

# Historic Environment Scotland Bill

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## Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Section 1	Schedule 1
Sections 2 to 14	Schedule 2
Section 15	Schedule 3
Section 16	Schedule 4
Sections 17 and 18	Schedule 5
Sections 19 to 26	Schedule 6
Sections 27 to 30	Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Schedule 1

#### Liam McArthur

6 In schedule 1, page 14, line 17, after <which> insert—

<( ) ensures geographical diversity, and  
( )>

#### Liam McArthur

7 In schedule 1, page 16, line 31, after <employee> insert <,

(da) subject to sub-paragraph (1A), any other person Historic Environment Scotland considers appropriate>

#### Liam McArthur

8\* In schedule 1, page 16, line 31, at end insert—

<(1A) Historic Environment Scotland may authorise a person under sub-paragraph (1)(da) to exercise such of its functions (and to such extent) as it may determine if—

(a) Historic Environment Scotland is satisfied that the person whom they are authorising to exercise the function has the knowledge, skills and experience necessary to exercise the function,

(b) sufficient guidance has been given to the person by Historic Environment Scotland to enable the person to exercise the function in accordance with (as the case may be)—

(i) the corporate plan published under section 8(4),

(ii) any policy or strategy published by Historic Environment Scotland.

- (c) adequate arrangements have been put in place for regular reporting by the person to Historic Environment Scotland on the exercise of the function to ensure, in particular—
  - (i) that the performance of the function is in accordance with any standards set out in any policy, strategy or plan mentioned in paragraph (b),
  - (ii) that proper accounting practices are being adhered to in the exercise of the function.>

**Liz Smith**

**60** In schedule 1, page 18, line 16, at end insert—

- <( ) Information provided under sub-paragraph (1)(a) must include information about—
- (a) the exercise by Historic Environment Scotland of its regulatory functions,
  - (b) the operation of any internal governance arrangements Historic Environment Scotland has put in place to ensure that it exercises its regulatory functions—
    - (i) separately from its other functions,
    - (ii) independently of any other person or interest.>

**Section 2**

**Liam McArthur**

**1** In section 2, page 1, leave out line 23 and insert—

- <( ) conserving the historic environment,  
( ) enhancing the historic environment.>

**Fiona Hyslop**

**9** In section 2, page 2, line 14, after <working> insert <in collaboration>

**Liam McArthur**

**2** In section 2, page 2, line 14, after <persons> insert <, including local communities,>

**Fiona Hyslop**

**10** In section 2, page 2, line 14, leave out <otherwise> and insert <in other ways>

**Liz Smith**

**61** In section 2, page 2, line 17, after <person> insert <, including persons in ownership of private properties, collections or objects in relation to the historic environment, in—

- (a) managing, protecting, preserving and conserving properties, collections and objects in relation to the historic environment,
- (b)>

**Fiona Hyslop**

- 11 In section 2, page 2, line 22, after <Ministers> insert <, and  
( ) as may be appropriate in the circumstances, to the interests of local communities>

**Liam McArthur**

- 3 In section 2, page 2, line 22, at end insert—  
<( ) In exercising its functions, Historic Environment Scotland must have regard to local issues and local decision-making processes.>

**Section 3**

**Liam McArthur**

- 12 In section 3, page 2, line 25, leave out second <such> and insert <subsection (5A) and such other>

**Fiona Hyslop**

- 13 In section 3, page 2, line 29, leave out <other> and insert <prescribed>

**Liam McArthur**

- 14 In section 3, page 2, line 39, at end insert—  
<(5A) The Scottish Ministers may delegate the exercise of any function to a person under subsection (1)(b) if—  
(a) Ministers are satisfied that the person to whom the function is delegated has the knowledge, skills and experience necessary to exercise the function,  
(b) sufficient directions have been given to the person by Ministers to enable the person to exercise the function in accordance with any policy determined by Ministers,  
(c) adequate arrangements have been put in place for reporting to Ministers on the exercise of the function by the person.>

**Fiona Hyslop**

- 15 In section 3, page 3, line 5, at end insert—  
<( ) The Scottish Ministers must publish delegations under subsection (1).>

**Fiona Hyslop**

- 16 In section 3, page 3, line 9, at end insert—  
<“prescribed”, in relation to a person to whom the Scottish Ministers may delegate functions under subsection (1)(b), means prescribed by Ministers by order,>

**Fiona Hyslop**

- 17 In section 3, page 3, line 10, leave out from <means> to end of line 14 and insert <has the meaning given by section (*Properties in care*).>

**After section 3**

**Fiona Hyslop**

- 18 After section 3, insert—

**<Properties in care**

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

**Section 7**

**Liam McArthur**

- 19 In section 7, page 5, line 15, leave out second <such> and insert <subsection (4A) and such other>

**Fiona Hyslop**

- 20 In section 7, page 5, line 19, leave out <other> and insert <prescribed>

**Liam McArthur**

- 21 In section 7, page 5, line 28, insert at end—

- <(4A) The Scottish Ministers may delegate the exercise of any function to a person under subsection (1)(b) if—
- (a) Ministers are satisfied that the person to whom the function is delegated has the knowledge, skills and experience necessary to exercise the function,
  - (b) sufficient directions have been given to the person by Ministers to enable the person to exercise the function in accordance with any policy determined by Ministers,

- (c) adequate arrangements have been put in place for reporting to Ministers on the exercise of the function by the person.>

**Fiona Hyslop**

- 22 In section 7, page 5, line 34, at end insert—  
<( ) The Scottish Ministers must publish delegations under subsection (1).>

**Fiona Hyslop**

- 23 In section 7, page 6, line 1, after <agreement> insert <,  
“prescribed”, in relation to a person to whom the Scottish Ministers may delegate functions under subsection (1)(b), means prescribed by Ministers by order>

**Section 11**

**Liam McArthur**

- 24 In section 11, page 7, line 13, at end insert—  
<( ) Historic Environment Scotland must provide local authorities with advice, information and assistance relating to the historic environment.>

**Liam McArthur**

- 25\* In section 11, page 7, line 15, after <person> insert <, including local authorities>

**Section 12**

**Liz Smith**

- 4 In section 12, page 7, line 27, at beginning insert <subject to subsection (4A),>

**Liz Smith**

- 5 In section 12, page 7, line 29, at end insert—  
<(4A) Historic Environment Scotland need not comply with a direction given under subsection (1) if the effect of so doing would be inconsistent with—  
(a) the corporate plan approved under section 8(3),  
(b) any revised corporate plan approved under section 8(3).  
(4B) If Historic Environment Scotland decides under subsection (4A) not to comply with a direction under subsection (1), it must inform the Scottish Ministers of its decision and the reasons for that decision.>

**Section 13**

**Fiona Hyslop**

- 26 In section 13, page 8, line 5, leave out <3(8)> and insert <(Properties in care)>

## Schedule 2

### Fiona Hyslop

- 27 In schedule 2, page 19, leave out lines 6 to 10 and insert—
- <( ) 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.”>

### Fiona Hyslop

- 28 In schedule 2, page 19, line 31, leave out <for “the Secretary of State” substitute “Historic> and insert <after “State” insert “or Historic>

### Fiona Hyslop

- 29 In schedule 2, page 19, leave out lines 33 and 34 and insert—
- <( ) 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,”>

### Fiona Hyslop

- 30 In schedule 2, page 19, line 35, after <State”> insert <in each place>

### Fiona Hyslop

- 31 In schedule 2, page 20, line 16, after <Scotland> insert <or, as the case may be, the Scottish Ministers>

### Fiona Hyslop

- 32 In schedule 2, page 21, line 33, after <Scotland> insert <or, where the Scottish Ministers refused the scheduled monument consent or granted it subject to conditions, Ministers>

### Fiona Hyslop

- 33 In schedule 2, page 21, line 35, after <Scotland’s> insert <or, as the case may be, the Scottish Ministers’>

### Fiona Hyslop

- 34 In schedule 2, page 21, line 37, after <Scotland> insert <or, as the case may be, the Scottish Ministers>

**Fiona Hyslop**

- 35 In schedule 2, page 22, line 17, leave out from <for> to <has”> in line 18 and insert <—  
( ) after “received,” insert “Historic Environment Scotland has or”,  
( ) 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,”>

**Fiona Hyslop**

- 36 In schedule 2, page 22, line 19, at end insert—  
<( ) after “refused” insert “or the appeal was dismissed”,>

**Fiona Hyslop**

- 37 In schedule 2, page 22, line 21, at end insert—  
<( ) After that paragraph insert—  
“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.”>

**Fiona Hyslop**

- 38 In schedule 2, page 22, line 23, leave out <for “The Secretary of State” substitute “Historic” and insert <after “State” insert “or Historic”>

**Fiona Hyslop**

- 39 In schedule 2, page 22, line 30, leave out <for “The Secretary of State” substitute “Historic” and insert <after “State” insert “or, as the case may be, Historic”>

**Fiona Hyslop**

- 40 In schedule 2, page 22, line 31, leave out <“its”> and insert <“the”>

**Fiona Hyslop**

- 41 In schedule 2, page 22, line 32, leave out <for “him” substitute “it”> and insert <“to him” is repealed>

**Fiona Hyslop**

- 42 In schedule 2, page 25, line 9, at end insert—

<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.

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.

(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

(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.

(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).

(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
  - (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.

**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.
- (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.”>

**Fiona Hyslop**

**43** In schedule 2, page 25, line 33, at end insert—

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

**“9FA Enforcement by the Scottish Ministers**

- (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.

- (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.”.>

**Fiona Hyslop**

44 In schedule 2, page 26, line 20, at end insert—

<After that section insert—

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

- (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.
- (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.”.>

**Fiona Hyslop**

45 In schedule 2, page 30, line 24, leave out <and 4D(6)> and insert <, 4D(6) and 9CB(4)>

**Fiona Hyslop**

46 In schedule 2, page 30, line 28, leave out <and 4B> and insert <, 4B and 9C>

**Fiona Hyslop**

47 In schedule 2, page 31, line 8, after <4C> insert <,

- ( ) in relation to an appeal under section 9C as the Scottish Ministers have under section 9CA>

**Fiona Hyslop**

48 In schedule 2, page 31, line 20, leave out <or 4B> and insert <, 4B or 9C>

**Fiona Hyslop**

49 In schedule 2, page 34, line 32, for <9O(1)> substitute <9O>

**Fiona Hyslop**

50 In schedule 2, page 34, line 32, after <monuments)> insert <—

( ) in subsection (1)>

**Fiona Hyslop**

51 In schedule 2, page 34, line 35, after <“it”> insert <,

( ) after that subsection insert—

“(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.”,

( ) in subsection (2) for “subsection (1)” substitute “subsection (1) or (1A)”>

**Schedule 3**

**Fiona Hyslop**

52 In schedule 3, page 39, line 19, leave out <after subsection (4)> and insert <—

( ) 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.”,

( ) after subsection (5)>

**Fiona Hyslop**

53 In schedule 3, page 39, line 21, leave out <(4A)> and insert <(6)>

**Fiona Hyslop**

54 In schedule 3, page 39, line 22, after <consent> insert <in such cases or classes of case as may be prescribed>

**Fiona Hyslop**

55 In schedule 3, page 39, line 28, leave out <(4B)> and insert <(7)>

**Fiona Hyslop**

56 In schedule 3, page 39, line 28, leave out <(4A)(b)(ii)> and insert <(6)(b)(ii)>

**Section 22**

**Fiona Hyslop**

57 In section 22, page 11, line 31, at end insert—

<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.”.>

#### **After section 22**

##### **Fiona Hyslop**

**58** After section 22, insert—

*<Conservation areas*

##### **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”.>

##### **Neil Bibby**

**62** After section 22, insert—

*<Local authorities*

##### **Local authority functions in relation to the historic environment**

Local authorities must, in exercising their functions in relation to the historic environment, have regard to appropriate information and expert advice.>

#### **Section 24**

##### **Fiona Hyslop**

**59** In section 24, page 12, line 13, at end insert—

<( ) orders under section 3(8),  
( ) orders under section 7(7),>



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