

HISTORIC ENVIRONMENT SCOTLAND ACT 2014

EXPLANATORY NOTES

SCHEDULES

Schedule 2 – Functions of Historic Environment Scotland in Relation to Scheduled Monuments

Part 3 – Scheduled monument enforcement notices

131. **Part 3** of the schedule relates to scheduled monument enforcement notices.
132. **Paragraphs 16-18** confer on Historic Environment Scotland functions in relation to scheduled monument enforcement notices currently conferred on the Scottish Ministers, by amending sections 9A and 9B of the 1979 Act to allow Historic Environment Scotland to serve a scheduled monument enforcement notice in respect of unauthorised works carried out to a scheduled monument.
133. **Paragraphs 19 and 20** amend the 1979 Act with regards to appeals against scheduled monument enforcement notices.
134. **Paragraph 19** amends section 9C of the 1979 Act to enable appeals against scheduled monument enforcement notices to be made to Ministers rather than the Sheriff as is the case at present. This paragraph also amends section 9C to update the provisions as regards the grounds of appeal against scheduled monument enforcement notices to bring them in line with the grounds for appeals against listed building enforcement notices.
135. **Paragraph 19(c)** and (d) insert subsections 2A and 3A into section 9C, adding provisions that written notice of an appeal must be given to the Scottish Ministers before the date at which the enforcement notice should come into effect, and provisions that persons giving such notice must submit (within a prescribed timeframe) a statement specifying the grounds on which the appeal is made, and any other information as Ministers prescribe.
136. **Paragraph 20** inserts sections 9CA and 9CB into the 1979 Act relating to the determination of and procedure for appeals. These two new sections align appeals against scheduled monument enforcement notices with equivalent provisions in the 1997 Act in respect of appeals against listed building consent enforcement notices.
137. New section 9CA gives Ministers a power to give directions to HES in order to give effect to the determination of an appeal against a scheduled monument enforcement notice. Such directions may include quashing the notice. The effect of the insertion of Section 9CB is to give Ministers the power to make provision in regulations in connection with appeals including the form, manner and time for making an appeal, the notification of an appeal and the manner in which the appeal is to be conducted. Section 9CB also specifies that new schedule 1A (as inserted by schedule 2, paragraph

*These notes relate to the Historic Environment Scotland Act
2014 (asp 19) which received Royal Assent on 9 December 2014*

- 34) which makes provisions regarding the determination of certain appeals by a person other than Ministers, applies to appeals under section 9C.
138. Amendments to section 9D of the 1979 Act by paragraph 21 give Historic Environment Scotland power to enter 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.
139. [Paragraph 22](#) inserts section 9FA into the 1979 Act with the effect that the Scottish Ministers may serve a scheduled monument enforcement notice under section 9A. Such a notice has the same effect as if the notice were served by Historic Environment Scotland. This allows Ministers to serve these notices in cases where they have called in an application for scheduled monument consent. Ministers must not serve a notice under this section without first consulting Historic Environment Scotland.