



Historic Environment Scotland Act 2014

2014 asp 19

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.

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.

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- (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.

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—
 - (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.

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- (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.

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.
- (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,
 - (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.

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

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.

Grants and loans

10 Grants to Historic Environment Scotland by the Scottish Ministers

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

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—
 - (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.

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.