

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

### PART 5

#### APPEALS AND REFERRALS

#### CHAPTER 1

#### APPEALS FROM HISTORIC ENVIRONMENT SCOTLAND

##### *Determination of appeals by appointed person*

34      After schedule 1 insert—

##### “SCHEDULE 1A

*(introduced by sections 1E(4), 4D(6) and 9CB(4))*

##### DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY THE SCOTTISH MINISTERS

##### *Determination of appeals by appointed person*

- 1      (1) The Scottish Ministers may by regulations prescribe classes of appeals under sections 1C, 4B and 9C which are to be determined by a person appointed by the Scottish Ministers for the purpose.
- (2) Those classes of appeals are to be so determined except in such classes of case—
  - (a) as may for the time being be prescribed, or
  - (b) as may be specified in directions given by the Scottish Ministers.
- (3) Regulations under sub-paragraph (1) may provide for the giving of publicity to any directions given by the Scottish Ministers under this paragraph.
- (4) This paragraph does not affect any provision made by or under this Act that an appeal is to lie to, or a notice of an appeal is to be served on, the Scottish Ministers.
- (5) A person appointed under this paragraph is referred to in this schedule as an “appointed person”.

##### *Powers and duties of appointed person*

- 2      (1) An appointed person is to have the same powers and duties—
  - (a) in relation to an appeal under section 1C as the Scottish Ministers have under section 1D,
  - (b) in relation to an appeal under section 4B as the Scottish Ministers have under section 4C,

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**Changes to legislation:** *There are currently no known outstanding effects for the Historic Environment Scotland Act 2014, Cross Heading: Determination of appeals by appointed person. (See end of Document for details)*

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- (c) in relation to an appeal under section 9C as the Scottish Ministers have under section 9CA.
- (2) Where an appeal has been determined by an appointed person, the decision is to be treated as a decision of the Scottish Ministers.
- (3) Except as provided for by section 55, the decision of an appointed person on any appeal is final.

*Determination of appeals by the Scottish Ministers*

- 3 (1) The Scottish Ministers may, if they think fit, direct that an appeal which would otherwise fall to be determined by an appointed person is instead to be determined by them.
- (2) Such a direction must—
  - (a) state the reasons for which it is given, and
  - (b) be served on the appellant.
- (3) Where an appeal under section 1C, 4B or 9C falls to be determined by the Scottish Ministers by virtue of a direction under this paragraph, the provisions of this Act which are relevant to the appeal are to apply, subject to sub-paragraph (4), as if this schedule had never applied to it.
- (4) In determining the appeal, the Scottish Ministers may take into account any report made to them by any person previously appointed to determine the appeal.
- 4 (1) The Scottish Ministers may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.
- (2) Such a further direction must—
  - (a) state the reasons for which it is given, and
  - (b) be served on—
    - (i) the person, if any, previously appointed to determine the appeal, and
    - (ii) the appellant.
- (3) Where such a further direction has been given, the provisions of this schedule relevant to the appeal are to apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Scottish Ministers in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) is, unless that person directs otherwise, to be treated as having been done by that person.

*Appointment of another person to determine appeal*

- 5 (1) At any time before the appointed person has determined the appeal the Scottish Ministers may—
  - (a) revoke the appointment, and

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- (b) appoint another person under paragraph 1 to determine the appeal instead.
- (2) Where such a new appointment is made, the consideration of the appeal or any inquiry or other hearing in connection with it is to be begun afresh.
- (3) Nothing in sub-paragraph (2) requires any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

#### *Local inquiries and hearings*

- 6 (1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person—
  - (a) may hold a local inquiry in connection with the appeal, and
  - (b) must do so if the Scottish Ministers so direct.
- (2) Where an appointed person—
  - (a) holds a hearing, or
  - (b) holds an inquiry by virtue of this paragraph,
 an assessor may be appointed by the Scottish Ministers to sit with the appointed person at the hearing or inquiry to advise the appointed person on any matters arising.
- (3) Subject to sub-paragraph (4), the expenses of any such hearing or inquiry are to be paid by the Scottish Ministers.
- (4) Subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.
- (5) The appointed person has the same power to make orders under subsection (9) of that section in relation to proceedings under this schedule which do not give rise to an inquiry as the person has in relation to such an inquiry.
- (6) For the purposes of this paragraph, references to the Minister in subsections (9) and (12) of that section are to be read as references to the appointed person.

#### *Supplementary provisions*

- 7 The functions of determining an appeal and doing anything in connection with it conferred by this schedule on an appointed person who is a member of the staff of the Scottish Administration are to be treated for the purposes of the Scottish Public Services Ombudsman Act 2002 (asp 11) as functions conferred on the Scottish Ministers.”.

#### **Commencement Information**

- I1** [Sch. 2 para. 34](#) in force at 27.2.2015 for specified purposes by [S.S.I. 2015/31](#), [art. 2](#), [Sch.](#)
- I2** [Sch. 2 para. 34](#) in force at 1.10.2015 in so far as not already in force by [S.S.I. 2015/196](#), [art. 2](#), [Sch.](#) (with transitional provisions and savings in S.S.I. 2015/239, arts. 2-19)

**Changes to legislation:**

There are currently no known outstanding effects for the Historic Environment Scotland Act 2014, Cross Heading: Determination of appeals by appointed person.