



# Historic Environment Scotland Act 2014

## 2014 asp 19

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 4th November 2014 and received Royal Assent on 9 December 2014**

An Act of the Scottish Parliament to establish Historic Environment Scotland; to make minor amendments to the law relating to the historic environment; and for connected purposes.

### PART 1

#### HISTORIC ENVIRONMENT SCOTLAND

##### *Establishment*

#### **1 Historic Environment Scotland**

- (1) A body corporate to be known as Historic Environment Scotland (in Gaelic, Àrainneachd Eachdraidheil na h-Alba) is established.
- (2) Historic Environment Scotland has the functions conferred on it by or under this Act and any other enactment.
- (3) Schedule 1 makes further provision about the status, membership, procedures and powers of Historic Environment Scotland.

#### **Commencement Information**

- II** [S. 1](#) in force at 19.1.2015 for specified purposes by [S.S.I. 2014/368](#), [art. 2](#)

*Status: Point in time view as at 19/01/2015. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Historic Environment Scotland Act 2014. (See end of Document for details)*

VALID FROM 27/02/2015

### *General functions*

## **2 Functions of Historic Environment Scotland**

- (1) Historic Environment Scotland has the general function of investigating, caring for and promoting Scotland's historic environment.
- (2) In exercising its general function, Historic Environment Scotland has the following particular functions—
  - (a) identifying and recording the historic environment,
  - (b) understanding and interpreting the historic environment,
  - (c) learning about, and educating others about, the historic environment,
  - (d) protecting and managing the historic environment,
  - (e) conserving and enhancing the historic environment.
- (3) Historic Environment Scotland also has the function of managing its collections as a national resource for reference, study and research.
- (4) In exercising that function, Historic Environment Scotland has the following particular functions—
  - (a) preserving, conserving and developing its collections,
  - (b) making the collections accessible to the public and to persons wishing to carry out study and research,
  - (c) exhibiting and interpreting objects in the collections.
- (5) Historic Environment Scotland, in exercising its functions, is to do so with a view to—
  - (a) encouraging education and research,
  - (b) promoting and contributing to understanding and enjoyment of the historic environment and of its collections,
  - (c) promoting the diversity of persons accessing the historic environment and its collections,
  - (d) offering and promoting leadership in relation to the historic environment,
  - (e) working in collaboration with other persons (whether in partnership or in other ways),
  - (f) contributing, as appropriate, to the development and delivery of policies and strategies in relation to the historic environment.
- (6) Historic Environment Scotland may support and assist any other person exercising functions in relation to the historic environment of a similar nature to its functions.
- (7) Support and assistance under subsection (6) may take the form of financial support and assistance.
- (8) In exercising its functions, Historic Environment Scotland must have regard—
  - (a) to any relevant policy or strategy published by the Scottish Ministers, and
  - (b) as may be appropriate in the circumstances, to the interests of local communities.

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VALID FROM 01/10/2015

### *Functions in relation to property*

#### **3 Delegation of functions in relation to properties in care**

- (1) The Scottish Ministers may, to such extent and subject to such conditions as they consider appropriate, delegate the exercise of any of their functions in relation to properties in care to—
  - (a) Historic Environment Scotland,
  - (b) any prescribed person Ministers consider appropriate.
- (2) Subsection (1) does not apply to any function of making, confirming or approving subordinate legislation.
- (3) A function arising from an agreement may be delegated under subsection (1) despite any prohibition or restriction in the agreement on delegation of the function.
- (4) A delegation under subsection (1) may be made in relation to a particular property in care, a group of properties in care or all properties in care.
- (5) Where a function delegated under subsection (1) relates to the making or receiving of charges of any kind, any revenue received as a result of the exercise of that function is revenue of the person to whom the function is delegated unless provision to the contrary is made in the delegation.
- (6) The delegation of a function under subsection (1) does not affect—
  - (a) the ability of the Scottish Ministers to exercise the function,
  - (b) their responsibility for that function.
- (7) Delegations under subsection (1)—
  - (a) must be in writing,
  - (b) may be varied or revoked at any time.
- (8) The Scottish Ministers must publish delegations under subsection (1).
- (9) In this section—

“functions” includes functions—

  - (a) conferred by or under this Act or any other enactment, or
  - (b) arising from any agreement,

“prescribed”, in relation to a person to whom the Scottish Ministers may delegate functions under subsection (1)(b), means prescribed by Ministers by order,

“property in care” has the meaning given by section 4.

#### **4 Properties in care**

- (1) The Scottish Ministers must compile and maintain a list of properties in care in relation to which they may delegate functions under section 3(1).
- (2) The Scottish Ministers may modify the list compiled and maintained under subsection (1) by—

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- (a) including a property in the list,
  - (b) removing a property from the list.
- (3) The Scottish Ministers must publish the list compiled and maintained under subsection (1).
- (4) In this section “property in care” means—
- (a) any heritable property which is of historical, archaeological, architectural or cultural significance or interest, and
  - (b) which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers.

## **5 Power of entry to investigate the historic environment**

- (1) A person authorised in writing by Historic Environment Scotland may at any reasonable time enter any land for the purpose of inspecting the land (including any building or other structure on the land) with a view to identifying and recording any matters of historical, archaeological, architectural or cultural significance or interest.
- (2) But an authorised person may not enter—
- (a) any land which is occupied unless at least 14 days' notice of the intended entry has been given to the occupier,
  - (b) any building or part of a building occupied as a dwelling house without the consent of the occupier.
- (3) An authorised person may, on entering any land, take with the person—
- (a) any other person the authorised person considers appropriate, and
  - (b) any equipment or materials required for any purpose for which the power of entry is being exercised.
- (4) A person seeking to enter any land in exercise of the power of entry under this section must, if so required by or on behalf of the owner or occupier of the land, produce evidence of the person's authority before entering.
- (5) A person commits an offence if the person without reasonable excuse intentionally obstructs a person exercising the power of entry under this section.
- (6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

VALID FROM 01/10/2015

### *Functions in relation to collections and objects*

## **6 Acquisition, deposit and disposal of objects**

- (1) Historic Environment Scotland may—
- (a) acquire (by purchase, exchange or gift),
  - (b) accept on deposit,
- any object which it considers it is desirable to add to its collections.

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- (2) The powers in subsection (1) are in addition to any other powers or means of acquisition or acceptance on deposit that Historic Environment Scotland has.
- (3) Historic Environment Scotland may dispose of any object from its collections (including any object it has created) if—
  - (a) the object is a duplicate of, or similar to, another object in the collections,
  - (b) Historic Environment Scotland considers that the object is not required for the purposes of the collections,
  - (c) because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections,
  - (d) the object is hazardous,
  - (e) in any other case, the Scottish Ministers agree to the disposal.
- (4) Disposal under subsection (3) may be by sale, exchange, gift, return or destruction.
- (5) The power in subsection (3) is in addition to any other powers of disposal that Historic Environment Scotland has.
- (6) Where an object is subject to a prohibition or restriction on disposal (including one imposed by virtue of paragraph 5(5) of schedule 5), Historic Environment Scotland may dispose of the object under subsection (3) in a manner inconsistent with the prohibition or restriction only—
  - (a) if the person having the right to enforce the prohibition or restriction consents,
  - (b) in the circumstances mentioned in subsection (3)(c), if Historic Environment Scotland is unable, despite taking all reasonable steps, to ascertain the name and contact details of any person having that right, or
  - (c) in the circumstances mentioned in subsection (3)(d).
- (7) In this section and in section 7, references to Historic Environment Scotland's collections are to collections which are owned by, in the custody of, or otherwise under the management and control of Historic Environment Scotland (but do not include collections in relation to which Historic Environment Scotland has functions by virtue of a delegation by the Scottish Ministers under section 8).

## **7 Borrowing and lending of objects**

- (1) Historic Environment Scotland may borrow or accept loans of objects for the purposes of exhibition, study or research or in connection with the exercise of any of its functions.
- (2) Historic Environment Scotland may lend any object from its collections (including any object it has created).
- (3) In deciding whether or not to lend an object (and in determining the period for which and the conditions on which the object is to be lent), Historic Environment Scotland is to have regard to—
  - (a) the interests of users of the collections,
  - (b) the suitability of the prospective borrower,
  - (c) the purpose of the loan,
  - (d) the physical condition and degree of rarity of the object,

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- (e) any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.
- (4) The powers in subsections (1) and (2) are in addition to any other powers of borrowing, accepting loans or lending that Historic Environment Scotland has.
- (5) Where an object is subject to a prohibition or restriction on lending (including one imposed by virtue of paragraph 5(5) of schedule 5), Historic Environment Scotland may lend the object under subsection (2) in a manner inconsistent with the prohibition or restriction only if—
  - (a) the person having the right to enforce the prohibition or restriction consents, or
  - (b) Historic Environment Scotland is unable, despite taking all reasonable steps, to ascertain the name and contact details of any person having that right.

## **8 Delegation of functions in relation to collections**

- (1) The Scottish Ministers may, to such extent and subject to such conditions as they consider appropriate, delegate the exercise of any of their functions in relation to their collections to—
  - (a) Historic Environment Scotland,
  - (b) any prescribed person Ministers consider appropriate.
- (2) A function arising from an agreement may be delegated under subsection (1) despite any prohibition or restriction in the agreement on delegation of the function.
- (3) A delegation under subsection (1) may be made in relation to—
  - (a) a particular collection, a group of collections or all collections,
  - (b) a particular object in a collection or a group of objects.
- (4) Where a function delegated under subsection (1) relates to the making or receiving of charges of any kind, any revenue received as a result of the exercise of that function is revenue of the person to whom the function is delegated unless provision to the contrary is made in the delegation.
- (5) The delegation of a function under subsection (1) does not affect—
  - (a) the ability of the Scottish Ministers to exercise the function,
  - (b) their responsibility for that function.
- (6) Delegations under subsection (1)—
  - (a) must be in writing,
  - (b) may be varied or revoked at any time.
- (7) The Scottish Ministers must publish delegations under subsection (1).
- (8) In this section—
  - references to the Scottish Ministers' collections are to collections which are owned by, in the custody of, or otherwise under the management and control of the Scottish Ministers,
  - “functions” includes functions—
    - (a) conferred by or under this Act or any other enactment, or
    - (b) arising from any agreement,

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“prescribed”, in relation to a person to whom the Scottish Ministers may delegate functions under subsection (1)(b), means prescribed by Ministers by order.

VALID FROM 27/02/2015

### *Corporate planning*

#### **9 Corporate plan**

- (1) Historic Environment Scotland must, before the beginning of each planning period, prepare a corporate plan and submit it for approval to the Scottish Ministers.
- (2) The corporate plan must set out—
  - (a) Historic Environment Scotland's main objectives for the planning period,
  - (b) the outcomes by reference to which the achievement of the main objectives may be measured, and
  - (c) the activities which Historic Environment Scotland expects to undertake during the planning period.
- (3) The Scottish Ministers may approve the corporate plan subject to such modifications as may be agreed between them and Historic Environment Scotland.
- (4) If the Scottish Ministers approve a corporate plan, Historic Environment Scotland must—
  - (a) publish the plan as it considers appropriate, and
  - (b) lay a copy of the plan before the Scottish Parliament.
- (5) During the planning period to which a corporate plan relates, Historic Environment Scotland may review the plan and submit a revised corporate plan to the Scottish Ministers for approval.
- (6) Subsections (2) to (4) apply to a revised corporate plan as they apply to a corporate plan.
- (7) In this section “planning period” means—
  - (a) a first period specified by the Scottish Ministers by order, and
  - (b) each subsequent period of 3 years.
- (8) The Scottish Ministers may by order substitute for the period for the time being specified in subsection (7)(b) such other period as they consider appropriate.

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### *Grants and loans*

#### **10 Grants to Historic Environment Scotland by the Scottish Ministers**

- (1) The Scottish Ministers may make grants to Historic Environment Scotland.



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- (2) In addition to any grants made under subsection (1), the Scottish Ministers may make grants to Historic Environment Scotland for particular purposes.
- (3) Grants under this section are subject to such terms and conditions (including as to repayment) as the Scottish Ministers may determine.

## **11 Grants and loans by Historic Environment Scotland**

- (1) Historic Environment Scotland may make grants and loans to such persons as it considers appropriate—
  - (a) for the purposes of, or in connection with, the exercise of its functions,
  - (b) where it appears to be conducive to the exercise of its functions.
- (2) A grant or loan under subsection (1) is subject to such terms and conditions (including as to repayment) as Historic Environment Scotland may determine.
- (3) A grant or loan under subsection (1) must be in accordance with any general authorisation given by the Scottish Ministers to Historic Environment Scotland as to the making of such grants and loans.

VALID FROM 27/02/2015

### *Advice and directions*

## **12 Advice, information and assistance**

- (1) Historic Environment Scotland must provide the Scottish Ministers with advice, information and assistance on any matter relating to its functions when, and in the manner, Ministers require.
- (2) Historic Environment Scotland may provide such advice, information and assistance at any other time.
- (3) Historic Environment Scotland may provide advice, information and assistance relating to the historic environment to any other person.

## **13 Directions and guidance**

- (1) The Scottish Ministers may give Historic Environment Scotland directions (of a general or specific nature) about the exercise of its functions.
- (2) But the Scottish Ministers may not give Historic Environment Scotland directions as to the exercise of its functions in relation to—
  - (a) any particular historic property, collection or object,
  - (b) the making of grants or loans under section 11.
- (3) Subsection (2)(a) does not apply in relation to the exercise of functions which Historic Environment Scotland has by virtue of a delegation by the Scottish Ministers under section 3 or 8.
- (4) Historic Environment Scotland must—



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- (a) comply with any directions given to it by the Scottish Ministers under this section,
  - (b) have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.
- (5) A direction under this section is to be given in writing.
- (6) The Scottish Ministers must publish directions given or guidance issued under this section.
- (7) The Scottish Ministers may vary or revoke any direction given under this section.
- (8) In subsection (2)(a) “historic property” means a heritable property which is of historical, archaeological, architectural or cultural significance or interest.

VALID FROM 27/02/2015

### *Interpretation*

#### **14 Interpretation of Part 1**

In this Part—

“collection” means a collection of objects,

“object” means an object, document or other thing having historical, archaeological, architectural or cultural significance or interest relating to the historic environment generally or with particular reference to Scotland, and

“property in care” has the meaning given by section 4.

VALID FROM 27/02/2015

## **PART 2**

### **FUNCTIONS IN RELATION TO SCHEDULED MONUMENTS**

#### **15 Historic Environment Scotland's functions in relation to scheduled monuments**

Schedule 2 makes provision for Historic Environment Scotland's functions in relation to scheduled monuments (within the meaning of the 1979 Act) as well as making other modifications as follows—

Part 1 has the effect of conferring on Historic Environment Scotland the function of compiling and maintaining the schedule of monuments under the 1979 Act,

Part 2—

- (a) has the effect of conferring on Historic Environment Scotland functions in relation to the grant, modification and revocation of scheduled monument consents,

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- (b) modifies the functions of the Scottish Ministers in relation to modification and revocation of such consents, and
- (c) makes other consequential modifications, including to the procedure for applications for the grant, modification and revocation of such consents,

Part 3 has the effect of conferring on Historic Environment Scotland functions in relation to scheduled monument enforcement notices,

Part 4 has the effect of conferring on Historic Environment Scotland functions in relation to stop notices and temporary stop notices,

Part 5 makes provision—

- (a) for appeals from decisions of Historic Environment Scotland to the Scottish Ministers, and
- (b) for the referral of applications for and related to scheduled monument consent from Historic Environment Scotland to the Scottish Ministers,

Part 6 has the effect of conferring on Historic Environment Scotland the function of compiling and maintaining the inventory of gardens and designed landscapes and the inventory of battlefields,

Part 7 makes other modifications of the 1979 Act in relation to Historic Environment Scotland's functions under that Act.

VALID FROM 27/02/2015

### PART 3

#### FUNCTIONS IN RELATION TO LISTING AND CONSERVATION

#### **16 Historic Environment Scotland's functions in relation to listed buildings**

Schedule 3 makes provision for Historic Environment Scotland's functions in relation to listed buildings and conservation areas (within the meaning of the 1997 Act) as well as making other modifications as follows—

Part 1 has the effect of conferring on Historic Environment Scotland the function of compiling or approving lists of buildings of special architectural or historic interest,

Part 2 has the effect of conferring on Historic Environment Scotland functions in relation to the grant, modification and revocation of listed building consent,

Part 3 has the effect of conferring on Historic Environment Scotland functions in relation to conservation areas,

Part 4 makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers,

Part 5 makes other modifications of the 1997 Act in relation to Historic Environment Scotland's functions under that Act.

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#### PART 4

##### FUNCTIONS IN RELATION TO THE MARINE ENVIRONMENT

**17 Historic Environment Scotland's functions in relation to the marine environment**

Schedule 4 modifies the Marine (Scotland) Act 2010 (asp 5) to make provision for Historic Environment Scotland's functions in relation to the marine environment.

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#### PART 5

##### DISSOLUTION OF RCAHMS AND TRANSFER OF STAFF ETC. TO HISTORIC ENVIRONMENT SCOTLAND

VALID FROM 01/10/2015

**18 Dissolution of RCAHMS**

The Royal Commission on the Ancient and Historical Monuments of Scotland is dissolved.

**19 Transfer of staff and property to Historic Environment Scotland**

Schedule 5 contains provision about the transfer to Historic Environment Scotland of staff and property of the Royal Commission on the Ancient and Historical Monuments of Scotland and of the Executive Agency of the Scottish Ministers known as Historic Scotland.

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## PART 6

### FURTHER MODIFICATIONS IN RELATION TO THE HISTORIC ENVIRONMENT

VALID FROM 01/10/2015

#### *Grants and loans*

#### **20 Grants and loans by the Scottish Ministers**

- (1) The Historic Buildings and Ancient Monuments Act 1953 (c.49) is amended as follows.
- (2) In section 4 (grants for preservation of historic buildings etc.)—
  - (a) in subsection (1) “outstanding” in each place is repealed,
  - (b) after that subsection insert—
 

“(1A) The power conferred by subsection (1) to make grants for the purposes mentioned includes power to make loans for those purposes.”,
  - (c) in subsection (3) after “grant” in both places insert “ or loan ”,
  - (d) after subsection (4) insert—
 

“(5) A grant or loan made under this section is to be made on such terms and conditions (including as to repayment and, in the case of a loan, payment of interest) as the Scottish Ministers may determine.”,
  - (e) the title to the section becomes “ **Grants and loans for preservation of historic buildings etc.** ”.
- (3) In the 1979 Act, in section 45A (grants and loans for the development and understanding of matters of historic etc. interest) subsection (3) is repealed.

#### *Scheduled monuments*

#### **21 Local inquiries in relation to scheduled monuments etc.**

- (1) The 1979 Act is amended as follows.
- (2) After section 23 (annual reports of Ancient Monuments Boards) insert—

#### *“Local inquiries*

#### **23A Local inquiries**

- (1) The Scottish Ministers may hold a local inquiry for the purposes of the exercise of any of their functions under this Part of this Act.

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(2) The Scottish Ministers must appoint a person to hold the inquiry and to report on it to them.

(3) Subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held by virtue of subsection (1) as they apply to an inquiry held by virtue of subsection (1) of that section.

### **23B Local inquiries: further provision**

(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed in connection with inquiries or hearings conducted under or by virtue of this Act.

(2) Regulations under subsection (1) may in particular make provision—

- (a) about the notification of an inquiry or hearing,
- (b) about the manner in which an inquiry or hearing is to be conducted,
- (c) as to procedure in connection with matters preparatory to such inquiries or hearings and in connection with matters subsequent to them.”.

### *Listed buildings*

VALID FROM 01/10/2015

## **22 Meaning of “listed building”**

(1) The 1997 Act is amended as follows.

(2) In section 1 (listing of buildings of special architectural or historic interest)—

- (a) in subsection (4) after “shall” insert “, subject to subsection (4A), ”,
- (b) after that subsection insert—

“(4A) In a list compiled or approved under this section, an entry for a building may provide—

- (a) that an object or structure mentioned in subsection (4)(a) or (b) is not to be treated as part of the building for the purposes of this Act,
- (b) that any part or feature of the building is not of special architectural or historic interest.”.

## **23 Applications for listed building consent**

(1) The 1997 Act is amended as follows.

(2) In section 12 (duty to notify Scottish Ministers of applications)—

- (a) in subsection (1) after “shall” insert “, where subsection (1A) applies, ”,
- (b) after that subsection insert—

“(1A) This subsection applies where—

- (a) regulations, or

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(b) directions given to planning authorities by the Scottish Ministers,

provide that the application must be so notified.

(1B) Directions under subsection (1A)(b) may be given to—

- (a) planning authorities generally,
- (b) a particular planning authority, or
- (c) a description of planning authority.”.

(3) In section 13 (directions concerning notification of applications etc.)—

- (a) subsections (1) and (2) are repealed,
- (b) in subsection (4) “(1) or” is repealed.

(4) In section 14 (decision on application for listed building consent) after subsection (2) insert—

“(2A) A planning authority, if minded to grant listed building consent for any works—

- (a) must consider imposing a condition specified in, or of a nature indicated in, directions given to them by the Scottish Ministers, and
- (b) must not grant such consent without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or is not needed.”.

VALID FROM 01/10/2015

### *Conservation areas*

#### **24 Control of demolition**

- (1) The 1997 Act is amended as follows.
- (2) In section 66 (control of demolition in conservation areas) in subsection (2) for paragraphs (a) and (b) substitute—
  - “(a) the planning authority, or
  - (b) the Scottish Ministers.”.

## **PART 7**

### **FINAL PROVISIONS**

#### *Interpretation*

#### **25 Interpretation**

In this Act—

“1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979 (c.46),

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“1997 Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).

#### *Subordinate legislation*

### **26 Subordinate legislation**

- (1) Orders under this Act are subject to the negative procedure.
- (2) Subsection (1) does not apply to—
  - (a) orders for which provision is made in subsection (3),
  - (b) orders under section 31(2).
- (3) Orders under—
  - (a) section 3(9),
  - (b) section 8(8),
  - (c) section 27(1) which add to, replace or omit the text of an Act,are subject to the affirmative procedure.

#### *Ancillary provision*

### **27 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act or any provision of it.
- (2) An order under subsection (1) may modify any enactment (including this Act).

VALID FROM 27/02/2015

#### *Consequential modifications*

### **28 Consequential modifications**

Schedule 6 contains amendments and repeals consequential on the establishment of Historic Environment Scotland.

#### *Crown application*

### **29 Crown application: criminal offences**

- (1) No contravention by the Crown of section 5(5) makes the Crown criminally liable.
- (2) But the Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.



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- (3) Despite subsection (1), this Act applies to persons in the public service of the Crown as it applies to other persons.

### 30 Crown application: powers of entry

- (1) A power of entry conferred by or under this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.
- (2) The following table determines what is “Crown land” and who the “appropriate authority” is in relation to each kind of Crown land.

<i>Crown land</i>	<i>Appropriate authority</i>
Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown estate	The Crown Estate Commissioners
Other land an interest in which belongs to Her Majesty in right of the Crown	The office-holder in the Scottish Administration or the Government department having the management of the land
Land an interest in which belongs to Her Majesty in right of Her private estates	The person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers
Land an interest in which belongs to an office-holder in the Scottish Administration	The relevant office-holder in the Scottish Administration
Land an interest in which belongs to a Government department	The relevant Government department
Land an interest in which is held in trust for Her Majesty for the purposes of the Scottish Administration	The relevant office-holder in the Scottish Administration
Land an interest in which is held in trust for Her Majesty for the purposes of a Government department	The relevant Government department

- (3) “Government department” means a department of the Government of the United Kingdom.
- (4) References to Her Majesty's private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

#### *Commencement and short title*

### 31 Commencement

- (1) This section and sections 25 to 27, 29, 30 and 32 come into force on the day after Royal Assent.

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**Status:** Point in time view as at 19/01/2015. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Historic Environment Scotland Act 2014. (See end of Document for details)

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- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

## **32 Short title**

The short title of this Act is the Historic Environment Scotland Act 2014.

*Status: Point in time view as at 19/01/2015. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Historic Environment Scotland Act 2014. (See end of Document for details)*

## SCHEDULE 1

*(introduced by section 1(3))*

### HISTORIC ENVIRONMENT SCOTLAND

#### *Status*

- 1 (1) Historic Environment Scotland is not a servant or agent of the Crown.
- (2) It does not enjoy any status, immunity or privilege of the Crown.
- (3) Its property is not property of, or property held on behalf of, the Crown.
- (4) Its members and staff are not to be regarded as civil servants.

#### **Commencement Information**

**I2** [Sch. 1 para. 1](#) in force at 19.1.2015 for specified purposes by [S.S.I. 2014/368, art. 2](#)

#### *Membership*

- 2 (1) Historic Environment Scotland is to consist of no fewer than 10 and no more than 15 persons appointed by the Scottish Ministers as members.
- (2) The Scottish Ministers are to appoint one of those members to chair Historic Environment Scotland.
- (3) The Scottish Ministers must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of Historic Environment Scotland.
- (4) The Scottish Ministers must, when making appointments under sub-paragraph (1), do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (5) A member holds and vacates office in accordance with terms and conditions determined by the Scottish Ministers.
- (6) A member may resign by written notice to the Scottish Ministers.
- (7) The Scottish Ministers may reappoint as a member a person who is (or has been) a member.
- (8) The Scottish Ministers may by order amend sub-paragraph (1) to substitute for the minimum or maximum number of members for the time being specified such other number or numbers of members.
- (9) In sub-paragraph (4) “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part II of schedule 5 to the Scotland Act 1998 (c.46).

#### **Commencement Information**

**I3** [Sch. 1 para. 2](#) in force at 19.1.2015 for specified purposes by [S.S.I. 2014/368, art. 2](#)

*Status:* Point in time view as at 19/01/2015. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Historic Environment Scotland Act 2014. (See end of Document for details)

### *Persons disqualified from membership*

- 3 The following persons may not be appointed as (and may not continue to be) members of Historic Environment Scotland—
- (a) members of the House of Commons,
  - (b) members of the House of Lords,
  - (c) members of the Scottish Parliament,
  - (d) members of the European Parliament.

#### **Commencement Information**

**I4** Sch. 1 para. 3 in force at 19.1.2015 for specified purposes by [S.S.I. 2014/368, art. 2](#)

### *Removal of members*

- 4 (1) The Scottish Ministers may, by written notice, revoke the appointment of a person as a member of Historic Environment Scotland if—
- (a) the person becomes insolvent,
  - (b) the person has been absent, without reasonable excuse, from 3 consecutive meetings of Historic Environment Scotland,
  - (c) the person is otherwise unfit to be a member or unable for any reason to discharge the person's functions as member.
- (2) A person becomes insolvent when—
- (a) the person's estate is sequestrated,
  - (b) the person grants a trust deed for creditors or makes a composition or arrangement with creditors,
  - (c) a voluntary arrangement proposed by the person is approved,
  - (d) the person's application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17),
  - (e) the person is adjudged bankrupt, or
  - (f) the person becomes subject to any other kind of order or arrangement analogous to those described in paragraphs (a) to (e) anywhere in the world.

#### **Commencement Information**

**I5** Sch. 1 para. 4 in force at 19.1.2015 for specified purposes by [S.S.I. 2014/368, art. 2](#)

### *Remuneration, allowances and expenses of members*

- 5 Historic Environment Scotland must pay each member such remuneration, allowances and expenses as the Scottish Ministers may determine.

#### **Commencement Information**

**I6** Sch. 1 para. 5 in force at 19.1.2015 for specified purposes by [S.S.I. 2014/368, art. 2](#)

*Status: Point in time view as at 19/01/2015. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Historic Environment Scotland Act 2014. (See end of Document for details)*

### *Chief executive and staff*

- 6
- (1) Historic Environment Scotland is to employ a person as chief executive.
  - (2) The person employed as chief executive may not be a member of Historic Environment Scotland.
  - (3) The chief executive is to be appointed—
    - (a) by Historic Environment Scotland with the approval of the Scottish Ministers,
    - (b) on terms and conditions determined by it and approved by the Scottish Ministers.
  - (4) Historic Environment Scotland may employ any other staff necessary for the exercise of its functions.
  - (5) Staff of Historic Environment Scotland are to be employed on terms and conditions determined by it and approved by the Scottish Ministers.

#### **Commencement Information**

**I7** [Sch. 1 para. 6](#) in force at 19.1.2015 for specified purposes by [S.S.I. 2014/368, art. 2](#)

### *Pensions, allowances and gratuities*

- 7
- (1) Historic Environment Scotland may, with the approval of the Scottish Ministers, make provision about such pensions, allowances or gratuities in respect of any person who is or has been an employee of Historic Environment Scotland as it may determine.
  - (2) That provision may take the form of—
    - (a) payment (or making arrangements for the payment) of,
    - (b) payments or contributions towards the provision of,
    - (c) providing and maintaining schemes (whether contributory or not) for the payment of,
 such pensions, allowances or gratuities.
  - (3) Those pensions, allowances or gratuities may include pensions, allowances or gratuities by way of compensation for loss of office.

#### **Commencement Information**

**I8** [Sch. 1 para. 7](#) in force at 19.1.2015 for specified purposes by [S.S.I. 2014/368, art. 2](#)

### *Committees*

- 8
- (1) Historic Environment Scotland may establish committees for any purpose relating to its functions.
  - (2) Historic Environment Scotland is to determine the composition of its committees.
  - (3) Historic Environment Scotland may appoint a person who is not a member of Historic Environment Scotland to be a member of a committee.

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- (4) But such a person is not entitled to vote at meetings of the committee.
- (5) A committee must comply with any directions given to it by Historic Environment Scotland.

**Commencement Information**

**I9** Sch. 1 para. 8 in force at 19.1.2015 for specified purposes by S.S.I. 2014/368, art. 2

*Procedure and meetings*

- 9 (1) Historic Environment Scotland may determine its own procedures and those of its committees, including the quorum at any meeting of it or of a committee.
- (2) The following persons may attend and take part in any meeting of Historic Environment Scotland or of a committee—
  - (a) members of the Scottish Government,
  - (b) persons authorised by the Scottish Ministers.
- (3) The persons mentioned in sub-paragraph (2) are not entitled to vote at such meetings.

**Commencement Information**

**I10** Sch. 1 para. 9 in force at 19.1.2015 for specified purposes by S.S.I. 2014/368, art. 2

*Delegation of functions*

- 10 (1) Historic Environment Scotland may authorise any of the following to exercise such of its functions (and to such extent) as it may determine—
  - (a) a member,
  - (b) any of its committees,
  - (c) the chief executive,
  - (d) any other employee.
- (2) But Historic Environment Scotland may not authorise the function of approving annual reports and accounts to be exercised by any other person.
- (3) Nothing in sub-paragraph (1) affects the responsibility of Historic Environment Scotland for the exercise of its functions.

**Commencement Information**

**I11** Sch. 1 para. 10 in force at 19.1.2015 for specified purposes by S.S.I. 2014/368, art. 2

*Validity of proceedings and actions*

- 11 The validity of proceedings or actions of Historic Environment Scotland (or of a committee) is not affected by—
  - (a) any vacancy in the membership of Historic Environment Scotland or of the committee,

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- (b) any defect in the appointment of a member of Historic Environment Scotland or of the committee,
- (c) the disqualification of a person as such a member after appointment.

**Commencement Information**

**I12** Sch. 1 para. 11 in force at 19.1.2015 for specified purposes by S.S.I. 2014/368, art. 2

*General powers*

- 12 (1) Historic Environment Scotland may do anything which appears to it—
- (a) to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions,
  - (b) to be conducive to the exercise of those functions.
- (2) In particular, Historic Environment Scotland may—
- (a) enter into contracts,
  - (b) borrow money from the Scottish Ministers or, with the approval of the Scottish Ministers, from other persons,
  - (c) enter into any business or undertaking,
  - (d) form, promote or acquire (whether alone or with others) companies (within the meaning of the Companies Act 2006 (c.46)),
  - (e) enter into joint ventures with others,
  - (f) undertake or execute any charitable trust,
  - (g) invest sums not immediately required in relation to the exercise of its functions,
  - (h) accept gifts of money and other property,
  - (i) obtain advice or assistance from any person who is, in Historic Environment Scotland's opinion, qualified to give it,
  - (j) carry out or commission research,
  - (k) issue publications,
  - (l) make charges in connection with the exercise of its functions (including charges for the provision of goods and services).
- (3) Historic Environment Scotland may not acquire and dispose of land without the consent of the Scottish Ministers.
- (4) In sub-paragraph (2)(f) a trust is a charitable trust if all its purposes are charitable purposes within the meaning of section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).
- (5) In sub-paragraph (2)(l) the reference to Historic Environment Scotland's functions does not include functions it has by virtue of a delegation by the Scottish Ministers under section 3 or 8.

**Commencement Information**

**I13** Sch. 1 para. 12 in force at 19.1.2015 for specified purposes by S.S.I. 2014/368, art. 2



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### Accounts

- 13 (1) Historic Environment Scotland must—
- (a) keep proper accounts and accounting records,
  - (b) prepare in respect of each financial year a statement of accounts, and
  - (c) send a copy of the statement to the Scottish Ministers.
- (2) Historic Environment Scotland must comply with any directions which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1).
- (3) Historic Environment Scotland must send the statement of accounts to the Auditor General for Scotland for auditing.

#### Commencement Information

**I14** Sch. 1 para. 13 in force at 19.1.2015 for specified purposes by S.S.I. 2014/368, art. 2

### Reports

- 14 (1) As soon as practicable after the end of each financial year, Historic Environment Scotland must prepare a report—
- (a) providing information on the exercise of its functions during that year,
  - (b) containing any other information that the Scottish Ministers require, and
  - (c) including a copy of the statement of accounts for that year audited by the Auditor General for Scotland.
- (2) Historic Environment Scotland must—
- (a) send a copy of the report to the Scottish Ministers, and
  - (b) publish the report.
- (3) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.
- (4) Historic Environment Scotland may publish such other reports and information on matters relevant to its functions as it considers appropriate.

#### Commencement Information

**I15** Sch. 1 para. 14 in force at 19.1.2015 for specified purposes by S.S.I. 2014/368, art. 2

VALID FROM 27/02/2015

## SCHEDULE 2 (introduced by section 15)

### FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO SCHEDULED MONUMENTS

**Status:** Point in time view as at 19/01/2015. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Historic Environment Scotland Act 2014. (See end of Document for details)

VALID FROM 27/02/2015

### SCHEDULE 3

*(introduced by section 16)*

#### FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO LISTING AND CONSERVATION

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VALID FROM 01/10/2015

### SCHEDULE 4

*(introduced by section 17)*

#### FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO THE MARINE ENVIRONMENT

1 The Marine (Scotland) Act 2010 (asp 5) is amended as follows.

2 After section 80 (advice etc. by Scottish Natural Heritage) insert—

**“80A Advice etc. by Historic Environment Scotland as regards Historic MPAs**

- (1) Historic Environment Scotland may give advice and guidance as to—
  - (a) the matters which are capable of damaging or otherwise affecting any marine historic asset in a Historic MPA,
  - (b) how any stated preservation objectives for a Historic MPA may be furthered, or how the achievement of any such objectives may be hindered, and
  - (c) the assessment by a public authority of the matters in section 83(4)(b)(i) and (ii) including what factors the authority should take into account.
- (2) Advice or guidance as to any of the matters in paragraph (a) to (c) of subsection (1) may be given—
  - (a) in relation to—
    - (i) a particular Historic MPA,
    - (ii) all Historic MPAs generally,
  - (b) in relation to a particular public authority or public authorities generally.”.

3 In section 82 (duties of public authorities in relation to marine protected areas etc.)—

- (a) in subsection (3) after “Heritage” insert “ or Historic Environment Scotland ”,

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	<ul style="list-style-type: none"> <li>(b) in subsection (5) after “Heritage” insert “ or Historic Environment Scotland ”,</li> <li>(c) in subsection (6) after sub-paragraph (i) insert— <ul style="list-style-type: none"> <li>“(ia) Historic Environment Scotland has given advice or guidance to the authority under section 80A,”</li> </ul> </li> <li>(d) in subsection (7) after “Heritage” insert “ or Historic Environment Scotland ”,</li> <li>(e) in subsection (10) after “Heritage” insert “ or Historic Environment Scotland ”,</li> <li>(f) in subsection (12) after “80” insert “ , by Historic Environment Scotland under section 80A ”,</li> <li>(g) in subsection (13)— <ul style="list-style-type: none"> <li>(i) the words from “it is appropriate” to “Research MPA” become paragraph (a) of that subsection,</li> <li>(ii) after that paragraph insert— <ul style="list-style-type: none"> <li>“(b) it is appropriate to inform Historic Environment Scotland where the exercise of the public authority's functions or the act or omission in question relates to a Historic MPA.”</li> </ul> </li> </ul> </li> </ul>
4	<p>In section 83 (duties of public authorities in relation to certain decisions)—</p> <ul style="list-style-type: none"> <li>(a) in subsection (2) after “Heritage” insert “ or Historic Environment Scotland ”,</li> <li>(b) in subsection (8) after “80” insert “ , by Historic Environment Scotland under section 80A ”,</li> <li>(c) in subsection (9)— <ul style="list-style-type: none"> <li>(i) the words from “it is appropriate” to “Research MPA” become paragraph (a) of that subsection,</li> <li>(ii) after that paragraph insert— <ul style="list-style-type: none"> <li>“(b) it is appropriate to inform Historic Environment Scotland where the act relates to a Historic MPA.”</li> </ul> </li> </ul> </li> </ul>
5	<p>In section 84 (failure to comply with duties) after subsection (3) insert—</p> <p>“(3A) In relation to a Historic MPA if, in the opinion of Historic Environment Scotland, a public authority has failed—</p> <ul style="list-style-type: none"> <li>(a) to act in accordance with advice or guidance given by Historic Environment Scotland under section 80A,</li> <li>(b) to comply with any of its duties under section 82(2) or 83(3) or (4),</li> </ul> <p>Historic Environment Scotland may request from the authority an explanation in writing for the failure.</p> <p>(3B) Historic Environment Scotland must send a copy of a request by it under subsection (3A) to the Scottish Ministers.</p> <p>(3C) On receiving a request under subsection (3A), the public authority must—</p> <ul style="list-style-type: none"> <li>(a) provide Historic Environment Scotland with the requested explanation for the failure,</li> <li>(b) send a copy of the explanation to the Scottish Ministers.” </li></ul>

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**Changes to legislation:** There are currently no known outstanding effects for the Historic Environment Scotland Act 2014. (See end of Document for details)

VALID FROM 27/02/2015

## SCHEDULE 5

*(introduced by section 19)*

### TRANSFER OF STAFF, PROPERTY ETC. TO HISTORIC ENVIRONMENT SCOTLAND

#### *Staff transfer schemes*

- 1
- (1) The Scottish Ministers may make a staff transfer scheme.
  - (2) A staff transfer scheme is a scheme making provision for or in connection with the transfer to Historic Environment Scotland of persons who are—
    - (a) employed by the Royal Commission on the Ancient and Historical Monuments of Scotland,
    - (b) subject to sub-paragraph (3), members of the staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as Historic Scotland.
  - (3) Sub-paragraph (2)(b) does not apply to members of the staff of the Scottish Ministers on secondment or loan to Historic Scotland from another part of the Scottish Administration.
  - (4) A staff transfer scheme may in particular—
    - (a) prescribe rules by which the transfer of specified persons, or classes of specified person, can be determined,
    - (b) provide that specified persons, or classes of specified person, are to become employees of Historic Environment Scotland.
  - (5) A staff transfer scheme may make provision only in relation to persons whose employment relates to the carrying out of Historic Environment Scotland's functions.
  - (6) In this paragraph “specified” means specified in a staff transfer scheme.

#### *Staff transfer schemes: general*

- 2
- (1) This paragraph applies in relation to a staff transfer scheme under paragraph 1.
  - (2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.
  - (3) The scheme may—
    - (a) specify different dates for different purposes,
    - (b) make different provision in relation to different cases or classes of case.

#### *Transfers under paragraph 1: effect on contract of employment*

- 3
- (1) This paragraph applies where—
    - (a) a person is to be transferred by virtue of a staff transfer scheme, and

- (b) immediately before the transfer date the person has a contract of employment with—
  - (i) the Royal Commission on the Ancient and Historical Monuments of Scotland, or
  - (ii) the Scottish Ministers.
- (2) The contract of employment has effect on and after the transfer date as if originally made between the person and Historic Environment Scotland.
- (3) The rights, powers, duties and liabilities of the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers under or in connection with the contract of employment are by virtue of this paragraph transferred to Historic Environment Scotland on the transfer date.
- (4) Anything done before the transfer date by or in relation to the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers in respect of the contract of employment or the person is to be treated on and after that date as having been done by or in relation to Historic Environment Scotland.
- (5) If, before the transfer date, the person informs the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers that the person does not wish to become an employee of Historic Environment Scotland—
  - (a) sub-paragraphs (2) to (4) do not apply in relation to the person, and
  - (b) the person's contract of employment is terminated on the day before the transfer date.
- (6) A person is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the person.
- (7) Nothing in this paragraph affects any right of a person to terminate the person's contract of employment if a substantial detrimental change in the person's working conditions is made.
- (8) No such right arises by reason only that, by virtue of this paragraph, the identity of the person's employer changes.

*Property transfer schemes*

- 4 (1) The Scottish Ministers may make a property transfer scheme.
- (2) A property transfer scheme is a scheme making provision for or in connection with the transfer to Historic Environment Scotland of property, rights, liabilities and obligations of—
  - (a) the Royal Commission on the Ancient and Historical Monuments of Scotland,
  - (b) the Scottish Ministers.
- (3) A property transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights, liabilities and obligations relate to Historic Environment Scotland's functions.
- (4) The Royal Commission on the Ancient and Historical Monuments of Scotland must provide the Scottish Ministers with such information or assistance as Ministers

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may reasonably require for the purposes of or in connection with the making of a property transfer scheme.

- (5) On the transfer date—
- (a) any property or rights to which a property transfer scheme applies transfer to and vest in Historic Environment Scotland,
  - (b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of Historic Environment Scotland.
- (6) A property transfer scheme may make provision for the payment by Historic Environment Scotland of compensation in respect of property and rights transferred by virtue of the scheme.

*Property transfer schemes: general*

- 5 (1) This paragraph applies in relation to a property transfer scheme under paragraph 4.
- (2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.
- (3) The scheme may—
- (a) specify different dates in relation to different property, rights, liabilities and obligations,
  - (b) make different provision in relation to different cases or classes of case.
- (4) The scheme may make provision for the creation of rights, or the imposition of liabilities or obligations, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.
- (5) The scheme may make provision requiring Historic Environment Scotland to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.
- (6) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of a property transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.
- (7) The scheme may make provision about the continuation of legal proceedings.

*Transfer schemes: additional provision*

- 6 A staff transfer scheme under paragraph 1 or a property transfer scheme under paragraph 4 may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

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**Changes to legislation:** There are currently no known outstanding effects for the Historic Environment Scotland Act 2014. (See end of Document for details)

VALID FROM 27/02/2015

SCHEDULE 6  
(introduced by section 28)

CONSEQUENTIAL MODIFICATIONS

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**Status:**

Point in time view as at 19/01/2015. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Historic Environment Scotland Act 2014.