

## **Ancient Monuments and Archaeological Areas Act 1979**

### **AMENDMENTS TO BE MADE BY THE HISTORIC ENVIRONMENT (WALES) BILL**

#### **Purpose**

This document is intended to show how the provisions of the Ancient Monuments and Archaeological Areas Act 1979, as they applied in relation to Wales on 7 January 2015, would look as amended by the Historic Environment (Wales) Bill (if enacted as introduced on 1 May 2015).

Material to be deleted by the Historic Environment (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Historic Environment (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments.

#### **Warning**

**This text has been prepared by officials of Cadw. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.**

**It has been produced solely to help people understand the effect of the Historic Environment (Wales) Bill. It is not intended for use in any other context.**

# **Ancient Monuments and Archaeological Areas Act 1979**

*Amending  
section of  
the Historic  
Environment  
(Wales) Bill*

## **Part I**

### **Ancient Monuments**

#### ***Protection of scheduled monuments***

#### **1 Schedule of monuments**

- (1) The Secretary of State shall compile and maintain for the purposes of this Act (in such form as he thinks fit) a schedule of monuments (referred to below in this Act as "the Schedule").
- (2) The Secretary of State shall on first compiling the Schedule include therein--
  - (a) any monument included in the list last published before the commencement of this Act under section 12 of the Ancient Monuments Consolidation and Amendment Act 1913; and
  - (b) any monument in respect of which the Secretary of State has before the commencement of this Act served notice on any person in accordance with section 6 (1) of the Ancient Monuments Act 1931 of his intention to include it in a list to be published under section 12.
- (3) Subject to subsection (4) below, the Secretary of State may on first compiling the Schedule or at any time thereafter include therein any monument which appears to him to be of national importance.

The Secretary of State shall consult the Historic Buildings and Monuments Commission for England (in this Act referred to as "the Commission") before he includes in the Schedule a monument situated in England.
- (4) The power of the Secretary of State under subsection (3) above to include any monument in the Schedule does not apply to any structure which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family.
- (5) The Secretary of State may--
  - (a) exclude any monument from the Schedule; or
  - (b) amend the entry in the Schedule relating to any monument (whether by excluding anything previously included as part of the monument or adding anything not previously so included, or otherwise).

In the case of a monument situated in England, the Secretary of

State shall consult with the Commission before he makes an exclusion or amendment.

(5A) Section 1AA makes provision about consultation by the Welsh Ministers on proposals to include or exclude a monument or to make a material amendment in relation to a scheduled monument.

S 4(1)

(6) As soon as may be after--

- (a) including any monument in the Schedule under subsection (3) above;
- (b) amending the entry in the Schedule relating to any monument; or
- (c) excluding any monument from the Schedule;

the Secretary of State shall (subject to sub-section (6A) below) inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the action taken and, in a case falling within paragraph (a) or (b) above, shall also send to him or them a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.

(6A) Subsection (6) above shall not apply as regards a monument situated in England but, as soon as may be after acting as mentioned in paragraph (a), (b) or (c) of that subsection as regards such a monument, the Secretary of State shall inform the Commission of the action taken and, in a case falling within paragraph (a) or (b) of that subsection, shall also send to the Commission a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.

(6B) As soon as may be after making a material amendment of the kind described in section 1AA(5) in relation to a monument identified in the Schedule by reference to a map, the Welsh Ministers must—

- (a) inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the action taken; and
- (b) send to those persons a copy of the amended map.

S 4(2)

(6C) Section 1AE(2) makes further provision about information that the Welsh Ministers must provide after making certain amendments in relation to the Schedule.

(7) Subject to subsection (7A) below the Secretary of State shall from time to time publish a list of all the monuments which are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list published in sections, all sections of the list

need not be published simultaneously.

- (7A) Subsection (7) above shall not apply as regards monuments situated in England, but the Secretary of State shall from time to time supply the Commission with a list of all the monuments which are so situated and are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list supplied in sections, all sections of the list need not be supplied simultaneously.
- (8) The Secretary of State may from time to time publish amendments of any list published under subsection (7) above, and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being--
  - (a) of the monuments listed; and
  - (b) of any matters purporting to be produced in the list from the entries in the Schedule relating to the monuments listed.
- (8A) The Secretary of State shall from time to time supply the Commission with amendments of any list supplied under subsection (7A) above.
- (9) An entry in the Schedule recording the inclusion therein of a monument situated in England and Wales shall be a local land charge.
- (10) It shall be competent to record in the Register of Sasines--
  - (a) a certified copy of the entry or (as the case may be) the amended entry in the Schedule relating to any monument in Scotland which is heritable; and
  - (b) where any such monument is excluded from the Schedule and a certified copy of the entry in the Schedule relating to it has previously been so recorded under paragraph (a) above, a certificate issued by or on behalf of the Secretary of State stating that it has been so excluded.
- (11) In this Act "scheduled monument" means any monument which is for the time being included in the Schedule.

## **1A Commission's functions as to informing and publishing**

- (1) As soon as may be after the Commission--
  - (a) have been informed as mentioned in section 1(6A) of this Act, and
  - (b) in a case falling within section 1(6)(a) or (b) of this Act, have

received a copy of the entry or (as the case may be) of the amended entry from the Secretary of State,

the Commission shall inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the inclusion, amendment or exclusion and, in a case falling within section 1(6)(a) or (b), shall also send to him or them a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.

- (2) As soon as may be after the Commission receive a list or a section in pursuance of section 1(7A) of this Act, they shall publish the list or section (as the case may be).
- (3) The Commission shall from time to time publish amendments of any list published under subsection (2) above, and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being--
  - (a) of the monuments listed; and
  - (b) of any matters purporting to be reproduced in the list from the entries in the Schedule relating to monuments listed.

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

- (1) This section applies where the Welsh Ministers are proposing—
  - (a) to include a monument in the Schedule;
  - (b) to exclude a monument from the Schedule; or
  - (c) 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—
  - (a) serve notice of the proposed inclusion, exclusion or amendment on the appropriate persons; and
  - (b) invite those persons to submit written representations about the proposal.
- (3) The appropriate persons are—
  - (a) the owner of the monument;
  - (b) if the owner is not the occupier, the occupier of the monument
  - (c) each local authority in whose area the monument is situated;  
and

S 3(1)

(d) 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—

(a) specify the proposed inclusion, exclusion or amendment;

(b) 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

(c) in the case of a proposed inclusion or a proposed amendment of the kind described in subsection (5)(a)—

(i) include a statement of the effect of section 1AB; and

(ii) 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—

(a) adds to the area shown for the monument on the map referred to in subsection (1)(c); or

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

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

S 3(1)

**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.

S 3(1)

**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—
  - (a) by means of a public local inquiry;
  - (b) by means of a hearing;
  - (c) on the basis of written representations.
- (6) The Welsh Ministers may by regulations make further provision in connection with reviews under this section, including provision about —
  - (a) the grounds on which an application for a review may be made;
  - (b) the information that must be provided to, or may be required by, the Welsh Ministers in connection with an application;
  - (c) the form and manner in which an application must be made;
  - (d) the period within which an application must be made;
  - (e) the procedure that is to be followed in connection with a review;
  - (f) the conduct of public local inquiries and hearings; and
  - (g) costs that may be required to be paid in connection with a review.
- (7) Regulations made by virtue of subsection (6)(e), (f) or (g) may confer power on the Welsh Ministers—
  - (i) to determine matters of a description specified in the regulations; and
  - (ii) to give directions in relation to those matters.
- (8) Schedule A2 applies to reviews under this section.

S 3(1)

## **2 Control of works affecting scheduled monuments**

- (1) If any person executes or causes or permits to be executed any

works to which this section applies he shall be guilty of an offence unless the works are authorised under this Part of this Act or by development consent.

- (2) This section applies to any of the following works, that is to say--
  - (a) any works resulting in the demolition or destruction of or any damage to a scheduled monument;
  - (b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto; and
  - (c) any flooding or tipping operations on land in, on or under which there is a scheduled monument.
- (3) Without prejudice to any other authority to execute works conferred under this Part of this Act, works to which this section applies are authorised under this Part of this Act if--
  - (a) the Secretary of State has granted written consent (referred to below in this Act as "scheduled monument consent") for the execution of the works; and
  - (b) the works are executed in accordance with the terms of the consent and of any conditions attached to the consent.

(3A) If works to which this section applies have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument without being authorised under this Part, and the Welsh Ministers grant consent for the retention of the works, the works are authorised under this Part from the grant of the consent.

(3B) References in this Act to scheduled monument consent (other than in section 4) include a reference to consent under subsection (3A).

} S 6(1)

- (4) Scheduled monument consent may be granted either unconditionally or subject to conditions (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).
- (5) Without prejudice to the generality of subsection (4) above, a condition attached to a scheduled monument consent may require that
  - (a) a person authorised by the Commission (in a case where the monument in question is situated in England), or
  - (b) the Secretary of State or a person authorised by the Secretary of State (in any other case)

be afforded an opportunity, before any works to which the consent

relates are begun, to examine the monument and its site and carry out such excavations therein as appear to the Secretary of State to be desirable for the purpose of archaeological investigation.

(5A) In the case of a monument situated in Wales, the reference in subsection (3)(a) to the granting of written consent includes a reference to the granting of consent in such other manner as may be prescribed by the Welsh Ministers. } S 5(1)

(5B) The Welsh Ministers may by regulations make provision as to the form and content of consent under this section in relation to a monument situated in Wales.

(6) Without prejudice to subsection (1) above, if a person executing or causing or permitting to be executed any works to which a scheduled monument consent relates fails to comply with any condition attached to the consent he shall be guilty of an offence, unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.

(6A) In any proceedings for an offence under subsection (1) in relation to a monument or anything else on which interim protection is conferred (which is, as a result of section 1AB(2), treated as a scheduled monument or part of such a monument) — } S 3(2)

(a) it is a defence for the accused to prove that the accused did not know, and could not reasonably have been expected to know, that the interim protection had been conferred; and

(b) where the defence is raised by a person on whom a notice should have been served under section 1AA(2), it is for the prosecution to prove that the notice was served on the person.

(7) In any proceedings for an offence under this section in relation to works within subsection (2)(a) above it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument.

(8) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) above which have been executed in relation to a scheduled monument situated in England or land in, on or under which there is such a scheduled monument it shall be a defence for the accused to prove that he did not know and had no reason to believe that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument. S 15(2)

(8A) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) which have been executed in S 15(3)

relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument, it is a defence for the accused to prove that, before executing the works or before causing or permitting their execution (as the case may be), the accused —

(a) had taken all reasonable steps to find out whether there was a scheduled monument in the area affected by the works; and

(b) did not know, and had no reason to believe, that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.

S 15(3)

- (9) In any proceedings for an offence under this section it shall be a defence to prove that the works were urgently necessary in the interests of safety or health and that notice in writing of the need for the works was given to the Secretary of State as soon as reasonably practicable.
- (10) A person guilty of an offence under this section shall be liable--
- (a) on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment to a fine.
- (11) Part I of Schedule 1 to this Act shall have effect with respect to applications for and the effect of, scheduled monument consent.

### **3 Grant of scheduled monument consent by order of the Secretary of State**

- (1) The Secretary of State may by order grant scheduled monument consent for the execution of works of any class or description specified in the order, and any such consent may apply to scheduled monuments of any class or description so specified. Before granting consent in relation to monuments of a class or description which includes monuments situated in England, the Secretary of State shall consult with the Commission in relation to the monuments so situated.
- (2) Any conditions attached by virtue of section 2 of this Act to a scheduled monument consent granted by an order under this section shall apply in such class or description of cases as may be specified in the order.
- (3) The Secretary of State may direct that scheduled monument consent granted by an order under this section shall not apply to any scheduled monument specified in the direction, and may

withdraw any direction given under this subsection. Before making a direction in relation to a monument situated in England, or withdrawing such a direction, the Secretary of State shall consult with the Commission.

- (4) A direction under subsection (3) above shall not take effect until notice of it has been served on the occupier or (if there is no occupier) on the owner of the monument in question.
- (5) References below in this Act to a scheduled monument consent do not include references to a scheduled monument consent granted by an order under this section unless the contrary intention is expressed.

#### **4 Duration, modification and revocation of scheduled monument consent**

- (1) Subject to subsection (2) below, if no works to which a scheduled monument consent relates are executed or started within the period of five years beginning with the date on which the consent was granted, or such longer or shorter period as may be specified for the purposes of this subsection in the consent, the consent shall cease to have effect at the end of that period (unless previously revoked in accordance with the following provisions of this section).
- (2) Subsection (1) above does not apply to a scheduled monument consent which provides that it shall cease to have effect at the end of a period specified therein.
- (3) If it appears to the Secretary of State to be expedient to do so, he may by a direction given under this section modify or revoke a scheduled monument consent to any extent he considers expedient. Where a direction would (if given) affect a monument situated in England, the Secretary of State shall consult with the Commission before he gives such a direction.
- (4) Without prejudice to the generality of the power conferred by subsection (3) above to modify a scheduled monument consent, it extends to specifying a period, or altering any period specified, for the purposes of subsection (1) above, and to including a provision to the effect mentioned in subsection (2) above, or altering any period specified for the purposes of any such provision.
- (5) Part II of Schedule 1 to this Act shall have effect with respect to directions under this section modifying or revoking a scheduled monument consent.

**5 Execution of works for preservation of a scheduled monument by Secretary of State in cases of urgency**

- (1) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a scheduled monument he may enter the site of the monument and execute those works, after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than seven days' notice in writing of his intention to do so.
- (2) Where the Secretary of State executes works under this section for repairing any damage to a scheduled monument--
  - (a) any compensation order previously made in respect of that damage under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders against convicted persons) in favour of any other person shall be enforceable (so far as not already complied with) as if it had been made in favour of the Secretary of State; and
  - (b) any such order subsequently made in respect of that damage shall be made in favour of the Secretary of State.
- (3) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a scheduled monument situated in England, he may (instead of acting as mentioned in subsection (1) above) authorise the Commission to enter the site of the monument and execute such works as are specified in the authorisation.
- (4) In that case, the Commission may enter the site and execute the works after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than seven days' notice in writing of their intention to do so.
- (5) Where the Secretary of State gives an authorisation under subsection (3) above, subsection (2) above shall have effect with the substitution of "Commission" for "Secretary of State" (in each place) and of "execute" for "executes".

**6 Powers of entry for inspection of scheduled monuments, etc**

- (1) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining its condition and
  - (a) whether any works affecting the monument are being carried out in contravention of section 2(1) of this Act; or

- (b) whether it has been or is likely to be damaged (by any such works or otherwise).
- (2) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land in connection with--
  - (a) any application for scheduled monument consent for works affecting that monument; or
  - (b) any proposal by the Secretary of State to modify or revoke a scheduled monument consent for any such works.
- (3) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of--
  - (a) observing the execution on the land of any works to which a scheduled monument consent relates; and
  - (b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works;

so as to ensure that the works in question are to have been executed in accordance with the terms of the consent and of any conditions attached to the consent.

- (4) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land on which any works to which a scheduled consent relates are being carried out for the purpose of--
  - (a) inspecting the land (including any buildings or other structures on the land) with a view to recording any matters of archaeological or historical interest; and
  - (b) observing the execution of those works with a view to examining and recording any objects or other material of archaeological or historical interest, and recording any matters of archaeological or historical interest, discovered during the course of those works.
- (5) Any person duly authorised in writing by the Secretary of State may enter any land in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Secretary of State to be desirable with a view to preserving the monument from accidental or deliberate damage. This subsection does not apply to land in England.

- (6) References in this section to scheduled monument consent include references to consent granted by order under section 3 of this Act.

**6A Commission's powers of entry in relation to scheduled monuments**

- (1) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining whether any works affecting the monument have been or are being carried out in contravention of section 2(1) of this Act and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1).
- (2) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of--
  - (a) observing the execution on the land of any works to which a scheduled monument consent relates; and
  - (b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works,with a view to ascertaining whether the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the consent, and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1) or (6) of this Act.
- (3) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land in connection with any consultation made in respect of the monument under section 4(3) of this Act or paragraph 3(3)(c) of Schedule 1 to this Act.
- (4) Any person duly authorised in writing by the Commission may enter any land which is in England and in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Commission to be desirable with a view to preserving the monument from accidental or deliberate damage.
- (5) References in this section to scheduled monument consent include references to consent granted by order under section 3 of this Act.



## 7 **Compensation for refusal of scheduled monument consent**

- (1) Subject to the following provisions of this section, where a person who has an interest in the whole or any part of a monument incurs expenditure or otherwise sustains any loss or damage in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to any works of a description mentioned in subsection (2) below, the Secretary of State or (where the monument in question is situated in England) the Commission shall pay to that person compensation in respect of that expenditure, loss or damage.

References in this section and in section 8 of this Act to compensation being paid in respect of any works are references to compensation being paid in respect of any expenditure incurred or other loss or damage sustained in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to those works.

- (2) The following are works in respect of which compensation is payable under this section--
- (a) works which are reasonably necessary for carrying out any development for which planning permission had been granted (otherwise than by a general development order) before the time when the monument in question became a scheduled monument and was still effective at the date of the application for scheduled monument consent;
  - (b) works which do not constitute development, or constitute development such that planning permission is granted therefor by a general development order; and
  - (c) works which are reasonably necessary for the continuation of any use of the monument for any purpose for which it was in use immediately before the date of the application for scheduled monument consent.

For the purpose of paragraph (c) above, any use in contravention of any legal restrictions for the time being applying to the use of the monument shall be disregarded.

- (3) The compensation payable under this section in respect of any works within subsection (2)(a) above shall be limited to compensation in respect of any expenditure incurred or other loss or damage sustained by virtue of the fact that, in consequence of the Secretary of State's decision, any development for which the planning permission in question was granted could not be carried out without contravening section 2(1) of this Act.
- (4) In the case of a monument situated in England, a person shall not S 10(1)

be entitled to compensation under this section by virtue of subsection (2)(b) above if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument, unless those works consist solely of operations involved in or incidental to the use of the site of the monument for the purposes of agriculture or forestry (including afforestation).

(4A) In the case of a monument situated in Wales, a person is not entitled to compensation under this section by virtue of section (2)(b) if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument, unless those works consist solely of operations involved in or incidental to the use of the site of the monument for purposes specified by the Welsh Ministers by regulations.

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- (5) In a case where scheduled monument consent is granted subject to conditions, a person shall not be entitled to compensation under this section by virtue of subsection (2)(c) above unless compliance with those conditions would in effect make it impossible to use the monument for the purpose there mentioned.
- (6) In calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of an interest in land--
  - (a) it shall be assumed that any subsequent application for scheduled monument consent in relation to works of a like description would be determined in the same way; but
  - (b) in the case of a refusal of scheduled monument consent, the Secretary of State, on refusing that consent, undertook to grant such consent for some other works affecting the monument in the event of an application being made in that behalf, regard shall be had to that undertaking.
- (7) References in this section to a general development order are references to a development order made as a general order applicable (subject to such exceptions as may be specified therein) to all land.

## **8 Recovery of compensation under section 7 on subsequent grant of consent**

- (1) Subject to the following provisions of this section, this section applies--
  - (a) in a case where compensation under section 7 of this Act was paid in consequence of the refusal of a scheduled monument consent, if the Secretary of State subsequently grants scheduled monument consent for the execution of all or any of

the works in respect of which the compensation was paid; and

- (b) in a case where compensation under that section was paid in consequence of the granting of a scheduled monument consent subject to conditions, if the Secretary of State subsequently so modifies that consent that those conditions, or any of them, cease to apply to the execution of all or any of the works in respect of which the compensation was paid or grant a new consent in respect of all or any of those works free from those conditions, or any of them.

(2) This section does not apply in any case unless--

- (a) the compensation paid exceeded £20; and
- (b) the requirement mentioned in subsection (2A) below is fulfilled.

(2A) The requirement is that--

- (a) where the monument in question is situated in England, the Commission have caused notice of the payment of compensation to be deposited with the council of each district or London borough in which the monument is situated or (where it is situated in the City of London, the Inner Temple or the Middle Temple) with the Common Council of the City of London;
- (b) where the monument in question is situated in Scotland, the Secretary of State has caused such notice to be deposited with the local authority of each area in which the monument is situated;
- (c) where the monument in question is situated in Wales, the Secretary of State has caused such notice to be deposited with the council of each county or county borough in which the monument is situated.

(3) In granting or modifying a scheduled monument consent in a case to which this section applies the Secretary of State may do so on terms that no works in respect of which the compensation was paid are to be executed in pursuance of the consent until the recoverable amount has been repaid to the Secretary of State or secured to his satisfaction or (as the case may be) has been repaid to the Commission or secured to their satisfaction.

Subject to subsection (4) below, in this subsection "the recoverable amount" means such amount (being an amount representing the whole of the compensation previously paid or such part thereof as the Secretary of State thinks fit) as the Secretary of State may specify in giving notice of his decision on the application for scheduled monument consent or (as the case may be) in the

direction modifying the consent.

- (4) Where a person who has an interest in the whole or any part of a monument is aggrieved by the amount specified by the Secretary of State as the recoverable amount for the purpose of subsection (3) above, he may require the determination of that amount to be referred to the Upper Tribunal or (in the case of a monument situated in Scotland) to the Lands Tribunal for Scotland; and in any such case the recoverable amount for the purposes of that subsection shall be such amount (being an amount representing the whole or any part of the compensation previously paid) as that Tribunal may determine to be just in the circumstances of the case.
- (5) A notice deposited under subsection (2)(b) above shall specify the decision which gave rise to the right to compensation, the monument affected by the decision, and the amount of the compensation.
- (6) A notice so deposited in the case of a monument situated in England and Wales shall be a local land charge; and for the purposes of the Local Land Charges Act 1975 the council with whom any such notice is deposited shall be treated as the originating authority as respects the charge thereby constituted.

## **9 Compensation where works affecting a scheduled monument cease to be authorised**

- (1) Subject to the following provisions of this section, where any works affecting a scheduled monument which were previously authorised under this Part of this Act cease to be so, then, if any person who has an interest in the whole or any part of the monument--
  - (a) has incurred expenditure in carrying out works which are rendered abortive by the fact that any further works have ceased to be so authorised; or
  - (b) has otherwise sustained loss or damage which is directly attributable to that fact;the Secretary of State or (where the monument in question is situated in England) the Commission shall pay to that person compensation in respect of that expenditure, loss or damage.
- (2) Subsection (1) above only applies where the works cease to be authorised under this Part of this Act--
  - (a) by virtue of the fact that a scheduled monument consent granted by order under section 3 of this Act ceases to apply to any scheduled monument (whether by virtue of variation or

- revocation of the order or by virtue of a direction under subsection (3) of that section); or
- (b) by virtue of the modification or revocation of a scheduled monument consent by a direction given under section 4 of this Act; or
  - (c) in accordance with paragraph 8 of Schedule 1 to this Act, by virtue of the service of a notice of proposed modification or revocation of a scheduled monument consent under paragraph 5 of that Schedule.
- (3) A person shall not be entitled to compensation under this section in a case falling within subsection (2)(a) above unless, on an application for scheduled monument consent for the works in question, consent is refused, or is granted subject to conditions other than those which previously applied under the order.
  - (4) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out those works.
  - (5) Subject to subsection (4) above, no compensation shall be paid under this section in respect of any works carried out before the grant of the scheduled monument consent in question, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

*Agreements concerning scheduled monuments etc: Wales*

**9ZA Heritage partnership agreement**

- (1) The Welsh Ministers may enter into an agreement under this section (a “heritage partnership agreement”) with the owner of—
  - (a) a scheduled monument situated in Wales; or
  - (b) any land adjoining or in the vicinity of such a scheduled monument (“associated land”).
- (2) Any of the following may also be a party to a heritage partnership agreement (in addition to the owner and the Welsh Ministers)—
  - (a) any occupier of the scheduled monument or its associated land;
  - (b) any person with an interest in the scheduled monument or its associated land;

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- (c) any person involved in the management of the scheduled monument or its associated land;
- (d) any local authority in whose area the scheduled monument or its associated land is situated;
- (e) any local authority which is a guardian of the scheduled monument or its associated land by virtue of this Act;
- (f) any other person who appears to the Welsh Ministers appropriate as having a special knowledge of, or interest in, the scheduled monument, or in monuments of special historic or archaeological interest more generally.

(3) A heritage partnership agreement may contain provision—

- (a) granting scheduled monument consent under section 2(3) for specified works for the purpose of removing or repairing the scheduled monument to which the agreement relates or any part of it, or of making any alterations or additions to the monument; and
- (b) specifying any conditions to which the consent is subject (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).

(4) A heritage partnership agreement may also—

- (a) specify or describe works that would, or would not, in the view of the parties to the agreement, constitute works to which section 2 applies;
- (b) make provision about the maintenance and preservation of the monument or its associated land;
- (c) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the scheduled monument or its associated land;
- (d) provide for public access to the scheduled monument or its associated land and the provision of associated facilities, information or services to the public;
- (e) restrict access to, or use of, the scheduled monument or its associated land;
- (f) prohibit the doing of any specified thing in relation to the scheduled monument or its associated land;
- (g) provide for the Welsh Ministers, or any local authority in whose area the scheduled monument or its associated land is situated, to make payments of specified amounts and on

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specified terms—

- (i) for, or towards, the cost of any works provided for under the agreement; or
- (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.

(5) In this section “specified” means specified or described in the heritage partnership agreement.

(6) In this section and in section 9ZB “owner”, in relation to a scheduled monument or its associated land, means a person who is for the time being—

- (a) the estate owner in respect of the fee simple in the monument or its associated land (as the case may be); or
- (b) entitled to a tenancy of the monument or its associated land (as the case may be) for a term of years certain of which not less than 7 years remains unexpired.

(7) Where more than one person is the owner of a scheduled monument or its associated land, the references in subsection (1) and in section 9ZB(2)(b) to the owner are to any one or more of those persons.

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### **9ZB Heritage partnership agreement: supplemental**

(1) A heritage partnership agreement—

- (a) must be in writing;
- (b) must make provision for the parties to review its terms at intervals specified in the agreement;
- (c) must make provision for its termination and variation; and
- (d) may contain incidental and consequential provision.

(2) A heritage partnership agreement may relate to more than one scheduled monument, provided that the following are parties to the agreement in each case—

- (a) the Welsh Ministers; and
- (b) the owner of the scheduled monument or the owner of land adjoining or in the vicinity of the scheduled monument.

(3) The Welsh Ministers may by regulations make provision—

- (a) about any consultation that must take place before a heritage partnership agreement is made or varied;

- (b) about the publicity that must be given to a heritage partnership agreement before or after it is made or varied;
  - (c) specifying terms that must be included in a heritage partnership agreement;
  - (d) enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an agreement;
  - (e) about the provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision;
  - (f) disapplying, or applying or reproducing with or without modifications, any provision of this Act for the purposes of heritage partnership agreements.
- (4) A heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not a party to the agreement (and, accordingly, scheduled monument consent granted by such an agreement enures only for the benefit of the parties to the agreement).

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*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.

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**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
  - (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

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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.
- (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

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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.

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(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 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.

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*Scheduled monuments: temporary stop notices*

**9ZI Temporary stop 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 “temporary stop notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient that the works are stopped immediately (or that part of them is).
- (3) A temporary stop notice must be in writing and must—
- (a) specify the works in question;
  - (b) prohibit execution of the works (or so much of them as is specified in the notice);
  - (c) set out the Welsh Ministers’ reasons for issuing the notice; and

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- (d) include a statement of the effect of section 9ZK.
- (4) A temporary stop notice may be served on a person who appears to the Welsh Ministers—
- (a) to be carrying out the works or causing them to be carried out; or
  - (b) to have an interest in the monument or land.
- (5) The Welsh Ministers must display a copy of the notice on the monument or land (except where doing so might damage the monument, in which case it is sufficient to display the notice in a prominent position as close to the monument or land as is reasonably practicable).
- (6) A temporary stop notice takes effect when the copy of it is first displayed in accordance with subsection (5).
- (7) A temporary stop notice ceases to have effect—
- (a) at the end of the period of 28 days beginning with the day on which the copy of it is first displayed in accordance with subsection (5); or
  - (b) if the notice specifies a shorter period beginning with that day, at the end of that period.
- (8) But if the Welsh Ministers withdraw the notice before the time when it would otherwise cease to have effect under subsection (7), the notice ceases to have effect on its withdrawal.
- (9) The Welsh Ministers may not issue a subsequent temporary stop notice in relation to the same works unless they have, since issuing the previous notice, taken other enforcement action in relation to the contravention referred to in subsection (1).
- (10) The reference in subsection (9) to taking other enforcement action includes a reference to obtaining an injunction under section 9ZM.

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### **9ZJ Temporary stop notice: power of entry**

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 temporary stop notice should be served;
- (b) securing the display or removal of a temporary stop notice or securing that it is affixed for the purposes of service in accordance with section 56(2)(b);

- (c) ascertaining whether a temporary stop notice has been complied with;
- (d) considering a claim for compensation under section 9ZL.

### **9ZK Temporary stop notice: offence**

- (1) A person is guilty of an offence if the person contravenes, or causes or permits a contravention of, a temporary stop notice—
  - (a) which has been served on the person; or
  - (b) a copy of which has been displayed in accordance with section 9ZI(5).
- (2) 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 temporary stop notice, be convicted of more than one offence under this section by reference to different periods.
- (3) 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 temporary stop notice.
- (4) In proceedings against a person for an offence under this section, it is a defence for the person to prove—
  - (a) that the works were urgently necessary in the interests of safety or health; and
  - (b) that notice in writing of the need for the works was given to the Welsh Ministers as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (6) 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 of the offence.

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### **9ZL Temporary stop notice: compensation**

- (1) A person who, on the day when a temporary stop notice is first displayed in accordance with section 9ZI(5), has an interest in the monument or land concerned is, on making a claim to the Welsh Ministers within the prescribed time and manner, entitled to be paid compensation by them in respect of any loss or damage directly attributable to the effect of the notice.

- (2) But subsection (1) applies only if—
    - (a) the works specified in the notice do not contravene section 2(1) or (6); or
    - (b) the Welsh Ministers withdraw the notice other than following the grant of scheduled monument consent, after the day mentioned in subsection (1), which authorises the works.
  - (3) The loss or damage in respect of which compensation is payable under this section includes a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the notice.
  - (4) No compensation is payable under this section in the case of loss or damage suffered by a claimant if—
    - (a) the claimant was required to provide information under section 57, and
    - (b) the loss or damage could have been avoided if the claimant had provided the information or otherwise co-operated with the Welsh Ministers when responding to the notice.
- } S 13(1)

*Scheduled monuments: injunctions*

**9ZM Injunctions**

- (1) This section applies where the Welsh Ministers consider it necessary or expedient for any actual or apprehended contravention of section 2(1) or (6) in respect of a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument to be restrained by injunction.
  - (2) The Welsh Ministers may apply to the High Court or the county court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Act.
  - (3) On an application under subsection (2), the court may grant such an injunction as it thinks appropriate for the purpose of restraining the contravention.
- } S 14

**26 Power of entry on land believed to contain an ancient monument**

- (1) A person duly authorised in writing by the Secretary of State may at any reasonable time enter any land in, on or under which the Secretary of State knows or has reason to believe there is an ancient monument for the purpose of inspecting the land (including any building or other structure on the land) with a view to recording



any matters of archaeological or historical interest.

- (2) Subject to subsection (3) below, a person entering any land in exercise of the power conferred by subsection (1) above may carry out excavations in the land for the purpose of archaeological investigation.
- (3) No excavation shall be made in exercise of the power conferred by subsection (2) above except with the consent of every person whose consent to the making of the excavation would be required apart from this section.

(4) But subsection (3) does not apply in relation to excavations in the land by a person authorised by the Welsh Ministers under subsection (1) if the Welsh Ministers know or have reason to believe that an ancient monument they know or believe to be in, on or under the land is or may be at risk of imminent damage or destruction.

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## 27 **General provisions as to compensation for depreciation under Part I**

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 5 of the Land Compensation Act 1961 or, in relation to land in Scotland, the rules set out in section 12 of the Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

- (2) This section applies to any compensation payable under ~~section 7 or 9~~ section 1AD, 7, 9 or 9ZL of this Act in respect of any loss or damage consisting of depreciation of the value of an interest in land.

S 4(3) and  
S 13(2)

- (3) Where an interest in land is subject to a mortgage--
  - (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the mortgage;
  - (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no compensation to which this section applies shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage);

and

- (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

## 28 Offence of damaging certain ancient monuments

- (1) A person who without reasonable excuse destroys or damages any protected monument situated in England - S 16(2)
  - (a) knowing that it is a protected monument; and
  - (b) intending to destroy or damage the monument or being reckless as to whether the monument would be destroyed or damaged;

shall be guilty of an offence.

- (1A) A person who without lawful excuse destroys or damages a protected monument situated in Wales is guilty of an offence if the person—
  - (a) knew or ought reasonably to have known that it was a protected monument; and
  - (b) intended to destroy or damage the monument or was reckless as to whether the monument would be damaged or destroyed.} S 16(3)

- (2) This section applies to anything done by or under the authority of the owner of the monument, other than an act for the execution of excepted works, as it applies to anything done by any other person.

In this subsection "excepted works" means works for which scheduled monument consent has been given under this Act (including any consent granted by order under section 3) or for which development consent has been granted.

- (3) In this section "protected monument" means any scheduled monument and any monument under the ownership or guardianship of the Secretary of State or the Commission or a local authority by virtue of this Act.
- (4) A person guilty of an offence under this section shall be liable--
  - (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or both; or

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

**29 Compensation orders for damage to monuments under guardianship in England and Wales**

Where the owner or any other person is convicted of an offence involving damage to a monument situated in England and Wales which was at the time of the offence under the guardianship of the Secretary of State or the Commission or any local authority by virtue of this Act, any compensation order made under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders against convicted persons) in respect of that damage shall be made in favour of the Secretary of State or the Commission or the local authority in question (as the case may require).

**30 Disposal of land acquired under Part I**

- (1) Subject to the following provisions of this section, the Secretary of State or the Commission or any local authority may dispose of any land acquired by them under section 10, 11 or 21 of this Act.
- (1A) The Secretary of State shall consult with the Commission before disposing of any land situated in England under this section.
- (1B) The Commission shall consult with the Secretary of State before disposing of any land under this section.
- (2) A local authority shall consult with the Secretary of State before disposing of any land under this section.
- (3) Subject to subsection (4) below, where the land in question is or includes a monument, the Secretary of State or the Commission or the local authority (as the case may be) may only dispose of it on such terms as will in their opinion ensure the preservation of the monument.
- (4) Subsection (3) above does not apply in any case where the Secretary of State or the Commission or the local authority (as the case may be) are satisfied that it is no longer practicable to preserve the monument (whether because of the cost of preserving it or otherwise).

**31 Voluntary contributions towards expenditure under Part I**

The Secretary of State or any local authority may receive voluntary

contributions for or towards the cost of any expenditure incurred by them under this Part of this Act (whether in relation to any particular monument or land or otherwise).

### 32 Interpretation of Part I

- (1) In this Part of this Act "maintenance" and "maintain" have the meanings given by section 13(7) of this Act, and expressions to which a meaning is given for the purposes of the Town and Country Planning Act 1990 or the Planning (Listed Buildings and Conservation Areas) Act 1990 or (as regards Scotland) for the purposes of the Town and Country Planning (Scotland) Act 1997 or the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 have the same meaning as in the said Acts of 1990 or (as the case may require) as in the said Acts of 1997.
- (2) References in this Part of this Act to a monument, in relation to the acquisition or transfer of any monument (whether under a power conferred by this Part of this Act or otherwise), include references to any interest in or right over the monument.
- (3) For the purposes of this Part of this Act the Secretary of State or the Commission or a local authority are the owners of a monument by virtue of this Act if the Secretary of State or the Commission or the local authority (as the case may be) have acquired it under section 10, 11 or 21 of this Act.

### Part III

#### Miscellaneous and Supplemental

##### Register of historic parks and gardens in Wales

#### 41A Register of historic parks and gardens in Wales

- (1) The Welsh Ministers must compile and maintain a register (to be known as "the register of historic parks and gardens") of such of the following grounds in Wales as appear to them to be of special historic interest—
  - (a) parks,
  - (b) gardens,
  - (c) designed ornamental landscapes,
  - (d) places of recreation,
  - (e) other designed grounds.
- (2) The Welsh Ministers must decide whether, or to what extent, it would be appropriate to include as part of the registration of

S 18(1)

- grounds of a description referred to in subsection (1)—
- (a) any building or water on, or adjacent or contiguous to, those grounds, or
  - (b) any land adjacent or contiguous to those grounds.
- (3) For the purpose of maintaining the register, the Welsh Ministers may from time to time modify it by—
- (a) adding an entry,
  - (b) removing an entry, or
  - (c) amending an entry.
- (4) As soon as reasonably practicable after including grounds in the register or modifying the register, the Welsh Ministers must inform—
- (a) the owner of the grounds in question,
  - (b) if the owner is not the occupier, the occupier, and
  - (c) each local authority or National Park Authority in whose area the grounds are situated.
- (5) Where the Welsh Ministers include grounds in the register or modify the register under subsection (3)(a) or (c), the duty to inform under subsection (4) also includes a duty to send each of the persons concerned a copy of the entry or modified entry (as the case may be).
- (6) The Welsh Ministers must publish the up-to-date register in such manner as they think appropriate.
- S 18(1)

### ***Restrictions on use of metal detectors***

#### **42 Restrictions on use of metal detectors**

- (1) If a person uses a metal detector in a protected place without the written consent of the Commission (in the case of a place situated in England) or of the Secretary of State (in any other case) he shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.
- (2) In this section--
- "metal detector" means any device designed or adapted for detecting or locating any metal or mineral in the ground; and
- "protected place" means any place which is either--
- (a) the site of a scheduled monument or of any monument under

the ownership or guardianship of the Secretary of State or the Commission or a local authority by virtue of this Act; or

- (b) situated in an area of archaeological importance.
- (3) If a person without written consent removes any object of archaeological or historical interest which he has discovered by the use of a metal detector in a protected place he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine. The reference in this subsection to written consent is to that of the Commission (where the place in question is situated in England) or of the Secretary of State (in any other case).
- (4) A consent granted by the Secretary of State or the Commission for the purposes of this section may be granted either unconditionally or subject to conditions.
- (5) If any person--
  - (a) in using a metal detector in a protected place in accordance with any consent granted by the Secretary of State or the Commission for the purposes of this section; or
  - (b) in removing or otherwise dealing with any object which he has discovered by the use of a metal detector in a protected place in accordance with any such consent;

fails to comply with any condition attached to the consent, he shall be guilty of an offence and liable, in a case falling within paragraph (a) above, to the penalty provided by subsection (1) above, and in a case falling within paragraph (b) above, to the penalty provided by subsection (3) above.

- (6) In any proceedings for an offence under subsection (1) above, it shall be a defence for the accused to prove that he used the metal detector for a purpose other than detecting or locating objects of archaeological or historical interest.
- (7) In any proceedings for an offence under subsection (1) or (3) above relating to a protected place situated in England, it shall be a defence for the accused to prove that he had taken all reasonable precautions to find out whether the place where he used the metal detector was a protected place and did not believe that it was.

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(8) In proceedings for an offence under subsection (1) or (3) relating to a protected place situated in Wales, it is a defence for the accused to prove that the accused—

- (a) had taken all reasonable steps to find out whether the place in which the metal detector was used was a protected place; and

} S 17(3)

(b) did not know, and had no reason to believe, that the place was a protected place.

S 17(3)

### ***Powers of entry***

#### **43 Power of entry for survey and valuations**

- (1) Any person authorised under this section may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that or any other land under this Act or in connection with any claim for compensation under this Act in respect of any such acquisition or for any damage to that or any other land.
- (2) A person is authorised under this section if he is an officer of the Valuation Office of the Inland Revenue Department or a person duly authorised in writing by the Secretary of State or other authority proposing to make the acquisition which is the occasion of the survey or valuation or (as the case may be) from whom in accordance with this Act compensation in respect of the damage is recoverable.
- (3) Subject to section 44(9) of this Act, the power to survey land conferred by this section shall be construed as including power to search and bore for the purposes of ascertaining the nature of the subsoil or the presence of minerals therein.

#### **44 Supplementary provisions with respect to powers of entry**

- (1) A person may not in the exercise of any power of entry under this Act, other than that conferred by section 43, enter any building or part of a building occupied as a dwelling house without the consent of the occupier.
- (2) Subject to the following provisions of this subsection, a person may not in the exercise of any power of entry under this Act demand admission as of right to any land which is occupied unless prior notice of the intended entry has been given to the occupier--
  - (a) where the purpose of the entry is to carry out any works on the land (other than excavations in exercise of the power under section 26 or 38 of this Act), not less than fourteen days before the day on which admission is demanded; or
  - (b) in any other case, not less than twenty-four hours before admission is demanded.

This subsection does not apply in relation to the power of entry under section 5 of this Act.

- (3) A person seeking to enter any land in exercise of any power of entry under this Act shall, if so required by or on behalf of the owner or occupier thereof, produce evidence of his authority before entering.
- (4) Any power of entry under this Act shall be construed as including power for any person entering any land in exercise of the power of entry to take with him any assistance or equipment reasonably required for the purpose to which his entry relates and to do there anything reasonably necessary for carrying out that purpose.
- (5) Without prejudice to subsection (4) above, where a person enters any land in exercise of any power of entry under this Act for the purpose of carrying out any archaeological investigation or examination of the land, he may take and remove such samples of any description as appear to him to be reasonably required for the purpose of archaeological analysis.
- (6) Subject to subsection (7) below, where any works are being carried out on any land in relation to which any power of entry under this Act is exercisable, a person acting in the exercise of that power shall comply with any reasonable requirements or conditions imposed by the person by whom the works are being carried out for the purpose of preventing interference with or delay to the works.
- (7) Any requirements or conditions imposed by a person by whom any works are being carried out shall not be regarded as reasonable for the purposes of subsection (6) above if compliance therewith would in effect frustrate the exercise of the power or the purpose of the entry; and that subsection does not apply where the works in question are being carried out in contravention of section 2(1) or (6) or 35 of this Act.
- (8) Any person who intentionally obstructs a person acting in the exercise of any power of entry under this Act shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.
- (9) Where under section 43 of this Act a person proposes to carry out any works authorised by virtue of subsection (3) of that section--
  - (a) he shall not carry out those works unless notice of his intention to do so was included in the notice required by subsection (2)(a) above; and
  - (b) if the land in question is held by statutory undertakers, and those undertakers object to the proposed works on the grounds that the carrying out thereof would be seriously



detrimental to the carrying on of their undertaking, the works shall not be carried out except with the authority of the Secretary of State.

### ***Financial provisions***

#### **45 Expenditure on archaeological investigation**

- (1) The Secretary of State may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation of any land (other than land in England) which he considers may contain an ancient monument or anything else of archaeological or historical interest.
- (1A) The Commission may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation of any land in England which they consider may contain an ancient monument or anything else of archaeological or historical interest; and the reference to an ancient monument in this subsection shall be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to the Commission.
- (2) Any local authority may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation of any land in or in the vicinity of their area, being land which they consider may contain an ancient monument or anything else of archaeological or historical interest.
- (3) The Secretary of State or the Commission or any local authority may publish the results of any archaeological investigation undertaken, assisted, or wholly or partly financed by them under this section in such manner and form as they think fit.
- (4) Without prejudice to the application, by virtue of section 53 of this Act, of any other provision of this Act to land which is not within Great Britain, the powers conferred by this section shall be exercisable in relation to any such land which forms part of the sea bed within the seaward limits of United Kingdom territorial waters adjacent to the coast of Great Britain (or, as regards the powers mentioned in subsection (1A) above, England).

#### **46 Compensation for damage caused by exercise of certain powers under this Act**

- (1) Subject to subsection (2) below, where, in the exercise in relation to any land of any power to which this section applies, any damage has been caused to that land or to any chattels on that land, any person interested in that land or those chattels may recover

compensation in respect of that damage from the Secretary of State or the Commission or other authority by or on whose behalf the power was exercised.

- (2) Where any such damage is caused in the exercise of any such power by or on behalf of any person for the time being holding appointment as the investigating authority for an area of archaeological importance under section 34 of this Act, compensation shall be recoverable in accordance with this section from the Commission (if the area in question is situated in England) or from the Secretary of State (in any other case).
- (3) This section applies to any power to enter, or to do anything, on any land under any of the following sections of this Act, that is to say, sections 6, 6A, [9ZF](#), [9ZJ](#), 26, 38, 39, 40 and 43.
- (4) References in subsection (1) above to chattels shall be construed in relation to Scotland as references to moveables.

S 12(2) and  
S 13(3)

#### **47 General provisions with respect to claims for compensation under this Act**

- (1) Any claim for compensation under this Act shall be made within the time and in the manner prescribed.
- (2) Any question of disputed compensation under this Act shall be referred to and determined by the Upper Tribunal or (in the case of any land situated in Scotland) by the Lands Tribunal for Scotland.
- (3) In relation to the determination of any such question, the provisions of section 4 of the Land Compensation Act 1961 or (as the case may be) of sections 9 and 11 of the Land Compensation (Scotland) Act 1963 shall apply, but the references in section 4 of the Act of 1961 and section 11 of the Act of 1963 to the acquiring authority shall be construed as references to the authority by whom the compensation claimed is payable under this Act.

#### ***Application to special cases***

#### **50 Application to Crown land**

- (1) Notwithstanding any interest of the Crown in Crown land, but subject to the following provisions of this section--
  - (a) a monument which for the time being is Crown land may be included in the Schedule; and
  - (b) any restrictions or powers imposed or conferred by any of the provisions of this Act shall apply and be exercisable in relation to Crown land and in relation to anything done on

Crown land otherwise than by or on behalf of the Crown, but not so as to affect any interest of the Crown therein.

- (2) Except with the consent of the appropriate authority--
  - (a) no power under this Act to enter, or to do anything, on any land shall be exercisable in relation to land which for the time being is Crown land; and
  - (b) no interest in land which for the time being is Crown land shall be acquired compulsorily under Part I of this Act.
- (3) In relation to any operations proposed to be carried out on Crown land otherwise than by or on behalf of the Crown, an operations notice served under section 35 of this Act shall not be effective for the purposes of that section unless it is accompanied by a certificate from the appropriate authority in the prescribed form consenting to the exercise in relation to that land in connection with those operations of the powers conferred by sections 38 and 40 of this Act.

(3A) Crown land may be included in the register of historic parks and gardens (see section 41A).

S 18(2)

- (4) In this section "Crown land" means land in which there is a Crown interest or a Duchy interest; "Crown interest" means an interest belonging to Her Majesty in right of the Crown, or belonging to a Government department, or held in trust for Her Majesty for the purposes of a Government department, and includes any estate or interest held in right of the Prince and Steward of Scotland; "Duchy interest" means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall; and for the purposes of this section "the appropriate authority", in relation to any land--
  - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the Government department having the management of that land;
  - (b) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;
  - (c) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
  - (d) in the case of land belonging to a Government department or held in trust for Her Majesty for the purposes of a Government department, means that department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

In this subsection "Government department" includes any Minister of the Crown.

## **51 Ecclesiastical property**

- (1) Without prejudice to the provisions of the Acquisition of Land (Authorisation Procedure) Act 1946 with respect to notices served under that Act, where under any of the provisions of this Act a notice is required to be served on an owner of land, and the land is ecclesiastical property, a like notice shall be served on the Diocesan Board of Finance for the diocese in which the land is situated.
- (2) Where any ecclesiastical property is vested in the incumbent of a benefice which is vacant it shall for the purposes of this Act be treated as being vested in the Diocesan Board of Finance for the diocese in which the land is situated.
- (3) Any sum which under section 7, 9 or 46 of this Act is payable in relation to land which is ecclesiastical property, and apart from this subsection would be payable to an incumbent, shall be paid to the Diocesan Board of Finance for the diocese in which the land is situated, to be applied for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising, or disposing of the proceeds of, such a sale.
- (4) Where any sum is recoverable under section 8 of this Act in respect of land which is ecclesiastical property the Diocesan Board of Finance for the diocese in which the land is situated may apply any money or securities held by it in the payment of that sum.
- (5) In this section "ecclesiastical property" means land belonging to an ecclesiastical benefice of the Church of England, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese of the Church of England or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

## **52 Application to the Isles of Scilly**

The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application to those Isles of the provisions of this Act--

- (a) as if those Isles were a district and the Council of the Isles were the council of that district; and
- (b) in other respects subject to such modifications as may be specified in the order.

**52A The Broads**

Parts I and II and section 45(2) and (3) of this Act shall apply, in relation to the Broads (as defined by the Norfolk and Suffolk Broads Act 1988), as if the Broads Authority were a local authority.

**53 Monuments in territorial waters**

- (1) A monument situated in, on or under the sea bed within the seaward limits of United Kingdom territorial waters adjacent to the coast of Great Britain (referred to below in this section as a monument in territorial waters) may be included in the Schedule under section 1(3) of this Act, and the remaining provisions of this Act shall extend accordingly to any such monument which is a scheduled monument (but not otherwise).

- (2) The entry in the Schedule relating to any monument in territorial waters shall describe the monument as lying off the coast of England, or of Scotland, or of Wales; and, subject to subsection (2B), any such monument shall be treated for the purposes of this Act as situated in the country specified for the purposes of this subsection in the entry relating to the monument in the Schedule.

S 20(1)

(2A) The functions under this Act conferred on the Welsh Ministers by the Historic Environment (Wales) Act 2015 (as well as those already transferred to them) are exercisable in relation to Wales within the meaning of the Government of Wales Act 2006 (c. 32) (which includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea (see section 158(1) of that Act)).

S 20(2)

(2B) Accordingly, a monument is not to be treated by virtue of section 53(2) as being in Wales unless it is situated in Wales within the meaning of section 158(1) of the Government of Wales Act 2006 (c.32).

- (3) In relation to any monument in territorial waters which is under the ownership or guardianship of the Secretary of State or the Commission or any local authority by virtue of this Act, references in this Act to land associated with the monument (or to associated land) include references to any part of the sea bed occupied by the Secretary of State or by the Commission or by a local authority for

any such purpose relating to the monument as is mentioned in section 15(1) of this Act.

- (4) Without prejudice to any jurisdiction exercisable apart from this subsection, proceedings for any offence under this Act committed in United Kingdom territorial waters adjacent to the coast of Great Britain may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain.
- (5) It is hereby declared that, notwithstanding that by virtue of this section this Act may affect individuals or bodies corporate outside the United Kingdom, it applies to any individual whether or not he is a British subject, and to any body corporate whether or not incorporated under the law of any part of the United Kingdom.
- (6) A constable shall on any monument in territorial waters have all the powers, protection and privileges which he has in the area for which he acts as constable.
- (7) References in this section to the sea bed do not include the seashore or any other land which, though covered (intermittently or permanently) by the sea, is within Great Britain.

### ***Supplemental***

#### **54 Treatment and preservation of finds**

- (1) Where a person enters any land in exercise of any power of entry under this Act for any of the following purposes, that is to say--
  - (a) to carry out any excavations in the land or any operations affecting any ancient monument situated in, on or under the land;
  - (b) to observe any operations on the land in exercise of the power under section 6(3)(a) or (4)(b) or 6A(2)(a) of this Act; or
  - (c) to carry out any archaeological examination of the land;he may take temporary custody of any object of archaeological or historical interest discovered during the course of those excavations or operations or (as the case may be) during the course of that examination, and remove it from its site for the purpose of examining, testing, treating, recording or preserving it.
- (2) The Secretary of State or other authority by or on whose behalf the power of entry was exercised may not retain the object without the consent of the owner beyond such period as may be reasonably required for the purpose of examining and recording it and carrying

out any test or treatment which appears to the Secretary of State or to that other authority to be desirable for the purpose of archaeological investigation or analysis or with a view to restoring or preserving the object.

- (3) Nothing in this section shall affect any right of the Crown under the Treasure Act 1996.

## **55 Proceedings for questioning validity of certain orders, etc**

- (1) If any person--

- (a) is aggrieved by any order to which this section applies and desires to question the validity of that order, on the grounds that it is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to it; or
- (b) is aggrieved by any action on the part of the Secretary of State to which this section applies and desires to question the validity of that action, on the grounds that it is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to it;

he may, within six weeks from the relevant date, make an application under this section to the High Court or (in Scotland) to the Court of Session.

- (2) This section applies to any designation order and to any order under section 33(4) of this Act varying or revoking a designation order.
- (3) This section applies to action on the part of the Secretary of State of either of the following descriptions, that is to say--
- (a) any decision of the Secretary of State on an application for scheduled monument consent; and
- (b) the giving by the Secretary of State of any direction under section 4 of this Act modifying or revoking a scheduled monument consent.

(3A) This section applies to a decision on a review under section 1AE (review by Welsh Ministers or appointed person). S 4(4)

- (4) In subsection (1) above "the relevant date" means--
- (a) in relation to an order, the date on which notice of the making of the order is published (or, as the case may be, first published) in accordance with Schedule 2 to this Act; and
- (b) in relation to any action on the part of the Secretary of State,

the date on which that action is taken.

- (5) On any application under this section the High Court or (in Scotland) the Court of Session--
  - (a) may by interim order suspend the operation of the order or action, the validity whereof is questioned by the application, until the final determination of the proceedings;
  - (b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation thereto, may quash that order or action in whole or in part.
- (6) In this section "the relevant requirements" means--
  - (a) in relation to any order to which this section applies, any requirements of this Act or of any regulations made under this Act which are applicable to that order; and
  - (b) in relation to any action to which this section applies, any requirements of this Act or of the Tribunals and Inquiries Act 1992 or of any regulations or rules made under this Act or under that Act which are applicable to that action.
- (7) Except as provided by this section, the validity of any order or action to which this section applies shall not be questioned in any legal proceedings whatsoever; but nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take a decision on an application for scheduled monument consent.

## **56 Service of documents**

- (1) Any notice or other document required or authorised to be served under this Act may be served either--
  - (a) by delivering it to the person on whom it is to be served; or
  - (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address; or
  - (c) by sending it in a pre-paid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address; or



(ca) in a case where—

- (i) the notice or other document relates to a monument situated in Wales or land in Wales; and
- (ii) an address for service using electronic communications has been given by that person,  
by sending it using electronic communications, in accordance with the condition set out in subsection (1A); or

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- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it in a pre-paid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.

(1A) The condition mentioned in subsection (1)(ca) is that the notice or document must be—

- (a) capable of being accessed by the person mentioned in that provision;
- (b) legible in all material respects; and
- (c) in a form sufficiently permanent to be used for subsequent reference;

S 21(2)

and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

- (2) Where any such notice or document is required or authorised to be served on any person as being the owner or occupier of any monument or other land--

- (a) it may be addressed to the "owner" or (as the case may require) to the "occupier" of that monument or land (describing it) without further name or description; and
- (b) if the usual or last known place of abode of the person in question cannot be found, it may be served by being affixed conspicuously to the monument or to some object on the site of the monument or (as the case may be) on the land.

(3) In this section, “Wales” has the same meaning as in the Government of Wales Act 2006 (c. 32) (see section 158(1) of that Act).

S 21(3)

**57 Power to require information as to interests in land**

- (1) For the purpose of enabling the Secretary of State or the Commission or a local authority to exercise any function under this Act, the Secretary of State or the Commission or the local authority may require the occupier of any land and any person who, either directly or indirectly, receives rent in respect of any land to state in writing the nature of his interest therein, and the name and address of any other person known to him as having an interest therein, whether as a freeholder, owner . . . mortgagee, lessee, or otherwise.
- (2) Any person who, having been required under this section to give any information, fails without reasonable excuse to give that information, shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.
- (3) Any person who, having been so required to give any information, knowingly makes any mis-statement in respect of it, shall be guilty of an offence and liable--
  - (a) on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment to a fine.

**58 Offences by corporations**

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against accordingly.
- (2) In subsection (1) above the expression "director", in relation to any body corporate established by or under an enactment for the purpose of carrying on under national ownership an industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of that body corporate.

**59 Prosecution of offences: Scotland**

Notwithstanding anything in section 136 of the Criminal Procedure

(Scotland) Act 1995, summary proceedings in Scotland for an offence under this Act may be commenced at any time within one year from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings came to his knowledge; and a certificate purporting to be signed by the prosecutor stating that date shall be conclusive.

## 60 Regulations and orders

- (1) Any order or regulations made under this Act may make different provision for different cases to which the order or (as the case may be) the regulations apply.

(1A) Any power of the Welsh Ministers to make regulations or an order under this Act includes power to make such incidental, supplemental, consequential, transitory, transitional or saving provision as the Welsh Ministers consider appropriate. S 39(1)

- (2) Any power of the Secretary of State to make regulations under this Act, and the power to make orders under sections 3, 37, 52, 61 and 65 of this Act shall be exercisable by statutory instrument; and any statutory instrument containing any such regulations or order, other than one containing regulations under section 19 of this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Any power of the Welsh Ministers to make regulations under this Act or an order under section 3, 37 or 61 is exercisable by statutory instrument.

(4) A statutory instrument containing regulations under section 1AA or 9ZB may not be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

(5) Any other statutory instrument containing such regulations or an order made by the Welsh Ministers under this Act, other than regulations under section 19, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

S 39(2)

## 61 Interpretation

- (1) In this Act—
- “address”, in relation to electronic communications, means a number or address used for the purposes of such communications; S 21(4)
- "ancient monument" has the meaning given by subsection (12) below;

"area of archaeological importance" means an area designated as such under section 33 of this Act;

"the Commission" means the Historic Buildings and Monuments Commission for England;

"designation order" means an order under that section;

"development consent" means development consent under the Planning Act 2008;

"electronic communication" has the same meaning as in the Electronic Communications Act 2000; S 21(4)

"enactment" includes an enactment in any local or private Act of Parliament, and an order, rule, regulation, byelaw or scheme made under an Act of Parliament;

"flooding operations" means covering land with water or any other liquid or partially liquid substance;

"functions" includes powers and duties;

"guardianship deed" has the meaning given by section 12(6) of this Act;

"interim protection" has the meaning given by section 1AB(3); S 4(5)

"land" means--

(a) in England and Wales, any corporeal hereditament;

(b) in Scotland, any heritable property;

including a building or a monument and, in relation to any acquisition of land, includes any interest in or right over land;

"local authority" means--

(a) in England . . . , the council of a county or district, . . . the council of a London borough, and the Common Council of the City of London;

(aa) in Wales, the council of a county or county borough; and

(b) in Scotland, the planning authority within the meaning of Part IX of the Local Government (Scotland) Act 1973;

"monument" has the meaning given by subsection (7) below;

"owner", in relation to any land in England and Wales means (except for the purposes of sections 9ZA and 9ZB and paragraph 2(1) of Schedule 1 to this Act and any regulations made for the purposes of that paragraph) a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or S 11(2)(a)

where the land is not let at a rack rent, would be so entitled if it were so let;

"possession" includes receipt of rents and profits or the right to receive rents and profits (if any);

"prescribed" means prescribed by regulations made by the Secretary of State;

"the Schedule" has the meaning given by section 1(1) of this Act;

"scheduled monument" has the meaning given by section 1(11) of this Act and references to "scheduled monument consent" shall be construed in accordance with section 2(3) and (3B) and 3(5) of this Act; S 6(2)

"tipping operations" means tipping soil or spoil or depositing building or other materials or matter (including waste materials or refuse) on any land; and

"universal postal service provider" means a universal service provider within the meaning of Part 3 of the Postal Services Act 2011; and references to the provision of a universal postal service shall be construed in accordance with that Part;

"works" includes operations of any description and, in particular (but without prejudice to the generality of the preceding provision) flooding or tipping operations and any operations undertaken for purposes of agriculture (within the meaning of the Town and Country Planning Act 1990 or, as regards Scotland, the Town and Country Planning (Scotland) Act 1997) or forestry (including afforestation).

(2) In this Act "statutory undertakers" means--

- (a) persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of . . . , . . . or hydraulic power;
- (b) . . . the Civil Aviation Authority, . . . a universal postal service provider in connection with the provision of a universal postal service and any other authority, body or undertakers which by virtue of any enactment are to be treated as statutory undertakers for any of the purposes of the Town and Country Planning Act 1990 or of the Town and Country Planning (Scotland) Act 1997; and
- (c) any other authority, body or undertakers specified in an order made by the Secretary of State under this paragraph.

(2A) The undertaking of a universal postal service provider so far as

relating to the provision of a universal postal service shall be taken to be his statutory undertaking for the purposes of this Act; and references in this Act to his undertaking shall be construed accordingly.

(2B) Where—

(a) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of this Act; and

(b) the communication is received by that person outside that person's business hours,

it is to be treated as having been received on the next working day; and in this subsection "working day" means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

S 21(5)

- (3) For the purposes of sections 14(1) and 21(2) of this Act and paragraph 6(1)(b) and (2)(b) of Schedule 3 to this Act a person shall be taken to be immediately affected by the operation of a guardianship deed relating to any land if he is bound by that deed and is in possession or occupation of the land.
- (4) For the purposes of this Act "archaeological investigation" means any investigation of any land, objects or other material for the purpose of obtaining and recording any information of archaeological or historical interest and (without prejudice to the generality of the preceding provision) includes in the case of an archaeological investigation of any land--
  - (a) any investigation for the purpose of discovering and revealing and (where appropriate) recovering and removing any objects or other material of archaeological or historical interest situated in, on or under the land; and
  - (b) examining, testing, treating, recording and preserving any such objects or material discovered during the course of any excavations or inspections carried out for the purposes of any such investigation.
- (5) For the purposes of this Act, an archaeological examination of any land means any examination or inspection of the land (including any buildings or other structures thereon) for the purpose of obtaining and recording any information of archaeological or historical interest.
- (6) In this Act (other than in section 9ZA) references to land associated with any monument (or to associated land) shall be construed in accordance with section 15(6) of this Act.
- (7) "Monument" means (subject to subsection (8) below)--

S11(2)(b)

- (a) any building, structure or work, whether above or below the surface of the land, and any cave or excavation;
- (b) any site comprising the remains of any such building, structure or work or of any cave or excavation; **and** S 22(2)(a)
- (c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part thereof which neither constitutes nor forms part of any work which is a monument within paragraph (a) above; **and**
- (d) any site in Wales (other than one falling within paragraph (b) or (c) above) comprising any thing, or group of things, that evidences previous human activity; } S 22(2)(b)

and any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled.

(7A) In subsection (7)(d) "Wales" has the meaning given by section 158(1) of the Government of Wales Act 2006 (c. 32). S 22(3)

- (8) Subsection (7)(a) above does not apply to any ecclesiastical building for the time being used for ecclesiastical purposes, and subsection (7)(c) above does not apply--
  - (a) to a site comprising any object or its remains unless the situation of that object or its remains in that particular site is a matter of public interest;
  - (b) to a site comprising, or comprising the remains of, any vessel which is protected by an order under section 1 of the Protection of Wrecks Act 1973 designating an area round the site as a restricted area.
- (9) For the purposes of this Act, the site of a monument includes not only the land in or on which it is situated but also any land comprising or adjoining it which appears to the Secretary of State or the Commission or a local authority, in the exercise in relation to that monument of any of their functions under this Act, to be essential for the monument's support and preservation.
- (10) References in this Act to a monument include references--
  - (a) to the site of the monument in question; and
  - (b) to a group of monuments or any part of a monument or group of monuments.
- (11) References in this Act to the site of a monument--
  - (a) are references to the monument itself where it consists of a site; and

- (b) in any other case include references to the monument itself.
- (12) "Ancient monument" means--
- (a) any scheduled monument, and
  - (b) any other monument which in the opinion of the Secretary of State is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it.
- (13) In this section "remains" includes any trace or sign of the previous existence of the thing in question.

### SCHEDULE A1

*introduced by section 1AC*

### LAPSE OF INTERIM PROTECTION

- 1 This Schedule applies where interim protection ceases to have effect in relation to a monument as a result of the issue of a notice under section 1AB(4)(b) or (5)(b).
- 2 The fact that the interim protection has ceased to have effect does not affect the liability of any person to be prosecuted and punished for an offence under section 2, 9ZG, 9ZK, 28 or 42 committed with respect to the monument while the interim protection had effect.
- 3 Any proceedings on or arising out of an application for scheduled monument consent with respect to the monument lapse, in so far as they relate to consent required by virtue of the interim protection; and any such consent granted lapses to the same extent.
- 4 (1) Any scheduled monument enforcement notice served by the Welsh Ministers with respect to the monument ceases to have effect, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.  
 (2) Any proceedings on or arising out of such a notice under section 9ZE or 9ZF(4) lapse, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.  
 (3) Notwithstanding sub-paragraph (1), section 9ZF(2) continues to have effect as respects any expenses incurred by a person authorised by the Welsh Ministers as mentioned in section 9ZF(1), and with respect to any sums paid on account of such expenses.
- 5 Any temporary stop notice served by the Welsh Ministers with

S 3(3) and  
Schedule 1



respect to the monument ceases to have effect, in so far as the notice relates to works affecting anything in respect of which the interim protection had effect.

- 6 Any proceedings on an application made by the Welsh Ministers under section 9ZM with respect to the monument lapse, in so far as they relate to the restraint of any actual or apprehended contravention in relation to anything in respect of which the interim protection had effect.

## SCHEDULE A2

*introduced by section 1AE*

### DECISIONS ON REVIEWS BY PERSON APPOINTED BY WELSH MINISTERS

#### *Decisions on reviews by appointed persons*

- 1 (1) The Welsh Ministers may by regulations prescribe the classes of reviews under section 1AE on which a decision is to be made by a person appointed by the Welsh Ministers for the purpose instead of by the Welsh Ministers.
- (2) Decisions on reviews of a prescribed class are to be made accordingly.
- (3) This paragraph does not affect any provision in this Act or any instrument made under it that an application for a review is to be made to the Welsh Ministers.
- (4) A person appointed under this paragraph is referred to in this Schedule as “an appointed person”.

#### *Powers and duties of appointed person*

- 2 (1) An appointed person has the same powers and duties in relation to a review under section 1AE as the Welsh Ministers have under—
- (a) subsections (3)(a) and (b) and (5) of that section; and
- (b) regulations made by virtue of subsection (6)(e), (f) or (g) of that section.
- (2) Where an appointed person makes a decision on a review, the decision is to be treated as that of the Welsh Ministers.
- (3) Except as provided by section 55, the validity of that decision is not to be questioned in any legal proceedings.
- (4) No application may be made to the High Court under section 55 on

S 3(3) and  
Schedule 1

the ground that a decision on a review ought to have been made by the Welsh Ministers and not by an appointed person unless the person who made the application for the review challenges the appointed person's power to make the decision before the decision is made.

Appointment of another person to make a decision on a review

- 3 (1) At any time before an appointed person has made a decision on a review under section 1AE the Welsh Ministers may—
- (a) revoke the person's appointment; and
  - (b) appoint another person under paragraph 1 to make the decision instead.
- (2) Where such a new appointment is made, the review, and any inquiry or other hearing in connection with the review, must be begun afresh.
- (3) Nothing in sub-paragraph (2) requires any person to be given an opportunity to make fresh representations or to modify or withdraw any representations already made.

Public local inquiries, hearings and written representations

- 4 (1) An appointed person may appoint an assessor to provide advice on—
- (a) any matters arising at a public local inquiry or hearing held by the appointed person in connection with a review under section 1AE or in consequence of such an inquiry or hearing;
  - or
  - (b) any matters arising in written representations made to the appointed person in connection with such a review or in consequence of such representations.
- (2) Section 250(2) and (3) of the Local Government Act 1972 (c.70) (local inquiries: evidence) applies to a public local inquiry held by an appointed person.

Directions

- 5 (1) The Welsh Ministers may direct that anything that would fall to be done by an appointed person in connection with a review under section 1AE, other than the making of a decision on the review under subsection (3)(b) of that section, is to be done instead by the Welsh Ministers.

S 3(3) and  
Schedule 1

(2) A direction given under sub-paragraph (1) may be amended or withdrawn by a further direction.

Delegation

6 (1) An appointed person may delegate to another person anything that would fall to be done by the appointed person in connection with a review under section 1AE, other than—

(a) the conduct of a public local inquiry or hearing; and

(b) the making of a decision on the review under subsection (3)(b) of that section.

(2) A delegation under sub-paragraph (1) is to be to the extent, and on the terms, that the appointed person determines and may be amended or revoked.

S 3(3) and  
Schedule 1

Supplementary provision

7 Where an appointed person is a member of the staff of the Welsh Government, the functions of making a decision on a review and doing anything in connection with it conferred on the person by this Schedule are to be treated for the purposes of the Public Services (Ombudsman) Wales Act 2005 (c.10) as functions of the Welsh Government.

## SCHEDULE 1

### CONTROL OF WORKS AFFECTING SCHEDULED MONUMENTS

Sections 2, 4

#### Part I

#### Applications for Scheduled Monument Consent

- 1 (1) Provision may be made by regulations under this Act with respect to the form and manner in which applications for scheduled monument consent are to be made, the particulars to be included therein and the information to be provided by applicants or (as the case may be) by the Secretary of State in connection therewith.
- (2) Any scheduled monument consent (including scheduled monument consent granted by order under section 3 of this Act) shall (except so far as it otherwise provides) enure for the benefit of the monument and of all persons for the time being interested therein.

(3) The Welsh Ministers may by regulations make provision as to cases in which an applicant for scheduled monument consent in relation to a monument situated in Wales may make the application otherwise than in the form provided for under sub-paragraph (1); and such provision may confer a discretion on the Welsh Ministers.

S 5(2)

- 2 (1) The Secretary of State may refuse to entertain an application for scheduled monument consent unless it is accompanied by one or other of the following certificates signed by or on behalf of the applicant, that is to say--
- (a) a certificate stating that, at the beginning of the period of twenty-one days ending with the application, no person other than the applicant was the owner of the monument;
  - (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons other than the applicant who, at the beginning of that period, were owners of the monument;
  - (c) a certificate stating that the applicant is unable to issue a certificate in accordance with either of the preceding paragraphs, that he has given the requisite notice of the application to such one or more of the persons mentioned in paragraph (b) above as are specified in the certificate, that he has taken such steps as are reasonably open to him to ascertain the names and addresses of the remainder of those persons and that he has been unable to do so;
  - (d) a certificate stating that the applicant is unable to issue a certificate in accordance with paragraph (a) above, that he has taken such steps as are reasonably open to him to ascertain the names and addresses of the persons mentioned in paragraph (b) above and that he has been unable to do so.
- (2) Any certificate issued for the purposes of sub-paragraph (1) above--
- (a) shall contain such further particulars of the matters to which the certificate relates as may be prescribed by regulations made for the purposes of this paragraph; and
  - (b) shall be in such form as may be so prescribed,
- and any reference in that sub-paragraph to the requisite notice is a reference to a notice in the form so prescribed.
- (3) Regulations made for the purposes of this paragraph may make provision as to who, in the case of any monument, is to be treated

as the owner for those purposes.

- (4) If any person issues a certificate which purports to comply with the requirements of this paragraph or of regulations made by the Welsh Ministers under it and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding level 3 on the standard scale.

S 7

**2A** As soon as practicable after receiving an application for scheduled monument consent in relation to a monument situated in England, the Secretary of State shall send a copy of the application to the Commission.

**2B (1)** The Welsh Ministers may refuse to entertain an application for scheduled monument consent if—

(a) within the period of 2 years ending with the date on which the application is received, the Welsh Ministers have refused a similar application; and

(b) in their opinion, there has been no significant change in any material considerations since the similar application was refused.

(2) The Welsh Ministers may refuse to entertain an application for scheduled monument consent if the application is made at a time when a similar application is under consideration.

(3) For the purposes of this paragraph, an application for scheduled monument consent is to be taken to be similar to another such application only if the works to which the applications relate are, in the Welsh Ministers' opinion, the same or substantially the same.

S 8

**3 (1)** The Secretary of State may grant scheduled monument consent in respect of all or any part of the works to which an application for scheduled monument consent relates.

(2) Before determining whether or not to grant scheduled monument consent on any application therefor, the Secretary of State shall either--

(a) cause a public local inquiry to be held; or

(b) afford to the applicant, and to any other person to whom it appears to the Secretary of State expedient to afford it, an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(2A) In the application of this paragraph to the Welsh Ministers, subparagraph (2) has effect as if for “shall” there were substituted “may”.

S 9

- (3) Before determining whether or not to grant scheduled monument consent on any application therefor the Secretary of State--
    - (a) shall in every case consider any representations made by any person with respect to that application before the time when he considers his decision thereon (whether in consequence of any notice given to that person in accordance with any requirements of regulations made by virtue of paragraph 2 above or of any publicity given to the application by the Secretary of State, or otherwise);
    - (b) shall also, if any inquiry or hearing has been held in accordance with sub-paragraph (2) above, consider the report of the person who held it and
    - (c) shall, if the monument in question is situated in England, consult with the Commission.
  - (4) The Secretary of State shall serve notice of his decision with respect to the application on the applicant and on every person who has made representations to him with respect to the application.
- 4**
- (1) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (evidence and costs at local inquiries) shall apply to a public local inquiry held in pursuance of paragraph 3(2) above in relation to a monument situated in England and Wales as they apply where a Minister or the Secretary of State causes an inquiry to be held under subsection (1) of that section.
  - (2) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (evidence and expenses at local inquiries) shall apply to a public local inquiry held in pursuance of paragraph 3(2) above in relation to a monument situated in Scotland as they apply where a Minister or the Secretary of State causes an inquiry to be held under subsection (1) of that section.

## Part II

### Modification and Revocation of Scheduled Monument Consent

- 5** (1) Before giving a direction under section 4 of this Act modifying or revoking a scheduled monument consent the Secretary of State shall serve a notice of proposed modification or revocation on--

- (a) the owner of the monument and (if the owner is not the occupier) the occupier of the monument, and
  - (b) any other person who in the opinion of the Secretary of State would be affected by the proposed modification or revocation.
- (1A) Where the monument in question is situated in England, the Secretary of State shall consult with the Commission before serving a notice under this paragraph, and on serving such a notice he shall send a copy of it to the Commission.
- (2) A notice under this paragraph shall--
  - (a) contain a draft of the proposed modification or revocation and a brief statement of the reasons therefor; and
  - (b) specify the time allowed by sub-paragraph (5) below for making objections to the proposed modification or revocation and the manner in which any such objections can be made.
- (3) Where the effect of a proposed modification (or any part of it) would be to exclude any works from the scope of the scheduled monument consent in question or in any manner to affect the execution of any of the works to which the consent relates, the notice under this paragraph relating to that proposed modification shall indicate that the works affected must not be executed after the receipt of the notice or (as the case may require) must not be so executed in a manner specified in the notice.
- (4) A notice of proposed revocation under this paragraph shall indicate that the works to which the scheduled monument consent in question relates must not be executed after receipt of the notice.
- (5) A person served with a notice under this paragraph may make an objection to the proposed modification or revocation at any time before the end of the period of twenty-eight days beginning with the date on which the notice was served.
- 6** (1) If no objection to a proposed modification or revocation is duly made by a person served with notice thereof in accordance with paragraph 5 above, or if all objections so made are withdrawn, the Secretary of State may give a direction under section 4 of this Act modifying or revoking the scheduled monument consent in question in accordance with the notice.
- (2) If any objection duly made as mentioned in sub-paragraph (1) above is not withdrawn, then, before giving a direction under section 4 of this Act with respect to the proposed modification or revocation, the Secretary of State shall either--

- (a) cause a public local inquiry to be held; or
  - (b) afford to any such person an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (3) If any person by whom an objection has been made avails himself of the opportunity of being heard, the Secretary of State shall afford to each other person served with notice of the proposed modification or revocation in accordance with paragraph 5 above, and to any other person to whom it appears to the Secretary of State expedient to afford it, an opportunity of being heard on the same occasion.
- (4) Before determining in a case within sub-paragraph (2) above whether to give a direction under section 4 of this Act modifying or revoking the scheduled monument consent in accordance with the notice, the Secretary of State--
- (a) shall in every case consider any objections duly made as mentioned in sub-paragraph (1) above and not withdrawn; and
  - (b) shall also, if any inquiry or hearing has been held in accordance with sub-paragraph (2) above, consider the report of the person who held it.
- (5) After considering any objections and report he is required to consider in accordance with sub-paragraph (4) above the Secretary of State may give a direction under section 4 of this Act modifying or revoking the scheduled monument consent either in accordance with the notice or with any variation appearing to him to be appropriate.
- 7** As soon as may be after giving a direction under section 4 of this Act the Secretary of State shall send a copy of the direction to each person served with notice of its proposed effect in accordance with paragraph 5 above and to any other person afforded an opportunity of being heard in accordance with paragraph 6(3) above.
- 8** (1) Where in accordance with sub-paragraph (3) of paragraph 5 above a notice under that paragraph indicates that any works specified in the notice must not be executed after receipt of the notice, the works so specified shall not be regarded as authorised under Part I of this Act at any time after the relevant service date.
- (2) Where in accordance with that sub-paragraph a notice under that paragraph indicates that any works specified in the notice must not be executed after receipt of the notice in a manner so specified, the works so specified shall not be regarded as authorised under



Part I of this Act if executed in that manner at any time after the relevant service date.

- (3) Where in accordance with sub-paragraph (4) of paragraph 5 above a notice under that paragraph indicates that the works to which the scheduled monument consent relates must not be executed after receipt of the notice, those works shall not be regarded as authorised under Part I of this Act at any time after the relevant service date.
- (4) The preceding provisions of this paragraph shall cease to apply in relation to any works affected by a notice under paragraph 5 above--
  - (a) if within the period of twenty-one months beginning with the relevant service date the Secretary of State gives a direction with respect to the modification or revocation proposed by that notice in accordance with paragraph 6 above, on the date when he gives that direction;
  - (b) if within that period the Secretary of State serves notice on the occupier or (if there is no occupier) on the owner of the monument that he has determined not to give such a direction, on the date when he serves that notice; and
  - (c) in any other case, at the end of that period.
- (5) In this paragraph "the relevant service date" means, in relation to a notice under paragraph 5 above with respect to works affecting any monument, the date on which that notice was served on the occupier or (if there is no occupier) on the owner of the monument.

- 9**
- (1) Subject to sub-paragraph (2) below, subsections (2) to (5) of section 250 of the Local Government Act 1972 (evidence and costs at local inquiries) shall apply to a public inquiry held in pursuance of paragraph 6(2) above as they apply where a Minister or the Secretary of State causes an inquiry to be held under sub-section (1) of that section.
  - (2) Subsection (4) of that section (costs of the Minister causing the inquiry to be held to be defrayed by such local authority or party to the inquiry as the Minister may direct) shall not apply except in so far as the Secretary of State is of opinion, having regard to the object and result of the inquiry, that his costs should be defrayed by any party thereto.
  - (3) In the application of this paragraph to Scotland, in sub-paragraph (1) for the words " subsections (2) to (5) of section 250 of the Local Government Act 1972 (evidence and costs at local inquiries)" there shall be substituted the words " subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (evidence and

expenses at local inquiries)", and in sub-paragraph (2) for the words " subsection (4) of that section (costs" there shall be substituted the words " subsection (7) of that section (expenses".