

SL(6)521 – The Applications for Scheduled Monument Consent (Wales) Regulations 2024

Background and Purpose

These Regulations are made under powers given to the Welsh Ministers by the Historic Environment (Wales) Act 2023 (the “2023 Act”). The 2023 Act forms part of a code of law relating to the historic environment of Wales. These Regulations also form part of that Code.

The 2023 Act protects monuments of special historic interest. A monument may comprise a building, structure, work, cave or excavation, or site. The 2023 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 2 of the 2023 Act.

The framework for applications for scheduled monument consent is set out in sections 14 and 15 of the 2023 Act. These Regulations make further provision about such applications relating to scheduled monuments in Wales.

Regulation 2 makes further provision about the form and content of an application for scheduled monument consent, how to make such an application and the documents that must be included with it.

Regulation 3 amends the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992 (the “1992 Regulations”). The 1992 Regulations align the procedures for making applications and holding inquiries where an application made under section 6 of the Transport and Works Act 1992 also requires scheduled monument consent.

Regulation 4 makes consequential amendments to the Developments of National Significance (Wales) Regulations 2016.

Regulation 5 revokes the Ancient Monuments (Applications for Scheduled Monument Consent) (Wales) Regulations 2017.

Procedure

Negative

The Regulations were made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.



Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation

In regulation 3(3)(b), the location for the insertion of the new text by the amendment is identified as “after “consent”...” in paragraph (1) of regulation 4 of the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992. However, the word “consent” occurs twice in the existing text of paragraph (1) in regulation 4 of those Regulations. It is found in the opening words before sub-paragraph (a) and in that sub-paragraph itself, both of which are part of paragraph (1) in regulation 4. Therefore, the amendment fails to identify with certainty the location for the insertion of the new text and whether it should only be inserted after the first place the word “consent” occurs or in both places.

2. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 3(6), a new Schedule 3 is inserted in the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992. In paragraph 1(a) of the new Schedule 3, in the Welsh text, the word “declarasiwn” has been used to convey the meaning of “declaration” in the modification of section 15(1)(aa) of the Historic Environment (Wales) Act 2023. This is consistent with the terminology of the existing Welsh text of section 15 of that Act. It is also consistent with the entry on the Welsh Government’s database of terms, BydTermCymru, that notes “declarasiwn” with status A as the fully standardised term for “declaration” and has an additional note that this differs in meaning from another Welsh word “datganiad” in a legal context.

Paragraph 2 of the new Schedule 3 also modifies the Applications for Scheduled Monument Consent (Wales) Regulations 2024. However, in the Welsh text, in paragraph 2(b) of the new Schedule 3, the word “datganiad” rather than “declarasiwn” has been used to convey the meaning of “declaration” in the heading and body of the new regulation 2A and in the heading and opening words of the Form of declaration of the modified text. Therefore, the choice of term for “declaration” in the Welsh text of the modifications in paragraph 2(b) of the new Schedule 3 is inconsistent with that used in the earlier modifications in paragraph 2(a) of the new Schedule 3 and the existing text found in section 15 of the Historic Environment (Wales) Act 2023, and differs from the standardised term on BydTermCymru. In addition, the word “datganiad” is used in the Welsh text of all of the modifications and in the existing text of section 15 of the Historic Environment (Wales) Act 2023 to convey the meaning of “statement”. As a result, the reader of the Welsh text will also be unable to distinguish between “declaration” and “statement” because the same word has been used to express both terms in the modifications of paragraph 2(b) in the new Schedule 3.



Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd

It is noted that section 13(1) and (2) of the 2023 Act referred to in these Regulations were not in force on the date that these Regulations were made.

However, in accordance with the Historic Environment (Wales) Act 2023 (Commencement) Order 2024, the remaining provisions of the 2023 Act (except section 147, which is not referenced in these Regulations) will come into force on 4 November 2024, the same date on which these Regulations come into force.

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 30 September 2024 and reports to the Senedd in line with the reporting points above.

