

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

PART 2

SCHEDULED MONUMENT CONSENT

- 4 The 1979 Act is further amended as follows.
- 5 In section 2 (control of works affecting scheduled monuments)—
- (a) in subsection (3)(a) after “State” insert “or Historic Environment Scotland”,
 - (b) in subsection (3A) for paragraph (b) substitute—
 - “(b) consent for the retention of the works is granted by the Scottish Ministers or by Historic Environment Scotland,”,
 - (c) in subsection (5) in paragraph (b) and in the fullout for “the Secretary of State” in each place substitute “Historic Environment Scotland”,
 - (d) after that subsection insert—
 - “(5A) The conditions that may be attached to scheduled monument consent under subsection (4) include a condition reserving specified details of the works (whether or not set out in the application for consent) for subsequent approval by Historic Environment Scotland.”,
 - (e) in subsection (9) for “the Secretary of State” substitute “Historic Environment Scotland”.
- 6 After section 3 (grant of scheduled monument consent by order of the Scottish Ministers) insert—

“3A Application for variation or discharge of conditions

- (1) Any person interested in a scheduled monument in relation to which scheduled monument consent has been granted subject to conditions may apply to Historic Environment Scotland for the variation or discharge of the conditions.
 - (2) The application must indicate what variation or discharge of conditions is applied for and Part 1 of schedule 1 applies to such an application as it applies to an application for scheduled monument consent.
 - (3) Historic Environment Scotland or, as the case may be, the Scottish Ministers may, on such an application—
 - (a) vary or discharge the conditions attached to the consent (whether or not the application relates to the condition varied or discharged),
 - (b) add new conditions consequential upon the variation or discharge.”.
- 7 In section 4 (duration, modification and revocation of scheduled monument consent)—
- (a) for subsections (3) and (4) substitute—
 - “(3) If it appears to Historic Environment Scotland that it is expedient to modify or revoke a scheduled monument consent, it may by order

under this section modify or revoke the consent to such extent as it considers expedient.

(4) The power conferred by subsection (3) to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.”

(b) in subsection (5) for “directions” substitute “orders”.

8 After that section insert—

“4A Modification and revocation of scheduled monument consent by Scottish Ministers

(1) If it appears to the Scottish Ministers that it is expedient to modify or revoke a scheduled monument consent, they may by order under this section modify or revoke the consent to such extent as they consider expedient.

(2) The Scottish Ministers may not make an order under this section without consulting Historic Environment Scotland.

(3) Where the Scottish Ministers propose to make such an order, they must serve notice on—

(a) the owner of the scheduled monument affected,

(b) where the owner is not the occupier of the monument, the occupier, and

(c) any other person who in their opinion will be affected by the order.

(4) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.

(5) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they make the order, give such an opportunity both to that person and to Historic Environment Scotland.

(6) The power conferred by this section to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.

(7) An order under this section has effect as if it had been made by Historic Environment Scotland under section 4 and confirmed by the Scottish Ministers under paragraph 10 of Part 2 of schedule 1.”

9 In section 5(1) (execution of works for preservation of a scheduled monument in cases of urgency)—

(a) for “the Secretary of State” substitute “Historic Environment Scotland”,

(b) for “he” substitute “it”,

(c) for “his” substitute “its”.

10 In section 6 (powers of entry for inspection of scheduled monuments)—

- (a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (b) in subsection (2) after “State” in both places insert “or Historic Environment Scotland”,
 - (c) in subsection (3) after “State” insert “or Historic Environment Scotland”,
 - (d) in subsection (3A) after “Ministers” insert “or Historic Environment Scotland”,
 - (e) in subsection (4) after “State” insert “or Historic Environment Scotland”,
 - (f) in subsection (5) after “State” in both places insert “or Historic Environment Scotland”.
- 11 In section 7 (compensation for refusal of scheduled monument consent)—
- (a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland or, where the Scottish Ministers refused the scheduled monument consent or granted it subject to conditions, Ministers”,
 - (b) in subsection (3) for “the Secretary of State’s” substitute “Historic Environment Scotland’s or, as the case may be, the Scottish Ministers”,
 - (c) in subsection (6)(b) for “the Secretary of State” substitute “Historic Environment Scotland or, as the case may be, the Scottish Ministers”.
- 12 In section 8 (recovery of compensation under section 7 on subsequent grant of consent)—
- (a) in subsection (1) after “State” in both places insert “or Historic Environment Scotland”,
 - (b) in subsection (2A)(b) after “State” insert “or Historic Environment Scotland”,
 - (c) in subsection (3)—
 - (i) after “State” in each place insert “or Historic Environment Scotland”,
 - (ii) after “his” in both places insert “or its”,
 - (d) in subsection (4) after “State” insert “or Historic Environment Scotland”.
- 13 In section 9(1) (compensation where works cease to be authorised) after “State” insert “or Historic Environment Scotland”.
- 14 (1) Part 1 of schedule 1 (applications for scheduled monument consent) is amended as follows.
- (2) In paragraph 1(1) for “the Secretary of State” substitute “Historic Environment Scotland”.
 - (3) In paragraph 2(1) for “The Scottish Ministers” substitute “Historic Environment Scotland”.
 - (4) In paragraph 2B—
 - (a) in sub-paragraph (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
 - (b) in sub-paragraph (2)(a)—
 - (i) after “received,” insert “Historic Environment Scotland has or”,
 - (ii) after “refused” insert “or the Scottish Ministers have dismissed an appeal against the refusal of, or an appeal under section 4B(3) in respect of,”,

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- (c) in sub-paragraph (2)(b)—
 - (i) for “their” substitute “its”,
 - (ii) after “refused” insert “or the appeal was dismissed”,
 - (d) in sub-paragraph (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”.
- (5) After that paragraph insert—
- “2C (1) If Historic Environment Scotland, on an application to it for scheduled monument consent, intends to grant that consent, it must, where sub-paragraph (2) applies, first notify the Scottish Ministers of the application.
- (2) This sub-paragraph applies where—
- (a) regulations, or
 - (b) directions given to Historic Environment Scotland by the Scottish Ministers,
- provide that the application must be so notified.
- (3) The Scottish Ministers may within the period of 28 days beginning with the date of the notification—
- (a) direct the reference of the application to them under section 3B, or
 - (b) give notice to Historic Environment Scotland that they require further time in which to consider whether to require such a reference.
- (4) Historic Environment Scotland must not grant scheduled monument consent until—
- (a) the period mentioned in sub-paragraph (3) has expired without the Scottish Ministers directing the reference of the application to them or giving notice under paragraph (b) of that sub-paragraph, or
 - (b) the Scottish Ministers have notified Historic Environment Scotland that they do not intend to require the reference of the application.
- 2D The Scottish Ministers may give directions to Historic Environment Scotland requiring it, in such cases or classes of case as may be specified in the directions, to notify to Ministers and to such other persons as may be so specified—
- (a) any applications made to it for scheduled monument consent, and
 - (b) the decisions taken on those applications.”.

(6) In paragraph 3—

- (a) in sub-paragraph (1) after “State” insert “or Historic Environment Scotland”,
- (b) for sub-paragraphs (2) and (3) substitute—

“(2) The Scottish Ministers may by regulations make provision for the procedure to be followed by Historic Environment Scotland in considering and determining applications for scheduled monument consent.”,

- (c) in sub-paragraph (4)—

- (i) after “State” insert “or, as the case may be, Historic Environment Scotland”,
- (ii) for “his” substitute “the”,
- (iii) “to him” is repealed.

(7) Paragraph 4 is repealed.

15 In Part 2 of schedule 1 (modification and revocation of scheduled monument consent)—

- (a) paragraphs 5 to 9 are repealed,
- (b) after paragraph 9 insert—

“10 (1) Except as provided for in paragraph 11, an order made by Historic Environment Scotland under section 4 modifying or revoking a scheduled monument consent does not take effect unless it is confirmed by the Scottish Ministers.

(2) Where Historic Environment Scotland submits an order to the Scottish Ministers for confirmation, it must serve notice on—

- (a) the owner of the scheduled monument affected,
- (b) where the owner is not the occupier of the monument, the occupier, and
- (c) any other person who in its opinion will be affected by the order.

(3) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.

(4) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they confirm the order, give such an opportunity both to that person and to Historic Environment Scotland.

(5) The Scottish Ministers may confirm any such order submitted to them either without modification or subject to such modifications as they consider expedient.

11 (1) Where sub-paragraph (2) applies, Historic Environment Scotland—

- (a) need not submit the order under section 4 modifying or revoking the scheduled monument consent to the Scottish Ministers for approval,
- (b) must instead take the steps mentioned in sub-paragraph (3).

(2) This sub-paragraph applies where—

- (a) the owner of the scheduled monument affected,
- (b) where the owner is not the occupier of the monument, the occupier, and
- (c) all other persons who in Historic Environment Scotland’s opinion will be affected by the order,

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have notified Historic Environment Scotland in writing that they do not object to the order.

- (3) The steps referred to in sub-paragraph (1)(b) are—
 - (a) advertising in the prescribed manner the fact that the order has been made,
 - (b) serving notice to the same effect on the persons mentioned in sub-paragraph (2), and
 - (c) sending a copy of any such advertisement to the Scottish Ministers not more than 3 days after its publication.
- (4) The advertisement under sub-paragraph (3)(a) must specify—
 - (a) the period within which persons affected by the order may give notice to the Scottish Ministers that they require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose, and
 - (b) the period at the end of which, if no such notice is given to the Scottish Ministers, the order may take effect by virtue of this paragraph and without being confirmed by the Scottish Ministers.
- (5) The period referred to in sub-paragraph (4)(a) must not be less than 28 days from the date on which the advertisement first appears.
- (6) The period referred to in sub-paragraph (4)(b) must not be less than 14 days from the end of the period referred to in sub-paragraph (4)(a).
- (7) The notice under sub-paragraph (3)(b) must include a statement to the effect that no compensation is payable under section 9 in respect of an order which takes effect by virtue of this paragraph.
- (8) The order takes effect at the end of the period referred to in sub-paragraph (4)(b) without being confirmed by the Scottish Ministers if—
 - (a) no person claiming to be affected by the order has given notice to the Scottish Ministers as mentioned in sub-paragraph (4)(a) within the period referred to in that sub-paragraph, and
 - (b) the Scottish Ministers have not directed that the order be submitted to them for confirmation.”.