Scheduled monuments and the Historic Environment (Wales) Act 2016: Enforcement, defences and powers of entry

The Historic Environment (Wales) Act 2016 (’the 2016 Act’) is the first legislation enacted specifically for the historic environment of Wales. It makes important changes to the Ancient Monuments and Archaeological Areas Act 1979 (’the 1979 Act’) that will affect how Welsh scheduled monuments are designated, protected and managed. The full text of the 2016 Act and its accompanying Explanatory Notes are available on http://www.legislation.gov.uk/search?title=&year=2016&number=4&type=anaw

This information sheet describes certain scheduled monument provisions of the new Act that come into force on 21 May 2016.

These provisions:
- give the Welsh Ministers new instruments to act quickly to halt damage or unauthorised works to scheduled monuments;
- improve the protection of Wales’ scheduled monuments by limiting the availability of the defence of ignorance under the 1979 Act; and
- introduce new powers of entry for the excavation of monuments in imminent danger of damage or destruction.

Enforcement

The following provisions create enforcement powers for scheduled monuments in Wales that are comparable to those now available for listed buildings.

Temporary stop notices (section 13)
The Welsh Government’s Historic Environment Service (Cadw), acting on behalf of the Welsh Ministers, will now be able to issue a temporary stop notice to require an immediate halt to unauthorised works before a scheduled monument is damaged further or destroyed. The notice can also be used to stop works that fail to comply with a condition attached to a scheduled monument consent.

The notice will require specified works to be stopped for 28 days from the date that it is first posted on or near the monument. Failure to comply with a temporary stop notice constitutes an offence in addition to any offence arising from the unauthorised works.

Enforcement notices (section 12)
Cadw will also be able to serve an enforcement notice if unauthorised works have been, or are being, carried out to a scheduled monument. An enforcement notice may specify the steps required to restore the monument or to alleviate the effect of the unauthorised works. It can also be used to bring a monument to the state it would have been in if the conditions of a granted scheduled monument consent had been fulfilled.

An enforcement notice does not come into force until 28 days after it has been served, and during that time an appeal against it on certain grounds may be lodged in a magistrates’ court. If the specified works are not undertaken a person authorised
by the Welsh Ministers may carry out the works and recover the costs from the
owner or lessee of the monument. Failure to comply with an enforcement notice
constitutes an offence in addition to any offence arising from the unauthorised works.

Defences

The 2016 Act restricts the availability of the defence of ignorance in cases of
damage or unauthorised works to scheduled monuments (sections 15–17).

It will now be an offence if a protected monument is damaged or destroyed, and the
accused knew or ought reasonably to have known that the monument was protected.
To have a defence in cases of unauthorised works, the accused will have to prove
that s/he did not know and had no reason to believe that the monument was
protected even after taking all reasonable steps to find out if a scheduled monument
would be affected by the works.

Any person accused of using a metal detector in a protected place will be required to
prove that all steps were taken to find out whether it was a protected place and that
s/he still did not know, or had no reason to believe, that it was protected.

Cadw is developing an online, map-based resource that will provide details and
maps of designated historic assets in Wales. The site provides information on
scheduled monuments, listed buildings, protected wrecks, registered landscapes and
World Heritage Sites and will eventually include registered historic parks and
gardens. A test version of the site is available on:

Powers of entry for archaeological investigation (section 19)

The Welsh Ministers may give an authorised person the power 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. This power will only be used rarely in cases where there is a real threat
that significant archaeological information will be lost and the owner is unknown or
cannot be contacted.

Disclaimer

This fact sheet does not provide an authoritative legal interpretation of the provisions
of the Historic Environment (Wales) Act 2016. For any legal matters, direct reference
should be made to the text of the Act, which is available on