

**2011 No. 377**

**ANCIENT MONUMENTS**

**TOWN AND COUNTRY PLANNING**

**The Historic Environment (Amendment) (Scotland) Act 2011  
(Saving, Transitional and Consequential Provisions) Order 2011**

<i>Made</i> - - - -	<i>27th October 2011</i>
<i>Laid before the Scottish Parliament</i>	<i>31st October 2011</i>
<i>Coming into force</i> - -	<i>1st December 2011</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 32(1) and (2) of the Historic Environment (Amendment) (Scotland) Act 2011(a) and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Historic Environment (Amendment) (Scotland) Act 2011 (Saving, Transitional and Consequential Provisions) Order 2011 and comes into force on 1st December 2011.

(2) In this Order—

- “the 1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979(b);
- “the Act” means the Historic Environment (Amendment) (Scotland) Act 2011;
- “the Listed Buildings Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(c); and
- “scheduled monument consent” has the same meaning as in section 61(1) of the 1979 Act.

**Offences under sections 2, 28 and 42 of the 1979 Act: modification of defences**

2. Notwithstanding the commencement of section 3 (offences under sections 2, 28 and 42: modification of defences) of the Act on 1st December 2011—

- (a) section 2(8) of the 1979 Act continues to have effect as it did immediately before that date in relation to any proceedings for an offence under section 2 (control of works affecting scheduled monuments) of the 1979 Act relating to works within section 2(2)(a) or (c) of the 1979 Act executed, or caused or permitted to be executed, before that date;
- (b) section 28(1) (offence of damaging certain ancient monuments) of the 1979 Act continues to have effect as it did immediately before that date in relation to any damage or

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(a) 2011 asp 3.  
(b) 1979 c.46.  
(c) 1997 c.9.

destruction of a protected monument (within the meaning of section 28 of the 1979 Act) before that date; and

- (c) section 42 (restrictions on use of metal detectors) of the 1979 Act continues to have effect as it did immediately before that date in relation to an act specified in section 42(1) or (3) of the 1979 Act occurring before that date.

### **Scheduled monument consent: applications**

3. Notwithstanding the commencement of section 15(3) (scheduled monument consent: applications) of the Act on 1st December 2011, paragraph 2(1) and (2) of Schedule 1 (applications for scheduled monument consent) to the 1979 Act continues to have effect as it did immediately before that date in respect of an application for scheduled monument consent made before that date.

### **Power of Scottish Ministers to refuse to entertain applications for scheduled monument consent**

4. Paragraph 2B(1) (refusal to entertain certain applications for scheduled monument consent) of Schedule 1 to the 1979 Act(a) applies only to an application made on or after 1st December 2011.

### **Power of planning authority to decline to determine applications**

5. An application for listed building consent is a current application for the purposes of section 10A(1) (declining to determine applications) of the Listed Buildings Act(b) only if the application is made on or after 1st December 2011.

### **Hearings in connection with applications for listed building consent and appeals**

6. Notwithstanding the commencement of section 21 (hearings in connection with applications for listed building consent and appeals) of the Act on 1st December 2011—

- (a) where a direction requiring an application to be referred to the Scottish Ministers instead of being dealt with by the planning authority is given under section 11(1) (call-in of application) of the Listed Buildings Act before that date, section 11 of the Listed Buildings Act continues to apply for the purposes of that application as it had effect immediately before that date; and
- (b) where notice of appeal is given to the Scottish Ministers under section 19(1) (appeals: supplementary provisions) or section 35(2) (appeal against enforcement notice) of the Listed Buildings Act before that date the provisions of Schedule 3 to the Listed Buildings Act continue to apply for the purposes of that appeal as those provisions had effect immediately before that date.

### **Amendment of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992**

7.—(1) The Town and Country Planning (General Permitted Development) (Scotland) Order 1992(c) is amended in accordance with paragraph (2).

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(a) Paragraph 2B is inserted by section 16 of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3).  
(b) Section 10A is introduced by section 20 of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3).  
(c) S.I. 1992/223 to which there are amendments which are not relevant to the changes made by this Order.

(2) In article 2(1) (interpretation) for the definition of “historic garden or designed landscape” substitute—

““historic garden or designed landscape” means a garden or landscape which is included in the inventory of gardens and designed landscapes compiled and maintained under section 32A of the Ancient Monuments and Archaeological Areas Act 1979(a);”.

### **Amendment of the Transport and Works (Scotland) Act 2007 (Consents under Enactments) Regulations 2007**

8.—(1) Subject to paragraph (4), the Transport and Works (Scotland) Act 2007 (Consents under Enactments) Regulations 2007(b) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2 (interpretation)—

- (a) omit the definition of “the 1979 Act”; and
- (b) in the definition of “scheduled monument consent” for “the 1979 Act” substitute “the Ancient Monuments and Archaeological Areas Act 1979”.

(3) In regulation 6 (modification of procedures for scheduled monuments consent) for paragraphs (2) and (3) substitute—

“(2) Where this regulation applies, the Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 2011(c) have effect with the following modifications—

- (a) in regulation 2 (application for scheduled monument consent), after paragraph (3) insert—

“(4) The application must also be accompanied by a statement that the application is made for the purpose of proposals included in the concurrent application and the statement must give (if known) the date and the reference number of the concurrent application.

(5) In this regulation “concurrent application” means an application made under section 4 (applications) of the Transport and Works (Scotland) Act 2007 relating to proposals for the purpose of which the granting of scheduled monument consent is required in respect of the monument.”; and

- (b) in regulation 3 (certificates and notices)—

(i) after paragraph (2)(a) insert—

“(aa) that—

- (i) a notice of concurrent application has been given in accordance with rules made under section 4 (applications) of the Transport and Works (Scotland) Act 2007 to all of the persons (other than the applicant) who were, at the beginning of the period of 28 days ending with the concurrent application, the owners of the monument; and

- (ii) every such notice contains a statement that an application for scheduled monument consent has been, or is to be, made in respect of the monument;”;

- (ii) in paragraph (2)(c)(i) for “sub-paragraph (a) or (b)” substitute “sub-paragraph (a), (aa) or (b)”;

- (iii) in paragraph (4)—

- (aa) after the definition of “agricultural tenant” insert—

““concurrent application” has the same meaning as in regulation 2(5);” and

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(a) 1979 c.46. Section 32A is inserted by section 11 of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3).

(b) S.S.I. 2007/569.

(c) S.S.I. 2011/375.

(bb) for the definition of “owner of a monument” substitute—

““owner of a monument” in relation to any scheduled monument means any person who, in respect of any part of the monument, is under the Lands Clauses Acts enabled to sell and convey the land to promoters of an undertaking and includes a lessee under a lease the unexpired period of which exceeds three years;”.”.

(4) The Transport and Works (Scotland) Act 2007 (Consents under Enactments) Regulations 2007 continue to have effect as they had effect immediately before 1st December 2011 in relation to an application for scheduled monument consent made before that date.

**Amendment of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008**

9.—(1) The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008(a) are amended in accordance with paragraph (2).

(2) In regulation 3(1) (interpretation) for the definition of “historic garden or designed landscape” substitute—

““historic garden or designed landscape” means a garden or landscape which is included in the inventory of gardens and designed landscapes compiled and maintained under section 32A of the Ancient Monuments and Archaeological Areas Act 1979(b);”.

*FIONA HYSLOP*

A member of the Scottish Executive

St Andrew’s House,  
Edinburgh  
27th October 2011

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(a) S.S.I. 2008/432 to which there are amendments which are not relevant to the changes made by this Order.  
(b) Section 32A was inserted by section 11 of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3).

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes saving, transitional and consequential provisions in relation to the commencement of various provisions of the Historic Environment (Amendment) (Scotland) Act 2011 (“the Act”).

Section 3 of the Act modifies the provisions relating to defences where offences are committed under sections 2, 28 and 42 of the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”). Article 2 provides that these provisions of the 1979 Act will continue to apply unamended by section 3 in respect of acts occurring before 1st December 2011.

Article 3 provides that paragraph 2(1) and (2) of Schedule 1 to the 1979 Act (which are replaced by changes introduced by section 15(3) of the Act) continues to apply in relation to applications for scheduled monument consent made before 1st December 2011.

Section 16 of the Act introduces a power to allow the Scottish Ministers to refuse to entertain repeat applications for scheduled monument consent in certain circumstances. Article 4 provides that this power is only to apply to applications made after 1st December 2011.

Section 20 of the Act introduces section 10A into the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the 1997 Act”) which enables a planning authority to decline to determine an application for listed building consent in certain circumstances. Article 5 provides that section 10A shall only apply to applications made after 1st December 2011.

Article 6 preserves an applicant’s right to a hearing in relation to an application for listed building consent called in by the Scottish Ministers before 1st December 2011 or appeals made before that date which are to be determined by an appointed person under Schedule 3 to the 1997 Act.

Articles 7 and 9 respectively amend the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 and the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 to update the definition of “historic garden or designed landscape” to refer to the new inventory to be compiled and maintained under section 32A of the 1979 Act.

Article 8 amends the Transport and Works (Scotland) Act 2007 (Consents under Enactments) Regulations 2007 to assimilate procedures where a project requires an application under section 2 of the Transport and Works (Scotland) Act 2007 and scheduled monument consent.

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SCOTTISH STATUTORY INSTRUMENTS

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