



# Ancient Monuments and Archaeological Areas Act 1979

## 1979 CHAPTER 46

### PART I

#### ANCIENT MONUMENTS

##### *Protection of scheduled monuments*

#### **1 Schedule of monuments.**

- (1) [<sup>F1</sup>The Secretary of State][<sup>F1</sup>Historic Environment Scotland] shall compile and maintain for the purposes of this Act (in such form as [<sup>F2</sup>he][<sup>F2</sup>it] thinks fit) a schedule of monuments (referred to below in this Act as “the Schedule”).
- (2) The Secretary of State shall on first compiling the Schedule include therein—
  - (a) any monument included in the list last published before the commencement of this Act under section 12 of the <sup>M1</sup>Ancient Monuments Consolidation and Amendment Act 1913; and
  - (b) any monument in respect of which the Secretary of State has before the commencement of this Act served notice on any person in accordance with section 6(1) of the <sup>M2</sup>Ancient Monuments Act 1931 of his intention to include it in a list to be published under section 12.
- (3) Subject to subsection (4) below, [<sup>F3</sup>the Secretary of State][<sup>F3</sup>Historic Environment Scotland] may on first compiling the Schedule or at any time thereafter include therein any monument which appears to [<sup>F4</sup>him][<sup>F4</sup>it] to be of national importance.  
  
[<sup>F5</sup> The Secretary of State shall consult the Historic Buildings and Monuments Commission for England (in this Act referred to as “ the Commission ”) before he includes in the Schedule a monument situated in England. ]
- (4) The power of [<sup>F6</sup>the Secretary of State][<sup>F6</sup>Historic Environment Scotland] under subsection (3) above to include any monument in the Schedule does not apply to any

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structure which is occupied as a dwelling house by any person other than a person employed as the caretaker thereof or his family.

(5) [<sup>F7</sup>The Secretary of State][<sup>F7</sup>Historic Environment Scotland] may—

- (a) exclude any monument from the Schedule; or
- (b) amend the entry in the Schedule relating to any monument (whether by excluding anything previously included as part of the monument or adding anything not previously so included, or otherwise).

[<sup>F8</sup>In the case of a monument situated in England, the Secretary of State shall consult with the Commission before he makes an exclusion or amendment.]

[<sup>F9</sup>(5A) Section 1AA makes provision about consultation by the Welsh Ministers on proposals to include or exclude a monument or to make a material amendment in relation to a scheduled monument.]

(6) [<sup>F10</sup>Where Historic Environment Scotland—

- (a) includes a monument in the Schedule under subsection (3),
- (b) amends the entry in the Schedule relating to a monument, or
- (c) excludes a monument from the Schedule,

it must notify such persons as may be prescribed in such form and manner, and within such time, as may be prescribed of the action taken.]

[<sup>F12</sup>(6A) Subsection (6) above shall not apply as regards a monument situated in England but, as soon as may be after acting as mentioned in paragraph ( a ), ( b ) or ( c ) of that subsection as regards such a monument, the Secretary of State shall inform the Commission of the action taken and, in a case falling within paragraph ( a ) or ( b ) of that subsection, shall also send to the Commission a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument. ]

[<sup>F13</sup>(6B) As soon as may be after making a material amendment of the kind described in section 1AA(5) in relation to a monument identified in the Schedule by reference to a map, the Welsh Ministers must—

- (a) inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the action taken; and
- (b) send to those persons a copy of the amended map.

(6C) Section 1AE(2) makes further provision about information that the Welsh Ministers must provide after making certain amendments in relation to the Schedule.]

(7) [<sup>F14</sup>[<sup>F15</sup>Subject to subsection (7A) below] The Secretary of State shall from time to time publish a list of all the monuments which are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list published in sections, all sections of the list need not be published simultaneously.]

[<sup>F16</sup>(7A) Subsection (7) above shall not apply as regards monuments situated in England, but the Secretary of State shall from time to time supply the Commission with a list of all the monuments which are so situated and are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list supplied in sections, all sections of the list need not be supplied simultaneously.]

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(8) <sup>F14</sup>The Secretary of State may from time to time publish amendments of any list published under subsection (7) above, and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being—

- (a) of the monuments listed; and
- (b) of any matters purporting to be reproduced in the list from the entries in the Schedule relating to the monuments listed.]

<sup>F17</sup>(8A) The Secretary of State shall from time to time supply the Commission with amendments of any list supplied under subsection (7A) above.]

(9) An entry in the Schedule recording the inclusion therein of a monument situated in England and Wales shall be a local land charge.

(10) It shall be competent to record in the Register of Sasines—

- (a) a certified copy of the entry or (as the case may be) the amended entry in the Schedule relating to any monument in Scotland which is heritable; and
- (b) where any such monument is excluded from the Schedule and a certified copy of the entry in the Schedule relating to it has previously been so recorded under paragraph (a) above, a certificate issued by or on behalf of <sup>F18</sup>the Secretary of State<sup>F18</sup> Historic Environment Scotland] stating that it has been so excluded.

(11) In this Act “scheduled monument” means any monument which is for the time being included in the Schedule.

#### Textual Amendments

- F1** Words in s. 1(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 2(a)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F2** Word in s. 1(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 2(a)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F3** Words in s. 1(3) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 2(b)(i)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F4** Word in s. 1(3) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 2(b)(ii)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F5** Words inserted by [National Heritage Act 1983](#) (c. 47, SIF 78), s. 41, **Sch. 4 para. 25(2)**
- F6** Words in s. 1(4) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 2(c)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F7** Words in s. 1(5) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 2(d)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F8** Words inserted by [National Heritage Act 1983](#) (c. 47, SIF 78), s. 41, **Sch. 4 para. 25(3)**
- F9** S. 1(5A) inserted (E.W.) (31.5.2017) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 4(1), 41(3)**; S.I. 2017/633, art. 4(a) (with art. 6(1))
- F10** S. 1(6) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014](#) (asp 19), s. 31(2), **sch. 2 para. 2(e)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F11** Words inserted by [National Heritage Act 1983](#) (c. 47, SIF 78), s. 41, **Sch. 4 para. 25(4)**
- F12** S. 1(6A) inserted by [National Heritage Act 1983](#) (c. 47, SIF 78), s. 41, **Sch. 4 para. 25(5)(9)**

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- F13** S. 1(6B)(6C) inserted (E.W.) (31.5.2017) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 4(2), 41(3)**; [S.I. 2017/633](#), art. 4(a) (with art. 6(1))
- F14** S. 1(7)(8) repealed (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 2(f)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F15** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 25(6)**
- F16** S. 1(7A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 25(7)**
- F17** S. 1(8A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 25(8)**
- F18** Words in s. 1(10)(b) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 2(g)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.

#### Modifications etc. (not altering text)

- C1** S. 1(6) savings for effects of 2014 asp 19, Sch. 2 para. 2(e) (S.) (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), **2(2)**
- C2** S. 1(10)(b) savings for effects of 2014 asp 19, Sch. 2 para. 2(g) (S.) (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), **3**

#### Marginal Citations

- M1** 1913 c. 32.
- M2** 1931 c. 16.

### [<sup>F19</sup>1A Commission's functions as to informing and publishing.

- (1) As soon as may be after the Commission—
- have been informed as mentioned in section 1(6A) of this Act, and
  - in a case falling within section 1(6)( a ) or ( b ) of this Act, have received a copy of the entry or (as the case may be) of the amended entry from the Secretary of State,
- the Commission shall inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the inclusion, amendment or exclusion and, in a case falling within section 1(6)( a ) or ( b ), shall also send to him or them a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.
- (2) As soon as may be after the Commission receive a list or a section in pursuance of section 1(7A) of this Act, they shall publish the list or section (as the case may be).
- (3) The Commission shall from time to time publish amendments of any list published under subsection (2) above, and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being—
- of the monuments listed; and
  - of any matters purporting to be reproduced in the list from the entries in the Schedule relating to monuments listed.]

#### Textual Amendments

- F19** S. 1A inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 26**

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## [<sup>F20</sup>1AA Duty to consult on certain amendments relating to the Schedule

- (1) This section applies where the Welsh Ministers are proposing—
  - (a) to include a monument in the Schedule;
  - (b) to exclude a monument from the Schedule; or
  - (c) in the case of a monument which is identified in the Schedule by reference to a map maintained by the Welsh Ministers, to make a material amendment in relation to the monument.
- (2) The Welsh Ministers must—
  - (a) serve notice of the proposed inclusion, exclusion or amendment on the appropriate persons; and
  - (b) invite those persons to submit written representations about the proposal.
- (3) The appropriate persons are—
  - (a) the owner of the monument;
  - (b) if the owner is not the occupier, the occupier of the monument;
  - (c) each local authority in whose area the monument is situated; and
  - (d) any other person who appears to the Welsh Ministers appropriate as having special knowledge of, or interest in, the monument, or in monuments of special historic or archaeological interest more generally.
- (4) A notice under subsection (2) must—
  - (a) specify the proposed inclusion, exclusion or amendment;
  - (b) specify the period within which representations about the proposal may be made, which must be at least 28 days beginning with the day on which the notice is served; and
  - (c) in the case of a proposed inclusion or a proposed amendment of the kind described in subsection (5)(a)—
    - (i) include a statement of the effect of section 1AB; and
    - (ii) specify the date on which interim protection takes effect under subsection (2) of that section.
- (5) For the purposes of this section an amendment in relation to a monument in the Schedule is “material” if it—
  - (a) adds to the area shown for the monument on the map referred to in subsection (1)(c); or
  - (b) reduces the area so shown.
- (6) The Welsh Ministers may by regulations amend subsection (3) by adding a description of person to the list of appropriate persons in that subsection; and where the Welsh Ministers do so, they may also make such amendments to this Act as they consider appropriate in consequence of the amendment to subsection (3).

### Textual Amendments

**F20** Ss. 1AA-1AE inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 3(1), 41(1)(c)(3)**; S.I. 2017/633, **art. 5(a)** (with **art. 6(1)**)

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## **1AB Interim protection pending decisions on certain amendments relating to the Schedule**

- (1) This section applies where the Welsh Ministers consult under section 1AA on a proposal to—
  - (a) include a monument in the Schedule; or
  - (b) make a material amendment of the kind described in section 1AA(5)(a) in relation to a monument in the Schedule.
- (2) The provisions of this Act have effect in relation to the monument, from the beginning of the day specified for the purposes of section 1AA(4)(c)(ii)—
  - (a) in the case of a proposal to include a monument in the Schedule, as if the monument were a scheduled monument; and
  - (b) in the case of a proposal to make a material amendment in relation to a monument in the Schedule, as if the amendment were made.
- (3) The protection conferred on a monument or area by virtue of subsection (2) is referred to in this Act as “interim protection”.
- (4) Interim protection conferred by virtue of subsection (2)(a) ceases to have effect—
  - (a) where the Welsh Ministers include the monument in the Schedule, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
  - (b) where the Welsh Ministers decide not to include the monument in the Schedule, from the beginning of the day specified in a notice issued to—
    - (i) the owner of the monument;
    - (ii) if the owner is not the occupier, the occupier of the monument; and
    - (iii) each local authority in whose area the monument is situated.
- (5) Interim protection conferred by virtue of subsection (2)(b) ceases to have effect—
  - (a) where the Welsh Ministers make the material amendment, from the beginning of the day specified in the notice for the purpose of section 1AE(2)(a); or
  - (b) where the Welsh Ministers decide not to make the material amendment, from the beginning of the day specified in a notice issued to—
    - (i) the owner of the monument;
    - (ii) if the owner is not the occupier, the occupier of the monument; and
    - (iii) each local authority in whose area the monument is situated.
- (6) The Welsh Ministers—
  - (a) must publish by electronic means a list containing particulars of each monument in relation to which interim protection has effect; and
  - (b) must, on request, provide a copy of the notice served under section 1AA(2) in respect of such a monument.

### **Textual Amendments**

**F20** Ss. 1AA-1AE inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 3(1), 41(1)(c)(3)**; S.I. 2017/633, **art. 5(a)** (with **art. 6(1)**)

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## 1AC Provisions applicable on lapse of interim protection

Schedule A1 has effect with respect to the lapse of interim protection.

### Textual Amendments

**F20** Ss. 1AA-1AE inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 3(1), 41(1)(c)(3)**; S.I. 2017/633, **art. 5(a)** (with **art. 6(1)**)

## 1AD Compensation for loss or damage caused by interim protection

- (1) This section applies where interim protection in respect of a monument ceases to have effect as a result of the issue of a notice by the Welsh Ministers under section 1AB(4)(b) or (5)(b).
- (2) Any person who, at the time when the interim protection took effect, had an interest in the monument is, on making a claim to the Welsh Ministers within the prescribed time and in the prescribed manner, entitled to be paid compensation by the Welsh Ministers in respect of any loss or damage directly attributable to the effect of the protection.
- (3) The loss or damage in respect of which compensation is payable under subsection (2) includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the monument on account of the interim protection having effect.

### Textual Amendments

**F20** Ss. 1AA-1AE inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016](#) (anaw 4), **ss. 3(1), 41(1)(c)(3)**; S.I. 2017/633, **art. 5(a)** (with **art. 6(1)**)

## 1AE Review of decisions on certain amendments relating to the Schedule

- (1) This section applies where the Welsh Ministers—
  - (a) include a monument in the Schedule; or
  - (b) make a material amendment of the kind described in section 1AA(5)(a) in relation to a monument in the Schedule.
- (2) When the Welsh Ministers inform the owner and (if the owner is not the occupier) the occupier of the monument under section 1(6) or (6B) that they have taken that action, they must also serve on that person or those persons a notice which—
  - (a) specifies the date on which the Welsh Ministers did so (and on which interim protection under section 1AB(2) ceased to have effect); and
  - (b) states that the person may make an application to the Welsh Ministers requesting them to review their decision to do so.
- (3) Where the owner or occupier of the monument makes such an application, the Welsh Ministers must—
  - (a) carry out the review requested;
  - (b) make a decision on the review; and



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- (c) make such amendment to the Schedule or the map referred to in section 1AA(1)(c) as they consider appropriate to give effect to that decision.
- (4) Except as provided in section 55, the validity of any decision taken by the Welsh Ministers on the review is not to be questioned in any legal proceedings.
- (5) The Welsh Ministers must carry out a review under this section in such one or more of the following ways as appears to them to be appropriate—
  - (a) by means of a public local inquiry;
  - (b) by means of a hearing;
  - (c) on the basis of written representations.
- (6) The Welsh Ministers must by regulations make provision about—
  - (a) the grounds on which an application for a review under this section may be made;
  - (b) the information that must be provided to, or may be required by, the Welsh Ministers in connection with such an application;
  - (c) the form and manner in which such an application must be made; and
  - (d) the period within which such an application must be made.
- (7) The Welsh Ministers may by regulations make further provision in connection with reviews under this section, including provision about costs that may be required to be paid in connection with a review.
- (8) Regulations made by virtue of subsection (6) or (7) may confer power on the Welsh Ministers—
  - (a) to determine matters of a description specified in the regulations; and
  - (b) to give directions in relation to those matters.
- (9) Schedule A2 applies to reviews under this section.]

#### Textual Amendments

**F20** Ss. 1AA-1AE inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 3(1), 41(1)(c)(3)**; [S.I. 2017/633](#), **art. 5(a)** (with [art. 6\(1\)](#))

#### [<sup>F21</sup>1B Publication of the Schedule

- (1) Historic Environment Scotland must—
  - (a) publish the Schedule compiled and maintained under section 1, and any amendments of the Schedule, and
  - (b) make the Schedule available for public inspection,
 in such manner as may be prescribed.
- (2) The Scottish Ministers may by regulations make further provision for—
  - (a) the publication of the Schedule,
  - (b) the making of the Schedule available for public inspection,
  - (c) the notification of the inclusion of a monument in, the amendment of an entry relating to a monument in or the exclusion of a monument from the Schedule.]



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### Textual Amendments

**F21** S. 1B inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 3** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

## [<sup>F22</sup>1C Appeal against inclusion etc. in Schedule of monuments

- (1) This section applies where Historic Environment Scotland makes a decision—
  - (a) to include a monument in the Schedule,
  - (b) to amend an entry in the Schedule relating to a monument.
- (2) A person mentioned in subsection (3) may appeal the decision to the Scottish Ministers.
- (3) The person is—
  - (a) the owner of the monument,
  - (b) the tenant of the monument,
  - (c) the occupier of the monument.

### Textual Amendments

**F22** Ss. 1C-1E inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 32** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

## 1D Determination of appeals under section 1C

- (1) The Scottish Ministers may—
  - (a) dismiss an appeal under section 1C,
  - (b) allow such an appeal (in whole or in part).
- (2) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.
- (3) Where the Scottish Ministers allow an appeal, they may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to their decision.
- (4) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 1C is final.

### Textual Amendments

**F22** Ss. 1C-1E inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 32** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

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## 1E Procedure for appeals under section 1C

- (1) The Scottish Ministers may by regulations make provision in connection with appeals under section 1C, including provision about—
  - (a) the grounds on which an appeal may be made,
  - (b) 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 1C.]

### Textual Amendments

**F22** Ss. 1C-1E inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 32](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

## 2 Control of works affecting scheduled monuments.

- (1) If any person executes or causes or permits to be executed any works to which this section applies he shall be guilty of an offence unless the works are authorised under this Part of this Act [<sup>F23</sup>or by development consent].
- (2) This section applies to any of the following works, that is to say—
  - (a) any works resulting in the demolition or destruction of or any damage to a scheduled monument;
  - (b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto; and
  - (c) any flooding or tipping operations on land in, on or under which there is a scheduled monument.
- (3) Without prejudice to any other authority to execute works conferred under this Part of this Act, works to which this section applies are authorised under this Part of this Act if—
  - (a) the Secretary of State [<sup>F24</sup>or Historic Environment Scotland] has granted [<sup>F25</sup>written] consent (referred to below in this Act as “scheduled monument consent”) for the execution of the works; and
  - (b) the works are executed in accordance with the terms of the consent and of any conditions attached to the consent.

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**Changes to legislation:** Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Protection of scheduled monuments is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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<sup>F26</sup>(3A) If works to which this section applies have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument without being authorised under this Part, and the Welsh Ministers grant consent for the retention of the works, the works are authorised under this Part from the grant of the consent.

(3B) References in this Act to scheduled monument consent (other than in section 4) include a reference to consent under subsection (3A).]

<sup>F27</sup>(3A) If—

(a) works to which this section applies have been executed without being authorised under this Part; and

<sup>F28</sup>[ consent for the retention of the works is granted by the Scottish Ministers or  
(b) by Historic Environment Scotland,]

the works are authorised under this Part of this Act from the grant of the consent.

(3B) References in this Act to scheduled monument consent include consent under subsection (3A) above.]

(4) Scheduled monument consent may be granted either unconditionally or subject to conditions (whether with respect to the manner in which or the persons by whom the works or any of the works are to be executed or otherwise).

(5) Without prejudice to the generality of subsection (4) above, a condition attached to a scheduled monument consent may require that

<sup>F29</sup>(a) a person authorised by the Commission (in a case where the monument in question is situated in England), or

(b) [<sup>F30</sup>the Secretary of State][<sup>F30</sup>Historic Environment Scotland] or a person authorised by [<sup>F30</sup>the Secretary of State][<sup>F30</sup>Historic Environment Scotland] (in any other case)]

be afforded an opportunity, before any works to which the consent relates are begun, to examine the monument and its site and carry out such excavations therein as appear to [<sup>F31</sup>the Secretary of State][<sup>F31</sup>Historic Environment Scotland] to be desirable for the purpose of archaeological investigation.

<sup>F32</sup>(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.]

<sup>F33</sup>(5A) In the case of a monument situated in Wales, the reference in subsection (3)(a) to the granting of written consent includes a reference to the granting of consent in such other manner as may be prescribed by the Welsh Ministers.

(5B) The Welsh Ministers may by regulations make provision as to the form and content of consent under this section in relation to a monument situated in Wales.]

(6) Without prejudice to subsection (1) above, if a person executing or causing or permitting to be executed any works to which a scheduled monument consent relates fails to comply with any condition attached to the consent he shall be guilty of an offence, unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.

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**Changes to legislation:** Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Protection of scheduled monuments is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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- [<sup>F34</sup>(6A) In any proceedings for an offence under subsection (1) in relation to a monument or anything else on which interim protection is conferred (which is, as a result of section 1AB(2), treated as a scheduled monument or part of such a monument)—
- (a) it is a defence for the accused to prove that the accused did not know, and could not reasonably have been expected to know, that the interim protection had been conferred; and
  - (b) where the defence is raised by a person on whom a notice should have been served under section 1AA(2), it is for the prosecution to prove that the notice was served on the person.]
- (7) In any proceedings for an offence under this section in relation to works within subsection (2)(a) above it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid or prevent damage to the monument.
- (8) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) above [<sup>F35</sup>which have been executed in relation to a scheduled monument situated in England or land in, on or under which there is such a scheduled monument] it shall be a defence for the accused to [<sup>F36</sup>prove that][<sup>F36</sup>show that, before executing, causing the execution of or, as the case may be, permitting the execution of the works—
- (a) he had taken all reasonable steps to find out whether there was a scheduled monument within the area affected by the works, and]
- he did not know and had no reason to believe that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.
- [<sup>F37</sup>(8A) In any proceedings for an offence under this section in relation to works within subsection (2)(a) or (c) which have been executed in relation to a scheduled monument situated in Wales or land in, on or under which there is such a scheduled monument, it is a defence for the accused to prove that, before executing the works or before causing or permitting their execution (as the case may be), the accused?—
- (a) had taken all reasonable steps to find out whether there was a scheduled monument in the area affected by the works; and
  - (b) did not know, and had no reason to believe, that the monument was within the area affected by the works or (as the case may be) that it was a scheduled monument.]
- (9) In any proceedings for an offence under this section it shall be a defence to prove that the works were urgently necessary in the interests of safety or health and that notice in writing of the need for the works was given to [<sup>F38</sup>the Secretary of State][<sup>F38</sup>Historic Environment Scotland] as soon as reasonably practicable.
- (10) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction or, in Scotland, on conviction before a court of summary jurisdiction, to a fine not exceeding [<sup>F39</sup>the statutory maximum][<sup>F39</sup>£50,000]; or
  - (b) on conviction on indictment to a fine.
- [<sup>F40</sup>(10A) In determining the amount of any fine to be imposed on a person under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.]

**Changes to legislation:** Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Protection of scheduled monuments is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (11) Part I of Schedule 1 to this Act shall have effect with respect to applications for, <sup>F41</sup>the manner of granting, and the form, content] and the effect of, scheduled monument consent.

### Textual Amendments

- F23** Words in s. 2(1) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 17** (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)
- F24** Words in s. 2(3)(a) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(a)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F25** Word in s. 2(3)(a) repealed (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 2(a)**, 33(2); [S.S.I. 2011/372](#), art. 2, Sch.
- F26** S. 2(3A)(3B) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 6(1)**, 41(2)
- F27** S. 2(3A)(3B) inserted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 2(b)**, 33(2); [S.S.I. 2011/372](#), art. 2, Sch.
- F28** S. 2(3A)(b) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(b)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F29** Words substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 27**
- F30** Words in s. 2(5)(b) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(c)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F31** Words in s. 2(5) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(c)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F32** S. 2(5A) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(d)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F33** S. 2(5A)(5B) inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 5(1)**, 41(1)(c)(3); [S.I. 2017/633](#), art. 5(b)
- F34** S. 2(6A) inserted (E.W.) (21.3.2016 for specified purposes, 31.5.2017 in so far as not already in force) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 3(2)**, 41(1)(c)(3); [S.I. 2017/633](#), art. 5(b)
- F35** Words in s. 2(8) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 15(2)**, 41(2)
- F36** Words in s. 2(8) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 3(2)**, 33(2); [S.S.I. 2011/372](#), art. 2, Sch.
- F37** S. 2(8A) inserted (E.W.) (21.5.2016) by [Historic Environment \(Wales\) Act 2016 \(anaw 4\)](#), **ss. 15(3)**, 41(2)
- F38** Words in s. 2(9) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 5(e)** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F39** Words in s. 2(10) substituted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 4(2)(a)**, 33(2); [S.S.I. 2011/372](#), art. 2, Sch.
- F40** S. 2(10A) inserted (S.) (1.12.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 4(2)(b)**, 33(2); [S.S.I. 2011/372](#), art. 2, Sch.
- F41** Words in s. 2(11) inserted (S.) (30.6.2011 for specified purposes, 1.12.2011 in so far as not already in force) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), **ss. 15(4)**, 33(2); [S.S.I. 2011/174](#), art. 2, Sch.; [S.S.I. 2011/372](#), art. 2, Sch.

*Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Protection of scheduled monuments is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

#### Modifications etc. (not altering text)

- C3** S. 2 excluded (18.12.1996) by 1996 c. 61, s. 12, **Sch. 7 para. 4(2)**
- C4** S. 2 excluded (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 9 para. 4(2)**
- C5** S. 2 excluded (23.2.2017) by High Speed Rail (London - West Midlands) Act 2017 (c. 7), s. 70(1), **Sch. 19 para. 1(2)**
- C6** S. 2 excluded (11.2.2021) by High Speed Rail (West Midlands - Crewe) Act 2021 (c. 2), s. 64(1), **Sch. 19 para. 1(2)**
- C7** S. 2(5)(b) savings for effects of 2014 asp 19, Sch. 2 para. 5(c) (S.) (1.10.2015) by The Historic Environment Scotland Act 2014 (Saving, Transitional and Consequential Provisions) Order 2015 (S.S.I. 2015/239), arts. 1(1), 4
- C8** S. 2(8) savings for effects of 2011 asp 3 s. 3(2) (S.) (1.12.2011) by The Historic Environment (Amendment) (Scotland) Act 2011 (Saving, Transitional and Consequential Provisions) Order 2011 (S.S.I. 2011/377), arts. 1(1), 2(a)
- C9** S. 2(9) savings for effects of 2014 asp 19, Sch. 2 para. 5(e) (S.) (1.10.2015) by The Historic Environment Scotland Act 2014 (Saving, Transitional and Consequential Provisions) Order 2015 (S.S.I. 2015/239), arts. 1(1), 5

### 3 Grant of scheduled monument consent by order of the Secretary of State.

- (1) The Secretary of State may by order grant scheduled monument consent for the execution of works of any class or description specified in the order, and any such consent may apply to scheduled monuments of any class or description so specified.

[<sup>F42</sup>Before granting consent in relation to monuments of a class or description which includes monuments situated in England, the Secretary of State shall consult with the Commission in relation to the monuments so situated.]

- (2) Any conditions attached by virtue of section 2 of this Act to a scheduled monument consent granted by an order under this section shall apply in such class or description of cases as may be specified in the order.

- (3) The Secretary of State may direct that scheduled monument consent granted by an order under this section, shall not apply to any scheduled monument specified in the direction, and may withdraw any direction given under this subsection.

[<sup>F43</sup>Before making a direction in relation to a monument situated in England, or withdrawing such a direction, the Secretary of State shall consult with the Commission.]

- (4) A direction under subsection (3) above shall not take effect until notice of it has been served on the occupier or (if there is no occupier) on the owner of the monument in question.

- (5) References below in this Act to a scheduled monument consent do not include references to a scheduled monument consent granted by an order under this section, unless the contrary intention is expressed.

#### Textual Amendments

- F42** Words inserted by National Heritage Act 1983 (c. 47, SIF 78), s. 41, **Sch. 4 para. 28(2)**
- F43** Words inserted by National Heritage Act 1983 (c. 47, SIF 78), s. 41, **Sch. 4 para. 28(3)**

**Changes to legislation:** Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Protection of scheduled monuments is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

### [<sup>F44</sup>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.]

#### Textual Amendments

**F44** S. 3A inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 6** (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.

### [<sup>F45</sup>3B Referral of certain applications to the Scottish Ministers

- (1) The Scottish Ministers may give directions requiring applications for—
  - (a) scheduled monument consent,
  - (b) variation or discharge of conditions to which scheduled monument consent is subject,
  - (c) subsequent approval required by a condition to which scheduled monument consent is subject,
 to be referred to them instead of being dealt with by Historic Environment Scotland.
- (2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.
- (3) A direction under this section may be withdrawn or modified by a subsequent direction.
- (4) An application in respect of which a direction under this section has effect is to be referred to the Scottish Ministers accordingly.
- (5) In determining an application under this section, the Scottish Ministers may deal with the application as if it had been made to them in the first instance.
- (6) Except as provided for by section 55, the decision of the Scottish Ministers on any application referred to them under this section is final.
- (7) The reference in subsection (1)(c) to scheduled monument consent includes a reference to consent granted by order under section 3.



*Changes to legislation:* Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Protection of scheduled monuments is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

#### Textual Amendments

**F45** Ss. 3B, 3C inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 35** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### 3C Procedure for referrals under section 3B

- (1) The Scottish Ministers may by regulations make provision in connection with referrals under section 3B, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the referral.
- (2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
  - (a) the notification of a referral,
  - (b) the manner in which a referral is to be conducted.
- (3) Regulations made by virtue of subsection (2)(b) may also include provision that the manner in which a referral, or any stage of a referral, 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).]

#### Textual Amendments

**F45** Ss. 3B, 3C inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 35** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### 4 Duration, modification and revocation of scheduled monument consent.

- (1) Subject to subsection (2) below, if no works to which a scheduled monument consent relates are executed or started within the period of five years beginning with the date on which the consent was granted, or such longer or shorter period as may be specified for the purposes of this subsection in the consent, the consent shall cease to have effect at the end of that period (unless previously revoked in accordance with the following provisions of this section).
- (2) Subsection (1) above does not apply to a scheduled monument consent which provides that it shall cease to have effect at the end of a period specified therein.
- (3) [<sup>F46</sup>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) [<sup>F46</sup>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.]

**Changes to legislation:** Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Protection of scheduled monuments is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (5) Part II of Schedule 1 to this Act shall have effect with respect to <sup>F48</sup>directions<sup>F48</sup>orders under this section modifying or revoking a scheduled monument consent.

#### Textual Amendments

- F46** S. 4(3)(4) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 7(a)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F47** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 29**
- F48** Word in s. 4(5) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 7(b)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

#### Modifications etc. (not altering text)

- C10** S. 4 savings for effects of 2014 asp 19, Sch. 2 para. 7 (S.) (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Saving, Transitional and Consequential Provisions\) Order 2015 \(S.S.I. 2015/239\)](#), arts. 1(1), 7
- C11** S. 4 excluded (1.1.2022) by [The Scheduled Monuments \(Heritage Partnership Agreements\) \(Wales\) Regulations 2021 \(S.I. 2021/1176\)](#), reg. 1, **Sch. 1**

### <sup>F49</sup>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.

*Changes to legislation: Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Protection of scheduled monuments is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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.]

#### Textual Amendments

**F49** S. 4A inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 8](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### [<sup>F50</sup>4B Appeal in relation to scheduled monument consent

- (1) This section applies where Historic Environment Scotland makes a decision—
- refusing an application for scheduled monument consent,
  - granting such an application subject to conditions,
  - refusing an application for variation or discharge of conditions to which a scheduled monument consent is subject,
  - granting such an application subject to conditions,
  - refusing an application for subsequent approval required by a condition to which a scheduled monument consent is subject.
- (2) A person who made the application mentioned in subsection (1) may appeal the decision to the Scottish Ministers.
- (3) A person may also appeal to the Scottish Ministers where Historic Environment Scotland has not given notice of its decision on an application mentioned in subsection (1)(a), (c) or (e) within the prescribed period or such other longer period as may be agreed between the applicant and Historic Environment Scotland.
- (4) An appeal under this section may include the ground that—
- the monument should not be included in the Schedule,
  - the entry in the Schedule relating to the monument should be amended.

#### Textual Amendments

**F50** Ss. 4B-4D inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 33](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

### 4C Determination of appeals under section 4B

- (1) The Scottish Ministers may—
- dismiss an appeal under section 4B,
  - allow such an appeal (in whole or in part).
- (2) In determining an appeal under section 4B, the Scottish Ministers may deal with the application to which the appeal relates as if it had been made to them in the first instance.

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**Changes to legislation:** Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Protection of scheduled monuments is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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- (3) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.
- (4) Subsection (5) applies where—
  - (a) the grounds of appeal include the ground—
    - (i) that the monument should not be included in the Schedule, or
    - (ii) that the entry in the Schedule relating to the monument should be amended, and
  - (b) the Scottish Ministers uphold that ground.
- (5) The Scottish Ministers may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that decision.
- (6) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 4B is final.

#### Textual Amendments

**F50** Ss. 4B-4D inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 33](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.

## 4D Procedure for appeals under section 4B

- (1) The Scottish Ministers may by regulations make provision in connection with appeals under section 4B, including provision about—
  - (a) subject to section 4B(4), the grounds on which an appeal may be made,
  - (b) 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) Regulations under subsection (1) may also provide that an appeal in respect of an application—
  - (a) for scheduled monument consent, or
  - (b) for the variation or discharge of conditions to which such a consent is subject, need not be entertained unless it is accompanied by a certificate in the prescribed form as to the interests in the monument to which the appeal relates.

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- (5) Sub-paragraphs (2) to (4) of paragraph 2 of schedule 1 apply to regulations imposing a requirement by virtue of subsection (4) as they apply to the requirement imposed by sub-paragraph (1) of that paragraph.
- (6) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 4B.]

#### Textual Amendments

**F50** Ss. 4B-4D inserted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 33](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.

## 5 Execution of works for preservation of a scheduled monument by Secretary of State in cases of urgency.

- (1) If it appears to [<sup>F51</sup>the Secretary of State][<sup>F51</sup>Historic Environment Scotland] that any works are urgently necessary for the preservation of a scheduled monument [<sup>F52</sup>he][<sup>F52</sup>it] may enter the site of the monument and execute those works, after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than seven days' notice in writing of [<sup>F53</sup>his][<sup>F53</sup>its] intention to do so.
- (2) Where the Secretary of State executes works under this section for repairing any damage to a scheduled monument—
- any compensation order previously made in respect of that damage under [<sup>F54</sup>section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 [<sup>F55</sup>or Chapter 2 of Part 7 of the Sentencing Code]] (compensation orders against convicted persons) in favour of any other person shall be enforceable (so far as not already complied with) as if it had been made in favour of the Secretary of State; and
  - any such order subsequently made in respect of that damage shall be made in favour of the Secretary of State.
- [<sup>F56</sup>(3) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a scheduled monument situated in England, he may (instead of acting as mentioned in subsection (1) above) authorise the Commission to enter the site of the monument and execute the works as are specified in the authorisation.
- (4) In that case, the Commission may enter the site and execute the works after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than seven day's notice in writing of their intention to do so.
- (5) Where the Secretary of State gives an authorisation under subsection (3) above, subsection (2) above shall have effect with the substitution of “Commission” for “Secretary of State” (in each place) and of “execute” for “executes”.]

#### Textual Amendments

**F51** Words in s. 5(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 9\(a\)](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.

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- F52** Word in s. 5(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 9\(b\)](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F53** Word in s. 5(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 9\(c\)](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F54** Words in s. 5(2)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), [Sch. 9 para. 58](#)
- F55** Words in s. 5(2)(a) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 40](#) (with [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F56** S. 5(3)–(5) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 30](#)

## 6 Powers of entry for inspection of scheduled monuments, etc.

- (1) Any person duly authorised in writing by [<sup>F57</sup>the Secretary of State][<sup>F57</sup>Historic Environment Scotland] may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining its condition [<sup>F58</sup>and<sup>F58</sup>; and such power may, in particular, be exercised with a view to ascertaining—]]—
  - (a) whether any works affecting the monument are being carried out in contravention of section 2(1) of this Act; or
  - (b) whether it has been or is likely to be damaged (by any such works or otherwise).
- (2) Any person duly authorised in writing by the Secretary of State [<sup>F59</sup>or Historic Environment Scotland] may at any reasonable time enter any land for the purpose of inspecting any scheduled monument in, on or under the land in connection with—
  - (a) any application for scheduled monument consent for works affecting that monument; or
  - (b) any proposal by the Secretary of State [<sup>F59</sup>or Historic Environment Scotland] to modify or revoke a scheduled monument consent for any such works.
- (3) Any person duly authorised in writing by the Secretary of State [<sup>F60</sup>or Historic Environment Scotland] may at any reasonable time enter any land for the purpose of—
  - (a) observing the execution on the land of any works to which a scheduled monument consent relates; and
  - (b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works;

so as to ensure that the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the consent.
- [<sup>F61</sup>(3A) Any person duly authorised in writing by the Scottish Ministers [<sup>F62</sup>or Historic Environment Scotland] may at any reasonable time enter any land—
  - (a) to ascertain whether a scheduled monument enforcement notice, a stop notice or a temporary stop notice should be served in relation to a scheduled monument in, on or under that or any other land,
  - (b) for the purposes of displaying—
    - (i) a site notice,
    - (ii) a notice under section 9G(7) in place of a site notice, or
    - (iii) a copy of a temporary stop notice, and a statement as to the effect of section 9M, under section 9K(4),



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- (c) to ascertain whether a scheduled monument enforcement notice, a stop notice or a temporary stop notice has been complied with,
  - (d) to ascertain whether any offence has been, or is being, committed with respect to any scheduled monument in, on or under that or any other land under section 2(1) or (6), 9E, 9J or 9M.]
- (4) Any person duly authorised in writing by the Secretary of State [<sup>F63</sup>or Historic Environment Scotland] may at any reasonable time enter any land on which any works to which a scheduled monument consent relates are being carried out for the purpose of—
- (a) inspecting the land (including any buildings or other structures on the land) with a view to recording any matters of archaeological or historical interest; and
  - (b) observing the execution of those works with a view to examining and recording any objects or other material of archaeological or historical interest, and recording any matters of archaeological or historical interest, discovered during the course of those works.
- (5) Any person duly authorised in writing by the Secretary of State [<sup>F64</sup>or Historic Environment Scotland] may enter any land in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Secretary of State [<sup>F64</sup>or Historic Environment Scotland] to be desirable with a view to preserving the monument from accidental or deliberate damage.
- [<sup>F65</sup>This subsection does not apply to land in England.]
- (6) References in this section to scheduled monument consent include references to consent granted by order under section 3 of this Act.

#### Textual Amendments

- F57** Words in s. 6(1) substituted (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 10\(a\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F58** Words in s. 6(1) substituted (S.) (30.6.2011) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), ss. 5, 33(2); S.S.I. 2011/174, art. 2, Sch.
- F59** Words in s. 6(2) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 10\(b\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F60** Words in s. 6(3) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 10\(c\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F61** Words in s. 6(3A) inserted (S.) (30.6.2011 for specified purposes) by [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#), ss. 6(2), 33(2); S.S.I. 2011/174, art. 2, Sch.
- F62** Words in s. 6(3A) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 10\(d\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.
- F63** Words in s. 6(4) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 10\(e\)](#) (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.



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**F64** Words in s. 6(5) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), **sch. 2 para. 10(f)** (with ss. 29, 30); S.S.I. 2015/31, art. 2, sch.; S.S.I. 2015/196, art. 2, sch.

**F65** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, **Sch. 4 para. 31**

#### Modifications etc. (not altering text)

**C12** S. 6 applied (with modifications) (1.1.2022) by [The Scheduled Monuments \(Heritage Partnership Agreements\) \(Wales\) Regulations 2021 \(S.I. 2021/1176\)](#), reg. 1, **Sch. 1**

**C13** S. 6(1) restricted (18.12.1996) by 1996 c. 61, s. 12, **Sch. 7 para. 4(3)**

**C14** S. 6(1) restricted (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **Sch. 9 para. 4(3)**

**C15** S. 6(1) restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 19 para. 1(3)**

**C16** S. 6(1) restricted (11.2.2021) by [High Speed Rail \(West Midlands - Crewe\) Act 2021 \(c. 2\)](#), s. 64(1), **Sch. 19 para. 1(3)**

### [<sup>F66</sup>6A Commission's powers of entry in relation to scheduled monuments.

- (1) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining whether any works affecting the monument have been or are being carried out in contravention of section 2(1) of this Act and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1).
- (2) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of—
  - (a) observing the execution on the land of any works to which a scheduled monument consent relates; and
  - (b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works,
 with a view to ascertaining whether the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the consent, and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1) or (6) of this Act.
- (3) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land in connection with any consultation made in respect of the monument under section 4(3) of this Act or paragraph 3(3)(c) of Schedule 1 to this Act.
- (4) Any person duly authorised in writing by the Commission may enter any land which is in England and in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Commission to be desirable with a view to preserving the monument from accidental or deliberate damage.
- (5) References in this section to scheduled monument consent include references to consent granted by order under section 3 of this Act.]

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### Textual Amendments

**F66** S. 6A inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 32](#)

### Modifications etc. (not altering text)

**C17** S. 6A(1) restricted (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 9 para. 4\(3\)](#)

**C18** S. 6A(1) restricted (18.12.1996) by [1996 c. 61](#), s. 12, [Sch. 7 para. 4\(3\)](#)

**C19** S. 6A(1) restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), [Sch. 19 para. 1\(3\)](#)

**C20** S. 6A(1) restricted (11.2.2021) by [High Speed Rail \(West Midlands - Crewe\) Act 2021 \(c. 2\)](#), s. 64(1), [Sch. 19 para. 1\(3\)](#)

## 7 Compensation for refusal of scheduled monument consent.

- (1) Subject to the following provisions of this section, where a person who has an interest in the whole or any part of a monument incurs expenditure or otherwise sustains any loss or damage in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to any works of a description mentioned in subsection (2) below, [<sup>F67</sup>the Secretary of State][<sup>F67</sup>Historic Environment Scotland or, where the Scottish Ministers refused the scheduled monument consent or granted it subject to conditions, Ministers][<sup>F68</sup>or (where the monument in question is situated in England) the Commission] shall pay to that person compensation in respect of that expenditure, loss or damage.

References in this section and in section 8 of this Act to compensation being paid in respect of any works are references to compensation being paid in respect of any expenditure incurred or other loss or damage sustained in consequence of the refusal, or the granting subject to conditions, of a scheduled monument consent in relation to those works.

- (2) The following are works in respect of which compensation is payable under this section—
- (a) works which are reasonably necessary for carrying out any development for which planning permission had been granted (otherwise than by a general development order) before the time when the monument in question became a scheduled monument and was still effective at the date of the application for scheduled monument consent;
  - (b) works which do not constitute development, or constitute development such that planning permission is granted therefor by a general development order; and
  - (c) works which are reasonably necessary for the continuation of any use of the monument for any purpose for which it was in use immediately before the date of the application for scheduled monument consent.

For the purposes of paragraph (c) above, any use in contravention of any legal restrictions for the time being applying to the use of the monument shall be disregarded.

- (3) The compensation payable under this section in respect of any works within subsection (2)(a) above shall be limited to compensation in respect of any expenditure incurred or other loss or damage sustained by virtue of the fact that, in consequence of [<sup>F69</sup>the Secretary of State's][<sup>F69</sup>Historic Environment Scotland's or, as the case may be, the Scottish Ministers'] decision, any development for which the planning permission

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in question was granted could not be carried out without contravening section 2(1) of this Act.

- (4) A person shall not be entitled to compensation under this section by virtue of subsection (2)(b) above if the works in question or any of them would or might result in the total or partial demolition or destruction of the monument, unless those works consist solely of operations involved in or incidental to the use of the site of the monument for the purposes of agriculture or forestry (including afforestation).
- (5) In a case where scheduled monument consent is granted subject to conditions, a person shall not be entitled to compensation under this section by virtue of subsection (2)(c) above unless compliance with those conditions would in effect make it impossible to use the monument for the purpose there mentioned.
- (6) In calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of an interest in land—
  - (a) it shall be assumed that any subsequent application for scheduled monument consent in relation to works of a like description would be determined in the same way; but
  - (b) if, in the case of a refusal of scheduled monument consent, [<sup>F70</sup>the Secretary of State][<sup>F70</sup>Historic Environment Scotland or, as the case may be, the Scottish Ministers] , on refusing that consent, undertook to grant such consent for some other works affecting the monument in the event of an application being made in that behalf, regard shall be had to that undertaking.
- (7) References in this section to a general development order are references to a development order made as a general order applicable (subject to such exceptions as may be specified therein) to all land.

#### Textual Amendments

- F67** Words in s. 7(1) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 11\(a\)](#) (with [ss. 29, 30](#)); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F68** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 33](#)
- F69** Words in s. 7(3) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 11\(b\)](#) (with [ss. 29, 30](#)); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F70** Words in s. 7(6)(b) substituted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 11\(c\)](#) (with [ss. 29, 30](#)); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.

## 8 Recovery of compensation under section 7 on subsequent grant of consent.

- (1) Subject to the following provisions of this section, this section applies—
  - (a) in a case where compensation under section 7 of this Act was paid in consequence of the refusal of a scheduled monument consent, if the Secretary of State [<sup>F71</sup>or Historic Environment Scotland] subsequently grants scheduled monument consent for the execution of all or any of the works in respect of which the compensation was paid; and
  - (b) in a case where compensation under that section was paid in consequence of the granting of a scheduled monument consent subject to conditions, if

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the Secretary of State [<sup>F71</sup>or Historic Environment Scotland] subsequently so modifies that consent that those conditions, or any of them, cease to apply to the execution of all or any of the works in respect of which the compensation was paid or grants a new consent in respect of all or any of those works free from those conditions, or any of them.

(2) This section does not apply in any case unless—

(a) the compensation paid exceeded £20; and

[<sup>F72</sup>(b) the requirement mentioned in subsection (2A) below is fulfilled]

[<sup>F73</sup>(2A) The requirement is that—

(a) where the monument in question is situated in England, the Commission have caused notice of the payment of compensation to be deposited with the council of each district or London borough in which the monument is situated or (where it is situated in the City of London, the Inner Temple or the Middle Temple) with the Common Council of the City of London;

(b) where the monument in question is situated in Scotland, the Secretary of State [<sup>F74</sup>or Historic Environment Scotland] has caused such notice to be deposited with the local authority of each area in which the monument is situated;

(c) where the monument in question is situated in Wales, the Secretary of State has caused such notice to be deposited with the council of each [<sup>F75</sup>county or county borough] in which the monument is situated.]

(3) In granting or modifying a scheduled monument consent in a case to which this section applies the Secretary of State [<sup>F76</sup>or Historic Environment Scotland] may do so on terms that no works in respect of which the compensation was paid are to be executed in pursuance of the consent until the recoverable amount has been repaid to the Secretary of State [<sup>F76</sup>or Historic Environment Scotland] or secured to his [<sup>F77</sup>or its] satisfaction [<sup>F78</sup>or (as the case may be) has been repaid to the Commission or secured to their satisfaction].

Subject to subsection (4) below, in this subsection “the recoverable amount” means such amount (being an amount representing the whole of the compensation previously paid or such part thereof as the Secretary of State [<sup>F76</sup>or Historic Environment Scotland] thinks fit) as the Secretary of State [<sup>F76</sup>or Historic Environment Scotland] may specify in giving notice of his [<sup>F77</sup>or its] decision on the application for scheduled monument consent or (as the case may be) in the direction modifying the consent.

(4) Where a person who has an interest in the whole or any part of a monument is aggrieved by the amount specified by the Secretary of State [<sup>F79</sup>or Historic Environment Scotland] as the recoverable amount for the purposes of subsection (3) above, he may require the determination of that amount to be referred to the [<sup>F80</sup>Upper Tribunal or] (in the case of a monument situated in Scotland) to the Lands Tribunal for Scotland; and in any such case the recoverable amount for the purposes of that subsection shall be such amount (being an amount representing the whole or any part of the compensation previously paid) as that Tribunal may determine to be just in the circumstances of the case.

(5) A notice deposited under subsection (2)(b) above shall specify the decision which gave rise to the right to compensation, the monument affected by the decision, and the amount of the compensation.

(6) A notice so deposited in the case of a monument situated in England and Wales shall be a local land charge; and for the purposes of the <sup>M3</sup>Local Land Charges Act 1975

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the council with whom any such notice is deposited shall be treated as the originating authority as respects the charge thereby constituted.

- (7) A notice so deposited in the case of any monument situated in Scotland which is heritable may be recorded in the Register of Sasines.

#### Textual Amendments

- F71** Words in s. 8(1) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 12\(a\)](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F72** S. 8(2)(b) substituted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 34\(2\)\(5\)](#)
- F73** S. 8(2A) inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 34\(3\)\(5\)](#)
- F74** Words in s. 8(2A) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 12\(b\)](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F75** Words in s. 8(2A)(c) substituted (1.4.1996) by [1994 c. 19](#), s. 66(6), [Sch. 16 para. 56\(1\)](#) (with ss. 54(5) (7), 55(5), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); [S.I. 1996/396](#), art. 4, [Sch. 2](#)
- F76** Words in s. 8(3) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 12\(c\)\(i\)](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F77** Words in s. 8(3) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 12\(c\)\(ii\)](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F78** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 34\(4\)\(5\)](#)
- F79** Words in s. 8(4) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 12\(d\)](#) (with ss. 29, 30); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F80** Words in s. 8(4) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 1 para. 127](#) (with [Sch. 5](#))

#### Marginal Citations

- M3** [1975 c. 76](#).

## 9 Compensation where works affecting a scheduled monument cease to be authorised.

- (1) Subject to the following provisions of this section, where any works affecting a scheduled monument which were previously authorised under this Part of this Act cease to be so, then, if any person who has an interest in the whole or any part of the monument—

- (a) has incurred expenditure in carrying out works which are rendered abortive by the fact that any further works have ceased to be so authorised; or
- (b) has otherwise sustained loss or damage which is directly attributable to that fact;

the Secretary of State [<sup>F81</sup>or Historic Environment Scotland][<sup>F82</sup>or (where the monument in question is situated in England) the Commission] shall pay to that person compensation in respect of that expenditure, loss or damage.

- (2) Subsection (1) above only applies where the works cease to be authorised under this Part of this Act—

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**Changes to legislation:** Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Protection of scheduled monuments is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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- (a) by virtue of the fact that a scheduled monument consent granted by order under section 3 of this Act ceases to apply to any scheduled monument (whether by virtue of variation or revocation of the order or by virtue of a direction under subsection (3) of that section); or
  - (b) by virtue of the modification or revocation of a scheduled monument consent by a direction given under section 4 of this Act; or
  - (c) in accordance with paragraph 8 of Schedule 1 to this Act, by virtue of the service of a notice of proposed modification or revocation of a scheduled monument consent under paragraph 5 of that Schedule.
- (3) A person shall not be entitled to compensation under this section in a case falling within subsection (2)(a) above unless, on an application for scheduled monument consent for the works in question, consent is refused, or is granted subject to conditions other than those which previously applied under the order.
- (4) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out those works.
- (5) Subject to subsection (4) above, no compensation shall be paid under this section in respect of any works carried out before the grant of the scheduled monument consent in question, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

#### Textual Amendments

- F81** Words in s. 9(1) inserted (S.) (27.2.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Historic Environment Scotland Act 2014 \(asp 19\)](#), s. 31(2), [sch. 2 para. 13](#) (with [ss. 29, 30](#)); [S.S.I. 2015/31](#), art. 2, sch.; [S.S.I. 2015/196](#), art. 2, sch.
- F82** Words inserted by [National Heritage Act 1983 \(c. 47, SIF 78\)](#), s. 41, [Sch. 4 para. 35](#)

**Changes to legislation:**

Ancient Monuments and Archaeological Areas Act 1979, Cross Heading: Protection of scheduled monuments is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(3A) inserted by [2023 asc 3 Sch. 13 para. 20\(b\)](#)
- s. 1AA-1AE omitted by [2023 asc 3 Sch. 13 para. 21](#)
- s. 7(4A) inserted by [2016 anaw 4 s. 10\(2\)](#)
- s. 33(1A) inserted by [2023 asc 3 Sch. 13 para. 35\(a\)](#)