



# Ancient Monuments and Archaeological Areas Act 1979

## 1979 CHAPTER 46

### PART I

#### ANCIENT MONUMENTS

##### Modifications etc. (not altering text)

- C1** Pt. I (ss. 1-32) extended (E.W.) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para.10(1)** (with ss. 7(6), 115, 117, Sch. 8 para. 7)

#### *Protection of scheduled monuments*

### **1 Schedule of monuments.**

- (1) [<sup>F1</sup>The Secretary of State][<sup>F1</sup>Historic Environment Scotland] shall compile and maintain for the purposes of this Act (in such form as [<sup>F2</sup>he][<sup>F2</sup>it] thinks fit) a schedule of monuments (referred to below in this Act as “the Schedule”).
- (2) The Secretary of State shall on first compiling the Schedule include therein—
  - (a) any monument included in the list last published before the commencement of this Act under section 12 of the <sup>M1</sup>Ancient Monuments Consolidation and Amendment Act 1913; and
  - (b) any monument in respect of which the Secretary of State has before the commencement of this Act served notice on any person in accordance with section 6(1) of the <sup>M2</sup>Ancient Monuments Act 1931 of his intention to include it in a list to be published under section 12.
- (3) Subject to subsection (4) below, [<sup>F3</sup>the Secretary of State][<sup>F3</sup>Historic Environment Scotland] may on first compiling the Schedule or at any time thereafter include therein any monument which appears to [<sup>F4</sup>him][<sup>F4</sup>it] to be of national importance.

*Status: Point in time view as at 23/02/2017.*

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[<sup>F5</sup> The Secretary of State shall consult the Historic Buildings and Monuments Commission for England (in this Act referred to as “ the Commission ”) before he includes in the Schedule a monument situated in England. ]

(4) The power of [<sup>F6</sup>the Secretary of State][<sup>F6</sup>Historic Environment Scotland] under subsection (3) above to include any monument in the Schedule does not apply to any structure which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family.

(5) [<sup>F7</sup>The Secretary of State][<sup>F7</sup>Historic Environment Scotland] may—

- (a) exclude any monument from the Schedule; or
- (b) amend the entry in the Schedule relating to any monument (whether by excluding anything previously included as part of the monument or adding anything not previously so included, or otherwise).

[<sup>F8</sup>In the case of a monument situated in England, the Secretary of State shall consult with the Commission before he makes an exclusion or amendment.]

(6) [<sup>F9</sup>Where Historic Environment Scotland—

- (a) includes a monument in the Schedule under subsection (3),
- (b) amends the entry in the Schedule relating to a monument, or
- (c) excludes a monument from the Schedule,

it must notify such persons as may be prescribed in such form and manner, and within such time, as may be prescribed of the action taken.]

[<sup>F11</sup>(6A) Subsection (6) above shall not apply as regards a monument situated in England but, as soon as may be after acting as mentioned in paragraph ( a ), ( b ) or ( c ) of that subsection as regards such a monument, the Secretary of State shall inform the Commission of the action taken and, in a case falling within paragraph ( a ) or ( b ) of that subsection, shall also send to the Commission a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument. ]

(7) [<sup>F12</sup>[<sup>F13</sup>Subject to subsection (7A) below] The Secretary of State shall from time to time publish a list of all the monuments which are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list published in sections, all sections of the list need not be published simultaneously.]

[<sup>F14</sup>(7A) Subsection (7) above shall not apply as regards monuments situated in England, but the Secretary of State shall from time to time supply the Commission with a list of all the monuments which are so situated and are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list supplied in sections, all sections of the list need not be supplied simultaneously.]

(8) [<sup>F12</sup>The Secretary of State may from time to time publish amendments of any list published under subsection (7) above, and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being—

- (a) of the monuments listed; and
- (b) of any matters purporting to be reproduced in the list from the entries in the Schedule relating to the monuments listed.]

[<sup>F15</sup>(8A) The Secretary of State shall from time to time supply the Commission with amendments of any list supplied under subsection (7A) above.]

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- (9) An entry in the Schedule recording the inclusion therein of a monument situated in England and Wales shall be a local land charge.
- (10) It shall be competent to record in the Register of Sasines—
- (a) a certified copy of the entry or (as the case may be) the amended entry in the Schedule relating to any monument in Scotland which is heritable; and
  - (b) where any such monument is excluded from the Schedule and a certified copy of the entry in the Schedule relating to it has previously been so recorded under paragraph (a) above, a certificate issued by or on behalf of <sup>F16</sup>the Secretary of State<sup>F16</sup> [Historic Environment Scotland] stating that it has been so excluded.
- (11) In this Act “scheduled monument” means any monument which is for the time being included in the Schedule.

#### Textual Amendments

- F1** Words in s. 1(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 2\(a\)\(i\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F2** Word in s. 1(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 2\(a\)\(ii\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F3** Words in s. 1(3) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 2\(b\)\(i\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F4** Word in s. 1(3) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 2\(b\)\(ii\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F5** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 25\(2\)](#)
- F6** Words in s. 1(4) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 2\(c\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F7** Words in s. 1(5) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 2\(d\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F8** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 25\(3\)](#)
- F9** S. 1(6) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 2\(e\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F10** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 25\(4\)](#)
- F11** S. 1(6A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 25\(5\)\(9\)](#)
- F12** S. 1(7)(8) repealed (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 2\(f\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F13** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 25\(6\)](#)
- F14** S. 1(7A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 25\(7\)](#)
- F15** S. 1(8A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 25\(8\)](#)
- F16** Words in s. 1(10)(b) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 2\(g\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

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#### Modifications etc. (not altering text)

- C2** S. 1(6) savings for effects of 2014 asp 19, Sch. 2 para. 2(e) (S.) (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), 2(2)
- C3** S. 1(10)(b) savings for effects of 2014 asp 19, Sch. 2 para. 2(g) (S.) (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), 3

#### Marginal Citations

- M1** 1913 c. 32.  
**M2** 1931 c. 16.

### [<sup>F17</sup>1A Commission's functions as to informing and publishing.

- (1) As soon as may be after the Commission—
- (a) have been informed as mentioned in section 1(6A) of this Act, and
  - (b) in a case falling within section 1(6)( a ) or ( b ) of this Act, have received a copy of the entry or (as the case may be) of the amended entry from the Secretary of State,
- the Commission shall inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the inclusion, amendment or exclusion and, in a case falling within section 1(6)( a ) or ( b ), shall also send to him or them a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.
- (2) As soon as may be after the Commission receive a list or a section in pursuance of section 1(7A) of this Act, they shall publish the list or section (as the case may be).
- (3) The Commission shall from time to time publish amendments of any list published under subsection (2) above, and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being—
- (a) of the monuments listed; and
  - (b) of any matters purporting to be reproduced in the list from the entries in the Schedule relating to monuments listed.]

#### Textual Amendments

- F17** S. 1A inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 26](#)

### [<sup>F18</sup>1AA Duty to consult on certain amendments relating to the Schedule

- (1) This section applies where the Welsh Ministers are proposing—
- (a) to include a monument in the Schedule;
  - (b) to exclude a monument from the Schedule; or
  - (c) in the case of a monument which is identified in the Schedule by reference to a map maintained by the Welsh Ministers, to make a material amendment in relation to the monument.
- (2) The Welsh Ministers must—

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- (a) serve notice of the proposed inclusion, exclusion or amendment on the appropriate persons; and
  - (b) invite those persons to submit written representations about the proposal.
- (3) The appropriate persons are—
- (a) the owner of the monument;
  - (b) if the owner is not the occupier, the occupier of the monument;
  - (c) each local authority in whose area the monument is situated; and
  - (d) any other person who appears to the Welsh Ministers appropriate as having special knowledge of, or interest in, the monument, or in monuments of special historic or archaeological interest more generally.
- (4) A notice under subsection (2) must—
- (a) specify the proposed inclusion, exclusion or amendment;
  - (b) specify the period within which representations about the proposal may be made, which must be at least 28 days beginning with the day on which the notice is served; and
  - (c) in the case of a proposed inclusion or a proposed amendment of the kind described in subsection (5)(a)—
    - (i) include a statement of the effect of section 1AB; and
    - (ii) specify the date on which interim protection takes effect under subsection (2) of that section.
- (5) For the purposes of this section an amendment in relation to a monument in the Schedule is “material” if it—
- (a) adds to the area shown for the monument on the map referred to in subsection (1)(c); or
  - (b) reduces the area so shown.
- (6) The Welsh Ministers may by regulations amend subsection (3) by adding a description of person to the list of appropriate persons in that subsection; and where the Welsh Ministers do so, they may also make such amendments to this Act as they consider appropriate in consequence of the amendment to subsection (3).

#### Textual Amendments

**F18** Ss. 1AA-1AE inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 3(1), 41(1)(c)(3)**; S.I. 2017/633, **art. 5(a)** (with **art. 6(1)**)

#### **1AB Interim protection pending decisions on certain amendments relating to the Schedule**

- (1) This section applies where the Welsh Ministers consult under section 1AA on a proposal to—
- (a) include a monument in the Schedule; or
  - (b) make a material amendment of the kind described in section 1AA(5)(a) in relation to a monument in the Schedule.
- (2) The provisions of this Act have effect in relation to the monument, from the beginning of the day specified for the purposes of section 1AA(4)(c)(ii)—

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- (a) in the case of a proposal to include a monument in the Schedule, as if the monument were a scheduled monument; and
  - (b) in the case of a proposal to make a material amendment in relation to a monument in the Schedule, as if the amendment were made.
- (3) The protection conferred on a monument or area by virtue of subsection (2) is referred to in this Act as “interim protection”.
- (4) Interim protection conferred by virtue of subsection (2)(a) ceases to have effect—
- (a) where the Welsh Ministers include the monument in the Schedule, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
  - (b) where the Welsh Ministers decide not to include the monument in the Schedule, from the beginning of the day specified in a notice issued to—
    - (i) the owner of the monument;
    - (ii) if the owner is not the occupier, the occupier of the monument; and
    - (iii) each local authority in whose area the monument is situated.
- (5) Interim protection conferred by virtue of subsection (2)(b) ceases to have effect—
- (a) where the Welsh Ministers make the material amendment, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
  - (b) where the Welsh Ministers decide not to make the material amendment, from the beginning of the day specified in a notice issued to—
    - (i) the owner of the monument;
    - (ii) if the owner is not the occupier, the occupier of the monument; and
    - (iii) each local authority in whose area the monument is situated.
- (6) The Welsh Ministers—
- (a) must publish by electronic means a list containing particulars of each monument in relation to which interim protection has effect; and
  - (b) must, on request, provide a copy of the notice served under section 1AA(2) in respect of such a monument.

#### Textual Amendments

**F18** Ss. 1AA-1AE inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 3(1), 41(1)(c)(3)**; S.I. 2017/633, **art. 5(a)** (with art. 6(1))

### 1AC Provisions applicable on lapse of interim protection

Schedule A1 has effect with respect to the lapse of interim protection.

#### Textual Amendments

**F18** Ss. 1AA-1AE inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 3(1), 41(1)(c)(3)**; S.I. 2017/633, **art. 5(a)** (with art. 6(1))

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## **1AD Compensation for loss or damage caused by interim protection**

- (1) This section applies where interim protection in respect of a monument ceases to have effect as a result of the issue of a notice by the Welsh Ministers under section 1AB(4)(b) or (5)(b).
- (2) Any person who, at the time when the interim protection took effect, had an interest in the monument is, on making a claim to the Welsh Ministers within the prescribed time and in the prescribed manner, entitled to be paid compensation by the Welsh Ministers in respect of any loss or damage directly attributable to the effect of the protection.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the monument on account of the interim protection having effect.

### **Textual Amendments**

**F18** Ss. 1AA-1AE inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 3(1), 41(1)(c)(3)**; S.I. 2017/633, **art. 5(a)** (with **art. 6(1)**)

## **1AE Review of decisions on certain amendments relating to the Schedule**

- (1) This section applies where the Welsh Ministers—
  - (a) include a monument in the Schedule; or
  - (b) make a material amendment of the kind described in section 1AA(5)(a) in relation to a monument in the Schedule.
- (2) When the Welsh Ministers inform the owner and (if the owner is not the occupier) the occupier of the monument under section 1(6) or (6B) that they have taken that action, they must also serve on that person or those persons a notice which—
  - (a) specifies the date on which the Welsh Ministers did so (and on which interim protection under section 1AB(2) ceased to have effect); and
  - (b) states that the person may make an application to the Welsh Ministers requesting them to review their decision to do so.
- (3) Where the owner or occupier of the monument makes such an application, the Welsh Ministers must—
  - (a) carry out the review requested;
  - (b) make a decision on the review; and
  - (c) make such amendment to the Schedule or the map referred to in section 1AA(1)(c) as they consider appropriate to give effect to that decision.
- (4) Except as provided in section 55, the validity of any decision taken by the Welsh Ministers on the review is not to be questioned in any legal proceedings.
- (5) The Welsh Ministers must carry out a review under this section in such one or more of the following ways as appears to them to be appropriate—
  - (a) by means of a public local inquiry;
  - (b) by means of a hearing;
  - (c) on the basis of written representations.

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- (6) The Welsh Ministers must by regulations make provision about—
- (a) the grounds on which an application for a review under this section may be made;
  - (b) the information that must be provided to, or may be required by, the Welsh Ministers in connection with such an application;
  - (c) the form and manner in which such an application must be made; and
  - (d) the period within which such an application must be made.
- (7) The Welsh Ministers may by regulations make further provision in connection with reviews under this section, including provision about costs that may be required to be paid in connection with a review.
- (8) Regulations made by virtue of subsection (6) or (7) may confer power on the Welsh Ministers—
- (a) to determine matters of a description specified in the regulations; and
  - (b) to give directions in relation to those matters.
- (9) Schedule A2 applies to reviews under this section.]

#### Textual Amendments

**F18** Ss. 1AA-1AE inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 3(1), 41(1)(c)(3)**; S.I. 2017/633, **art. 5(a)** (with **art. 6(1)**)

#### [<sup>F19</sup>1B Publication of the Schedule

- (1) Historic Environment Scotland must—
- (a) publish the Schedule compiled and maintained under section 1, and any amendments of the Schedule, and
  - (b) make the Schedule available for public inspection, in such manner as may be prescribed.
- (2) The Scottish Ministers may by regulations make further provision for—
- (a) the publication of the Schedule,
  - (b) the making of the Schedule available for public inspection,
  - (c) the notification of the inclusion of a monument in, the amendment of an entry relating to a monument in or the exclusion of a monument from the Schedule.]

#### Textual Amendments

**F19** S. 1B inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 3** (with ss. 29, 30); S.S.I. 2015/31, **art. 2, sch.**; S.S.I. 2015/196, **art. 2, sch.**

#### [<sup>F20</sup>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,



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- (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.

#### Textual Amendments

**F20** Ss. 1C-1E inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 32](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### 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.

#### Textual Amendments

**F20** Ss. 1C-1E inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 32](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### 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.

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- (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.]

#### Textual Amendments

**F20** Ss. 1C-1E inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 32](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.

## 2 Control of works affecting scheduled monuments.

- (1) If any person executes or causes or permits to be executed any works to which this section applies he shall be guilty of an offence unless the works are authorised under this Part of this Act [<sup>F21</sup>or by development consent].
  - (2) This section applies to any of the following works, that is to say—
    - (a) any works resulting in the demolition or destruction of or any damage to a scheduled monument;
    - (b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto; and
    - (c) any flooding or tipping operations on land in, on or under which there is a scheduled monument.
  - (3) Without prejudice to any other authority to execute works conferred under this Part of this Act, works to which this section applies are authorised under this Part of this Act if—
    - (a) the Secretary of State [<sup>F22</sup>or Historic Environment Scotland] has granted [<sup>F23</sup>written] consent (referred to below in this Act as “scheduled monument consent”) for the execution of the works; and
    - (b) the works are executed in accordance with the terms of the consent and of any conditions attached to the consent.
- [<sup>F24</sup>(3A) If works to which this section applies have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument without being authorised under this Part, and the Welsh Ministers grant consent for the retention of the works, the works are authorised under this Part from the grant of the consent.
- (3B) References in this Act to scheduled monument consent (other than in section 4) include a reference to consent under subsection (3A).]
- [<sup>F25</sup>(3A) If—
- (a) works to which this section applies have been executed without being authorised under this Part; and
  - (b) [<sup>F26</sup>consent for the retention of the works is granted by the Scottish Ministers or by Historic Environment Scotland,]

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the works are authorised under this Part of this Act from the grant of the consent.

(3B) References in this Act to scheduled monument consent include consent under subsection (3A) above.]

(4) Scheduled monument consent may be granted either unconditionally or subject to conditions (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).

(5) Without prejudice to the generality of subsection (4) above, a condition attached to a scheduled monument consent may require that

- [<sup>F27</sup>(a) a person authorised by the Commission (in a case where the monument in question is situated in England), or
- (b) [<sup>F28</sup>the Secretary of State][<sup>F28</sup>Historic Environment Scotland] or a person authorised by [<sup>F28</sup>the Secretary of State][<sup>F28</sup>Historic Environment Scotland] (in any other case)]

be afforded an opportunity, before any works to which the consent relates are begun, to examine the monument and its site and carry out such excavations therein as appear to [<sup>F29</sup>the Secretary of State][<sup>F29</sup>Historic Environment Scotland] to be desirable for the purpose of archaeological investigation.

[<sup>F30</sup>(5A) The conditions that may be attached to scheduled monument consent under subsection (4) include a condition reserving specified details of the works (whether or not set out in the application for consent) for subsequent approval by Historic Environment Scotland.]

[<sup>F31</sup>(5A) In the case of a monument situated in Wales, the reference in subsection (3)(a) to the granting of written consent includes a reference to the granting of consent in such other manner as may be prescribed by the Welsh Ministers.

(5B) The Welsh Ministers may by regulations make provision as to the form and content of consent under this section in relation to a monument situated in Wales.]

(6) Without prejudice to subsection (1) above, if a person executing or causing or permitting to be executed any works to which a scheduled monument consent relates fails to comply with any condition attached to the consent he shall be guilty of an offence, unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.

[<sup>F32</sup>(6A) In any proceedings for an offence under subsection (1) in relation to a monument or anything else on which interim protection is conferred (which is, as a result of section 1AB(2), treated as a scheduled monument or part of such a monument)—

- (a) it is a defence for the accused to prove that the accused did not know, and could not reasonably have been expected to know, that the interim protection had been conferred; and
- (b) where the defence is raised by a person on whom a notice should have been served under section 1AA(2), it is for the prosecution to prove that the notice was served on the person.]

(7) In any proceedings for an offence under this section in relation to works within subsection (2)(a) above it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument.

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- (8) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) above [<sup>F33</sup>which have been executed in relation to a scheduled monument situated in England or land in, on or under which there is such a scheduled monument] it shall be a defence for the accused to [<sup>F34</sup>prove that][<sup>F34</sup>show that, before executing, causing the execution of or, as the case may be, permitting the execution of the works—
- (a) he had taken all reasonable steps to find out whether there was a scheduled monument within the area affected by the works, and]
- he did not know and had no reason to believe that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.
- [<sup>F35</sup>(8A) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) which have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument, it is a defence for the accused to prove that, before executing the works or before causing or permitting their execution (as the case may be), the accused?—
- (a) had taken all reasonable steps to find out whether there was a scheduled monument in the area affected by the works; and
- (b) did not know, and had no reason to believe, that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.]
- (9) In any proceedings for an offence under this section it shall be a defence to prove that the works were urgently necessary in the interests of safety or health and that notice in writing of the need for the works was given to [<sup>F36</sup>the Secretary of State][<sup>F36</sup>Historic Environment Scotland] as soon as reasonably practicable.
- (10) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding [<sup>F37</sup>the statutory maximum][<sup>F37</sup>£50,000]; or
- (b) on conviction on indictment to a fine.
- [<sup>F38</sup>(10A) In determining the amount of any fine to be imposed on a person under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.]
- (11) Part I of Schedule 1 to this Act shall have effect with respect to applications for, [<sup>F39</sup>the manner of granting, and the form, content] and the effect of, scheduled monument consent.

#### Textual Amendments

- F21** Words in s. 2(1) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\), s. 241\(8\), Sch. 2 para. 17](#) (with s. 226); [S.I. 2010/101, art. 2](#) (with art. 6)
- F22** Words in s. 2(3)(a) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\), s. 31\(2\), sch. 2 para. 5\(a\)](#) (with ss. 29, 30); [S.S.I. 2015/31, art. 2, sch.](#); [S.S.I. 2015/196, art. 2, sch.](#)
- F23** Word in s. 2(3)(a) repealed (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\), ss. 2\(a\), 33\(2\)](#); [S.S.I. 2011/372, art. 2, Sch.](#)
- F24** [S. 2\(3A\)\(3B\)](#) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\), ss. 6\(1\), 41\(2\)](#)

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- F25** S. 2(3A)(3B) inserted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) (asp 3), **ss. 2(b)**, 33(2); S.S.I. 2011/372, art. 2, Sch.
- F26** S. 2(3A)(b) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 5(b)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F27** Words substituted by [National Heritage Act 1983](#) (c. 47, SIF 78), s. 41, **Sch. 4 para. 27**
- F28** Words in s. 2(5)(b) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 5(c)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F29** Words in s. 2(5) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 5(c)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F30** S. 2(5A) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 5(d)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F31** S. 2(5A)(5B) inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 5(1)**, 41(1)(c)(3); S.I. 2017/633, art. 5(b)
- F32** S. 2(6A) inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 3(2)**, 41(1)(c)(3); S.I. 2017/633, art. 5(b)
- F33** Words in s. 2(8) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 15(2)**, 41(2)
- F34** Words in s. 2(8) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) (asp 3), **ss. 3(2)**, 33(2); S.S.I. 2011/372, art. 2, Sch.
- F35** S. 2(8A) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 15(3)**, 41(2)
- F36** Words in s. 2(9) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 5(e)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F37** Words in s. 2(10) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) (asp 3), **ss. 4(2)(a)**, 33(2); S.S.I. 2011/372, art. 2, Sch.
- F38** S. 2(10A) inserted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) (asp 3), **ss. 4(2)(b)**, 33(2); S.S.I. 2011/372, art. 2, Sch.
- F39** Words in s. 2(11) inserted (S.) (30.6.2011 for specified purposes, 1.12.2011 in so far as not already in force) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) (asp 3), **ss. 15(4)**, 33(2); S.S.I. 2011/174, art. 2, Sch.; S.S.I. 2011/372, art. 2, Sch.

#### **Modifications etc. (not altering text)**

- C4** S. 2 excluded (18.12.1996) by 1996 c. 61, s. 12, **Sch. 7 para. 4(2)**
- C5** S. 2 excluded (22.7.2008) by [Crossrail Act 2008](#) (c. 18), **Sch. 9 para. 4(2)**
- C6** S. 2 excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017](#) (c. 7), s. 70(1), **Sch. 19 para. 1(2)**
- C7** S. 2(5)(b) savings for effects of 2014 asp 19, Sch. 2 para. 5(c) (S.) (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015](#) (S.S.I. 2015/239), arts. 1(1), **4**
- C8** S. 2(8) savings for effects of 2011 asp 3 s. 3(2) (S.) (1.12.2011) by [The Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(Saving, Transitional and Consequential Provisions\) Order 2011](#) (S.S.I. 2011/377), arts. 1(1), **2(a)**
- C9** S. 2(9) savings for effects of 2014 asp 19, Sch. 2 para. 5(e) (S.) (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015](#) (S.S.I. 2015/239), arts. 1(1), **5**

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### 3 Grant of scheduled monument consent by order of the Secretary of State.

- (1) The Secretary of State may by order grant scheduled monument consent for the execution of works of any class or description specified in the order, and any such consent may apply to scheduled monuments of any class or description so specified.

[<sup>F40</sup>Before granting consent in relation to monuments of a class or description which includes monuments situated in England, the Secretary of State shall consult with the Commission in relation to the monuments so situated.]

- (2) Any conditions attached by virtue of section 2 of this Act to a scheduled monument consent granted by an order under this section shall apply in such class or description of cases as may be specified in the order.

- (3) The Secretary of State may direct that scheduled monument consent granted by an order under this section, shall not apply to any scheduled monument specified in the direction, and may withdraw any direction given under this subsection.

[<sup>F41</sup>Before making a direction in relation to a monument situated in England, or withdrawing such a direction, the Secretary of State shall consult with the Commission.]

- (4) A direction under subsection (3) above shall not take effect until notice of it has been served on the occupier or (if there is no occupier) on the owner of the monument in question.

- (5) References below in this Act to a scheduled monument consent do not include references to a scheduled monument consent granted by an order under this section, unless the contrary intention is expressed.

#### Textual Amendments

**F40** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 28\(2\)](#)

**F41** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 28\(3\)](#)

#### [<sup>F42</sup>3A Application for variation or discharge of conditions

- (1) Any person interested in a scheduled monument in relation to which scheduled monument consent has been granted subject to conditions may apply to Historic Environment Scotland for the variation or discharge of the conditions.

- (2) The application must indicate what variation or discharge of conditions is applied for and Part 1 of schedule 1 applies to such an application as it applies to an application for scheduled monument consent.

- (3) Historic Environment Scotland or, as the case may be, the Scottish Ministers may, on such an application—

- (a) vary or discharge the conditions attached to the consent (whether or not the application relates to the condition varied or discharged),
- (b) add new conditions consequential upon the variation or discharge.]

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#### Textual Amendments

**F42** S. 3A inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 6](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### [<sup>F43</sup>3B Referral of certain applications to the Scottish Ministers

- (1) The Scottish Ministers may give directions requiring applications for—
  - (a) scheduled monument consent,
  - (b) variation or discharge of conditions to which scheduled monument consent is subject,
  - (c) subsequent approval required by a condition to which scheduled monument consent is subject,to be referred to them instead of being dealt with by Historic Environment Scotland.
- (2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.
- (3) A direction under this section may be withdrawn or modified by a subsequent direction.
- (4) An application in respect of which a direction under this section has effect is to be referred to the Scottish Ministers accordingly.
- (5) In determining an application under this section, the Scottish Ministers may deal with the application as if it had been made to them in the first instance.
- (6) Except as provided for by section 55, the decision of the Scottish Ministers on any application referred to them under this section is final.
- (7) The reference in subsection (1)(c) to scheduled monument consent includes a reference to consent granted by order under section 3.

#### Textual Amendments

**F43** Ss. 3B, 3C inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 35](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### 3C Procedure for referrals under section 3B

- (1) The Scottish Ministers may by regulations make provision in connection with referrals under section 3B, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the referral.
- (2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
  - (a) the notification of a referral,
  - (b) the manner in which a referral is to be conducted.

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- (3) Regulations made by virtue of subsection (2)(b) may also include provision that the manner in which a referral, or any stage of a referral, 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).]

#### Textual Amendments

**F43** Ss. 3B, 3C inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 35** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### 4 Duration, modification and revocation of scheduled monument consent.

- (1) Subject to subsection (2) below, if no works to which a scheduled monument consent relates are executed or started within the period of five years beginning with the date on which the consent was granted, or such longer or shorter period as may be specified for the purposes of this subsection in the consent, the consent shall cease to have effect at the end of that period (unless previously revoked in accordance with the following provisions of this section).
- (2) Subsection (1) above does not apply to a scheduled monument consent which provides that it shall cease to have effect at the end of a period specified therein.
- (3) [<sup>F44</sup>If it appears to Historic Environment Scotland that it is expedient to modify or revoke a scheduled monument consent, it may by order under this section modify or revoke the consent to such extent as it considers expedient.]
- (4) [<sup>F44</sup>The power conferred by subsection (3) to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.]
- (5) Part II of Schedule 1 to this Act shall have effect with respect to [<sup>F46</sup>directions][<sup>F46</sup>orders] under this section modifying or revoking a scheduled monument consent.

#### Textual Amendments

**F44** S. 4(3)(4) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 7(a)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

**F45** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 29**

**F46** Word in s. 4(5) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 7(b)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### Modifications etc. (not altering text)

**C10** S. 4 savings for effects of 2014 asp 19, Sch. 2 para. 7 (S.) (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), 7



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#### [<sup>F47</sup>4A **Modification and revocation of scheduled monument consent by Scottish Ministers**

- (1) If it appears to the Scottish Ministers that it is expedient to modify or revoke a scheduled monument consent, they may by order under this section modify or revoke the consent to such extent as they consider expedient.
- (2) The Scottish Ministers may not make an order under this section without consulting Historic Environment Scotland.
- (3) Where the Scottish Ministers propose to make such an order, they must serve notice on—
  - (a) the owner of the scheduled monument affected,
  - (b) where the owner is not the occupier of the monument, the occupier, and
  - (c) any other person who in their opinion will be affected by the order.
- (4) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.
- (5) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they make the order, give such an opportunity both to that person and to Historic Environment Scotland.
- (6) The power conferred by this section to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.
- (7) An order under this section has effect as if it had been made by Historic Environment Scotland under section 4 and confirmed by the Scottish Ministers under paragraph 10 of Part 2 of schedule 1.]

#### **Textual Amendments**

**F47** S. 4A inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 8](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### [<sup>F48</sup>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.

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- (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.

#### Textual Amendments

**F48** Ss. 4B-4D inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 33](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### 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.

#### Textual Amendments

**F48** Ss. 4B-4D inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 33](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### 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—

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- (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.]

#### Textual Amendments

**F48** Ss. 4B-4D inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 33](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

## 5 Execution of works for preservation of a scheduled monument by Secretary of State in cases of urgency.

- (1) If it appears to <sup>F49</sup>the Secretary of State<sup>F49</sup> [Historic Environment Scotland] that any works are urgently necessary for the preservation of a scheduled monument <sup>F50</sup>he<sup>F50</sup> <sup>F50</sup>it<sup>F50</sup> may enter the site of the monument and execute those works, after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than seven days' notice in writing of <sup>F51</sup>his<sup>F51</sup> <sup>F51</sup>its<sup>F51</sup> intention to do so.
- (2) Where the Secretary of State executes works under this section for repairing any damage to a scheduled monument—
  - (a) any compensation order previously made in respect of that damage under <sup>F52</sup>section 130 of the Powers of Criminal Courts (Sentencing) Act 2000<sup>F52</sup> (compensation orders against convicted persons) in favour of any other person shall be enforceable (so far as not already complied with) as if it had been made in favour of the Secretary of State; and

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- (b) any such order subsequently made in respect of that damage shall be made in favour of the Secretary of State.
- [<sup>F53</sup>(3) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a scheduled monument situated in England, he may (instead of acting as mentioned in subsection (1) above) authorise the Commission to enter the site of the monument and execute the works as are specified in the authorisation.
- (4) In that case, the Commission may enter the site and execute the works after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than seven day's notice in writing of their intention to do so.
- (5) Where the Secretary of State gives an authorisation under subsection (3) above, subsection (2) above shall have effect with the substitution of "Commission" for "Secretary of State" (in each place) and of "execute" for "executes".]

#### Textual Amendments

- F49** Words in s. 5(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 9\(a\)](#) (with [ss. 29, 30](#)); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F50** Word in s. 5(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 9\(b\)](#) (with [ss. 29, 30](#)); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F51** Word in s. 5(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 9\(c\)](#) (with [ss. 29, 30](#)); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F52** Words in s. 5(2)(a) substituted (25.8.2000) by [2000 c. 6](#), ss. 165, 168(1), [Sch. 9 para. 58](#)
- F53** S. 5(3)–(5) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 30](#)

## 6 Powers of entry for inspection of scheduled monuments, etc.

- (1) Any person duly authorised in writing by [<sup>F54</sup>the Secretary of State][<sup>F54</sup>Historic Environment Scotland] may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining its condition [<sup>F55</sup>and][<sup>F55</sup>]; and such power may, in particular, be exercised with a view to ascertaining—
- whether any works affecting the monument are being carried out in contravention of section 2(1) of this Act; or
  - whether it has been or is likely to be damaged (by any such works or otherwise).
- (2) Any person duly authorised in writing by the Secretary of State [<sup>F56</sup>or Historic Environment Scotland] may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land in connection with—
- any application for scheduled monument consent for works affecting that monument; or
  - any proposal by the Secretary of State [<sup>F56</sup>or Historic Environment Scotland] to modify or revoke a scheduled monument consent for any such works.
- (3) Any person duly authorised in writing by the Secretary of State [<sup>F57</sup>or Historic Environment Scotland] may at any reasonable time enter any land for the purpose of—

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- (a) observing the execution on the land of any works to which a scheduled monument consent relates; and
- (b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works;

so as to ensure that the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the consent.

[<sup>F58</sup>(3A) Any person duly authorised in writing by the Scottish Ministers [<sup>F59</sup>or Historic Environment Scotland] may at any reasonable time enter any land—

- (a) to ascertain whether a scheduled monument enforcement notice, a stop notice or a temporary stop notice should be served in relation to a scheduled monument in, on or under that or any other land,
- (b) for the purposes of displaying—
  - (i) a site notice,
  - (ii) a notice under section 9G(7) in place of a site notice, or
  - (iii) a copy of a temporary stop notice, and a statement as to the effect of section 9M, under section 9K(4),
- (c) to ascertain whether a scheduled monument enforcement notice, a stop notice or a temporary stop notice has been complied with,
- (d) to ascertain whether any offence has been, or is being, committed with respect to any scheduled monument in, on or under that or any other land under section 2(1) or (6), 9E, 9J or 9M.]

(4) Any person duly authorised in writing by the Secretary of State [<sup>F60</sup>or Historic Environment Scotland] may at any reasonable time enter any land on which any works to which a scheduled monument consent relates are being carried out for the purpose of—

- (a) inspecting the land (including any buildings or other structures on the land) with a view to recording any matters of archaeological or historical interest; and
- (b) observing the execution of those works with a view to examining and recording any objects or other material of archaeological or historical interest, and recording any matters of archaeological or historical interest, discovered during the course of those works.

(5) Any person duly authorised in writing by the Secretary of State [<sup>F61</sup>or Historic Environment Scotland] may enter any land in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Secretary of State [<sup>F61</sup>or Historic Environment Scotland] to be desirable with a view to preserving the monument from accidental or deliberate damage.

[<sup>F62</sup>This subsection does not apply to land in England.]

(6) References in this section to scheduled monument consent include references to consent granted by order under section 3 of this Act.

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### Textual Amendments

- F54** Words in s. 6(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 10\(a\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F55** Words in s. 6(1) substituted (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), [ss. 5, 33\(2\)](#); S.S.I. 2011/174, art. 2, Sch.
- F56** Words in s. 6(2) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 10\(b\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F57** Words in s. 6(3) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 10\(c\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F58** Words in s. 6(3A) inserted (S.) (30.6.2011 for specified purposes) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), [ss. 6\(2\), 33\(2\)](#); S.S.I. 2011/174, art. 2, Sch.
- F59** Words in s. 6(3A) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 10\(d\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F60** Words in s. 6(4) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 10\(e\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F61** Words in s. 6(5) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 10\(f\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F62** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 31](#)

### Modifications etc. (not altering text)

- C11** S. 6(1) restricted (18.12.1996) by 1996 c. 61, s. 12, [Sch. 7 para. 4\(3\)](#)
- C12** S. 6(1) restricted (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 9 para. 4\(3\)](#)
- C13** S. 6(1) restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), [Sch. 19 para. 1\(3\)](#)

## [<sup>F63</sup>6A Commission's powers of entry in relation to scheduled monuments.

- (1) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining whether any works affecting the monument have been or are being carried out in contravention of section 2(1) of this Act and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1).
- (2) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of—
- observing the execution on the land of any works to which a scheduled monument consent relates; and
  - inspecting the condition of the land and the scheduled monument in question after the completion of any such works,
- with a view to ascertaining whether the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the consent, and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1) or (6) of this Act.

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- (3) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land in connection with any consultation made in respect of the monument under section 4(3) of this Act or paragraph 3(3)(c) of Schedule 1 to this Act.
- (4) Any person duly authorised in writing by the Commission may enter any land which is in England and in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Commission to be desirable with a view to preserving the monument from accidental or deliberate damage.
- (5) References in this section to scheduled monument consent include references to consent granted by order under section 3 of this Act.]

#### Textual Amendments

**F63** S. 6A inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 32](#)

#### Modifications etc. (not altering text)

**C14** S. 6A(1) restricted (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 9 para. 4\(3\)](#)

**C15** S. 6A(1) restricted (18.12.1996) by [1996 c. 61](#), s. 12, [Sch. 7 para. 4\(3\)](#)

**C16** S. 6A(1) restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), [Sch. 19 para. 1\(3\)](#)

## 7 Compensation for refusal of scheduled monument consent.

- (1) Subject to the following provisions of this section, where a person who has an interest in the whole or any part of a monument incurs expenditure or otherwise sustains any loss or damage in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to any works of a description mentioned in subsection (2) below, [<sup>F64</sup>the Secretary of State][<sup>F64</sup>Historic Environment Scotland or, where the Scottish Ministers refused the scheduled monument consent or granted it subject to conditions, Ministers][<sup>F65</sup>or (where the monument in question is situated in England) the Commission] shall pay to that person compensation in respect of that expenditure, loss or damage.

References in this section and in section 8 of this Act to compensation being paid in respect of any works are references to compensation being paid in respect of any expenditure incurred or other loss or damage sustained in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to those works.

- (2) The following are works in respect of which compensation is payable under this section—
  - (a) works which are reasonably necessary for carrying out any development for which planning permission had been granted (otherwise than by a general development order) before the time when the monument in question became a scheduled monument and was still effective at the date of the application for scheduled monument consent;

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- (b) works which do not constitute development, or constitute development such that planning permission is granted therefor by a general development order; and
- (c) works which are reasonably necessary for the continuation of any use of the monument for any purpose for which it was in use immediately before the date of the application for scheduled monument consent.

For the purposes of paragraph (c) above, any use in contravention of any legal restrictions for the time being applying to the use of the monument shall be disregarded.

- (3) The compensation payable under this section in respect of any works within subsection (2)(a) above shall be limited to compensation in respect of any expenditure incurred or other loss or damage sustained by virtue of the fact that, in consequence of [<sup>F66</sup>the Secretary of State's][<sup>F66</sup>Historic Environment Scotland's or, as the case may be, the Scottish Ministers'] decision, any development for which the planning permission in question was granted could not be carried out without contravening section 2(1) of this Act.
- (4) A person shall not be entitled to compensation under this section by virtue of subsection (2)(b) above if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument, unless those works consist solely of operations involved in or incidental to the use of the site of the monument for the purposes of agriculture or forestry (including afforestation).
- (5) In a case where scheduled monument consent is granted subject to conditions, a person shall not be entitled to compensation under this section by virtue of subsection (2)(c) above unless compliance with those conditions would in effect make it impossible to use the monument for the purpose there mentioned.
- (6) In calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of an interest in land—
  - (a) it shall be assumed that any subsequent application for scheduled monument consent in relation to works of a like description would be determined in the same way; but
  - (b) if, in the case of a refusal of scheduled monument consent, [<sup>F67</sup>the Secretary of State][<sup>F67</sup>Historic Environment Scotland or, as the case may be, the Scottish Ministers] , on refusing that consent, undertook to grant such consent for some other works affecting the monument in the event of an application being made in that behalf, regard shall be had to that undertaking.
- (7) References in this section to a general development order are references to a development order made as a general order applicable (subject to such exceptions as may be specified therein) to all land.

#### Textual Amendments

- F64** Words in s. 7(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 11\(a\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F65** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 33](#)
- F66** Words in s. 7(3) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 11\(b\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.



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**F67** Words in s. 7(6)(b) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 11\(c\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

## 8 Recovery of compensation under section 7 on subsequent grant of consent.

- (1) Subject to the following provisions of this section, this section applies—
- (a) in a case where compensation under section 7 of this Act was paid in consequence of the refusal of a scheduled monument consent, if the Secretary of State [<sup>F68</sup>or Historic Environment Scotland] subsequently grants scheduled monument consent for the execution of all or any of the works in respect of which the compensation was paid; and
  - (b) in a case where compensation under that section was paid in consequence of the granting of a scheduled monument consent subject to conditions, if the Secretary of State [<sup>F68</sup>or Historic Environment Scotland] subsequently so modifies that consent that those conditions, or any of them, cease to apply to the execution of all or any of the works in respect of which the compensation was paid or grants a new consent in respect of all or any of those works free from those conditions, or any of them.

- (2) This section does not apply in any case unless—

- (a) the compensation paid exceeded £20; and
- [<sup>F69</sup>(b) the requirement mentioned in subsection (2A) below is fulfilled]

[<sup>F70</sup>(2A) The requirement is that—

- (a) where the monument in question is situated in England, the Commission have caused notice of the payment of compensation to be deposited with the council of each district or London borough in which the monument is situated or (where it is situated in the City of London, the Inner Temple or the Middle Temple) with the Common Council of the City of London;
- (b) where the monument in question is situated in Scotland, the Secretary of State [<sup>F71</sup>or Historic Environment Scotland] has caused such notice to be deposited with the local authority of each area in which the monument is situated;
- (c) where the monument in question is situated in Wales, the Secretary of State has caused such notice to be deposited with the council of each [<sup>F72</sup>county or county borough] in which the monument is situated.]

- (3) In granting or modifying a scheduled monument consent in a case to which this section applies the Secretary of State [<sup>F73</sup>or Historic Environment Scotland] may do so on terms that no works in respect of which the compensation was paid are to be executed in pursuance of the consent until the recoverable amount has been repaid to the Secretary of State [<sup>F73</sup>or Historic Environment Scotland] or secured to his [<sup>F74</sup>or its] satisfaction [<sup>F75</sup>or (as the case may be) has been repaid to the Commission or secured to their satisfaction].

Subject to subsection (4) below, in this subsection “the recoverable amount” means such amount (being an amount representing the whole of the compensation previously paid or such part thereof as the Secretary of State [<sup>F73</sup>or Historic Environment Scotland] thinks fit) as the Secretary of State [<sup>F73</sup>or Historic Environment Scotland] may specify in giving notice of his [<sup>F74</sup>or its] decision on the application for scheduled monument consent or (as the case may be) in the direction modifying the consent.

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- (4) Where a person who has an interest in the whole or any part of a monument is aggrieved by the amount specified by the Secretary of State [<sup>F76</sup>or Historic Environment Scotland] as the recoverable amount for the purposes of subsection (3) above, he may require the determination of that amount to be referred to the [<sup>F77</sup>Upper Tribunal or] (in the case of a monument situated in Scotland) to the Lands Tribunal for Scotland; and in any such case the recoverable amount for the purposes of that subsection shall be such amount (being an amount representing the whole or any part of the compensation previously paid) as that Tribunal may determine to be just in the circumstances of the case.
- (5) A notice deposited under subsection (2)(b) above shall specify the decision which gave rise to the right to compensation, the monument affected by the decision, and the amount of the compensation.
- (6) A notice so deposited in the case of a monument situated in England and Wales shall be a local land charge; and for the purposes of the <sup>M3</sup>Local Land Charges Act 1975 the council with whom any such notice is deposited shall be treated as the originating authority as respects the charge thereby constituted.
- (7) A notice so deposited in the case of any monument situated in Scotland which is heritable may be recorded in the Register of Sasines.

#### Textual Amendments

- F68** Words in s. 8(1) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 12\(a\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F69** S. 8(2)(b) substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 34\(2\)\(5\)](#)
- F70** S. 8(2A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 34\(3\)\(5\)](#)
- F71** Words in s. 8(2A) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 12\(b\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F72** Words in s. 8(2A)(c) substituted (1.4.1996) by 1994 c. 19, s. 66(6), [Sch. 16 para. 56\(1\)](#) (with ss. 54(5) (7), 55(5), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); S.I. 1996/396, art. 4, [Sch. 2](#)
- F73** Words in s. 8(3) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 12\(c\)\(i\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F74** Words in s. 8(3) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 12\(c\)\(ii\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F75** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 34\(4\)\(5\)](#)
- F76** Words in s. 8(4) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 12\(d\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F77** Words in s. 8(4) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 1 para. 127](#) (with [Sch. 5](#))

#### Marginal Citations

- M3** 1975 c. 76.

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## 9 Compensation where works affecting a scheduled monument cease to be authorised.

- (1) Subject to the following provisions of this section, where any works affecting a scheduled monument which were previously authorised under this Part of this Act cease to be so, then, if any person who has an interest in the whole or any part of the monument—
- (a) has incurred expenditure in carrying out works which are rendered abortive by the fact that any further works have ceased to be so authorised; or
  - (b) has otherwise sustained loss or damage which is directly attributable to that fact;
- the Secretary of State [<sup>F78</sup>or Historic Environment Scotland][<sup>F79</sup>or (where the monument in question is situated in England) the Commission] shall pay to that person compensation in respect of that expenditure, loss or damage.
- (2) Subsection (1) above only applies where the works cease to be authorised under this Part of this Act—
- (a) by virtue of the fact that a scheduled monument consent granted by order under section 3 of this Act ceases to apply to any scheduled monument (whether by virtue of variation or revocation of the order or by virtue of a direction under subsection (3) of that section); or
  - (b) by virtue of the modification or revocation of a scheduled monument consent by a direction given under section 4 of this Act; or
  - (c) in accordance with paragraph 8 of Schedule 1 to this Act, by virtue of the service of a notice of proposed modification or revocation of a scheduled monument consent under paragraph 5 of that Schedule.
- (3) A person shall not be entitled to compensation under this section in a case falling within subsection (2)(a) above unless, on an application for scheduled monument consent for the works in question, consent is refused, or is granted subject to conditions other than those which previously applied under the order.
- (4) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out those works.
- (5) Subject to subsection (4) above, no compensation shall be paid under this section in respect of any works carried out before the grant of the scheduled monument consent in question, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

### Textual Amendments

- F78** Words in s. 9(1) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 13](#) (with [ss. 29, 30](#)); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F79** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 35](#)

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## <sup>F80</sup>Agreements concerning scheduled monuments etc: Wales

### Textual Amendments

**F80** Ss. 9ZA, 9ZB and cross-heading inserted (E.W.) (21.3.2016 for specified purposes, 1.1.2022 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 11(1)**, 41(1)(c)(3); S.I. 2021/1059, **art. 2(a)**

### 9ZA Heritage partnership agreement

- (1) The Welsh Ministers may enter into an agreement under this section (a “heritage partnership agreement”) with the owner of—
  - (a) a scheduled monument situated in Wales; or
  - (b) any land adjoining or in the vicinity of such a scheduled monument (“associated land”).
- (2) Any of the following may also be a party to a heritage partnership agreement (in addition to the owner and the Welsh Ministers)—
  - (a) any occupier of the scheduled monument or its associated land;
  - (b) any person with an interest in the scheduled monument or its associated land;
  - (c) any person involved in the management of the scheduled monument or its associated land;
  - (d) any local authority in whose area the scheduled monument or its associated land is situated;
  - (e) any local authority which is a guardian of the scheduled monument or its associated land by virtue of this Act;
  - (f) any other person who appears to the Welsh Ministers appropriate as having a special knowledge of, or interest in, the scheduled monument, or in monuments of special historic or archaeological interest more generally.
- (3) A heritage partnership agreement may contain provision—
  - (a) granting scheduled monument consent under section 2(3) for specified works for the purpose of removing or repairing the scheduled monument to which the agreement relates or any part of it, or of making any alterations or additions to the monument; and
  - (b) specifying any conditions to which the consent is subject (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).
- (4) A heritage partnership agreement may also—
  - (a) specify or describe works that would, or would not, in the view of the parties to the agreement, constitute works to which section 2 applies;
  - (b) make provision about the maintenance and preservation of the scheduled monument or its associated land;
  - (c) make provision about the carrying out of specified works, or the doing of any specified thing, in relation to the scheduled monument or its associated land;
  - (d) provide for public access to the scheduled monument or its associated land and the provision of associated facilities, information or services to the public;
  - (e) restrict access to, or use of, the scheduled monument or its associated land;

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- (f) prohibit the doing of any specified thing in relation to the scheduled monument or its associated land;
  - (g) provide for the Welsh Ministers, or any local authority in whose area the scheduled monument or its associated land is situated, to make payments of specified amounts and on specified terms—
    - (i) for, or towards, the cost of any works provided for under the agreement; or
    - (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.
- (5) In this section “specified” means specified or described in the heritage partnership agreement.
- (6) In this section and in section 9ZB “owner”, in relation to a scheduled monument or its associated land, means a person who is for the time being—
  - (a) the estate owner in respect of the fee simple in the monument or its associated land (as the case may be); or
  - (b) entitled to a tenancy of the monument or its associated land (as the case may be) for a term of years certain of which not less than 7 years remains unexpired.
- (7) Where more than one person is the owner of a scheduled monument or its associated land, the references in subsection (1) and in section 9ZB(2)(b) to the owner are to any one or more of those persons.

## **9ZB Heritage partnership agreement: supplemental**

- (1) A heritage partnership agreement—
  - (a) must be in writing;
  - (b) must make provision for the parties to review its terms at intervals specified in the agreement;
  - (c) must make provision for its termination and variation; and
  - (d) may contain incidental and consequential provision.
- (2) A heritage partnership agreement may relate to more than one scheduled monument, provided that the following are parties to the agreement in each case—
  - (a) the Welsh Ministers; and
  - (b) the owner of the scheduled monument or the owner of land adjoining or in the vicinity of the scheduled monument.
- (3) The Welsh Ministers must by regulations make provision—
  - (a) about the consultation that must take place before a heritage partnership agreement is made or varied;
  - (b) about the publicity that must be given to a heritage partnership agreement before or after it is made or varied;
  - (c) specifying terms that must be included in a heritage partnership agreement; and
  - (d) enabling the Welsh Ministers to terminate by order a heritage partnership agreement or any provision of such an agreement.
- (4) Regulations made under subsection (3)(a) must require the Welsh Ministers to consult the following persons before entering into a heritage partnership agreement under section 9ZA(1)(a)—

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- (a) the owner of the scheduled monument to which the proposed agreement relates;
  - (b) any occupier of the scheduled monument;
  - (c) any local authority in whose area the scheduled monument is situated;
  - (d) any local authority which is a guardian of the scheduled monument.
- (5) Regulations made under subsection (3)(a) must require the Welsh Ministers to consult the following persons before entering into a heritage partnership agreement under section 9ZA(1)(b)—
- (a) the owner of the land to which the proposed agreement relates;
  - (b) any occupier of the land;
  - (c) any local authority in whose area the land is situated;
  - (d) any local authority which is a guardian of the land by virtue of this Act.
- (6) Regulations made under section (3)(d) may specify provision that may be included in an order made by virtue of that paragraph, including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision.
- (7) The Welsh Ministers may by regulations make provision disapplying, or applying or reproducing with or without modifications, any provision of this Act for the purposes of heritage partnership agreements.
- (8) A heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not a party to the agreement (and, accordingly, scheduled monument consent granted by such an agreement enures only for the benefit of the parties to the agreement).]

*[<sup>F81</sup>Scheduled monument enforcement notices*

**Textual Amendments**

**F81** Ss. 9ZC-9ZH and cross-heading inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), ss. 12(1), 41(2)

**9ZC Scheduled monument enforcement notice**

- (1) This section applies where it appears to the Welsh Ministers that works affecting a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument have been or are being carried out in contravention of section 2(1) or (6).
- (2) The Welsh Ministers may issue a notice under this section (referred to in this Part as a “scheduled monument enforcement notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient to do so.
- (3) A scheduled monument enforcement notice must be in writing and must specify—
- (a) the date on which the notice takes effect (see subsection (4));
  - (b) the alleged contravention;
  - (c) where the Welsh Ministers require works to cease, the works concerned and the period within which the Welsh Ministers require them to cease; and

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- (d) where the Welsh Ministers require steps of a kind referred to in subsection (5) to be taken, the steps concerned and the period within which the Welsh Ministers require them to be taken.
- (4) A scheduled monument enforcement notice takes effect on the date specified in the notice for the purposes of subsection (3)(a); and the date so specified must be at least 28 days after the date on which the notice is served in accordance with section 9ZD.
- (5) The steps mentioned in subsection (3)(d) are—
  - (a) steps for restoring the monument or land to its former state;
  - (b) if the Welsh Ministers consider restoration would not be practicable or desirable, steps for executing such further works as they consider are required to alleviate in a manner acceptable to them the effect of the works carried out without scheduled monument consent;
  - (c) if scheduled monument consent for the works has been granted, steps for bringing the monument or land to the state it would have been in if the conditions of the consent had been complied with.
- (6) A scheduled monument enforcement notice may specify different periods for different works or different steps.
- (7) Where works of the kind mentioned in subsection (5)(b) are carried out, scheduled monument consent is to be treated as having been granted in respect of the works.

#### **9ZD Scheduled monument enforcement notice: supplementary provision**

- (1) A copy of a scheduled monument enforcement notice must be served on—
  - (a) the owner of the monument or land concerned;
  - (b) if the owner is not the occupier, the occupier;
  - (c) if the monument or land is let but the lessee is not the occupier, the lessee; and
  - (d) every other person with an interest in the monument or land which is, in the opinion of the Welsh Ministers, materially affected by the notice.
- (2) The Welsh Ministers may at any time withdraw a scheduled monument enforcement notice; but that does not affect the power to issue another notice under section 9ZC.
- (3) The Welsh Ministers may at any time waive or relax any requirement imposed by a scheduled monument enforcement notice (including the length of a period specified in the notice for the purposes of section 9ZC(3)(c) or (d)).
- (4) The Welsh Ministers must, immediately after exercising the power under subsection (2) or (3), give notice of the exercise of the power to every person who has been served with a copy of the notice under subsection (1) (or who would be if the notice were to be reissued).
- (5) The Welsh Ministers—
  - (a) must publish by electronic means a list containing particulars of each monument in respect of which a scheduled monument enforcement notice has effect; and
  - (b) must, on request, provide a copy of a scheduled monument enforcement notice the particulars of which are contained in the list.

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### **9ZE Scheduled monument enforcement notice: appeal**

- (1) A person on whom a scheduled monument enforcement notice is served, or any other person with an interest in the monument or land concerned, may appeal to a magistrates' court against the notice.
- (2) An appeal under this section must be brought before the date specified in the notice for the purposes of section 9ZC(3)(a).
- (3) An appeal under this section may be brought on any of the following grounds—
  - (a) that the matters alleged to constitute the contravention specified for the purposes of section 9ZC(3)(b) have not occurred;
  - (b) that those matters, in so far as they have occurred, do not constitute a contravention of section 2(1) or (6);
  - (c) that works to the monument or land were urgently necessary in the interests of safety or health and that—
    - (i) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter;
    - (ii) the works carried out were limited to the minimum measures immediately necessary; and
    - (iii) written notice justifying in detail the need for the works was given to the Welsh Ministers as soon as reasonably practicable;
  - (d) that a copy of the notice was not served as required by section 9ZD;
  - (e) that a period specified for the purposes of section 9ZC(3)(c) or (d) falls short of what should reasonably be allowed.
- (4) Where an appeal under this section is brought, the notice is of no effect until the appeal is finally determined or withdrawn.
- (5) On an appeal under this section, a magistrates' court may uphold the notice or quash it.
- (6) The court may uphold a notice even if copies of it have not been served in accordance with section 9ZD if the court is satisfied that no person on whom a copy should have been, but was not, served has been substantially prejudiced by the failure.

### **9ZF Scheduled monument enforcement notice: power of entry**

- (1) A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes?—
  - (a) ascertaining whether a scheduled monument enforcement notice should be served;
  - (b) securing that a scheduled monument enforcement notice is affixed for the purposes of service in accordance with section 56(2)(b);
  - (c) ascertaining whether a scheduled monument enforcement notice has been complied with.
- (2) If steps specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(d) have not been taken within the period so specified, a person duly authorised by the Welsh Ministers may—
  - (a) at any reasonable time enter the land in, on or under which the monument is situated and take the steps concerned; and
  - (b) recover from the person who is then the owner or lessee of the monument or land expenses incurred by them in doing so.



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- (3) The liability under subsection (2)(b) of a person who is the owner of a monument or land merely by virtue of being entitled to receive the rack rent as trustee for another person is limited to the total amount of money the person has or has had by virtue of that entitlement.
- (4) Where, on a claim by the owner of a scheduled monument or land, it appears to a magistrates' court that the occupier of the monument or land is preventing the owner from carrying out the work required by a scheduled monument enforcement notice, the court may by warrant authorise the owner to enter the land and carry out the work.

### **9ZG Failure to comply with scheduled monument enforcement notice**

- (1) This section applies where after the end of a period specified in a scheduled monument enforcement notice for the purposes of section 9ZC(3)(c) or (d)—
  - (a) the works specified as being required to cease have not ceased; or
  - (b) the steps specified as being required to be taken have not been taken.
- (2) The person who is for the time being owner of the scheduled monument or of the land in, on or under which it is situated is in breach of the notice.
- (3) If the owner of a monument or land is in breach of a scheduled monument enforcement notice, the owner is guilty of an offence.
- (4) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same scheduled monument enforcement notice, be convicted of more than one offence under this section by reference to different periods.
- (5) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did everything the person could be expected to do to secure that—
  - (a) in a case concerning works required to cease, the works did cease; or
  - (b) in a case concerning steps required to be taken, the steps were taken.
- (6) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the scheduled monument enforcement notice.
- (7) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (8) In determining the amount of a fine to be imposed on a person convicted under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the execution of the works to which the scheduled monument enforcement notice relates.

### **9ZH Effect of scheduled monument consent on notice**

- (1) This section applies if, after the issue of a scheduled monument enforcement notice, consent is granted under section 2(3A)—
  - (a) for the retention of any work to which the notice relates; or
  - (b) permitting the retention of works without complying with a condition subject to which a previous scheduled monument consent was granted.

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- (2) The notice ceases to have effect in so far as it—
- (a) requires the work or works to cease;
  - (b) requires steps to be taken involving the works not being retained; or
  - (c) requires steps to be taken for complying with that condition.]

*f<sup>F82</sup>Scheduled monuments: temporary stop notices*

#### Textual Amendments

**F82** Ss. 9ZI-9ZL and cross-heading inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 13(1), 41(2)**

### 9ZI Temporary stop notice

- (1) This section applies where it appears to the Welsh Ministers that works affecting a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument have been or are being carried out in contravention of section 2(1) or (6).
- (2) The Welsh Ministers may issue a notice under this section (referred to in this Part as a “temporary stop notice”) if, having regard to the effect of the works on the monument as one of national importance, they consider that it is expedient that the works are stopped immediately (or that part of them is).
- (3) A temporary stop notice must be in writing and must—
  - (a) specify the works in question;
  - (b) prohibit execution of the works (or so much of them as is specified in the notice);
  - (c) set out the Welsh Ministers' reasons for issuing the notice; and
  - (d) include a statement of the effect of section 9ZK.
- (4) A temporary stop notice may be served on a person who appears to the Welsh Ministers—
  - (a) to be carrying out the works or causing them to be carried out; or
  - (b) to have an interest in the monument or land.
- (5) The Welsh Ministers must display a copy of the notice on the monument or land (except where doing so might damage the monument, in which case it is sufficient to display the notice in a prominent position as close to the monument or land as is reasonably practicable); and the copy must specify the date on which it is first displayed.
- (6) A temporary stop notice takes effect when the copy of it is first displayed in accordance with subsection (5).
- (7) A temporary stop notice ceases to have effect—
  - (a) at the end of the period of 28 days beginning with the day on which the copy of it is first displayed in accordance with subsection (5); or
  - (b) if the notice specifies a shorter period beginning with that day, at the end of that period.

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- (8) But if the Welsh Ministers withdraw the notice before the time when it would otherwise cease to have effect under subsection (7), the notice ceases to have effect on its withdrawal.
- (9) The Welsh Ministers may not issue a subsequent temporary stop notice in relation to the same works unless they have, since issuing the previous notice, taken other enforcement action in relation to the contravention referred to in subsection (1).
- (10) The reference in subsection (9) to taking other enforcement action includes a reference to obtaining an injunction under section 9ZM.

#### **9ZJ Temporary stop notice: power of entry**

A person duly authorised in writing by the Welsh Ministers may at any reasonable time enter any land for any of the following purposes?—

- (a) ascertaining whether a temporary stop notice should be served;
- (b) securing the display of a temporary stop notice or securing that it is affixed for the purposes of service in accordance with section 56(2)(b);
- (c) ascertaining whether a temporary stop notice has been complied with;
- (d) considering a claim for compensation under section 9ZL.

#### **9ZK Temporary stop notice: offence**

- (1) A person is guilty of an offence if the person contravenes, or causes or permits a contravention of, a temporary stop notice—
  - (a) which has been served on the person; or
  - (b) a copy of which has been displayed in accordance with section 9ZI(5).
- (2) An offence under this section may be charged by reference to a day or to some longer period; accordingly, a person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different periods.
- (3) In proceedings against a person for an offence under this section, it is a defence for the person to prove that the person did not know, and could not reasonably have been expected to know, of the existence of the temporary stop notice.
- (4) In proceedings against a person for an offence under this section, it is a defence for the person to prove—
  - (a) that the works were urgently necessary in the interests of safety or health; and
  - (b) that notice in writing of the need for the works was given to the Welsh Ministers as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.
- (6) In determining the amount of a fine to be imposed on a person convicted under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

#### **9ZL Temporary stop notice: compensation**

- (1) A person who, on the day when a temporary stop notice is first displayed in accordance with section 9ZI(5), has an interest in the monument or land concerned is, on making

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a claim to the Welsh Ministers within the prescribed time and manner, entitled to be paid compensation by them in respect of any loss or damage directly attributable to the effect of the notice.

- (2) But subsection (1) applies only if—
- (a) the works specified in the notice do not contravene section 2(1) or (6); or
  - (b) the Welsh Ministers withdraw the notice other than following the grant of scheduled monument consent, after the day mentioned in subsection (1), which authorises the works.
- (3) The loss or damage in respect of which compensation is payable under this section includes a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the notice.
- (4) No compensation is payable under this section in the case of loss or damage suffered by a claimant if—
- (a) the claimant was required to provide information under section 57, and
  - (b) the loss or damage could have been avoided if the claimant had provided the information or otherwise co-operated with the Welsh Ministers when responding to the notice.]

*[<sup>F83</sup>Scheduled monuments: injunctions*

#### Textual Amendments

**F83** S. 9ZM and cross-heading inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 14, 41(2)**

### 9ZM Injunctions

- (1) This section applies where the Welsh Ministers consider it necessary or expedient for any actual or apprehended contravention of section 2(1) or (6) in respect of a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument to be restrained by injunction.
- (2) The Welsh Ministers may apply to the High Court or the county court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Act.
- (3) On an application under subsection (2), the court may grant such an injunction as it thinks appropriate for the purpose of restraining the contravention.]

*[<sup>F84</sup>Scheduled monument enforcement notices*

#### Textual Amendments

**F84** Ss. 9A-9O and cross-heading inserted (S.) (30.6.2011 for specified purposes, 1.12.2011 in so far as not already in force) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) (asp 3), **ss. 6(1), 33(2)**; [S.S.I. 2011/174](#), art. 2, Sch.; [S.S.I. 2011/372](#), art. 2, Sch.

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## 9A Power to issue scheduled monument enforcement notice

- (1) Where it appears to [<sup>F85</sup>Historic Environment Scotland] that—
  - (a) any works have been, or are being, executed to a scheduled monument or to land in, on or under which there is a scheduled monument, and
  - (b) the works are such as to involve a contravention of section 2(1) or (6), [<sup>F86</sup>it may, if it considers] it expedient having regard to the effect of the works on the character of the monument as one of national importance, serve a notice under this section (in this Act referred to as a “scheduled monument enforcement notice”).
- (2) A scheduled monument enforcement notice must specify the alleged contravention and must (either or both)—
  - (a) specify any works falling within subsection (1) which [<sup>F87</sup>Historic Environment Scotland requires] to cease,
  - (b) require steps falling within subsection (3) and specified in the notice to be taken.
- (3) Those steps are—
  - (a) for restoring the monument or land to its former state,
  - (b) if [<sup>F88</sup>Historic Environment Scotland considers] that restoration to its former state would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as [<sup>F89</sup>it considers] are required to alleviate in a manner acceptable to [<sup>F90</sup>it] the effect of the works which were carried out without scheduled monument consent, or
  - (c) for bringing the monument or land to the state it would have been in if the conditions of any scheduled monument consent for the works had been complied with.
- (4) In considering whether restoration is undesirable under subsection (3)(b), [<sup>F91</sup>Historic Environment Scotland is] to have regard to the desirability of preserving—
  - (a) the national importance of the monument,
  - (b) its features of historical, architectural, traditional, artistic or archaeological interest.
- (5) Where further works of a kind mentioned in subsection (3)(b) have been carried out on a monument or land, scheduled monument consent is treated as having been granted in respect of the works carried out on that monument or land.

### Textual Amendments

- F85** Words in s. 9A(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 17\(a\)\(i\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F86** Words in s. 9A(1)(b) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 17\(a\)\(ii\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F87** Words in s. 9A(2)(a) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 17\(b\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F88** Words in s. 9A(3)(b) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 17\(c\)\(i\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

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**Changes to legislation:** Ancient Monuments and Archaeological Areas Act 1979, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F89** Words in s. 9A(3)(b) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 17\(c\)\(ii\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F90** Word in s. 9A(3)(b) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 17\(c\)\(iii\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F91** Words in s. 9A(4) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 17\(d\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### Modifications etc. (not altering text)

- C17** S. 9A savings for effects of 2014 asp 19, Sch. 2 para. 17 (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), [8](#)

## 9B Scheduled monument enforcement notices: further provisions

- (1) A scheduled monument enforcement notice—
  - (a) must specify the date on which it is to take effect and, subject to section 9C(3), takes effect on that date, and
  - (b) must specify the period (the “period for compliance”) within which—
    - (i) any works required to cease must cease,
    - (ii) any steps required to be taken must be taken,
 and may specify different periods for different works or steps.
- (2) Where different periods apply to different works or steps, references in this Act to the period for compliance with a scheduled monument enforcement notice, in relation to any works or step, are to the period within which the works are required to cease or the step is required to be taken.
- (3) The date specified in the notice under subsection (1)(a) must be at least 28 days after the date on which the notice is served.
- (4) A copy of a scheduled monument enforcement notice must be served—
  - (a) on the owner, the lessee and the occupier of the monument to which it relates and of the land in, on or under which the monument is situated,
  - (b) on any other person having an interest in the monument or land, being an interest which in the opinion of <sup>[F92]</sup>Historic Environment Scotland] is materially affected by the notice.
- (5) <sup>[F93]</sup>Historic Environment Scotland] may, at any time—
  - (a) withdraw a scheduled monument enforcement notice (without prejudice to <sup>[F94]</sup>its] power to issue another), or
  - (b) waive or relax any requirement of such a notice and, in particular, extend the period for compliance.
- (6) <sup>[F95]</sup>Historic Environment Scotland] must, immediately after exercising the powers conferred by subsection (5), give notice of the exercise to every person who has been served with a copy of the scheduled monument enforcement notice or would, if the notice were reissued, be served with a copy of it.
- (7) <sup>[F96]</sup>Historic Environment Scotland] must—

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- (a) publish by electronic means (as for example by means of the internet) a list containing particulars of any monument in respect of which a scheduled monument enforcement notice has been served, and
- (b) on request, provide a copy of a scheduled monument enforcement notice.

#### Textual Amendments

- F92** Words in s. 9B(4)(b) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\), s. 31\(2\), sch. 2 para. 18\(a\)](#) (with ss. 29, 30); [S.S.I. 2015/31, art. 2, sch.](#); [S.S.I. 2015/196, art. 2, sch.](#)
- F93** Words in s. 9B(5) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\), s. 31\(2\), sch. 2 para. 18\(b\)\(i\)](#) (with ss. 29, 30); [S.S.I. 2015/31, art. 2, sch.](#); [S.S.I. 2015/196, art. 2, sch.](#)
- F94** Word in s. 9B(5)(a) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\), s. 31\(2\), sch. 2 para. 18\(b\)\(ii\)](#) (with ss. 29, 30); [S.S.I. 2015/31, art. 2, sch.](#); [S.S.I. 2015/196, art. 2, sch.](#)
- F95** Words in s. 9B(6) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\), s. 31\(2\), sch. 2 para. 18\(c\)](#) (with ss. 29, 30); [S.S.I. 2015/31, art. 2, sch.](#); [S.S.I. 2015/196, art. 2, sch.](#)
- F96** Words in s. 9B(7) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\), s. 31\(2\), sch. 2 para. 18\(d\)](#) (with ss. 29, 30); [S.S.I. 2015/31, art. 2, sch.](#); [S.S.I. 2015/196, art. 2, sch.](#)

#### Modifications etc. (not altering text)

- C18** S. 9B savings for effects of 2014 asp 19, Sch. 2 para. 18 (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), 8

### 9C Appeal against scheduled monument enforcement notice

- (1) A person on whom a scheduled monument enforcement notice is served or any other person having an interest in the monument to which it relates or the land in, on or under which it is situated may, at any time before the date specified in the notice as the date on which it is to take effect, [<sup>F97</sup>appeal to the Scottish Ministers] on any of the grounds in subsection (2).
- (2) Those grounds are—
  - [<sup>F98</sup>(za) that the monument is not of national importance,]
  - (a) that the matters alleged to constitute a contravention of section 2(1) or (6) have not occurred,
  - (b) that those matters (if they occurred) do not constitute such a contravention,
  - (c) that—
    - (i) works to the monument or land were urgently necessary in the interests of safety or health,
    - (ii) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter, and
    - (iii) the works carried out were limited to the minimum measures immediately necessary,

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- [ that scheduled monument consent ought to be granted for the works, or that  
<sup>F99</sup>(ca) any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted,]
- (d) that copies of the notice were not served as required by section 9B(4),
- [ except in relation to such a requirement as is mentioned in section 9A(3)(b) or  
<sup>F100</sup>(da) (c), that the requirements of the notice exceed what is necessary for restoring the monument or land to its condition before the works were carried out,]
- (e) that the period for compliance for any works or step falls short of what should reasonably be allowed.
- [ that the steps required by the notice for the purpose of restoring the character  
<sup>F101</sup>(f) of the monument or land to its former state would not serve that purpose,
- (g) that the cessation of any works required by the notice exceeds what is necessary to remedy the contravention of section 2(1) or (6),
- (h) that steps required to be taken by virtue of section 9A(3)(b) exceed what is necessary to alleviate the effect of the works executed to the monument or land,
- (i) that steps required to be taken by virtue of section 9A(3)(c) exceed what may reasonably be required to bring the monument or land to the state in which it would have been if the scheduled monument consent had been complied with.]
- [ An appeal under this section is to be made by giving written notice of the appeal to the  
<sup>F102</sup>(2A) Scottish Ministers before the date specified in the scheduled monument enforcement notice as the date on which it is to take effect.]
- (3) Where an appeal is brought under this section the notice is of no effect until the appeal is withdrawn or finally determined.
- [ A person who gives notice of appeal under this section must submit to the Scottish  
<sup>F103</sup>(3A) Ministers, either when giving the notice or within such time as may be prescribed, a statement in writing—
- (a) specifying the grounds on which the appeal is made,
- (b) giving such further information as may be prescribed.]
- <sup>F104</sup>(4) .....
- <sup>F105</sup>(5) .....

### Textual Amendments

- F97** Words in s. 9C(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 19\(a\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F98** S. 9C(2)(za) inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 19\(b\)\(i\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F99** S. 9C(2)(ca) inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 19\(b\)\(ii\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F100** S. 9C(2)(da) inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 19\(b\)\(iii\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.



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- F101** Ss. 9C(2)(f)-(i) inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **sch. 2 para. 19(b)(iv)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F102** S. 9C(2A) inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **sch. 2 para. 19(c)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F103** S. 9C(3A) inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **sch. 2 para. 19(d)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F104** S. 9C(4) repealed (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **sch. 2 para. 19(e)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F105** S. 9C(5) repealed (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **sch. 2 para. 19(e)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### **Modifications etc. (not altering text)**

- C19** S. 9C savings for effects of 2014 asp 19, Sch. 2 para. 19 (1.10.2015) by The Historic Environment Scotland Act 2014 (Saving, Transitional and Consequential Provisions) Order 2015 (S.S.I. 2015/239), arts. 1(1), **8**

### **Determination of appeals under section 9C**

**F106**  
**9CA**

- (1) On determining an appeal under section 9C, the Scottish Ministers may give directions for giving effect to the determination, including where appropriate directions for quashing the scheduled monument enforcement notice.
- (2) On such an appeal the Scottish Ministers may if they are satisfied that the correction or variation will not cause injustice to the appellant or to Historic Environment Scotland—
  - (a) correct any defect, error or misdescription in the scheduled monument enforcement notice, or
  - (b) vary the terms of the notice.
- (3) In a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 9B(4) to be served with a copy of the notice was not served, the Scottish Ministers may disregard that fact if they are satisfied that the person has not been substantially prejudiced by the failure.
- (4) The Scottish Ministers may—
  - (a) dismiss such an appeal if the appellant fails to comply with section 9C(3A) within the prescribed time,
  - (b) allow such an appeal or quash the scheduled monument enforcement notice if Historic Environment Scotland fails to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 9CB(1).
- (5) On the determination of an appeal under section 9C the Scottish Ministers may—
  - (a) grant scheduled monument consent for the works to which the scheduled monument enforcement notice relates,
  - (b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or

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- (c) direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that determination.
- (6) Any scheduled monument consent granted by the Scottish Ministers under subsection (5)(a) is to be treated as granted under section 2(3).
- (7) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 9C is final.

#### Textual Amendments

**F106** Ss. 9CA, 9CB inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 20** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### Modifications etc. (not altering text)

**C20** S. 9CA savings for effects of 2014 asp 19, Sch. 2 para. 20 (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), **8**

### 9CB Procedure for appeals under section 9C

- (1) The Scottish Ministers may by regulations make provision in connection with appeals under section 9C, including provision about 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 9C.]

#### Textual Amendments

**F106** Ss. 9CA, 9CB inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 20** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### Modifications etc. (not altering text)

**C21** S. 9CB savings for effects of 2014 asp 19, Sch. 2 para. 20 (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), **8**

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## **9D Execution of works required by scheduled monument enforcement notice**

- (1) If any steps specified in the scheduled monument enforcement notice have not been taken within the period for compliance with the notice, [<sup>F107</sup>Historic Environment Scotland] may—
  - (a) enter on the land in, on or under which the scheduled monument is situated and take those steps, and
  - (b) recover from the person who is then the owner or lessee of the monument or land any expenses reasonably incurred by [<sup>F108</sup>it] in doing so.
- (2) Where a scheduled monument enforcement notice has been served in respect of a monument—
  - (a) any expenses incurred by the owner, lessee or occupier of a monument or the land in, on or under which it is situated for the purpose of complying with it, and
  - (b) any sums paid by the owner or lessee of a monument or land under subsection (1) in respect of expenses incurred by [<sup>F109</sup>Historic Environment Scotland in taking steps required by the notice] ,are to be treated as incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.
- (3) If on a complaint by the owner of any scheduled monument or land it appears to the sheriff that the occupier of the monument or land is preventing the owner from carrying out work required to be carried out by a scheduled monument enforcement notice, the sheriff may by warrant authorise the owner to enter the land and carry out the work.
- (4) If [<sup>F110</sup>Historic Environment Scotland takes] steps under subsection (1) [<sup>F111</sup>it] may sell any materials removed by [<sup>F112</sup>it] from the monument or land unless those materials are claimed by the owner within 3 days of their removal.
- (5) After selling the materials [<sup>F113</sup>Historic Environment Scotland] must pay the proceeds to the owner less the expenses recoverable by [<sup>F114</sup>it] from the owner.
- (6) Where [<sup>F115</sup>Historic Environment Scotland seeks] , under subsection (1), to recover any expenses from a person on the basis that the person is the owner of the scheduled monument or land, and the person proves that—
  - (a) the person is receiving the rent in respect of the monument or land merely as trustee, tutor, curator, factor or agent of some other person, and
  - (b) the person has not, and since the date of the service of the demand for payment has not had, in the person's hands on behalf of that other person sufficient money to discharge the whole demand of [<sup>F116</sup>Historic Environment Scotland],  
the person's liability is limited to the total amount of the money which the person has or has had in the person's hands on behalf of that other person.
- (7) If by reason of subsection (6) [<sup>F117</sup>Historic Environment Scotland has] not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent [<sup>F118</sup>it] may recover any unpaid balance from the person on whose behalf the rent is received.
- (8) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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### Textual Amendments

- F107** Words in s. 9D(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(a)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F108** Word in s. 9D(1)(b) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(a)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F109** Words in s. 9D(2)(b) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(b)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F110** Words in s. 9D(4) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(c)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F111** Word in s. 9D(4) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(c)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F112** Word in s. 9D(4) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(c)(iii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F113** Words in s. 9D(5) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(d)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F114** Word in s. 9D(5) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(d)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F115** Words in s. 9D(6) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(e)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F116** Words in s. 9D(6)(b) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(e)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F117** Words in s. 9D(7) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(f)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F118** Word in s. 9D(7) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 21(f)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### Modifications etc. (not altering text)

- C22** S. 9D savings for effects of 2014 asp 19, Sch. 2 para. 21 (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), 8

## 9E Offence where scheduled monument enforcement notice not complied with

- (1) Where, after the end of the period for compliance with a scheduled monument enforcement notice, any works required by the notice to cease have not ceased or any step required by the notice has not been taken, the person who is for the time being owner of the scheduled monument or of the land in, on or under which it is situated is in breach of the notice.

*Status: Point in time view as at 23/02/2017.*

*Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) If at any time the owner of the monument or land is in breach of a scheduled monument enforcement notice the owner is guilty of an offence.
- (3) An offence under this section may be charged by reference to any day or longer period of time.
- (4) A person may, in relation to the same scheduled monument enforcement notice, be convicted of more than one offence under this section by reference to different days or different periods.
- (5) In proceedings against any person for an offence under this section, it is a defence for the person to show that—
  - (a) the person did everything the person could be expected to do to secure that all works required by the notice to cease were ceased or that all the steps required by the notice were taken, or
  - (b) the person was not served with a copy of the notice and was not aware of its existence.
- (6) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding £20,000, and
  - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of any fine to be imposed, the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

## **9F Effect of scheduled monument consent on scheduled monument enforcement notice**

- (1) If, after the issue of a scheduled monument enforcement notice, consent is granted under section 2(3A)—
  - (a) for the retention of any work to which the notice relates, or
  - (b) permitting the retention of works without complying with some condition subject to which a previous scheduled monument consent was granted,the notice ceases to have effect in so far as such work is or such works are required by the notice to cease, or in so far as it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition.
- (2) The fact that a scheduled monument enforcement notice has wholly or partly ceased to have effect under subsection (1) does not affect the liability of any person for an offence in respect of a previous failure to comply with it. Stop notices

## **Enforcement by the Scottish Ministers**

**F1199FA**

- (1) If it appears to the Scottish Ministers that it is expedient that a scheduled monument enforcement notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9A.
- (2) A scheduled monument enforcement notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.

*Status: Point in time view as at 23/02/2017.*

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- (3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.
- (4) The provisions of this Act relating to scheduled monument enforcement notices apply, so far as relevant, to a scheduled monument enforcement notice served by the Scottish Ministers as they apply to a scheduled monument enforcement notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.]

#### Textual Amendments

**F119** S. 9FA inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 22](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.

#### 9G Stop notices

- (1) Subsection (2) applies where [<sup>F120</sup>Historic Environment Scotland considers] it expedient that any relevant works should cease before the expiry of the period for compliance with a scheduled monument enforcement notice.
- (2) [<sup>F121</sup>Historic Environment Scotland] may, when [<sup>F122</sup>it serves] the copy of the scheduled monument enforcement notice or afterwards, serve a notice (in this Act referred to as a “stop notice”) prohibiting the execution of the relevant works to the scheduled monument to which the enforcement notice relates, or to land in, on or under which the monument is situated, or to any part of the monument or land specified in the stop notice.
- (3) In this section and sections 9H and 9I, “relevant works” means any works specified in the scheduled monument enforcement notice as works which [<sup>F123</sup>Historic Environment Scotland requires] to cease and any works carried out as part of, or associated with, such works.
- (4) A stop notice may not be served if the scheduled monument enforcement notice has taken effect.
- (5) A stop notice must specify the date when it is to come into effect, and that date—
  - (a) must not be earlier than 3 days after the date when the notice is served, unless [<sup>F124</sup>Historic Environment Scotland considers] that there are special reasons for specifying an earlier date and a statement of those reasons is served with the stop notice, and
  - (b) must not be later than 28 days from the date when the notice is first served on any person.
- (6) A stop notice may be served by [<sup>F125</sup>Historic Environment Scotland] on any person who appears to [<sup>F126</sup>it] to have an interest in the monument or the land in, on or under which it is situated or who is executing, or causing to be executed, the relevant works specified in the scheduled monument enforcement notice.
- (7) [<sup>F127</sup>Historic Environment Scotland] may at any time withdraw a stop notice (without prejudice to [<sup>F128</sup>its] power to serve another) by notice which must be—
  - (a) served on all persons who were served with the stop notice, and

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- (b) publicised by displaying it for 7 days in place of all or any site notices (within the meaning of section 9H(3)).

#### Textual Amendments

- F120** Words in s. 9G(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 24(a)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F121** Words in s. 9G(2) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 24(b)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F122** Words in s. 9G(2) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 24(b)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F123** Words in s. 9G(3) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 24(c)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F124** Words in s. 9G(5)(a) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 24(d)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F125** Words in s. 9G(6) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 24(e)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F126** Word in s. 9G(6) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 24(e)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F127** Words in s. 9G(7) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 24(f)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F128** Word in s. 9G(7) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 24(f)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### Modifications etc. (not altering text)

- C23** S. 9G savings for effects of 2014 asp 19, Sch. 2 para. 24 (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), **8**

## 9H Stop notices: supplementary provisions

- (1) A stop notice ceases to have effect when—
- the scheduled monument enforcement notice to which it relates is withdrawn or quashed,
  - the period for compliance expires, or
  - notice of the withdrawal of the stop notice is served under section 9G(7),
- whichever occurs first.
- (2) Where a requirement of the scheduled monument enforcement notice to which a stop notice relates is waived or relaxed by virtue of section 9B(5) so that the scheduled monument enforcement notice no longer relates to any relevant works, the stop notice ceases to have effect in relation to those works.

*Status: Point in time view as at 23/02/2017.*

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- (3) Where a stop notice has been served in respect of a scheduled monument [<sup>F129</sup>Historic Environment Scotland] may publicise it by displaying on the land in, on or under which the monument is situated or on the monument (except where doing so might damage it) a notice (in this section and in sections 6 and 9J referred to as a “site notice”)
- (a) stating that a stop notice has been served on a particular person or persons,
  - (b) indicating its requirements, and
  - (c) stating that any person contravening it may be prosecuted for an offence under section 9J.
- (4) A stop notice is not invalid by reason that a copy of the scheduled monument enforcement notice to which it relates was not served as required by section 9B if it is shown that [<sup>F130</sup>Historic Environment Scotland] took all such steps as were reasonably practicable to effect proper service.

#### Textual Amendments

**F129** Words in s. 9H(3) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 25(a)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

**F130** Words in s. 9H(4) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 25(b)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### Modifications etc. (not altering text)

**C24** S. 9H savings for effects of 2014 asp 19, Sch. 2 para. 25 (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), **8**

#### <sup>F131</sup>9HA **Power of the Scottish Ministers to serve stop notice**

- (1) If it appears to the Scottish Ministers that it is expedient that a stop notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9G.
- (2) A stop notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.
- (3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.
- (4) The provisions of this Act relating to stop notices apply, so far as relevant, to a stop notice served by the Scottish Ministers as they apply to a stop notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.]



*Status: Point in time view as at 23/02/2017.*

*Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F131** S. 9HA inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 26](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

## 9I Compensation for loss due to stop notice

- (1) Where a stop notice ceases to have effect a person who, when the notice is first served, has an interest (whether as owner or occupier or otherwise) in the scheduled monument to which the notice relates or the land in, on or under which the monument is situated is entitled to be compensated by <sup>F132</sup>[Historic Environment Scotland] in respect of any loss or damage falling within subsection (2).
- (2) That is loss or damage directly attributable to—
  - (a) the prohibition contained in the stop notice, or
  - (b) in a case within subsection (3)(b), the prohibition of such of the works prohibited by the stop notice as cease to be relevant works.
- (3) For the purposes of this section, a stop notice ceases to have effect when—
  - (a) the scheduled monument enforcement notice is quashed,
  - (b) a requirement of the scheduled monument enforcement notice is waived or relaxed by virtue of section 9B(5) so that any works the execution of which are prohibited by the stop notice cease to be relevant works,
  - (c) the scheduled monument enforcement notice is withdrawn by <sup>F133</sup>[Historic Environment Scotland] otherwise than in consequence of the grant by <sup>F134</sup>[it] of scheduled monument consent for the works to which the notice relates, or
  - (d) the stop notice is withdrawn.
- (4) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition includes any sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.
- (5) No compensation is payable under this section—
  - (a) in respect of the prohibition in a stop notice of any works which, at any time when the notice is in force, are such as to involve a contravention of section 2(1) or (6), or
  - (b) in the case of a claimant who was required to provide information under section 57 (power to require information as to interests in land) in respect of any loss or damage suffered by the claimant which could have been avoided if the claimant had provided the information or had otherwise co-operated with <sup>F135</sup>[Historic Environment Scotland] when responding to the notice.

### Textual Amendments

**F132** Words in s. 9I(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 27\(a\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

**F133** Words in s. 9I(3)(c) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 27\(b\)\(i\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

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**F134** Word in s. 9I(3)(c) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 27\(b\)\(ii\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

**F135** Words in s. 9I(5)(b) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 27\(c\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### **Modifications etc. (not altering text)**

**C25** S. 9I savings for effects of 2014 asp 19, Sch. 2 para. 27 (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), 8

### **9J Penalties for contravention of stop notice**

- (1) A person who contravenes a stop notice after a site notice has been displayed, or after the stop notice has been served on the person, is guilty of an offence.
- (2) Contravention of a stop notice includes causing or permitting its contravention.
- (3) An offence under this section may be charged by reference to any day or longer period of time.
- (4) A person may, in relation to the same stop notice, be convicted of more than one offence under this section by reference to different days or different periods.
- (5) It is a defence in any proceedings under this section that—
  - (a) the stop notice was not served on the accused, and
  - (b) the accused had no reasonable cause to believe that the works were prohibited by the stop notice.
- (6) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding £20,000, and
  - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of the fine, the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.]

*[<sup>F84</sup>Temporary stop notices*

### **9K Temporary stop notices**

- (1) Where it appears to [<sup>F136</sup>Historic Environment Scotland] that—
  - (a) any works have been, or are being, executed to a scheduled monument or to land in, on or under which there is a scheduled monument,
  - (b) the works are such as to involve a contravention of section 2(1) or (6), and
  - (c) it is expedient that the works are (or any part of the works is) stopped immediately,

[<sup>F137</sup>it may, if it considers] it expedient to do so having regard to the effect of the works on the character of the monument as one of national importance, issue a temporary stop notice.

*Status: Point in time view as at 23/02/2017.*

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- (2) The notice must be given in writing and must—
  - (a) specify the works in question,
  - (b) prohibit execution of the works (or so much of the works as is specified in the notice), and
  - (c) set out [<sup>F138</sup>Historic Environment Scotland's] reasons for issuing the notice.
- (3) A temporary stop notice may be served on any of the following—
  - (a) a person who appears to [<sup>F139</sup>Historic Environment Scotland] to be executing, or causing to be executed, the works,
  - (b) a person who appears to [<sup>F139</sup>Historic Environment Scotland] to have an interest in the scheduled monument or the land in, on or under which the monument is situated (whether as owner or occupier or otherwise).
- (4) [<sup>F140</sup>Historic Environment Scotland] must display on the land in, on or under which the monument is situated or on the monument (except where doing so might damage it)—
  - (a) a copy of the notice, and
  - (b) a statement as to the effect of section 9M.
- (5) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of subsection (4).
- (6) A temporary stop notice ceases to have effect at the end of the period of 28 days starting on the day the copy notice is so displayed.
- (7) But if a shorter period starting on that day is specified in the notice, the notice instead ceases to have effect at the end of that shorter period.
- (8) And if the notice is withdrawn by [<sup>F141</sup>Historic Environment Scotland] before that period of 28 days (or, as the case may be, that shorter period) expires, the notice ceases to have effect on being so withdrawn.

#### Textual Amendments

- F136** Words in s. 9K(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 28\(a\)\(i\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F137** Words in s. 9K(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 28\(a\)\(ii\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F138** Words in s. 9K(2)(c) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 28\(b\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F139** Words in s. 9K(3) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 28\(c\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F140** Words in s. 9K(4) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 28\(d\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F141** Words in s. 9K(8) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 28\(e\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

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**Changes to legislation:** Ancient Monuments and Archaeological Areas Act 1979, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Modifications etc. (not altering text)

**C26** S. 9K savings for effects of 2014 asp 19, Sch. 2 para. 28 (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), 9

### 9L Temporary stop notices: restrictions

- (1) A second or subsequent temporary stop notice must not be issued in respect of the same works unless [<sup>F142</sup>Historic Environment Scotland has] in the meantime taken some other enforcement action in relation to the contravention of section 2(1) or (6) which is constituted by the works.
- (2) In subsection (1), “enforcement action” includes obtaining the grant of an interdict under section 9O.

#### Textual Amendments

**F142** Words in s. 9L(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 29](#) (with [ss. 29, 30](#)); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.

### 9M Temporary stop notices: offences

- (1) A person who contravenes a temporary stop notice—
  - (a) which has been served on the person, or
  - (b) a copy of which has been displayed in pursuance of section 9K(4),
 is guilty of an offence.
- (2) Contravention of a temporary stop notice includes causing or permitting its contravention.
- (3) An offence under this section may be charged by reference to a day or to a longer period of time.
- (4) A person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different days or different periods.
- (5) It is a defence in any proceedings under this section that—
  - (a) the temporary stop notice was not served on the accused, and
  - (b) the accused did not know, and could not reasonably have been expected to know, of its existence.
- (6) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding £20,000,
  - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of the fine, the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the execution of the works which constituted the offence.

*Status: Point in time view as at 23/02/2017.*

*Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 9N Temporary stop notices: compensation

- (1) A person who, at the date on which a temporary stop notice is first displayed in pursuance of section 9K(4), has an interest (whether as owner or occupier or otherwise) in the scheduled monument to which the notice relates or the land in, on or under which the monument is situated is entitled to be compensated by [<sup>F143</sup>Historic Environment Scotland] in respect of any loss or damage directly attributable to the prohibition effected by that notice.
- (2) But subsection (1) applies only if the circumstances are as set out in one or both of the following paragraphs—
  - (a) the works specified in the notice are authorised by scheduled monument consent granted on or before the date mentioned in that subsection,
  - (b) [<sup>F144</sup>Historic Environment Scotland withdraws] the notice other than following such grant of scheduled monument consent as is mentioned in paragraph (a).
- (3) Subsections (4) and (5) of section 9I apply to compensation payable under this section as they apply to compensation payable under that section; and for the purpose of that application references in subsection (5) of that section to a stop notice are to be taken to be references to a temporary stop notice.]

### Textual Amendments

**F143** Words in s. 9N(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 30(a)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

**F144** Words in s. 9N(2)(b) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 30(b)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### Modifications etc. (not altering text)

**C27** S. 9N savings for effects of 2014 asp 19, Sch. 2 para. 30 (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), 9

*[<sup>F84</sup>Interdicts*

## 9O Interdicts restraining unauthorised works on scheduled monuments

- (1) Whether or not [<sup>F145</sup>Historic Environment Scotland has exercised or proposes to exercise any of its] other powers under this Act, [<sup>F146</sup>it] may seek to restrain or prevent any actual or apprehended breach of any of the controls provided by or under this Act on the execution of works affecting scheduled monuments by means of an application for interdict.  
  
[ Whether or not the Scottish Ministers have exercised or propose to exercise any of their  
<sup>F147</sup>(1A) powers under this Act, they may seek to restrain or prevent any actual or apprehended breach of any of the controls provided by or under this Act on the execution of works affecting scheduled monuments by means of an application for interdict.]
- (2) On an application under [<sup>F148</sup>subsection (1) or (1A)] the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the breach.

*Status: Point in time view as at 23/02/2017.*

*Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) In this section “the court” means the Court of Session or the sheriff.]

#### Textual Amendments

- F145** Words in s. 90(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 40(a)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F146** Word in s. 90(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 40(a)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F147** S. 90(1A) inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 40(b)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F148** Words in s. 90(2) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 40(c)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### *Acquisition of ancient monuments*

## 10 Compulsory acquisition of ancient monuments.

- (1) The Secretary of State may acquire compulsorily any ancient monument for the purpose of securing its preservation [<sup>F149</sup>; but, where the monument in question is situated in England, he shall consult with the Commission before making a compulsory purchase order.]
- (2) The <sup>M4</sup>[<sup>F150</sup>Acquisition of Land Act 1981] shall apply to any compulsory acquisition by the Secretary of State under this section of an ancient monument situated in England and Wales . . . <sup>F151</sup>
- (3) The <sup>M5</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to any compulsory acquisition by the Secretary of State under this section of an ancient monument situated in Scotland as it applies to a compulsory acquisition by another Minister or by the Secretary of State under section 58 of the <sup>M6</sup>National Health Service (Scotland) Act 1972 in a case falling within section 1(1) of the said Act of 1947.
- (4) For the purpose of assessing compensation in respect of any compulsory acquisition under this section of a monument which, immediately before the date of the compulsory purchase order, was scheduled, it shall be assumed that scheduled monument consent would not be granted for any works which would or might result in the demolition, destruction or removal of the monument or any part of it.

#### Textual Amendments

- F149** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 36**
- F150** Words substituted by [Acquisition of Land Act 1981 \(c. 67\)](#), **Sch. 4 para. 1 Table**
- F151** Words repealed by [Acquisition of Land Act 1981 \(c. 67\)](#), **Sch. 6 Pt. I**

#### Marginal Citations

- M4** 1981 c. 67.
- M5** 1947 c. 42.

*Status: Point in time view as at 23/02/2017.*

*Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

M6 1972 c. 58.

## 11 Acquisition by agreement or gift of ancient monuments.

- (1) The Secretary of State may acquire by agreement any ancient monument [<sup>F152</sup>but, where the monument in question is situated in England, he shall consult with the Commission before doing so.]
- [<sup>F153</sup>(1A) With the consent of the Secretary of State, the Commission may acquire by agreement any ancient monument situated in England.]
  - (2) Any local authority may acquire by agreement any ancient monument situated in or in the vicinity of their area.
  - (3) The Secretary of State or any local authority may accept a gift (whether by deed or will) of any ancient monument [<sup>F154</sup>; but, where the monument in question is situated in England, the Secretary of State shall consult with the Commission before accepting]
- [<sup>F155</sup>(3A) With the consent of the Secretary of State, the Commission may accept a gift (whether by deed or will) of any ancient monument situated in England.]
  - (4) The provisions of Part I of the <sup>M7</sup>Compulsory Purchase Act 1965 (so far as applicable) other than sections 4 to 8, section 10 and section 31, shall apply in relation to any acquisition under subsection (1) or (2) above of an ancient monument situated in England and Wales.
  - (5) For the purpose of any acquisition under subsection (1) or (2) above of any ancient monument situated in Scotland which is heritable—
    - (a) the Lands Clauses Acts (with the exception of the provisions excluded by subsection (6) below) and sections 6 and 70 to 78 of the <sup>M8</sup>Railways Clauses Consolidation (Scotland) Act 1845 (as originally enacted and not as amended by section 15 of the <sup>M9</sup>Mines (Working Facilities and Support) Act 1923) shall be incorporated with this section; and
    - (b) in construing those Acts for the purposes of this section, this section shall be deemed to be the special Act and the Secretary of State or the local authority acquiring the monument shall be deemed to be the promoter of the undertaking or company (as the case may require).
  - (6) The provisions of the Lands Clauses Acts excluded from being incorporated with this section are—
    - (a) those which relate to the acquisition of land otherwise than by agreement;
    - (b) those which relate to access to the special Act; and
    - (c) sections 120 to 125 of the <sup>M10</sup>Lands Clauses Consolidation (Scotland) Act 1845.

### Textual Amendments

**F152** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 37\(2\)](#)

**F153** S. 11(1A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 37\(3\)](#)

**F154** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 37\(4\)](#)

**F155** S. 11(3A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 37\(5\)](#)

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#### Modifications etc. (not altering text)

- C28** S. 11 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Cotswolds Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1777\)](#), arts. 1, **25(2)(xxv)** (with art. 35)
- C29** S. 11 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Chilterns Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1778\)](#), arts. 2, **25(1), 25(1), 25(2)(xxv)** (with art. 35)

#### Marginal Citations

- M7** 1965 c. 56.  
**M8** 1845 c. 33.  
**M9** 1923 c. 20.  
**M10** 1845 c. 19.

### *Guardianship of ancient monuments*

## 12 Power to place ancient monument under guardianship. **E+W**

- (1) Subject to subsection (4) below, a person who has—
- an interest of any description mentioned in subsection (3) below in an ancient monument situated in England and Wales; or
  - any heritable interest in an ancient monument situated in Scotland;
- may, with the consent of the Secretary of State, constitute him by deed guardian of the monument.

[<sup>F156</sup>Where the monument in question is situated in England, the Secretary of State shall consult with the Commission before he so consents.]

- [<sup>F157</sup>(1A) Subject to subsection (4) below, a person who has an interest of any description mentioned in subsection (3) below in an ancient monument situated in England may, with the consent of the Commission, given after obtaining the consent of the Secretary of State, constitute the Commission by deed guardian of the Monument.]

- (2) Subject to subsection (4) below, a person who has any such interest in an ancient monument may with the consent of any local authority in or in the vicinity of whose area the monument is situated constitute that authority by deed guardians of the monument.
- (3) The interests in an ancient monument situated in England and Wales which qualify a person to establish guardianship of the monument under subsection (1) [<sup>F158</sup>or (1A)] or (2) above are the following—
- an estate in fee simple absolute in possession;
  - a leasehold estate or interest in possession, being an estate or interest for a term of years of which not less than forty-five are unexpired or (as the case may be) renewable for a term of not less than forty-five years; and
  - an interest in possession for his own life or the life of another, or for lives (whether or not including his own), under any existing or future [<sup>F159</sup>trust of land] under which the estate or interest for the time being subject to the trust falls within paragraph (a) or (b) above.



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*Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) A person who is not the occupier of an ancient monument may not establish guardianship of the monument under this section unless the occupier is also a party to the deed executed for the purposes of subsection (1) [<sup>F158</sup>(1A)] or (2) above.
- (5) Any person who has an interest in an ancient monument may be a party to any such deed in addition to the person establishing the guardianship of the monument and (where the latter is not the occupier) the occupier.
- (6) In relation to any monument of which the Secretary of State [<sup>F160</sup>or the Commission] or any local authority have been constituted the guardians under this Act, references below in this Act to the guardianship deed are references to the deed executed for the purposes of subsection (1) or [<sup>F161</sup>(1A) or (2) above (as the case may be)]
- (7) A guardianship deed relating to any ancient monument situated in England and Wales shall be a local land charge.
- (8) A guardianship deed relating to any ancient monument situated in Scotland may be recorded in the Register of Sasines.
- (9) Every person deriving title to any ancient monument from, through or under any person who has executed a guardianship deed shall be bound by the guardianship deed unless—
  - (a) in the case of a monument in England and Wales, he derives title by virtue of any disposition made by the person who executed the deed before the date of the deed; or
  - (b) in the case of a monument in Scotland, he is a person who in good faith and for value acquired right (whether completed by infektment or not) to his interest in the monument before the date of the deed.
- (10) The Secretary of State [<sup>F162</sup>or the Commission] or a local authority shall not consent to become guardians of any structure which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family.
- (11) Except as provided by this Act, any person who has any estate or interest in a monument under guardianship shall have the same right and title to, and estate or interest in, the monument in all respects as if the Secretary of State or [<sup>F163</sup>the Commission or the local authority in question (as the case may be)] had not become guardians of the monument.

#### Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F156** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(2\)](#)
- F157** S. 12(1A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(3\)](#)
- F158** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(4\)](#)
- F159** Words in s. 12(3) substituted (E.W.) (1.1.1997) by [1996 c. 47, s. 25\(1\)](#), [Sch. 3 para. 17\(a\)](#) (with s. [24\(2\)](#), [25\(4\)](#)); [S.I. 1996/2974, art.2](#)
- F160** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(5\)](#)
- F161** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(5\)](#)
- F162** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(6\)](#)
- F163** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(7\)](#)

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*Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### **Modifications etc. (not altering text)**

- C30** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Cotswolds Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1777\)](#), arts. 1, **25(2)(xxvi)** (with art. 35)
- C31** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Chilterns Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1778\)](#), arts. 2, **25(1), 25(1), 25(2)(xxvi)** (with art. 35)

## **12 Power to place ancient monument under guardianship. S**

- (1) Subject to subsection (4) below, a person who has—
- (a) an interest of any description mentioned in subsection (3) below in an ancient monument situated in England and Wales; or
  - (b) any heritable interest in an ancient monument situated in Scotland;
- may, with the consent of the Secretary of State, constitute him by deed guardian of the monument.

[<sup>F266</sup>Where the monument in question is situated in England, the Secretary of State shall consult with the Commission before he so consents.]

- [<sup>F267</sup>(1A) Subject to subsection (4) below, a person who has an interest of any description mentioned in subsection (3) below in an ancient monument situated in England may, with the consent of the Commission, given after obtaining the consent of the Secretary of State, constitute the Commission by deed guardian of the Monument.]
- (2) Subject to subsection (4) below, a person who has any such interest in an ancient monument may with the consent of any local authority in or in the vicinity of whose area the monument is situated constitute that authority by deed guardians of the monument.
- (3) The interests in an ancient monument situated in England and Wales which qualify a person to establish guardianship of the monument under subsection (1) [<sup>F268</sup>or (1A)] or (2) above are the following—
- (a) an estate in fee simple absolute in possession;
  - (b) a leasehold estate or interest in possession, being an estate or interest for a term of years of which not less than forty-five are unexpired or (as the case may be) renewable for a term of not less than forty-five years; and
  - (c) an interest in possession for his own life or the life of another, or for lives (whether or not including his own), under any existing or future trust for sale under which the estate or interest for the time being subject to the trust falls within paragraph (a) or (b) above.
- (4) A person who is not the occupier of an ancient monument may not establish guardianship of the monument under this section unless the occupier is also a party to the deed executed for the purposes of subsection (1) [<sup>F268</sup>(1A)] or (2) above.
- (5) Any person who has an interest in an ancient monument may be a party to any such deed in addition to the person establishing the guardianship of the monument and (where the latter is not the occupier) the occupier.
- (6) In relation to any monument of which the Secretary of State [<sup>F269</sup>or the Commission] or any local authority have been constituted the guardians under this Act, references

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below in this Act to the guardianship deed are references to the deed executed for the purposes of subsection (1) or [F270(1A) or (2) above (as the case may be)]

- (7) A guardianship deed relating to any ancient monument situated in England and Wales shall be a local land charge.
- (8) A guardianship deed relating to any ancient monument situated in Scotland may be recorded in the Register of Sasines.
- (9) Every person deriving title to any ancient monument from, through or under any person who has executed a guardianship deed shall be bound by the guardianship deed unless—
  - (a) in the case of a monument in England and Wales, he derives title by virtue of any disposition made by the person who executed the deed before the date of the deed; or
  - (b) in the case of a monument in Scotland, he is a person who in good faith and for value acquired right (whether [F271]title has been completed] or not) to his interest in the monument before the date of the deed.
- (10) The Secretary of State [F272]or the Commission] or a local authority shall not consent to become guardians of any structure which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family.
- (11) Except as provided by this Act, any person who has any estate or interest in a monument under guardianship shall have the same right and title to, and estate or interest in, the monument in all respects as if the Secretary of State or [F273]the Commission or the local authority in question (as the case may be)] had not become guardians of the monument.

#### Extent Information

- E3** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

#### Textual Amendments

- F266** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(2\)](#)
- F267** S. 12(1A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(3\)](#)
- F268** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(4\)](#)
- F269** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(5\)](#)
- F270** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(5\)](#)
- F271** Words in s. 12(9)(b) substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [Sch. 12 para. 40\(2\)](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F272** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(6\)](#)
- F273** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 38\(7\)](#)

#### Modifications etc. (not altering text)

- C30** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Cotswolds Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1777\)](#), arts. 1, [25\(2\)\(xxvi\)](#) (with art. 35)
- C31** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Chilterns Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1778\)](#), arts. 2, [25\(1\)](#), [25\(1\)](#), [25\(2\)\(xxvi\)](#) (with art. 35)

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### 13 Effect of guardianship.

- (1) The Secretary of State [<sup>F164</sup>and the Commission] and any local authority shall be under a duty to maintain any monument which is under their guardianship by virtue of this Act.
  - (2) The Secretary of State [<sup>F164</sup>and the Commission] and any local authority shall have full control and management of any monument which is under their guardianship by virtue of this Act.
- [<sup>F165</sup>(2A) The power conferred by subsection (2) above includes power—
- (a) to control the holding of events in or on the monument;
  - (b) to control and manage such events;
  - (c) to require payment of a charge in respect of the holding of such events;
  - (d) to exclude, restrict or otherwise control public access to the monument in connection with such events.]
- (3) With a view to fulfilling their duty under subsection (1) above to maintain a monument of which they are the guardians, the Secretary of State [<sup>F166</sup>or the Commission] or any local authority shall have power to do all such things as may be necessary for the maintenance of the monument and for the exercise by them of proper control and management with respect to the monument.
  - (4) Without prejudice to the generality of the preceding provisions of this section, the Secretary of State [<sup>F166</sup>or the Commission] or any local authority shall have power—
    - (a) to make any examination of a monument which is under their guardianship by virtue of this Act;
    - (b) to open up any such monument or make excavations therein for the purpose of examination or otherwise; and
    - (c) to remove the whole or any part of any such monument to another place for the purpose of preserving it.
  - (5) The Secretary of State [<sup>F166</sup>or the Commission] or any local authority may at any reasonable time enter the site of a monument which is under their guardianship by virtue of this Act for the purpose of exercising any of their powers under this section in relation to the monument (and may authorise any other person to exercise any of those powers on their behalf).
  - (6) Subsections (2) to (4) above are subject to any provision to the contrary in the guardianship deed.
  - (7) In this Part of this Act “maintenance” includes fencing, repairing, and covering in, of a monument and the doing of any other act or thing which may be required for the purpose of repairing the monument or protecting it from decay or injury, and “maintain” shall be construed accordingly.
- [<sup>F167</sup>(8) In subsection (2A) above—
- (a) “events” includes functions and any other organised activities;
  - (b) references to the holding of events, in relation to organised activities, are to be construed as references to the carrying out of such activities.]

#### Textual Amendments

**F164** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 39\(2\)](#)

*Status: Point in time view as at 23/02/2017.*

*Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F165** S. 13(2A) inserted (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 7(2)(a)**, 33(2); S.S.I. 2011/174, art. 2, Sch.

**F166** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 39(3)**

**F167** S. 13(8) added (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 7(2)(b)**, 33(2); S.S.I. 2011/174, art. 2, Sch.

#### **Modifications etc. (not altering text)**

**C30** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Cotswolds Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1777\)](#), arts. 1, **25(2)(xxvi)** (with art. 35)

**C31** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Chilterns Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1778\)](#), arts. 2, **25(1)**, **25(1)**, 25(2)(xxvi) (with art. 35)

## **14 Termination of guardianship.**

(1) Subject to the following provisions of this section, where the Secretary of State [<sup>F168</sup>or the Commission] or a local authority have become guardians of any monument under this Act, they may by agreement made with the persons who are for the time being immediately affected by the operation of the guardianship deed—

- (a) exclude any part of the monument from guardianship; or
- (b) renounce guardianship of the monument;

but except as provided above the monument shall remain under guardianship (unless it is acquired by its guardians) until an occupier of the monument who is entitled to terminate the guardianship gives notice in writing to that effect to the guardians of the monument.

An occupier of a monument is entitled to terminate the guardianship of the monument if—

- (a) he has any interest in the monument which would qualify him to establish guardianship of the monument under section 12 of this Act; and
- (b) he is not bound by the guardianship deed.

(2) A local authority shall consult with the Secretary of State before entering into any agreement under this section.

[<sup>F169</sup>Where the monument in question is situated in England, the Secretary of State shall consult with the Commission before entering into any such agreement.

The Commission shall consult with the Secretary of State before entering into any such agreement.]

(3) Neither the Secretary of State [<sup>F170</sup>nor the Commission] nor a local authority may enter into any such agreement unless he or they are satisfied with respect to the part of the monument or (as the case may be) with respect to the whole of the monument in question—

- (a) that satisfactory arrangements have been made for ensuring its preservation after termination of the guardianship; or
- (b) that it is no longer practicable to preserve it (whether because of the cost of preserving it or otherwise).

(4) An agreement under this section must be made under seal in the case of a monument situated in England and Wales.

*Status: Point in time view as at 23/02/2017.*

*Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date.*

*Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Where in the case of a monument situated in Scotland the guardianship deed has been recorded in the Register of Sasines in accordance with section 12 of this Act an agreement under this section relating to that monument may also be so recorded.

#### Textual Amendments

**F168** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 40(2)**

**F169** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 40(3)**

**F170** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 40(4)**

#### Modifications etc. (not altering text)

**C30** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Cotswolds Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1777\)](#), arts. 1, **25(2)(xxvi)** (with art. 35)

**C31** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Chilterns Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1778\)](#), arts. 2, **25(1), 25(1), 25(2)(xxvi)** (with art. 35)

*Acquisition and guardianship of land in the vicinity of an ancient monument, etc.*

## 15 Acquisition and guardianship of land in the vicinity of an ancient monument.

- (1) References in sections 10 to 12 of this Act to an ancient monument shall include references to any land adjoining or in the vicinity of an ancient monument which appears to the Secretary of State [<sup>F171</sup>or the Commission] or a local authority to be reasonably required for any of the following purposes, that is to say—

- (a) the maintenance of the monument or its amenities;
- (b) providing or facilitating access to the monument;
- (c) the exercise of proper control or management with respect to the monument;
- (d) the storage of equipment or materials for the purpose mentioned in paragraph (a) above; and
- (e) the provision of facilities and services for the public for or in connection with affording public access to the monument;

(and one of those purposes shall accordingly be sufficient to support the compulsory acquisition of any such land under section 10(1) of this Act, instead of the purpose there mentioned).

[<sup>F172</sup>Land may be acquired, or taken into guardianship, by the Commission by virtue of this section only if the land is situated in England.]

- (2) Land may be acquired or taken into guardianship by virtue of this section for any of the purposes relating to an ancient monument mentioned in subsection (1) above either at the same time as the monument or subsequently.
- (3) The Secretary of State [<sup>F173</sup>and the Commission] and any local authority shall have full control and management of any land which is under their guardianship by virtue of this Act after being taken into guardianship by virtue of this section for a purpose relating to any ancient monument, and [<sup>F174</sup>without prejudice to that generality] shall have power to do all such things as may be necessary—

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- (a) for the exercise by them of proper control and management with respect to the land; and
  - (b) for the use of the land for any of the purposes relating to the monument mentioned in subsection (1) above.
- [<sup>F175</sup>(3A) The power of full control and management of land under guardianship conferred by subsection (3) above includes power—
- (a) to control the holding of events on associated land;
  - (b) to control and manage such events;
  - (c) to require payment of a charge in respect of the holding of such events;
  - (d) to exclude, restrict or otherwise control public access to associated land in connection with such events.]
- (4) The Secretary of State [<sup>F173</sup>and the Commission] and any local authority may at any reasonable time enter any land which is under their guardianship by virtue of this Act for the purpose of exercising their power under subsection (3) above (and may authorise any other person to do so, and to exercise that power, on their behalf).
- [<sup>F176</sup>(4A) Subsections (3), (3A) and (4) are subject to any provision to the contrary in the guardianship deed.]
- (5) Section 14(1) and (2) of this Act shall apply in relation to any land taken into guardianship by virtue of this section for any purpose relating to an ancient monument as they apply in relation to a monument, but, apart from any termination of guardianship by virtue of that section, any such land shall also cease to be under guardianship if the monument in question ceases to be under guardianship otherwise than by virtue of being acquired by its guardians or ceases to exist.
- (6) References below in this Act, in relation to any monument of which the Secretary of State [<sup>F177</sup>or the Commission] or a local authority are the owners or guardians by virtue of this Act, to land associated with that monument (or to associated land) are references to any land acquired or taken into guardianship by virtue of this section for a purpose relating to that monument, or appropriated for any such purpose under a power conferred by any other enactment.
- [<sup>F178</sup>(7) In subsection (3A) above—
- (a) “events” includes functions and any other organised activities;
  - (b) references to the holding of events, in relation to organised activities, are to be construed as references to the carrying out of such activities.]

#### Textual Amendments

- F171** Words inserted by [National Heritage Act 1983](#) (c. 47, SIF 78), s. 41, **Sch. 4 para. 41(2)**
- F172** Words inserted by [National Heritage Act 1983](#) (c. 47, SIF 78), s. 41, **Sch. 4 para. 41(2)**
- F173** Words inserted by [National Heritage Act 1983](#) (c. 47, SIF 78), s. 41, **Sch. 4 para. 41(3)**
- F174** Words in s. 15(3) inserted (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) (asp 3), **ss. 7(3)(a)**, 33(2); S.S.I. 2011/174, art. 2, Sch.
- F175** S. 15(3A) inserted (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) (asp 3), **ss. 7(3)(b)**, 33(2); S.S.I. 2011/174, art. 2, Sch.
- F176** S. 15(4A) inserted (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) (asp 3), **ss. 7(3)(c)**, 33(2); S.S.I. 2011/174, art. 2, Sch.
- F177** Words inserted by [National Heritage Act 1983](#) (c. 47, SIF 78), s. 41, **Sch. 4 para. 41(4)**

*Status: Point in time view as at 23/02/2017.*

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**F178** S. 15(7) added (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\), ss. 7\(3\)\(d\), 33\(2\)](#); S.S.I. 2011/174, art. 2, Sch.

**Modifications etc. (not altering text)**

**C30** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Cotswolds Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1777\)](#), arts. 1, **25(2)(xxvi)** (with art. 35)

**C31** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Chilterns Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1778\)](#), arts. 2, **25(1), 25(1), 25(2)(xxvi)** (with art. 35)

**16 Acquisition of easements and other similar rights over land in the vicinity of an ancient monument.**

- (1) The Secretary of State may acquire, by agreement or compulsorily, over land adjoining or in the vicinity of any monument which is under his ownership by virtue of this Act, any easement which appears to him to be necessary—
- (a) for any of the purposes relating to that monument mentioned in section 15(1) of this Act; or
  - (b) for the use of any land associated with that monument for any of those purposes.

[<sup>F179</sup>Where the land in question is situated in England, the Secretary of State shall consult with the Commission before entering into the agreement or making the compulsory purchase order (as the case may be).]

[<sup>F180</sup>(1A) The Commission may by agreement acquire over land adjoining or in the vicinity of any monument which is under their ownership by virtue of this Act, any such easement as the Secretary of State may acquire by virtue of subsection (1) above.]

- (2) A local authority may by agreement acquire over land adjoining or in the vicinity of any monument which is under their ownership by virtue of this Act any such easement as the Secretary of State may acquire by virtue of subsection (1) above.
- (3) The power of acquiring an easement under subsection (1) [<sup>F181</sup>or (1A)] or (2) above shall include power to acquire any such easement by the grant of a new right.
- (4) The Secretary of State [<sup>F182</sup>or the Commission] or any local authority may acquire, for the benefit of any monument or land under his or their guardianship by virtue of this Act, a right of any description which he or they would be authorised to acquire under any of the preceding provisions of this section if the monument or land was under his or their ownership by virtue of this Act, and those provisions shall apply accordingly in any such case.
- (5) Any right to which subsection (4) above applies—
- (a) shall be treated for the purposes of its acquisition under this section and in all other respects as if it were a legal easement; and
  - (b) may be enforced by the guardians for the time being of the monument or land for whose benefit it was acquired as if they were the absolute owner in possession of that monument or land.
- (6) Any right to which subsection (4) above applies which is acquired by agreement under this section for a purpose relating to any monument under guardianship, or for the



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- use of any land associated with any such monument for any purpose relating to that monument—
- (a) subject to any provision to the contrary in the agreement under which it was acquired, may be revoked by the grantor; and
  - (b) may be revoked by any successor in title of the grantor as respects any of the land over which it is exercisable in which he has an interest;
- if the monument ceases to be under guardianship otherwise than by virtue of being acquired by its guardians or ceases to exist.
- (7) References above in this section to an easement or (as the case may be) to a legal easement shall be construed in relation to land in Scotland as references to a servitude.
  - (8) Any right to which subsection (4) above applies—
    - (a) shall be a local land charge, if it relates to land in England and Wales; and
    - (b) may be recorded in the Register of Sasines, if it relates to land in Scotland.
  - (9) The <sup>M11</sup>[<sup>F183</sup>Acquisition of Land Act 1981] shall apply to any compulsory acquisition by the Secretary of State under this section of any easement over land in England and Wales . . . <sup>F184</sup>
  - (10) The <sup>M12</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to any compulsory acquisition by the Secretary of State under this section of any servitude over land in Scotland as it applies to a compulsory acquisition by another Minister or by the Secretary of State under section 58 of the <sup>M13</sup>National Health Service (Scotland) Act 1972 in a case falling within section 1(1) of the said Act of 1947.
  - (11) The provisions of Part I of the <sup>M14</sup>Compulsory Purchase Act 1965 (so far as applicable) other than sections 4 to 8, section 10 and section 31, shall apply in relation to any acquisition by agreement under this section of any easement over land in England and Wales.
  - (12) For the purposes of any acquisition by agreement under this section of any servitude over land in Scotland—
    - (a) the Lands Clauses Acts (with the exception of the provisions excluded by subsection (13) below) and sections 6 and 70 to 78 of the <sup>M15</sup>Railways Clauses Consolidation (Scotland) Act 1845 (as originally enacted and not as amended by section 15 of the <sup>M16</sup>Mines (Working Facilities and Support) Act 1923) shall be incorporated with this section; and
    - (b) in construing those Acts for the purposes of this section, this section shall be deemed to be the special Act and the Secretary of State or the local authority acquiring the servitude shall be deemed to be the promoter of the undertaking or company (as the case may require).
  - (13) The provisions of the Lands Clauses Acts excluded from being incorporated with this section are—
    - (a) those which relate to the acquisition of land otherwise than by agreement;
    - (b) those which relate to access to the special Act; and
    - (c) sections 120 to 125 of the <sup>M17</sup>Lands Clauses Consolidation (Scotland) Act 1845.

#### Textual Amendments

**F179** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 42\(2\)](#)

*Status: Point in time view as at 23/02/2017.*

**Changes to legislation:** Ancient Monuments and Archaeological Areas Act 1979, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**F180** S. 16(1A) inserted by National Heritage Act 1983 (c. 47, SIF 78), s. 41, **Sch. 4 para. 42(3)**

**F181** Words inserted by National Heritage Act 1983 (c. 47, SIF 78), s. 41, **Sch. 4 para. 42(4)**

**F182** Words inserted by National Heritage Act 1983 (c. 47, SIF 78), s. 41, **Sch. 4 para. 42(5)**

**F183** Words substituted by Acquisition of Land Act 1981 (c. 67), **Sch. 4 para. 1 Table**

**F184** Words repealed by Acquisition of Land Act 1981 (c. 67), **Sch. 6 Pt. I**

#### **Modifications etc. (not altering text)**

**C30** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by The Cotswolds Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004 (S.I. 2004/1777), arts. 1, **25(2)(xxvi)** (with art. 35)

**C31** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by The Chilterns Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004 (S.I. 2004/1778), arts. 2, **25(1), 25(1), 25(2)(xxvi)** (with art. 35)

#### **Marginal Citations**

**M11** 1981 c. 67.

**M12** 1947 c. 42.

**M13** 1972 c. 58.

**M14** 1965 c. 56.

**M15** 1845 c. 33.

**M16** 1923 c. 20.

**M17** 1845 c. 19.

### *Agreements concerning ancient monuments, etc.*

## **17 Agreements concerning ancient monuments and land in their vicinity.**

(1) The Secretary of State may enter into an agreement under this section with the occupier of an ancient monument or of any land adjoining or in the vicinity of an ancient monument.

[<sup>F185</sup>(1A) The Commission may enter into an agreement under this section with the occupier of an ancient monument situated in England or of any land so situated which adjoins or is in the vicinity of an ancient monument so situated.]

(2) A local authority may enter into an agreement under this section with the occupier of any ancient monument situated in or in the vicinity of their area or with the occupier of any land adjoining or in the vicinity of any such ancient monument.

[<sup>F186</sup>(2A) Historic Environment Scotland may enter into an agreement under this section with the occupier of an ancient monument situated in Scotland or of any land so situated which adjoins or is in the vicinity of an ancient monument so situated.]

(3) Any person who has an interest in an ancient monument or in any land adjoining or in the vicinity of an ancient monument may be a party to an agreement under this section in addition to the occupier.

(4) An agreement under this section may make provision for all or any of the following matters with respect to the monument or land in question, that is to say—

- (a) the maintenance and preservation of the monument and its amenities;
- (b) the carrying out of any such work, or the doing of any such other thing, in relation to the monument or land as may be specified in the agreement;

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- (c) public access to the monument or land and the provision of facilities and information or other services for the use of the public in that connection;
- (d) restricting the use of the monument or land;
- (e) prohibiting in relation to the monument or land the doing of any such thing as may be specified in the agreement; and
- (f) the making by the Secretary of State or [<sup>F187</sup>the Commission or the local authority [<sup>F188</sup>or Historic Environment Scotland] (as the case may be)] of payments in such manner, of such amounts and on such terms as may be so specified (and whether for or towards the cost of any work provided for under the agreement or in consideration of any restriction, prohibition or obligation accepted by any other party thereto);

and may contain such incidental and consequential provisions as appear to the Secretary of State or [<sup>F187</sup>the Commission or the local authority [<sup>F189</sup>or Historic Environment Scotland] (as the case may be)] to be necessary or expedient.

- (5) Where an agreement under this section expressly provides that the agreement as a whole or any restriction, prohibition or obligation arising thereunder is to be binding on the successors of any party to the agreement (but not otherwise), then, as respects any monument or land in England and Wales, every person deriving title to the monument or land in question from, through or under that party shall be bound by the agreement, or (as the case may be) by that restriction, prohibition or obligation, unless he derives title by virtue of any disposition made by that party before the date of the agreement.
- (6) An agreement under this section relating to any monument or land in Scotland and containing any such provision as is mentioned in subsection (5) above may be recorded in the Register of Sasines, and that subsection shall apply to any such agreement which is so recorded or (as the case may be) to any restriction, prohibition or obligation to which that provision relates.
- (7) [<sup>F190</sup>Section 84 of the Law of Property Act 1925 (c. 20) (power <sup>F191</sup>... to discharge or modify restrictive covenant) shall not apply to an agreement under this section.]
- (8) Nothing in any agreement under this section to which the Secretary of State is a party shall be construed as operating as a scheduled monument consent.
- [<sup>F192</sup>(9) References to an ancient monument in subsection (1A) above, and in subsection (3) above so far as it applies for the purposes of subsection (1A), shall be construed as if the reference in section 61(12)( b ) of this Act to the Secretary of State were to the Commission. ]
- [<sup>F193</sup>(9A) References to an ancient monument in subsection (2A), and in subsection (3) so far as it applies for the purposes of subsection (2A), are to be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to Historic Environment Scotland.]
- [<sup>F194</sup>(10) References in this section to an ancient monument situated in England include any such monument situated in, on or under the seabed within the seaward limits of the United Kingdom territorial waters adjacent to England; and an order under section 33(10) of the National Heritage Act 1983 (orders determining limits of waters adjacent to England) applies for the purposes of this subsection as it applies for the purposes of section 33(9) of that Act.]

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### Textual Amendments

- F185** S. 17(1A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 43(2)**
- F186** S. 17(2A) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 41(a)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F187** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 43(3)**
- F188** Words in s. 17(4)(f) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 41(b)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F189** Words in s. 17(4) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 41(b)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F190** S. 17(7) substituted (S.) (28.11.2004) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), ss. 122(1), 129(2), **Sch. 14 para. 8** (with ss. 119, 121) (see S.S.I. 2003/456, art. 2)
- F191** Words in s. 17(7) omitted (1.6.2009) by virtue of [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 128** (with Sch. 5)
- F192** S. 17(9) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 43(4)**
- F193** S. 17(9A) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 41(c)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F194** S. 17(10) inserted (1.7.2002) by [National Heritage Act 2002 \(c. 14\)](#), ss. {2(2)}, 8(2)

### Modifications etc. (not altering text)

- C30** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Cotswolds Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1777\)](#), arts. 1, **25(2)(xxvi)** (with art. 35)
- C31** Ss. 12-17 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Chilterns Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1778\)](#), arts. 2, **25(1), 25(1), 25(2)(xxvi)** (with art. 35)

### Marginal Citations

- M18** 1925 c. 20.  
**M19** 1970 c. 35.

## *Powers of limited owners*

### 18 Powers of limited owners for purposes of sections 12, 16 and 17. **E+W**

- (1) Subject to section 12 of this Act, a person may establish guardianship of any land under subsection (1) [<sup>F195</sup>or (1A)] or (2) of that section or join in executing a guardianship deed for the purposes of that section notwithstanding that he is a limited owner of the land.
- (2) A person may—
- grant any easement, servitude or other right over land which the Secretary of State [<sup>F196</sup>or the Commission] or any local authority are authorised to acquire under section 16 of this Act; or
  - enter into an agreement under section 17 of this Act with respect to any land; notwithstanding that he is a limited owner of the land.

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- (3) For the purposes of this section—
- (a) a body corporate or corporation sole is a limited owner of any land in which it has an interest; and
  - (b) any other persons are limited owners of land in which they have an interest only if they hold that interest in one or other of the capacities mentioned in subsection (4) below.
- (4) The capacities referred to in subsection (3)(b) above are the following—
- (a) as tenant for life or statutory owner within the meaning of the <sup>M20</sup>Settled Land Act 1925;
  - <sup>F197</sup>[(b) as trustees of land;]
  - (c) as liferenter or heir of entail in possession (in Scotland); and
  - (d) as trustees for charities or as commissioners or trustees for ecclesiastical, collegiate or other public purposes.
- (5) The <sup>M21</sup>Trusts (Scotland) Act 1921 shall have effect as if among the powers conferred on trustees by section 4 of that Act (general powers of trustees) there were included a power to do any of the following acts in relation to the trust estate or any part of it, that is to say—
- (a) to execute a guardianship deed;
  - (b) to grant any servitude or other right which the Secretary of State or any local authority are authorised to acquire under section 16 of this Act; and
  - (c) to enter into an agreement under section 17 of this Act.
- (6) Subject to subsection (7) below, where a person who is a limited owner of any land by virtue of holding an interest in the land in any of the capacities mentioned in subsection (4) above executes a guardianship deed in relation to the land the guardianship deed shall bind every successive owner of any estate or interest in the land.
- (7) Where the land to which a guardianship deed relates is at the date of the deed subject to any incumbrance not capable of being overreached by the limited owner in exercise of any powers of sale or management conferred on him by law or under any settlement or other instrument, the deed shall not bind the incumbrancer.
- (8) Subject to subsection (9) below, where an agreement under section 17 of this Act to which a limited owner is a party expressly provides that the agreement as a whole or any restriction, prohibition or obligation arising thereunder is to be binding on his successors (but not otherwise), subsections (6) and (7) above shall apply to the agreement or (as the case may be) to the restriction, prohibition or obligation in question as they apply to a guardianship deed.
- (9) Subsection (8) above does not apply to an agreement relating to any land in Scotland unless it is recorded in the Register of Sasines.

#### Extent Information

- E2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F195** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 44\(2\)](#)

*Status: Point in time view as at 23/02/2017.*

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**F196** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 44(3)**

**F197** S. 18(4)(b) substituted (E.W.) (1.1.1997) by [1996 c. 47, s. 25\(1\)](#), **Sch. 3 para. 17(b)** (with s. 24(2), 25(4)); [S.I. 1996/2974, art.2](#)

#### Marginal Citations

**M20** 1925 c. 18.

**M21** 1921 c. 58.

## 18 Powers of limited owners for purposes of sections 12, 16 and 17. **S**

- (1) Subject to section 12 of this Act, a person may establish guardianship of any land under subsection (1) [<sup>F274</sup>or (1A)] or (2) of that section or join in executing a guardianship deed for the purposes of that section notwithstanding that he is a limited owner of the land.
- (2) A person may—
  - (a) grant any easement, servitude or other right over land which the Secretary of State [<sup>F275</sup>or the Commission] or any local authority are authorised to acquire under section 16 of this Act; or
  - (b) enter into an agreement under section 17 of this Act with respect to any land; notwithstanding that he is a limited owner of the land.
- (3) For the purposes of this section—
  - (a) a body corporate or corporation sole is a limited owner of any land in which it has an interest; and
  - (b) any other persons are limited owners of land in which they have an interest only if they hold that interest in one or other of the capacities mentioned in subsection (4) below.
- (4) The capacities referred to in subsection (3)(b) above are the following—
  - (a) as tenant for life or statutory owner within the meaning of the <sup>M24</sup>Settled Land Act 1925;
  - (b) as trustees for sale within the meaning of the <sup>M25</sup>Law of Property Act 1925;
  - (c) as liferenter <sup>F276</sup>... in possession (in Scotland); and
  - (d) as trustees for charities or as commissioners or trustees for ecclesiastical, collegiate or other public purposes.
- (5) The <sup>M26</sup>Trusts (Scotland) Act 1921 shall have effect as if among the powers conferred on trustees by section 4 of that Act (general powers of trustees) there were included a power to do any of the following acts in relation to the trust estate or any part of it, that is to say—
  - (a) to execute a guardianship deed;
  - (b) to grant any servitude or other right which the Secretary of State or any local authority are authorised to acquire under section 16 of this Act; and
  - (c) to enter into an agreement under section 17 of this Act.
- (6) Subject to subsection (7) below, where a person who is a limited owner of any land by virtue of holding an interest in the land in any of the capacities mentioned in subsection (4) above executes a guardianship deed in relation to the land the guardianship deed shall bind every successive owner of any estate or interest in the land.

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- (7) Where the land to which a guardianship deed relates is at the date of the deed subject to any incumbrance not capable of being overreached by the limited owner in exercise of any powers of sale or management conferred on him by law or under any settlement or other instrument, the deed shall not bind the incumbrancer.
- (8) Subject to subsection (9) below, where an agreement under section 17 of this Act to which a limited owner is a party expressly provides that the agreement as a whole or any restriction, prohibition or obligation arising thereunder is to be binding on his successors (but not otherwise), subsections (6) and (7) above shall apply to the agreement or (as the case may be) to the restriction, prohibition or obligation in question as they apply to a guardianship deed.
- (9) Subsection (8) above does not apply to an agreement relating to any land in Scotland unless it is recorded in the Register of Sasines.

#### Extent Information

- E4** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F274** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\), s. 41, Sch. 4 para. 44\(2\)](#)  
**F275** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\), s. 41, Sch. 4 para. 44\(3\)](#)  
**F276** Words in s. 18(4)(c) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\), ss. 71, 77\(2\), Sch. 12 para. 40\(3\), 13 Pt. 1 \(with ss. 58, 62, 75\); S.S.I. 2003/456, art. 2](#)

#### Marginal Citations

- M24** 1925 c. 18.  
**M25** 1925 c. 20.  
**M26** 1921 c. 58.

### *Public access to monuments under public control*

## **19 Public access to monuments under public control.**

- (1) Subject to [<sup>F198</sup>sections 13(2A) and 15(3A) of this Act and to] the following provisions of this section, the public shall have access to any monument under the ownership or guardianship of the Secretary of State [<sup>F199</sup>or the Commission] or any local authority by virtue of this Act.
- (2) The Secretary of State [<sup>F200</sup>and the Commission] and any local authority may nevertheless control the times of normal public access to any monument under their ownership or guardianship by virtue of this Act and may also, if they consider it necessary or expedient to do so in the interests of safety or for the maintenance or preservation of the monument, entirely exclude the public from access to any such monument or to any part of it, for such period as they think fit:

Provided that—

- (a) the power of a local authority under this subsection to control the times of normal public access to any monument shall only be exercisable by regulations under this section; and

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- (b) the power of a local authority under this subsection entirely to exclude the public from access to any monument with a view to its preservation shall only be exercisable with the consent of the Secretary of State.
- (3) The Secretary of State and any local authority may by regulations under [<sup>F201</sup>this subsection] regulate public access to any monument, or to all or any of the monuments, under their ownership or guardianship by virtue of this Act and any such regulations made by the Secretary of State may also apply to any monument, or to all or any of the monuments, under his control or management for any other reason.
- [<sup>F202</sup>The Secretary of State shall consult with the Commission before he makes any regulations under this subsection in relation only to monuments situated in England.]
- (4) Without prejudice to the generality of subsection (3) above, regulations made by the Secretary of State or a local authority under [<sup>F203</sup>that subsection] may prescribe the times when the public are to have access to monuments to which the regulations apply and may make such provision as appears to the Secretary of State or to the local authority in question to be necessary for—
- (a) the preservation of any such monument and its amenities or of any property of the Secretary of State or local authority; and
  - (b) prohibiting or regulating any act or thing which would tend to injure or disfigure any such monument or its amenities or to disturb the public in their enjoyment of it;
- and may prescribe charges for the admission of the public to any such monument or to any class or description of monuments to which the regulations apply.
- [<sup>F204</sup>(4A) The Secretary of State may by regulations under this section make such provision as appears to him necessary for prohibiting or regulating any act or thing which would tend to injure or disfigure any monument under the ownership or guardianship of the Commission by virtue of this Act or the monument's amenities or to disturb the public in their enjoyment of it.
- (4B) The Secretary of State shall consult with the Commission before he makes any regulations under subsection (4A) above.]
- (5) Without prejudice to subsections (3) and (4) above, the Secretary of State [<sup>F205</sup>and the Commission] and any local authority shall have power to make such charges as they may from time to time determine for the admission of the public to any monument under their ownership or guardianship by virtue of this Act or (in the case of the Secretary of State) to any monument otherwise under his control or management.
- (6) Notwithstanding subsection (1) above, any person authorised in that behalf by the Secretary of State [<sup>F206</sup>or by the Commission] or by a local authority may refuse admission—
- (a) to any monument under the ownership or guardianship of the Secretary of State or [<sup>F207</sup>the Commission or that local authority (as the case may be)] by virtue of this Act; or
  - (b) (in the case of the Secretary of State) to any monument otherwise under his control or management;
- to any person he has reasonable cause to believe is likely to do anything which would tend to injure or disfigure the monument or its amenities or to disturb the public in their enjoyment of it.



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- (7) If any person contravenes or fails to comply with any provision of any regulations under this section, he shall be liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding [<sup>F208</sup>level 2 on the standard scale].
- (8) Regulations made by a local authority under this section shall not take effect unless they are submitted to and confirmed by the Secretary of State, and the Secretary of State may confirm any such regulations either with or without modifications.
- (9) In relation to any monument under guardianship, subsection (1) above is subject to any provision to the contrary in the guardianship deed.

#### Textual Amendments

- F198** Words in s. 19(1) inserted (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 7(4)**, 33(2); S.S.I. 2011/174, art. 2, Sch.
- F199** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 45(2)**
- F200** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 45(3)**
- F201** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 45(4)**
- F202** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 45(4)**
- F203** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 45(5)**
- F204** S. 19(4A)(4B) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 45(6)**
- F205** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 45(7)**
- F206** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 45(8)**
- F207** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 45(8)**
- F208** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48\)](#), **s. 46** and [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), **s. 289G** (as inserted by [Criminal Justice Act 1982 \(c. 48\)](#), **s. 54**)

#### Modifications etc. (not altering text)

- C32** S. 19 excluded (18.12.1996) by 1996 c. 61, s. 12, **Sch. 7 para. 4(5)**
- C33** S. 19 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Cotswolds Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1777\)](#), arts. 1, **25(2)(xxvii)** (with art. 35)
- C34** S. 19 functions made exercisable concurrently (with effect in accordance with art. 25(1) of the amending S.I.) by [The Chilterns Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1778\)](#), arts. 2, **25(1)**, **25(1)**, 25(2)(xxvii) (with art. 35)
- C35** S. 19 excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **Sch. 9 para. 4(5)**
- C36** S. 19 excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 19 para. 1(5)**
- C37** S. 19(3)(4A) excluded (18.12.1996) by 1996 c. 61, s. 12, **Sch. 7 para. 4(6)**
- C38** S. 19(3) restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 19 para. 1(6)**
- C39** S. 19(4A) restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 19 para. 1(6)**
- C40** S. 19(6) restricted (18.12.1996) by 1996 c. 61, s. 12, **Sch. 7 para. 4(7)**
- C41** S. 19(6) restricted (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **Sch. 9 para. 4(7)**
- C42** S. 19(6) restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 19 para. 1(7)**

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## 20 Provision of facilities for the public in connection with ancient monuments.

- (1) The Secretary of State [<sup>F209</sup>and the Commission] and any local authority may provide such facilities and information or other services for the public [<sup>F210</sup>for or in connection with affording public access]—
- (a) [<sup>F211</sup>to][<sup>F211</sup>in or on] any monument under their ownership or guardianship by virtue of this Act; or
  - (b) (in the case of the Secretary of State) [<sup>F212</sup>to][<sup>F212</sup>in or on] any monument otherwise under his control or management;
- as appear to them to be necessary or desirable.
- (2) [<sup>F213</sup>In subsection (1), references to a monument include references to any land associated with the monument.
- (2A) The facilities and services which may be provided for the public under this section include—
- (a) facilities and information or other services for or in connection with affording public access to the monument, and
  - (b) facilities for the sale of goods and the provision of other services.]
- (3) The Secretary of State [<sup>F214</sup>and the Commission] and any local authority shall have power to make such charges as they may from time to time determine for the use of any facility or service provided by them for the public under this section.

### Textual Amendments

- F209** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 46(2)**
- F210** Words in s. 20(1) repealed (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 8(a)(i)**, 33(2); S.S.I. 2011/174, art. 2, Sch.
- F211** Words in s. 20(1)(a) substituted (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 8(a)(ii)**, 33(2); S.S.I. 2011/174, art. 2, Sch.
- F212** Words in s. 20(1)(b) substituted (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 8(a)(iii)**, 33(2); S.S.I. 2011/174, art. 2, Sch.
- F213** S. 20(2)(2A) substituted for s. 20(2) (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 8(b)**, 33(2); S.S.I. 2011/174, art. 2, Sch.
- F214** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 46(3)**

### Modifications etc. (not altering text)

- C43** S. 20 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Cotswolds Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1777\)](#), arts. 1, **25(2)(xxvii)** (with art. 35)
- C44** S. 20 functions made exercisable concurrently (with effect in accordance with art. 25(1) of the amending S.I.) by [The Chilterns Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1778\)](#), arts. 2, **25(1)**, **25(1)**, **25(2)(xxvii)** (with art. 35)

### *Transfer of ownership and guardianship of ancient monuments*

## 21 Transfer of ancient monuments between local authorities and Secretary of State.

- (1) Subject to subsection (2) below, the Secretary of State [<sup>F215</sup>and the Commission] and any local authority may, in respect of any monument of which they are the owners or

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guardians by virtue of this Act or any land associated with any such monument, enter into and carry into effect any agreements for the transfer—

- (a) from the Secretary of State to the local authority;
- (b) from the local authority to the Secretary of State; or
- (c) from the local authority to another local authority; <sup>F216</sup>or
- (d) from the Secretary of State to the Commission; or
- (e) from the Commission to the Secretary of State; or
- (f) from the Commission to the local authority; or
- (g) from the local authority to the Commission;]

of that monument or land or (as the case may be) of the guardianship of that monument or land.

(2) Where the Secretary of State <sup>F217</sup>or the Commission] or the local authority in question are guardians of a monument or associated land, they may not enter into an agreement under this section with respect to that monument or land without the consent of the persons who are for the time being immediately affected by the operation of the guardianship deed.

<sup>F218</sup>(3) The Commission may not enter into an agreement under subsection (1) above in respect of a monument or land not situated in England.

(4) The Secretary of State may not enter into an agreement mentioned in subsection (1) ( a ) or ( b ) above in respect of a monument or land situated in England without consulting the Commission.

(5) The Commission may not enter into an agreement mentioned in subsection (1)( f ) above without consulting the Secretary of State.

(6) The Commission may not enter into an agreement mentioned in subsection (1)( g ) above without the consent of the Secretary of State. ]

#### Textual Amendments

**F215** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 47(2)**

**F216** S. 21(1)(d)–(g) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 47(2)**

**F217** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 47(3)**

**F218** S. 21(3)–(6) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 47(4)**

#### Modifications etc. (not altering text)

**C45** S. 21 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Cotswolds Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1777\)](#), arts. 1, **25(2)(xxviii)** (with art. 35)

**C46** S. 21 functions made exercisable concurrently (E.W.) (with effect in accordance with art. 25(1) of the amending S.I.) by [The Chilterns Area of Outstanding Natural Beauty \(Establishment of Conservation Board\) Order 2004 \(S.I. 2004/1778\)](#), arts. 2, **25(1), 25(1), 25(2)(xxviii)** (with art. 35)

### Ancient Monuments Boards

#### <sup>F219</sup>22 Ancient Monuments Boards.

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#### Textual Amendments

**F219** S. 22 repealed (1.4.2006) by [Ancient Monuments Board for Wales \(Abolition\) Order 2006 \(S.I. 2006/64\)](#), arts. 1(2), **3(1)(a)**

### <sup>F220F221</sup>23 Annual reports of Ancient Monuments Boards.

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#### Textual Amendments

**F220** S. 23 repealed (1.4.2006) by [Ancient Monuments Board for Wales \(Abolition\) Order 2006 \(S.I. 2006/64\)](#), arts. 1(2), **3(1)(a)**

**F221** Words in s. 23 repealed (S.) (31.5.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), **Sch. 4 para. 6(b)(i)**; S.S.I. 2003/219, art. 2(1)(c)

### <sup>F222</sup>Local inquiries

#### Textual Amendments

**F222** Ss. 23A, 23B and cross-heading inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), **ss. 21(2), 31(2)** (with **ss. 29, 30**); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### 23A Local inquiries

- (1) The Scottish Ministers may hold a local inquiry for the purposes of the exercise of any of their functions under this Part of this Act.
- (2) The Scottish Ministers must appoint a person to hold the inquiry and to report on it to them.
- (3) Subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held by virtue of subsection (1) as they apply to an inquiry held by virtue of subsection (1) of that section.

### 23B Local inquiries: further provision

- (1) The Scottish Ministers may by regulations make provision as to the procedure to be followed in connection with inquiries or hearings conducted under or by virtue of this Act.
- (2) Regulations under subsection (1) may in particular make provision—
  - (a) about the notification of an inquiry or hearing,
  - (b) about the manner in which an inquiry or hearing is to be conducted,
  - (c) as to procedure in connection with matters preparatory to such inquiries or hearings and in connection with matters subsequent to them.]

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*Miscellaneous and supplemental*

**24 Expenditure by Secretary of State or local authority on acquisition and preservation of ancient monuments, etc.**

- (1) <sup>F223</sup>Subject to subsection (3A) below] The Secretary of State may defray or contribute towards the cost of the acquisition by any person of any ancient monument.
- (2) <sup>F223</sup>Subject to subsection (3A) below] The Secretary of State may undertake, or assist in, or defray or contribute towards the cost of the removal of any ancient monument or of any part of any such monument to another place for the purpose of preserving it, and may <sup>F224</sup>at the request of the owner undertake, or assist in, or defray or contribute towards the cost of the preservation, maintenance and management of any ancient monument.
- <sup>F224</sup>(a) at the request of the owner undertake, or assist in, or
- (b) defray or contribute towards the cost of,
- the preservation, maintenance and management of any ancient monument. ]]
- (3) <sup>F223</sup>Subject to subsection (3A) below] The Secretary of State may contribute towards the cost of the provision of facilities or services for the public by a local authority under section 20 of this Act.
- <sup>F225</sup>(3A) As respects a monument situated in England, subsections (1) to (3) above shall apply as if “Commission” were substituted for “Secretary of State”.
- [ The reference in subsection (3A) above to a monument situated in England includes <sup>F226</sup>(3AA) any monument situated in, on or under the seabed within the seaward limits of the United Kingdom territorial waters adjacent to England; and an order under section 33(10) of the National Heritage Act 1983 (orders determining limits of waters adjacent to England) applies for the purposes of this subsection as it applies for the purposes of section 33(9) of that Act.]
- (3B) References to an ancient monument in subsections (1) and (2) above, as amended by subsection (3A) above, shall be construed as if the reference in section 61(12)( b ) of this Act to the Secretary of State were to the Commission. ]
- (4) Any local authority may <sup>F227</sup>at the request of the owner undertake, or assist in, or defray or contribute towards the cost of the preservation, maintenance and management of any ancient monument situated in or in the vicinity of their area.
- <sup>F227</sup>(a) at the request of the owner undertake, or assist in, or
- (b) defray or contribute towards the cost of,
- the preservation, maintenance and management of any ancient monument situated in or in the vicinity of their area. ]]
- (5) No expenses shall be incurred by the Secretary of State <sup>F228</sup>or the Commission] or any local authority under this section in connection with any monument which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family.

**Textual Amendments**

**F223** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 48\(2\)](#)

**F224** Words in s. 24(2) substituted (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), [ss. 9\(a\)](#), 33(2); [S.S.I. 2011/174](#), art. 2, Sch.

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- F225** S. 24(3A)(3B) inserted by National Heritage Act 1983 (c. 47, SIF 78), s. 41, **Sch. 4 para. 48(3)**  
**F226** S. 24(3AA) inserted (1.7.2002) by National Heritage Act 2002 (c. 14), ss. {2(3)}, 8(2)  
**F227** Words in s. 24(4) substituted (S.) (30.6.2011) by Historic Environment (Amendment) (Scotland) Act 2011 (asp 3), **ss. 9(b)**, 33(2); S.S.I. 2011/174, art. 2, Sch.  
**F228** Words inserted by National Heritage Act 1983 (c. 47, SIF 78), s. 41, **Sch. 4 para. 48(4)**

## 25 Advice and superintendence by Secretary of State.

- (1) [<sup>F229</sup>Subject to subsection (3A) below][<sup>F230</sup>The Secretary of State][<sup>F230</sup>Historic Environment Scotland] may give advice with reference to the treatment of any ancient monument.
- (2) [<sup>F229</sup>Subject to subsection (3A) below][<sup>F231</sup>The Secretary of State][<sup>F231</sup>Historic Environment Scotland] may also, if in [<sup>F232</sup>his][<sup>F232</sup>its] opinion it is advisable, superintend any work in connection with any ancient monument if invited to do so by the owner, and shall superintend any such work, whether required to do so by the owner or not, in connection with any scheduled monument, if in [<sup>F232</sup>his][<sup>F232</sup>its] opinion it is advisable.
- (3) [<sup>F229</sup>Subject to subsection (3A) below][<sup>F233</sup>The Secretary of State][<sup>F233</sup>Historic Environment Scotland] may make a charge for giving advice and superintendence under this section or may give it free of charge, as [<sup>F234</sup>he][<sup>F234</sup>it] thinks fit.
- [<sup>F235</sup>(3A) As respects a monument situated in England, subsections (1) to (3) above shall apply as if “Commission” were substituted for “Secretary of State”, “their” for “his” (in each place) and “they think” for “he thinks”.
- (3B) References to an ancient monument in subsections (1) and (2) above, as amended by subsection (3A) above, shall be construed as if the reference in section 61(12)( b ) of this Act to the Secretary of State were to the Commission. ]

### Textual Amendments

- F229** Words inserted by National Heritage Act 1983 (c. 47, SIF 78), s. 41, **Sch. 4 para. 49(2)(4)(5)**  
**F230** Words in s. 25(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **sch. 2 para. 42(a)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.  
**F231** Words in s. 25(2) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **sch. 2 para. 42(b)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.  
**F232** Word in s. 25(2) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **sch. 2 para. 42(b)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.  
**F233** Words in s. 25(3) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **sch. 2 para. 42(c)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.  
**F234** Word in s. 25(3) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Historic Environment Scotland Act 2014 (asp 19), s. 31(2), **sch. 2 para. 42(c)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.  
**F235** S. 25(3A)(3B) inserted by National Heritage Act 1983 (c. 47, SIF 78), s. 41, **Sch. 4 para. 49(3)–(5)**

### Modifications etc. (not altering text)

- C47** S. 25(2) restricted (18.12.1996) by 1996 c. 61, s. 12, **Sch. 7 para. 4(8)(a)**

*Status: Point in time view as at 23/02/2017.*

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- C48** S. 25(2) restricted (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 9 para. 4\(8\)\(a\)](#)
- C49** S. 25(2) restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), [Sch. 19 para. 1\(8\)\(a\)](#)
- C50** S. 25(3) excluded (18.12.1996) by 1996 c. 61, s. 12, [Sch. 7 para. 4\(8\)\(b\)](#)
- C51** S. 25(3) excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 9 para. 4\(8\)\(b\)](#)
- C52** S. 25(3) excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), [Sch. 19 para. 1\(8\)\(b\)](#)

## 26 Power of entry on land believed to contain an ancient monument.

- (1) A person duly authorised in writing by [<sup>F236</sup>the Secretary of State][<sup>F236</sup>Historic Environment Scotland] may at any reasonable time enter any land in, on or under which [<sup>F236</sup>the Secretary of State][<sup>F236</sup>Historic Environment Scotland] knows or has reason to believe there is an ancient monument for the purpose of inspecting the land (including any building or other structure on the land) with a view to recording any matters of archaeological or historical interest.
- (2) Subject to subsection (3) below, a person entering any land in exercise of the power conferred by subsection (1) above may carry out excavations in the land for the purpose of archaeological investigation.
- (3) [<sup>F237</sup>Subject to subsection (4) below,] no excavation shall be made in exercise of the power conferred by subsection (2) above except with the consent of every person whose consent to the making of the excavation would be required apart from this section.
- [<sup>F238</sup>(4) Subsection (3) does not apply where—
- (a) land is, or is to be, excavated in exercise of the power conferred by subsection (2); and
  - (b) [<sup>F239</sup>the Scottish Ministers know or have][<sup>F239</sup>Historic Environment Scotland knows or has] reason to believe that any ancient monument [<sup>F240</sup>they know or believe][<sup>F240</sup>it knows or believes] to be in, on or under that land is or may be at risk of imminent damage or destruction.]
- [<sup>F241</sup>(4) But subsection (3) does not apply in relation to excavations in the land by a person authorised by the Welsh Ministers under subsection (1) if the Welsh Ministers know or have reason to believe that an ancient monument they know or believe to be in, on or under the land is or may be at risk of imminent damage or destruction.]

### Textual Amendments

- F236** Words in s. 26(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 43\(a\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F237** Words in s. 26(3) inserted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), [ss. 10\(a\)](#), 33(2); S.S.I. 2011/372, art. 2, Sch.
- F238** S. 26(4) added (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), [ss. 10\(b\)](#), 33(2); S.S.I. 2011/372, art. 2, Sch.
- F239** Words in s. 26(4)(b) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 43\(b\)\(i\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

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**F240** Words in s. 26(4)(b) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 43\(b\)\(ii\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

**F241** S. 26(4) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), [ss. 19, 41\(2\)](#)

#### **Modifications etc. (not altering text)**

**C53** S. 26 restricted (18.12.1996) by [1996 c. 61](#), s. 12, [Sch. 7 para. 4\(3\)](#)

**C54** S. 26 restricted (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 9 para. 4\(3\)](#)

**C55** S. 26 restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), [Sch. 19 para. 1\(3\)](#)

## **27 General provisions as to compensation for depreciation under Part I.**

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 5 of the <sup>M22</sup>Land Compensation Act 1961 or, in relation to land in Scotland, the rules set out in section 12 of the <sup>M23</sup>Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (2) This section applies to any compensation payable under section 7 or 9 [<sup>F242</sup>or 9ZL] of this Act in respect of any loss or damage consisting of depreciation of the value of an interest in land.
- (3) Where an interest in land is subject to a mortgage—
  - (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the mortgage;
  - (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no compensation to which this section applies shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
  - (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

#### **Textual Amendments**

**F242** Words in s. 27(2) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), [ss. 13\(2\), 41\(2\)](#)

#### **Marginal Citations**

**M22** 1961 c. 33.

**M23** 1963 c. 51.



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## 28 Offence of damaging certain ancient monuments.

- (1) A person who without [<sup>F243</sup>lawful][<sup>F243</sup>reasonable] excuse destroys or damages any protected monument [<sup>F244</sup>situated in England][<sup>F245</sup>shall be guilty of an offence if the person]—
- (a) [<sup>F246</sup>knowing that it is][<sup>F246</sup>knew or ought to have known that it was] a protected monument; and
  - (b) [<sup>F247</sup>intending][<sup>F247</sup>intended] to destroy or damage the monument or [<sup>F248</sup>being][<sup>F248</sup>was] reckless as to whether the monument would be destroyed or damaged;
- [<sup>F249</sup>shall be guilty of an offence.]
- [<sup>F250</sup>(1A) A person who without lawful excuse destroys or damages a protected monument situated in Wales is guilty of an offence if the person—
- (a) knew or ought reasonably to have known that it was a protected monument; and
  - (b) intended to destroy or damage the monument or was reckless as to whether the monument would be damaged or destroyed.]
- (2) This section applies to anything done by or under the authority of the owner of the monument, other than an act for the execution of excepted works, as it applies to anything done by any other person.
- In this subsection “excepted works” means works for which scheduled monument consent has been given under this Act (including any consent granted by order under section 3) [<sup>F251</sup>or for which development consent has been granted].
- (3) In this section “protected monument” means any scheduled monument and any monument under the ownership or guardianship of the Secretary of State [<sup>F252</sup>or the Commission] or a local authority by virtue of this Act.
- (4) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding [<sup>F253</sup>the statutory maximum][<sup>F253</sup>£50,000] or to imprisonment for a term not exceeding six months or both; or
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.
- [<sup>F254</sup>(5) In determining the amount of any fine to be imposed on a person under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.]

### Textual Amendments

**F243** Word in s. 28(1) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\), ss. 3\(3\)\(a\), 33\(2\); S.S.I. 2011/372, art. 2, Sch.](#)

**F244** Words in s. 28(1) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\), ss. 16\(2\), 41\(2\)](#)

**F245** Words in s. 28(1) inserted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\), ss. 3\(3\)\(b\), 33\(2\); S.S.I. 2011/372, art. 2, Sch.](#)

**F246** Words in s. 28(1)(a) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\), ss. 3\(3\)\(c\), 33\(2\); S.S.I. 2011/372, art. 2, Sch.](#)

**F247** Word in s. 28(1)(b) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\), ss. 3\(3\)\(d\)\(i\), 33\(2\); S.S.I. 2011/372, art. 2, Sch.](#)

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- F248** Word in s. 28(1)(b) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 3(3)(d)(ii)**, 33(2); S.S.I. 2011/372, art. 2, Sch.
- F249** Words in s. 28(1) repealed (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 3(3)(e)**, 33(2); S.S.I. 2011/372, art. 2, Sch.
- F250** S. 28(1A) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 16(3)**, 41(2)
- F251** Words in s. 28(2) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 18** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)
- F252** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 50**
- F253** Words in s. 28(4) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 4(3)(a)**, 33(2); S.S.I. 2011/372, art. 2, Sch.
- F254** S. 28(5) added (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 4(3)(b)**, 33(2); S.S.I. 2011/372, art. 2, Sch.

#### Modifications etc. (not altering text)

- C56** S. 28 excluded (18.12.1996) by [1996 c. 61](#), s. 12, **Sch. 7 para. 4(9)**
- C57** S. 28 excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **Sch. 9 para. 4(9)**
- C58** S. 28 excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 19 para. 1(9)**
- C59** S. 28(1) savings for effects of 2011 asp 3 s. 3(3) (S.) (1.12.2011) by [The Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(Saving, Transitional and Consequential Provisions\) Order 2011 \(S.S.I. 2011/377\)](#), arts. 1(1), **2(b)**

## 29 Compensation orders for damage to monuments under guardianship in England and Wales.

Where the owner or any other person is convicted of an offence involving damage to a monument situated in England and Wales which was at the time of the offence under the guardianship of the Secretary of State [<sup>F255</sup>or the Commission] or any local authority by virtue of this Act, any compensation order made under [<sup>F256</sup>section 130 of the Powers of Criminal Courts (Sentencing) Act 2000] (compensation orders against convicted persons) in respect of that damage shall be made in favour of the Secretary of State or [<sup>F257</sup>the Commission or the local authority in question (as the case may require)].

#### Textual Amendments

- F255** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 51**
- F256** Words in s. 29 substituted (25.8.2000) by [2000 c. 6](#), ss. 165, 168(1), **Sch. 9 para. 59** (with ss. 58, 62, 75)
- F257** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 51**

## 30 Disposal of land acquired under Part I.

- (1) Subject to the following provisions of this section, the Secretary of State [<sup>F258</sup>or the Commission] or any local authority may dispose of any land acquired by them under section 10, 11 or 21 of this Act.

[<sup>F259</sup>(1A) The Secretary of State shall consult with the Commission before disposing of any land situated in England under this section.

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- (1B) The Commission shall consult with the Secretary of State before disposing of any land under this section.]
- (2) A local authority shall consult with the Secretary of State before disposing of any land under this section.
- (3) Subject to subsection (4) below, where the land in question is or includes a monument, the Secretary of State or [<sup>F260</sup>the Commission or the local authority (as the case may be)] may only dispose of it on such terms as will in their opinion ensure the preservation of the monument.
- (4) Subsection (3) above does not apply in any case where the Secretary of State or [<sup>F260</sup>the Commission or the local authority (as the case may be)] are satisfied that it is no longer practicable to preserve the monument (whether because of the cost of preserving it or otherwise).

#### Textual Amendments

**F258** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 52\(2\)](#)

**F259** S. 30(1A)(1B) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 52\(3\)](#)

**F260** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 52\(4\)](#)

### 31 Voluntary contributions towards expenditure under Part I.

The Secretary of State [<sup>F261</sup>, Historic Environment Scotland] or any local authority may receive voluntary contributions for or towards the cost of any expenditure incurred by them under this Part of this Act (whether in relation to any particular monument or land or otherwise).

#### Textual Amendments

**F261** Words in s. 31 inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 44](#) (with [ss. 29, 30](#)); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.

### 32 Interpretation of Part I.

- (1) In this Part of this Act “maintenance” and “maintain” have the meanings given by section 13(7) of this Act, and expressions to which a meaning is given for the purposes of [<sup>F262</sup>the Town and Country Planning Act 1990 or the Planning (Listed Buildings and Conservation Areas) Act 1990] or (as regards Scotland) for the purposes of [<sup>F263</sup>the Town and Country Planning (Scotland) Act 1997 or the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997] have the same meaning as in [<sup>F262</sup>the said Acts of 1990] or (as the case may require) as in [<sup>F263</sup>the said Acts of 1997].
- (2) References in this Part of this Act to a monument, in relation to the acquisition or transfer of any monument (whether under a power conferred by this Part of this Act or otherwise), include references to any interest in or right over the monument.
- (3) For the purposes of this Part of this Act the Secretary of State [<sup>F264</sup> or the Commission] or a local authority are the owners of a monument by virtue of this Act if the Secretary

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of State or [<sup>F265</sup>the Commission or the local authority (as the case be)] have acquired it under section 10, 11 or 21 of this Act.

#### Textual Amendments

**F262** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, [Sch. 2 para. 43\(1\)](#)

**F263** Words in s. 32(1) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6](#), [Sch. 2 para. 29\(1\)\(a\)](#).

**F264** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 53](#)

**F265** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 53](#)

**Status:**

Point in time view as at 23/02/2017.

**Changes to legislation:**

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