

SCHEDULE 3 FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO LISTING AND CONSERVATION

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

- (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

- (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

- (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.

Status: This is the original version (as it was originally enacted).

- (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).