

**2015 No. 239**

**ANCIENT MONUMENTS**

**TOWN AND COUNTRY PLANNING**

**TITLE CONDITIONS**

**The Historic Environment Scotland Act 2014 (Saving,  
Transitional and Consequential Provisions) Order 2015**

*Made* - - - - - *2nd June 2015*

*Laid before the Scottish Parliament* *4th June 2015*

*Coming into force* - - - *1st October 2015*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 27 of the Historic Environment Scotland Act 2014(a) and section 38(4) of the Title Conditions (Scotland) Act 2003(b) and all other powers enabling them to do so.

**PART 1**

**Introductory**

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Historic Environment Scotland Act 2014 (Saving, Transitional and Consequential Provisions) Order 2015 and comes into force on 1st October 2015.

(2) In this Order—

“the 1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979(c);

“the Act” means the Historic Environment Scotland Act 2014;

“the Listed Buildings Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(d); and

“the List” means the list of buildings of special architectural or historic interest compiled or approved under section 1 of the Listed Buildings Act;

“the Schedule” has the meaning given by section 1(1) of the 1979 Act;

“scheduled monument” has the meaning given by section 1(11) of the 1979 Act;

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(a) 2014 asp 19.

(b) 2003 asp 9.

(c) 1979 c.46.

(d) 1997 c.9.

“scheduled monument enforcement notice” has the meaning given by section 9A(1) of the 1979 Act; and

“scheduled monument consent” has the same meaning as in section 61(1) of the 1979 Act.

## PART 2

### Ancient Monuments

#### **Schedule of monuments**

**2.**—(1) Subject to paragraph (2), anything done (or having effect as if done) by the Scottish Ministers for the purposes of or in connection with the function of compiling and maintaining the Schedule conferred on Historic Environment Scotland by virtue of section 15 of, and Part 1 of schedule 2 to, the Act has effect as if done by Historic Environment Scotland in so far as that is required for continuing its effect on and after 1st October 2015.

(2) For the purposes of section 1(6) of the 1979 Act and, to the extent applicable, the purposes of section 1C of the 1979 Act—

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

by the Scottish Ministers (or having effect as if done by the Scottish Ministers) before 1st October 2015 is not to be treated as having effect as if done by Historic Environment Scotland.

#### **Registration of certificates**

**3.** Section 1(10)(b) of the 1979 Act continues to have effect as it did immediately before 1st October 2015 in respect of any certificate issued before that date by or on behalf of the Scottish Ministers (or having effect as if issued by or on behalf of the Scottish Ministers).

#### **Conditions attached to scheduled monument consent**

**4.** Where—

- (a) a condition attached to a scheduled monument consent by virtue of section 2(5)(b) of the 1979 Act requires that the Scottish Ministers (however described) are to be afforded an opportunity, before any works to which the scheduled monument consent relates are begun, to examine the scheduled monument and its site or to carry out excavations; and
- (b) such opportunity has not been afforded to the Scottish Ministers before 1st October 2015,

the reference in the condition to the Scottish Ministers is to be treated on and after that date as a reference to Historic Environment Scotland.

#### **Defence under section 2(9) of the 1979 Act**

**5.** Where notice of the need for works is given to the Scottish Ministers in accordance with section 2(9) of the 1979 Act before 1st October 2015, that section continues to have effect as it did immediately before 1st October 2015 in connection with any proceedings for an offence under section 2 of the 1979 Act in relation to such works.

#### **Applications for scheduled monument consent**

**6.** The provisions of Part 1 of Schedule 1 to the 1979 Act continue to have effect as they did immediately before 1st October 2015 in respect of an application for scheduled monument consent made before that date but in respect of which no notice of the decision of the Scottish Ministers is given before that date.

### **Modification and revocation of scheduled monument consent**

7. The provisions of section 4 of, and Part 2 of Schedule 1 to, the 1979 Act continue to have effect as they did immediately before 1st October 2015 in respect of a direction under section 4 given before that date.

### **Scheduled monument enforcement notices**

8. The provisions of sections 9A to 9D, 9G, 9H and 9I of the 1979 Act continue to have effect as they did immediately before 1st October 2015 in relation to a scheduled monument enforcement notice served before 1st October 2015.

### **Temporary Stop notices**

9. The provisions of sections 9K and 9N of the 1979 Act continue to have effect as they did immediately before 1st October 2015 in relation to a temporary stop notice issued under section 9K(1) of the 1979 Act before 1st October 2015.

### **Inventory of gardens and designed landscapes and inventory of battlefields**

10.—(1) Subject to paragraphs (2) and (3), anything done by the Scottish Ministers for the purposes of or in connection with the function of compiling and maintaining—

- (a) an inventory of gardens and designed landscapes under section 32A(1) of the 1979 Act; or
- (b) an inventory of battlefields under section 32B(1) of the 1979 Act,

conferred on Historic Environment Scotland by virtue of section 15 of, and Part 6 of Schedule 2 to, the Act has effect as if done by Historic Environment Scotland in so far as that is required for continuing its effect after 1st October 2015.

(2) For the purposes of section 32A(4) of the 1979 Act, and the application of that section by section 32B(3) of the 1979 Act—

- (a) the inclusion of any grounds (as mentioned in section 32A(2) of the 1979 Act) or any battlefield, as the case may be, in an inventory; or
- (b) the modification of an entry in the inventory,

by the Scottish Ministers before 1st October 2015 is not to be treated as having effect as if done by Historic Environment Scotland.

(3) The provisions of section 32A(4), and that section as applied by section 32B(3) of the 1979 Act, continue to have effect as they did immediately before 1st October 2015 in respect of—

- (a) the inclusion of any grounds (as mentioned in section 32A(2) of the 1979 Act) or any battlefield, as the case may be, in an inventory; or
- (b) the modification of an entry in the inventory,

by the Scottish Ministers before 1st October 2015.

### **Restriction on use of metal detectors**

11. For the purposes of section 42(1) a written consent for the use of a metal detector granted (or having effect as if granted) by the Scottish Ministers and remaining in effect immediately before 1st October 2015, is to be treated as if granted by Historic Environment Scotland and references in such consent to the Scottish Ministers (however described) are to be treated as references to Historic Environment Scotland.

### **Proceedings for questioning the validity of certain orders, etc**

**12.**—(1) The provisions of section 55 of the 1979 Act continue to have effect as they did immediately before 1st October 2015 in respect of—

- (a) a decision of the Scottish Ministers (whether before, on or after that date) on an application for scheduled monument consent made before that date; and
- (b) a direction given by the Scottish Ministers under section 4 of the 1979 Act before that date.

## **PART 3**

### **Listed Buildings and Conservation Areas**

#### **Listing of buildings of special architectural or historic interest**

**13.**—(1) Subject to paragraph (2), anything done (or having effect as if done) by the Scottish Ministers for the purposes of or in connection with the function of compiling or approving a list of buildings of special architectural or historic interest conferred on Historic Environment Scotland by virtue of section 16 of, and Part 1 of schedule 3 to, the Act has effect as if done by Historic Environment Scotland in so far as that is required for continuing its effect on and after 1st October 2015.

(2) For the purposes of section 1A(2) of the Listed Buildings Act and, to the extent applicable, the purposes of section 5B of the Listed Buildings Act—

- (a) the inclusion of a building in the List;
- (b) the amendment of an entry relating to building in the List; or
- (c) the exclusion of a building from the List,

by the Scottish Ministers (or having effect as if by the Scottish Ministers) before 1st October 2015 is not to be treated as having effect as if done by Historic Environment Scotland.

#### **Building preservation notices**

**14.**—(1) Where a building preservation notice (as defined in section 3(1) of the Listed Buildings Act) served before 1st October 2015 remains in force on that date, a request made by the planning authority to the Scottish Ministers to consider including the building which is the subject of the notice in the List is, if no decision has been made by the Scottish Ministers in response to that request before that date, to be treated as having been made to Historic Environment Scotland.

(2) Where, in respect of a building preservation notice, notification is given to the planning authority under section 3(4)(b) of the Listed Buildings Act before 1st October 2015, the provisions of Schedule 2 to the Listed Buildings Act continue to have effect as they did immediately before that date.

(3) Where the Scottish Ministers have before 1st October 2015 notified the planning authority in accordance with section 3(6) of the Listed Buildings Act that they do not propose to include a building in the List—

- (a) the provisions of section 3(6)(a) of the Listed Buildings Act continue to have effect as they did immediately before 1st October 2015 in respect of that decision; and
- (b) for the purposes of section 3(6)(b) of the Listed Buildings Act the reference to the date of Historic Environment Scotland's notification is to be treated as the date of notification of that decision by the Scottish Ministers.

### **Certificate that building not intended to be listed**

**15.**—(1) Where an application is made under section 5A(1) of the Listed Buildings Act before 1st October 2015 and has not been determined by the Scottish Ministers by that date, the application is to be treated as if made to Historic Environment Scotland.

(2) Where the Scottish Ministers issue a certificate under section 5A(1) of the Listed Buildings Act before 1st October 2015, section 5A(2) of the Listed Buildings Act applies in respect of the building to which the certificate relates as if—

- (a) for “Historic Environment Scotland issues” there were substituted “the Scottish Ministers have issued”; and
- (b) in paragraph (a), for “it”, in both places where that word occurs, there were substituted “Historic Environment Scotland”.

### **Authorisation of works: listed building consent**

**16.**—(1) Where notice of a proposal to execute works for the demolition of a listed building is given to the Royal Commission under section 7(2)(b) of the Listed Buildings Act before 1st October 2015 but no written statement is made before that date in terms of section 7(2)(c)(ii) of the Listed Buildings Act (as it had effect immediately before 1st October 2015), section 7(2) of the Listed Buildings Act applies for the purposes of the authorisation of those works—

- (a) as if notice under subsection (2)(b) has been given to Historic Environment Scotland; and
- (b) as including for the purposes of the calculation of the period referred to in subsection (2)(c)(i), any period before 1st October 2015 during which reasonable access to the building was made available to the members or officers of the Royal Commission.

(2) In this article “the Royal Commission” means the Royal Commission on the Ancient and Historical Monuments of Scotland.

### **Duty to notify applications**

**17.** The provisions of sections 12 and 13 of the Listed Buildings Act, and any directions made under section 13(1) of the Listed Buildings Act before 1st October 2015, continue to have effect as they did immediately before that date in respect of an application for listed building consent, or application for conservation area consent, made before that date.

### **Revocation and modification of listed building consent by order**

**18.** The provisions of sections 22 and 23 of the Listed Buildings Act continue to have effect as they did immediately before 1st October 2015 in respect of an order made under section 21 of the Listed Buildings Act before that date.

### **Designation of conservation areas**

**19.**—(1) The amendment of section 61(2) of the Listed Buildings Act by paragraph 13 of schedule 3 to the Act does not affect the validity of the designation by the Scottish Ministers of an area as a conservation area before 1st October 2015.

(2) The provisions of sections 62(2) and (4) of the Listed Buildings Act continue to have effect as they did immediately before 1st October 2015 in respect of the designation of an area as a conservation area by the Scottish Ministers before that date.

## PART 4

### Modification of enactments

#### **Amendment of the Ancient Monuments (Class Consents) (Scotland) Order 1996**

**20.**—(1) The Ancient Monuments (Class Consents) (Scotland) Order 1996(a) is amended in accordance with paragraph (2).

(2) In the Schedule (classes or descriptions of works for the execution of which scheduled monument consent is granted by virtue of this Order)—

- (a) in class V (works urgently necessary for health or safety) in paragraph (b), for “the Secretary of State” substitute “Historic Environment Scotland”.
- (b) in class VI (works of archaeological evaluation)—
  - (i) in paragraph (a)—
    - (aa) for “the Secretary of State” substitute “Historic Environment Scotland or, as the case may be, the Scottish Ministers”; and
    - (bb) omit “by him”;
  - (ii) in paragraph (b) for “the Secretary of State” in both places where those words occur, substitute “Historic Environment Scotland or, as the case may be, the Scottish Ministers”; and
  - (iii) in paragraph (c) for “the Secretary of State” substitute “Historic Environment Scotland or, as the case may be, the Scottish Ministers”;
- (c) in class VII (certain works executed under agreements under section 17 of the Ancient Monuments and Archaeological Areas Act 1979) omit “between the occupier and the Secretary of State”; and
- (d) in class IX (certain works undertaken by the Royal Commission on the Ancient and Historical Monuments of Scotland), for “the Royal Commission on the Ancient and Historical Monuments of Scotland” in both places where those words occur, substitute “Historic Environment Scotland”.

#### **Amendment of the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003**

**21.**—(1) The Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order(b) is amended in accordance with paragraph (2).

(2) In Part II of the Schedule (conservation bodies prescribed under section 38(4) of the Title Conditions (Scotland) Act 2003: other bodies) insert, at the appropriate place in alphabetical order, “Historic Environment Scotland”.

#### **Amendment of the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007**

**22.**—(1) Subject to paragraph (3), the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007(c) are amended in accordance with paragraph (2).

(2) In column 2 of Schedule 3 (persons to be served with copy application etc), in entries 9, 15 and 16 for “The Scottish Ministers (marked “for the attention of Historic Scotland”)", in each case, substitute “Historic Environment Scotland”.

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(a) S.I. 1996/1507.

(b) S.S.I. 2003/453: amended by S.S.I. 2003/621, S.S.I. 2004/400, S.S.I. 2006/110, S.S.I. 2006/130, S.S.I. 2007/533, S.S.I. 2008/217, S.S.I. 2012/30 and S.S.I. 2013/289.

(c) S.S.I. 2007/570.

(3) The provisions of Schedule 3 continue to have effect as they did immediately before 1st October 2015 in relation to—

- (a) an application for an order under section 1 of the Transport and Works (Scotland) Act 2007<sup>(a)</sup>; and
- (b) a proposal for such an order by the Scottish Ministers by virtue of section 6 of that Act, made before that date.

**Amendment of the Disclosure (Persons engaged in the Investigation and Reporting of Crime or Sudden Deaths) (Scotland) Regulations 2011**

**23.**—(1) The Disclosure (Persons engaged in the Investigation and Reporting of Crime or Sudden Deaths) (Scotland) Regulations 2011<sup>(b)</sup> are amended in accordance with paragraph (2).

(2) In the Schedule—

- (a) omit “Historic Scotland”; and
- (b) after “Health and Safety Executive” insert “Historic Environment Scotland”.

*FIONA HYSLOP*  
A member of the Scottish Government

St Andrew’s House,  
Edinburgh  
2nd June 2015

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(a) 2007 asp 8.  
(b) S.S.I. 2011/146 to which there are amendments which are not relevant to this Order.

## 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 Scotland Act 2014 (“the Act”).

From 1st October 2015 the duty under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”) to compile and maintain a schedule of monuments (“the Schedule”) is transferred from the Scottish Ministers to Historic Environment Scotland. Article 2 provides that anything done, or treated as having been done, by the Scottish Ministers in compiling and maintaining the Schedule is treated (other than for the purposes of notification requirements under section 1(6) and appeals under section 1C of the 1979 Act) as if done by Historic Environment Scotland.

Article 3 saves the existing provisions of section 1(10)(b) to ensure that registration of certificates issued before 1st October 2015 remains competent after that date.

Section 2(5) of the 1979 Act currently specifically enables conditions to be imposed by the Scottish Ministers when granting scheduled monument consent to require an opportunity to be given to them to examine the monument and carry out excavations before works commence. Article 4 provides that where such opportunity has not been given to the Scottish Ministers before 1st October 2015 the condition is to be treated as requiring the opportunity to be given to Historic Environment Scotland.

Article 5 preserves the effect of notices given under section 2(9) of the 1979 Act in relation to the defence that works to a monument where urgently necessary in the interests of health and safety.

Part 1 of Schedule 1 to the 1979 Act contains provisions in relation to the handling and determination of applications for scheduled monument consent. Article 6 continues these provisions in effect for the purposes of any applications for such consent made before 1st October 2015 and which remain to be determined at that date.

Section 4 of the 1979 Act currently enables the Scottish Ministers to make directions to modify or revoke a scheduled monument consent. Part 2 of Schedule 1 to the 1979 Act contains related procedural provisions. Article 7 continues these provisions in effect for the purposes of directions given before 1st October 2015. The Act introduces powers to modify or revoke scheduled monument consent by order under new section 4A of the 1979 Act from that date.

Article 8 continues the current provisions of sections 9A to 9D, 9G, 9H and 9I of the 1979 Act in effect for the purposes of a scheduled monument enforcement notice served before 1st October 2015. Article 9 similarly continues the current provisions of sections 9K and 9N of the 1979 Act in effect in relation to temporary stop notices issued before that date.

From 1st October 2015 the respective duties under sections 32A and 32B of the 1979 Act to compile and maintain an inventory of gardens and designed landscapes and an inventory of battlefields is transferred from the Scottish Ministers to Historic Environment Scotland. Article 10 provides that anything done by the Scottish Ministers in compiling and maintaining such inventories is treated (other than for the purposes of notification requirements under section 32A(4) of the 1979 Act) as if done by Historic Environment Scotland. Where a duty to notify under that section arises in relation to any action of the Scottish Ministers, the duty to notify remains with the Scottish Ministers in terms of article 10(3).

Section 42(1) of the 1979 Act currently requires the consent of the Scottish Ministers for the use of a metal detector in a protected place situated in Scotland. From 1st October 2015 such consent will be required from Historic Environment Scotland. Article 11 ensures that consents which are in effect immediately before this change will continue to be effective and will be treated as if granted by Historic Environment Scotland.

Article 12 preserves the existing provisions of section 55 of the 1979 Act in relation to challenges to decisions by the Scottish Ministers on applications for scheduled monument consent and directions under section 4 of the 1979 Act made before 1st October 2015.



From 1st October 2015 the duty under section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the Listed Buildings Act”) to compile, or approve, lists of building of special architectural or historic interest is transferred from the Scottish Ministers to Historic Environment Scotland. Article 13 provides that anything done, or treated as having been done, by the Scottish Ministers in compiling or approving such lists is treated (other than for the purposes of notification requirements under section 1A(2) and appeals under section 5B of the 1979 Act) as if done by Historic Environment Scotland.

Section 3 of the Listed Buildings Act enables a planning authority to serve a building preservation notice in respect of a building which is not a listed building. The planning authority currently in this connection are to make a request to the Scottish Ministers to consider including the building on the list of listed buildings. After 1st October such a request is to be made to Historic Environment Scotland. If no decision has been made by the Scottish Ministers in respect of such a request made before that date article 14(1) provides that the request is to be treated as having been made to Historic Environment Scotland as that body will from that date be responsible for compilation of the list. Section 3(4)(b) provides that a building preservation notice shall cease to be in force if the planning authority are notified that the Scottish Ministers (after 1st October 2015, Historic Environment Scotland) do not intend to include the building on the list. Article 14(2) continues the current provisions of schedule 2 to the Listed Buildings Act, which relate to the consequences of a building preservation notice ceasing to have effect, in respect of such a notice where the Scottish Ministers give notice under section 3(4)(b) before 1st October 2015. Article 14(3)(a) continues in effect, after 1st October 2015, the duty imposed on the Scottish Ministers under section 3(6)(a) to notify owners and others of a decision taken by them not to include a building in a list. Where such notice is given by the Scottish Minister article 14(3)(b) continues the provisions of section 3(6)(b) in effect so the 12 month period referred to in that section will begin with the date of notification by the Scottish Ministers.

The responsibility for inclusion of a building on the list of listed buildings will from 1st October 2015 rest with Historic Environment Scotland. Section 5A(1) of the Listed Buildings Act enables an application to be made for a certificate that there is no intention to list a building. Article 15(1) treats any such application made to the Scottish Ministers before that date, and which has not been determined by that date, as if it is made to Historic Environment Scotland. Article 15(2) provides that where a certificate is issued by the Scottish Ministers under section 5A(1) before 1st October 2015 the 5 year period referred to in section 5A(2)(a) will still start on the date of issue of that certificate.

In terms of section 7(2)(b) and (c) of the Listed Buildings Act works for demolition of a listed building are authorised if notice of the proposal to execute the works is given to the Royal Commission on the Ancient and Historical Monuments of Scotland (“the Commission”) and either reasonable access has been given for the purposes of recording the building or a statement has been given under section 7(2)(c)(ii) of the Listed Buildings Act that such recording is not desired or has been completed. The functions of the Commission transfer to Historic Environment Scotland on 1st October 2015. Article 16 provides that if notice of the proposed demolition works is given to the Commission before that date section 7(2) applies as if notice has been given to Historic Environment Scotland. For the purposes of calculating the period of 3 months referred to in section 7(2)(c)(i) any period before 1st October 2015 during which reasonable access to the building was made available to the Commission is to be taken into account.

Article 17 continues the provisions of section 12 and 13(1) of the Listed Buildings Act, and any directions made under section 13(1), in effect in respect of applications for listed building consent or conservation area consent which are made before 1st October 2015. Article 18 continues the provisions of section 22 and 23 of the Listed Buildings Act in effect in respect of orders made under section 21 of the Listed Buildings Act before that date.

Article 19 provides that amendments to section 61(1) of the Listed Buildings Act do not affect the validity of the designation by the Scottish Ministers of an area as a conservation area and also provide that the current duty under section 62(2) and (4) to give notice of such a designation remains in place.

Article 20 amends the Ancient Monuments (Class Consents) (Scotland) Order 1996 so that it refers to Historic Environment Scotland. Article 21, made under section 38(4) of the Title Conditions (Scotland) Act 2003, designates Historic Environment Scotland as a conservation body for the purposes of that Act. Articles 22 and 23 respectively update references in the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007 and the Disclosure (Persons engaged in the Investigation and Reporting of Crime or Sudden Deaths) (Scotland) Regulations 2011 to include references to Historic Environment Scotland.

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