

Historic Environment Scotland Bill

[AS PASSED]

CONTENTS

Section

PART 1

HISTORIC ENVIRONMENT SCOTLAND

Establishment

1 Historic Environment Scotland

General functions

2 Functions of Historic Environment Scotland

Functions in relation to property

3 Delegation of functions in relation to properties in care

3A Properties in care

4 Power of entry to investigate the historic environment

Functions in relation to collections and objects

5 Acquisition, deposit and disposal of objects

6 Borrowing and lending of objects

7 Delegation of functions in relation to collections

Corporate planning

8 Corporate plan

Grants and loans

9 Grants to Historic Environment Scotland by the Scottish Ministers

10 Grants and loans by Historic Environment Scotland

Advice and directions

11 Advice, information and assistance

12 Directions and guidance

Interpretation

13 Interpretation of Part 1

PART 2

FUNCTIONS IN RELATION TO SCHEDULED MONUMENTS

14 Historic Environment Scotland's functions in relation to scheduled monuments

PART 3

FUNCTIONS IN RELATION TO LISTING AND CONSERVATION

- 15 Historic Environment Scotland’s functions in relation to listed buildings

PART 4

FUNCTIONS IN RELATION TO THE MARINE ENVIRONMENT

- 16 Historic Environment Scotland’s functions in relation to the marine environment

PART 5

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

- 17 Dissolution of RCAHMS
18 Transfer of staff and property to Historic Environment Scotland

PART 6

FURTHER MODIFICATIONS IN RELATION TO THE HISTORIC ENVIRONMENT

Grants and loans

- 19 Grants and loans by the Scottish Ministers

Scheduled monuments

- 20 Local inquiries in relation to scheduled monuments etc.

Listed buildings

- 21 Meaning of “listed building”
22 Applications for listed building consent

Conservation areas

- 22A Control of demolition

PART 7

FINAL PROVISIONS

Interpretation

- 23 Interpretation

Subordinate legislation

- 24 Subordinate legislation

Ancillary provision

- 25 Ancillary provision

Consequential modifications

- 26 Consequential modifications

Crown application

- 27 Crown application: criminal offences
28 Crown application: powers of entry

Commencement and short title

- 29 Commencement
- 30 Short title

Schedule 1—Historic Environment Scotland

Schedule 2—Functions of Historic Environment Scotland in relation to scheduled monuments

Part 1—Schedule of monuments

Part 2—Scheduled monument consent

Part 3—Scheduled monument enforcement notices

Part 4—Scheduled monuments: stop notices

Part 5—Appeals and referrals

Part 6—Functions in relation to gardens, landscapes and battlefields

Part 7—Other matters in relation to scheduled monuments

Schedule 3—Functions of Historic Environment Scotland in relation to listing and conservation

Part 1—Listing of special buildings

Part 2—Listed building consent

Part 3—Conservation areas

Part 4—Appeals against listing

Part 5—Other matters in relation to listing

Schedule 4—Functions of Historic Environment Scotland in relation to the marine environment

Schedule 5—Transfer of staff, property etc. to Historic Environment Scotland

Schedule 6—Consequential modifications

Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Historic Environment Scotland Bill

[AS PASSED]

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.

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.

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.

5 (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,
- 10 (b) may be varied or revoked at any time.

(7A) The Scottish Ministers must publish delegations under subsection (1).

(8) In this section—

“functions” includes functions—

- 15 (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 3A.

3A Properties in care

20 (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—

- 25 (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—

- 30 (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.

4 Power of entry to investigate the historic environment

35 (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.

- 5 (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.
- 10 (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.
- 15 (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

5 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.
- 25 (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
 - 30 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.
- 35 (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—
- 40 (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).

5 (7) In this section and in section 6, 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 7).

10 **6 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).

15 (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,

20 (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.

25 (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—

30 (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.

7 Delegation of functions in relation to collections

35 (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.

40 (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.
- (6A) The Scottish Ministers must publish delegations under subsection (1).
- (7) 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

8 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.
- 5 (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.

10 *Grants and loans*

9 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.
- 15 (3) Grants under this section are subject to such terms and conditions (including as to repayment) as the Scottish Ministers may determine.

10 Grants and loans by Historic Environment Scotland

- (1) Historic Environment Scotland may make grants and loans to such persons as it considers appropriate—
- 20 (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.
- 25 (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

11 Advice, information and assistance

- 30 (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.
- 35 (3) Historic Environment Scotland may provide advice, information and assistance relating to the historic environment to any other person.

12 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 10.
- (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 7.
- (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

13 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 3A.

PART 2

FUNCTIONS IN RELATION TO SCHEDULED MONUMENTS

14 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,
- (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.

PART 3

FUNCTIONS IN RELATION TO LISTING AND CONSERVATION

15 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.

PART 4

FUNCTIONS IN RELATION TO THE MARINE ENVIRONMENT

16 **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.

PART 5

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

17 **Dissolution of RCAHMS**

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

18 **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.

PART 6

FURTHER MODIFICATIONS IN RELATION TO THE HISTORIC ENVIRONMENT

Grants and loans

19 **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

20 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.
- (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

21 Meaning of “listed building”

- (1) The 1997 Act is amended as follows.
- (2) In section 1 (listing of buildings of special architectural or historical 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.”.

22 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

(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.”.

Conservation areas

22A 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

23 Interpretation

In this Act—

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

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

Subordinate legislation

24 Subordinate legislation

- 5 (1) Orders under this Act are subject to the negative procedure.
- (2) Subsection (1) does not apply to—
- (za) orders for which provision is made in subsection (3),
- (b) orders under section 29(2).
- 10 (3) Orders under—
- (a) section 3(8),
- (b) section 7(7),
- (c) section 25(1) which add to, replace or omit the text of an Act,
- are subject to the affirmative procedure.

Ancillary provision

25 Ancillary provision

- 15 (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.
- 20 (2) An order under subsection (1) may modify any enactment (including this Act).

Consequential modifications

26 Consequential modifications

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

Crown application

27 Crown application: criminal offences

- (1) No contravention by the Crown of section 4(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.
- 30 (3) Despite subsection (1), this Act applies to persons in the public service of the Crown as it applies to other persons.

28 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).

30

Commencement and short title

29 Commencement

- (1) This section and sections 23 to 25, 27, 28 and 30 come into force on the day after Royal Assent.
- (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.

35

30 Short title

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

SCHEDULE 1
(introduced by section 1(3))

HISTORIC ENVIRONMENT SCOTLAND

Status

- 5 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.

Membership

- 10 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
15 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
20 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
25 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).

30 *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,
35 (c) members of the Scottish Parliament,
(d) members of the European Parliament.

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,
 - 5 (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—
- 10 (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,
 - 15 (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.

Remuneration, allowances and expenses of members

- 20 5 Historic Environment Scotland must pay each member such remuneration, allowances and expenses as the Scottish Ministers may determine.

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.
- 25 (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.
- 30 (5) Staff of Historic Environment Scotland are to be employed on terms and conditions determined by it and approved by the Scottish Ministers.

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.
- 35 (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,

5 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.

Committees

10 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.

(4) But such a person is not entitled to vote at meetings of the committee.

15 (5) A committee must comply with any directions given to it by Historic Environment Scotland.

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.

20 (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.

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.

35 (3) Nothing in sub-paragraph (1) affects the responsibility of Historic Environment Scotland for the exercise of its functions.

Validity of proceedings and actions

11 The validity of proceedings or actions of Historic Environment Scotland (or of a committee) is not affected by—

- 5
- (a) any vacancy in the membership of Historic Environment Scotland or of the committee,
 - (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.

General powers

10 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—

- 15
- (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).
- 20
- 25
- 30

(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 7.

35

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.
- 5
- (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.

10 *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.
- 15
- (2) Historic Environment Scotland must—
- (a) send a copy of the report to the Scottish Ministers, and
 - (b) publish the report.
- 20
- (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.

SCHEDULE 2
(introduced by section 14)

25 FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO SCHEDULED MONUMENTS

PART 1

SCHEDULE OF MONUMENTS

- 1 The 1979 Act is amended as follows.
- 2 In section 1 (Schedule of monuments)—
- 30
- (a) in subsection (1)—
 - (i) for “The Secretary of State” substitute “Historic Environment Scotland”,
 - (ii) for “he” substitute “it”,
 - (b) in subsection (3)—
 - (i) for first “the Secretary of State” substitute “Historic Environment Scotland”,
- 35

- (ii) for “him” substitute “it”,
- (c) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”,
- (d) in subsection (5) for “The Secretary of State” substitute “Historic Environment Scotland”,
- (ea) for subsection (6) substitute—
- “(6) Where Historic Environment Scotland—
- (a) includes a monument in the Schedule under subsection (3),
- (b) amends the entry in the Schedule relating to a monument, or
- (c) excludes a monument from the Schedule,
- it must notify such persons as may be prescribed in such form and manner, and within such time, as may be prescribed of the action taken.”,
- (f) subsections (7) and (8) are repealed,
- (g) in subsection (10)(b) for “the Secretary of State” substitute “Historic Environment Scotland”.
- After section 1A (Commission’s functions as to informing and publishing) insert—

“1B Publication of the Schedule

- (1) Historic Environment Scotland must—
- (a) publish the Schedule compiled and maintained under section 1, and any amendments of the Schedule, and
- (b) make the Schedule available for public inspection,
- in such manner as may be prescribed.
- (2) The Scottish Ministers may by regulations make further provision for—
- (a) the publication of the Schedule,
- (b) the making of the Schedule available for public inspection,
- (c) the notification of the inclusion of a monument in, the amendment of an entry relating to a monument in or the exclusion of a monument from the Schedule.”.

PART 2

SCHEDULED MONUMENT CONSENT

The 1979 Act is further amended as follows.

In section 2 (control of works affecting scheduled monuments)—

- (a) in subsection (3)(a) after “State” insert “or Historic Environment Scotland”,
- (ba) in subsection (3A) for paragraph (b) substitute—
- “(b) consent for the retention of the works is granted by the Scottish Ministers or by Historic Environment Scotland”,

(c) in subsection (5) in paragraph (b) and in the fullout for “the Secretary of State” in each place substitute “Historic Environment Scotland”,

(d) after that subsection insert—

5 “(5A) The conditions that may be attached to scheduled monument consent under subsection (4) include a condition reserving specified details of the works (whether or not set out in the application for consent) for subsequent approval by Historic Environment Scotland.”,

(e) in subsection (9) for “the Secretary of State” substitute “Historic Environment Scotland”.

10 6 After section 3 (grant of scheduled monument consent by order of the Scottish Ministers) insert—

“3A Application for variation or discharge of conditions

15 (1) Any person interested in a scheduled monument in relation to which scheduled monument consent has been granted subject to conditions may apply to Historic Environment Scotland for the variation or discharge of the conditions.

(2) The application must indicate what variation or discharge of conditions is applied for and Part 1 of schedule 1 applies to such an application as it applies to an application for scheduled monument consent.

20 (3) Historic Environment Scotland or, as the case may be, the Scottish Ministers may, on such an application—

(a) vary or discharge the conditions attached to the consent (whether or not the application relates to the condition varied or discharged),

(b) add new conditions consequential upon the variation or discharge.”.

7 In section 4 (duration, modification and revocation of scheduled monument consent)—

25 (a) for subsections (3) and (4) substitute—

“**(3)** If it appears to Historic Environment Scotland that it is expedient to modify or revoke a scheduled monument consent, it may by order under this section modify or revoke the consent to such extent as it considers expedient.

30 **(4)** The power conferred by subsection (3) to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.”,

(b) in subsection (5) for “directions” substitute “orders”.

8 After that section insert—

35 **“4A Modification and revocation of scheduled monument consent by Scottish Ministers**

(1) If it appears to the Scottish Ministers that it is expedient to modify or revoke a scheduled monument consent, they may by order under this section modify or revoke the consent to such extent as they consider expedient.

40 (2) The Scottish Ministers may not make an order under this section without consulting Historic Environment Scotland.

- (3) Where the Scottish Ministers propose to make such an order, they must serve notice on—
- (a) the owner of the scheduled monument affected,
 - (b) where the owner is not the occupier of the monument, the occupier, and
 - (c) any other person who in their opinion will be affected by the order.
- (4) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.
- (5) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they make the order, give such an opportunity both to that person and to Historic Environment Scotland.
- (6) The power conferred by this section to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.
- (7) An order under this section has effect as if it had been made by Historic Environment Scotland under section 4 and confirmed by the Scottish Ministers under paragraph 10 of Part 2 of schedule 1.”.
- 9 In section 5(1) (execution of works for preservation of a scheduled monument in cases of urgency)—
- (a) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (b) for “he” substitute “it”,
 - (c) for “his” substitute “its”.
- 10 In section 6 (powers of entry for inspection of scheduled monuments)—
- (a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,
 - (b) in subsection (2) after “State” in both places insert “or Historic Environment Scotland”,
 - (c) in subsection (3) after “State” insert “or Historic Environment Scotland”,
 - (d) in subsection (3A) after “Ministers” insert “or Historic Environment Scotland”,
 - (e) in subsection (4) after “State” insert “or Historic Environment Scotland”,
 - (f) in subsection (5) after “State” in both places insert “or Historic Environment Scotland”.
- 11 In section 7 (compensation for refusal of scheduled monument consent)—
- (a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland or, where the Scottish Ministers refused the scheduled monument consent or granted it subject to conditions, Ministers”,
 - (b) in subsection (3) for “the Secretary of State’s” substitute “Historic Environment Scotland’s or, as the case may be, the Scottish Ministers”.

(c) in subsection (6)(b) for “the Secretary of State” substitute “Historic Environment Scotland or, as the case may be, the Scottish Ministers”.

12 In section 8 (recovery of compensation under section 7 on subsequent grant of consent)—

5 (a) in subsection (1) after “State” in both places insert “or Historic Environment Scotland”,

(b) in subsection (2A)(b) after “State” insert “or Historic Environment Scotland”,

(c) in subsection (3)—

(i) after “State” in each place insert “or Historic Environment Scotland”,

10 (ii) after “his” in both places insert “or its”,

(d) in subsection (4) after “State” insert “or Historic Environment Scotland”.

13 In section 9(1) (compensation where works cease to be authorised) after “State” insert “or Historic Environment Scotland”.

14 (1) Part 1 of schedule 1 (applications for scheduled monument consent) is amended as follows.

15 (2) In paragraph 1(1) for “the Secretary of State” substitute “Historic Environment Scotland”.

(3) In paragraph 2(1) for “The Scottish Ministers” substitute “Historic Environment Scotland”.

20 (4) In paragraph 2B—

(a) in sub-paragraph (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in sub-paragraph (2)(a)—

(i) after “received,” insert “Historic Environment Scotland has or”,

25 (ii) after “refused” insert “or the Scottish Ministers have dismissed an appeal against the refusal of, or an appeal under section 4B(3) in respect of”,

(c) in sub-paragraph (2)(b)—

(i) for “their” substitute “its”,

(ii) after “refused” insert “or the appeal was dismissed”,

30 (d) in sub-paragraph (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

(4A) After that paragraph insert—

35 “2C (1) If Historic Environment Scotland, on an application to it for scheduled monument consent, intends to grant that consent, it must, where sub-paragraph (2) applies, first notify the Scottish Ministers of the application.

(2) This sub-paragraph applies where—

(a) regulations, or

(b) directions given to Historic Environment Scotland by the Scottish Ministers,

provide that the application must be so notified.

(3) The Scottish Ministers may within the period of 28 days beginning with the date of the notification—

(a) direct the reference of the application to them under section 3B, or

(b) give notice to Historic Environment Scotland that they require further time in which to consider whether to require such a reference.

(4) Historic Environment Scotland must not grant scheduled monument consent until—

(a) the period mentioned in sub-paragraph (3) has expired without the Scottish Ministers directing the reference of the application to them or giving notice under paragraph (b) of that sub-paragraph, or

(b) the Scottish Ministers have notified Historic Environment Scotland that they do not intend to require the reference of the application.

2D The Scottish Ministers may give directions to Historic Environment Scotland requiring it, in such cases or classes of case as may be specified in the directions, to notify to Ministers and to such other persons as may be so specified—

(a) any applications made to it for scheduled monument consent, and

(b) the decisions taken on those applications.”.

(5) In paragraph 3—

(a) in sub-paragraph (1) after “State” insert “or Historic Environment Scotland”,

(b) for sub-paragraphs (2) and (3) substitute—

“(2) The Scottish Ministers may by regulations make provision for the procedure to be followed by Historic Environment Scotland in considering and determining applications for scheduled monument consent.”,

(c) in sub-paragraph (4)—

(i) after “State” insert “or, as the case may be, Historic Environment Scotland”,

(ii) for “his” substitute “the”,

(iii) “to him” is repealed.

(6) Paragraph 4 is repealed.

15 In Part 2 of schedule 1 (modification and revocation of scheduled monument consent)—

(a) paragraphs 5 to 9 are repealed,

(b) after paragraph 9 insert—

“10(1) Except as provided for in paragraph 11, an order made by Historic Environment Scotland under section 4 modifying or revoking a scheduled monument consent does not take effect unless it is confirmed by the Scottish Ministers.

(2) Where Historic Environment Scotland submits an order to the Scottish Ministers for confirmation, it must serve notice on—

- (a) the owner of the scheduled monument affected,
- (b) where the owner is not the occupier of the monument, the occupier, and
- (c) any other person who in its opinion will be affected by the order.

5 (3) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.

10 (4) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they confirm the order, give such an opportunity both to that person and to Historic Environment Scotland.

(5) The Scottish Ministers may confirm any such order submitted to them either without modification or subject to such modifications as they consider expedient.

11(1) Where sub-paragraph (2) applies, Historic Environment Scotland—

15 (a) need not submit the order under section 4 modifying or revoking the scheduled monument consent to the Scottish Ministers for approval,

(b) must instead take the steps mentioned in sub-paragraph (3).

(2) This sub-paragraph applies where—

20 (a) the owner of the scheduled monument affected,

(b) where the owner is not the occupier of the monument, the occupier, and

(c) all other persons who in Historic Environment Scotland's opinion will be affected by the order,

have notified Historic Environment Scotland in writing that they do not object to the order.

25 (3) The steps referred to in sub-paragraph (1)(b) are—

(a) advertising in the prescribed manner the fact that the order has been made,

(b) serving notice to the same effect on the persons mentioned in sub-paragraph (2), and

30 (c) sending a copy of any such advertisement to the Scottish Ministers not more than 3 days after its publication.

(4) The advertisement under sub-paragraph (3)(a) must specify—

35 (a) the period within which persons affected by the order may give notice to the Scottish Ministers that they require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose, and

(b) the period at the end of which, if no such notice is given to the Scottish Ministers, the order may take effect by virtue of this paragraph and without being confirmed by the Scottish Ministers.

40 (5) The period referred to in sub-paragraph (4)(a) must not be less than 28 days from the date on which the advertisement first appears.

- (6) The period referred to in sub-paragraph (4)(b) must not be less than 14 days from the end of the period referred to in sub-paragraph (4)(a).
- (7) The notice under sub-paragraph (3)(b) must include a statement to the effect that no compensation is payable under section 9 in respect of an order which takes effect by virtue of this paragraph.
- (8) The order takes effect at the end of the period referred to in sub-paragraph (4)(b) without being confirmed by the Scottish Ministers if—
- (a) no person claiming to be affected by the order has given notice to the Scottish Ministers as mentioned in sub-paragraph (4)(a) within the period referred to in that sub-paragraph, and
 - (b) the Scottish Ministers have not directed that the order be submitted to them for confirmation.”.

PART 3

SCHEDULED MONUMENT ENFORCEMENT NOTICES

16 The 1979 Act is further amended as follows.

17 In section 9A (power to issue scheduled monument enforcement notice)—

(a) in subsection (1)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) in paragraph (b) for “they may, if they consider” substitute “it may, if it considers”,

(b) in subsection (2)(a) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,

(c) in subsection (3)(b)—

(i) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(ii) for “they consider” substitute “it considers”,

(iii) for “them” substitute “it”,

(d) in subsection (4) for “the Scottish Ministers are” substitute “Historic Environment Scotland is”.

18 In section 9B (scheduled monument enforcement notices: further provision)—

(a) in subsection (4)(b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (5)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) in paragraph (a) for “their” substitute “its”,

(c) in subsection (6) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(d) in subsection (7) for “The Scottish Ministers” substitute “Historic Environment Scotland”.

18A In section 9C (appeal against scheduled monument enforcement notice)—

(a) in subsection (1) for “by summary application appeal to the sheriff” substitute “appeal to the Scottish Ministers”,

(b) in subsection (2)—

(i) before paragraph (a) insert—

“(za) that the monument is not of national importance,”,

(ii) after paragraph (c) insert—

“(ca) that scheduled monument consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted,”,

(iii) after paragraph (d) insert—

“(da) except in relation to such a requirement as is mentioned in section 9A(3)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the monument or land to its condition before the works were carried out,”,

(iv) after paragraph (e) insert—

“(f) that the steps required by the notice for the purpose of restoring the character of the monument or land to its former state would not serve that purpose,

(g) that the cessation of any works required by the notice exceeds what is necessary to remedy the contravention of section 2(1) or (6),

(h) that steps required to be taken by virtue of section 9A(3)(b) exceed what is necessary to alleviate the effect of the works executed to the monument or land,

(i) that steps required to be taken by virtue of section 9A(3)(c) exceed what may reasonably be required to bring the monument or land to the state in which it would have been if the scheduled monument consent had been complied with.”,

(c) after subsection (2) insert—

“(2A) An appeal under this section is to be made by giving written notice of the appeal to the Scottish Ministers before the date specified in the scheduled monument enforcement notice as the date on which it is to take effect.”,

(d) after subsection (3) insert—

“(3A) A person who gives notice of appeal under this section must submit to the Scottish Ministers, either when giving the notice or within such time as may be prescribed, a statement in writing—

(a) specifying the grounds on which the appeal is made,

(b) giving such further information as may be prescribed.”,

(e) subsections (4) and (5) are repealed.

18B After that section insert—

“9CA Determination of appeals under section 9C

- (1) On determining an appeal under section 9C, the Scottish Ministers may give directions for giving effect to the determination, including where appropriate directions for quashing the scheduled monument enforcement notice.
- 5 (2) On such an appeal the Scottish Ministers may if they are satisfied that the correction or variation will not cause injustice to the appellant or to Historic Environment Scotland—
- (a) correct any defect, error or misdescription in the scheduled monument enforcement notice, or
- 10 (b) vary the terms of the notice.
- (3) In a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 9B(4) to be served with a copy of the notice was not served, the Scottish Ministers may disregard that fact if they are satisfied that the person has not been substantially prejudiced by the failure.
- 15 (4) The Scottish Ministers may—
- (a) dismiss such an appeal if the appellant fails to comply with section 9C(3A) within the prescribed time,
- (b) allow such an appeal or quash the scheduled monument enforcement notice if Historic Environment Scotland fails to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 9CB(1).
- 20 (5) On the determination of an appeal under section 9C the Scottish Ministers may—
- (a) grant scheduled monument consent for the works to which the scheduled monument enforcement notice relates,
- (b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or
- 25 (c) direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that determination.
- (6) Any scheduled monument consent granted by the Scottish Ministers under subsection (5)(a) is to be treated as granted under section 2(3).
- (7) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 9C is final.

35 **9CB Procedure for appeals under section 9C**

- (1) The Scottish Ministers may by regulations make provision in connection with appeals under section 9C, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.
- 40 (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 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 9C.”.

19 In section 9D (execution of works required by scheduled monument enforcement notice)—

(a) in subsection (1)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) in paragraph (b) for “them” substitute “it”,

(b) in subsection (2)(b) for “the Scottish Ministers in taking steps required by it” substitute “Historic Environment Scotland in taking steps required by the notice”,

(c) in subsection (4)—

(i) for “the Scottish Ministers take” substitute “Historic Environment Scotland takes”,

(ii) for “they” substitute “it”,

(iii) for “them” substitute “it”,

(d) in subsection (5)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “them” substitute “it”,

(e) in subsection (6)—

(i) for “the Scottish Ministers seek” substitute “Historic Environment Scotland seeks”,

(ii) in paragraph (b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(f) in subsection (7)—

(i) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”,

(ii) for “they” substitute “it”.

19A After section 9F (effect of scheduled monument consent on scheduled monument enforcement notice) insert—

“9FA Enforcement by the Scottish Ministers

- 5 (1) If it appears to the Scottish Ministers that it is expedient that a scheduled monument enforcement notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9A.
- (2) A scheduled monument enforcement notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.
- (3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.
- 10 (4) The provisions of this Act relating to scheduled monument enforcement notices apply, so far as relevant, to a scheduled monument enforcement notice served by the Scottish Ministers as they apply to a scheduled monument enforcement notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.”.
- 15

PART 4

SCHEDULED MONUMENTS: STOP NOTICES

20 The 1979 Act is further amended as follows.

21 In section 9G (stop notices)—

- 20 (a) in subsection (1) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,
- (b) in subsection (2)—
- (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
- (ii) for “they serve” substitute “it serves”,
- 25 (c) in subsection (3) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,
- (d) in subsection (5)(a) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,
- (e) in subsection (6)—
- 30 (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
- (ii) for “them” substitute “it”,
- (f) in subsection (7)—
- (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
- (ii) for “their” substitute “its”.

35 22 In section 9H (stop notices: supplementary provisions)—

- (a) in subsection (3) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
- (b) in subsection (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

22A After that section insert—

“9HA Power of the Scottish Ministers to serve stop notice

- 5 (1) If it appears to the Scottish Ministers that it is expedient that a stop notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9G.
- (2) A stop notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.
- (3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.
- 10 (4) The provisions of this Act relating to stop notices apply, so far as relevant, to a stop notice served by the Scottish Ministers as they apply to a stop notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.”

15 23 In section 9I (compensation for loss due to stop notice)—

- (a) in subsection (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
- (b) in subsection (3)(c)—
- 20 (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
- (ii) for “them” substitute “it”,
- (c) in subsection (5)(b) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

24 In section 9K (temporary stop notices)—

- (a) in subsection (1)—
- 25 (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
- (ii) for “they may, if they consider” substitute “it may, if it considers”,
- (b) in subsection (2)(c) for “the Scottish Ministers” substitute “Historic Environment Scotland’s”,
- (c) in subsection (3) for “the Scottish Ministers” in both places substitute “Historic Environment Scotland”,
- 30 (d) in subsection (4) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
- (e) in subsection (8) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

35 25 In section 9L(1) (temporary stop notices: restrictions) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”.

26 In section 9N (temporary stop notices: compensation)—

- (a) in subsection (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
- 40 (b) in subsection (2)(b) for “the Scottish Ministers withdraw” substitute “Historic Environment Scotland withdraws”.

PART 5

APPEALS AND REFERRALS

CHAPTER 1

APPEALS FROM HISTORIC ENVIRONMENT SCOTLAND

5 27 The 1979 Act is further amended as follows.

Appeal against inclusion or amendment of entry in Schedule of monuments

28 After section 1B (publication of the Schedule) (inserted by paragraph 3) insert—

“1C Appeal against inclusion etc. in Schedule of monuments

(1) This section applies where Historic Environment Scotland makes a decision—

- 10 (a) to include a monument in the Schedule,
 (b) to amend an entry in the Schedule relating to a monument.

(2) A person mentioned in subsection (3) may appeal the decision to the Scottish Ministers.

(3) The person is—

- 15 (a) the owner of the monument,
 (b) the tenant of the monument,
 (c) the occupier of the monument.

1D Determination of appeals under section 1C

(1) The Scottish Ministers may—

- 20 (a) dismiss an appeal under section 1C,
 (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.

25 (3) Where the Scottish Ministers allow an appeal, they may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to their decision.

(4) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 1C is final.

1E Procedure for appeals under section 1C

(1) The Scottish Ministers may by regulations make provision in connection with appeals under section 1C, including provision about—

- 30 (a) the grounds on which an appeal may be made,
 35 (b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

- (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 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 1C.”.

Appeal in relation to scheduled monument consent

29 After section 4A (inserted by paragraph 8) insert—

“4B Appeal in relation to scheduled monument consent

- (1) This section applies where Historic Environment Scotland makes a decision—
- (a) refusing an application for scheduled monument consent,
 - (b) granting such an application subject to conditions,
 - (c) refusing an application for variation or discharge of conditions to which a scheduled monument consent is subject,
 - (d) granting such an application subject to conditions,
 - (e) refusing an application for subsequent approval required by a condition to which a scheduled monument consent is subject.
- (2) A person who made the application mentioned in subsection (1) may appeal the decision to the Scottish Ministers.
- (3) A person may also appeal to the Scottish Ministers where Historic Environment Scotland has not given notice of its decision on an application mentioned in subsection (1)(a), (c) or (e) within the prescribed period or such other longer period as may be agreed between the applicant and Historic Environment Scotland.
- (4) An appeal under this section may include the ground that—
- (a) the monument should not be included in the Schedule,
 - (b) the entry in the Schedule relating to the monument should be amended.

4C Determination of appeals under section 4B

- (1) The Scottish Ministers may—
- (a) dismiss an appeal under section 4B,
 - (b) allow such an appeal (in whole or in part).

- (2) In determining an appeal under section 4B, the Scottish Ministers may deal with the application to which the appeal relates as if it had been made to them in the first instance.
- (3) 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.
- (4) Subsection (5) applies where—
- (a) the grounds of appeal include the ground—
 - (i) that the monument should not be included in the Schedule, or
 - (ii) that the entry in the Schedule relating to the monument should be amended, and
 - (b) the Scottish Ministers uphold that ground.
- (5) The Scottish Ministers may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that decision.
- (6) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 4B is final.

4D Procedure for appeals under section 4B

- (1) The Scottish Ministers may by regulations make provision in connection with appeals under section 4B, including provision about—
- (a) subject to section 4B(4), 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.
- (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) Regulations under subsection (1) may also provide that an appeal in respect of an application—
- (a) for scheduled monument consent, or
 - (b) for the variation or discharge of conditions to which such a consent is subject,

need not be entertained unless it is accompanied by a certificate in the prescribed form as to the interests in the monument to which the appeal relates.

(5) Sub-paragraphs (2) to (4) of paragraph 2 of schedule 1 apply to regulations imposing a requirement by virtue of subsection (4) as they apply to the requirement imposed by sub-paragraph (1) of that paragraph.

(6) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 4B.”.

Determination of appeals by appointed person

30 After schedule 1 insert—

“SCHEDULE 1A

(introduced by sections 1E(4), 4D(6) and 9CB(4))

DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY THE SCOTTISH MINISTERS

Determination of appeals by appointed person

15 1 (1) The Scottish Ministers may by regulations prescribe classes of appeals under sections 1C, 4B and 9C which are to be determined by a person appointed by the Scottish Ministers for the purpose.

(2) Those classes of appeals are to be so determined except in such classes of case—

20 (a) as may for the time being be prescribed, or

(b) as may be specified in directions given by the Scottish Ministers.

(3) Regulations under sub-paragraph (1) may provide for the giving of publicity to any directions given by the Scottish Ministers under this paragraph.

25 (4) This paragraph does not affect any provision made by or under this Act that an appeal is to lie to, or a notice of an appeal is to be served on, the Scottish Ministers.

(5) A person appointed under this paragraph is referred to in this schedule as an “appointed person”.

Powers and duties of appointed person

30 2 (1) An appointed person is to have the same powers and duties—

(a) in relation to an appeal under section 1C as the Scottish Ministers have under section 1D,

(b) in relation to an appeal under section 4B as the Scottish Ministers have under section 4C,

35 (c) in relation to an appeal under section 9C as the Scottish Ministers have under section 9CA.

(2) Where an appeal has been determined by an appointed person, the decision is to be treated as a decision of the Scottish Ministers.

- (3) Except as provided for by section 55, the decision of an appointed person on any appeal is final.

Determination of appeals by the Scottish Ministers

- 5 3 (1) The Scottish Ministers may, if they think fit, direct that an appeal which would otherwise fall to be determined by an appointed person is instead to be determined by them.
- (2) Such a direction must—
- (a) state the reasons for which it is given, and
- (b) be served on the appellant.
- 10 (3) Where an appeal under section 1C, 4B or 9C falls to be determined by the Scottish Ministers by virtue of a direction under this paragraph, the provisions of this Act which are relevant to the appeal are to apply, subject to sub-paragraph (4), as if this schedule had never applied to it.
- (4) In determining the appeal, the Scottish Ministers may take into account any
- 15 report made to them by any person previously appointed to determine the appeal.
- 4 (1) The Scottish Ministers may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.
- (2) Such a further direction must—
- 20 (a) state the reasons for which it is given, and
- (b) be served on—
- (i) the person, if any, previously appointed to determine the appeal, and
- (ii) the appellant.
- 25 (3) Where such a further direction has been given, the provisions of this schedule relevant to the appeal are to apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Scottish Ministers in connection with the
- 30 appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) is, unless that person directs otherwise, to be treated as having been done by that person.

Appointment of another person to determine appeal

- 5 5 (1) At any time before the appointed person has determined the appeal the Scottish Ministers may—
- 35 (a) revoke the appointment, and
- (b) appoint another person under paragraph 1 to determine the appeal instead.
- (2) Where such a new appointment is made, the consideration of the appeal or any inquiry or other hearing in connection with it is to be begun afresh.

- (3) Nothing in sub-paragraph (2) requires any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Local inquiries and hearings

- 5 6 (1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person—
- (a) may hold a local inquiry in connection with the appeal, and
- (b) must do so if the Scottish Ministers so direct.
- (2) Where an appointed person—
- 10 (a) holds a hearing, or
- (b) holds an inquiry by virtue of this paragraph,
- an assessor may be appointed by the Scottish Ministers to sit with the appointed person at the hearing or inquiry to advise the appointed person on any matters arising.
- 15 (3) Subject to sub-paragraph (4), the expenses of any such hearing or inquiry are to be paid by the Scottish Ministers.
- (4) Subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.
- 20 (5) The appointed person has the same power to make orders under subsection (9) of that section in relation to proceedings under this schedule which do not give rise to an inquiry as the person has in relation to such an inquiry.
- (6) For the purposes of this paragraph, references to the Minister in subsections (9) and (12) of that section are to be read as references to the appointed person.

25 *Supplementary provisions*

- 7 The functions of determining an appeal and doing anything in connection with it conferred by this schedule on an appointed person who is a member of the staff of the Scottish Administration are to be treated for the purposes of the Scottish Public Services Ombudsman Act 2002 (asp 11) as functions conferred on the Scottish Ministers.”
- 30

CHAPTER 2

REFERRAL OF CERTAIN APPLICATIONS

Referral of certain applications

- 31 After section 3A (inserted by paragraph 6) insert—
- 35 **“3B Referral of certain applications to the Scottish Ministers**
- (1) The Scottish Ministers may give directions requiring applications for—
- (a) scheduled monument consent,

(b) variation or discharge of conditions to which scheduled monument consent is subject,

(c) subsequent approval required by a condition to which scheduled monument consent is subject,

5 to be referred to them instead of being dealt with by Historic Environment Scotland.

(2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.

10 (3) A direction under this section may be withdrawn or modified by a subsequent direction.

(4) An application in respect of which a direction under this section has effect is to be referred to the Scottish Ministers accordingly.

(5) In determining an application under this section, the Scottish Ministers may deal with the application as if it had been made to them in the first instance.

15 (6) Except as provided for by section 55, the decision of the Scottish Ministers on any application referred to them under this section is final.

(7) The reference in subsection (1)(c) to scheduled monument consent includes a reference to consent granted by order under section 3.

3C Procedure for referrals under section 3B

20 (1) The Scottish Ministers may by regulations make provision in connection with referrals under section 3B, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the referral.

25 (2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—

(a) the notification of a referral,

(b) the manner in which a referral is to be conducted.

30 (3) Regulations made by virtue of subsection (2)(b) may also include provision that the manner in which a referral, or any stage of a referral, 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).”

PART 6

FUNCTIONS IN RELATION TO GARDENS, LANDSCAPES AND BATTLEFIELDS

35 32 Part 1A of the 1979 Act is amended as follows.

33 In section 32A (inventory of gardens and designed landscapes)—

(a) in subsection (1)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “they think” substitute “it thinks”,

- (iii) for “them” substitute “it”,
- (b) in subsection (3) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
- (c) in subsection (4)—
- 5 (i) for “their” substitute “its”,
- (ii) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
- (d) in subsection (5)—
- (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
- (ii) for “they think” substitute “it thinks”.
- 10 34 In section 32B(1) (inventory of battlefields)—
- (a) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
- (b) for “they think” substitute “it thinks”,
- (c) for “them” substitute “it”.

PART 7

15 OTHER MATTERS IN RELATION TO SCHEDULED MONUMENTS

35 The 1979 Act is further amended as follows.

Interdict

- 36 In section 90 (interdicts restraining unauthorised works on scheduled monuments)—
- (a) in subsection (1)—
- 20 (i) for “they have exercised or propose to exercise any of their” substitute “Historic Environment Scotland has exercised or proposes to exercise any of its”,
- (ii) for “the Scottish Ministers” substitute “it”,
- (b) after that subsection insert—
- 25 “(1A) Whether or not the Scottish Ministers have exercised or propose to exercise any of their powers under this Act, they may seek to restrain or prevent any actual or apprehended breach of any of the controls provided by or under this Act on the execution of works affecting scheduled monuments by means of an application for interdict.”,
- 30 (c) in subsection (2) for “subsection (1)” substitute “subsection (1) or (1A)”.

Agreements concerning ancient monuments etc.

- 37 In section 17 (agreements concerning ancient monuments etc.)—
- (a) after subsection (2) insert—
- 35 “(2A) Historic Environment Scotland may enter into an agreement under this section with the occupier of an ancient monument situated in Scotland or of any land so situated which adjoins or is in the vicinity of an ancient monument so situated.”,

(b) in subsection (4)—

(i) in paragraph (f), after “authority” insert “or Historic Environment Scotland”,

(ii) in the fullout, after “authority” insert “or Historic Environment Scotland”,

(c) after subsection (9) insert—

“(9A) References to an ancient monument in subsection (2A), and in subsection (3) so far as it applies for the purposes of subsection (2A), are to be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to Historic Environment Scotland.”.

Advice and superintendence

38 In section 25 (advice and superintendence)—

(a) in subsection (1) for “The Secretary of State” substitute “Historic Environment Scotland”,

(b) in subsection (2)—

(i) for “The Secretary of State” substitute “Historic Environment Scotland”,

(ii) for “his” in both places substitute “its”,

(c) in subsection (3)—

(i) for “The Secretary of State” substitute “Historic Environment Scotland”,

(ii) for “he” substitute “it”.

Power of entry: inspection and recording

39 In section 26 (power of entry on land believed to contain an ancient monument)—

(a) in subsection (1) for “the Secretary of State” in both places substitute “Historic Environment Scotland”,

(b) in subsection (4)(b)—

(i) for “the Scottish Ministers know or have” substitute “Historic Environment Scotland knows or has”,

(ii) for “they know or believe” substitute “it knows or believes”.

Power to accept voluntary contributions

40 In section 31 (voluntary contributions towards expenditure under Part 1 of the 1979 Act) after “State” insert “, Historic Environment Scotland”.

Metal detectors

41 In section 42 (restrictions on use of metal detectors)—

(a) in subsection (1) after “consent” insert “of Historic Environment Scotland (in the case of a place situated in Scotland),”,

(b) in subsection (2) in the definition of “protected place”, after “State” insert “, Historic Environment Scotland”,

(c) in subsection (3) after “that” insert “of Historic Environment Scotland (where the place in question is situated in Scotland),”,

- (d) in subsection (4) after “by” insert “Historic Environment Scotland,”,
- (e) in subsection (5)(a) after “by” insert “Historic Environment Scotland,”.

Power of entry: survey and valuation

42 In section 43(2) (power of entry for survey and valuation) after “State” insert “, Historic
5 Environment Scotland”.

Compensation

43 In section 46(1) (compensation for damage caused by exercise of certain powers) after
“from” insert “Historic Environment Scotland,”.

Application to Crown land

10 44 In section 50 (application of Act to Crown land) after subsection (1) insert—
“(1A) For the purposes of subsection (1)(b), anything done by Historic Environment
Scotland on Crown land, in relation to which it has functions by virtue of a
delegation by the Scottish Ministers under section 3 of the Historic
Environment Scotland Act 2014 (asp 00), is not to be treated as done by or on
15 behalf of the Crown.”.

Finds

45 In section 54(2) (treatment and preservation of finds) after “State” in both places insert
“, Historic Environment Scotland”.

Proceedings questioning certain orders

20 46 In section 55 (proceedings for questioning validity of certain orders)—
(a) in subsection (1)(b) after “State” insert “or Historic Environment Scotland”,
(b) in subsection (3)—
(i) after first “State” insert “ or Historic Environment Scotland”,
(ii) for “either” substitute “any”,
25 (iii) for paragraph (a) substitute—
“(a) any decision of the Scottish Ministers on an application for scheduled
monument consent referred to them under section 3B,
(aa) any decision of the Scottish Ministers on an appeal under this Act”,
(iv) in paragraph (b) for “the giving by the Secretary of State of any direction
30 under section 4” substitute “the making by Historic Environment Scotland
of any order under section 4 or by the Scottish Ministers of any order under
section 4A”,
(c) in subsection (4)(b) after “State” insert “or Historic Environment Scotland”,
(d) in subsection (7) after “State” insert “or Historic Environment Scotland”.

Power to require information

35 47 In section 57(1) (power to require information as to interests in land) after “State” in
both places insert “or Historic Environment Scotland”.

Interpretation

48 In section 61(9) (meaning of site of monument) after “State” insert “or Historic Environment Scotland”.

5
 SCHEDULE 3
(introduced by section 15)

FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO LISTING AND CONSERVATION

PART 1

LISTING OF SPECIAL BUILDINGS

1 The 1997 Act is amended as follows.

10 *Compiling or approving lists of special buildings*

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

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,

15 (b) in subsection (2) for “the Secretary of State” substitute “Historic Environment Scotland”,

(c) in subsection (3)—

(i) for “the Secretary of State” substitute “Historic Environment Scotland”,

(ii) for “him” substitute “it”,

20 (d) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”.

Publication of lists and notification of listing

3 After section 1 insert—

“1A Publication of lists and notification of listing etc.

(1) Historic Environment Scotland must—

25 (a) publish any list compiled or approved under section 1, and any amendments of such a list, and

(b) make such lists available for public inspection,
 in such manner as may be prescribed.

(2) Historic Environment Scotland must also—

30 (a) notify such persons as may be prescribed, and

(b) do so in such form and manner, and within such time, as may be prescribed,

of the inclusion of a building in, the amendment of an entry relating to a building in or the exclusion of a building from such a list.

35 (3) The Scottish Ministers may by regulations make further provision for—

(a) the publication of such lists,

- (b) the making of such lists available for public inspection,
- (c) the notification of the inclusion of a building in, the amendment of an entry relating to a building in or the exclusion of a building from such a list.

5 (4) Regulations under subsection (3) may in particular provide for planning authorities in whose districts any buildings included in such lists are situated to take any of the steps mentioned in that subsection.”.

4 Section 2 (publication of lists) is repealed.

Temporary listing

10 5 In section 3 (temporary listing: building preservation notices)—

(a) in subsection (2) for “the Secretary of State” substitute “Historic Environment Scotland”,

(b) in subsection (4)—

(i) for “the Secretary of State” substitute “Historic Environment Scotland”,

15 (ii) in paragraph (b) for “he” substitute “it”,

(c) in subsection (6)—

(i) for “the Secretary of State” substitute “Historic Environment Scotland”,

(ii) for “he” substitute “it”,

20 (iii) in each of paragraphs (a) and (b) for “the Secretary of State’s” in both places substitute “Historic Environment Scotland’s”.

Certificate that no intention to list building

6 In section 5A (certificate that building not intended to be listed)—

(a) in subsection (1)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

25 (ii) for “they do” substitute “it does”,

(b) in subsection (2)—

(i) for “the Scottish Ministers issue” substitute “Historic Environment Scotland issues”,

(ii) in paragraph (a) for “they” and “them” substitute “it”,

30 (c) in subsection (3) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

PART 2

LISTED BUILDING CONSENT

7 The 1997 Act is further amended as follows.

35 8 In section 7 (authorisation of works: listed building consent)—

(a) in subsection (2)—

(i) in paragraph (b) for “the Royal Commission” substitute “Historic Environment Scotland”,

(ii) in paragraph (c)(i) for “members or officers of the Commission” substitute “Historic Environment Scotland”,

(iii) for paragraph (c)(ii) substitute—

“(ii) Historic Environment Scotland has stated in writing that it has completed its recording of that building or that it does not wish to record it.”,

(b) subsection (4) is repealed,

(c) in subsection (5) for “the Royal Commission” substitute “Historic Environment Scotland”.

9 In section 9 (making of applications for listed building consent)—

(a) in subsection (3)—

(i) the “and” after paragraph (b) is repealed,

(ii) after paragraph (c) insert “, and

(d) the procedure to be followed by planning authorities or, as the case may be, the Scottish Ministers in considering and determining such applications.”,

(b) after subsection (5) insert—

“(6) The regulations must also require planning authorities, before granting or refusing applications for listed building consent in such cases or classes of case as may be prescribed, to consult—

(a) Historic Environment Scotland,

(b) such other persons as may be—

(i) prescribed, or

(ii) specified in directions given to planning authorities by the Scottish Ministers.

(7) Directions given by virtue of subsection (6)(b)(ii) for the purposes of regulations under this section may be given to—

(a) planning authorities generally,

(b) a particular planning authority, or

(c) a description of planning authority.”.

Revocation and modification of listed building consent

10 In section 22(2) (procedure for orders revoking or modifying listed building consent: opposed cases) after paragraph (c) insert—

“(ca) Historic Environment Scotland,

(cb) such other persons as may be prescribed.”.

- 11 In section 23(1)(b) (procedure for orders revoking or modifying listed building consent: unopposed cases) after “land” insert “, Historic Environment Scotland, such other persons as may be prescribed”.

PART 3

CONSERVATION AREAS

12 The 1997 Act is further amended as follows.

13 In section 61(2) (designation of conservation areas)—

(a) for “The Secretary of State” substitute “Historic Environment Scotland”,

(b) for “he so determines, he” substitute “Historic Environment Scotland so determines, it”.

14 In section 62 (designation of conservation areas: supplementary provisions)—

(a) in subsection (1), after “State” insert “and Historic Environment Scotland”,

(b) for subsection (2) substitute—

“(2) Historic Environment Scotland must—

(a) give notice to a planning authority of—

(i) the designation of any part of their district as a conservation area under section 61(2), and

(ii) any variation or cancellation of any such designation,

(b) give notice to the Scottish Ministers of the designation and of any such variation or cancellation.”,

(c) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”,

(d) in subsection (5) for “the Secretary of State” substitute “Historic Environment Scotland”.

15 In paragraph 2 of schedule 1 (buildings formerly subject to building preservation orders)—

(a) for sub-paragraph (1) substitute—

“(1) Historic Environment Scotland may at any time direct that paragraph 1 no longer applies to a particular building.

(1A) The Scottish Ministers may direct that paragraph 1 no longer applies to a particular building if the building is referred to in a notice of appeal under section 5B, 18 or 35 relating to the building (whether or not they are requested to do so).”,

(b) in sub-paragraph (2) for “such a direction” substitute “a direction under sub-paragraph (1) or (1A)”,

(c) after sub-paragraph (2) insert—

“(2A) Where a direction is given under sub-paragraph (1) or (1A), Historic Environment Scotland or (as the case may be) the Scottish Ministers must notify the other.”,

(d) in sub-paragraph (3)—

(i) for “such a direction” substitute “a direction under sub-paragraph (1) or (1A)”;

(ii) for “the Secretary of State” substitute “Historic Environment Scotland or (as the case may be) the Scottish Ministers”.

Paragraph 3 of schedule 1 is repealed.

PART 4

APPEALS AGAINST LISTING

The 1997 Act is further amended as follows.

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.
- (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).

PART 5

OTHER MATTERS IN RELATION TO LISTING

5 24 The 1997 Act is further amended as follows.

Compensation

25 In section 26(1) (compensation for loss or damage caused by service of building preservation notice) for “the Secretary of State” substitute “Historic Environment Scotland”.

10 *Application of 1997 Act to land and works of planning authorities*

26 In section 73 (application of 1997 Act to land and works of planning authorities)—

(a) in subsection (1) for “sections 1(1) and (3) and 2” substitute “section 1(1) and (3)”,

(b) in subsection (4) “section 2(2) and” is repealed.

15 *Powers of entry*

27 In section 76 (rights of entry)—

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,

(b) in subsection (2) for “the Secretary of State” in both places substitute “Historic Environment Scotland”,

(c) in subsection (3) for “the Secretary of State” substitute “Historic Environment Scotland”.

Building preservation notices

28 In schedule 2 (lapse of building preservation notice) in paragraph 1(b) for “the Secretary of State” substitute “Historic Environment Scotland”.

SCHEDULE 4

(introduced by section 16)

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”,

(b) in subsection (5) after “Heritage” insert “or Historic Environment Scotland”,

(c) in subsection (6) after sub-paragraph (i) insert—

“(ia) Historic Environment Scotland has given advice or guidance to the authority under section 80A,”,

(d) in subsection (7) after “Heritage” insert “or Historic Environment Scotland”,

(e) in subsection (10) after “Heritage” insert “or Historic Environment Scotland”,

(f) in subsection (12) after “80” insert “, by Historic Environment Scotland under section 80A”,

(g) in subsection (13)—

(i) the words from “it is appropriate” to “Research MPA” become paragraph (a) of that subsection, and

(ii) after that paragraph insert—

“(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.”.

4 In section 83 (duties of public authorities in relation to certain decisions)—

(a) in subsection (2) after “Heritage” insert “or Historic Environment Scotland”,

(b) in subsection (8) after “80” insert “, by Historic Environment Scotland under section 80A”,

(c) in subsection (9)—

(i) the words from “it is appropriate” to “Research MPA” become paragraph (a) of that subsection, and

(ii) after that paragraph insert—

“(b) it is appropriate to inform Historic Environment Scotland where the act relates to a Historic MPA.”.

5 In section 84 (failure to comply with duties) after subsection (3) insert—

“(3A) In relation to a Historic MPA if, in the opinion of Historic Environment Scotland, a public authority has failed—

Schedule 5—Transfer of staff, property etc. to Historic Environment Scotland

(a) to act in accordance with advice or guidance given by Historic Environment Scotland under section 80A,

(b) to comply with any of its duties under section 82(2) or 83(3) or (4),

Historic Environment Scotland may request from the authority an explanation in writing for the failure.

(3B) Historic Environment Scotland must send a copy of a request by it under subsection (3A) to the Scottish Ministers.

(3C) On receiving a request under subsection (3A), the public authority must—

(a) provide Historic Environment Scotland with the requested explanation for the failure,

(b) send a copy of the explanation to the Scottish Ministers.”.

SCHEDULE 5

(introduced by section 18)

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

- 5 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—
 - 10 (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.
- 15 (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.
- 20 (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—
- 25 (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.
- 30 (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.

35 *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—
- 40 (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.

5 (4) The Royal Commission on the Ancient and Historical Monuments of Scotland must provide the Scottish Ministers with such information or assistance as Ministers may reasonably require for the purposes of or in connection with the making of a property transfer scheme.

(5) On the transfer date—

10 (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.

15 (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.

20 (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.

25 (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.

30 (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.

35 *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.

SCHEDULE 6
(introduced by section 26)

CONSEQUENTIAL MODIFICATIONS

Ethical Standards in Public Life etc. (Scotland) Act 2000

- 5 1 In the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), in schedule 3 (devolved public bodies)—
- (a) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed,
 - (b) at the appropriate place in alphabetical order insert—
- 10 “Historic Environment Scotland”.

Scottish Public Services Ombudsman Act 2002

- 2 In the Scottish Public Services Ombudsman Act 2002 (asp 11), in Part 2 of schedule 2 (listed authorities: entries amendable by Order in Council), under the heading “Scottish public authorities”—
- 15 (a) after paragraph 25 (the entry for Highlands and Islands Enterprise) insert—
“25ZA Historic Environment Scotland.”,
 - (b) paragraph 34 (the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland) is repealed.

Freedom of Information (Scotland) Act 2002

- 20 3 In the Freedom of Information (Scotland) Act 2002 (asp 13), in Part 7 of schedule 1 (Scottish public authorities: others)—
- (a) after paragraph 67 (the entry for Highlands and Islands Enterprise) insert—
“67ZA Historic Environment Scotland.”,
 - (b) paragraph 76 (the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland) is repealed.
- 25

Public Appointments and Public Bodies etc. (Scotland) Act 2003

- 4 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2 (the specified authorities), under the heading “Executive bodies”—
- (a) at the appropriate place in alphabetical order insert—
- 30 “Historic Environment Scotland”,
- (b) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.

Public Services Reform (Scotland) Act 2010

- 5 In the Public Services Reform (Scotland) Act 2010 (asp 8)—
- 35 (a) in schedule 5 (improvement of public functions: listed bodies), under the heading “Scottish public authorities with mixed functions or no reserved functions”—
 - (i) at the appropriate place in alphabetical order insert—
“Historic Environment Scotland”,

- (ii) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed,
- (b) in schedule 8 (information on exercise of public functions: listed public bodies)—
 - (i) at the appropriate place in alphabetical order insert—
5 “Historic Environment Scotland”,
 - (ii) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.

Public Records (Scotland) Act 2011

- 6 In the Public Records (Scotland) Act 2011 (asp 12), in the schedule (authorities to which
10 Part 1 applies), under the heading “Others”—
 - (a) at the appropriate place in alphabetical order insert—
“Historic Environment Scotland”,
 - (b) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.

Historic Environment Scotland Bill

[AS PASSED]

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.

Introduced by: Fiona Hyslop
Supported by: Humza Yousaf
On: 3 March 2014
Bill type: Government Bill

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