

HISTORIC ENVIRONMENT SCOTLAND ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 7 – Final Provisions

Section 25 - Interpretation

96. **Section 25** expands the short references used in the Act, for economy of space, to give their full citations: “the 1979 Act” to the Ancient Monuments and Archaeological Areas Act 1979 and “the 1997 Act” to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Section 26 – Subordinate legislation

97. This section provides that orders made under this Act are subject to the negative procedure of the Scottish Parliament with the exception of commencement orders under section 31(2), orders under sections 3(9) and 8(8) and some orders under section 27(1). Orders under section 31(2) are subject to no procedure. Orders under section 27(1) which add to, replace or omit the text of an Act are subject to the affirmative procedure of the Scottish Parliament, as are orders made under sections 3(9) and 8(8).

Section 27 – Ancillary provision

98. Subsection (1) confers powers on the Scottish Ministers enabling them to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purpose of giving full effect to this Act or any of its provisions.
99. Subsection (2) states that any order made under the powers of subsection (1) may modify any enactment (including this Act).

Section 28 – Consequential modifications

100. **Section 28** introduces schedule 6 which makes amendments to other Acts required as a result of the establishment of Historic Environment Scotland and repeals provisions of certain Acts.

Section 29 – Crown application: criminal offences

101. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Act applies to the Crown in Scotland. However, subsection (1) absolves the Crown of any criminal liability, should it be in contravention of the provision in section 5(5) of this Act. Instead, subsection (2) provides for the Court of Session to declare the act to be unlawful.

Section 30 – Crown application – powers of entry

102. **Section 30** provides that the power in section 5 (power of entry to investigate the historic environment) is exercisable in relation to Crown land, but only if the appropriate authority gives its consent. Subsection (2) provides a table setting out what is meant by “appropriate authority”.

Section 31 - Commencement

103. **Section 31** sets out the arrangements for commencement of the provisions of the Act. Sections 25 to 27 and sections 29 to 32 come into force on the day after Royal Assent. All other provisions will come into force on such day as the Scottish Ministers may by order appoint. Subsection (3) provides that a commencement order may include transitional, transitory or saving provision.

Section 32 – Short title

104. This provides for the Act to be referred to as the Historic Environment Scotland Act 2014.