

The Historic Environment (Wales) Act 2016 — Fact Sheet 1

Scheduled monuments — Definition of a monument, designation and scheduled monument consent

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' — <http://www.legislation.gov.uk/ukpga/1979/46/contents>) that 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/anaw/2016/4/contents>

This fact sheet describes the scheduled monument provisions of the Act that:

- extend the definition of a monument;
- introduce consultation, interim protection and a right of review into the scheduling process; and
- modernise the scheduled monument consent system and align it more closely with listed building consent procedures.

Definition of a monument (section 22)

The 2016 Act expands the definition of a monument so the Welsh Ministers can designate any sites that provide evidence of past human activity. This will allow a small number of nationally important sites that consist of nothing more than artefact scatters or other insubstantial traces of human activity to be protected through scheduling. Most are likely to be prehistoric sites from the Palaeolithic and Mesolithic periods, but they may also include later sites such as historic battlefields or industrial waste tips.

Consultation, interim protection and right of review (sections 3 and 4)

Consultation

The 2016 Act has introduced a requirement for formal consultation if the Welsh Ministers are proposing to:

- schedule a monument,
- deschedule a monument, or
- add to or reduce a scheduled area.

The Welsh Ministers must serve notice of their proposal on: a monument's owner, an occupier of the monument, a relevant local authority and any other person whom they believe to have a special knowledge of or interest in the particular monument, or such monuments generally. At least 28 days must be allowed for the return of written representations.

Interim protection

From the beginning of a consultation on a proposal by the Welsh Ministers to schedule a monument or add to a scheduled area, the monument will enjoy interim protection as if already scheduled. It will therefore be an offence to damage it or undertake works

without scheduled monument consent. Interim protection will last until the Welsh Ministers reach a decision on the designation and communicate it to the owner, occupier and relevant local authority. A list of monuments under interim protection is published on the Cadw website (<http://cadw.gov.wales/historicenvironment/policy/historicenvironmentbill/statutorynotices/?lang=en>).

If the Welsh Ministers choose not to schedule a monument or add to a scheduled area, any person with an interest in the monument when interim protection took effect may claim compensation for loss or damage directly attributable to its operation. Under the procedures set out in the Ancient Monuments (Claims for Compensation) (Wales) Regulations 2017 (<http://www.legislation.gov.uk/wsi/2017/641/contents/made>), a written claim for compensation must be submitted to the Welsh Ministers within six months from the date that interim protection ceased.

Right of review

If the Welsh Ministers decide to schedule a monument or add to a scheduled area, the 2016 Act gives the owner or occupier the right to request a review of the decision. The Scheduled Monuments (Review of Scheduling Decisions) (Wales) Regulations 2017 (<http://www.legislation.gov.uk/wsi/2017/643/contents/made>) supplement the Act's provisions by setting out the grounds for reviews and detailed procedural matters.

A review may only be sought on the grounds that a monument is not of national importance or that an addition to a scheduled area is unjustified. The Planning Inspectorate has been appointed to undertake all reviews on behalf of the Welsh Ministers.

An application for a review, including full particulars of the applicant's case, must be made within 12 weeks of the receipt of the Welsh Ministers' notice of designation. Any interested parties who contributed to the original consultation and any other persons or bodies considered appropriate by the Planning Inspectorate must be informed of the review and may make representations. The Planning Inspectorate may elect to use one or more of the following methods in conducting a review:

- written representations,
- a hearing, or
- a public local inquiry.

Once the Planning Inspectorate has gathered sufficient evidence and reached a decision, it must inform all of the participants in the review of its findings. The Welsh Ministers must implement any alterations to the scheduling of a monument that might be required by such a decision.

Scheduled monument consent (sections 5 – 10)

It is an offence to undertake virtually any works to a scheduled monument without first obtaining scheduled monument consent, which is granted by the Welsh Government's Historic Environment Service (Cadw) on behalf of the Welsh Ministers. The Ancient Monuments (Class Consents) Order 1994 (<http://www.legislation.gov.uk/uksi/1994/1381/contents/made>) permits the

continuation of certain classes of works — for instance, agricultural and forestry works that have been legally carried out in the same location during the previous six years.

The 2016 Act makes several adjustments to the scheduled monument consent system to modernise it and align it more closely with listed building consent procedures.

Simplified scheduled monument consent procedure (section 5)

The 2016 Act makes provision for a simplified scheduled monument consent procedure. The Ancient Monuments (Applications for Scheduled Monument Consent) (Wales) Regulations 2017 (<http://www.legislation.gov.uk/wsi/2017/642/contents/made>) state that the procedure will only be available for certain minor works. In such cases, if both Cadw and the applicant are content to use the simplified procedure, a full consent application will not be required. Cadw, however, will still provide a written scheduled monument consent.

Consent for the retention of unauthorised works (section 6)

Cadw can grant consent for the retention of unauthorised works to a scheduled monument. This will only happen rarely and in situations where the works are beneficial to the monument. This is not introducing an alternative to proper prior consent for works to a scheduled monument. It does not provide retrospective consent for the unauthorised works, which could still be the subject of legal action.

Refusal of repeat applications (section 8)

Cadw can refuse to consider an application for scheduled monument consent if a similar application has been refused within the previous two years or is currently under consideration.

Choice of method to receive representations (section 9)

Before determining whether or not to grant scheduled monument consent, the Welsh Ministers have the discretion to hold a public local inquiry, or appoint an individual to hold a hearing or receive representations in writing. Whatever method is chosen, the Welsh Ministers must consider all representations received.

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 <http://www.legislation.gov.uk/anaw/2016/4/contents>

Other scheduled monument provisions of the 2016 Act

Fact sheet 2 provides information on the provisions of the Act that relate to scheduled monument enforcement, defences and powers of entry.