (2) Where—
- (a) an operations notice is served with respect to any operations; and
 - (b) the investigating authority for the area of archaeological importance in which the site of the operations is situated serves notice in accordance with subsection (3) below of its intention to excavate the site;

the investigating authority shall have a right to carry out excavations in the site for the purpose of archaeological investigation at any time during the period allowed for excavation in accordance with subsection (4) below.

Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Section 38 is up to date with all changes known to be in force on or before 27 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) The investigating authority shall only have a right to excavate the site of any operations in accordance with subsection (2) above if before the end of the period of four weeks beginning with the date of service of the operations notice the authority—
- (a) serves notice in the prescribed form of its intention to excavate on the developer; and
 - (b) serves a copy of that notice on any council (in England and Wales) or local authority (in Scotland) served with the operations notice and also (unless the functions of the investigating authority are for the time being exercisable by the Secretary of State) on the Secretary of State. ^[F1]and
 - (c) where the site in question is situated in England, serves a copy of that notice on the Commission (unless the investigating authority is for the time being the Commission).]
- (4) The period allowed for excavation under subsection (2) above is the period of four months and two weeks beginning—
- (a) with the date immediately following the end of the period of six weeks beginning with the date of service of the operations notice; or
 - (b) where the operations specified in the operations notice are to be carried out after clearance of the site, with the date of receipt of the notification of clearance of the site required under section 35(7) of this Act or with the date first mentioned in paragraph (a) above (whichever last occurs); or
 - (c) with any earlier date agreed between the investigating authority and the developer.
- (5) Where—
- (a) the investigating authority has served notice of its intention to excavate the site in accordance with subsection (3) above; and
 - (b) the period of six weeks beginning with the date of service of the operations notice has expired;
- the investigating authority shall have a right to carry out excavations in the site for the purpose of archaeological investigation notwithstanding that the period allowed for excavation in accordance with subsection (4) above has not yet begun, but only if the authority does not thereby obstruct the execution on the site by the developer of clearance operations or any other operations to which section 35 of this Act does not apply.
- (6) The investigating authority may at any reasonable time enter the site and any land giving access to the site for the purpose of exercising a right to excavate the site in accordance with subsection (2) or (5) above.
- (7) If operations to which the operations notice relates are carried out on the site at a time when the investigating authority has a right to excavate the site in accordance with subsection (2) or (5) above section 35 of this Act shall have effect in relation to those operations as if the operations notice had not been served (subject, however, to any exemption or defence conferred by or under section 37 of this Act).
- (8) The Secretary of State may at any time direct—
- (a) that an investigating authority shall comply with any conditions specified in the direction in exercising any of its powers under the preceding provisions of this section in relation to any site; or
 - (b) that any such power shall cease to be exercisable by an investigating authority in relation to the whole or any part of any site;

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and may vary or revoke any direction given under paragraph (a) above.

[^{F2}The Secretary of State shall consult with the Commission before giving, varying or revoking a direction under this subsection in relation to a site situated in England.]

(9) On giving a direction under subsection (8) above the Secretary of State shall serve a copy of the direction on each of the following persons, that is to say—

- (a) the investigating authority;
- (b) any council (in England and Wales) or local authority (in Scotland) served with the operations notice in question;
- (c) the developer; and
- (d) any person other than the developer by whom the certificate accompanying the operations notice in accordance with section 35(4)(b) of this Act was issued;

and on varying or revoking any such direction the Secretary of State shall notify the same persons (giving particulars of the effect of any variation).

[^{F3}(10) On giving a direction under subsection (8) above in relation to a site situated in England the Secretary of State shall send a copy of the direction to the Commission (if the investigating authority is not the Commission).

(11) On varying or revoking a direction given under subsection (8) above in relation to a site situated in England the Secretary of State shall notify the Commission (giving particulars of the effect of any variation) if the investigating authority is not the Commission.]

Textual Amendments

- F1** S. 38(3)(c) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 57(2)(5)**
- F2** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 57(3)**
- F3** S. 38(10)(11) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 57(4)**

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Changes and effects yet to be applied to :

- s. 38(3)(b) words omitted by [2023 asc 3 Sch. 13 para. 37\(a\)](#)
- s. 38(9)(b) words omitted by [2023 asc 3 Sch. 13 para. 37\(b\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(3A) inserted by [2023 asc 3 Sch. 13 para. 20\(b\)](#)
- s. 1AA-1AE omitted by [2023 asc 3 Sch. 13 para. 21](#)
- s. 7(4A) inserted by [2016 anaw 4 s. 10\(2\)](#)
- s. 33(1A) inserted by [2023 asc 3 Sch. 13 para. 35\(a\)](#)