

SCHEDULE 2
FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND
IN RELATION TO SCHEDULED MONUMENTS

PART 3

SCHEDULED MONUMENT ENFORCEMENT NOTICES

20 After that section insert—

“9CA Determination of appeals under section 9C

- (1) On determining an appeal under section 9C, the Scottish Ministers may give directions for giving effect to the determination, including where appropriate directions for quashing the scheduled monument enforcement notice.
- (2) On such an appeal the Scottish Ministers may if they are satisfied that the correction or variation will not cause injustice to the appellant or to Historic Environment Scotland—
 - (a) correct any defect, error or misdescription in the scheduled monument enforcement notice, or
 - (b) vary the terms of the notice.
- (3) In a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 9B(4) to be served with a copy of the notice was not served, the Scottish Ministers may disregard that fact if they are satisfied that the person has not been substantially prejudiced by the failure.
- (4) The Scottish Ministers may—
 - (a) dismiss such an appeal if the appellant fails to comply with section 9C(3A) within the prescribed time,
 - (b) allow such an appeal or quash the scheduled monument enforcement notice if Historic Environment Scotland fails to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 9CB(1).
- (5) On the determination of an appeal under section 9C the Scottish Ministers may—
 - (a) grant scheduled monument consent for the works to which the scheduled monument enforcement notice relates,
 - (b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or
 - (c) direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that determination.
- (6) Any scheduled monument consent granted by the Scottish Ministers under subsection (5)(a) is to be treated as granted under section 2(3).
- (7) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 9C is final.

9CB Procedure for appeals under section 9C

- (1) The Scottish Ministers may by regulations make provision in connection with appeals under section 9C, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.
- (2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
 - (a) the form, manner and time for making an appeal,
 - (b) the notification of an appeal,
 - (c) the manner in which an appeal is to be conducted.
- (3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).
- (4) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 9C.”