

SCHEDULE 2
FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND
IN RELATION TO SCHEDULED MONUMENTS

PART 5

APPEALS AND REFERRALS

CHAPTER 1

APPEALS FROM HISTORIC ENVIRONMENT SCOTLAND

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.

Status: This is the original version (as it was originally enacted).

- (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—
 - (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.”.