

## **EXECUTIVE NOTE**

### **THE HISTORIC ENVIRONMENT (AMENDMENT) (SCOTLAND) ACT 2011 (COMMENCEMENT NO. 2) ORDER 2011**

#### **S.S.I. 2011/372 (C. 35)**

1. The above instrument was made in exercise of the powers conferred by section 33(2) and (3) of the Historic Environment (Amendment) (Scotland) Act 2011. This commencement order is laid before the Scottish Parliament.

#### **Policy Objectives**

2. The purpose of the instrument is to commence certain provisions of the Historic Environment (Amendment) (Scotland) Act 2011 (“the 2011 Act”) on 1 December 2011.

3. The 2011 Act is a tightly focused technical amending piece of legislation that will enhance the ability of the regulatory authorities to manage the historic environment in a sustainable way for the enjoyment and benefit of future generations. The Bill for the Act was introduced in Parliament on 4 May 2010 and was passed by the Parliament on 20 January 2011. The Act received Royal Assent on 23 February 2011.

4. Sections 31, 32, and 33 came into force on 24 February 2011, the day after the Act received Royal Assent. Sections 1, 5, 7, 8, 9, 11, 12, 13, 27, 29(1) and 30 of the Act were commenced in full on 30 June 2011. Sections 6, 15, 20, 23, 24 and 26 were partially commenced on 30 June for the purposes of making regulations only<sup>1</sup>.

5. This instrument commences sections 2, 3, 4, 6, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 28 for all purposes. The sections of the Act that are to be commenced on 1 December 2011 may be summarised as follows:

- Section 2: Taken with the changes made by section 15 of the 2001 Act, this provision will allow Scottish Ministers to make provision in regulations as to the manner, form and content of scheduled monument consent - to include electronic means, taking account of the new ways of delivering public services.
- Section 3: Modifies certain defences under sections 2, 28 and 42 of the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”).
- Section 4: Raises the level of fines on summary conviction under section 2 and section 28 of the 1979 Act to £50,000 and makes it a requirement that the court, in determining the amount of the fine to be imposed on a person convicted of an offence under section 2 or 28 takes into account the extent of any financial gain that has or is likely to accrue to the offender.

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<sup>1</sup> See the Historic Environment (Amendment) (Scotland) Act 2001 (Commencement No.2 ) Order 2011 (S.S.I. 2011/174)

- Section 6: Allows Scottish Ministers to serve a scheduled monument enforcement notice that will allow for the reversal or amelioration of unauthorised works to a scheduled monument or works in breach of any condition attached to scheduled monument consent, in cases where such remedial works are desirable or reasonably practicable. Section 6 also introduces new powers that will enable Scottish Ministers to issue stop notices and temporary stop notices that will effect a halt – immediate in the case of temporary stop notices – to specified unauthorised works to scheduled monuments.
- Section 10: This section modifies the power of entry in section 26 of the 1979 Act so that the associated power to excavate may be exercisable without the need for the consent of the owner where the monument is at imminent risk of damage or destruction.
- Section 14: Extends the range of historic environment assets that can be designated under the 1979 Act by expressly allowing Scottish Ministers to designate “any site comprising any thing, or group of things, that evidences previous human activity”.
- Section 15: Enables the Scottish Ministers to make regulations as to the form and manner of scheduled monument consent and amends the regulation making power in respect of applications for scheduled monument consent.
- Section 16: Allows Scottish Ministers to decline to consider a scheduled monument consent application where that application is similar to an application that had been made within the previous two years and Ministers consider there has been no significant changes in any material considerations since the similar application was refused or at a time when a similar application is under consideration.
- Section 17: Replaces the requirement to hold a public local inquiry or a hearing in connection with scheduled monument applications under the 1979 Act with a power to do so. This harmonises the scheduled monument consent application process with the provisions introduced by the Planning etc. (Scotland) Act 2006, which enable Scottish Ministers to determine the most suitable means of determining each application, through written submissions, a hearing or an inquiry or any combination of these.
- Section 18: Introduces a power that enables Scottish Ministers to offer any person a certificate that they do not intend to list the building which will guarantee that a building will not be listed during the five years from the date of the certificate.
- Section 19: Raises the level of fines on summary conviction under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1997 (“the 1997 Act”) to £50,000 to act as an appropriate and effective deterrent to unauthorised works.
- Section 20: Enables local authorities to decline to consider a listed building consent application in certain specified situations. This will bring this aspect of the listed building consent process into line with similar powers in the planning regime.

- Section 21: Removes the requirement to hold a hearing before determining applications and appeals under the 1997 Act. This harmonises the listed building consent application and appeals process with the provisions introduced by the Planning etc. (Scotland) Act 2006, which enable Scottish Ministers to determine the most suitable means of determining each application, through written submissions, a hearing or an inquiry or any combination of these.
- Sections 22: Amends the 1997 Act to allow a listed building enforcement notice to specify such works as the planning authority or the Scottish Ministers require to be stopped.
- Section 23: Enables Scottish Ministers and local authorities to issue stop notices and temporary stop notices that will effect a halt – immediate in the case of temporary stop notices – to specified unauthorised works to listed buildings.
- Section 24: Enables planning authorities to issue fixed penalty notices as an alternative to prosecution in cases where a person is in breach of a listed building enforcement notice.
- Section 25: Amends section 49(3) of the 1997 Act to specify as an additional example of the types of works which may be carried out where works appear to be urgently necessary for the preservation of a listed building, “preventative works necessary to limit any deterioration of the building”.
- Section 26: Allows Scottish Ministers and local authorities to register a notice of liability for expenses, incurred by them in carrying out any urgent works to a building under the terms of section 49 of the 1997 Act, in the appropriate property register against the building in question.
- Section 28: Amends section 73A of the 1997 Act. Section 73A applies the 1997 Act to the Crown but disapplies certain provisions, in particular those imposing criminal sanctions. The amendments follow this approach in relation to the new offences and obligation introduced by the 2011 Act.

### **Consultation**

6. No consultation was undertaken on this order. The provisions of the Act being commenced have previously been subject to consultation through the Bill process.

### **Financial Effects**

7. The instrument has no financial effects on the Scottish Government, local government or on business.