



## EXPLANATORY NOTES

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### **Historic Environment Scotland Act 2014 (asp 19)**

£6.00



# **HISTORIC ENVIRONMENT SCOTLAND ACT 2014**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE ACT**

3. The purpose of the Act is to create a new lead body for Scotland's historic environment – Historic Environment Scotland - which will be a Non-Departmental Public Body, and to equip that body with the necessary powers to be able to carry out the functions which are currently delivered by Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). The Act provides for RCAHMS to be dissolved. The Act also sets out the governance arrangements for the new body and provides for the delegation or transfer to Historic Environment Scotland of Ministerial powers and responsibilities under existing legislation. The Act enables the transfer of the property, staff and liabilities of both RCAHMS and Historic Scotland to Historic Environment Scotland (excluding properties and collections in the care of Scottish Ministers) and realigns certain functions in relation to designation and regulation of the historic environment so they are more consistent with each other and with the wider planning system.

### **Background: Status and functions of Historic Scotland and RCAHMS**

4. Historic Scotland is an Executive Agency of the Scottish Government. This means that it has no powers of its own, but operates using powers conferred on Scottish Ministers.
5. The main functions which Historic Scotland carries out are:
  - Caring for and presenting to visitors the Properties in Care;
  - Designating places to be protected, by scheduling of monuments of national importance, by listing buildings of architectural or historic interest, by adding to the Inventory of Gardens and Designed Landscapes and the Inventory of Historic Battlefields and by designating Historic Marine Protected Areas;

*These notes relate to the Historic Environment Scotland Act 2014 (asp 19)  
which received Royal Assent on 9 December 2014*

- Providing specialist advice and expert knowledge to the Scottish Government's Historic Environment Policy Unit to inform the development of Scottish Ministers' policies as they relate to the historic environment and other matters;
- Providing financial assistance towards the conservation and enhancement of the historic environment; and
- Providing guidance on the management of the historic environment.

6. RCAHMS was established by Royal Warrant in 1908. It is treated for administrative purposes as a Non-Departmental Public Body. It has been a registered charity since 1992, when the Royal Warrant was last updated. Its purpose is to:

- identify, survey and analyse the historic and built environment of Scotland;
- preserve, care for and add to the information and items in its collections; and
- promote understanding, education and enjoyment through interpretation of the information it collects and items it looks after.

7. Many of Historic Scotland's functions are set out in statute, mainly in the Acts listed below. The Act amends the following Acts to ensure that Historic Environment Scotland can operate as intended:

- the Historic Buildings and Ancient Monuments Act 1953 ("the 1953 Act");
- the Ancient Monuments and Archaeological Areas Act 1979 ("the 1979 Act");
- the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ("the 1997 Act"); and
- the Marine (Scotland) Act 2010 ("the 2010 Act").

## **STRUCTURE OF THE ACT**

8. The Act is in seven Parts:

- Part 1 - Historic Environment Scotland;
- Part 2 - Functions in relation to scheduled monuments;
- Part 3 - Functions in relation to listing and conservation;
- Part 4 - Functions in relation to the marine environment;
- Part 5 - Dissolution of RCAHMS and transfer of staff etc. to Historic Environment Scotland;
- Part 6 - Further modifications in relation to the historic environment; and
- Part 7 – Final provisions.

9. The Act also includes six schedules setting out the detailed arrangements in relation to a number of areas covered by the Act and making minor and consequential amendments.

## **COMMENTARY**

### **PART 1 – HISTORIC ENVIRONMENT SCOTLAND**

#### **Section 1 – Historic Environment Scotland**

10. Section 1 provides for the creation of a new body to be known as Historic Environment Scotland, with the functions conferred on it by this Act and any other enactment. This section introduces schedule 1 to the Act, which makes provision about the status, membership procedures and powers of Historic Environment Scotland. Further notes on schedule 1 are given in paragraphs 105 to 117.

#### **Section 2 – Functions of Historic Environment Scotland**

11. Section 2 sets out the functions of the Historic Environment Scotland. Subsection (1) sets out that the new body has the general function to investigate, care for and promote Scotland's historic environment. Subsection (2) expands on the general function.

12. Subsection (2)(a) gives Historic Environment Scotland the function of identifying and recording the historic environment. It might, for example, do this by undertaking field and aerial survey programmes to identify new sites or gather more information about existing sites, and creating records of discoveries.

13. Subsection (2)(b) gives Historic Environment Scotland the function of understanding and interpreting the historic environment. It might do this by undertaking research into historic buildings to determine their date and building sequence and presenting the results to a variety of audiences in various media.

14. Subsection (2)(c) gives Historic Environment Scotland the function of learning about, and educating others about, the historic environment. This might be done by participating in collaborative research programmes with individuals, academic institutions and other bodies, or by acquiring knowledge of traditional skills and techniques and helping to maintain these by training new craftspeople, or by using material in the collections to contribute to teaching materials for schools.

15. Subsection (2)(d) gives Historic Environment Scotland the function of protecting and managing the historic environment. It could do this by engaging with the development planning process to ensure that the historic environment is considered in strategic development proposals. Its work in designating scheduled monuments, listed buildings, gardens and designed landscapes and battlefields will provide the foundation for protection of these important assets.

16. Subsection (2)(e) gives Historic Environment Scotland the function of conserving and enhancing the historic environment. Its work in this respect might include undertaking or arranging hands-on maintenance and repair work at the visitor properties it manages, or supporting work to improve the general condition of a conservation area.

17. Subsection (3) gives Historic Environment Scotland the function of managing its collections as a national resource for reference, study and research. Subsection (4) expands on this function. Definitions of “collection” and “object” are given in section 14 of the Act and explained under ‘Section 14 – Interpretation of Part 1’ in paragraphs 77 to 81.

18. Subsection (4)(a) sets out that in exercising its section 3 function Historic Environment Scotland must do so with a view to preserving, conserving and developing its collections. It might, for example, do this by engaging specialist conservators to maintain or bring objects in the collections to a good condition, by ensuring that the objects in its collections are stored and accessed in ways which seek to minimise deterioration, or by adding significant new material to its collections to ensure that their value and currency are maintained. Such activities might be undertaken within the framework of a collections strategy.

19. Subsection (4)(b) sets out that in exercising its section 3 function Historic Environment Scotland must do so with a view to making the collections accessible to the public and to persons wishing to carry out study and research. This could be achieved by making public search rooms available so that objects in the collections can be brought to persons wishing to consult them or by digitally copying objects and making them available online.

20. Subsection (4)(c) sets out that in exercising its section 3 function Historic Environment Scotland must do so with a view to exhibiting and interpreting objects in the collections. Ways of doing this might include organising the public display of objects on a particular theme or topic, and delivering audio, visual or audio-visual aids to assist those wishing to understand the context and cultural significance of the exhibits. It might collaborate to exhibit collections internationally to encourage tourism to Scotland, or seek the loan of another body’s collections to support particular exhibitions. This function will also be delivered online.

21. Subsection (5) sets out the manner in which Historic Environment Scotland is to exercise its functions.

22. Subsection (5)(a) sets out that in exercising its functions Historic Environment Scotland must do so with a view to encouraging education and research. This might include partnering with academic institutions and other bodies in research projects, or seeking to encourage school and university students to use its collections or visitor sites in connection with curricular studies.

23. Subsection (5)(b) sets out that in exercising its functions Historic Environment Scotland must do so with a view to promoting and contributing to understanding and enjoyment of the historic environment and of its collections. Activities such as organising public events and activities at the properties that it looks after, publishing accessible and useful information and running hands-on activities to engage the public in the process of discovery would be among the ways it could achieve this.

24. Subsection (5)(c) sets out that in exercising its functions Historic Environment Scotland must do so with a view to promoting the diversity of persons accessing the historic environment and its collections. It might, for example, invest in works to improve physical access to the monuments and historic buildings it presents to the public or deliver community engagement activities that are focused on increasing diversity and tailored to meet the needs of particular groups and individuals. Online access to its services might be particularly important here.

25. Subsection (5)(d) sets out that in exercising its functions Historic Environment Scotland must do so with a view to offering and promoting leadership in relation to the historic environment. This could include leading collaborative projects to develop standards in connection with the management, protection and conservation of the historic environment. It might also lead by example: demonstrating high standards of conservation work or producing attractive and informative publications.

26. Subsection (5)(e) sets out that in exercising its functions Historic Environment Scotland must do so with a view to working in collaboration with other persons (whether in partnership or in other ways). Ways of doing this might include providing training and support to groups wishing to identify and record their local historic environment, or supporting owners who wish to repair or maintain historic buildings in the most authentic manner. It might work with others to develop online solutions that fulfil specific user needs by providing integrated access to information and digitised collections held by several different collections.

27. Subsection (5)(f) sets out that in exercising its functions Historic Environment Scotland must do so with a view to contributing, as appropriate, to the development and delivery of policies and strategies in relation to the historic environment. This might involve active participation in and contributing expert knowledge to professional forums and committees. This strategic approach is currently represented by Scotland's Historic Environment Strategy, in which Historic Environment Scotland will be a key partner.

28. Subsections (6) and (7) allow Historic Environment Scotland to support and assist (including by financial support and assistance) any other person carrying out functions similar to its own functions.

29. Subsection (8)(a) requires Historic Environment Scotland, when exercising its functions, to have regard to wider relevant government policies and strategies. It might do this, for example, by ensuring that a modern building which acts as accommodation for its staff is compliant with government policies on energy efficiency and waste reduction, by ensuring that the management of visitor sites is in accord with biodiversity requirements or by considering wider regeneration objectives when allocating grants and loans under its various programmes.

30. Subsection (8)(b) requires Historic Environment Scotland, when exercising its functions, to have regard to the interests of local communities, as may be appropriate in the circumstances. It will be for HES to decide on what is appropriate in each case.

### **Section 3 – Delegation of functions in relation to properties in care**

31. Section 3 allows the Scottish Ministers to delegate their functions (statutory and non-statutory) in relation to properties in care to Historic Environment Scotland or any prescribed person Ministers consider appropriate. This means that Ministers may only delegate functions under this section to persons who have been first prescribed by order.

32. Subsection (3) allows for delegation to take place despite the existence of prohibitions or restrictions on delegation in agreements.

33. Subsection (5) makes it clear that any revenue received as a result of the exercise of any delegated function is the revenue of the person to whom the function is delegated unless Ministers provide otherwise in the delegation. Thus, Historic Environment Scotland would retain money paid for admittance to visitor properties.

34. Subsection (6) makes it clear that delegating functions does not affect the ultimate responsibility of the Scottish Ministers for properties in care.

35. Subsection (8) requires Ministers to publish delegations under subsection (1), in the interests of transparency.

36. The scheme(s) of delegation from the Scottish Ministers to Historic Environment Scotland or other bodies would specify expected standards of conservation and maintenance and degree of public access, and the measures by which achievement of these would be monitored. Schemes of delegation could also deal with matters such as charging for access and for additional services.

### **Section 4 – Properties in Care**

37. Under section 4, the Scottish Ministers are under a duty to maintain and publish a list of “properties in care”, functions relating to which can be delegated under section 3.

38. “Property in care” means any heritable property which is of historical, archaeological, architectural or cultural significance or interest and which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers. Currently there are 345 such properties, consisting of a mixture of properties where Ministers hold title, properties where guardianship agreements have conferred management responsibilities on Ministers in perpetuity, and a small number of properties which are leased or held by other means. In all cases, these properties are held for the purpose of being conserved and made accessible for the public.

### **Section 5 – Power of entry to investigate the historic environment**

39. Section 5 gives Historic Environment Scotland the power to enter land (including buildings or other structures on the land) to identify and record the historic environment, subject to certain provisions set out in the subsections.

40. Subsections (2) to (4) set out details of how this power may be exercised, including restrictions on the power, for example the exclusion of access to dwellings. Similar statutory powers of access, which already exist for Ministers and their employees, are only used as a last resort after every effort to contact the owner or occupier of a property has failed. These powers have been exercised very seldom – less than ten times in total over the past 30 years.

41. Subsection (5) makes it a criminal offence to (without reasonable excuse) intentionally obstruct a person exercising the powers of entry under subsection (1). The offence is punishable on summary conviction up to a maximum fine, set in subsection (6), of level 3 on the standard scale (currently £1000).

### **Section 6 – Acquisition, deposit and disposal of objects**

42. Section 6 specifies Historic Environment Scotland’s powers in relation to the acquisition, acceptance on deposit of and disposal of objects. Historic Environment Scotland may acquire objects (either by purchase, exchange or gift) or accept objects on deposit to develop the collections. Deposit is an arrangement whereby a depositor charges a body (in this case Historic Environment Scotland) with the safe-keeping of an object or collection for a fixed or indefinite period of time, with ownership of the property resting with the depositor and subject to such conditions as are agreed between the body and the depositor. Deposit, which is common practice in a wide range of collections, creates additional requirements when objects are being disposed of, as set out below, in paragraphs 44-53.

43. Subsection (2) makes clear that these powers are in addition to any other powers of acquisition or acceptance on deposit that Historic Environment Scotland may have, as HES may in future be given additional statutory powers under other legislation, for example under the Museums and Galleries Act 1992.

44. Subsection (3) sets out the circumstances in which Historic Environment Scotland may dispose of any object from its collections.

45. The case for disposal in subsection (3)(a) is that an object is a duplicate of, or similar to, another object in the collections, for example where a collection of architectural drawings includes original drawings along with multiple un-annotated copies it may not be desirable to keep the copies.

46. The case for disposal in subsection (3)(b) is that Historic Environment Scotland considers that the object is not required for the purposes of the collections. This would allow Historic Environment Scotland to ensure that objects in the collection are relevant to the historic environment and consistent with its collecting policy.

47. The case for disposal in subsection (3)(c) is that because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections. This would allow disposals in cases where an object was damaged to such an extent that it had lost all information content and was therefore not worth conserving, for example a heavily water-damaged document.

48. The case for disposal in subsection (3)(d) is that the object is hazardous. This provision would allow disposal in cases where an object is hazardous, for example where a material such as a cellulose nitrate film has degraded to the point of posing a possible fire hazard. The key test here would be whether any benefits of retaining such objects were outweighed by the risks.

49. The case for disposal in subsection (3)(e) is that the Scottish Ministers agree to the disposal. This would allow disposal in a case where there was a moral claim on an object that would ordinarily not be eligible for disposal under subsection (3)(a)-(d)

50. Subsection (4) clarifies that such disposals may be made by sale, exchange, gift, return or destruction. It is implicit that disposal (other than return) of an object is only possible where Historic Environment Scotland holds the object as owner.

51. Subsection (5) makes clear that these powers are in addition to any other powers of disposal that Historic Environment Scotland may have, as HES may in future be given additional statutory powers of acquisition and disposal under other legislation, for example under the Museums and Galleries Act 1992.

52. Subsection (6) sets out that where an object is subject to a prohibition or restriction on disposal, as in the case of an object on deposit, Historic Environment Scotland cannot dispose of the object without the consent of the person having the right to enforce the prohibition or restriction. However where an object is damaged, has deteriorated or become infested and is no longer of use for the purposes of the collections, HES can dispose of that object without consent if they have taken all reasonable steps to contact the appropriate person. HES may also dispose of any object which is hazardous even without consent. It is implicit that an object on deposit or loan is, by its very nature, subject to a restriction or prohibition on disposal.

53. These provisions protect the interests of depositors and lenders and will serve as a reminder to Historic Environment Scotland to check for any such prohibitions or restrictions when considering any disposal under subsection (3).

54. Subsection (7) clarifies that in this section and in section 7, references to Historic Environment Scotland's collections are references to collections of objects which are owned by, in the custody of, or otherwise under its management and control, excluding those collections they have been delegated the management of under section 7.

## **Section 7 - Borrowing and lending of objects**

55. Subsection (1) of section 7 allows Historic Environment Scotland to borrow or accept loans of historic objects for exhibition, study or research while subsection (2) allows Historic Environment Scotland to lend any historic object from its collections.

56. Subsection (3) specifies the factors that Historic Environment Scotland must have regard to when deciding whether or not to lend an object, and when deciding how long to lend for and any conditions of lending.

57. The factors to which Historic Environment Scotland must have regard are: the interests of the users of the collections; the suitability of the prospective borrower; the purpose of the loan; the physical condition and degree of rarity of the object, and any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.

58. Subsection (4) makes clear that these powers are in addition to any other powers of borrowing, accepting loans or lending that Historic Environment Scotland may have, as Historic Environment Scotland may in future be given additional statutory powers under other legislation.

59. Subsection (5) protects prohibitions or restrictions on lending that donors have attached to objects in the collections and is intended to serve as a reminder to Historic Environment Scotland to check for any such conditions when considering lending objects under subsection (2). Prohibitions or restrictions on lending may only be overridden with the consent of the person having the right to enforce the condition or if the name and contact details of such a person cannot be ascertained despite Historic Environment Scotland taking all reasonable steps to ascertain them.

## **Section 8 – Delegation of functions in relation to collections**

60. Section 8 enables the Scottish Ministers to delegate the management of their collections to Historic Environment Scotland or to any prescribed person Ministers consider appropriate. This means that Ministers may only delegate functions under this section to persons who have been first prescribed by order.

61. Subsection (2) allows for delegation to take place despite the existence of prohibitions or restrictions on delegation in agreements.

62. Subsection (3) clarifies that such delegations can apply to a particular collection, a group of collections or all collections. The same subsection also clarifies that such delegations can apply to a particular object in a collection, or a group of such objects.

63. Subsection (4) makes it clear that any revenue received as a result of the exercise of any delegated function is the revenue of the person to whom the function is delegated unless Ministers provide otherwise in the delegation. Thus, money paid by a publisher in return for the right to use images of objects in delegated collections would remain with Historic Environment Scotland.

64. Subsection (5) makes it clear that delegation of functions does not affect the ultimate responsibility of the Scottish Ministers.

65. Subsections (6) and (7) require that the Scottish Ministers must make such delegations in writing, that they can be varied or revoked at any time and that they must be published.

66. Subsection (8) clarifies that references in this section to the Scottish Ministers' collections are to collections of objects which are owned by, in the custody of, or otherwise under the management and control of the Scottish Ministers – as distinct from the collections of Historic Environment Scotland itself by virtue of section 6 and any transfer of property scheme under paragraph 4 of schedule 5.

### **Section 9 - Corporate planning**

67. Section 9 places a duty on Historic Environment Scotland to prepare a corporate plan at the beginning of each planning period which must be submitted to the Scottish Ministers for approval. Subsection (2) outlines what such a plan must contain, subsection (3) describes the method for its approval and subsection (4) requires the plan once approved to be published and laid before the Scottish Parliament. Subsections (5) and (6) allow for modifications to the agreed plan. Subsection (7) sets the normal planning period as 3 years and allows for a different period for the initial plan (to be specified by Ministers by order), while subsection (8) allows for the normal planning period to be varied by order of Ministers – if for example experience shows that a longer or shorter period is better suited to the cycle of planning and resource allocation. Ministers will be also able to offer directions and guidance on the content and presentation of corporate plans under the provisions of section 13 (see below) if this is necessary.

### **Section 10 – Grants to Historic Environment Scotland by the Scottish Ministers**

68. Section 10 allows the Scottish Ministers to make grants to Historic Environment Scotland. These may be for general or particular purposes – for example towards a named function or project. It also provides for such grants to be subject to such terms and conditions as the Scottish Ministers may determine. Examples might include additional funding to accelerate the delivery of a shared research project or to create a shared national resource, such as a building conservation skills training centre. Historic Environment Scotland's funding will normally be dealt with in corporate plan and annual financial allocation discussions, with the power in this section being for use only in exceptional circumstances.

### **Section 11 – Grants and loans by Historic Environment Scotland**

69. Section 11 allows Historic Environment Scotland to make grants and loans to such persons as it considers appropriate in furtherance of its functions subject to such terms and conditions as it may determine.

70. At present, grant programmes operated by Historic Scotland on behalf of Ministers include grants for the repair of historic buildings, grants for the care and maintenance of ancient monuments, grants for archaeology projects, grants in support of conservation skills training and grants to voluntary organisations. Total grant expenditure is in the order of £15 million per annum.

71. These grants are distributed under a variety of different powers held by Ministers, and there are a variety of terms and conditions associated with each power. The Act gives Historic Environment Scotland a single power which will allow it to take over all existing

grant-giving activities and will promote a more responsive grant programme that can adapt to current needs and a less complex approach to programme terms and conditions.

72. Subsection (3) clarifies that such grants or loans made by Historic Environment Scotland must be made in accordance with any general authorisation given by the Scottish Ministers to Historic Environment Scotland. Such an authorisation might, for example, set the broad terms and eligibility/ranking criteria of all grant programmes which Historic Environment Scotland was expected to operate over the planning period. However, an authorisation would not extend to allowing Ministers to give direction in relation to the outcome of particular grant or loan applications.

### **Section 12 - Advice, information and assistance**

73. Section 12 places a duty on Historic Environment Scotland to provide the Scottish Ministers with advice, information and assistance on any matter relating to the organisation's functions, and also allows Historic Environment Scotland to offer these to Scottish Ministers. It also allows Historic Environment Scotland to provide advice, information and assistance to any person. This last provision is particularly significant, since Historic Environment Scotland will employ staff who have a very varied body of expertise and skills and will frequently be asked for advice.

### **Section 13 - Directions and guidance**

74. Section 13 allows the Scottish Ministers to direct Historic Environment Scotland (both generally and specifically) in relation to the exercise of its functions.

75. Subsection (2) provides that the Scottish Ministers will not be able to direct in respect of particular historic properties, collections or objects or the making of grants and loans. This is to provide for curatorial independence, allowing for decision-making to be led solely by expert knowledge and judgement in these key areas. However, subsection (2)(a) which prevents Ministers from directing on a particular historic property, object or collection, does not apply (by virtue of subsection (3)) in cases where Historic Environment Scotland is exercising functions delegated by Scottish Ministers under section 3 or 8. This means that with regards to the properties in care and associated collections Ministers may give directions to Historic Environment Scotland, in recognition of the fact that these functions remain the responsibility of Scottish Ministers and are only delegated to Historic Environment Scotland.

76. Historic Environment Scotland must comply with directions and must have regard to guidance issued by the Scottish Ministers (subsection (4)). Directions must be given in writing (subsection (5)) and the Scottish Ministers must publish directions and guidance (subsection (6)).

### **Section 14 – Interpretation of Part 1**

77. Section 14 sets out how the terms “collection”, “object” and “property in care” are to be interpreted in Part 1 of the Act.

78. “Collection” in Part 1 means a collection of objects usually with some kind of shared characteristic, for example created by the same individual or referring to the same place. It is used in this Part to refer specifically to collections of objects, rather than to collections of buildings or sites. The term can refer to the entire collection of material managed by Historic Environment Scotland or smaller groupings within the ‘parent collection’.

79. The collections that will be managed by Historic Environment Scotland include material of many different types and in many different formats. The term “object” has been used throughout the Act to refer to a ‘thing’ curated by Historic Environment Scotland. The definition provided in the Act makes it clear that objects may be physical artefacts, documents or indeed anything, provided only that it is of relevance to the historic environment.

80. “Object” in the Act means an object, document or other thing having historical, archaeological, architectural or cultural significance or interest relating to the historic environment generally or with particular reference to Scotland. The term “document” used here takes its meaning from schedule 1 to the Interpretation and Legislative Reform Scotland Act 2010 and means “anything in which information is recorded in any form (and references to producing a document are to be read accordingly)”. “Document” would cover information recorded in electronic form, for example, digital images, databases, spread sheets and 3-D and 2-D spatial data.

81. “Property in care” has the meaning given to it in section 4.

## **PART 2 – FUNCTIONS IN RELATION TO SCHEDULED MONUMENTS**

### **Section 15 – Historic Environment Scotland’s functions in relation to scheduled monuments**

82. Section 15 introduces schedule 2 to the Act, which makes provision for Historic Environment Scotland’s functions in relation to scheduled monuments as well as making other modifications, including those relating to consents and appeals. It confers on Historic Environment Scotland the function of compiling and maintaining the schedule of monuments under the 1979 Act. It also confers designation functions on Historic Environment Scotland in relation to the inventories of gardens and designed landscapes and of battlefields. All of these matters are provided for by changes to the 1979 Act. Further notes on schedule 2 are given in paragraphs 118 to 150.

## **PART 3 – FUNCTIONS IN RELATION TO LISTING AND CONSERVATION**

### **Section 16 – Historic Environment Scotland’s functions in relation to listed buildings**

83. Section 16 introduces schedule 3 to the Act which makes provision for Historic Environment Scotland’s functions in relation to listed buildings and conservation areas as well as making other modifications including those relating to consents and appeals. It confers on Historic Environment Scotland the function of compiling lists of buildings of special architectural or historic interest. These matters are provided for by changes to the 1997 Act. Further notes on schedule 3 are given in paragraphs 151 to 159.

## **PART 4 – FUNCTIONS IN RELATION TO THE MARINE ENVIRONMENT**

### **Section 17 - Historic Environment Scotland's functions in relation to the marine environment**

84. Section 17 introduces schedule 4 to the Act which makes provision for Historic Environment Scotland's functions in relation to the marine environment by way of amendment of the 2010 Act. Further notes on schedule 4 are given in paragraphs 160 and 161.

## **PART 5 – DISSOLUTION OF RCAHMS AND TRANSFER OF STAFF ETC. TO HISTORIC ENVIRONMENT SCOTLAND**

### **Section 18 - Dissolution of RCAHMS**

85. Section 18 provides for the dissolution of the Royal Commission on the Ancient and Historical Monuments of Scotland. The duties of serving Commissioners will cease at the commencement of this provision.

### **Section 19 - Transfer of staff and property etc. to Historic Environment Scotland**

86. Section 19 introduces schedule 5 to the Act which contains provisions about the transfer to Historic Environment Scotland of staff and property etc. of RCAHMS and of the Executive Agency of the Scottish Ministers known as Historic Scotland. Further notes on schedule 5 are given in paragraphs 162 to 168.

## **PART 6 – FURTHER MODIFICATIONS IN RELATION TO THE HISTORIC ENVIRONMENT**

### **Section 20 - Grants and loans by the Scottish Ministers**

87. Section 20 amends the 1953 Act, which is the current basis for grant-giving in respect of the repair of historic buildings.

88. Subsection (2) removes from section 4 of the 1953 Act the requirement that buildings/land must be of "outstanding" historic or architectural interest to be eligible for grants by the Scottish Ministers under that section, as this provision is no longer of particular value. It dates from a period before Listed Buildings were assigned to categories and before grant programmes had detailed and agreed criteria. It also inserts a new subsection (1A) which clarifies that the power to make grants under section 4 of the 1953 Act includes the power to make loans for the same purposes. This recognises the need to make wise use of public funds by allowing for approaches other than grant-giving. Subsection (2)(d) inserts a new subsection (5) in section 4 of the 1953 Act which clarifies that a grant or loan made under this section is to be made on such terms and conditions (including as to repayment) as Ministers may determine.

89. Subsection (3) repeals subsection (3) of section 45A of the 1979 Act, inserted by the Historic Environment (Amendment) (Scotland) Act 2011, which placed an annual limit on grants and loans made by Ministers for the development and understanding of

matters of historic, etc., interest. This power is currently used to give support for the work of a range of voluntary bodies whose objectives include working to help ensure that Scotland's historic environment is valued and cared for. With the shift in focus to more collaborative action to deliver agreed strategic objectives, the work of such bodies is likely to become proportionately more significant in future and it is desired to retain flexibility to offer support in this way in situations where funding by Historic Environment Scotland might be perceived as not appropriate.

### **Section 21 - Local inquiries in relation to ancient monuments**

90. Section 21 inserts new sections 23A and 23B into the 1979 Act to give the Scottish Ministers a power to hold inquiries in relation to functions under Part 1 of the 1979 Act including for example an appeal under new section 1C. The operation of these changes is discussed further below, under schedule 2.

### **Section 22 - Meaning of “listed building”**

91. Section 22 amends section 1 of the 1997 Act which places a duty on the Scottish Ministers to compile and maintain a list of buildings of special architectural or historic interest by inserting a new subsection (4A). This new section allows for any such entry for a building in the list to specify that an object or structure is not to be treated as part of the building for the purposes of the 1997 Act and also that any part or feature of the building is not of special architectural historic interest. This new power will apply to future new entries and to the amendment, in the future, of existing entries. The intention is to ensure that protection is more precisely targeted upon those elements of a building which are of particular historical or architectural significance. For example, the new power would allow for a relatively modern extension to a historic building to be excluded from the protection – and restrictions – applied by listing to the remainder of the building.

### **Section 23 - Applications for listed building consent**

92. Subsection (2) amends section 12 of the 1997 Act by inserting new subsections (1A) and (1B). This gives Ministers the power to set out in regulations or directions the circumstances in which a planning authority which is minded to grant listed building consent is required to notify the Scottish Ministers.

93. Subsection (3) amends section 13 of the 1997 Act to repeal the existing powers in subsections (1) and (2) for Ministers to set out in directions that specified types of listed building consent applications need not be notified to the Scottish Ministers.

94. Subsection (4) inserts subsection (2A) into section 14 of the 1997 Act, with the effect that where the planning authority is minded to grant listed building consent, Ministers may set out in directions conditions that should be imposed, and that the planning authority must consider imposing those conditions, and must not subsequently grant consent without satisfying the Scottish Ministers that such consideration has been given and that either such conditions have been imposed, or are not required. An example of where this could be used would be where Ministers were considering calling in an application where the proposals were generally acceptable, but they had certain specific

concerns. With the imposition of certain conditions Ministers would be content for the consent to be granted, and therefore these directions could avoid the need for call in.

### **Section 24 – Control of demolition**

95. Section 24 amends section 66 of the 1997 Act to enable local authorities to determine applications for consent made by a planning authority for the demolition of a building within a conservation area. The planning authority will apply to itself for consent, as is the case with local authority planning applications. They are required to consult Historic Environment Scotland before they do this, to ensure the appropriate checks and balances are in place.

## **PART 7 – FINAL PROVISIONS**

### **Section 25 - Interpretation**

96. Section 25 expands the short references used in the Act, for economy of space, to give their full citations: “the 1979 Act” to the Ancient Monuments and Archaeological Areas Act 1979 and “the 1997 Act” to the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997.

### **Section 26 – Subordinate legislation**

97. This section provides that orders made under this Act are subject to the negative procedure of the Scottish Parliament with the exception of commencement orders under section 31(2), orders under sections 3(9) and 8(8) and some orders under section 27(1). Orders under section 31(2) are subject to no procedure. Orders under section 27(1) which add to, replace or omit the text of an Act are subject to the affirmative procedure of the Scottish Parliament, as are orders made under sections 3(9) and 8(8).

### **Section 27 – Ancillary provision**

98. Subsection (1) confers powers on the Scottish Ministers enabling them to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purpose of giving full effect to this Act or any of its provisions.

99. Subsection (2) states that any order made under the powers of subsection (1) may modify any enactment (including this Act).

### **Section 28 – Consequential modifications**

100. Section 28 introduces schedule 6 which makes amendments to other Acts required as a result of the establishment of Historic Environment Scotland and repeals provisions of certain Acts.

## **Section 29 – Crown application: criminal offences**

101. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Act applies to the Crown in Scotland. However, subsection (1) absolves the Crown of any criminal liability, should it be in contravention of the provision in section 5(5) of this Act. Instead, subsection (2) provides for the Court of Session to declare the act to be unlawful.

## **Section 30 – Crown application – powers of entry**

102. Section 30 provides that the power in section 5 (power of entry to investigate the historic environment) is exercisable in relation to Crown land, but only if the appropriate authority gives its consent. Subsection (2) provides a table setting out what is meant by “appropriate authority”.

## **Section 31 - Commencement**

103. Section 31 sets out the arrangements for commencement of the provisions of the Act. Sections 25 to 27 and sections 29 to 32 come into force on the day after Royal Assent. All other provisions will come into force on such day as the Scottish Ministers may by order appoint. Subsection (3) provides that a commencement order may include transitional, transitory or saving provision.

## **Section 32 – Short title**

104. This provides for the Act to be referred to as the Historic Environment Scotland Act 2014.

## **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 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

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

## **PARLIAMENTARY HISTORY**

171. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings of that Stage took place and the references to the official report of those proceedings. It also shows the dates on which Committee Reports and other papers relating to the Act were published, and references to those reports and other papers.

<i>Proceedings and Reports</i>	<i>References</i>
<b><i>Introduction</i></b>	
Bill as introduced – 3 March 2014	SP Bill 47 - Session 4 (2014) <u>Bill (As Introduced)</u>
<b><i>Stage 1</i></b>	
<b><i>(a) Education and Culture Committee</i></b>	
8 <sup>th</sup> meeting 2014. 18 March 2014	Cols 3806 – 3848 <u>Official Report of Meeting 18 March 2014</u>
13 <sup>th</sup> meeting 2014. 6 May 2014	Cols 4109 – 4138 <u>Official Report of Meeting 6 May 2014</u>
14 <sup>th</sup> meeting 2014. 20 May 2014	Cols 4152 – 4182 <u>Official Report of Meeting 20 May 2014</u>
16 <sup>th</sup> meeting 2014. 10 June 2014	In private
Stage 1 report. 12 June 2014	Stage one report <u>Stage 1 Report on the Historic Environment Scotland Bill</u>

*These notes relate to the Historic Environment Scotland Act 2014 (asp 19)  
which received Royal Assent on 9 December 2014*

<b><i>Proceedings and Reports</i></b>	<b><i>References</i></b>
<b><i>(b) Delegated Powers and Law Reform Committee</i></b>	
11 <sup>th</sup> meeting 2014. 25 March 2014	Cols 1380 – 1384 <u>Official Report of Meeting 25 March 2014</u>
13 <sup>th</sup> meeting 2014. 22 April 2014	In private
14 <sup>th</sup> meeting 2014. 29 April 2014	In private
21 <sup>st</sup> meeting 2014. 17 June 2014	Col 1540 <u>Official Report of Meeting 17 June 2014</u>
<b><i>(c) Finance Committee</i></b>	
8 <sup>th</sup> meeting 2014. 12 March 2014	In private
13 <sup>th</sup> meeting 2014. 30 April 2014	In private
<b><i>(d) Consideration by the Parliament</i></b>	
Stage 1 debate. 19 June 2014	<u>Stage 1 Report</u>
<b><i>Stage 2</i></b>	
<b><i>(a) Education and Culture Committee</i></b>	
21 <sup>st</sup> meeting 2014. 19 August 2014	Cols 4322 – 4356 <u>Official Report of Meeting 19 August 2014</u>
<b><i>Stage 3</i></b>	
<b><i>(a) Delegated Powers and Law Reform Committee</i></b>	
29 <sup>th</sup> meeting. 28 October 2014	Col 5 <u>Official Report of Meeting 28 October 2014</u>
<b><i>(b) Consideration by the Parliament</i></b>	
Stage 3 amendments and debate. 4 November 2014	Cols 10 - 38 and Col 83 <u>Official Report, Meeting of the Parliament, 4 November 2014</u>
Bill as passed	SP Bill 47B - Session 4 (2014) <u>Bill (As Passed) (posted 5 November 2014)</u>
<b><i>Royal Assent</i></b>	
9 December 2014	<u>Historic Environment Scotland Act 2014 (asp 19)</u>

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