

SCHEDULE 3

(introduced by section 16)

FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO LISTING AND CONSERVATION

PART 1

LISTING OF SPECIAL BUILDINGS

1 The 1997 Act is amended as follows.

Compiling or approving lists of special buildings

- 2 In section 1 (listing of buildings of special architectural or historic interest)—
- (a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (b) in subsection (2) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (c) in subsection (3)—
 - (i) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (ii) for “him” substitute “it”,
 - (d) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”.

Publication of lists and notification of listing

3 After section 1 insert—

“1A Publication of lists and notification of listing etc.

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- (1) Historic Environment Scotland must—
 - (a) publish any list compiled or approved under section 1, and any amendments of such a list, and
 - (b) make such lists available for public inspection, in such manner as may be prescribed.
- (2) Historic Environment Scotland must also—
 - (a) notify such persons as may be prescribed, and
 - (b) do so in such form and manner, and within such time, as may be prescribed,of the inclusion of a building in, the amendment of an entry relating to a building in or the exclusion of a building from such a list.
- (3) The Scottish Ministers may by regulations make further provision for—
 - (a) the publication of such lists,
 - (b) the making of such lists available for public inspection,

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- (c) the notification of the inclusion of a building in, the amendment of an entry relating to a building in or the exclusion of a building from such a list.

(4) Regulations under subsection (3) may in particular provide for planning authorities in whose districts any buildings included in such lists are situated to take any of the steps mentioned in that subsection.”.

4 Section 2 (publication of lists) is repealed.

Temporary listing

- 5 In section 3 (temporary listing: building preservation notices)—
- (a) in subsection (2) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (b) in subsection (4)—
 - (i) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (ii) in paragraph (b) for “he” substitute “it”,
 - (c) in subsection (6)—
 - (i) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (ii) for “he” substitute “it”,
 - (iii) in each of paragraphs (a) and (b) for “the Secretary of State’s” in both places substitute “Historic Environment Scotland’s”.

Certificate that no intention to list building

- 6 In section 5A (certificate that building not intended to be listed)—
- (a) in subsection (1)—
 - (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
 - (ii) for “they do” substitute “it does”,
 - (b) in subsection (2)—
 - (i) for “the Scottish Ministers issue” substitute “Historic Environment Scotland issues”,
 - (ii) in paragraph (a) for “they” and “them” substitute “it”,
 - (c) in subsection (3) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

PART 2

LISTED BUILDING CONSENT

7 The 1997 Act is further amended as follows.

- 8 In section 7 (authorisation of works: listed building consent)—
- (a) in subsection (2)—
 - (i) in paragraph (b) for “the Royal Commission” substitute “Historic Environment Scotland”,

- (ii) in paragraph (c)(i) for “members or officers of the Commission” substitute “Historic Environment Scotland”,
 - (iii) for paragraph (c)(ii) substitute—
 - “(ii) Historic Environment Scotland has stated in writing that it has completed its recording of that building or that it does not wish to record it,”
 - (b) subsection (4) is repealed,
 - (c) in subsection (5) for “the Royal Commission” substitute “Historic Environment Scotland”.
- 9 In section 9 (making of applications for listed building consent)—
- (a) in subsection (3)—
 - (i) the “and” after paragraph (b) is repealed,
 - (ii) after paragraph (c) insert “, and
 - (d) the procedure to be followed by planning authorities or, as the case may be, the Scottish Ministers in considering and determining such applications.”,
 - (b) after subsection (5) insert—
 - “(6) The regulations must also require planning authorities, before granting or refusing applications for listed building consent in such cases or classes of case as may be prescribed, to consult—
 - (a) Historic Environment Scotland,
 - (b) such other persons as may be—
 - (i) prescribed, or
 - (ii) specified in directions given to planning authorities by the Scottish Ministers.
 - (7) Directions given by virtue of subsection (6)(b)(ii) for the purposes of regulations under this section may be given to—
 - (a) planning authorities generally,
 - (b) a particular planning authority, or
 - (c) a description of planning authority.”.

Revocation and modification of listed building consent

- 10 In section 22(2) (procedure for orders revoking or modifying listed building consent: opposed cases) after paragraph (c) insert—
- “(ca) Historic Environment Scotland,
 - (cb) such other persons as may be prescribed.”.
- 11 In section 23(1)(b) (procedure for orders revoking or modifying listed building consent: unopposed cases) after “land” insert “, Historic Environment Scotland, such other persons as may be prescribed”.

PART 3

CONSERVATION AREAS

- 12 The 1997 Act is further amended as follows.
- 13 In section 61(2) (designation of conservation areas)—
- (a) for “The Secretary of State” substitute “Historic Environment Scotland”,
 - (b) for “he so determines, he” substitute “Historic Environment Scotland so determines, it”.
- 14 In section 62 (designation of conservation areas: supplementary provisions)—
- (a) in subsection (1) after “State” insert “and Historic Environment Scotland”,
 - (b) for subsection (2) substitute—
 - “(2) Historic Environment Scotland must—
 - (a) give notice to a planning authority of—
 - (i) the designation of any part of their district as a conservation area under section 61(2), and
 - (ii) any variation or cancellation of any such designation,
 - (b) give notice to the Scottish Ministers of the designation and of any such variation or cancellation.”,
 - (c) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (d) in subsection (5) for “the Secretary of State” substitute “Historic Environment Scotland”.
- 15 In paragraph 2 of schedule 1 (buildings formerly subject to building preservation orders)—
- (a) for sub-paragraph (1) substitute—
 - “(1) Historic Environment Scotland may at any time direct that paragraph 1 no longer applies to a particular building.
 - (1A) The Scottish Ministers may direct that paragraph 1 no longer applies to a particular building if the building is referred to in a notice of appeal under section 5B, 18 or 35 relating to the building (whether or not they are requested to do so).”,
 - (b) in sub-paragraph (2) for “such a direction” substitute “a direction under sub-paragraph (1) or (1A)”,
 - (c) after sub-paragraph (2) insert—
 - “(2A) Where a direction is given under sub-paragraph (1) or (1A), Historic Environment Scotland or (as the case may be) the Scottish Ministers must notify the other.”,
 - (d) in sub-paragraph (3)—
 - (i) for “such a direction” substitute “a direction under sub-paragraph (1) or (1A)”,
 - (ii) for “the Secretary of State” substitute “Historic Environment Scotland or (as the case may be) the Scottish Ministers”.
- 16 Paragraph 3 of schedule 1 is repealed.

PART 4

APPEALS AGAINST LISTING

17 The 1997 Act is further amended as follows.

18 After section 5A (certificate that building not intended to be listed) insert—

“5B Appeal against listing of buildings

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- (1) This section applies where Historic Environment Scotland makes a decision—
 - (a) to include a building in the list compiled or approved under section 1,
 - (b) to amend an entry in the list relating to a building (but not where the amendment excludes a building from the list).
- (2) A person mentioned in subsection (3) may appeal the decision to the Scottish Ministers.
- (3) The person is—
 - (a) the owner of the building,
 - (b) the tenant of the building,
 - (c) the occupier of the building.

5C Determination of appeals under section 5B

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- (1) The Scottish Ministers may—
 - (a) dismiss an appeal under section 5B,
 - (b) allow such an appeal (in whole or in part).
- (2) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.
- (3) Where the Scottish Ministers allow an appeal, they may direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to their decision.
- (4) Except as provided for by sections 57 and 58, the decision of the Scottish Ministers on an appeal under section 5B is final.

5D Procedure for appeals under section 5B

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- (1) Regulations may make provision in connection with appeals under section 5B, including provision about—
 - (a) the grounds on which an appeal may be made,
 - (b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

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- (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 3 (which makes provision about the determination of certain appeals by a person appointed by the Scottish Ministers) applies to an appeal under section 5B.”.
- 19 In section 19(3) (appeals: supplementary provisions) for “the Secretary of State” substitute “Historic Environment Scotland”.
- 20 In section 20(1) (determination of appeals) for paragraph (b) substitute—
- “(b) where the Scottish Ministers allow an appeal, they may direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to their decision.”.
- 21 In section 37(4) (determination of appeals under section 35) for paragraph (c) substitute—
- “(c) direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to that determination.”.
- 22 In section 57(2) (validity of certain orders and decisions) before paragraph (a) insert—
- “(za) any decision of the Scottish Ministers on an appeal under section 5B,”.
- 23 In schedule 3 (determination of certain appeals by person appointed by the Scottish Ministers)—
- (a) in paragraph 1(1) after “sections” insert “5B,”,
 - (b) in paragraph 2(1) before paragraph (a) insert—
 - “(za) in relation to an appeal under section 5B as the Scottish Ministers have under section 5C and paragraph 2(1A) of schedule 1,”,
 - (c) in paragraph 3(3) after “section” insert “5B,”,
 - (d) in paragraph 5(3) paragraph (a) is repealed (together with the “or” immediately following it).

PART 5

OTHER MATTERS IN RELATION TO LISTING

- 24 The 1997 Act is further amended as follows.

Compensation

- 25 In section 26(1) (compensation for loss or damage caused by service of building preservation notice) for “the Secretary of State” substitute “Historic Environment Scotland”.

Application of 1997 Act to land and works of planning authorities

- 26 In section 73 (application of 1997 Act to land and works of planning authorities)—
- (a) in subsection (1) for “sections 1(1) and (3) and 2” substitute “section 1(1) and (3)”,
 - (b) in subsection (4) “section 2(2) and” is repealed.

Powers of entry

- 27 In section 76 (rights of entry)—
- (a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (b) in subsection (2) for “the Secretary of State” in both places substitute “Historic Environment Scotland”,
 - (c) in subsection (3) for “the Secretary of State” substitute “Historic Environment Scotland”.

Building preservation notices

- 28 In schedule 2 (lapse of building preservation notice) in paragraph 1(b) for “the Secretary of State” substitute “Historic Environment Scotland”.