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STATUTORY INSTRUMENTS

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**1995 No. 1625 (N.I. 9)**

**Historic Monuments and Archaeological  
Objects (Northern Ireland) Order 1995**

- - - - - 28th June 1995

**Modifications etc. (not altering text)**

- C1** Order: transfer of functions (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), **Sch. 5 Pt. 1** (with art. 9(2))

**PART I**  
**INTRODUCTORY**

**Title and commencement**

**1.**—(1) This Order may be cited as the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995.

(2) This Order shall come into operation on the expiration of 2 months from the day on which it is made.

**Interpretation**

**2.**—(1) The Interpretation Act (Northern Ireland) 1954<sup>F1</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“archaeological object” includes any object, being a chattel (whether in a manufactured or unmanufactured state), which is, or appears to be, of archaeological or historical interest and which has, by reason of such interest, a value substantially greater than its intrinsic value or the value of the materials of which it is composed;

“the Department” means the Department of the Environment;

“flooding operations” means covering land with water or any other liquid or partially liquid substance;

“guardianship deed” has the meaning given by Article 15(4);

“historic monument” means—

- (a) any scheduled monument; and

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- (b) any other monument the protection of which is in the opinion of the Department of public interest by reason of the archaeological, historical, architectural, traditional or artistic interest attaching to it;

“maintenance”, in relation to a monument, includes fencing, repairing, and covering in, of the monument and the doing of any other act or thing which may be required for the purpose of repairing the monument or protecting it from decay or injury, and “maintain” shall be construed accordingly;

“monument” has the meaning given by paragraph (6);

“owner”, in relation to any land, means (except for the purposes of paragraph 2 of Schedule 1 and any regulations under that paragraph) a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let;

“prescribed” means prescribed by regulations made by the Department;

“protection” includes preservation;

“the Schedule” has the meaning given by Article 3(2);

“scheduled monument” has the meaning given by Article 3(2) and references to “scheduled monument consent” shall be construed in accordance with Articles 4(3) and 5(5);

<sup>F2</sup>“statutory provision” has the meaning given to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“tipping operations” means tipping soil or spoil or depositing building or other materials or matter (including waste materials or refuse) on any land; and

“works” includes operations of any description and, in particular (but without prejudice to the generality of the preceding provision) flooding or tipping operations and any operations undertaken for purposes of agriculture (within the meaning of [<sup>F3</sup>the Planning Act (Northern Ireland) 2011]) or forestry (including afforestation).

(3) For the purposes of this Order “archaeological investigation” means any investigation of any land, objects or other material for the purpose of obtaining and recording any information of archaeological or historical interest and (without prejudice to the generality of the preceding provision) includes in the case of an archaeological investigation of any land—

- (a) any investigation for the purpose of discovering and revealing and (where appropriate) recovering and removing any objects or other material of archaeological or historical interest situated in, on or under the land; and
- (b) examining, testing, treating, recording and preserving any such objects or material discovered during the course of any excavations or inspections carried out for the purposes of any such investigation.

(4) For the purposes of this Order, an archaeological examination of any land means any examination or inspection of the land for the purpose of obtaining and recording any information of archaeological or historical interest.

(5) In this Order references to land associated with any monument (or to associated land) shall be construed in accordance with Article 18(7).

(6) “Monument” means (subject to paragraph (7))—

- (a) any building, structure or works, whether above or below the surface of the land, and any cave or excavation;
- (b) any site comprising the remains of any such building, structure or works or of any cave or excavation; and

- (c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part thereof which neither constitutes nor forms part of anything which is a monument within sub-paragraph (a);

and any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled.

(7) Paragraph (6)(a) does not apply to any ecclesiastical building for the time being used for ecclesiastical purposes, and paragraph (6)(c) does not apply—

- (a) to a site comprising any object or its remains unless the situation of that object or its remains in that particular site is a matter of public interest;
- (b) to a site comprising, or comprising the remains of, any vessel which is protected by an order under section 1 of the Protection of Wrecks Act 1973<sup>F4</sup> designating an area round the site as a restricted area.

(8) For the purposes of this Order, the site of a monument includes not only the land in or on which it is situated but also any land comprising or adjoining it which appears to the Department, in the exercise in relation to that monument of any of its functions under this Order, to be essential for the monument's support and preservation.

(9) References in this Order to a monument include references—

- (a) to the site of the monument in question; and
- (b) to a group of monuments or any part of a monument or group of monuments.

(10) References in this Order to the site of a monument—

- (a) are references to the monument itself where it consists of a site; and
- (b) in any other case include references to the monument itself.

(11) In this Article “remains” includes any trace or sign of the previous existence of the thing in question.

**F1** 1954 c. 33 (N.I.)

**F2** 1954 c. 33 (N.I.)

**F3** Words in art. 2(2) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 6 para. 72](#) (with s. 211); [S.R. 2015/49](#), arts. 2, 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2)

**F4** 1973 c. 33

## PART II

### HISTORIC MONUMENTS

#### *Protection of scheduled monuments*

#### **Schedule of monuments**

**3.—**(1) The Department shall for the purposes of this Order compile and maintain in such form as it thinks fit a schedule specifying such monuments as it thinks fit.

(2) In this Order—

“the Schedule” means the schedule compiled and maintained under paragraph (1);

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“scheduled monument” means a monument which is for the time being specified in the Schedule.

(3) Subject to paragraph (5), the Department shall on first compiling the Schedule include therein—

- (a) any monument which, immediately before the coming into operation of this Order, is included in a schedule prepared under section 7(1) of the Historic Monuments Act (Northern Ireland) 1971<sup>F5</sup>; and
- (b) any monument in respect of which the Department has before the coming into operation of this Order served notice on any person in accordance with section 7(2) of that Act of its intention to include it in such a schedule.

(4) Subject to paragraphs (5) and (6), at any time thereafter the Department may—

- (a) include any monument in the Schedule;
- (b) remove any monument from the Schedule;
- (c) amend any entry in the Schedule relating to a monument (whether by removing anything previously included as part of the monument or adding anything not previously so included, or otherwise).

(5) The Department shall not at any time include in the Schedule any structure which is occupied as a dwelling house by any person other than a person employed as a caretaker thereof or his family.

(6) Before taking any action under paragraph (4)(a) or (b) the Department shall consult the Historic Monuments Council.

(7) As soon as may be after taking any action under paragraph (4) (a), (b) or (c) in relation to a monument, the Department shall inform the owner and (if the owner is not the occupier) the occupier of the monument of the action taken and, in the case of action under paragraph (4)(a) or (c), shall also send to him or them a copy of the entry or (as the case may be) of the amended entry.

(8) The Department shall from time to time publish a list of all the monuments which are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list published in sections, all sections of the list need not be published simultaneously.

(9) The Department may from time to time publish amendments of any list published under paragraph (8) and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being—

- (a) of the monuments listed; and
- (b) of any matters purporting to be reproduced in the list from the entries in the Schedule relating to the monuments listed.

**F5** 1971 c. 17 (N.I.)

### **Control of works affecting scheduled monuments**

4.—(1) If any person executes or causes or permits to be executed any works to which this Article applies he shall be guilty of an offence unless the works are authorised under this Part.

(2) This Article applies to any of the following works, that is to say—

- (a) any works resulting in the demolition, destruction or disturbance of, or any damage to, a scheduled monument;
- (b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto; and

- (c) any flooding or tipping operations on land in, on or under which there is a scheduled monument.
- (3) Without prejudice to any other authority to execute works conferred under this Part, works to which this Article applies are authorised under this Part if—
- (a) the Department has granted written consent (referred to in this Order as “scheduled monument consent”) for the execution of the works; and
- (b) the works are executed in accordance with the terms of the consent and of any conditions attached to the consent.
- (4) Scheduled monument consent may be granted either unconditionally or subject to conditions (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).
- (5) Without prejudice to the generality of paragraph (4), a condition attached to a scheduled monument consent may require that the Department or a person authorised by the Department be afforded an opportunity, before any works to which the consent relates are begun, to examine the monument and its site and carry out such excavations therein as appear to the Department to be desirable for the purpose of archaeological investigation.
- (6) Without prejudice to paragraph (1), if a person executing or causing or permitting to be executed any works to which a scheduled monument consent relates fails to comply with any condition attached to the consent he shall be guilty of an offence, unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.
- (7) In any proceedings for an offence under this Article in relation to works within paragraph (2)
- (a) it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to or disturbance of the monument.
- (8) In any proceedings for an offence under this Article it shall be a defence to prove the following matters—
- (a) that the works were urgently necessary in the interests of safety and health or for the preservation of the scheduled monument;
- (b) that the works carried out were limited to the minimum measures immediately necessary; and
- (c) that notice in writing justifying in detail the carrying out of the works was given to the Department as soon as reasonably practicable.
- (9) A person guilty of an offence under this Article shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to a fine.
- (10) Part I of Schedule 1 shall have effect with respect to applications for, and the effect of, scheduled monument consent.

### **Grant of scheduled monument consent by order of the Department**

5.—(1) The Department may by order grant scheduled monument consent for the execution of works of any class or description specified in the order, and any such consent may apply to scheduled monuments of any class or description so specified.

(2) Any conditions attached by virtue of Article 4 to a scheduled monument consent granted by an order under this Article shall apply in such class or description of cases as may be specified in the order.