

HISTORIC ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Ancient Monuments Etc

Section 12 – Enforcement notices

72. **Section 12** inserts new sections 9ZC to 9ZH into the 1979 Act, which allow the Welsh Ministers to issue scheduled monument enforcement notices.

9ZC Scheduled monument enforcement notice

73. Section 9ZC(1) and (2) allows the Welsh Ministers to serve enforcement notices in respect of unauthorised works that have been carried out, or are being carried out, to a scheduled monument or to land in, on or under which there is a scheduled monument. In considering whether to issue an enforcement notice, the Welsh Ministers must have regard to the effects of the works on the monument as one of national importance.
74. Section 9ZC(3) requires the enforcement notice to specify the alleged contravention and the works that are to cease and/or the steps that the Welsh Ministers require to be taken. These may be steps to restore the monument or land to its former state. If the Welsh Ministers consider that the restoration of the monument or land to its former state is not practicable or desirable, the enforcement notice may specify the steps required to alleviate the effect of the unauthorised works. If scheduled monument consent for the works has been granted, an enforcement notice may also specify the steps required for bringing the monument or land to the state it would have been in if the conditions of the scheduled monument consent had been complied with.
75. The enforcement notice must also set the period within which the Welsh Ministers require the works to cease and the period within which any steps required by the notice must be carried out. Given that a range of works of differing urgency may be required, section 9ZC(6) allows the notice to specify different periods for compliance for different works or steps. For example, the notice may require immediate archaeological investigation followed by the subsequent production of a report.

9ZD Scheduled monument enforcement notice: supplementary provision

76. Section 9ZD(1) specifies on whom a copy of the scheduled monument enforcement notice must be served. Section 56 of the 1979 Act (service of documents) applies to the service of the notice.
77. Section 9ZD(2) states that the Welsh Ministers may withdraw an enforcement notice and, if necessary, issue another. Section 9ZD(3) also enables the Welsh Ministers to amend the requirements imposed by an enforcement notice, for example by extending the deadline for compliance. However, the Welsh Ministers cannot amend an enforcement notice to impose more onerous requirements; if they wish to impose such requirements, they will need to withdraw the notice and issue a new notice.

78. Section 9ZD(5) requires the Welsh Ministers to publish a list of enforcement notices that have been issued and are still in effect, as well as to provide a copy of a notice on request.

9ZE Scheduled monument enforcement notice: appeal

79. This section sets out the process and grounds for appeal against an enforcement notice. A person on whom an enforcement notice has been served under section 9ZD(1), or any other person with an interest in the monument or land in question, may challenge the notice by appeal to a magistrates' court. The grounds for appeal are set out in section 9ZE(3).
80. The appeal must be made before the date on which the notice takes effect under section 9ZC(3)(a). Once an appeal has been lodged, the enforcement notice has no effect until the appeal is withdrawn or finally determined.
81. Section 9ZE(6) allows an enforcement notice to be upheld even if it has not been served in accordance with section 9ZD, provided that no one with an interest in the monument or land is substantially prejudiced by the failure.

9ZF Scheduled monument enforcement notice: power of entry

82. Section 9ZF(1) gives a person authorised in writing by the Welsh Ministers the power: to enter land at a reasonable time to ascertain whether an enforcement notice should be served; to secure an enforcement notice to the monument or to some object on the site of the monument or on the land (if the usual or last known place of abode of the owner or occupier cannot be found); and to ascertain whether an enforcement notice has been complied with.
83. Section 9ZF(2) allows a person authorised by the Welsh Ministers to enter the land at a reasonable time to undertake any works required by the notice if the works have not been carried out within the period for compliance stated in the notice. It also provides for the recovery of expenses incurred in carrying out such works from the owner or lessee of the monument or land.
84. Section 9ZF(3) limits the recovery of costs from owners receiving rent as a trustee for another person to the amount of money the trustee has or has had in their hands on behalf of the beneficiary.
85. If an occupier of a monument prevents an owner from undertaking works required by an enforcement notice, section 9ZF(4) permits the owner to apply to a magistrates' court for a warrant authorising entry to the land and the execution of the works.

9ZG Failure to comply with scheduled monument enforcement notice

86. Section 9ZG provides that, where an enforcement notice has not been complied with within the period specified, the owner of the monument or land is in breach of the notice and is guilty of an offence. A person may be convicted of more than one offence in relation to the same enforcement notice if the breach continues.
87. Section 9ZG(5) and (6) sets out the defences to the offence, and section 9ZG(7) makes provision for the imposition of financial penalties on summary conviction or on conviction on indictment. Section 9ZG(8) states that the courts are to have regard to any financial benefit the person convicted may have received or be likely to receive as a result of the offence when determining the amount of any fine to be imposed.

9ZH Effect of scheduled monument consent on notice

88. Section 9ZH applies where a scheduled monument enforcement notice has been issued, and scheduled monument consent is then granted under new section 2(3A) of the 1979 Act for the retention of works (see section 6 above). In those circumstances, the

*These notes refer to the Historic Environment (Wales) Act
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enforcement notice will no longer have effect in so far as it requires: the cessation of such works; steps in which the works are not retained; or steps to comply with any condition attached to a previous scheduled monument consent.

89. [Section 12\(2\)](#) amends subsection 3 of section 46 of the 1979 Act, which provides for compensation for damage arising from the exercise of certain powers under the Act, so that it will apply in cases of damage arising from the exercise of the new power of entry conferred by section 9ZF.