



Historic Environment (Wales) Act 2016

2016 anaw 4

An Act of the National Assembly for Wales to make provision amending certain aspects of the law relating to ancient monuments and listed buildings; to establish a register of historic parks and gardens and a list of historic place names; to establish historic environment records for local authority areas; to establish an Advisory Panel for the Welsh Historic Environment; and for connected purposes. [21 March 2016]

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:

PART 1

OVERVIEW

1 Overview

- (1) This Act has five Parts.
- (2) This Part provides an overview of this Act.
- (3) Part 2 makes amendments to the Ancient Monuments and Archaeological Areas Act 1979 (c.46), primarily in relation to ancient monuments in Wales. It also makes provision for the Welsh Ministers to compile and maintain a register of historic parks and gardens.
- (4) Part 3 makes amendments to the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) in relation to buildings in Wales that are of special architectural or historic interest (“listed buildings”).
- (5) Part 4 makes other provision about the historic environment in Wales, including provision—
 - (a) for the compilation of a list of historic place names in Wales (section 34),
 - (b) for the compilation of a historic environment record for each local authority area in Wales (sections 35 to 37), and

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- (c) for the establishment, constitution and functions of the Advisory Panel for the Welsh Historic Environment (sections 38 and 39).
- (6) Part 5 contains provision that applies generally for the purposes of this Act.

PART 2

ANCIENT MONUMENTS ETC

Overview

2 Overview of this Part

- (1) This Part is primarily about the protection of ancient monuments in Wales. It makes provision—
 - (a) for the Welsh Ministers to consult before making certain changes to the Schedule under the Ancient Monuments and Archaeological Areas Act 1979 (c.46) (“the 1979 Act”) or certain amendments relating to monuments in the Schedule (section 3);
 - (b) to give a monument statutory protection while the Welsh Ministers decide whether to include it in the Schedule or, in the case of a monument already included in the Schedule, to make certain amendments relating to it (section 3);
 - (c) for the Welsh Ministers to review a decision of theirs to include a monument in the Schedule or to make certain amendments relating to a monument in the Schedule (section 3);
 - (d) to amend the procedure relating to scheduled monument consent and the provision for compensation for the refusal of such consent (sections 5 to 10);
 - (e) for the Welsh Ministers to enter into an agreement with the owner of a monument included in the Schedule about matters such as consent for works to the monument (section 11);
 - (f) for the Welsh Ministers to issue an enforcement notice or a temporary stop notice, or to apply to court for an injunction, in a case involving certain works to a monument included in the Schedule (sections 12 to 14);
 - (g) to modify the application of certain offences, including by the creation of a due diligence defence (sections 15 to 17);
 - (h) about the power to enter land believed to contain an ancient monument (section 19);
 - (i) about the circumstances in which a monument in the territorial sea is to be treated as being situated in Wales (section 20);
 - (j) to enable notices and other documents required or authorised to be served under the 1979 Act to be served by electronic communication (section 21);
 - (k) to amend the definition of “monument” in the 1979 Act (section 22).
- (2) This Part also makes provision for the Welsh Ministers to compile and maintain a register of historic parks and gardens (section 18).

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Schedule of monuments

3 Amendments relating to the Schedule

- (1) After section 1A of the Ancient Monuments and Archaeological Areas Act 1979 (c.46) insert—

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

- (1) This section applies where the Welsh Ministers are proposing—
- to include a monument in the Schedule;
 - to exclude a monument from the Schedule; or
 - in the case of a monument which is identified in the Schedule by reference to a map maintained by the Welsh Ministers, to make a material amendment in relation to the monument.
- (2) The Welsh Ministers must—
- serve notice of the proposed inclusion, exclusion or amendment on the appropriate persons; and
 - invite those persons to submit written representations about the proposal.
- (3) The appropriate persons are—
- the owner of the monument;
 - if the owner is not the occupier, the occupier of the monument;
 - each local authority in whose area the monument is situated; and
 - any other person who appears to the Welsh Ministers appropriate as having special knowledge of, or interest in, the monument, or in monuments of special historic or archaeological interest more generally.
- (4) A notice under subsection (2) must—
- specify the proposed inclusion, exclusion or amendment;
 - specify the period within which representations about the proposal may be made, which must be at least 28 days beginning with the day on which the notice is served; and
 - in the case of a proposed inclusion or a proposed amendment of the kind described in subsection (5)(a)—
 - include a statement of the effect of section 1AB; and
 - specify the date on which interim protection takes effect under subsection (2) of that section.
- (5) For the purposes of this section an amendment in relation to a monument in the Schedule is “material” if it—
- adds to the area shown for the monument on the map referred to in subsection (1)(c); or
 - reduces the area so shown.
- (6) The Welsh Ministers may by regulations amend subsection (3) by adding a description of person to the list of appropriate persons in that subsection; and where the Welsh Ministers do so, they may also make such amendments to

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this Act as they consider appropriate in consequence of the amendment to subsection (3).

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

- (1) This section applies where the Welsh Ministers consult under section 1AA on a proposal to—
 - (a) include a monument in the Schedule; or
 - (b) make a material amendment of the kind described in section 1AA(5) (a) in relation to a monument in the Schedule.
- (2) The provisions of this Act have effect in relation to the monument, from the beginning of the day specified for the purposes of section 1AA(4)(c)(ii)—
 - (a) in the case of a proposal to include a monument in the Schedule, as if the monument were a scheduled monument; and
 - (b) in the case of a proposal to make a material amendment in relation to a monument in the Schedule, as if the amendment were made.
- (3) The protection conferred on a monument or area by virtue of subsection (2) is referred to in this Act as “interim protection”.
- (4) Interim protection conferred by virtue of subsection (2)(a) ceases to have effect—
 - (a) where the Welsh Ministers include the monument in the Schedule, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
 - (b) where the Welsh Ministers decide not to include the monument in the Schedule, from the beginning of the day specified in a notice issued to—
 - (i) the owner of the monument;
 - (ii) if the owner is not the occupier, the occupier of the monument; and
 - (iii) each local authority in whose area the monument is situated.
- (5) Interim protection conferred by virtue of subsection (2)(b) ceases to have effect—
 - (a) where the Welsh Ministers make the material amendment, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
 - (b) where the Welsh Ministers decide not to make the material amendment, from the beginning of the day specified in a notice issued to—
 - (i) the owner of the monument;
 - (ii) if the owner is not the occupier, the occupier of the monument; and
 - (iii) each local authority in whose area the monument is situated.
- (6) The Welsh Ministers—
 - (a) must publish by electronic means a list containing particulars of each monument in relation to which interim protection has effect; and

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- (b) must, on request, provide a copy of the notice served under section 1AA(2) in respect of such a monument.

1AC Provisions applicable on lapse of interim protection

Schedule A1 has effect with respect to the lapse of interim protection.

1AD Compensation for loss or damage caused by interim protection

- (1) This section applies where interim protection in respect of a monument ceases to have effect as a result of the issue of a notice by the Welsh Ministers under section 1AB(4)(b) or (5)(b).
- (2) Any person who, at the time when the interim protection took effect, had an interest in the monument is, on making a claim to the Welsh Ministers within the prescribed time and in the prescribed manner, entitled to be paid compensation by the Welsh Ministers in respect of any loss or damage directly attributable to the effect of the protection.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the monument on account of the interim protection having effect.

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

- (1) This section applies where the Welsh Ministers—
 - (a) include a monument in the Schedule; or
 - (b) make a material amendment of the kind described in section 1AA(5)(a) in relation to a monument in the Schedule.
- (2) When the Welsh Ministers inform the owner and (if the owner is not the occupier) the occupier of the monument under section 1(6) or (6B) that they have taken that action, they must also serve on that person or those persons a notice which—
 - (a) specifies the date on which the Welsh Ministers did so (and on which interim protection under section 1AB(2) ceased to have effect); and
 - (b) states that the person may make an application to the Welsh Ministers requesting them to review their decision to do so.
- (3) Where the owner or occupier of the monument makes such an application, the Welsh Ministers must—
 - (a) carry out the review requested;
 - (b) make a decision on the review; and
 - (c) make such amendment to the Schedule or the map referred to in section 1AA(1)(c) as they consider appropriate to give effect to that decision.
- (4) Except as provided in section 55, the validity of any decision taken by the Welsh Ministers on the review is not to be questioned in any legal proceedings.
- (5) The Welsh Ministers must carry out a review under this section in such one or more of the following ways as appears to them to be appropriate—