



Historic Environment Scotland Act 2014

2014 asp 19

VALID FROM 19/01/2015

PART 1

HISTORIC ENVIRONMENT SCOTLAND

Establishment

1 Historic Environment Scotland

- (1) A body corporate to be known as Historic Environment Scotland (in Gaelic, Àrainneachd Eachdraidheil na h-Alba) is established.
- (2) Historic Environment Scotland has the functions conferred on it by or under this Act and any other enactment.
- (3) Schedule 1 makes further provision about the status, membership, procedures and powers of Historic Environment Scotland.

VALID FROM 27/02/2015

General functions

2 Functions of Historic Environment Scotland

- (1) Historic Environment Scotland has the general function of investigating, caring for and promoting Scotland's historic environment.
- (2) In exercising its general function, Historic Environment Scotland has the following particular functions—
 - (a) identifying and recording the historic environment,
 - (b) understanding and interpreting the historic environment,
 - (c) learning about, and educating others about, the historic environment,

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- (d) protecting and managing the historic environment,
 - (e) conserving and enhancing the historic environment.
- (3) Historic Environment Scotland also has the function of managing its collections as a national resource for reference, study and research.
- (4) In exercising that function, Historic Environment Scotland has the following particular functions—
- (a) preserving, conserving and developing its collections,
 - (b) making the collections accessible to the public and to persons wishing to carry out study and research,
 - (c) exhibiting and interpreting objects in the collections.
- (5) Historic Environment Scotland, in exercising its functions, is to do so with a view to—
- (a) encouraging education and research,
 - (b) promoting and contributing to understanding and enjoyment of the historic environment and of its collections,
 - (c) promoting the diversity of persons accessing the historic environment and its collections,
 - (d) offering and promoting leadership in relation to the historic environment,
 - (e) working in collaboration with other persons (whether in partnership or in other ways),
 - (f) contributing, as appropriate, to the development and delivery of policies and strategies in relation to the historic environment.
- (6) Historic Environment Scotland may support and assist any other person exercising functions in relation to the historic environment of a similar nature to its functions.
- (7) Support and assistance under subsection (6) may take the form of financial support and assistance.
- (8) In exercising its functions, Historic Environment Scotland must have regard—
- (a) to any relevant policy or strategy published by the Scottish Ministers, and
 - (b) as may be appropriate in the circumstances, to the interests of local communities.

VALID FROM 01/10/2015

Functions in relation to property

3 Delegation of functions in relation to properties in care

- (1) The Scottish Ministers may, to such extent and subject to such conditions as they consider appropriate, delegate the exercise of any of their functions in relation to properties in care to—
- (a) Historic Environment Scotland,
 - (b) any prescribed person Ministers consider appropriate.

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- (2) Subsection (1) does not apply to any function of making, confirming or approving subordinate legislation.
- (3) A function arising from an agreement may be delegated under subsection (1) despite any prohibition or restriction in the agreement on delegation of the function.
- (4) A delegation under subsection (1) may be made in relation to a particular property in care, a group of properties in care or all properties in care.
- (5) Where a function delegated under subsection (1) relates to the making or receiving of charges of any kind, any revenue received as a result of the exercise of that function is revenue of the person to whom the function is delegated unless provision to the contrary is made in the delegation.
- (6) The delegation of a function under subsection (1) does not affect—
 - (a) the ability of the Scottish Ministers to exercise the function,
 - (b) their responsibility for that function.
- (7) Delegations under subsection (1)—
 - (a) must be in writing,
 - (b) may be varied or revoked at any time.
- (8) The Scottish Ministers must publish delegations under subsection (1).
- (9) In this section—
 - “functions” includes functions—
 - (a) conferred by or under this Act or any other enactment, or
 - (b) arising from any agreement,
 - “prescribed”, in relation to a person to whom the Scottish Ministers may delegate functions under subsection (1)(b), means prescribed by Ministers by order,
 - “property in care” has the meaning given by section 4.

4 Properties in care

- (1) The Scottish Ministers must compile and maintain a list of properties in care in relation to which they may delegate functions under section 3(1).
- (2) The Scottish Ministers may modify the list compiled and maintained under subsection (1) by—
 - (a) including a property in the list,
 - (b) removing a property from the list.
- (3) The Scottish Ministers must publish the list compiled and maintained under subsection (1).
- (4) In this section “property in care” means—
 - (a) any heritable property which is of historical, archaeological, architectural or cultural significance or interest, and
 - (b) which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers.

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5 Power of entry to investigate the historic environment

- (1) A person authorised in writing by Historic Environment Scotland may at any reasonable time enter any land for the purpose of inspecting the land (including any building or other structure on the land) with a view to identifying and recording any matters of historical, archaeological, architectural or cultural significance or interest.
- (2) But an authorised person may not enter—
 - (a) any land which is occupied unless at least 14 days' notice of the intended entry has been given to the occupier,
 - (b) any building or part of a building occupied as a dwelling house without the consent of the occupier.
- (3) An authorised person may, on entering any land, take with the person—
 - (a) any other person the authorised person considers appropriate, and
 - (b) any equipment or materials required for any purpose for which the power of entry is being exercised.
- (4) A person seeking to enter any land in exercise of the power of entry under this section must, if so required by or on behalf of the owner or occupier of the land, produce evidence of the person's authority before entering.
- (5) A person commits an offence if the person without reasonable excuse intentionally obstructs a person exercising the power of entry under this section.
- (6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

VALID FROM 01/10/2015

Functions in relation to collections and objects

6 Acquisition, deposit and disposal of objects

- (1) Historic Environment Scotland may—
 - (a) acquire (by purchase, exchange or gift),
 - (b) accept on deposit,
 any object which it considers it is desirable to add to its collections.
- (2) The powers in subsection (1) are in addition to any other powers or means of acquisition or acceptance on deposit that Historic Environment Scotland has.
- (3) Historic Environment Scotland may dispose of any object from its collections (including any object it has created) if—
 - (a) the object is a duplicate of, or similar to, another object in the collections,
 - (b) Historic Environment Scotland considers that the object is not required for the purposes of the collections,
 - (c) because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections,
 - (d) the object is hazardous,

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- (e) in any other case, the Scottish Ministers agree to the disposal.
- (4) Disposal under subsection (3) may be by sale, exchange, gift, return or destruction.
- (5) The power in subsection (3) is in addition to any other powers of disposal that Historic Environment Scotland has.
- (6) Where an object is subject to a prohibition or restriction on disposal (including one imposed by virtue of paragraph 5(5) of schedule 5), Historic Environment Scotland may dispose of the object under subsection (3) in a manner inconsistent with the prohibition or restriction only—
 - (a) if the person having the right to enforce the prohibition or restriction consents,
 - (b) in the circumstances mentioned in subsection (3)(c), if Historic Environment Scotland is unable, despite taking all reasonable steps, to ascertain the name and contact details of any person having that right, or
 - (c) in the circumstances mentioned in subsection (3)(d).
- (7) In this section and in section 7, references to Historic Environment Scotland's collections are to collections which are owned by, in the custody of, or otherwise under the management and control of Historic Environment Scotland (but do not include collections in relation to which Historic Environment Scotland has functions by virtue of a delegation by the Scottish Ministers under section 8).

7 Borrowing and lending of objects

- (1) Historic Environment Scotland may borrow or accept loans of objects for the purposes of exhibition, study or research or in connection with the exercise of any of its functions.
- (2) Historic Environment Scotland may lend any object from its collections (including any object it has created).
- (3) In deciding whether or not to lend an object (and in determining the period for which and the conditions on which the object is to be lent), Historic Environment Scotland is to have regard to—
 - (a) the interests of users of the collections,
 - (b) the suitability of the prospective borrower,
 - (c) the purpose of the loan,
 - (d) the physical condition and degree of rarity of the object,
 - (e) any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.
- (4) The powers in subsections (1) and (2) are in addition to any other powers of borrowing, accepting loans or lending that Historic Environment Scotland has.
- (5) Where an object is subject to a prohibition or restriction on lending (including one imposed by virtue of paragraph 5(5) of schedule 5), Historic Environment Scotland may lend the object under subsection (2) in a manner inconsistent with the prohibition or restriction only if—
 - (a) the person having the right to enforce the prohibition or restriction consents, or

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- (b) Historic Environment Scotland is unable, despite taking all reasonable steps, to ascertain the name and contact details of any person having that right.

8 Delegation of functions in relation to collections

- (1) The Scottish Ministers may, to such extent and subject to such conditions as they consider appropriate, delegate the exercise of any of their functions in relation to their collections to—
 - (a) Historic Environment Scotland,
 - (b) any prescribed person Ministers consider appropriate.
- (2) A function arising from an agreement may be delegated under subsection (1) despite any prohibition or restriction in the agreement on delegation of the function.
- (3) A delegation under subsection (1) may be made in relation to—
 - (a) a particular collection, a group of collections or all collections,
 - (b) a particular object in a collection or a group of objects.
- (4) Where a function delegated under subsection (1) relates to the making or receiving of charges of any kind, any revenue received as a result of the exercise of that function is revenue of the person to whom the function is delegated unless provision to the contrary is made in the delegation.
- (5) The delegation of a function under subsection (1) does not affect—
 - (a) the ability of the Scottish Ministers to exercise the function,
 - (b) their responsibility for that function.
- (6) Delegations under subsection (1)—
 - (a) must be in writing,
 - (b) may be varied or revoked at any time.
- (7) The Scottish Ministers must publish delegations under subsection (1).
- (8) In this section—
 - references to the Scottish Ministers' collections are to collections which are owned by, in the custody of, or otherwise under the management and control of the Scottish Ministers,
 - “functions” includes functions—
 - (a) conferred by or under this Act or any other enactment, or
 - (b) arising from any agreement,
 - “prescribed”, in relation to a person to whom the Scottish Ministers may delegate functions under subsection (1)(b), means prescribed by Ministers by order.

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VALID FROM 27/02/2015

Corporate planning

9 Corporate plan

- (1) Historic Environment Scotland must, before the beginning of each planning period, prepare a corporate plan and submit it for approval to the Scottish Ministers.
- (2) The corporate plan must set out—
 - (a) Historic Environment Scotland's main objectives for the planning period,
 - (b) the outcomes by reference to which the achievement of the main objectives may be measured, and
 - (c) the activities which Historic Environment Scotland expects to undertake during the planning period.
- (3) The Scottish Ministers may approve the corporate plan subject to such modifications as may be agreed between them and Historic Environment Scotland.
- (4) If the Scottish Ministers approve a corporate plan, Historic Environment Scotland must—
 - (a) publish the plan as it considers appropriate, and
 - (b) lay a copy of the plan before the Scottish Parliament.
- (5) During the planning period to which a corporate plan relates, Historic Environment Scotland may review the plan and submit a revised corporate plan to the Scottish Ministers for approval.
- (6) Subsections (2) to (4) apply to a revised corporate plan as they apply to a corporate plan.
- (7) In this section “planning period” means—
 - (a) a first period specified by the Scottish Ministers by order, and
 - (b) each subsequent period of 3 years.
- (8) The Scottish Ministers may by order substitute for the period for the time being specified in subsection (7)(b) such other period as they consider appropriate.

VALID FROM 01/10/2015

Grants and loans

10 Grants to Historic Environment Scotland by the Scottish Ministers

- (1) The Scottish Ministers may make grants to Historic Environment Scotland.
- (2) In addition to any grants made under subsection (1), the Scottish Ministers may make grants to Historic Environment Scotland for particular purposes.
- (3) Grants under this section are subject to such terms and conditions (including as to repayment) as the Scottish Ministers may determine.

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11 Grants and loans by Historic Environment Scotland

- (1) Historic Environment Scotland may make grants and loans to such persons as it considers appropriate—
 - (a) for the purposes of, or in connection with, the exercise of its functions,
 - (b) where it appears to be conducive to the exercise of its functions.
- (2) A grant or loan under subsection (1) is subject to such terms and conditions (including as to repayment) as Historic Environment Scotland may determine.
- (3) A grant or loan under subsection (1) must be in accordance with any general authorisation given by the Scottish Ministers to Historic Environment Scotland as to the making of such grants and loans.

VALID FROM 27/02/2015

Advice and directions

12 Advice, information and assistance

- (1) Historic Environment Scotland must provide the Scottish Ministers with advice, information and assistance on any matter relating to its functions when, and in the manner, Ministers require.
- (2) Historic Environment Scotland may provide such advice, information and assistance at any other time.
- (3) Historic Environment Scotland may provide advice, information and assistance relating to the historic environment to any other person.

13 Directions and guidance

- (1) The Scottish Ministers may give Historic Environment Scotland directions (of a general or specific nature) about the exercise of its functions.
- (2) But the Scottish Ministers may not give Historic Environment Scotland directions as to the exercise of its functions in relation to—
 - (a) any particular historic property, collection or object,
 - (b) the making of grants or loans under section 11.
- (3) Subsection (2)(a) does not apply in relation to the exercise of functions which Historic Environment Scotland has by virtue of a delegation by the Scottish Ministers under section 3 or 8.
- (4) Historic Environment Scotland must—
 - (a) comply with any directions given to it by the Scottish Ministers under this section,
 - (b) have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.
- (5) A direction under this section is to be given in writing.

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- (6) The Scottish Ministers must publish directions given or guidance issued under this section.
- (7) The Scottish Ministers may vary or revoke any direction given under this section.
- (8) In subsection (2)(a) “historic property” means a heritable property which is of historical, archaeological, architectural or cultural significance or interest.

VALID FROM 27/02/2015

Interpretation

14 Interpretation of Part 1

In this Part—

“collection” means a collection of objects,

“object” means an object, document or other thing having historical, archaeological, architectural or cultural significance or interest relating to the historic environment generally or with particular reference to Scotland, and

“property in care” has the meaning given by section 4.

VALID FROM 27/02/2015

PART 2

FUNCTIONS IN RELATION TO SCHEDULED MONUMENTS

15 Historic Environment Scotland's functions in relation to scheduled monuments

Schedule 2 makes provision for Historic Environment Scotland's functions in relation to scheduled monuments (within the meaning of the 1979 Act) as well as making other modifications as follows—

Part 1 has the effect of conferring on Historic Environment Scotland the function of compiling and maintaining the schedule of monuments under the 1979 Act,

Part 2—

- (a) has the effect of conferring on Historic Environment Scotland functions in relation to the grant, modification and revocation of scheduled monument consents,
- (b) modifies the functions of the Scottish Ministers in relation to modification and revocation of such consents, and
- (c) makes other consequential modifications, including to the procedure for applications for the grant, modification and revocation of such consents,

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Part 3 has the effect of conferring on Historic Environment Scotland functions in relation to scheduled monument enforcement notices,

Part 4 has the effect of conferring on Historic Environment Scotland functions in relation to stop notices and temporary stop notices,

Part 5 makes provision—

(a) for appeals from decisions of Historic Environment Scotland to the Scottish Ministers, and

(b) for the referral of applications for and related to scheduled monument consent from Historic Environment Scotland to the Scottish Ministers,

Part 6 has the effect of conferring on Historic Environment Scotland the function of compiling and maintaining the inventory of gardens and designed landscapes and the inventory of battlefields,

Part 7 makes other modifications of the 1979 Act in relation to Historic Environment Scotland's functions under that Act.

VALID FROM 27/02/2015

PART 3

FUNCTIONS IN RELATION TO LISTING AND CONSERVATION

16 Historic Environment Scotland's functions in relation to listed buildings

Schedule 3 makes provision for Historic Environment Scotland's functions in relation to listed buildings and conservation areas (within the meaning of the 1997 Act) as well as making other modifications as follows—

Part 1 has the effect of conferring on Historic Environment Scotland the function of compiling or approving lists of buildings of special architectural or historic interest,

Part 2 has the effect of conferring on Historic Environment Scotland functions in relation to the grant, modification and revocation of listed building consent,

Part 3 has the effect of conferring on Historic Environment Scotland functions in relation to conservation areas,

Part 4 makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers,

Part 5 makes other modifications of the 1997 Act in relation to Historic Environment Scotland's functions under that Act.

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VALID FROM 01/10/2015

PART 4

FUNCTIONS IN RELATION TO THE MARINE ENVIRONMENT

17 **Historic Environment Scotland's functions in relation to the marine environment**

Schedule 4 modifies the Marine (Scotland) Act 2010 (asp 5) to make provision for Historic Environment Scotland's functions in relation to the marine environment.

VALID FROM 27/02/2015

PART 5

DISSOLUTION OF RCAHMS AND TRANSFER OF STAFF ETC. TO HISTORIC ENVIRONMENT SCOTLAND

VALID FROM 01/10/2015

18 **Dissolution of RCAHMS**

The Royal Commission on the Ancient and Historical Monuments of Scotland is dissolved.

19 **Transfer of staff and property to Historic Environment Scotland**

Schedule 5 contains provision about the transfer to Historic Environment Scotland of staff and property of the Royal Commission on the Ancient and Historical Monuments of Scotland and of the Executive Agency of the Scottish Ministers known as Historic Scotland.

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PART 6

FURTHER MODIFICATIONS IN RELATION TO THE HISTORIC ENVIRONMENT

VALID FROM 01/10/2015

Grants and loans

20 Grants and loans by the Scottish Ministers

- (1) The Historic Buildings and Ancient Monuments Act 1953 (c.49) is amended as follows.
- (2) In section 4 (grants for preservation of historic buildings etc.)—
 - (a) in subsection (1) “outstanding” in each place is repealed,
 - (b) after that subsection insert—

“(1A) The power conferred by subsection (1) to make grants for the purposes mentioned includes power to make loans for those purposes.”,
 - (c) in subsection (3) after “grant” in both places insert “ or loan ”,
 - (d) after subsection (4) insert—

“(5) A grant or loan made under this section is to be made on such terms and conditions (including as to repayment and, in the case of a loan, payment of interest) as the Scottish Ministers may determine.”,
 - (e) the title to the section becomes “ **Grants and loans for preservation of historic buildings etc.** ”.
- (3) In the 1979 Act, in section 45A (grants and loans for the development and understanding of matters of historic etc. interest) subsection (3) is repealed.

Scheduled monuments

21 Local inquiries in relation to scheduled monuments etc.

- (1) The 1979 Act is amended as follows.
- (2) After section 23 (annual reports of Ancient Monuments Boards) insert—

“Local inquiries

23A Local inquiries

- (1) The Scottish Ministers may hold a local inquiry for the purposes of the exercise of any of their functions under this Part of this Act.

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(2) The Scottish Ministers must appoint a person to hold the inquiry and to report on it to them.

(3) Subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held by virtue of subsection (1) as they apply to an inquiry held by virtue of subsection (1) of that section.

23B Local inquiries: further provision

(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed in connection with inquiries or hearings conducted under or by virtue of this Act.

(2) Regulations under subsection (1) may in particular make provision—

- (a) about the notification of an inquiry or hearing,
- (b) about the manner in which an inquiry or hearing is to be conducted,
- (c) as to procedure in connection with matters preparatory to such inquiries or hearings and in connection with matters subsequent to them.”.

Listed buildings

VALID FROM 01/10/2015

22 Meaning of “listed building”

(1) The 1997 Act is amended as follows.

(2) In section 1 (listing of buildings of special architectural or historic interest)—

- (a) in subsection (4) after “shall” insert “, subject to subsection (4A), ”,
- (b) after that subsection insert—

“(4A) In a list compiled or approved under this section, an entry for a building may provide—

- (a) that an object or structure mentioned in subsection (4)(a) or (b) is not to be treated as part of the building for the purposes of this Act,
- (b) that any part or feature of the building is not of special architectural or historic interest.”.

23 Applications for listed building consent

(1) The 1997 Act is amended as follows.

(2) In section 12 (duty to notify Scottish Ministers of applications)—

- (a) in subsection (1) after “shall” insert “, where subsection (1A) applies, ”,
- (b) after that subsection insert—

“(1A) This subsection applies where—

- (a) regulations, or

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(b) directions given to planning authorities by the Scottish Ministers,

provide that the application must be so notified.

(1B) Directions under subsection (1A)(b) may be given to—

- (a) planning authorities generally,
- (b) a particular planning authority, or
- (c) a description of planning authority.”.

(3) In section 13 (directions concerning notification of applications etc.)—

- (a) subsections (1) and (2) are repealed,
- (b) in subsection (4) “(1) or” is repealed.

(4) In section 14 (decision on application for listed building consent) after subsection (2) insert—

“(2A) A planning authority, if minded to grant listed building consent for any works—

- (a) must consider imposing a condition specified in, or of a nature indicated in, directions given to them by the Scottish Ministers, and
- (b) must not grant such consent without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or is not needed.”.

VALID FROM 01/10/2015

Conservation areas

24 Control of demolition

(1) The 1997 Act is amended as follows.

(2) In section 66 (control of demolition in conservation areas) in subsection (2) for paragraphs (a) and (b) substitute—

- “(a) the planning authority, or
- (b) the Scottish Ministers.”.

PART 7

FINAL PROVISIONS

Interpretation

25 Interpretation

In this Act—

“1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979 (c.46),

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“1997 Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).

Subordinate legislation

26 Subordinate legislation

- (1) Orders under this Act are subject to the negative procedure.
- (2) Subsection (1) does not apply to—
 - (a) orders for which provision is made in subsection (3),
 - (b) orders under section 31(2).
- (3) Orders under—
 - (a) section 3(9),
 - (b) section 8(8),
 - (c) section 27(1) which add to, replace or omit the text of an Act,
 are subject to the affirmative procedure.

Ancillary provision

27 Ancillary provision

- (1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act or any provision of it.
- (2) An order under subsection (1) may modify any enactment (including this Act).

VALID FROM 27/02/2015

Consequential modifications

28 Consequential modifications

Schedule 6 contains amendments and repeals consequential on the establishment of Historic Environment Scotland.

Crown application

29 Crown application: criminal offences

- (1) No contravention by the Crown of section 5(5) makes the Crown criminally liable.
- (2) But the Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

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- (3) Despite subsection (1), this Act applies to persons in the public service of the Crown as it applies to other persons.

30 Crown application: powers of entry

- (1) A power of entry conferred by or under this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.
- (2) The following table determines what is “Crown land” and who the “appropriate authority” is in relation to each kind of Crown land.

<i>Crown land</i>	<i>Appropriate authority</i>
Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown estate	The Crown Estate Commissioners
Other land an interest in which belongs to Her Majesty in right of the Crown	The office-holder in the Scottish Administration or the Government department having the management of the land
Land an interest in which belongs to Her Majesty in right of Her private estates	The person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers
Land an interest in which belongs to an office-holder in the Scottish Administration	The relevant office-holder in the Scottish Administration
Land an interest in which belongs to a Government department	The relevant Government department
Land an interest in which is held in trust for Her Majesty for the purposes of the Scottish Administration	The relevant office-holder in the Scottish Administration
Land an interest in which is held in trust for Her Majesty for the purposes of a Government department	The relevant Government department

- (3) “Government department” means a department of the Government of the United Kingdom.
- (4) References to Her Majesty's private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

Commencement and short title

31 Commencement

- (1) This section and sections 25 to 27, 29, 30 and 32 come into force on the day after Royal Assent.

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- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

32 Short title

The short title of this Act is the Historic Environment Scotland Act 2014.

Status:

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Changes to legislation:

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