

HISTORIC ENVIRONMENT (AMENDMENT) (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 2 – Modifications of the Ancient Monuments and Archaeological Areas Act 1979

Section 6 – Works affecting scheduled monuments: enforcement

New section 9D – Execution of works required by scheduled monument enforcement notice

21. Section 9D gives Scottish Ministers power to enter the land in, on or under which the scheduled monument is situated to undertake any works which have not been carried out within the period for compliance with the notice and provides for the recovery of expenses incurred in carrying out such works from the owner or lessee of the monument or land.
22. Subsection (3) provides a power for the sheriff to authorise by warrant an owner of the scheduled monument or land to go on the land and carry out the works where prevented to do so by the occupier.
23. Subsections (4) and (5) allow the removal from the monument or land of materials by the Scottish Ministers and their subsequent sale after a period of 3 days during which they are unclaimed by the owner, requiring any proceeds from such a sale, less expenses, to be paid to the owner. Subsections (6) and (7) limit liability for recovery of expenses from owners receiving rent in respect of the monument or land merely as a trustee, tutor, curator, factor or agent of some other person. If the owner does not have, and had not since the demand for payment from the Scottish Ministers had, sufficient money to discharge the whole demand, his liability for expenses is limited to the amount which he has, or has had, in his hands on behalf of that other person. Where Scottish Ministers have not recovered the whole of any such expenses from an owner recovery of any unpaid balance from the person on whose behalf the rent is received is allowed.
24. Subsection (8) makes it a criminal offence to wilfully obstruct the Scottish Ministers from carrying out works required by the enforcement notice under the powers available under subsection (1).