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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 375**

**ANCIENT MONUMENTS**

**The Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 2011**

*Made* - - - - 27th October 2011  
*Laid before the Scottish Parliament* - - - - 31st October 2011  
*Coming into force* - - 1st December 2011

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 2 and 60 of, and paragraphs 1(1) and 2(2), (2A) and (3) of Schedule 1 to, the Ancient Monuments and Archaeological Areas Act 1979(1) and all other powers enabling them to do so.

**Citation, commencement, extent and application**

1.—(1) These Regulations may be cited as the Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 2011 and come into force on 1st December 2011.

(2) These Regulations extend to Scotland only.

(3) These Regulations apply to applications for scheduled monument consent made on or after 1st December 2011.

**Application for scheduled monument consent**

2.—(1) An application for scheduled monument consent to the Scottish Ministers must be made in accordance with this Regulation.

(2) An application (on a form obtained from the Scottish Ministers) must contain—

- (a) a written description of the works to which it relates;
- (b) the name or location of the scheduled monument to which the works relate or a description of the location of the land; and

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(1) 1979 c.46. The functions of the Secretary of State transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46). Section 2 and Schedule 1 were amended by the [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#).

- (c) the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent.
- (3) The application must be accompanied by—
  - (a) a plan or drawing, sufficient to identify the area of land to which the works relate;
  - (b) such other plans and drawings as are necessary to describe the works to which it relates; and
  - (c) one or other of the certificates required under regulation 3.

### **Certificates and notices**

**3.—(1)** The applicant is to give notice in the form set out in the Schedule to any person (other than the applicant) who at the beginning of the prescribed period was the owner of the monument to which the application relates.

- (2) The applicant must issue a certificate stating, as appropriate—
  - (a) that at the beginning of the prescribed period no person (other than the applicant) was the owner of the monument to which the application relates;
  - (b) that the applicant has given notice in accordance with paragraph (1);
  - (c) that the applicant—
    - (i) is unable to issue a certificate in accordance with sub-paragraph (a) or (b); and
    - (ii) has given notice to at least one person entitled to receive notice under paragraph (1) but, having taken reasonable steps to ascertain the names and addresses of other such persons, was unable to give notice to those other persons;
  - (d) that the applicant—
    - (i) is unable to issue a certificate in accordance with sub-paragraph (a); and
    - (ii) having taken reasonable steps to ascertain the names and addresses of any person entitled to receive notice under paragraph (1), was unable to give notice to any such person.
- (3) A certificate issued—
  - (a) under paragraph (2)(b) or (c) must set out the name of every person to whom notice was given and the address at and the date on which such notice was given;
  - (b) under paragraph (2)(c) or (d) must specify the steps taken to ascertain the names and addresses of those persons to whom the applicant has been unable to give notice.
- (4) For the purposes of this regulation—
  - “the 1911 Act” means the Small Landholders (Scotland) Act 1911<sup>(2)</sup>;
  - “the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991<sup>(3)</sup>;
  - “the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003<sup>(4)</sup>;
  - “agricultural tenant” means—
    - (a) in the case of an agricultural lease constituting a 1991 Act tenancy within the meaning of the 2003 Act, the tenant within the meaning of section 85 of the 1991 Act;
    - (b) in the case of a lease constituting a short limited duration tenancy or a limited duration tenancy under the 2003 Act, the tenant within the meaning of section 93 of that Act;

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(2) 1911. c.49.

(3) 1991 c.55.

(4) 2003 asp 11.

- (c) in the case of a holding within the meaning of the 1911 Act to which the 1991 Act does not apply, the landholder within the meaning of section 2(2) of the 1911 Act;

“owner of a monument” is—

- (a) any person who, in respect of any part of the land in, on or under which there is a scheduled monument, is under the Lands Clauses Acts enabled to sell and convey that land to promoters of an undertaking;
- (b) any person who is entitled to possession of that land as a tenant under a lease the unexpired period of which is not less than 10 years;
- (c) any tenant of a croft within the meaning of section 3 or any owner-occupier crofter of an owner-occupied croft under section 19B(5) of the Crofters (Scotland) Act 1993(5) any part of which is comprised in that land to which an application for scheduled monument consent relates; and
- (d) any agricultural tenant of land any part of which is comprised in that land to which an application for scheduled monument consent relates; and

“prescribed period” means the period of 21 days ending with the date of the application.

### **Electronic communication**

4.—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communication.

(2) The criteria are that—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive the document electronically; and
- (b) any document sent by the electronic communication is—
- (i) capable of being accessed by the recipient;
  - (ii) legible in all material respects; and
  - (iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communication is deemed to have agreed—

- (a) to the use of electronic communication for all purposes relating to the application which are capable of being carried out electronically; and
- (b) that the address for the purpose of electronic communication is the address incorporated into, or otherwise logically associated with, that communication.

(4) Deemed agreement by a person under paragraph (3) exists until that person gives notice to revoke the agreement.

(5) Notice of withdrawal of consent to the use of electronic communication or of revocation of agreements under paragraph (4), takes effect on a date specified by the person in the notice, but not less than 7 days after the date on which the notice was given.

(6) In this regulation—

“address” includes any number or address used for the purpose of electronic communication or storage;

“document” includes any notice, consent, decision, representation, statement, list, report, form, plan, certificate, or other information or communication;

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“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000<sup>(6)</sup>;

“legible in all material respects” means that the information is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and

“sent” includes made, submitted or given and related expressions are to be construed accordingly.

**Revocation of the Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 1981**

5.—(1) The Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 1981<sup>(7)</sup> are revoked.

(2) Those Regulations continue to have effect as they had effect immediately before 1st December 2011 in relation to an application for scheduled monument consent made before that date.

St Andrew’s House,  
Edinburgh  
27th October 2011

*NICOLA STURGEON*  
A member of the Scottish Executive

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<sup>(6)</sup> 2000 c.7 as amended by para 158 of Schedule 17 to the Communications Act 2003 (c.21).

<sup>(7)</sup> 1981/1467.

SCHEDULE

Regulation 3(1)

ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979

Notice of application for scheduled monument consent

Proposal to carry out work affecting (a)

TAKE NOTICE that an application is being made to the Scottish Ministers by (b) for scheduled monument consent to (c). If you wish to make representations to the Scottish Ministers about the application, you should make them in writing before the time when they consider their decision on the application. In order to ensure that representations are received in time, they should be lodged not later than (d) with the Scottish Ministers, Historic Scotland, Longmore House, Edinburgh.

Signed

[on behalf of  
]\*

Date

\*Delete where inappropriate.

NOTES

- (a) Insert name, address or location of the monument with sufficient precision to ensure its identification.
- (b) Insert name of applicant.
- (c) Insert description of proposed works and name, address or location of the monument.
- (d) Insert date 21 days later than the date on which the notice is served.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision in respect of applications for scheduled monument consent. The Regulations also make provision as to the certificates which must accompany an application and prescribe the form of notice of application which must be given by the applicant to owners of the monument to which the application relates. In addition, the Regulations make provision as to the person who is to be treated as the owner of the monument for the purposes of such notices and certificates (regulation 3).

Regulation 5 revokes the Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 1981.