

HISTORIC ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Ancient Monuments Etc

Section 15 – Control of works affecting scheduled monuments

107. **Section 15** inserts new section 2(8A) into the 1979 Act to modify one of the defences to the offence of carrying out unauthorised works to a scheduled monument.
108. Section 2 of the 1979 Act provides for the control of works affecting scheduled monuments through the requirement for scheduled monument consent and is supported, in subsections (1) and (6), by criminal offences. Under section 2(8), it is a defence to some of those offences for the accused to prove, on the balance of probabilities, that he or she did not know and had no reason to believe that the monument was within the area affected by the works, or that the monument was scheduled.
109. **Section 15** disapplies the section 2(8) defence in relation to Wales and replaces it with the new defence in section 2(8A). This new defence requires a person accused of executing, causing or permitting unauthorised works in relation to a scheduled monument in Wales to prove, in addition, that he or she took all reasonable steps to find out whether the area affected by the works contained a scheduled monument. Such steps might include, for example, checking Cadw's publicly accessible online information on the location and extent of a scheduled monument.