

SCHEDULE 2  
FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND  
IN RELATION TO SCHEDULED MONUMENTS

**PART 3**

SCHEDULED MONUMENT ENFORCEMENT NOTICES

- 16 The 1979 Act is further amended as follows.
- 17 In section 9A (power to issue scheduled monument enforcement notice)—
- (a) in subsection (1)—
    - (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
    - (ii) in paragraph (b) for “they may, if they consider” substitute “it may, if it considers”,
  - (b) in subsection (2)(a) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,
  - (c) in subsection (3)(b)—
    - (i) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,
    - (ii) for “they consider” substitute “it considers”,
    - (iii) for “them” substitute “it”,
  - (d) in subsection (4) for “the Scottish Ministers are” substitute “Historic Environment Scotland is”.
- 18 In section 9B (scheduled monument enforcement notices: further provision)—
- (a) in subsection (4)(b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
  - (b) in subsection (5)—
    - (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
    - (ii) in paragraph (a) for “their” substitute “its”,
  - (c) in subsection (6) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
  - (d) in subsection (7) for “The Scottish Ministers” substitute “Historic Environment Scotland”.
- 19 In section 9C (appeal against scheduled monument enforcement notice)—
- (a) in subsection (1) for “by summary application appeal to the sheriff” substitute “appeal to the Scottish Ministers”,
  - (b) in subsection (2)—
    - (i) before paragraph (a) insert—
      - “(za) that the monument is not of national importance.”,
    - (ii) after paragraph (c) insert—
      - “(ca) that scheduled monument consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted.”,
    - (iii) after paragraph (d) insert—

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*Status: This is the original version (as it was originally enacted).*

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“(da) except in relation to such a requirement as is mentioned in section 9A(3)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the monument or land to its condition before the works were carried out.”,

(iv) after paragraph (e) insert—

“(f) that the steps required by the notice for the purpose of restoring the character of the monument or land to its former state would not serve that purpose,

(g) that the cessation of any works required by the notice exceeds what is necessary to remedy the contravention of section 2(1) or (6),

(h) that steps required to be taken by virtue of section 9A(3)(b) exceed what is necessary to alleviate the effect of the works executed to the monument or land,

(i) that steps required to be taken by virtue of section 9A(3)(c) exceed what may reasonably be required to bring the monument or land to the state in which it would have been if the scheduled monument consent had been complied with.”,

(c) after subsection (2) insert—

“(2A) An appeal under this section is to be made by giving written notice of the appeal to the Scottish Ministers before the date specified in the scheduled monument enforcement notice as the date on which it is to take effect.”,

(d) after subsection (3) insert—

“(3A) A person who gives notice of appeal under this section must submit to the Scottish Ministers, either when giving the notice or within such time as may be prescribed, a statement in writing—

(a) specifying the grounds on which the appeal is made,

(b) giving such further information as may be prescribed.”,

(e) subsections (4) and (5) are repealed.

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After that section insert—

**“9CA Determination of appeals under section 9C**

(1) On determining an appeal under section 9C, the Scottish Ministers may give directions for giving effect to the determination, including where appropriate directions for quashing the scheduled monument enforcement notice.

(2) On such an appeal the Scottish Ministers may if they are satisfied that the correction or variation will not cause injustice to the appellant or to Historic Environment Scotland—

(a) correct any defect, error or misdescription in the scheduled monument enforcement notice, or

(b) vary the terms of the notice.

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*Status: This is the original version (as it was originally enacted).*

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- (3) In a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 9B(4) to be served with a copy of the notice was not served, the Scottish Ministers may disregard that fact if they are satisfied that the person has not been substantially prejudiced by the failure.
- (4) The Scottish Ministers may—
  - (a) dismiss such an appeal if the appellant fails to comply with section 9C(3A) within the prescribed time,
  - (b) allow such an appeal or quash the scheduled monument enforcement notice if Historic Environment Scotland fails to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 9CB(1).
- (5) On the determination of an appeal under section 9C the Scottish Ministers may—
  - (a) grant scheduled monument consent for the works to which the scheduled monument enforcement notice relates,
  - (b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or
  - (c) direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that determination.
- (6) Any scheduled monument consent granted by the Scottish Ministers under subsection (5)(a) is to be treated as granted under section 2(3).
- (7) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 9C is final.

#### **9CB Procedure for appeals under section 9C**

- (1) The Scottish Ministers may by regulations make provision in connection with appeals under section 9C, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.
- (2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
  - (a) the form, manner and time for making an appeal,
  - (b) the notification of an appeal,
  - (c) the manner in which an appeal is to be conducted.
- (3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).
- (4) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 9C.”

- 21 In section 9D (execution of works required by scheduled monument enforcement notice)—
- (a) in subsection (1)—
    - (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
    - (ii) in paragraph (b) for “them” substitute “it”,
  - (b) in subsection (2)(b) for “the Scottish Ministers in taking steps required by it” substitute “Historic Environment Scotland in taking steps required by the notice”,
  - (c) in subsection (4)—
    - (i) for “the Scottish Ministers take” substitute “Historic Environment Scotland takes”,
    - (ii) for “they” substitute “it”,
    - (iii) for “them” substitute “it”,
  - (d) in subsection (5)—
    - (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
    - (ii) for “them” substitute “it”,
  - (e) in subsection (6)—
    - (i) for “the Scottish Ministers seek” substitute “Historic Environment Scotland seeks”,
    - (ii) in paragraph (b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
  - (f) in subsection (7)—
    - (i) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”,
    - (ii) for “they” substitute “it”.
- 22 After section 9F (effect of scheduled monument consent on scheduled monument enforcement notice) insert—

**“9FA Enforcement by the Scottish Ministers**

- (1) If it appears to the Scottish Ministers that it is expedient that a scheduled monument enforcement notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9A.
- (2) A scheduled monument enforcement notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.
- (3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.
- (4) The provisions of this Act relating to scheduled monument enforcement notices apply, so far as relevant, to a scheduled monument enforcement notice served by the Scottish Ministers as they apply to a scheduled monument enforcement notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.”.