

SCHEDULE 2

(introduced by section 15)

FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO SCHEDULED MONUMENTS

PART 1

SCHEDULE OF MONUMENTS

- 1 The 1979 Act is amended as follows.
- 2 In section 1 (Schedule of monuments)—
- (a) in subsection (1)—
 - (i) for “The Secretary of State” substitute “Historic Environment Scotland”,
 - (ii) for “he” substitute “it”,
 - (b) in subsection (3)—
 - (i) for first “the Secretary of State” substitute “Historic Environment Scotland”,
 - (ii) for “him” substitute “it”,
 - (c) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (d) in subsection (5) for “The Secretary of State” substitute “Historic Environment Scotland”,
 - (e) for subsection (6) substitute—
 - “(6) Where Historic Environment Scotland—
 - (a) includes a monument in the Schedule under subsection (3),
 - (b) amends the entry in the Schedule relating to a monument, or
 - (c) excludes a monument from the Schedule,it must notify such persons as may be prescribed in such form and manner, and within such time, as may be prescribed of the action taken.”,
 - (f) subsections (7) and (8) are repealed,
 - (g) in subsection (10)(b) for “the Secretary of State” substitute “Historic Environment Scotland”.
- 3 After section 1A (Commission’s functions as to informing and publishing) insert—

“1B Publication of the Schedule

- (1) Historic Environment Scotland must—
 - (a) publish the Schedule compiled and maintained under section 1, and any amendments of the Schedule, and
 - (b) make the Schedule available for public inspection, in such manner as may be prescribed.
- (2) The Scottish Ministers may by regulations make further provision for—
 - (a) the publication of the Schedule,
 - (b) the making of the Schedule available for public inspection,

- (c) the notification of the inclusion of a monument in, the amendment of an entry relating to a monument in or the exclusion of a monument from the Schedule.”.

PART 2

SCHEDULED MONUMENT CONSENT

4 The 1979 Act is further amended as follows.

5 In section 2 (control of works affecting scheduled monuments)—

- (a) in subsection (3)(a) after “State” insert “or Historic Environment Scotland”,
 (b) in subsection (3A) for paragraph (b) substitute—
 “(b) consent for the retention of the works is granted by the
 Scottish Ministers or by Historic Environment Scotland”,
 (c) in subsection (5) in paragraph (b) and in the fullout for “the Secretary of
 State” in each place substitute “Historic Environment Scotland”,
 (d) after that subsection insert—

“(5A) The conditions that may be attached to scheduled monument consent
 under subsection (4) include a condition reserving specified details
 of the works (whether or not set out in the application for consent)
 for subsequent approval by Historic Environment Scotland.”,

- (e) in subsection (9) for “the Secretary of State” substitute “Historic
 Environment Scotland”.

6 After section 3 (grant of scheduled monument consent by order of the Scottish
 Ministers) insert—

“3A Application for variation or discharge of conditions

- (1) Any person interested in a scheduled monument in relation to which
 scheduled monument consent has been granted subject to conditions may
 apply to Historic Environment Scotland for the variation or discharge of the
 conditions.
- (2) The application must indicate what variation or discharge of conditions is
 applied for and Part 1 of schedule 1 applies to such an application as it applies
 to an application for scheduled monument consent.
- (3) Historic Environment Scotland or, as the case may be, the Scottish Ministers
 may, on such an application—
 (a) vary or discharge the conditions attached to the consent (whether or
 not the application relates to the condition varied or discharged),
 (b) add new conditions consequential upon the variation or discharge.”.

7 In section 4 (duration, modification and revocation of scheduled monument
 consent)—

- (a) for subsections (3) and (4) substitute—

“(3) If it appears to Historic Environment Scotland that it is expedient to
 modify or revoke a scheduled monument consent, it may by order

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under this section modify or revoke the consent to such extent as it considers expedient.

- (4) The power conferred by subsection (3) to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.”
- (b) in subsection (5) for “directions” substitute “orders”.

8 After that section insert—

“4A Modification and revocation of scheduled monument consent by Scottish Ministers

- (1) If it appears to the Scottish Ministers that it is expedient to modify or revoke a scheduled monument consent, they may by order under this section modify or revoke the consent to such extent as they consider expedient.
- (2) The Scottish Ministers may not make an order under this section without consulting Historic Environment Scotland.
- (3) Where the Scottish Ministers propose to make such an order, they must serve notice on—
- (a) the owner of the scheduled monument affected,
 - (b) where the owner is not the occupier of the monument, the occupier, and
 - (c) any other person who in their opinion will be affected by the order.
- (4) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.
- (5) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they make the order, give such an opportunity both to that person and to Historic Environment Scotland.
- (6) The power conferred by this section to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.
- (7) An order under this section has effect as if it had been made by Historic Environment Scotland under section 4 and confirmed by the Scottish Ministers under paragraph 10 of Part 2 of schedule 1.”

9 In section 5(1) (execution of works for preservation of a scheduled monument in cases of urgency)—

- (a) for “the Secretary of State” substitute “Historic Environment Scotland”,
- (b) for “he” substitute “it”,
- (c) for “his” substitute “its”.

10 In section 6 (powers of entry for inspection of scheduled monuments)—

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- (a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (b) in subsection (2) after “State” in both places insert “or Historic Environment Scotland”,
 - (c) in subsection (3) after “State” insert “or Historic Environment Scotland”,
 - (d) in subsection (3A) after “Ministers” insert “or Historic Environment Scotland”,
 - (e) in subsection (4) after “State” insert “or Historic Environment Scotland”,
 - (f) in subsection (5) after “State” in both places insert “or Historic Environment Scotland”.
- 11 In section 7 (compensation for refusal of scheduled monument consent)—
- (a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland or, where the Scottish Ministers refused the scheduled monument consent or granted it subject to conditions, Ministers”,
 - (b) in subsection (3) for “the Secretary of State’s” substitute “Historic Environment Scotland’s or, as the case may be, the Scottish Ministers”,
 - (c) in subsection (6)(b) for “the Secretary of State” substitute “Historic Environment Scotland or, as the case may be, the Scottish Ministers”.
- 12 In section 8 (recovery of compensation under section 7 on subsequent grant of consent)—
- (a) in subsection (1) after “State” in both places insert “or Historic Environment Scotland”,
 - (b) in subsection (2A)(b) after “State” insert “or Historic Environment Scotland”,
 - (c) in subsection (3)—
 - (i) after “State” in each place insert “or Historic Environment Scotland”,
 - (ii) after “his” in both places insert “or its”,
 - (d) in subsection (4) after “State” insert “or Historic Environment Scotland”.
- 13 In section 9(1) (compensation where works cease to be authorised) after “State” insert “or Historic Environment Scotland”.
- 14 (1) Part 1 of schedule 1 (applications for scheduled monument consent) is amended as follows.
- (2) In paragraph 1(1) for “the Secretary of State” substitute “Historic Environment Scotland”.
 - (3) In paragraph 2(1) for “The Scottish Ministers” substitute “Historic Environment Scotland”.
 - (4) In paragraph 2B—
 - (a) in sub-paragraph (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (b) in sub-paragraph (2)(a)—
 - (i) after “received,” insert “Historic Environment Scotland has or”,
 - (ii) after “refused” insert “or the Scottish Ministers have dismissed an appeal against the refusal of, or an appeal under section 4B(3) in respect of,”,

- (c) in sub-paragraph (2)(b)—
 - (i) for “their” substitute “its”,
 - (ii) after “refused” insert “or the appeal was dismissed”,
 - (d) in sub-paragraph (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”.
- (5) After that paragraph insert—
- “2C (1) If Historic Environment Scotland, on an application to it for scheduled monument consent, intends to grant that consent, it must, where sub-paragraph (2) applies, first notify the Scottish Ministers of the application.
- (2) This sub-paragraph applies where—
- (a) regulations, or
 - (b) directions given to Historic Environment Scotland by the Scottish Ministers,
- provide that the application must be so notified.
- (3) The Scottish Ministers may within the period of 28 days beginning with the date of the notification—
- (a) direct the reference of the application to them under section 3B, or
 - (b) give notice to Historic Environment Scotland that they require further time in which to consider whether to require such a reference.
- (4) Historic Environment Scotland must not grant scheduled monument consent until—
- (a) the period mentioned in sub-paragraph (3) has expired without the Scottish Ministers directing the reference of the application to them or giving notice under paragraph (b) of that sub-paragraph, or
 - (b) the Scottish Ministers have notified Historic Environment Scotland that they do not intend to require the reference of the application.
- 2D The Scottish Ministers may give directions to Historic Environment Scotland requiring it, in such cases or classes of case as may be specified in the directions, to notify to Ministers and to such other persons as may be so specified—
- (a) any applications made to it for scheduled monument consent, and
 - (b) the decisions taken on those applications.”.

(6) In paragraph 3—

- (a) in sub-paragraph (1) after “State” insert “or Historic Environment Scotland”,
- (b) for sub-paragraphs (2) and (3) substitute—

“(2) The Scottish Ministers may by regulations make provision for the procedure to be followed by Historic Environment Scotland in considering and determining applications for scheduled monument consent.”,

- (c) in sub-paragraph (4)—

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- (i) after “State” insert “or, as the case may be, Historic Environment Scotland”,
- (ii) for “his” substitute “the”,
- (iii) “to him” is repealed.

(7) Paragraph 4 is repealed.

15 In Part 2 of schedule 1 (modification and revocation of scheduled monument consent)—

- (a) paragraphs 5 to 9 are repealed,
- (b) after paragraph 9 insert—

“10 (1) Except as provided for in paragraph 11, an order made by Historic Environment Scotland under section 4 modifying or revoking a scheduled monument consent does not take effect unless it is confirmed by the Scottish Ministers.

- (2) Where Historic Environment Scotland submits an order to the Scottish Ministers for confirmation, it must serve notice on—
 - (a) the owner of the scheduled monument affected,
 - (b) where the owner is not the occupier of the monument, the occupier, and
 - (c) any other person who in its opinion will be affected by the order.

(3) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.

(4) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they confirm the order, give such an opportunity both to that person and to Historic Environment Scotland.

(5) The Scottish Ministers may confirm any such order submitted to them either without modification or subject to such modifications as they consider expedient.

11 (1) Where sub-paragraph (2) applies, Historic Environment Scotland—

- (a) need not submit the order under section 4 modifying or revoking the scheduled monument consent to the Scottish Ministers for approval,
- (b) must instead take the steps mentioned in sub-paragraph (3).

(2) This sub-paragraph applies where—

- (a) the owner of the scheduled monument affected,
- (b) where the owner is not the occupier of the monument, the occupier, and
- (c) all other persons who in Historic Environment Scotland’s opinion will be affected by the order,

have notified Historic Environment Scotland in writing that they do not object to the order.

- (3) The steps referred to in sub-paragraph (1)(b) are—
- (a) advertising in the prescribed manner the fact that the order has been made,
 - (b) serving notice to the same effect on the persons mentioned in sub-paragraph (2), and
 - (c) sending a copy of any such advertisement to the Scottish Ministers not more than 3 days after its publication.
- (4) The advertisement under sub-paragraph (3)(a) must specify—
- (a) the period within which persons affected by the order may give notice to the Scottish Ministers that they require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose, and
 - (b) the period at the end of which, if no such notice is given to the Scottish Ministers, the order may take effect by virtue of this paragraph and without being confirmed by the Scottish Ministers.
- (5) The period referred to in sub-paragraph (4)(a) must not be less than 28 days from the date on which the advertisement first appears.
- (6) The period referred to in sub-paragraph (4)(b) must not be less than 14 days from the end of the period referred to in sub-paragraph (4)(a).
- (7) The notice under sub-paragraph (3)(b) must include a statement to the effect that no compensation is payable under section 9 in respect of an order which takes effect by virtue of this paragraph.
- (8) The order takes effect at the end of the period referred to in sub-paragraph (4)(b) without being confirmed by the Scottish Ministers if—
- (a) no person claiming to be affected by the order has given notice to the Scottish Ministers as mentioned in sub-paragraph (4)(a) within the period referred to in that sub-paragraph, and
 - (b) the Scottish Ministers have not directed that the order be submitted to them for confirmation.”.

PART 3

SCHEDULED MONUMENT ENFORCEMENT NOTICES

16 The 1979 Act is further amended as follows.

17 In section 9A (power to issue scheduled monument enforcement notice)—

- (a) in subsection (1)—

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- (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) in paragraph (b) for “they may, if they consider” substitute “it may, if it considers”,
 - (b) in subsection (2)(a) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,
 - (c) in subsection (3)(b)—
 - (i) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,
 - (ii) for “they consider” substitute “it considers”,
 - (iii) for “them” substitute “it”,
 - (d) in subsection (4) for “the Scottish Ministers are” substitute “Historic Environment Scotland is”.
- 18 In section 9B (scheduled monument enforcement notices: further provision)—
- (a) in subsection (4)(b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (b) in subsection (5)—
 - (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) in paragraph (a) for “their” substitute “its”,
 - (c) in subsection (6) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
 - (d) in subsection (7) for “The Scottish Ministers” substitute “Historic Environment Scotland”.
- 19 In section 9C (appeal against scheduled monument enforcement notice)—
- (a) in subsection (1) for “by summary application appeal to the sheriff” substitute “appeal to the Scottish Ministers”,
 - (b) in subsection (2)—
 - (i) before paragraph (a) insert—
 - “(za) that the monument is not of national importance,”,
 - (ii) after paragraph (c) insert—
 - “(ca) that scheduled monument consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted,”,
 - (iii) after paragraph (d) insert—
 - “(da) except in relation to such a requirement as is mentioned in section 9A(3)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the monument or land to its condition before the works were carried out,”,
 - (iv) after paragraph (e) insert—
 - “(f) that the steps required by the notice for the purpose of restoring the character of the monument or land to its former state would not serve that purpose,
 - (g) that the cessation of any works required by the notice exceeds what is necessary to remedy the contravention of section 2(1) or (6),

- (h) that steps required to be taken by virtue of section 9A(3)(b) exceed what is necessary to alleviate the effect of the works executed to the monument or land,
 - (i) that steps required to be taken by virtue of section 9A(3)(c) exceed what may reasonably be required to bring the monument or land to the state in which it would have been if the scheduled monument consent had been complied with.”,
- (c) after subsection (2) insert—
- “(2A) An appeal under this section is to be made by giving written notice of the appeal to the Scottish Ministers before the date specified in the scheduled monument enforcement notice as the date on which it is to take effect.”,
- (d) after subsection (3) insert—
- “(3A) A person who gives notice of appeal under this section must submit to the Scottish Ministers, either when giving the notice or within such time as may be prescribed, a statement in writing—
- (a) specifying the grounds on which the appeal is made,
 - (b) giving such further information as may be prescribed.”,
- (e) subsections (4) and (5) are repealed.

20 After that section insert—

“9CA Determination of appeals under section 9C

- (1) On determining an appeal under section 9C, the Scottish Ministers may give directions for giving effect to the determination, including where appropriate directions for quashing the scheduled monument enforcement notice.
- (2) On such an appeal the Scottish Ministers may if they are satisfied that the correction or variation will not cause injustice to the appellant or to Historic Environment Scotland—
 - (a) correct any defect, error or misdescription in the scheduled monument enforcement notice, or
 - (b) vary the terms of the notice.
- (3) In a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 9B(4) to be served with a copy of the notice was not served, the Scottish Ministers may disregard that fact if they are satisfied that the person has not been substantially prejudiced by the failure.
- (4) The Scottish Ministers may—
 - (a) dismiss such an appeal if the appellant fails to comply with section 9C(3A) within the prescribed time,
 - (b) allow such an appeal or quash the scheduled monument enforcement notice if Historic Environment Scotland fails to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 9CB(1).

- (5) On the determination of an appeal under section 9C the Scottish Ministers may—
 - (a) grant scheduled monument consent for the works to which the scheduled monument enforcement notice relates,
 - (b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or
 - (c) direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that determination.
- (6) Any scheduled monument consent granted by the Scottish Ministers under subsection (5)(a) is to be treated as granted under section 2(3).
- (7) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 9C is final.

9CB Procedure for appeals under section 9C

- (1) The Scottish Ministers may by regulations make provision in connection with appeals under section 9C, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.
- (2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
 - (a) the form, manner and time for making an appeal,
 - (b) the notification of an appeal,
 - (c) the manner in which an appeal is to be conducted.
- (3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).
- (4) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 9C.”.

21 In section 9D (execution of works required by scheduled monument enforcement notice)—

- (a) in subsection (1)—
 - (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) in paragraph (b) for “them” substitute “it”,
- (b) in subsection (2)(b) for “the Scottish Ministers in taking steps required by it” substitute “Historic Environment Scotland in taking steps required by the notice”,
- (c) in subsection (4)—
 - (i) for “the Scottish Ministers take” substitute “Historic Environment Scotland takes”,
 - (ii) for “they” substitute “it”,

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- (iii) for “them” substitute “it”,
- (d) in subsection (5)—
 - (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) for “them” substitute “it”,
- (e) in subsection (6)—
 - (i) for “the Scottish Ministers seek” substitute “Historic Environment Scotland seeks”,
 - (ii) in paragraph (b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
- (f) in subsection (7)—
 - (i) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”,
 - (ii) for “they” substitute “it”.

22 After section 9F (effect of scheduled monument consent on scheduled monument enforcement notice) insert—

“9FA Enforcement by the Scottish Ministers

- (1) If it appears to the Scottish Ministers that it is expedient that a scheduled monument enforcement notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9A.
- (2) A scheduled monument enforcement notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.
- (3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.
- (4) The provisions of this Act relating to scheduled monument enforcement notices apply, so far as relevant, to a scheduled monument enforcement notice served by the Scottish Ministers as they apply to a scheduled monument enforcement notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.”.

PART 4

SCHEDULED MONUMENTS: STOP NOTICES

23 The 1979 Act is further amended as follows.

24 In section 9G (stop notices)—

- (a) in subsection (1) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,
- (b) in subsection (2)—
 - (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) for “they serve” substitute “it serves”,

- (c) in subsection (3) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,
 - (d) in subsection (5)(a) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,
 - (e) in subsection (6)—
 - (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) for “them” substitute “it”,
 - (f) in subsection (7)—
 - (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) for “their” substitute “its”.
- 25 In section 9H (stop notices: supplementary provisions)—
- (a) in subsection (3) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (b) in subsection (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”.
- 26 After that section insert—
- “9HA Power of the Scottish Ministers to serve stop notice**
- (1) If it appears to the Scottish Ministers that it is expedient that a stop notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9G.
 - (2) A stop notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.
 - (3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.
 - (4) The provisions of this Act relating to stop notices apply, so far as relevant, to a stop notice served by the Scottish Ministers as they apply to a stop notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.”.
- 27 In section 9I (compensation for loss due to stop notice)—
- (a) in subsection (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (b) in subsection (3)(c)—
 - (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) for “them” substitute “it”,
 - (c) in subsection (5)(b) for “the Scottish Ministers” substitute “Historic Environment Scotland”.
- 28 In section 9K (temporary stop notices)—
- (a) in subsection (1)—

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- (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) for “they may, if they consider” substitute “it may, if it considers”,
 - (b) in subsection (2)(c) for “the Scottish Ministers” substitute “Historic Environment Scotland’s”,
 - (c) in subsection (3) for “the Scottish Ministers” in both places substitute “Historic Environment Scotland”,
 - (d) in subsection (4) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
 - (e) in subsection (8) for “the Scottish Ministers” substitute “Historic Environment Scotland”.
- 29 In section 9L(1) (temporary stop notices: restrictions) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”.
- 30 In section 9N (temporary stop notices: compensation)—
- (a) in subsection (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (b) in subsection (2)(b) for “the Scottish Ministers withdraw” substitute “Historic Environment Scotland withdraws”.

PART 5

APPEALS AND REFERRALS

CHAPTER 1

APPEALS FROM HISTORIC ENVIRONMENT SCOTLAND

- 31 The 1979 Act is further amended as follows.

Appeal against inclusion or amendment of entry in Schedule of monuments

- 32 After section 1B (publication of the Schedule) (inserted by paragraph 3) insert—

“1C Appeal against inclusion etc. in Schedule of monuments

- (1) This section applies where Historic Environment Scotland makes a decision—
 - (a) to include a monument in the Schedule,
 - (b) to amend an entry in the Schedule relating to a monument.
- (2) A person mentioned in subsection (3) may appeal the decision to the Scottish Ministers.
- (3) The person is—
 - (a) the owner of the monument,
 - (b) the tenant of the monument,
 - (c) the occupier of the monument.

1D Determination of appeals under section 1C

- (1) The Scottish Ministers may—
 - (a) dismiss an appeal under section 1C,
 - (b) allow such an appeal (in whole or in part).
- (2) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.
- (3) Where the Scottish Ministers allow an appeal, they may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to their decision.
- (4) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 1C is final.

1E Procedure for appeals under section 1C

- (1) The Scottish Ministers may by regulations make provision in connection with appeals under section 1C, including provision about—
 - (a) the grounds on which an appeal may be made,
 - (b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.
- (2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
 - (a) the form, manner and time for making an appeal,
 - (b) the notification of an appeal,
 - (c) the manner in which an appeal is to be conducted.
- (3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).
- (4) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 1C.”.

Appeal in relation to scheduled monument consent

33 After section 4A (inserted by paragraph 8) insert—

“4B Appeal in relation to scheduled monument consent

- (1) This section applies where Historic Environment Scotland makes a decision—
 - (a) refusing an application for scheduled monument consent,
 - (b) granting such an application subject to conditions,

- (c) refusing an application for variation or discharge of conditions to which a scheduled monument consent is subject,
 - (d) granting such an application subject to conditions,
 - (e) refusing an application for subsequent approval required by a condition to which a scheduled monument consent is subject.
- (2) A person who made the application mentioned in subsection (1) may appeal the decision to the Scottish Ministers.
- (3) A person may also appeal to the Scottish Ministers where Historic Environment Scotland has not given notice of its decision on an application mentioned in subsection (1)(a), (c) or (e) within the prescribed period or such other longer period as may be agreed between the applicant and Historic Environment Scotland.
- (4) An appeal under this section may include the ground that—
 - (a) the monument should not be included in the Schedule,
 - (b) the entry in the Schedule relating to the monument should be amended.

4C Determination of appeals under section 4B

- (1) The Scottish Ministers may—
 - (a) dismiss an appeal under section 4B,
 - (b) allow such an appeal (in whole or in part).
- (2) In determining an appeal under section 4B, the Scottish Ministers may deal with the application to which the appeal relates as if it had been made to them in the first instance.
- (3) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.
- (4) Subsection (5) applies where—
 - (a) the grounds of appeal include the ground—
 - (i) that the monument should not be included in the Schedule,
or
 - (ii) that the entry in the Schedule relating to the monument should be amended, and
 - (b) the Scottish Ministers uphold that ground.
- (5) The Scottish Ministers may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that decision.
- (6) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 4B is final.

4D Procedure for appeals under section 4B

- (1) The Scottish Ministers may by regulations make provision in connection with appeals under section 4B, including provision about—

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- (a) subject to section 4B(4), the grounds on which an appeal may be made,
 - (b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.
- (2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
- (a) the form, manner and time for making an appeal,
 - (b) the notification of an appeal,
 - (c) the manner in which an appeal is to be conducted.
- (3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).
- (4) Regulations under subsection (1) may also provide that an appeal in respect of an application—
- (a) for scheduled monument consent, or
 - (b) for the variation or discharge of conditions to which such a consent is subject,
- need not be entertained unless it is accompanied by a certificate in the prescribed form as to the interests in the monument to which the appeal relates.
- (5) Sub-paragraphs (2) to (4) of paragraph 2 of schedule 1 apply to regulations imposing a requirement by virtue of subsection (4) as they apply to the requirement imposed by sub-paragraph (1) of that paragraph.
- (6) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 4B.”.

Determination of appeals by appointed person

34 After schedule 1 insert—

“SCHEDULE 1A

(introduced by sections 1E(4), 4D(6) and 9CB(4))

DETERMINATION OF CERTAIN APPEALS BY
PERSON APPOINTED BY THE SCOTTISH MINISTERS

Determination of appeals by appointed person

- 1 (1) The Scottish Ministers may by regulations prescribe classes of appeals under sections 1C, 4B and 9C which are to be determined by a person appointed by the Scottish Ministers for the purpose.
- (2) Those classes of appeals are to be so determined except in such classes of case—

- (a) as may for the time being be prescribed, or
 - (b) as may be specified in directions given by the Scottish Ministers.
- (3) Regulations under sub-paragraph (1) may provide for the giving of publicity to any directions given by the Scottish Ministers under this paragraph.
- (4) This paragraph does not affect any provision made by or under this Act that an appeal is to lie to, or a notice of an appeal is to be served on, the Scottish Ministers.
- (5) A person appointed under this paragraph is referred to in this schedule as an “appointed person”.

Powers and duties of appointed person

- 2 (1) An appointed person is to have the same powers and duties—
- (a) in relation to an appeal under section 1C as the Scottish Ministers have under section 1D,
 - (b) in relation to an appeal under section 4B as the Scottish Ministers have under section 4C,
 - (c) in relation to an appeal under section 9C as the Scottish Ministers have under section 9CA.
- (2) Where an appeal has been determined by an appointed person, the decision is to be treated as a decision of the Scottish Ministers.
- (3) Except as provided for by section 55, the decision of an appointed person on any appeal is final.

Determination of appeals by the Scottish Ministers

- 3 (1) The Scottish Ministers may, if they think fit, direct that an appeal which would otherwise fall to be determined by an appointed person is instead to be determined by them.
- (2) Such a direction must—
- (a) state the reasons for which it is given, and
 - (b) be served on the appellant.
- (3) Where an appeal under section 1C, 4B or 9C falls to be determined by the Scottish Ministers by virtue of a direction under this paragraph, the provisions of this Act which are relevant to the appeal are to apply, subject to sub-paragraph (4), as if this schedule had never applied to it.
- (4) In determining the appeal, the Scottish Ministers may take into account any report made to them by any person previously appointed to determine the appeal.
- 4 (1) The Scottish Ministers may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.
- (2) Such a further direction must—
- (a) state the reasons for which it is given, and
 - (b) be served on—

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- (i) the person, if any, previously appointed to determine the appeal, and
 - (ii) the appellant.
- (3) Where such a further direction has been given, the provisions of this schedule relevant to the appeal are to apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Scottish Ministers in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) is, unless that person directs otherwise, to be treated as having been done by that person.

Appointment of another person to determine appeal

- 5 (1) At any time before the appointed person has determined the appeal the Scottish Ministers may—
- (a) revoke the appointment, and
 - (b) appoint another person under paragraph 1 to determine the appeal instead.
- (2) Where such a new appointment is made, the consideration of the appeal or any inquiry or other hearing in connection with it is to be begun afresh.
- (3) Nothing in sub-paragraph (2) requires any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Local inquiries and hearings

- 6 (1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person—
- (a) may hold a local inquiry in connection with the appeal, and
 - (b) must do so if the Scottish Ministers so direct.
- (2) Where an appointed person—
- (a) holds a hearing, or
 - (b) holds an inquiry by virtue of this paragraph,
- an assessor may be appointed by the Scottish Ministers to sit with the appointed person at the hearing or inquiry to advise the appointed person on any matters arising.
- (3) Subject to sub-paragraph (4), the expenses of any such hearing or inquiry are to be paid by the Scottish Ministers.
- (4) Subsections (4) to (13) of section 265 of the [Town and Country Planning \(Scotland\) Act 1997 \(c.8\)](#) apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.
- (5) The appointed person has the same power to make orders under subsection (9) of that section in relation to proceedings under this schedule which do not give rise to an inquiry as the person has in relation to such an inquiry.

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- (6) For the purposes of this paragraph, references to the Minister in subsections (9) and (12) of that section are to be read as references to the appointed person.

Supplementary provisions

- 7 The functions of determining an appeal and doing anything in connection with it conferred by this schedule on an appointed person who is a member of the staff of the Scottish Administration are to be treated for the purposes of the [Scottish Public Services Ombudsman Act 2002 \(asp 11\)](#) as functions conferred on the Scottish Ministers.”.

CHAPTER 2

REFERRAL OF CERTAIN APPLICATIONS

Referral of certain applications

- 35 After section 3A (inserted by paragraph 6) insert—

“3B Referral of certain applications to the Scottish Ministers

- (1) The Scottish Ministers may give directions requiring applications for—
- (a) scheduled monument consent,
 - (b) variation or discharge of conditions to which scheduled monument consent is subject,
 - (c) subsequent approval required by a condition to which scheduled monument consent is subject,
- to be referred to them instead of being dealt with by Historic Environment Scotland.
- (2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.
- (3) A direction under this section may be withdrawn or modified by a subsequent direction.
- (4) An application in respect of which a direction under this section has effect is to be referred to the Scottish Ministers accordingly.
- (5) In determining an application under this section, the Scottish Ministers may deal with the application as if it had been made to them in the first instance.
- (6) Except as provided for by section 55, the decision of the Scottish Ministers on any application referred to them under this section is final.
- (7) The reference in subsection (1)(c) to scheduled monument consent includes a reference to consent granted by order under section 3.

3C Procedure for referrals under section 3B

- (1) The Scottish Ministers may by regulations make provision in connection with referrals under section 3B, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the referral.
- (2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
 - (a) the notification of a referral,
 - (b) the manner in which a referral is to be conducted.
- (3) Regulations made by virtue of subsection (2)(b) may also include provision that the manner in which a referral, or any stage of a referral, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act)."

PART 6

FUNCTIONS IN RELATION TO GARDENS, LANDSCAPES AND BATTLEFIELDS

- 36 Part 1A of the 1979 Act is amended as follows.
- 37 In section 32A (inventory of gardens and designed landscapes)—
- (a) in subsection (1)—
 - (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) for “they think” substitute “it thinks”,
 - (iii) for “them” substitute “it”,
 - (b) in subsection (3) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
 - (c) in subsection (4)—
 - (i) for “their” substitute “its”,
 - (ii) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (d) in subsection (5)—
 - (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) for “they think” substitute “it thinks”.
- 38 In section 32B(1) (inventory of battlefields)—
- (a) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
 - (b) for “they think” substitute “it thinks”,
 - (c) for “them” substitute “it”.

PART 7

OTHER MATTERS IN RELATION TO SCHEDULED MONUMENTS

39 The 1979 Act is further amended as follows.

Interdict

40 In section 9O (interdicts restraining unauthorised works on scheduled monuments)—

- (a) in subsection (1)—
 - (i) for “they have exercised or propose to exercise any of their” substitute “Historic Environment Scotland has exercised or proposes to exercise any of its”,
 - (ii) for “the Scottish Ministers” substitute “it”,
- (b) after that subsection insert—

“(1A) Whether or not the Scottish Ministers have exercised or propose to exercise any of their powers under this Act, they may seek to restrain or prevent any actual or apprehended breach of any of the controls provided by or under this Act on the execution of works affecting scheduled monuments by means of an application for interdict.”,
- (c) in subsection (2) for “subsection (1)” substitute “subsection (1) or (1A)”.

Agreements concerning ancient monuments etc.

41 In section 17 (agreements concerning ancient monuments etc.)—

- (a) after subsection (2) insert—

“(2A) Historic Environment Scotland may enter into an agreement under this section with the occupier of an ancient monument situated in Scotland or of any land so situated which adjoins or is in the vicinity of an ancient monument so situated.”,
- (b) in subsection (4)—
 - (i) in paragraph (f) after “authority” insert “or Historic Environment Scotland”,
 - (ii) in the fullout after “authority” insert “or Historic Environment Scotland”,
- (c) after subsection (9) insert—

“(9A) References to an ancient monument in subsection (2A), and in subsection (3) so far as it applies for the purposes of subsection (2A), are to be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to Historic Environment Scotland.”.

Advice and superintendence

42 In section 25 (advice and superintendence)—

- (a) in subsection (1) for “The Secretary of State” substitute “Historic Environment Scotland”,
- (b) in subsection (2)—
 - (i) for “The Secretary of State” substitute “Historic Environment Scotland”,

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- (ii) for “his” in both places substitute “its”,
- (c) in subsection (3)—
 - (i) for “The Secretary of State” substitute “Historic Environment Scotland”,
 - (ii) for “he” substitute “it”.

Power of entry: inspection and recording

- 43 In section 26 (power of entry on land believed to contain an ancient monument)—
- (a) in subsection (1) for “the Secretary of State” in both places substitute “Historic Environment Scotland”,
 - (b) in subsection (4)(b)—
 - (i) for “the Scottish Ministers know or have” substitute “Historic Environment Scotland knows or has”,
 - (ii) for “they know or believe” substitute “it knows or believes”.

Power to accept voluntary contributions

- 44 In section 31 (voluntary contributions towards expenditure under Part 1 of the 1979 Act) after “State” insert “, Historic Environment Scotland”.

Metal detectors

- 45 In section 42 (restrictions on use of metal detectors)—
- (a) in subsection (1) after “consent” insert “of Historic Environment Scotland (in the case of a place situated in Scotland),”,
 - (b) in subsection (2) in the definition of “protected place”, after “State” insert “, Historic Environment Scotland”,
 - (c) in subsection (3) after “that” insert “of Historic Environment Scotland (where the place in question is situated in Scotland),”,
 - (d) in subsection (4) after “by” insert “Historic Environment Scotland”,
 - (e) in subsection (5)(a) after “by” insert “Historic Environment Scotland”,.

Power of entry: survey and valuation

- 46 In section 43(2) (power of entry for survey and valuation) after “State” insert “, Historic Environment Scotland”.

Compensation

- 47 In section 46(1) (compensation for damage caused by exercise of certain powers) after “from” insert “Historic Environment Scotland”,.

Application to Crown land

- 48 In section 50 (application of Act to Crown land) after subsection (1) insert—
- “(1A) For the purposes of subsection (1)(b), anything done by Historic Environment Scotland on Crown land, in relation to which it has functions by virtue of a delegation by the Scottish Ministers under section 3 of the

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Historic Environment Scotland Act 2014 (asp 19), is not to be treated as done by or on behalf of the Crown.”.

Finds

- 49 In section 54(2) (treatment and preservation of finds) after “State” in both places insert “, Historic Environment Scotland”.

Proceedings questioning certain orders

- 50 In section 55 (proceedings for questioning validity of certain orders)—
- (a) in subsection (1)(b) after “State” insert “or Historic Environment Scotland”,
 - (b) in subsection (3)—
 - (i) after first “State” insert “or Historic Environment Scotland”,
 - (ii) for “either” substitute “any”,
 - (iii) for paragraph (a) substitute—
 - “(a) any decision of the Scottish Ministers on an application for scheduled monument consent referred to them under section 3B,
 - (aa) any decision of the Scottish Ministers on an appeal under this Act,”,
 - (iv) in paragraph (b) for “the giving by the Secretary of State of any direction under section 4” substitute “the making by Historic Environment Scotland of any order under section 4 or by the Scottish Ministers of any order under section 4A”,
 - (c) in subsection (4)(b) after “State” insert “or Historic Environment Scotland”,
 - (d) in subsection (7) after “State” insert “or Historic Environment Scotland”.

Power to require information

- 51 In section 57(1) (power to require information as to interests in land) after “State” in both places insert “or Historic Environment Scotland”.

Interpretation

- 52 In section 61(9) (meaning of site of monument) after “State” insert “or Historic Environment Scotland”.