

HISTORIC ENVIRONMENT SCOTLAND ACT 2014

EXPLANATORY NOTES

SCHEDULES

Schedule 1 – Historic Environment Scotland

105. This schedule makes provision about the status, membership, procedures and powers relating to Historic Environment Scotland.
106. [Paragraph 1](#) sets out the status of Historic Environment Scotland: it is not a Crown body and therefore does not have any of the special privileges of the Crown. Crown bodies are not, for example, required to obtain formal scheduled monument consent for works to properties in their ownership or care.
107. [Paragraph 2](#) deals with membership arrangements in relation to the Board of Historic Environment Scotland. Sub-paragraph (1) sets out maximum and minimum numbers (which Ministers have a power under sub-paragraph (8) to vary from the 10-15 specified here). All Board members are to be appointed by the Scottish Ministers and must have (sub-paragraph (3)) skills and expertise relevant to the functions of the body. There is no specification of particular fields of expertise, with the expectation being that Ministers will select a balanced board whose members among them combine knowledge of the functional areas with skills and experience suitable for managing a large public body. Sub-paragraph (4) specifies that Ministers must encourage equal opportunities when making appointments to the board. The specific meaning of “equal opportunities” is clarified by sub-paragraph (9). More generally, it is intended to add Historic Environment Scotland to the list of bodies whose appointments are regulated by the Commissioner for Ethical Standards in Public Life in Scotland. In order that the first round of appointments can be regulated and conducted according to the Commissioner’s Code of Practice the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Historic Environment Scotland as Specified Authority) Order 2014 is already in force, meaning that Historic Environment Scotland can be treated as if it were a specified body listed in schedule 2 to the 2003 Act. Sub-paragraph (5) allows Ministers to set the terms and conditions of service of Board members, while sub-paragraph (6) sets out arrangements for members to resign. Sub-paragraph (7) allows for Ministers to reappoint members.
108. [Paragraph 3](#) sets out that members of certain bodies are not eligible to be appointed as Board members, or must cease to be Board members if they attain a place in these bodies. The bodies specified are the House of Commons, the House of Lords, the Scottish Parliament and the European Parliament. The reason for these exclusions is to avoid any perception of conflicts of interest between the legislative role of these bodies and the decision-making role of Historic Environment Scotland.
109. [Paragraph 4](#) sets out the arrangements for removal of members, including insolvency, repeated non-attendance or inability to discharge the duties required of members. These

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2014 (asp 19) which received Royal Assent on 9 December 2014*

factors, if they pre-existed, would debar any person from being appointed in the first instance, so only provisions for removal are required in the Act.

110. [Paragraph 5](#) allows for payment of remuneration, allowances and expenses to Board members, with Ministers determining the rates.
111. [Paragraph 6](#) sets out the arrangements for appointment and employment of a person as Chief Executive, with a requirement for Ministerial approval of the Board's chosen candidate. This paragraph also covers arrangements for the employment of staff.
112. [Paragraph 7](#) allows for the payment of pensions, allowances and gratuities by Historic Environment Scotland, with Ministers again determining the rates.
113. [Paragraphs 8 and 9](#) set out the arrangements for the Board's business, including committees, procedure and meetings. Ministers and officials are permitted to attend meetings, but may not vote.
114. [Paragraph 10](#) allows the Board to delegate any of their functions to members, committees or employees, except that the Board cannot delegate the approval of annual reports and accounts.
115. [Paragraph 11](#) allows for proceedings of Historic Environment Scotland to remain valid, even when conducted while the Board or a committee is temporarily short of the minimum specified number of members or if a member of the Board or committee subsequently proves to be ineligible for membership or is disqualified. The normal conduct of Board business would allow the Chair to require any business conducted in such circumstances to be brought back to the Board for review.
116. [Paragraph 12](#) sets out the general powers available to Historic Environment Scotland. Sub-paragraph (1) is a power to do anything related to the exercise of its functions while sub-paragraph (2) sets out a list of particular powers. These powers are intended to give the body a sufficiently wide range of powers to undertake any activity currently in hand at RCAHMS or Historic Scotland or foreseen.
117. [Paragraphs 13 and 14](#) set out requirements in respect of accounts and reports, including for their publication.

Schedule 2 – Functions of Historic Environment Scotland in Relation to Scheduled Monuments

118. [Schedule 2](#) to the Act makes provision for Historic Environment Scotland's functions in relation to scheduled monuments (within the meaning of the 1979 Act) as well as making other modifications.

Part 1 – Schedule of monuments

119. [Part 1](#) of the schedule confers on Historic Environment Scotland the function under section 1 of the 1979 Act of compiling and maintaining a schedule of monuments of national importance as currently carried out by Historic Scotland for Scottish Ministers. It also makes other modifications of section 1 of the 1979 Act. This includes replacing section 1(6) with a new version which makes clear that HES must notify prescribed persons of changes to the schedule of monuments in such form and manner and within such time as set out by Ministers in regulations.
120. The duty of Ministers to compile and publish a list of scheduled monuments is replaced by a duty on Historic Environment Scotland to compile and publish the schedule as prescribed by Ministers. The latter change will involve the replacement of a regularly published printed index to scheduled monuments by online access to digital versions of the scheduling documents (including maps) which relate to each and every scheduled monument. Online public access to this definitive material will be what the body is

required to deliver, rather than a simple list, though such lists can still be generated if need arises.

Part 2 – Scheduled Monument Consent

121. [Part 2](#) of the schedule confers on Historic Environment Scotland functions in relation to the grant, modification and revocation of scheduled monument consents; modifies the functions of the Scottish Ministers in relation to modification and revocation of such consents, and makes consequential modifications, including to the procedure for applications for the grant, modification and revocation of such consents. From the point of view of applicants for consent, the extant system is being altered to enable Historic Environment Scotland to undertake the functions above as well as Ministers, with the additional provision of an appeal to Ministers (see below for more detail on appeals).
122. [Paragraph 5](#) confers the power to grant scheduled monument consent under section 2 of the 1979 Act on Scottish Ministers or Historic Environment Scotland. Sub-paragraph (d) inserts subsection (5A) into section 2 of the 1979 Act. This allows for the granting of partial consent in relation to an application for scheduled monument consent.
123. [Paragraph 6](#) inserts new section 3A into the 1979 Act. This allows any person interested in a scheduled monument which is subject to a scheduled monument consent granted subject to conditions to apply to Historic Environment Scotland for the variation or discharge of any such conditions. The section also sets out details of what an application must specify and what actions Historic Environment Scotland may take in response. It also recognises that Ministers may take decisions on such applications where they have used their call-in powers.
124. [Paragraph 7](#) further amends the 1979 Act by substituting subsections (3) and (4) of section 4 with two new subsections which allow Historic Environment Scotland to revoke or modify a scheduled monument consent at any time before works have been completed. Subsection (4) also clarifies that any modification or revocation does not apply to works already carried out.
125. [Paragraph 8](#) inserts a new section 4A into the 1979 Act which relates to the modification and revocation of scheduled monument consent by Scottish Ministers, including arrangements for notification and hearings. The effect of these changes is to recast the provisions of Part II of schedule 1 to the 1979 Act to harmonise procedure with that for modifications and revocations in respect of listed buildings under the 1997 Act. The intended effect of these changes is to make procedures around scheduled monument consent as similar as possible to procedures around listed building consent.
126. [Paragraphs 9 to 13](#) make changes to sections 5 to 9 of the 1979 Act to give Historic Environment Scotland the necessary powers and liabilities in relation to its newly conferred functions under the 1979 Act.
127. [Paragraph 14](#) amends Part 1 of schedule 1 (applications for scheduled monument consent) to the 1979 Act to require applications for scheduled monument consent to be made to and dealt with by Historic Environment Scotland rather than by the Scottish Ministers.
128. Sub-paragraph (5) inserts new paragraph 2C into schedule 1 of the 1979 Act, to ensure that Historic Environment Scotland is required to notify Ministers of certain specified applications for scheduled monument consent. This means that Ministers can decide which cases or types of cases should be notified to them by Historic Environment Scotland where it intends to grant consent. This also provides that HES must not grant scheduled monument consent until the 28 day period (in which Ministers can decide to call in an application) has expired without Ministers calling in the application, or giving notice that more time is required, or until Ministers have notified HES that they do not intend to call in the application.

129. Sub-paragraph (6)(b) of paragraph 14 substitutes sub-paragraphs (2) and (3) of paragraph 3 with a new sub-paragraph (2) which allows the Scottish Ministers to prescribe (by way of regulations) the procedures to be followed by Historic Environment Scotland when determining applications for scheduled monument consent.
130. [Paragraph 15](#) repeals paragraphs 5 to 9 of Schedule 1 of the 1979 Act in connection with amendments made by paragraph 7, and further amends Part 2 of schedule 1 of the same Act in this respect.

Part 3 – Scheduled monument enforcement notices

131. [Part 3](#) of the schedule relates to scheduled monument enforcement notices.
132. [Paragraphs 16-18](#) confer on Historic Environment Scotland functions in relation to scheduled monument enforcement notices currently conferred on the Scottish Ministers, by amending sections 9A and 9B of the 1979 Act to allow Historic Environment Scotland to serve a scheduled monument enforcement notice in respect of unauthorised works carried out to a scheduled monument.
133. [Paragraphs 19 and 20](#) amend the 1979 Act with regards to appeals against scheduled monument enforcement notices.
134. [Paragraph 19](#) amends section 9C of the 1979 Act to enable appeals against scheduled monument enforcement notices to be made to Ministers rather than the Sheriff as is the case at present. This paragraph also amends section 9C to update the provisions as regards the grounds of appeal against scheduled monument enforcement notices to bring them in line with the grounds for appeals against listed building enforcement notices.
135. [Paragraph 19\(c\)](#) and (d) insert subsections 2A and 3A into section 9C, adding provisions that written notice of an appeal must be given to the Scottish Ministers before the date at which the enforcement notice should come into effect, and provisions that persons giving such notice must submit (within a prescribed timeframe) a statement specifying the grounds on which the appeal is made, and any other information as Ministers prescribe.
136. [Paragraph 20](#) inserts sections 9CA and 9CB into the 1979 Act relating to the determination of and procedure for appeals. These two new sections align appeals against scheduled monument enforcement notices with equivalent provisions in the 1997 Act in respect of appeals against listed building consent enforcement notices.
137. New section 9CA gives Ministers a power to give directions to HES in order to give effect to the determination of an appeal against a scheduled monument enforcement notice. Such directions may include quashing the notice. The effect of the insertion of Section 9CB is to give Ministers the power to make provision in regulations in connection with appeals including the form, manner and time for making an appeal, the notification of an appeal and the manner in which the appeal is to be conducted. Section 9CB also specifies that new schedule 1A (as inserted by schedule 2, paragraph 34) which makes provisions regarding the determination of certain appeals by a person other than Ministers, applies to appeals under section 9C.
138. Amendments to section 9D of the 1979 Act by paragraph 21 give Historic Environment Scotland power to enter land in, on or under which the scheduled monument is situated to undertake any works which have not been carried out within the period for compliance with the notice.
139. [Paragraph 22](#) inserts section 9FA into the 1979 Act with the effect that the Scottish Ministers may serve a scheduled monument enforcement notice under section 9A. Such a notice has the same effect as if the notice were served by Historic Environment Scotland. This allows Ministers to serve these notices in cases where they have called

in an application for scheduled monument consent. Ministers must not serve a notice under this section without first consulting Historic Environment Scotland.

Part 4 – Scheduled monuments: stop notices

140. **Part 4** of the schedule confers on Historic Environment Scotland functions in relation to stop notices and temporary stop notices currently conferred on Scottish Ministers by amending sections 9G, 9H, 9I, 9K, 9L and 9N of the 1979 Act. From the point of view of the person receiving such a notice, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland. Amendments to section 9G of the 1979 Act enable Historic Environment Scotland to serve a stop notice, where a scheduled monument enforcement notice has been served requiring works to cease, whilst amendments to section 9K enable Historic Environment Scotland to serve a temporary stop notice requiring works to stop immediately.
141. **Paragraph 26** inserts section 9HA into the 1979 Act with the effect that the Scottish Ministers may serve a stop notice under section 9G, and that this has the same effect as if the notice were served by Historic Environment Scotland. This allows Ministers to serve these notices in cases where they have called in an application for scheduled monument consent. Ministers must not serve a notice under this section without first consulting Historic Environment Scotland.

Part 5 – Appeals and referrals from Historic Environment Scotland

Chapter 1 – Appeals from Historic Environment Scotland

142. **Chapter 1** of Part 5 of the schedule makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers and for the referral of applications for and related to scheduled monument consent from Historic Environment Scotland to the Scottish Ministers. This is a new provision, consequent on transfer of duties previously performed by Ministers through their officials. Historic Environment Scotland will have internal processes which it is intended will resolve most disagreements, so it is intended that appeal processes set out in the Act will be required relatively infrequently.
143. **Paragraph 32** inserts a new section 1C into the 1979 Act which gives owners, tenants and occupiers the right to appeal to the Scottish Ministers against a decision of Historic Environment Scotland to include a monument in the Schedule or to amend an entry relating to the monument in question in the Schedule. Inserted new section 1D allows for the Scottish Ministers either to dismiss or to allow (in whole or in part) such an appeal, and also allows the Scottish Ministers to direct HES to modify the Schedule to take account of the outcome of an appeal which has been allowed. Inserted new section 1E provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals.
144. **Paragraph 33** inserts new section 4B into the 1979 Act which gives applicants for scheduled monument consent the right to appeal to the Scottish Ministers in the following circumstances – refusal of consent, the granting of consent subject to conditions, refusal of an application for variation or discharge of conditions attached to consent, granting of consent subject to conditions and refusal of an application for subsequent approval required by a condition to which consent is subject. Paragraph 33 also inserts two further new sections: 4C which makes further provision relating to such appeals whilst 4D provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals under 4B.
145. **Paragraph 34** inserts a new schedule 1A into the 1979 Act after schedule 1. This schedule makes provisions about the determination of certain appeals by a person other than the Scottish Ministers and applies to appeals under inserted sections 1C, 4B and 9C. This applies to appeals against inclusion of a monument in the schedule, appeals in relation to scheduled monument consent and appeals against scheduled monument

enforcement notices. Paragraph 1 of schedule 1A allows for the Scottish Ministers to prescribe classes of appeals under sections 1C, 4B and 9C which can be determined by a person appointed by the Scottish Ministers.

146. Paragraph 2 of schedule 1A sets out the powers and duties of a person so appointed. Paragraph 3 allows for the Scottish Ministers to direct that an appeal which would be determined by an appointed person is instead to be determined by them, while paragraph 4 provides for the Scottish Ministers to revoke a direction made under the powers set out in paragraph 3 at any time.

Chapter 2 – Referral of certain applications

147. **Chapter 2** of Part 5 of the schedule makes provision for the referral of applications for (and related to) scheduled monument consent from Historic Environment Scotland to the Scottish Ministers by inserting a new section 3B into the 1979 Act. This enables the Scottish Ministers to call in an application for decision by them instead of by Historic Environment Scotland, offering harmonisation with wider planning procedures.

Part 6 – Functions in relation to gardens and designed landscapes and battlefields

148. **Part 6** of the schedule confers on Historic Environment Scotland the function currently conferred on Scottish Ministers of compiling and maintaining the inventory of gardens and designed landscapes and the inventory of battlefields and amends sections 32A and 32B of the 1979 Act.

Part 7 – Other matters in relation to scheduled monuments

149. **Part 7** of the schedule makes other modifications of the 1979 Act in relation to scheduled monuments to enable Historic Environment Scotland to undertake functions in relation to such monuments, including provision for powers of entry.
150. **Paragraph 40** amends the 1979 Act to allow both Historic Environment Scotland and the Scottish Ministers, to seek to restrain or prevent any breach of controls provided under the 1979 Act by means of an application to the court for interdict.

Schedule 3 – Functions of Historic Environment Scotland in Relation to Listing and Conservation

151. **Schedule 3** to the Act makes provision for Historic Environment Scotland's functions in relation to listed buildings and conservation areas (within the meaning of the 1997 Act) as well as other modifications.

Part 1 – Listing of special buildings

152. **Paragraph 2** of Part 1 of the of the schedule confers on Historic Environment Scotland the function of compiling, or approving, lists of buildings of special architectural or historic interest under section 1 of the 1997 Act, currently conferred on Scottish Ministers. Paragraph 3 inserts a new section 1A into the 1997 Act which imposes a duty on Historic Environment Scotland to publish the list compiled under section 1 and to notify certain persons and gives the Scottish Ministers the power to set out in regulations the requirements of such publication and notification. From the point of view of the owner or occupier of a building, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

Part 2 – Listed Building Consent

153. **Part 2** of the schedule confers on Historic Environment Scotland functions in relation to the grant, modification and revocation of listed building consent. From the point of

view of the owner or occupier of a building, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

154. [Paragraph 8](#) amends section 7 of the 1997 Act to confer the power (currently held by Scottish Ministers) on Historic Environment Scotland to grant listed building consent.
155. [Paragraph 9](#) of schedule 3 amends section 9 of the 1997 Act to enable the Scottish Ministers to include in regulations the procedure to be followed by planning authorities or the Scottish Ministers in considering and determining an application for listed building consent. Paragraph 9 also inserts section 9(6) which specifies that the regulations must include provisions that require planning authorities to consult with Historic Environment Scotland before granting listed building consent. Under new section 9(6) Ministers may also prescribe which listed building or conservation area applications local authorities must consult on prior to granting or refusing listed building consent or conservation area consent. This means that Historic Environment Scotland will not need to be consulted on all applications, ensuring that it is only involved where a national perspective will add value.

Part 3 – Conservation areas

156. [Part 3](#) of the schedule confers on Historic Environment Scotland functions in relation to conservation areas currently conferred on Scottish Ministers, including functions in relation to building preservation orders. From the point of view of owners or occupiers within a Conservation Area, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

Part 4 – Appeals against listing

157. [Part 4](#) of the schedule makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers. This is a new provision, consequent on transfer of duties previously performed by Ministers through their officials. Historic Environment Scotland will have internal processes which it is intended will resolve most disagreements, so it is intended that appeal processes set out in the Act will be required relatively infrequently.
158. [Paragraph 18](#) inserts sections 5B, 5C and 5D into the 1997 Act. This allows any owner, occupier or tenant of a building to appeal to the Scottish Ministers against a decision of Historic Environment Scotland to designate a building as a listed building or to amend the list concerning the building in question (except where the amendment removes the building from the list). Inserted section 5C allows the Scottish Ministers either to dismiss or to allow (in whole or in part) such an appeal, and also allows the Scottish Ministers to direct HES to modify the List to take account of the outcome of an appeal which has been allowed. The determination by the Scottish Ministers of an appeal under this section is final. Inserted section 5D provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals.

Part 5: Other matters in relation to listing

159. [Part 5](#) of the schedule makes other modifications to the 1997 Act to enable Historic Environment Scotland to undertake functions in relation to listing, including powers of entry.

Schedule 4 – Functions of Historic Environment Scotland in Relation to the Marine Environment

160. [Schedule 4](#) to the Act makes provision conferring functions on Historic Environment Scotland in relation to the marine environment by amending the 2010 Act. However, Historic Environment Scotland is not given the power to designate historic Marine Protected Areas: this power remains solely with the Scottish Ministers.

161. **Paragraph 2** inserts section 80A into the 2010 Act. This sets out the circumstances in which Historic Environment Scotland may give advice and guidance as regards Historic Marine Protected Areas (MPA) designated under that Act. Amendments are also made to section 82 to 84 of the 2010 Act to require a public authority to notify Historic Environment Scotland where the exercise of any of the authority's functions or the making of determinations is capable of affecting a marine historic asset in a Historic MPA.

Schedule 5 – Transfer of Staff, Property Etc. to Historic Environment Scotland

162. **Schedule 5** to the Act makes provision for the transfer of staff and property etc. to Historic Environment Scotland.
163. **Paragraphs 1 to 3** make provision in relation to staff transfers. Paragraph 1 empowers the Scottish Ministers to make a staff transfer scheme making provision for or in connection with the transfer of staff employed by RCAHMS and staff of the Scottish Ministers employed in Historic Scotland to Historic Environment Scotland. Such a scheme is not subject to Parliamentary procedure.
164. Under paragraph 2, the scheme must specify the date on which the transfer is to take place. The scheme may specify different dates for different purposes and make different provision in relation to different cases or classes of case.
165. **Paragraph 3** makes provision in respect of the effect of the transfer on an employee's contract. It provides that the contract of employment for the person who is transferring has effect on or after the transfer date as if originally made between the employee and Historic Environment Scotland.
166. **Paragraph 3(5)** provides that employed staff may object in advance of their contract being transferred to Historic Environment Scotland, in which case their contract is terminated at the end of the day before the intended transfer. This termination will not be treated as dismissal of a person for the purposes of the legislation.
167. **Paragraphs 4 and 5** cover property transfers. Paragraph 4(1) enables the Scottish Ministers to make a property transfer scheme making provision for the transfer to Historic Environment Scotland of property, rights, liabilities and obligations of Scottish Ministers or RCAHMS. This includes property rights and obligations under lease agreements and rights and liabilities under grant and loan agreements.
168. **Paragraph 5(3)** provides that a transfer scheme may make provision in relation to different cases or classes of case and may specify different dates in relation to different property, rights, liabilities and obligations.

Schedule 6 – Consequential Modifications

169. **Schedule 6** to the Act lists consequential modifications to other Acts which are not specific to the historic environment. Historic Environment Scotland, as with all newly created public bodies, requires to be added to the list of bodies covered in areas of regulation which apply across the public sector. Schedule 6 makes these changes in the following areas, each relative to the similarly named Act:
- Ethical standards
 - Public services conduct
 - Freedom of information
 - Public appointments and public bodies
 - Public services reform
 - Public records

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170. Finally, schedule 6 provides for RCAHMS, once it is dissolved, to be removed from the schedules accompanying these Acts.