



# Historic Environment (Wales) Act 2016

2016 anaw 4

## PART 2

### ANCIENT MONUMENTS ETC

#### *Scheduled monuments: enforcement*

#### **12 Enforcement notices**

- (1) In the Ancient Monuments and Archaeological Areas Act 1979 (c.46), after section 9ZB (inserted by section 11) insert—

#### *“Scheduled monument enforcement notices*

##### **9ZC Scheduled monument enforcement notice**

- (1) This section applies where it appears to the Welsh Ministers that works affecting a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument have been or are being carried out in contravention of section 2(1) or (6).
- (2) The Welsh Ministers may issue a notice under this section (referred to in this Part as a “scheduled monument enforcement notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient to do so.
- (3) A scheduled monument enforcement notice must be in writing and must specify—
  - (a) the date on which the notice takes effect (see subsection (4));
  - (b) the alleged contravention;
  - (c) where the Welsh Ministers require works to cease, the works concerned and the period within which the Welsh Ministers require them to cease; and

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- (d) where the Welsh Ministers require steps of a kind referred to in subsection (5) to be taken, the steps concerned and the period within which the Welsh Ministers require them to be taken.
- (4) A scheduled monument enforcement notice takes effect on the date specified in the notice for the purposes of subsection (3)(a); and the date so specified must be at least 28 days after the date on which the notice is served in accordance with section 9ZD.
- (5) The steps mentioned in subsection (3)(d) are—
  - (a) steps for restoring the monument or land to its former state;
  - (b) if the Welsh Ministers consider restoration would not be practicable or desirable, steps for executing such further works as they consider are required to alleviate in a manner acceptable to them the effect of the works carried out without scheduled monument consent;
  - (c) if scheduled monument consent for the works has been granted, steps for bringing the monument or land to the state it would have been in if the conditions of the consent had been complied with.
- (6) A scheduled monument enforcement notice may specify different periods for different works or different steps.
- (7) Where works of the kind mentioned in subsection (5)(b) are carried out, scheduled monument consent is to be treated as having been granted in respect of the works.

#### **9ZD Scheduled monument enforcement notice: supplementary provision**

- (1) A copy of a scheduled monument enforcement notice must be served on—
  - (a) the owner of the monument or land concerned;
  - (b) if the owner is not the occupier, the occupier;
  - (c) if the monument or land is let but the lessee is not the occupier, the lessee; and
  - (d) every other person with an interest in the monument or land which is, in the opinion of the Welsh Ministers, materially affected by the notice.
- (2) The Welsh Ministers may at any time withdraw a scheduled monument enforcement notice; but that does not affect the power to issue another notice under section 9ZC.
- (3) The Welsh Ministers may at any time waive or relax any requirement imposed by a scheduled monument enforcement notice (including the length of a period specified in the notice for the purposes of section 9ZC(3)(c) or (d)).
- (4) The Welsh Ministers must, immediately after exercising the power under subsection (2) or (3), give notice of the exercise of the power to every person who has been served with a copy of the notice under subsection (1) (or who would be if the notice were to be reissued).
- (5) The Welsh Ministers—
  - (a) must publish by electronic means a list containing particulars of each monument in respect of which a scheduled monument enforcement notice has effect; and

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- (b) must, on request, provide a copy of a scheduled monument enforcement notice the particulars of which are contained in the list.

### **9ZE Scheduled monument enforcement notice: appeal**

- (1) A person on whom a scheduled monument enforcement notice is served, or any other person with an interest in the monument or land concerned, may appeal to a magistrates' court against the notice.
- (2) An appeal under this section must be brought before the date specified in the notice for the purposes of section 9ZC(3)(a).
- (3) An appeal under this section may be brought on any of the following grounds—
  - (a) that the matters alleged to constitute the contravention specified for the purposes of section 9ZC(3)(b) have not occurred;
  - (b) that those matters, in so far as they have occurred, do not constitute a contravention of section 2(1) or (6);
  - (c) that works to the monument or land were urgently necessary in the interests of safety or health and that—
    - (i) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter;
    - (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 notice was not served as required by section 9ZD;
  - (e) that a period specified for the purposes of section 9ZC(3)(c) or (d) falls short of what should reasonably be allowed.
- (4) Where an appeal under this section is brought, the notice is of 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 copies of it have not been served in accordance with section 9ZD if the court is satisfied that no person on whom a copy should have been, but was not, served has been substantially prejudiced by the failure.

### **9ZF Scheduled monument enforcement notice: power of entry**

- (1) A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes?—
  - (a) ascertaining whether a scheduled monument enforcement notice should be served;
  - (b) securing that a scheduled monument enforcement notice is affixed for the purposes of service in accordance with section 56(2)(b);
  - (c) ascertaining whether a scheduled monument enforcement notice has been complied with.

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- (2) If steps specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(d) have not been taken within the period so specified, a person duly authorised by the Welsh Ministers may—
  - (a) at any reasonable time enter the land in, on or under which the monument is situated and take the steps concerned; and
  - (b) recover from the person who is then the owner or lessee of the monument or land expenses incurred by them in doing so.
- (3) The liability under subsection (2)(b) 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.
- (4) Where, on a claim by the owner of a scheduled monument or land, it appears to a magistrates' court that the occupier of the monument or land is preventing the owner from carrying out the work required by a scheduled monument enforcement notice, the court may by warrant authorise the owner to enter the land and carry out the work.

#### **9ZG Failure to comply with scheduled monument enforcement notice**

- (1) This section applies where after the end of a period specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(c) or (d)—
  - (a) the works specified as being required to cease have not ceased; or
  - (b) the steps specified as being required to be taken have not been taken.
- (2) The person who is for the time being owner of the scheduled monument or of the land in, on or under which it is situated is in breach of the notice.
- (3) If the owner of a monument or land is in breach of a scheduled monument enforcement notice, the owner is guilty of an offence.
- (4) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same scheduled monument enforcement notice, be convicted of more than one offence under this section by reference to different periods.
- (5) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did everything the person could be expected to do to secure that—
  - (a) in a case concerning works required to cease, the works did cease; or
  - (b) in a case concerning steps required to be taken, the steps were taken.
- (6) 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 scheduled monument enforcement notice.
- (7) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (8) In determining the amount of a fine to be imposed on a person convicted under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence

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of the execution of the works to which the scheduled monument enforcement notice relates.

### **9ZH Effect of scheduled monument consent on notice**

- (1) This section applies if, after the issue of a scheduled monument enforcement notice, consent is granted under section 2(3A)—
    - (a) for the retention of any work to which the notice relates; or
    - (b) permitting the retention of works without complying with a condition subject to which a previous scheduled monument consent was granted.
  - (2) The notice ceases to have effect in so far as it—
    - (a) requires the work or works to cease;
    - (b) requires steps to be taken involving the works not being retained; or
    - (c) requires steps to be taken for complying with that condition.”
- (2) In section 46 of that Act (compensation for damage caused by exercise of certain powers), in subsection (3), after “section 6, 6A,” insert “ 9ZF, ”.

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

- Act repealed by [2023 asc 3 Sch. 13 para. 193](#)