

HISTORIC ENVIRONMENT SCOTLAND ACT 2014

EXPLANATORY NOTES

SCHEDULES

Schedule 2 – Functions of Historic Environment Scotland in Relation to Scheduled Monuments

Part 5 – Appeals and referrals from Historic Environment Scotland

Chapter 1 – Appeals from Historic Environment Scotland

142. [Chapter 1](#) of Part 5 of the schedule makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers and for the referral of applications for and related to scheduled monument consent from Historic Environment Scotland to the Scottish Ministers. This is a new provision, consequent on transfer of duties previously performed by Ministers through their officials. Historic Environment Scotland will have internal processes which it is intended will resolve most disagreements, so it is intended that appeal processes set out in the Act will be required relatively infrequently.
143. [Paragraph 32](#) inserts a new section 1C into the 1979 Act which gives owners, tenants and occupiers the right to appeal to the Scottish Ministers against a decision of Historic Environment Scotland to include a monument in the Schedule or to amend an entry relating to the monument in question in the Schedule. Inserted new section 1D allows for the Scottish Ministers either to dismiss or to allow (in whole or in part) such an appeal, and also allows the Scottish Ministers to direct HES to modify the Schedule to take account of the outcome of an appeal which has been allowed. Inserted new section 1E provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals.
144. [Paragraph 33](#) inserts new section 4B into the 1979 Act which gives applicants for scheduled monument consent the right to appeal to the Scottish Ministers in the following circumstances – refusal of consent, the granting of consent subject to conditions, refusal of an application for variation or discharge of conditions attached to consent, granting of consent subject to conditions and refusal of an application for subsequent approval required by a condition to which consent is subject. Paragraph 33 also inserts two further new sections: 4C which makes further provision relating to such appeals whilst 4D provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals under 4B.
145. [Paragraph 34](#) inserts a new schedule 1A into the 1979 Act after schedule 1. This schedule makes provisions about the determination of certain appeals by a person other than the Scottish Ministers and applies to appeals under inserted sections 1C, 4B and 9C. This applies to appeals against inclusion of a monument in the schedule, appeals in relation to scheduled monument consent and appeals against scheduled monument enforcement notices. Paragraph 1 of schedule 1A allows for the Scottish Ministers to

*These notes relate to the Historic Environment Scotland Act
2014 (asp 19) which received Royal Assent on 9 December 2014*

prescribe classes of appeals under sections 1C, 4B and 9C which can be determined by a person appointed by the Scottish Ministers.

146. Paragraph 2 of schedule 1A sets out the powers and duties of a person so appointed. Paragraph 3 allows for the Scottish Ministers to direct that an appeal which would be determined by an appointed person is instead to be determined by them, while paragraph 4 provides for the Scottish Ministers to revoke a direction made under the powers set out in paragraph 3 at any time.

Chapter 2 – Referral of certain applications

147. **Chapter 2** of Part 5 of the schedule makes provision for the referral of applications for (and related to) scheduled monument consent from Historic Environment Scotland to the Scottish Ministers by inserting a new section 3B into the 1979 Act. This enables the Scottish Ministers to call in an application for decision by them instead of by Historic Environment Scotland, offering harmonisation with wider planning procedures.