



# Ancient Monuments and Archaeological Areas Act 1979

## 1979 CHAPTER 46

### PART I

#### ANCIENT MONUMENTS

##### *[<sup>F1</sup>Scheduled monument enforcement notices*

#### Textual Amendments

- F1** 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.

#### **9A Power to issue scheduled monument enforcement notice**

- (1) Where it appears to [<sup>F2</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>F3</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>F4</sup>Historic Environment Scotland requires] to cease,
  - (b) require steps falling within subsection (3) and specified in the notice to be taken.

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- (3) Those steps are—
- (a) for restoring the monument or land to its former state,
  - (b) if [<sup>F5</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>F6</sup>it considers] are required to alleviate in a manner acceptable to [<sup>F7</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>F8</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

- F2** 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.
- F3** 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.
- F4** 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.
- F5** 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.
- F6** 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.
- F7** 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.
- F8** 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)

- C1** 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

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## 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 [F9]Historic Environment Scotland] is materially affected by the notice.
- (5) [F10]Historic Environment Scotland] may, at any time—
  - (a) withdraw a scheduled monument enforcement notice (without prejudice to [F11]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) [F12]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) [F13]Historic Environment Scotland] must—
  - (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

- F9** 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.
- F10** 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.
- F11** 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.

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**F12** 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.

**F13** 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)**

**C2** 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>F14</sup>appeal to the Scottish Ministers] on any of the grounds in subsection (2).

(2) Those grounds are—

[<sup>F15</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,

[<sup>F16</sup>(ca) that scheduled monument consent ought to be granted for the works, or that 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),

[<sup>F17</sup>(da) except in relation to such a requirement as is mentioned in section 9A(3)(b) or (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.

[<sup>F18</sup>(f) that the steps required by the notice for the purpose of restoring the character 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,

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- (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  
F19(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  
F20(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.]

F21(4) . . . . .

F22(5) . . . . .

#### Textual Amendments

- F14 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.
- F15 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.
- F16 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.
- F17 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.
- F18 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.
- F19 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.
- F20 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.
- F21 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.
- F22 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.

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

- C3** 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

#### <sup>F23</sup>9CA **Determination of appeals under section 9C**

- (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
  - (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

- F23** 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.

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

- C4** 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

- F23** 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)

- C5** 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**

### 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>F24</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>F25</sup>it] in doing so.
- (2) Where a scheduled monument enforcement notice has been served in respect of a monument—

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- (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>F26</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>F27</sup>Historic Environment Scotland takes] steps under subsection (1) [<sup>F28</sup>it] may sell any materials removed by [<sup>F29</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>F30</sup>Historic Environment Scotland] must pay the proceeds to the owner less the expenses recoverable by [<sup>F31</sup>it] from the owner.
- (6) Where [<sup>F32</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>F33</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>F34</sup>Historic Environment Scotland has] not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent [<sup>F35</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.

#### Textual Amendments

- F24** 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.
- F25** 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.
- F26** 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.



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- F27** 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.
- F28** 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.
- F29** 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.
- F30** 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.
- F31** 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.
- F32** 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.
- F33** 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.
- F34** 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.
- F35** 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)

- C6** 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.
- (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—

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*Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Scheduled monument enforcement notices is up to date with all changes known to be in force on or before 21 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) View outstanding changes*

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- (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

#### **I<sup>F36</sup>9FA Enforcement by the Scottish Ministers**

- (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.
- (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.]

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### Textual Amendments

**F36** 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>F37</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>F38</sup>Historic Environment Scotland] may, when [<sup>F39</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>F40</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>F41</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>F42</sup>Historic Environment Scotland] on any person who appears to [<sup>F43</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>F44</sup>Historic Environment Scotland] may at any time withdraw a stop notice (without prejudice to [<sup>F45</sup>its] power to serve another) by notice which must be—
  - (a) served on all persons who were served with the stop notice, and
  - (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

**F37** 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.

**Changes to legislation:** Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Scheduled monument enforcement notices is up to date with all changes known to be in force on or before 21 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) View outstanding changes

- F38** 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.
- F39** 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.
- F40** 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.
- F41** 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.
- F42** 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.
- F43** 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.
- F44** 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.
- F45** 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)

- C7** 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.
- (3) Where a stop notice has been served in respect of a scheduled monument [<sup>F46</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”)
- stating that a stop notice has been served on a particular person or persons,
  - indicating its requirements, and

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- (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>F47</sup>Historic Environment Scotland] took all such steps as were reasonably practicable to effect proper service.

#### Textual Amendments

- F46** 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.
- F47** 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)

- C8** 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>F48</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.]

#### Textual Amendments

- F48** 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

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- is entitled to be compensated by <sup>F49</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>F50</sup>Historic Environment Scotland] otherwise than in consequence of the grant by <sup>F51</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>F52</sup>Historic Environment Scotland] when responding to the notice.

#### Textual Amendments

- F49** 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.
- F50** 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.
- F51** 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.
- F52** 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)

- C9** 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](#)

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## **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.]

**Changes to legislation:**

Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Scheduled monument enforcement notices is up to date with all changes known to be in force on or before 21 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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(3A) inserted by [2023 asc 3 Sch. 13 para. 20\(b\)](#)
- s. 1AA-1AE omitted by [2023 asc 3 Sch. 13 para. 21](#)
- s. 7(4A) inserted by [2016 anaw 4 s. 10\(2\)](#)
- s. 33(1A) inserted by [2023 asc 3 Sch. 13 para. 35\(a\)](#)