

HISTORIC ENVIRONMENT SCOTLAND ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 6 – Further Modifications in Relation to the Historic Environment

Section 20 - Grants and loans by the Scottish Ministers

87. **Section 20** amends the 1953 Act, which is the current basis for grant-giving in respect of the repair of historic buildings.
88. Subsection (2) removes from section 4 of the 1953 Act the requirement that buildings/land must be of “outstanding” historic or architectural interest to be eligible for grants by the Scottish Ministers under that section, as this provision is no longer of particular value. It dates from a period before Listed Buildings were assigned to categories and before grant programmes had detailed and agreed criteria. It also inserts a new subsection (1A) which clarifies that the power to make grants under section 4 of the 1953 Act includes the power to make loans for the same purposes. This recognises the need to make wise use of public funds by allowing for approaches other than grant-giving. Subsection (2)(d) inserts a new subsection (5) in section 4 of the 1953 Act which clarifies that a grant or loan made under this section is to be made on such terms and conditions (including as to repayment) as Ministers may determine.
89. Subsection (3) repeals subsection (3) of section 45A of the 1979 Act, inserted by the Historic Environment (Amendment) (Scotland) Act 2011, which placed an annual limit on grants and loans made by Ministers for the development and understanding of matters of historic, etc., interest. This power is currently used to give support for the work of a range of voluntary bodies whose objectives include working to help ensure that Scotland’s historic environment is valued and cared for. With the shift in focus to more collaborative action to deliver agreed strategic objectives, the work of such bodies is likely to become proportionately more significant in future and it is desired to retain flexibility to offer support in this way in situations where funding by Historic Environment Scotland might be perceived as not appropriate.

Section 21 - Local inquiries in relation to ancient monuments

90. **Section 21** inserts new sections 23A and 23B into the 1979 Act to give the Scottish Ministers a power to hold inquiries in relation to functions under Part 1 of the 1979 Act including for example an appeal under new section 1C. The operation of these changes is discussed further below, under schedule 2.

Section 22 - Meaning of “listed building”

91. **Section 22** amends section 1 of the 1997 Act which places a duty on the Scottish Ministers to compile and maintain a list of buildings of special architectural or historic interest by inserting a new subsection (4A). This new section allows for any such entry

for a building in the list to specify that an object or structure is not to be treated as part of the building for the purposes of the 1997 Act and also that any part or feature of the building is not of special architectural historic interest. This new power will apply to future new entries and to the amendment, in the future, of existing entries. The intention is to ensure that protection is more precisely targeted upon those elements of a building which are of particular historical or architectural significance. For example, the new power would allow for a relatively modern extension to a historic building to be excluded from the protection – and restrictions – applied by listing to the remainder of the building.

Section 23 - Applications for listed building consent

92. Subsection (2) amends section 12 of the 1997 Act by inserting new subsections (1A) and (1B). This gives Ministers the power to set out in regulations or directions the circumstances in which a planning authority which is minded to grant listed building consent is required to notify the Scottish Ministers.
93. Subsection (3) amends section 13 of the 1997 Act to repeal the existing powers in subsections (1) and (2) for Ministers to set out in directions that specified types of listed building consent applications need not be notified to the Scottish Ministers.
94. Subsection (4) inserts subsection (2A) into section 14 of the 1997 Act, with the effect that where the planning authority is minded to grant listed building consent, Ministers may set out in directions conditions that should be imposed, and that the planning authority must consider imposing those conditions, and must not subsequently grant consent without satisfying the Scottish Ministers that such consideration has been given and that either such conditions have been imposed, or are not required. An example of where this could be used would be where Ministers were considering calling in an application where the proposals were generally acceptable, but they had certain specific concerns. With the imposition of certain conditions Ministers would be content for the consent to be granted, and therefore these directions could avoid the need for call in.

Section 24 – Control of demolition

95. **Section 24** amends section 66 of the 1997 Act to enable local authorities to determine applications for consent made by a planning authority for the demolition of a building within a conservation area. The planning authority will apply to itself for consent, as is the case with local authority planning applications. They are required to consult Historic Environment Scotland before they do this, to ensure the appropriate checks and balances are in place.