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WELSH STATUTORY INSTRUMENTS

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**2021 No. 1176 (W. 289)**

**ANCIENT MONUMENTS, WALES**

**The Scheduled Monuments (Heritage Partnership Agreements) (Wales) Regulations 2021**

*Made* - - - - 20 October 2021

*Coming into force* - - 1 January 2022

The Welsh Ministers, in exercise of the powers conferred by sections 9ZB(3) and (7) and 60(1A) of the Ancient Monuments and Archaeological Areas Act 1979(1), make the following Regulations.

In accordance with section 60(4)(2) of that Act, a draft of this instrument has been laid before and approved by a resolution of Senedd Cymru.

**Title and commencement**

1. The title of these Regulations is the Scheduled Monuments (Heritage Partnership Agreements) (Wales) Regulations 2021 and they come into force on 1 January 2022.

**Interpretation**

2. In these Regulations—

“the 1979 Act” (“*Deddf 1979*”) means the Ancient Monuments and Archaeological Areas Act 1979;

“associated land” (“*tir cysylltiedig*”) means land adjoining or in the vicinity of a scheduled monument situated in Wales;

“draft agreement” (“*cytundeb drafft*”) means draft heritage partnership agreement;

“draft variation” (“*amrywiad drafft*”) means draft variation to a heritage partnership agreement;

“heritage partnership agreement” (“*cytundeb partneriaeth dreftadaeth*”) means an agreement entered into by the Welsh Ministers under section 9ZA of the 1979 Act;

“notice of proposed termination” (“*hysbysiad o’r bwriad i derfynu*”) has the meaning given by regulation 6(4);

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(1) 1979 c. 46. Section 9ZB was inserted by section 11(1) of the Historic Environment (Wales) Act 2016 (anaw 4) (“the 2016 Act”). Section 60(1A) was inserted by section 40(1) of the 2016 Act.  
(2) Section 60(4) was inserted by section 40(2) of the 2016 Act. The reference in section 60(4) to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

“owner” (“*perchennog*”), 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 scheduled monument or land, or
- (b) entitled to a tenancy of the scheduled monument or land (as the case may be) for a term of years certain of which not less than 7 years remains unexpired;

“scheduled monument” (“*heneb gofrestredig*”) means a monument which is for the time being included in the Schedule of monuments maintained by the Welsh Ministers under section 1 of the 1979 Act;

“scheduled monument consent” (“*cydsyniad heneb gofrestredig*”) means consent under section 2(3) of the 1979 Act 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;

“termination order” (“*gorchymyn terfynu*”) means an order under regulation 6.

### **Matters which must be included in heritage partnership agreement**

3.—(1) A heritage partnership agreement must include—

- (a) enough information to identify the scheduled monument or associated land to which the agreement relates, including a plan or drawing of the monument or land;
- (b) such other plans, drawings and information as are necessary to describe the works which are covered by the agreement;
- (c) the date from which the agreement has effect;
- (d) the duration of the agreement.

(2) See also the following sections of the 1979 Act—

- (a) 9ZA(3) (providing that a heritage partnership agreement may contain provision granting scheduled monument consent for works specified in the agreement, subject to any conditions specified in the agreement);
- (b) 9ZA(4) (other matters that may be provided for in a heritage partnership agreement);
- (c) 9ZB(1) (making supplemental provision for heritage partnership agreements).

### **Consultation and publicity requirements: draft heritage partnership agreement or draft variation**

4.—(1) The Welsh Ministers may not enter into a heritage partnership agreement unless they have complied with paragraphs (4) to (6).

(2) Paragraph (3) applies to a proposed variation of an existing heritage partnership agreement so as to—

- (a) provide that the agreement relates to an additional scheduled monument, or
- (b) extend the duration of the agreement.

(3) The variation may not be made unless—

- (a) in the case of a variation proposed by a party other than the Welsh Ministers, that party has sent a copy of the draft variation to the Welsh Ministers, and
- (b) in any case, the Welsh Ministers have complied with paragraphs (4) to (6).

(4) The Welsh Ministers must—

- (a) send a copy of the draft agreement or draft variation (as the case may be) to—

- (i) the owner of the scheduled monument or associated land to which the draft agreement or draft variation relates;
    - (ii) any occupier of the scheduled monument or associated land;
    - (iii) any local authority in whose area the scheduled monument or associated land is situated;
    - (iv) any local authority which is a guardian of the scheduled monument or associated land (by virtue of section 12 or 15 of the 1979 Act), and
  - (b) invite representations from those persons before the end of a period specified in the invitation.
- (5) The Welsh Ministers must also—
- (a) publish the following information by electronic means for at least 21 days—
    - (i) the address or location of the scheduled monument or associated land to which the draft agreement or draft variation relates;
    - (ii) a summary of the draft agreement or draft variation;
    - (iii) details of how representations may be made about the draft agreement or draft variation to the Welsh Ministers;
    - (iv) the period within which any representations must be received,
  - (b) send the information described in sub-paragraph (a) to any person the Welsh Ministers consider to have an interest in the draft agreement or draft variation, other than a person to whom the draft agreement or draft variation has been sent under paragraph (4), and
  - (c) if requested to do so before the end of the period for making representations under this paragraph, send to the person who made the request a copy of the draft agreement or draft variation.
- (6) The Welsh Ministers must ensure that the periods for making representations under this regulation are periods of at least 21 days beginning with—
- (a) in the case of paragraph (4), the day on which a copy of the draft agreement or draft variation (as the case may be) is first sent under that paragraph, and
  - (b) in the case of paragraph (5), the day on which the information mentioned in sub-paragraph (a) of that paragraph is first published electronically.
- (7) Nothing in this regulation or regulation 5 requires the Welsh Ministers to publish or to send to any person information—
- (a) which is a trade secret,
  - (b) if disclosure is otherwise likely to prejudice the commercial interest of any person,
  - (c) the disclosure of which would constitute a breach of confidence actionable by any person, or
  - (d) the disclosure of which is prohibited by or under any enactment or by an order of a court.
- (8) In this regulation, “local authority” means—
- (a) in relation to scheduled monuments and associated land in Wales—
    - (i) the council of a county or a county borough, and
    - (ii) a National Park authority that is a local planning authority;
  - (b) in relation to associated land in England, the council of a county or district.

### **Publicity requirement: duty to publish list**

5. The Welsh Ministers must—
- (a) publish a list, by electronic means, of all heritage partnership agreements that are in effect, and
  - (b) as soon as practicable after a heritage partnership agreement is entered into, or an existing agreement is varied, add the agreement or variation to the list.

### **Termination orders: general**

6.—(1) The Welsh Ministers may, by order (a “termination order”), terminate a heritage partnership agreement, or any provision of an agreement.

(2) A termination order may include supplementary, incidental, transitory, transitional or saving provision.

(3) Before making a termination order, the Welsh Ministers must serve notice of a proposal to make the order (“a notice of proposed termination”) on—

- (a) the other parties to the agreement, and
- (b) any other person they consider to have an interest in the agreement.

(4) In these Regulations, a “notice of proposed termination” is a notice setting out—

- (a) a draft of the termination order;
- (b) the reasons for the proposed termination;
- (c) that a person upon whom the notice is served may make an objection to the Welsh Ministers in the manner specified in the notice at any time before the end of the period of 28 days beginning with the date on which the notice is served.

(5) A termination order terminating an agreement or provision which grants scheduled monument consent for works may be made at any time before the works are completed, but does not affect scheduled monument consent for works carried out before the order takes effect.

### **Termination orders: effect of service of notice of proposed termination**

7.—(1) Where the effect of a termination order would be to revoke a scheduled monument consent, a notice of proposed termination must specify that the works to which the consent relates must not be carried out, or caused or permitted to be carried out, on or after a day specified by the notice.

(2) Where the effect of a termination order would be to exclude any works from the scope of a scheduled monument consent, a notice of proposed termination must specify that the works must not be carried out, or caused or permitted to be carried out, on or after a day specified by the notice.

(3) Where a notice of proposed termination specifies that the works to which a scheduled monument consent relates must not be carried out, or caused or permitted to be carried out, on or after a day specified by the notice, the works are not to be regarded as authorised under section 2(3) of the 1979 Act if they are carried out, caused or permitted to be carried out on or after that date.

(4) Where a notice of proposed termination specifies that works specified in the notice must not be carried out, or caused or permitted to be carried out, on or after a day specified by the notice, the works are not to be regarded as authorised under section 2(3) of the 1979 Act if they are carried out, caused or permitted to be carried out on or after that date.

(5) But paragraphs (3) and (4) cease to apply—

- (a) if the Welsh Ministers make a termination order within the period of 21 months beginning with the date on which notice is served in accordance with regulation 6(3), when the

- termination order is made (at which point authorisation ceases to the extent provided in the order),
- (b) if the Welsh Ministers, within that period of 21 months, serve notice on the owner and any occupier of the scheduled monument that they have determined not to make a termination order, when that notice is served, and
  - (c) in any other case, at the end of that period of 21 months.

### **Termination orders: conditions**

**8.—(1)** This regulation applies where a notice of proposed termination has been served in accordance with regulation 6(3).

(2) The Welsh Ministers may not make the termination order to which the notice of proposed termination relates unless—

- (a) the period of 28 days for making objections, beginning with the date of service of the notice of proposed termination, has ended without any objections being made by a person on whom the notice was served,
- (b) where an objection was made by such a person within that period, all such objections are withdrawn, or
- (c) if an objection has been made to the Welsh Ministers before the end of that period and the objection has not been withdrawn, they have—
  - (i) caused a public local inquiry to be held, or
  - (ii) afforded to the persons described in paragraph (3) an opportunity to appear before and be heard by a person appointed by the Welsh Ministers for that purpose.

(3) The persons are—

- (a) the person making the objection, and
- (b) if the person referred to in sub-paragraph (a) accepts the opportunity to appear before and be heard at a hearing—
  - (i) any other person on which the notice of proposed termination has been served, and
  - (ii) any other person to whom it appears to the Welsh Ministers appropriate to give the opportunity to appear before and be heard at a hearing.

(4) The Welsh Ministers must also have considered—

- (a) any objections made before the end of the period referred to in paragraph (2) and not withdrawn, and
- (b) the report of the person who held any inquiry or hearing in accordance with paragraph (2)(c).

(5) Where the Welsh Ministers make a termination order by virtue of the condition in paragraph (2)(a) or (b) having been met, the order must be made on the terms set out by the notice of proposed termination.

(6) Where the Welsh Ministers make a termination order by virtue of the condition in paragraph (2)(c) having been met, the order may be made either on the terms set out by the notice of proposed termination or with any variations the Welsh Ministers consider appropriate.

(7) Section 250(2) and (3) of the Local Government Act 1972(3) (local inquiries: evidence) applies to a public local inquiry held by a person appointed by the Welsh Ministers in accordance with paragraph (2).

### **Termination orders: notification requirement**

9. As soon as practicable after making a termination order, the Welsh Ministers must—
- (a) send a copy of the order to each person served with a notice of proposed termination;
  - (b) where an inquiry was held under regulation 8(2)(c)(i), send a copy of the order to any other person who gave evidence at the inquiry;
  - (c) where a hearing was held under regulation 8(2)(c)(ii), send a copy of the order to any other person given the opportunity to appear before and be heard at the hearing.

### **Compensation relating to notice of proposed termination or termination order**

- 10.—(1) Paragraph (2) applies where—
- (a) the Welsh Ministers serve a notice of proposed termination or make a termination order,
  - (b) a party to the heritage partnership agreement who has an interest in the whole or any part of the scheduled monument or associated land to which the agreement applies—
    - (i) has incurred expenditure in carrying out works which are rendered abortive by the notice of proposed termination or termination order, or
    - (ii) has otherwise sustained loss or damage which is directly attributable to the notice of proposed termination or termination order, and
  - (c) that party to the agreement sends a claim for compensation to the Welsh Ministers and it is received by them within a period of 6 months beginning with the date on which the notice of proposed termination or termination order has effect.
- (2) The party to the heritage partnership agreement is entitled to be paid compensation by the Welsh Ministers in respect of the expenditure, loss or damage mentioned in paragraph (1)(b).
- (3) For the purposes of this regulation, any expenditure incurred on the preparation of plans (or other similar preparatory work) for the purposes of any works is to be treated as being incurred in carrying out those works.
- (4) Subject to paragraph (3), no compensation is payable under this regulation in respect of—
- (a) works carried out before the agreement has effect, or
  - (b) 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 agreement has effect.

### **Application of provisions of the 1979 Act**

11. The Schedule disapplies or modifies provisions of the 1979 Act for the purposes of heritage partnership agreements.

*Dawn Bowden*  
Deputy Minister for Arts and Sport, and Chief  
Whip under authority of the Minister for  
Economy, one of the Welsh Ministers

20 October 2021

## SCHEDULE 1

Ref

## Table

<i>Provision</i>	<i>Modification or disapplication</i>
Section 4 (duration, modification and revocation of scheduled monument consent)	Section 4 does not apply.
Section 6 (powers of entry for inspection of scheduled monuments, etc.)	Section 6 applies as if after subsection (2) there were inserted— “(2A) Any person duly authorised in writing by the Welsh Ministers 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 proposal by the Welsh Ministers to serve a notice of proposed termination or make a termination order under regulation 6 of the Scheduled Monuments (Heritage Partnership Agreements) (Wales) Regulations 2021.”
Section 27 (general provisions as to compensation for depreciation)	Section 27 applies as if the reference to section 9 were a reference to regulation 10 of these Regulations.
Section 51 (ecclesiastical property)	Section 51 applies as if in subsection (3), the reference to section 9 were a reference to regulation 10 of these Regulations.

**EXPLANATORY NOTE***(This note is not part of the Regulations)*

These Regulations are made under powers given to the Welsh Ministers by the Ancient Monuments and Archaeological Areas Act 1979 (c. 46) (“the 1979 Act”). They make provision about heritage partnership agreements relating to scheduled monuments in Wales.

The 1979 Act protects monuments of archaeological or historic interest. A monument may comprise a building, structure, work, cave or excavation, or site. The 1979 Act provides that the Welsh Ministers must maintain a record (referred to as a “Schedule”) of monuments in Wales that are of national importance. Particular types of works may only be carried out to a “scheduled monument” if they are authorised by the Welsh Ministers. This authorisation is called “scheduled monument consent” and is granted under Part 1 of the 1979 Act.

The Historic Environment (Wales) Act 2016 (anaw 4) amended the 1979 Act to introduce a “heritage partnership agreement”. This is an agreement between the Welsh Ministers and the owner of a scheduled monument in Wales or the owner of land adjoining, or in the vicinity of, such a scheduled monument (referred to as “associated land”). There may also be additional parties to a heritage partnership agreement, including any other person with an interest in the monument or

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associated land. Section 9ZB(2) of the 1979 Act provides that a heritage partnership agreement may relate to more than one scheduled monument.

A heritage partnership agreement may grant scheduled monument consent for a programme of works specified in the agreement. The works may only be for the purpose of removing or repairing a scheduled monument to which the agreement applies, or any part of it, or of making any alterations or additions to such a monument.

Section 9ZB(3) of the 1979 Act requires the Welsh Ministers to make Regulations to make further provision about the content of heritage partnership agreements and the procedures for agreeing and terminating agreements.

Regulation 3 sets out matters that must be included in a heritage partnership agreement. They include things such as enough information to identify the scheduled monument or associated land to which the agreement relates, and the duration of the agreement.

Regulations 4 and 5 make provision about consultation and publicity requirements. Regulation 4 sets out the consultation and publicity requirements with which the Welsh Ministers must comply before they enter into a heritage partnership agreement or an existing agreement is varied to include one or more additional scheduled monuments or to extend its duration. They include consulting with the owner and occupier of the land, and with relevant local authorities, and publicising draft heritage partnership agreements or draft variations to agreements by electronic means for a specified number of days.

Regulation 5 provides that the Welsh Ministers must publish a list, by electronic means, of heritage partnership agreements that are in effect and must update the list as soon as practicable after entering into a new heritage partnership agreement or if variations are made.

Regulations 6 to 8 provide for a procedure by which the Welsh Ministers may, by order (“a termination order”) terminate a heritage partnership agreement, or a provision of such an agreement, without the agreement of the other parties to the agreement. The Welsh Ministers may only do so where they serve notice of their intentions on the other parties (a “notice of proposed termination”) and specified conditions are met. The notice of proposed termination may, among other things, provide that any works authorised by the agreement are no longer authorised and must not be carried out on or after a date specified in the notice. The conditions include the other parties to the agreement and other interested persons being given the opportunity to object to the termination order.

Regulation 9 provides that, after making a termination order, the Welsh Ministers must send it to specified persons, including the other parties to the agreement.

Regulation 10 reproduces section 9 of the 1979 Act, with modifications, to make provision about compensation that the Welsh Ministers may have to pay where they serve a notice of proposed termination or make a termination order. If a party to the agreement has incurred specified expenditure or has otherwise sustained loss or damage, the Welsh Ministers may be required to compensate that person.

Regulation 11 and the Schedule disapply or modify other provisions of the 1979 Act for the purposes of heritage partnership agreements. The provisions set rules for assessing the compensation payable where the Welsh Ministers serve a notice of proposed termination or make a termination order and give a person authorised by the Welsh Ministers power to enter land to inspect a scheduled monument in connection with a proposal for a heritage partnership agreement to be terminated.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from Cadw, Tŷ’r Afon, Bedwas Road, Caerphilly, CF83 8WT and on the Welsh Government’s website at [www.gov.wales](http://www.gov.wales).

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