

Draft Regulations laid before Senedd Cymru under section 60(4) of the Ancient Monuments and Archaeological Areas Act 1979, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

**ANCIENT MONUMENTS,
WALES**

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

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 below 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 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 these 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 the agreement's duration and provision for the parties to shorten (but not extend) the duration of the agreement or a provision of it.

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 with before they enter into a heritage partnership agreement or vary an existing agreement to include one or more additional scheduled monuments. 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 current heritage partnership agreements and must update the list as soon as practicable after entering into a new heritage partnership agreement.

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 must, among other things, provide that any works authorised by the agreement are no longer authorised and must not be executed after the service of 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.

Section 9ZB(7) of the 1979 Act enables the Welsh Ministers, by regulations, to make provision disapplying, or applying or reproducing with or without modifications, any provision of that Act for the purpose of heritage partnership agreements.

Regulation 10 is made under section 9ZB(7) of the 1979 Act and reproduces with modifications section 9 of that Act 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 makes further provision about the compensation that may be payable under regulation 10. It is made under section 9ZB(7) of the 1979 Act and applies section 27 of that Act to claims for compensation under regulation 10. Section 27 sets rules for assessing the compensation payable for the depreciation in the value of land where the Welsh Ministers serve a notice of proposed termination or make a termination order.

Regulation 12 and the Schedule disapply or modify other provisions of the 1979 Act for the purposes of heritage partnership agreements. The modifications include giving 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, Welsh Government, Plas Carew, Cardiff, CF15 7QQ and on the Welsh Government's website at www.gov.wales/.

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**ANCIENT MONUMENTS,
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**The Scheduled Monuments
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Made ***

Coming into force ***

The Welsh Ministers make these Regulations 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⁾.

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

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 XX.

Interpretation

2. In these Regulations—

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

(1) 1979 c. 9. 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.

“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 drefstadaeth*”) means an agreement entered into by the Welsh Ministers under section 9ZA of the 1979 Act;

“local authority” (“*awdurdod lleol*”) means—

- (a) the council of a county or county borough in Wales, and
- (b) in relation to land in England that adjoins or is in the vicinity of a scheduled monument in Wales, the council of the county or district in which that land is located;

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

“owner” (“*perchennog*”), in relation to a scheduled monument or land adjoining or in the vicinity of a scheduled monument, 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 a heritage partnership agreement

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

- (a) enough information to identify the scheduled monument or 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;
 - (e) provision enabling the parties to shorten (but not extend) the duration of the agreement or part of the agreement;
 - (f) a procedure that requires a party to the agreement who wishes to vary it so as to relate to one or more additional scheduled monuments to send a copy of the draft variation to the Welsh Ministers.
- (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 things 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) This regulation sets consultation and publicity requirements with which the Welsh Ministers must comply—

- (a) before they enter into a heritage partnership agreement, or
 - (b) before an existing agreement is varied so as to relate to one or more additional scheduled monuments.
- (2) 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 land to which the draft agreement or draft variation relates,
 - (ii) any occupier of the scheduled monument or land,
 - (iii) any local authority in whose area the scheduled monument or land is situated, and
 - (iv) any local authority which is a guardian of the scheduled monument or land (by virtue of section 12 or 15 of the 1979 Act), and
 - (b) invite representations from those persons within a specified period of at least 21 days

beginning with the day on which the draft is sent.

- (3) 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 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,
 - (iv) the date by which representations must be received,
 - (b) send the information described in subparagraph (a) to any person the Welsh Ministers consider to have an interest in the draft agreement or draft variation, and
 - (c) if requested to do so by any person, send to that person a copy of the draft agreement or draft variation.

(4) This regulation does not require the Welsh Ministers to publish or to send to any person information—

- (a) which is a trade secret,
- (b) the disclosure of which is 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.

Publicity requirement: duty to publish list

5.—(1) This regulation sets a publicity requirement with which the Welsh Ministers must comply.

- (2) The Welsh Ministers must—
- (a) publish a list, by electronic means, of all current heritage partnership agreements, and
 - (b) as soon as practicable after a heritage partnership agreement is made, or an existing agreement is varied (so as to relate to one or more additional scheduled monuments), 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 a part of an agreement, on a date earlier than it would otherwise cease to have effect.

(2) A termination order made under this regulation may include such supplementary, incidental, transitory, transitional or saving provisions as the Welsh Ministers consider appropriate.

(3) But the Welsh Ministers may only make a termination order if—

- (a) they have served a notice of proposed termination of the heritage partnership agreement on—
 - (i) the other parties to the agreement, and
 - (ii) any other person they consider to have an interest in the agreement, and
- (b) conditions 1, 2 and 3 in regulation 7 are met.

(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 objections can be made in the form specified in the notice to the Welsh Ministers at any time before the end of the period of 28 days beginning with the date on which the notice is served.

Termination orders: conditions

7.—(1) These are the conditions referred to in regulation 6(3)(b).

(2) Condition 1 is that the period of 28 days beginning with the date of service of the notice of proposed termination has ended.

(3) Condition 2 is that if an objection was made to the Welsh Ministers before the end of that period, they have—

- (a) caused a public local inquiry to be held, or
- (b) afforded to the persons described in paragraph (4) an opportunity to appear before and be heard by a person appointed by the Welsh Ministers for that purpose.

(4) The persons are—

- (a) the person making the objection, and
- (b) if the person referred to in sub-paragraph (a) accepts the opportunity to attend 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 attend a hearing.

(5) Condition 3 is that the Welsh Ministers 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 (3).

(6) Section 250(2) and (3) of the Local Government Act 1972⁽¹⁾ (local inquiries: evidence) applies to a public local inquiry held by an appointed person in accordance with paragraph (3).

Termination orders: effect of service of notice of proposed termination

8.—(1) A notice of proposed termination must provide that works authorised by a scheduled monument consent granted by the heritage partnership agreement to which the notice relates must not be executed after the date on which the notice is served on the owner and any occupier of the scheduled monument.

(2) Those works are not to be regarded as authorised under section 2(3) of the 1979 Act at any time after the date on which notice is served in accordance with paragraph (1).

(3) But paragraph (2) ceases to apply—

- (a) if the Welsh Ministers make a termination order under regulation 6 within the period of 21 months beginning with the date on which notice is served in accordance with paragraph (1), on the date the termination order is made,
- (b) if the Welsh Ministers, within that 21 month period, serve notice on the owner and any occupier of the scheduled monument that they have determined not to make a termination order under regulation 6, on the date that notice is served, and
- (c) in any other case, at the end of that 21 month period.

Termination orders: notification requirement

9. As soon as practicable after making a termination order, the Welsh Ministers must send a copy of the order to—

- (a) each person served with a notice of proposed termination;
- (b) any other person given the opportunity to appear to attend the hearing under regulation 7(4)(b)(ii).

⁽¹⁾ 1972 c. 70.

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 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 section 27 of the 1979 Act relating to compensation

11. Section 27 (general provisions as to compensation for depreciation) of the 1979 Act applies to compensation under regulation 10 in respect of loss or damage consisting of depreciation of the value of an interest in land.

Application of other provisions of the 1979 Act

12.—(1) The Schedule disapplies or modifies other provisions of the 1979 Act for the purposes of heritage partnership agreements.

(2) The provisions of the 1979 Act specified in the left-hand column of the Table in the Schedule are modified or disapplied in accordance with the corresponding entry in the right-hand column of that Table.

Name

Title of Minister, one of the Welsh Ministers

Date

SCHEDULE Regulation 12

Table

<i>Provision</i>	<i>Modification</i>
section 2 (control of works affecting scheduled monuments)	Section applies as if subsections (3A) and (3B) were omitted.
section 4 (duration, modification and revocation of scheduled monument consent)	1979 Act applies as if section were omitted.
section 6 (powers of entry for inspection of scheduled monuments, etc.)	Section applies as if, in subsection (2)— (1) paragraph (a) were omitted, and— (2) for paragraph (b) there were substituted— “(b) 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.”
Schedule 1	1979 Act applies as if Schedule 1 were omitted.