

The Historic Environment (Wales) Act 2016 — Fact Sheet 2

Scheduled monuments — 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' — <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:

- 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 (sections 12 and 13)

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

Temporary stop notices (section 13)

The Welsh Government's Historic Environment Service (Cadw), acting on behalf of the Welsh Ministers, is now 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 requires specified works to be stopped for 28 days from the date that it is first posted on or near the monument. If an agreed resolution to the situation cannot be reached while the works are suspended, the notice can be followed by further enforcement action or prosecution. Failure to comply with a temporary stop notice constitutes an offence in addition to any offence arising from the unauthorised works.

If a temporary stop notice is incorrectly served or withdrawn without the grant of scheduled monument consent, a person with an interest in the monument or land concerned may claim compensation from the Welsh Ministers for any loss or damage arising directly from the effect of the notice. A written claim must be submitted within six months in accordance with the procedures set out in the Ancient Monuments (Claims for Compensation) (Wales) Regulations 2017 (<http://www.legislation.gov.uk/wsi/2017/641/contents/made>).

Enforcement notices (section 12)

Cadw is also 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 (sections 15–17)

The 2016 Act restricts the availability of the defence of ignorance in cases of damage or unauthorised works to scheduled monuments.

It is now 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.

Details and maps of scheduled monuments are freely available from Cof Cymru, Cadw's online, map-based resource for national historic assets in Wales (<http://cadw.gov.wales/historicenvironment/recordsv1/cof-cymru/?lang=en>). Cof Cymru also furnishes information on listed buildings, protected wrecks, registered historic landscapes and World Heritage Sites; it will eventually include registered historic parks and gardens.

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 the owner is unknown or cannot be contacted and there is a real threat that significant archaeological information will be lost.

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 1 provides information on the provisions of the Act that relate to the definition of a monument, the designation of a scheduled monument and scheduled monument consent.