

Status: Point in time view as at 01/12/2011.

Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, SCHEDULE 1 is up to date with all changes known to be in force on or before 23 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)

SCHEDULES

SCHEDULE 1

Sections 2 and 4.

CONTROL OF WORKS AFFECTING SCHEDULED MONUMENTS

PART I

APPLICATIONS FOR SCHEDULED MONUMENT CONSENT

- 1 (1) Provision may be made by regulations under this Act with respect to the form and manner in which applications for scheduled monument consent are to be made, the particulars to be included therein and the information to be provided by applicants or (as the case may be) by the Secretary of State in connection therewith.
- [^{F1}(1A) The Scottish Ministers may by regulations make provision as to—
- (a) the manner in which scheduled monument consent is to be granted;
 - (b) the form and content of scheduled monument consent.]
- (2) Any scheduled monument consent (including scheduled monument consent granted by order under section 3 of this Act) shall (except so far as it otherwise provides) enure for the benefit of the monument and of all persons for the time being interested therein.

Textual Amendments

F1 Sch. 1 para. 1(1A) 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(2), 33(2)**; [S.S.I. 2011/174](#), art. 2, Sch.; [S.S.I. 2011/372](#), art. 2, Sch.

- 2 (1) [^{F2}The Scottish Ministers may refuse to entertain an application for scheduled monument consent unless it is accompanied by a certificate as to the interests in the monument to which the application relates.]
- (2) [^{F3}The Scottish Ministers may by regulations—
- (a) make provision as to the notice of any application for scheduled monument consent to be given to any person (other than the applicant) who, at the beginning of the period of 21 days ending with the date of the application, was the owner of the monument;
 - (b) make provision for publicising applications for scheduled monument consent;
 - (c) make provision as to—
 - (i) the form and content of certificates such as are mentioned in subparagraph (1) and notices such as are mentioned in paragraph (a);
 - (ii) service of such notices;

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- (d) make provision as to such further particulars of the matters to which such certificates relate as may be prescribed;
 - (e) require an applicant for scheduled monument consent to certify, in such form as may be prescribed, or to provide evidence, that any requirements of the regulations have been satisfied.
- (2A) Regulations under sub-paragraph (2) may make different provision for different classes of case.]
- (3) Regulations made for the purposes of this paragraph may make provision as to who, in the case of any monument, is to be treated as the owner for those purposes.
- (4) If any person issues a certificate which purports to comply with the requirements of this paragraph[or regulations made under it] and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding [^{F4}level 3 on the standard scale].

Textual Amendments

- F2** Sch. 1 para. 2(1)-(2A) substituted for Sch. 1 para. 2(1)(2) (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(3)(a)**, 33(2); S.S.I. 2011/174, art. 2, Sch.; S.S.I. 2011/372, art. 2, Sch.; S.S.I. 2011/174, art. 2, Sch.; S.S.I. 2011/372, art. 2, Sch.
- F3** Sch. 1 para. 2(2)(2A) substituted for Sch. 1 para. 2(2) (S.) (30.6.2011 for specified purposes) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), ss. 15(3)(a), 33(2); S.S.I. 2011/174, art. 2, Sch.
- F4** 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)

- C1** Sch. 1 para. 2 modified (1.1.1993) by [S.I. 1992/3138](#), reg. 4(2), **Sch. 2 para.1**.
- C2** Sch. 1 para. 2 modified (S.) (28.12.2007) by [The Transport and Works \(Scotland\) Act 2007 \(Consents under Enactments\) Regulations 2007 \(S.S.I. 2007/569\)](#), regs. 1, **6(2)**
- C3** Sch. 1 para. 2(1)(2) savings for effects of 2011 asp 3 s. 15(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), **3**
- C4** Words in Sch. 1 para. 1(4) 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(3)(b)**, 33(2); S.S.I. 2011/174, art. 2, Sch.; S.S.I. 2011/372, art. 2, Sch.

- [^{F5}2A As soon as practicable after receiving an application for scheduled monument consent in relation to a monument situated in England, the Secretary of State shall send a copy of the application to the Commission.]

Textual Amendments

- F5** Para. 2A inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 68(2)**

- ^{F6}[^{F7} 2~~B~~1) Where sub-paragraph (2) or (3) applies, the Scottish Ministers may refuse to entertain an application for scheduled monument consent.

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- (2) This sub-paragraph applies where—
 - (a) within the period of 2 years ending with the date the application is received, the Scottish Ministers have refused a similar application; and
 - (b) in their opinion there has been no significant change in any material considerations since the similar application was refused.
- (3) This sub-paragraph applies where the application is made at a time when a similar application is under consideration.
- (4) For the purposes of this paragraph, an application for scheduled monument consent is to be taken to be similar to another such application only if the scheduled monument and the works to which the applications relate are, in the opinion of the Scottish Ministers, the same or substantially the same.]

Textual Amendments

- F6** Words in s. 61(1) inserted (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(3)**, 33(2); S.S.I. 2011/174, art. 2, Sch.; S.S.I. 2011/372, art. 2, Sch.
- F7** Sch. 1 para. 2B inserted (S.) (1.12.2011, 1.12.2011 in so far as not already in force) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), ss. **16**, 33(2); S.S.I. 2011/372, art. 2, Sch.

Modifications etc. (not altering text)

- C5** Sch. 1 para. 2B(1) restricted (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), 4

- 3 (1) The Secretary of State may grant scheduled monument consent in respect of all or any part of the works to which an application for scheduled monument consent relates.
- (2) Before determining whether or not to grant scheduled monument consent on any application therefor, the Secretary of State [^{F8}shall][^{F8}may] either—
 - (a) cause a public local inquiry to be held; or
 - (b) afford to the applicant, and to any other person to whom it appears to the Secretary of State expedient to afford it, an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (3) Before determining whether or not to grant scheduled monument consent on any application therefor the Secretary of State—
 - (a) shall in every case consider any representations made by any person with respect to that application before the time when he considers his decision thereon (whether in consequence of any notice given to that person in accordance with any requirements of regulations made by virtue of paragraph 2 above or of any publicity given to the application by the Secretary of State, or otherwise); and
 - (b) shall also, if any inquiry or hearing has been held in accordance with sub-paragraph (2) above, consider the report of the person who held it. [^{F9}and
 - (c) shall, if the monument in question is situated in England, consult with the Commission.]

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- (4) The Secretary of State shall serve notice of his decision with respect to the application on the applicant and on every person who has made representations to him with respect to the application.

Textual Amendments

- F8** Word in Sch. 1 para. 3(2) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\), ss. 17, 33\(2\)](#); S.S.I. 2011/372, art. 2, Sch.
- F9** Para. 3(3)(c) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\), s. 41, Sch. 4 para. 68\(3\)](#)

- 4 (1) Subsections (2) to (5) of section 250 of the ^{M1}Local Government Act 1972 (evidence and costs at local inquiries) shall apply to a public local inquiry held in pursuance of paragraph 3(2) above in relation to a monument situated in England and Wales as they apply where a Minister or the Secretary of State causes an inquiry to be held under subsection (1) of that section.
- (2) Subsections (2) to (8) of section 210 of the ^{M2}Local Government (Scotland) Act 1973 (evidence and expenses at local inquiries) shall apply to a public local inquiry held in pursuance of paragraph 3(2) above in relation to a monument situated in Scotland as they apply where a Minister or the Secretary of State causes an inquiry to be held under subsection (1) of that section.

Marginal Citations

- M1** 1972 c. 70.
M2 1973 c. 65.

PART II

MODIFICATION AND REVOCATION OF SCHEDULED MONUMENT CONSENT

- 5 (1) Before giving a direction under section 4 of this Act modifying or revoking a scheduled monument consent the Secretary of State shall serve a notice of proposed modification or revocation on—
- (a) the owner of the monument and (if the owner is not the occupier) the occupier of the monument; and
 - (b) any other person who in the opinion of the Secretary of State would be affected by the proposed modification or revocation.
- [^{F10}(1A) Where the monument in question is situated in England, the Secretary of State shall consult with the Commission before serving a notice under this paragraph, and on serving such a notice he shall send a copy of it to the Commission.]
- (2) A notice under this paragraph shall—
- (a) contain a draft of the proposed modification or revocation and a brief statement of the reasons therefor; and
 - (b) specify the time allowed by sub-paragraph (5) below for making objections to the proposed modification or revocation and the manner in which any such objections can be made.

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- (3) Where the effect of a proposed modification (or any part of it) would be to exclude any works from the scope of the scheduled monument consent in question or in any manner to affect the execution of any of the works to which the consent relates, the notice under this paragraph relating to that proposed modification shall indicate that the works affected must not be executed after the receipt of the notice or (as the case may require) must not be so executed in a manner specified in the notice.
- (4) A notice of proposed revocation under this paragraph shall indicate that the works to which the scheduled monument consent in question relates must not be executed after receipt of the notice.
- (5) A person served with a notice under this paragraph may make an objection to the proposed modification or revocation at any time before the end of the period of twenty-eight days beginning with the date on which the notice was served.

Textual Amendments

F10 Para. 5(1A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 68\(4\)](#)

- 6 (1) If no objection to a proposed modification or revocation is duly made by a person served with notice thereof in accordance with paragraph 5 above, or if all objections so made are withdrawn, the Secretary of State may give a direction under section 4 of this Act modifying or revoking the scheduled monument consent in question in accordance with the notice.
 - (2) If any objection duly made as mentioned in sub-paragraph (1) above is not withdrawn, then, before giving a direction under section 4 of this Act with respect to the proposed modification or revocation, the Secretary of State shall either—
 - (a) cause a public local inquiry to be held; or
 - (b) afford to any such person an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
 - (3) If any person by whom an objection has been made avails himself of the opportunity of being heard, the Secretary of State shall afford to each other person served with notice of the proposed modification or revocation in accordance with paragraph 5 above, and to any other person to whom it appears to the Secretary of State expedient to afford it, an opportunity of being heard on the same occasion.
 - (4) Before determining in a case within sub-paragraph (2) above whether to give a direction under section 4 of this Act modifying or revoking the scheduled monument consent in accordance with the notice, the Secretary of State—
 - (a) shall in every case consider any objections duly made as mentioned in sub-paragraph (1) above and not withdrawn; and
 - (b) shall also, if any inquiry or hearing has been held in accordance with sub-paragraph (2) above, consider the report of the person who held it.
 - (5) After considering any objections and report he is required to consider in accordance with sub-paragraph (4) above the Secretary of State may give a direction under section 4 of this Act modifying or revoking the scheduled monument consent either in accordance with the notice or with any variation appearing to him to be appropriate.
- 7 As soon as may be after giving a direction under section 4 of this Act the Secretary of State shall send a copy of the direction to each person served with notice of

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- its proposed effect in accordance with paragraph 5 above and to any other person afforded an opportunity of being heard in accordance with paragraph 6(3) above.
- 8 (1) Where in accordance with sub-paragraph (3) of paragraph 5 above a notice under that paragraph indicates that any works specified in the notice must not be executed after receipt of the notice, the works so specified shall not be regarded as authorised under Part I of this Act at any time after the relevant service date.
- (2) Where in accordance with that sub-paragraph a notice under that paragraph indicates that any works specified in the notice must not be executed after receipt of the notice in a manner so specified, the works so specified shall not be regarded as authorised under Part I of this Act if executed in that manner at any time after the relevant service date.
- (3) Where in accordance with sub-paragraph (4) of paragraph 5 above a notice under that paragraph indicates that the works to which the scheduled monument consent relates must not be executed after receipt of the notice, those works shall not be regarded as authorised under Part I of this Act at any time after the relevant service date.
- (4) The preceding provisions of this paragraph shall cease to apply in relation to any works affected by a notice under paragraph 5 above—
- (a) if within the period of twenty-one months beginning with the relevant service date the Secretary of State gives a direction with respect to the modification or revocation proposed by that notice in accordance with paragraph 6 above, on the date when he gives that direction;
 - (b) if within that period the Secretary of State serves notice on the occupier or (if there is no occupier) on the owner of the monument that he has determined not to give such a direction, on the date when he serves that notice; and
 - (c) in any other case, at the end of that period.
- (5) In this paragraph “the relevant service date” means, in relation to a notice under paragraph 5 above with respect to works affecting any monument, the date on which that notice was served on the occupier or (if there is no occupier) on the owner of the monument.
- 9 (1) Subject to sub-paragraph (2) below, subsections (2) to (5) of section 250 of the ^{M3}Local Government Act 1972 (evidence and costs at local inquiries) shall apply to a public local inquiry held in pursuance of paragraph 6(2) above as they apply where a Minister or the Secretary of State causes an inquiry to be held under subsection (1) of that section.
- (2) Subsection (4) of that section (costs of the Minister causing the inquiry to be held to be defrayed by such local authority or party to the inquiry as the Minister may direct) shall not apply except in so far as the Secretary of State is of opinion, having regard to the object and result of the inquiry, that his costs should be defrayed by any party thereto.
- (3) In the application of this paragraph to Scotland, in sub-paragraph (1) for the words “subsections (2) to (5) of section 250 of the ^{M4}Local Government Act 1972 (evidence and costs at local inquiries)” there shall be substituted the words “subsections (2) to (8) of section 210 of the ^{M5}Local Government (Scotland) Act 1973 (evidence and expenses at local inquiries)”, and in sub-paragraph (2) for the words “subsection (4) of that section (costs)” there shall be substituted the words “subsection (7) of that section (expenses)”.

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M3 1972 c. 70.

M4 1972 c. 70.

M5 1973 c. 65.

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