

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

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,

Status: This is the original version (as it was originally enacted).

- (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—
 - (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).

Status: This is the original version (as it was originally enacted).

- (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—

Status: This is the original version (as it was originally enacted).

- (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—
 - (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.
- (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.”