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HISTORIC ENVIRONMENT SCOTLAND CIRCULAR

REGULATIONS AND PROCEDURES



HISTORIC
ENVIRONMENT
SCOTLAND

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APRIL 2019

TABLE OF CONTENTS

| | |
|---|-----------|
| INTRODUCTION | 4 |
| DESIGNATION | 5 |
| Introduction | 5 |
| Scheduled monument and listed building appeals | 5 |
| Legal exclusions to listed buildings | 5 |
| Types of designation and how designation is carried out | 6 |
| Certificate of Intention Not to List (COINTL) | 7 |
| Notification of changes to the Schedule and the List | 7 |
| Service of notices | 8 |
| Publication of the Schedule and the List | 8 |
| Designating Conservation Areas | 8 |
| Scheduled monument and listed building designation, amendment and appeal process | 9 |
| HISTORIC ENVIRONMENT SCOTLAND'S ROLE IN THE PLANNING SYSTEM | 10 |
| Introduction | 10 |
| Development planning | 10 |
| Planning permission | 11 |
| Environmental Impact Assessment | 11 |
| Strategic Environmental Assessment | 12 |
| SCHEDULED MONUMENT CONSENT | 13 |
| Introduction | 13 |
| Pre-application discussion | 13 |
| Applications for scheduled monument consent | 13 |
| Publication | 14 |
| Timescales | 14 |
| Determination of application | 15 |
| Call-in by Scottish Ministers | 16 |
| Duration, modification and revocation of scheduled monument consent | 16 |
| Applications to vary or discharge conditions | 17 |
| Class consents for scheduled monuments | 18 |
| Use of metal detectors and prospecting minerals at protected places, including scheduled monuments | 19 |
| Enforcement notices | 19 |
| The process by which an application for scheduled monument consent is handled | 20 |
| LISTED BUILDING CONSENT AND CONSERVATION AREA CONSENT | 21 |
| The listed building consent and conservation area consent system | 21 |
| Pre-application discussion | 21 |
| Requirements for making applications | 21 |
| Demolition | 22 |
| Consultation with Historic Environment Scotland | 23 |
| Ecclesiastical exemption | 23 |
| Consideration by Historic Environment Scotland | 23 |
| Recording | 24 |
| The process by which an application for listed building consent/ conservation area consent is handled | 25 |

| | |
|--|-----------|
| APPEALING DECISIONS MADE BY HISTORIC ENVIRONMENT SCOTLAND | 26 |
| Introduction | 26 |
| Scope of the regulations | 27 |
| Designation and scheduled monument consent appeal process | 27 |
| Who can appeal | 28 |
| Notice of appeal | 28 |
| Intimation to Historic Environment Scotland | 30 |
| Historic Environment Scotland response | 30 |
| Notification of interested parties | 31 |
| Deadlines for provision of statements and other evidence | 32 |
| Procedure for determination | 32 |
| Further evidence | 32 |
| Opt-in notice | 33 |
| Site inspections | 33 |
| Pre-examination meetings | 33 |
| Written submissions | 34 |
| Hearing sessions | 34 |
| Inquiry sessions | 35 |
| New evidence | 36 |
| Appeals against scheduled monument enforcement notices under the Ancient Monuments Act | 36 |
| Statement of appeal | 37 |
| Intimation to Historic Environment Scotland and response | 37 |
| Notification to other parties | 38 |
| Called-in applications | 38 |
| General provisions | 38 |
| Non-delegated appeals | 39 |
| National security | 39 |
| Further copies of documents | 39 |
| Appointment of assessors | 39 |
| Decision notice | 39 |
| Electronic communications | 40 |
| APPENDIX 1 | 41 |
| Checklist – When to Consult Historic Environment Scotland | 41 |
| APPENDIX 2 | 42 |
| Historic Environment Legislation and Policy | 42 |
| Designation | 43 |
| Historic Environment Scotland’s role in the planning system | 44 |
| Scheduled monument consent | 44 |
| Listed building consent and conservation area consent | 45 |
| Appeals | 46 |
| APPENDIX 3 | 47 |
| Exemption from Demolition Control in Conservation Areas | 47 |

INTRODUCTION

1. This circular covers the requirements of the secondary legislation ('the Regulations') relating to the following primary legislation:
 - Ancient Monuments and Archaeological Areas Act 1979;
 - Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997;
 - Environmental Assessment (Scotland) Act 2005; and
 - Marine (Scotland) Act 2010.

2. This circular sets out the processes identified in the Regulations which describe Historic Environment Scotland's functions in relation to:
 - The designation of monuments of national importance and buildings of special architectural or historic interest
 - Our role in the planning system and the procedures for consulting us
 - Scheduled monument consent (SMC) applications and decisions.
 - Listed building consent (LBC) and conservation area consent (CAC) applications.
 - Appealing decisions made by Historic Environment Scotland.

3. This document is subject to ongoing reviews and change. Please ensure you are using the latest version of the document from our website - see the date on the back cover.

DESIGNATION

INTRODUCTION

4. Historic Environment Scotland is responsible for the designation of sites and places at the national level. Our role is to:
 - compile and maintain the Schedule of monuments under the Ancient Monuments and Archaeological Areas Act 1979;
 - compile or amend the List of buildings of special architectural or historic interest under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; and
 - compile and maintain the Inventory of gardens and designed landscapes and the Inventory of historic battlefields under the Ancient Monuments and Archaeological Areas Act 1979.
5. Historic Environment Scotland advises Scottish Ministers (Marine Scotland) on historic marine protected area designation and regulation as set out by the Marine (Scotland) Act 2010.

SCHEDULED MONUMENT AND LISTED BUILDING APPEALS

6. The Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and the Town and Country Planning (Appeals) (Scotland) Regulations 2013 include procedures for appeals against decisions of Historic Environment Scotland to Scottish Ministers in relation to scheduling and listing decisions (see appeals section below for details). There is no statutory right of appeal against inclusion on the gardens and designed landscapes and historic battlefield inventories, however, anyone can write to Historic Environment Scotland to ask them to review a decision. There is no right of appeal against the designation of historic marine protected areas as the designation decision rests with Scottish Ministers.

LEGAL EXCLUSIONS TO LISTED BUILDINGS

7. Section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 allows Historic Environment Scotland to state legally that an object or structure fixed to a listed building and/or any object or structure within the curtilage of the listed building is not to be treated as listed, and/or that any part or feature of a listed building is not of special architectural or historic interest and is therefore not listed. This is to ensure that listed building consent is only required where it is appropriate. The intention is that listed building consent should not be sought where proposals are restricted to the areas or structures formally excluded, but consent may in some cases be required because of the potential impact on areas of interest. For example, removing a later extension of no interest may need consent because of the potential impact on the original building.

TYPES OF DESIGNATION AND HOW DESIGNATION IS CARRIED OUT

8. Scheduling is the process that identifies, designates and provides statutory protection for monuments of national importance as set out in the Ancient Monuments and Archaeological Areas Act 1979.
9. The gardens and designed landscapes and historic battlefields are sites of national importance which can be added to their respective inventories under the Ancient Monuments and Archaeological Areas Act 1979.
10. Listing is the process that identifies, designates and provides statutory protection for buildings of special architectural or historic interest as set out in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
11. Marine historic assets of national importance which are situated in Scottish territorial waters (0–12 miles) can be designated as historic marine protected areas under the Marine (Scotland) Act 2010. Historic Environment Scotland provides Scottish Ministers with specialist advice and Scottish Ministers decide whether to designate.
12. The processes involved in how we undertake designation, including when we consult and how long the process takes, are set out on our website.
13. Designation work involves:
 - adding, reviewing, amending and removing designations;
 - making minor changes to existing designation records that don't alter what is legally designated.
14. We carry out this work by:
 - responding to external designation requests;
 - improving the quality our designation records and spatial data;
 - undertaking designation projects which address gaps in our understanding of sites or places;
 - developing partnerships by planning and undertaking our projects with the participation of stakeholders.
15. Any person or organisation can request:
 - the designation of a site or place;
 - the review of an existing designated site or place;
 - the removal of an existing designation;
 - minor changes to designation records; or
 - for buildings only, a Certificate of Intention Not to List (COINTL).
16. Requests can be made using [our application form](#).

CERTIFICATE OF INTENTION NOT TO LIST (COINTL)

17. A Certificate of Intention Not to List (COINTL) is a legal guarantee that a building won't be statutorily listed for five years from the date the certificate is granted. Requests can be made using the [designation application form](#) on Historic Environment Scotland's website. A planning authority can't serve a Building Preservation Notice on a building that holds a COINTL. More information about [COINTLs](#) and [Building Preservation Notices](#) can be found on Historic Environment Scotland's website.

NOTIFICATION OF CHANGES TO THE SCHEDULE AND THE LIST

The Schedule

18. The Scheduled Monuments (Notification and Publication) (Scotland) Regulations 2015 apply to decisions related to the designation of scheduled monuments.
19. When the Schedule is modified to include, amend or exclude a monument, regulation 3 of the Scheduled Monuments (Notification and Publication) (Scotland) Regulations 2015 sets out that Historic Environment Scotland will formally notify the owner/occupier of the monument and the local authority in whose area it is situated as soon as is reasonably practicable.
20. The notice must describe the location of the monument and include a copy of the entry in the Schedule.

The List

21. The Listed Buildings (Notification and Publication) (Scotland) Regulations 2015 apply to decisions related to the designation of listed buildings.
22. When the List is modified to include, amend or exclude a building, regulation 3 of the Listed Buildings (Notification and Publication) (Scotland) Regulations 2015 sets out that Historic Environment Scotland will formally notify the owner/occupier of the building and the local authority in whose area it is situated as soon as is reasonably practicable.
23. The notice must describe the location of the building and include a copy of the entry in the List.
24. If the building is removed from the List because it has been demolished, regulation 3 removes the requirement to notify the owner/occupier or include the list entry. Historic Environment Scotland must notify the local authority.

SERVICE OF NOTICES

25. Regulation 4 of the Scheduled Monuments (Notification and Publication) (Scotland) Regulations 2015 sets out the way the notice will be served. This is either in person, by post or electronically (unless the person has withdrawn consent for electronic communication). If it is not possible to obtain the name and/or address of the owner and/or occupier, the notice can be addressed to 'the owner' or 'the occupier' and clearly displayed on the land in or under which the monument is situated. The notice should only be displayed on the monument itself if this can be done without damaging it.
26. Regulation 4 of the Listed Buildings (Notification and Publication) (Scotland) Regulations 2015 sets out the way the notice is served. This is either in person, by post or electronically (unless the person has withdrawn consent for electronic communication). If it is not possible to obtain the name and/or address of the owner and/or occupier, the notice may be addressed to 'the owner' or 'the occupier' and clearly fixed to a conspicuous part of the building.

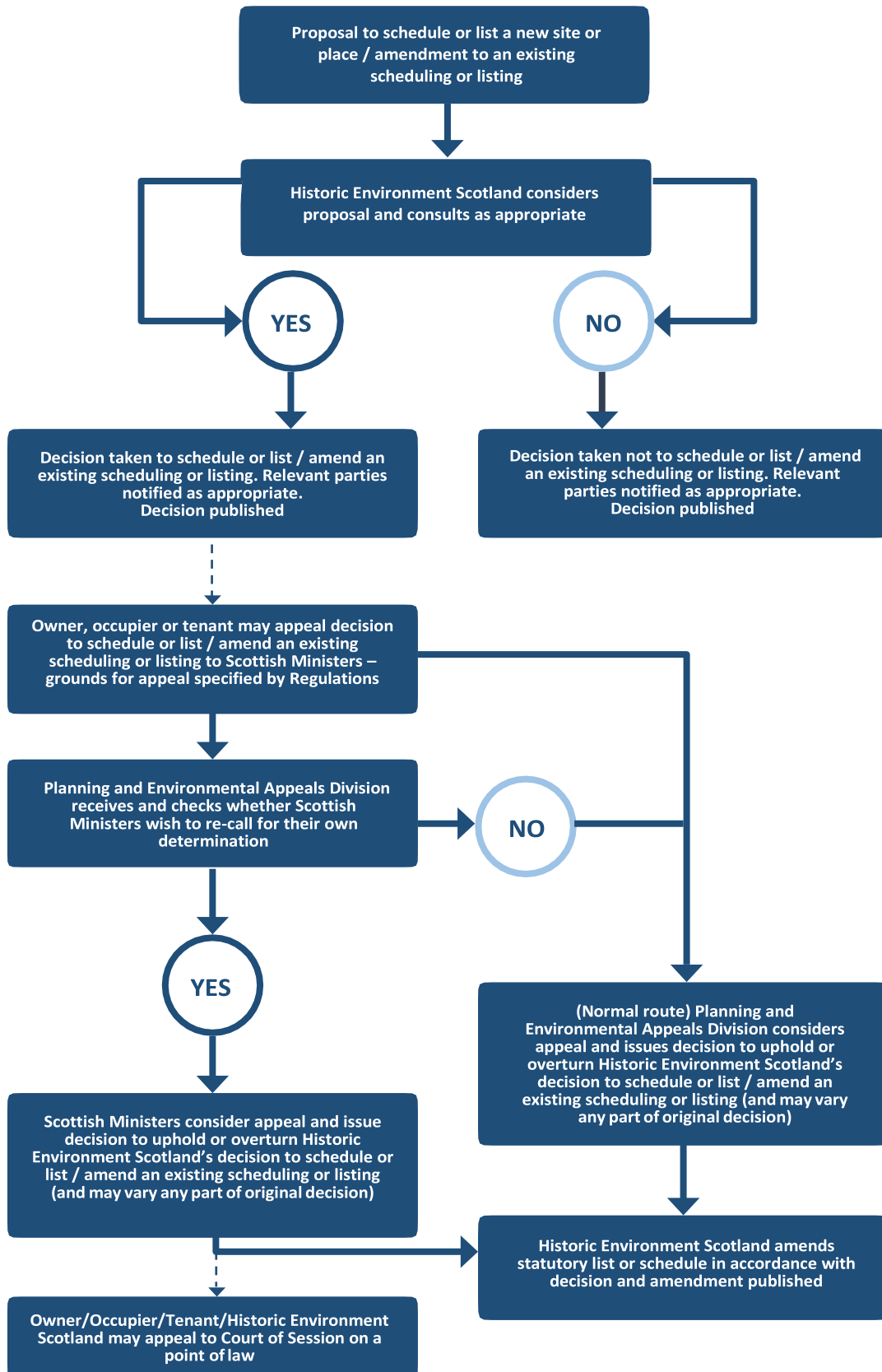
PUBLICATION OF THE SCHEDULE AND THE LIST

27. Regulation 5 of the Scheduled Monuments (Notification and Publication) (Scotland) Regulations 2015 requires Historic Environment Scotland to publish the Schedule on the internet and make it available for public inspection at its principal office.
28. Regulation 5 of the Listed Buildings (Notification and Publication) (Scotland) Regulations 2015 requires Historic Environment Scotland to publish the List on the internet and make it available for public inspection at its principal office.

DESIGNATING CONSERVATION AREAS

29. National planning policy sets out that local authorities are expected to ensure that local development plans and supplementary guidance provide a framework for protecting and, where appropriate, enhancing all elements of the historic environment. In this regard, local planning authorities should designate and review existing and potential conservation areas and identify existing and proposed Article 4 Directions. This should be supported by Conservation Area Appraisals and Management Plans.
30. Conservation areas are designated under the Planning Listed Buildings and Conservation Areas (Scotland) Act 1997. To be designated as a conservation area, an area must meet the criteria of 'special architectural or historic interest the character or appearance of which is desirable to preserve or enhance', as set out in Section 61 of the 1997 Act.
31. Local authorities are responsible for designating areas of special architectural or historic interest as conservation areas. By law, Historic Environment Scotland may also designate conservation areas, but we would only consider doing so in the most exceptional circumstances.
32. Selection guidance and policies for designating conservation areas is found on Historic Environment Scotland's website.

SCHEDULED MONUMENT AND LISTED BUILDING DESIGNATION, AMENDMENT AND APPEAL PROCESS



HISTORIC ENVIRONMENT SCOTLAND'S ROLE IN THE PLANNING SYSTEM

INTRODUCTION

33. Historic Environment Scotland is a statutory consultee in the planning system. The requirements to consult us are set out in The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.
34. Consultations should be sent to HMConsultations@hes.scot or by post.
35. Early engagement with us for our functions within the planning system is strongly encouraged. This is an integral part of the planning process. Effective pre-application engagement will allow us to give clarity on the information regarded as essential in its consideration of plans, programmes and proposals.
36. Historic Environment Scotland's functions in respect of this legislation are as follows:

DEVELOPMENT PLANNING

37. Historic Environment Scotland is specified as a key agency under the terms of regulation 28 of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008. Historic Environment Scotland has a duty to cooperate with strategic development planning authorities or planning authorities during the development planning process, including the following stages:
 - the compilation of Main Issues Reports;
 - the preparation of the proposed Plans; and
 - the preparation of Action Programmes and proposed Action Programmes.
38. Strategic development planning authorities and planning authorities can consult Historic Environment Scotland directly by post or email (HMConsultations@hes.scot).

PLANNING PERMISSION

39. Historic Environment Scotland is a statutory consultee for the matters specified in Schedule 5 (17) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. A planning authority must consult Historic Environment Scotland before determining a planning application in the following cases:
- development which may affect a historic garden or designed landscape;
 - development which may affect the site of a scheduled monument or its setting;
 - development which may affect a category A listed building or its setting;
 - development (other than householder development) which may affect a historic battlefield;
 - development of land which is situated within 800 metres of any Royal Palace or Park, and might affect the amenities of that Palace or Park; and
 - development which may affect a World Heritage Site. (Note: Historic Environment Scotland has confirmed to planning authorities under Regulation 25 (3) of the Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2013 that we do not require to be consulted on householder developments affecting World Heritage Sites).
40. Pre-application engagement is an integral part of the planning process. Effective pre-application engagement will allow us to give clear advice on what information should accompany a planning application.
41. More information on development management procedures can be found in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 and Circular 3/2013.
42. Historic Environment Scotland can be consulted by email at HMConsultations@hes.scot.

ENVIRONMENTAL IMPACT ASSESSMENT

43. Historic Environment Scotland is a consultation body for all Environmental Impact Assessment regimes in Scotland. Planning authorities are required to consult Historic Environment Scotland on proposals coming forward under relevant Environmental Impact Assessment legislation.
44. More information on Environmental Impact Assessment procedures, policy and good practice within the planning system can be found in The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations, Circular 3/2011 and Planning Advice Note (PAN) 1/2013. Guidance in relation to other Scottish Environmental Impact Assessment regimes is also available.
45. Historic Environment Scotland can be consulted by email at HMConsultations@hes.scot.

STRATEGIC ENVIRONMENTAL ASSESSMENT

46. Historic Environment Scotland is identified as one of the consultation authorities under the Environmental Assessment (Scotland) Act 2005. Formal enquiries and submissions such as screening and scoping reports should be directed to the Scottish Government's Strategic Environmental Assessment Team at SEA_Gateway@gov.scot. Technical assessment enquiries can, however, be made directly to Historic Environment Scotland.
47. More information on Strategic Environmental Assessment can be found in the guidance published by the Scottish Government. Scottish Government advice on Strategic Environmental Assessment and Development Planning can be found in Planning Advice Note (PAN)1/2010.

SCHEDULED MONUMENT CONSENT

INTRODUCTION

48. This section sets out the procedures relating to applications for scheduled monument consent (SMC). The requirements in relation to this consent process are set out in the Scheduled Monument Consent Procedure (Scotland) Regulations 2015.
49. The regulations explain the detailed statutory requirements for the consent process within the framework of the primary legislation contained in the Ancient Monuments and Archaeological Areas Act 1979.
50. Section 9 of the 1997 Listed Buildings Act sets out that where a building is both listed and scheduled (dual designated), the scheduled monument consent legislation takes precedence and the other legislation is disapplied.

PRE-APPLICATION DISCUSSION

51. Historic Environment Scotland promotes early pre-application discussions between prospective applicants and Historic Environment Scotland. Pre-application discussions should identify the information required in support of an application, and when it will be submitted and considered. Those involved should ensure any requirements for additional information are necessary, proportionate and clearly scoped.
52. Pre-application discussions between Historic Environment Scotland and applicants are intended to add value at the start of the change management process. They should improve the quality of the proposal and allow prospective applicants the opportunity to amend their emerging proposals. They should also simplify the application process itself. Pre-application discussions should identify the level of information required. Historic Environment Scotland offers a pre-application checking service for scheduled monument consent applications.

APPLICATIONS FOR SCHEDULED MONUMENT CONSENT

53. Applications for scheduled monument consent are to be made on a form obtained from Historic Environment Scotland. Applications can be submitted electronically (scheduledmonumentconsent@hes.scot) or by post.
54. Regulation 3 of the Scheduled Monument Consent Procedure (Scotland) Regulations 2015 sets out that an application must contain the following information:
 - a written description of the works to which it relates;
 - the name or location of the scheduled monument to which the works relate or a description of the location of the land; and
 - the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent.

The application must also be accompanied by:

- a plan or drawing, sufficient to identify the area of land to which the works relate;
- such other plans and drawings as are necessary to describe the works to which it related; and
- appropriate ownership certificates and notices.

55. Applications which contain insufficient information to satisfy the information requirements will be returned to the applicant. The reasons why the application has been returned, and what further information is required to satisfy these requirements, will be explained to the applicant.
56. The checking of applications will be carried out within five working days of receiving the application. The date from which the time period for determination runs is the date when the final piece of information required as set out in regulation 3 has been received by Historic Environment Scotland.
57. Regulation 11 provides that applications will not be invalid if they withhold information relating to national security or to measures taken to ensure the security of any premises or property, provided the applicant gives a written statement addressing these matters.

PUBLICATION

58. Regulation 7 requires Historic Environment Scotland to make scheduled monument consent applications and the decisions made on those applications available for public inspection through their publication on the internet or at our principal office.
59. Scheduled monument consent applications will be made publicly available during the application process (normally within five working days of receiving an application that satisfies the information requirements). Historic Environment Scotland will publish the application form and supporting documentation.
60. Once determined, Historic Environment Scotland will publish the decision notice and associated report on handling. Any representations made concerning an application that are material to the determination of the application will be addressed in the report of handling.

TIMESCALES

61. Applications for scheduled monument consent will normally be determined within eight weeks of receipt of the application. Complex applications may take longer; where this is likely to be the case, Historic Environment Scotland will discuss and agree appropriate timescales with the applicant.
62. Applications that have not been determined within two months can be appealed on the grounds of non-determination. Where the applicant and Historic Environment Scotland agree in writing to an extension to this statutory period, such extended period counts as the period allowed for determination.
63. Where cases are notified to or called in by Scottish Ministers for their own determination decisions will not normally be determined within these time frames.

DETERMINATION OF APPLICATION

64. Historic Environment Scotland is responsible for determining applications for scheduled monument consent, unless Scottish Ministers direct that the application is called in for their own determination under section 3B of the Ancient Monuments and Archaeological Areas Act 1979.
65. Applicants have the right to appeal a decision to Scottish Ministers (see section below: [Appealing Decisions Made by Historic Environment Scotland](#)).
66. Historic Environment Scotland can decide to: grant; grant with conditions; part grant/part refuse; part grant/part refuse with conditions; or refuse an application for scheduled monument consent.
67. The conditions applied can 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.
68. Applications for scheduled monument consent generated by Historic Environment Scotland for works to properties that we care for on behalf of Scottish Ministers are determined through the same scheduled monument consent process.
69. When an application is determined, a decision notice must be served on the applicant and every person who has made representations to Historic Environment Scotland (para 3(4) of Schedule 1 to the Ancient Monuments and Archaeological Areas Act 1979).
70. Regulation 8 of the Scheduled Monument Consent Procedure (Scotland) Regulations 2015 requires this decision notice to contain:
 - a statement of the terms of the decision (granted, granted with conditions, part granted/part refused, part granted/part refused with conditions, refused);
 - any conditions to which it is subject; and
 - the reasons for the decision.

The notice will also include:

- a description of the works;
 - the location of the monument; and
 - the reference number of the application.
71. Where consent has been refused (in whole or in part) or granted with conditions, regulation 8 requires the decision notice to be accompanied by a notice (Form 3) of the right to make an appeal, together with a statement explaining how the applicant may obtain information on how to appeal to the Scottish Ministers. For further details on appeals, see section below: [Appealing Decisions Made by Historic Environment Scotland](#).

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72. Works to a monument must be limited to those that have received consent. Any alteration in the description of works for which consent has been granted will require a separate scheduled monument consent application. The only exception to this is if the change is of such a nature that Historic Environment Scotland considers it to fall within the scope of the work for which consent has been granted, or if the change is of such a minor nature that Historic Environment Scotland considers an application of scheduled monument consent is not required. Applicants should contact Historic Environment Scotland if the nature of the work for which they have consent changes.

CALL-IN BY SCOTTISH MINISTERS

73. Regulations 9 and 10 of the Scheduled Monument Consent Procedure (Scotland) Regulations 2015 set out the procedure to be followed when Scottish Ministers call in a scheduled monument consent application for their own determination (under section 3B of the Ancient Monuments and Archaeological Areas Act 1979).
74. The criterion for notification by Historic Environment Scotland to Scottish Ministers has been set by direction. We must notify Scottish Ministers if we are minded to grant scheduled monument consent for works which would allow a greater level of intervention than the minimum level of intervention that is consistent with conserving what is culturally significant in the monument.
75. Regulation 9 states that Historic Environment Scotland will provide Scottish Ministers with:
- a copy of all relevant supporting documents, including the application form; and
 - any relevant correspondence and representations.
76. Regulation 10 requires Historic Environment Scotland to notify the applicant that scheduled monument consent has been referred to Scottish Ministers. The notice must include:
- the terms of the direction;
 - any reasons given by the Scottish Ministers that the application be referred to them; and
 - notification that the decision will be final.
77. Where we notify Scottish Ministers about an application which we may wish to consider calling-in, we will provide a report to Scottish Ministers setting out why the application has been notified.
78. Where an application is associated with a separate but related consent application which is also being considered for call in under the relevant legislation, the report supplied to Scottish Ministers from us will provide a statement from the relevant central government department or agency outlining the potential impacts on our interests and why they raise matters of national interest.
79. The Scheduled Monuments (Appeals) (Scotland) Regulations 2015 set out the procedures for dealing with applications called in for determination by Scottish Ministers under the Ancient Monuments and Archaeological Areas Act 1979. For details on these procedures, see section below: [Appealing Decisions Made by Historic Environment Scotland](#).

DURATION, MODIFICATION AND REVOCATION OF SCHEDULED MONUMENT CONSENT

80. If none of the works to which a scheduled monument consent relates are begun within five years from the date on which that consent was granted, or such longer or shorter period as specified in the consent, the consent shall cease to be valid at the end of that period.
81. Historic Environment Scotland may modify or revoke a scheduled monument consent (section 4(3) of the Ancient Monuments and Archaeological Areas Act 1979). Such a modification or revocation can only relate to works not yet carried out. Historic Environment Scotland must have such an order confirmed by Scottish Ministers unless the owner or occupier and all other persons who in Historic Environment Scotland's view will be affected by the order have notified Historic Environment Scotland in writing that they do not object to the order.
82. Where an order to Scottish Ministers is submitted for confirmation, we must serve notice on the owner or occupier and all other persons who in our view will be affected by the order. The notice must specify the period (which must not be less than 28 days after its service) within which those served may require to be heard by a person appointed by Scottish Ministers.
83. Where a modification or revocation order is unopposed, regulation 13 requires Historic Environment Scotland to publish a notice stating that an order has been made in the Edinburgh Gazette and in a local newspaper circulating in the area in which the monument is located. The notice must also be sent to those mentioned above, and a copy of the advertisement sent to Scottish Ministers not more than three days after its publication.

APPLICATIONS TO VARY OR DISCHARGE CONDITIONS

84. Regulation 4 of the Scheduled Monument Consent Procedure (Scotland) Regulations 2015 sets out that an application for variation or discharge of conditions attached to a scheduled monument consent granted in respect of a scheduled monument is to be made on a form obtained from Historic Environment Scotland. The application must include:
 - particulars of the applicant's interest in the monument; and
 - the name and address of the applicant and, where an agent is working on behalf of the applicant, the name and address of that agent.

The application must be accompanied by:

- any related plans and drawings; and
 - appropriate ownership certificates and notices.
85. Applications to vary or discharge conditions will be published by Historic Environment Scotland.

86. Regulation 8 of the Scheduled Monument Consent Procedure (Scotland) Regulations 2015 requires this decision notice to contain:

- a statement of the terms of the decision (granted, granted with conditions, part granted/part refused, part granted/part refused with conditions, refused, discharged, part discharged/part not discharged, not discharged);
- any conditions to which it is subject; and
- the reasons for the decision.

The notice will also include:

- a description of the nature of the variation or discharge;
- the location of the monument; and
- the reference number of the application.

87. Where an application to vary or discharge a condition has been refused (in whole or in part) or granted with further conditions, regulation 8 requires the decision notice to be accompanied by a notice (Form 4) of the right to make an appeal, together with a statement explaining how the applicant may obtain information on how to appeal to the Scottish Ministers. For details on these procedures, see section below: [Appealing Decisions Made by Historic Environment Scotland](#).

CLASS CONSENTS FOR SCHEDULED MONUMENTS

88. Some types of works do not require scheduled monument consent, as they are deemed to have what is known as ‘class consent’. The details of what is covered by class consents is defined by the Ancient Monuments (Class Consents) (Scotland) Order 1996 (‘the Class Consents Order’):

- Class I: Agricultural, horticultural or forestry works, where similar works have lawfully been undertaken in the previous 10 years in the case of ploughing or 6 years for everything else, subject to a number of important exclusions.
- Class II: Work undertaken by the Coal Authority or their licensees more than 10m below ground level.
- Class III: Canal repairs or maintenance, undertaken by the British Waterways Board (including Scottish Canals), essential for ensuring the functioning of the canals, but not involving material alterations or reconstruction.
- Class IV: Works for the repair or maintenance of machinery, but not involving material alterations or reconstruction.
- Class V: Works which are urgently necessary for health and safety, provided the works are limited to the minimum measures immediately necessary and Historic Environment Scotland are notified in writing, with a justification for the works, as soon as practicable after they have been undertaken.
- Class VI: Archaeological evaluation to an approved specification, in order to supply Historic

Environment Scotland with information required for the determination of and application for Scheduled Monument Consent or Scottish Ministers' determination of an application.

- Class VII: Works undertaken as part of a Management Agreement between an occupier and Historic Environment Scotland or Scottish Ministers under Section 17 of the 1979 Act.
- Class VIII: Works that are grant aided by Scottish Ministers under Section 24 of the 1979 Act.
- Class IX: The placing of survey markers, not below 30cm, by Historic Environment Scotland.

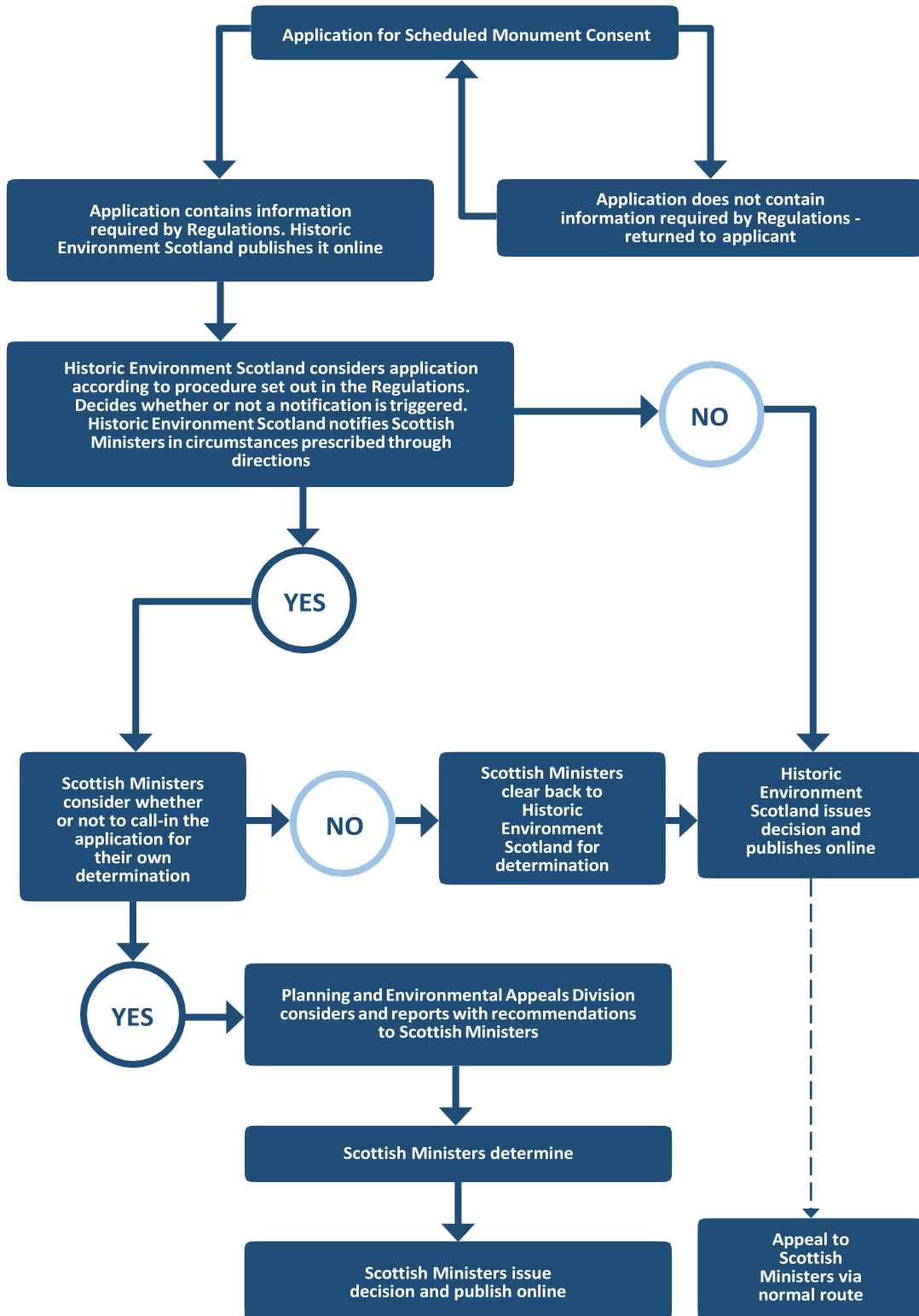
USE OF METAL DETECTORS AND PROSPECTING MINERALS AT PROTECTED PLACES, INCLUDING SCHEDULED MONUMENTS

89. Metal and Mineral Detecting Consent, obtained from Historic Environment Scotland, is required for the use of any equipment capable of detecting metal or minerals at protected places (a protected place is defined under the 1979 Act as a scheduled monument or a property that has come into the care of Scottish Ministers under the Act). This includes metal detectors, magnetometry/ gradiometer surveys and ground-penetrating radar.
90. Application forms and further information can be obtained from Historic Environment Scotland.
91. There is no right of appeal to the decision of Historic Environment Scotland on applications for such consent.

ENFORCEMENT NOTICES

92. Once a monument is scheduled, the prior written consent of Historic Environment Scotland is required for most works, including repairs. Any person carrying out unauthorised works or allowing unauthorised works to be carried out on a scheduled monument commits a criminal offence.
93. Historic Environment Scotland will seek, wherever possible, to engage, encourage and inform those who are subject to the Act in order to secure compliance. Breaches of the Act may arise for a variety of reasons, and the type and severity of offence will vary considerably. Where breaches of the law arise, enforcement action will be undertaken in a proportionate manner.
94. In some cases, a formal notice requiring compliance and amelioration may be served by Historic Environment Scotland. A scheduled monument enforcement notice allows for the reversal or amelioration of unauthorised works to a scheduled monument, or works in breach of any condition attached to scheduled monument consent. The enforcement notice cannot take effect until at least 28 days after it has been served. There is no time limit for taking scheduled monument enforcement action.
95. Appeals against scheduled monument enforcement notices can be made to Scottish Ministers. For further details on appeals, see section below: [Appealing Decisions Made by Historic Environment Scotland](#).

THE PROCESS BY WHICH AN APPLICATION FOR SCHEDULED MONUMENT CONSENT IS HANDLED



LISTED BUILDING CONSENT AND CONSERVATION AREA CONSENT

THE LISTED BUILDING CONSENT AND CONSERVATION AREA CONSENT SYSTEM

96. The Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 set out the process for applying for and determining applications for listed building consent and conservation area consent.
97. Listed building consent is required for all internal and external works that would affect the character of a listed building of any category.
98. Section 9 of the 1997 Listed Buildings Act sets out that where a building is both listed and scheduled (dual designated), the scheduled monument consent legislation takes precedence and the other legislation is disapplied.
99. Conservation area consent is only required for demolition of unlisted buildings in conservation areas. This requirement does not apply to certain specified buildings and structures (see the Exemption from Demolition Control in Conservation Areas Direction 1987 reproduced in Appendix 3).
100. Applications for listed building consent and conservation area consent are dealt with by planning authorities. National policy is set out in Scottish Planning Policy and the Historic Environment Policy for Scotland (HEPS). Detailed national policy guidance is set out in our Managing Change in the Historic Environment series.

PRE-APPLICATION DISCUSSION

101. The Scottish planning system promotes pre-application discussions. Planning authorities are strongly encouraged to engage Historic Environment Scotland early in the process where proposals are large-scale, unusual or contentious.

REQUIREMENTS FOR MAKING APPLICATIONS

102. Regulations 4 and 5 of the Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 set out the detailed requirements for making applications for listed building consent and conservation area consent, and for variation or discharge of conditions attached to listed building consent or conservation area consent.

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103. Regulation 6 sets out a requirement that applications for listed building consent are to be accompanied by an access statement, which is a statement setting out how any issues relating to access to the building for disabled people have been dealt with. This requirement is limited to proposals which impact upon the means of access to the building. There is no specified length for such a statement, but proportionality to the scale and nature of the proposed changes is expected to be the guiding principle.
 104. Regulation 8 requires the planning authority to advertise applications by site notices and notices inserted in newspapers, and sets out the information which must be in such notices.
 105. Regulation 9 lays out certification requirements, whereby applicants for consent who are not the sole owner of the building must certify what measures they have taken to inform others with an ownership interest.
 106. Regulation 10 specifies that planning authorities shall not entertain applications which do not contain the appropriate certificate under regulation 9.
 107. Regulation 11 provides that applications will not be invalid if they withhold information relating to national security or to measures taken to ensure the security of any premises or property, provided the applicant gives a written statement addressing these matters.
 108. Regulation 12 specifies the time limit within which the planning authority must issue a decision notice and inform other parties of its decision. It allows for that time limit not to apply where an application has been called in by Scottish Ministers for their determination. It further requires the planning authority not to determine an application until the period specified for consultation with Historic Environment Scotland (14 days) or representations (21 days) has ended. It lays out the minimum content for decision notices, which must include information on how applicants may appeal to Scottish Ministers.
 109. Regulation 13 sets out the requirements for planning authorities to notify applicants when applications are called in by Scottish Ministers.
 110. Regulation 14 sets out the terms under which electronic communication can be used.

DEMOLITION

111. In the context of the regulations, demolition means the total or substantial loss of a listed building. A listed building can be any built structure. Although the 1997 Act and this document use the term 'building', the phrase can apply to things like bridges, lamp posts and phone boxes, too. Even if part of a building is to be retained (such as in façade retention), a proposal may still be considered demolition. This would be the case if the proposed works would result in the loss of the majority of the listed building.
112. The removal of smaller parts of a building, such as conservatories, porches, chimneys and small scale extensions, should be assessed as alterations rather than demolition. In more complex cases, where alterations involve the loss of large amounts of fabric, planning authorities may need to consider in more detail whether works are classed as demolition. This should happen as early as possible in the process so that the planning authority can identify the relevant policies and guidance.

CONSULTATION WITH HISTORIC ENVIRONMENT SCOTLAND

113. Regulation 7 sets out the requirements for planning authorities to consult with Historic Environment Scotland before granting or refusing certain types of application – specifically:
- applications for listed building consent by a planning authority;
 - applications for listed building consent for works to category A and B listed buildings;
 - applications for listed building consent for demolition of a listed building; and
 - applications for conservation area consent (demolition of unlisted buildings in conservation areas).
114. Planning authorities are advised to consult Historic Environment Scotland (HMConsultations@hes.scot) as soon as possible after the receipt of a valid application. This ensures efficient handling and minimises any delay for the applicant, particularly if they need to amend their proposals. Regulation 12 states that planning authorities must give not less than 14 days for Historic Environment Scotland to respond to a consultation. Unless an amended timescale has been agreed, if Historic Environment Scotland does not respond within 14 days the planning authority may proceed to determine the application.

ECCLESIASTICAL EXEMPTION

115. Section 54 of the 1997 Act applies an exemption from listed building controls to ecclesiastical buildings in ecclesiastical use. This is known as ‘ecclesiastical exemption’. However, a number of denominations have agreed to a voluntary scheme whereby they are subject to listed building control for external works only. In these cases, planning authorities should consult Historic Environment Scotland as for any other application.
116. If agreement cannot be reached between the applicants, Historic Environment Scotland and the planning authority, the application should be referred to the decision-making body of the relevant denomination. Historic Environment Scotland or the Planning Authority can provide detailed guidance on ecclesiastical exemption.

CONSIDERATION BY HISTORIC ENVIRONMENT SCOTLAND

117. We will consider the impacts of the proposals and respond to the local authority within the agreed response period, setting out our views on the application. We may have no comment to make, may not wish to object but nonetheless wish to make comments on the application or suggest possible mitigation, or may raise a formal objection. Our response will set out clearly whether an objection is being raised or not.
118. Where we have not objected, but have nonetheless made comments on an application, planning authorities are expected to treat these comments as a material consideration.
119. If we have objected, and the details of the application are subsequently amended to address the concerns raised, planning authorities are expected to re-consult us, and that consultation will be treated as any statutory consultation, with the same timescales for response. If we indicate that

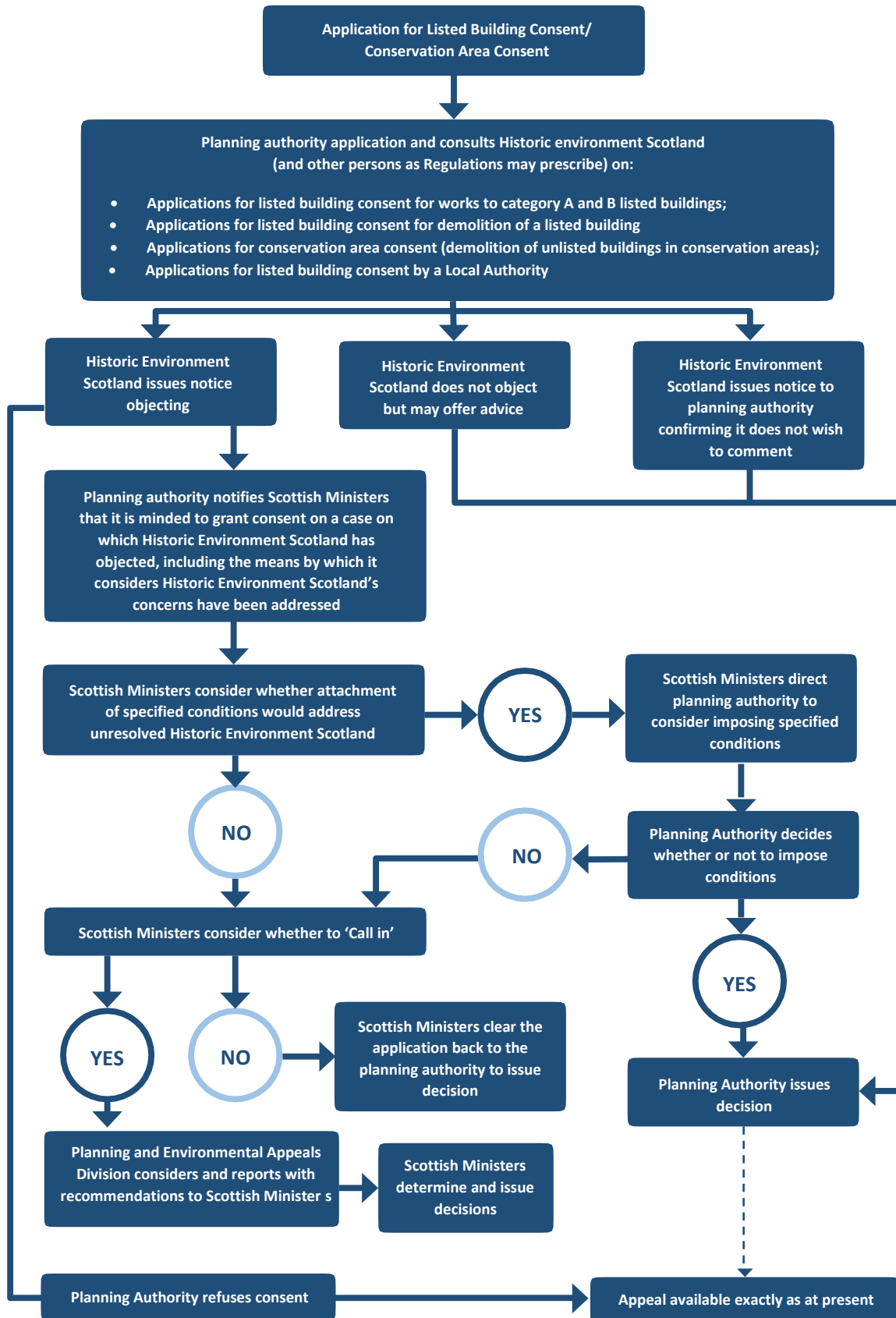
we no longer object to the application, then no notification to Scottish Ministers under section 12 is required. If we consider that the issues have not been resolved, we will re-state our objection at that stage.

120. If we have objected to an application and the planning authority is minded to grant consent, The Planning (Listed Buildings and Conservation Areas) (Notification of Applications) Direction 2015 requires that the planning authority notifies Scottish Ministers of its intention (Planning.Decisions@gov.scot). Scottish Ministers will decide whether they wish to call the application in for their own determination. Planning authorities should set out in their notification how our concerns have been addressed in their decision.
121. Scottish Ministers may in some cases consider that the issues raised by Historic Environment Scotland could be addressed by the attachment of conditions, and may direct that the planning authority consider imposing specified conditions. If planning authorities agree to impose the specified conditions, they may issue the consent as amended. If planning authorities do not agree to impose the conditions specified by Scottish Ministers, they will confirm that view to Scottish Ministers, who will decide whether the application should be called in for their own determination.
122. If Scottish Ministers consider that the issues raised by Historic Environment Scotland cannot be resolved through the addition of conditions, or if the planning authority does not agree to impose conditions specified by Scottish Ministers, then Scottish Ministers may call in the application for their own determination. In that case, the procedures generally apply to applications called in for determination by Scottish Ministers (section 11 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997) in the same way as they do to listed building consent appeals under section 18. The process for dealing with called-in applications is as set out in Scottish Government Planning Circular 4/2013: Planning Appeals.

RECORDING

123. Under section 7(2) (b) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, recipients of consent to demolish a listed building or an unlisted building in a conservation area are required to give Historic Environment Scotland notice of this consent being issued. Planning Authorities, or applicants, are encouraged to notify Historic Environment Scotland of demolition applications being made to the planning authority at the earliest possible stage and wherever possible, before the issuing of consent. Historic Environment Scotland will aim wherever possible to complete any necessary recording prior to consent being issued and always within 3 months of the receipt of notification. Recording carried out by Historic Environment Scotland is not a substitute for any recording that may be required as a condition of consent, and discussion between Historic Environment Scotland and the planning authority prior to consent will aim to avoid any duplication of work in this respect.
124. Historic Environment Scotland will respond to consent application notifications to confirm if recording is to be carried out. Where recording is not to be undertaken by ourselves we will confirm this to the applicants/recipients of consent within 28 days of receipt of notification.

THE PROCESS BY WHICH AN APPLICATION FOR LISTED BUILDING CONSENT/ CONSERVATION AREA CONSENT IS HANDLED



APPEALING DECISIONS MADE BY HISTORIC ENVIRONMENT SCOTLAND

INTRODUCTION

125. Appeals can be made against a number of decisions made by Historic Environment Scotland.
126. The requirements in relation to these appeals are set out in:
- The Scheduled Monuments (Appeals) (Scotland) Regulations 2015;
 - The Scheduled Monuments (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2015;
 - The Town and Country Planning (Appeals) (Scotland) Regulations 2013 as amended by the Town and Country Planning (Appeals) (Scotland) Amendment Regulations 2015; and
 - The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Amendment Regulations 2015.
127. The regulations explain the detailed statutory requirements for appeals within the framework of the primary legislation contained in the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
128. The appeal process is intended to ensure that examination procedures are proportionate and efficient; that the appeal process is transparent and fair; and that decisions are both robust and based upon a review of the proposals that were originally considered by Historic Environment Scotland.
129. Appeals to Scottish Ministers are processed on their behalf by the Planning and Environmental Appeals Division. References to submitting appeals, documents or responses to Scottish Ministers or the appointed person should be read as submitting them to the Planning and Environmental Appeals Division at:

Planning and Environmental Appeals Division
4 The Courtyard
Callendar Business Park
Callendar Road
FALKIRK FK1 1XR

E-mail: DPEA@gov.scot
Telephone: 01324 696 400

SCOPE OF THE REGULATIONS

130. The regulations and this circular apply to appeals in relation to the following:

The Planning (Listed Building and Conservation Areas) (Scotland) Act 1997

- Decisions by Historic Environment Scotland to include a building in the List or to amend an entry in the List relating to a building (but not where the amendment excludes a building from the List) (section 5B).

131. Note that where an appeal relates to an amendment to the List, it is only the statutory (legal) element of the designation which can be appealed – the only statutory element on the List is the address under which the building is listed. Listing categories and descriptions are not statutory, and, as such, a change to the category or Listed building record cannot be appealed.

The Ancient Monuments and Archaeological Areas Act 1979

- Decisions by Historic Environment Scotland to include a monument in the Schedule or to amend an entry in the Schedule relating to a monument (section 1C).
- Refusal by Historic Environment Scotland of an application for scheduled monument consent; granting such an application subject to conditions; refusing an application for variation or discharge of conditions; granting such an application subject to conditions; or refusing an application for subsequent approval required by a condition to which a scheduled monument consent is subject (section 4B).
- Where Historic Environment Scotland has not given notice of its decision on such an application within the prescribed period, or such longer period as may be agreed between the applicant and Historic Environment Scotland (section 4B).
- Serving of a scheduled monument enforcement notice by Historic Environment Scotland (section 9C).

132. Note that where an appeal relates to an amendment to the Schedule, it is only the statutory (legal) element of the designation which can be appealed – this is the legal scheduling document which contains the name of the scheduled site, a summary description of the monument and its location, and a map. Only amendments to this document can be appealed.

DESIGNATION AND SCHEDULED MONUMENT CONSENT APPEAL PROCESS

133. This section describes the appeal process with regard to the inclusion or amendment of entries relating to site or place on the schedule or list, and appeal against scheduled monument consent decisions or failure to determine a scheduled monument consent application.

WHO CAN APPEAL

134. Appeals against the decision to include a site or place in the List or the Schedule can be made by the owner, occupier or tenant of the building or monument affected.
135. Appeals against scheduled monument consent decisions can be made by the person who made the application.
136. It is not possible for parties not directly affected by Historic Environment Scotland's decisions (i.e. third parties) to appeal these decisions. However, in certain circumstances, as set out in the regulations, interested parties can make representations through the appeals process.

NOTICE OF APPEAL

137. An appeal to Scottish Ministers against a decision by Historic Environment Scotland needs to be made in writing on a form obtained from Scottish Ministers as set out in regulations:
 - 18A of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 (listing);
 - 18 of The Scheduled Monuments (Appeals) (Scotland) Regulations 2015 (scheduling); and
 - 3 of The Scheduled Monuments (Appeals) (Scotland) Regulations 2015 (scheduled monument consent, etc.)

Appeals may be submitted online; forms and guidance for doing so are available at the [Planning and Environmental Appeals Division](#).

138. Notice of appeal needs to be served within three months. The three-month period starts as below:
 - For appeals against a decision to include a site or place in the Schedule or List or amend an entry in the Schedule or List: on the date of the notification of the decision.
 - For appeals against a decision on scheduled monument consent: on the date of the decision notice.

For example, if the date on Historic Environment Scotland's notification/decision notice was 1 September, an appeal would have to be received by the Planning and Environmental Appeals Division on or before 30 November. An appeal received on 1 December would be out of time and not accepted.

- a. For appeals against non-determination of an application for scheduled monument consent: on expiry of the period allowed for determining the application. This period is two months from the date when the final piece of information required, as set out in regulation 6 of the Scheduled Monument Consent Procedure (Scotland) Regulations 2015, has been received by Historic Environment Scotland, unless a longer period has been agreed in writing by the applicant and Historic Environment Scotland.

For example, if the statutory two-month period within which Historic Environment Scotland was expected to make a decision expired on 17 March without a decision being issued, an appeal on the grounds of failure to determine would need to be received by the Planning and Environmental Appeals Division on or before 16 June. If the applicant and Historic Environment Scotland had agreed an extension of a month to the statutory period, such an appeal would then need to be received by the Planning and Environmental Appeals Division on or before 16 July.

There is no discretion to accept late appeals. Not appealing on the grounds of non-determination of scheduled monument consent does not affect the applicant's right to appeal against Historic Environment Scotland's eventual decision on the application.

139. The regulations set out what is required to accompany a notice of appeal to Scottish Ministers. Notices of appeal must include the following information:
- The name and address of the appellant.
 - The date and reference number assigned by Historic Environment Scotland (scheduled monument consent appeals only).
 - The name and address of any representative of the appellant for correspondence purposes.
 - A statement setting out full particulars of the appeal, including a note of what matters the appellant considers should be taken into account in determining the appeal and by which procedure (or combination of procedures), i.e. written submissions, hearing or public local enquiry, the appellant would prefer the appeal to be conducted.
 - A copy of the relevant designation notification or scheduled monument consent decision notice, as appropriate.
 - For listing appeals, the notice must include details of why the appellant considers the building is not of special architectural or historic interest, and for scheduling appeals it should include details of why the appellant considers the monument is not of national importance. Scheduled monument consent appeals can also be on the grounds that the monument should not be included in the schedule (i.e. is not of national importance) or that the schedule entry should be amended.
140. The appeal forms provided by the Scottish Government will prompt the provision of all of this information. While the Planning and Environmental Appeals Division will request any missing information, if the statutorily required information is not submitted within the period for making the appeal, the appeal will not be accepted.
141. The relevant sections of the regulations specify that all matters that the appellant intends to raise in the appeal must be set out in the notice of appeal (on a form obtained from Scottish Ministers) or in the accompanying documents. Any documents submitted to Historic Environment Scotland and any other evidence that the appellant intends to use to support his or her case must also accompany the notice of appeal.
142. The following sections of the regulations make it clear that the appellant may only raise additional matters or submit further documents, materials or evidence in accordance with and to the extent permitted by regulations. That is in accordance with:

- regulation 5(3) of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and 18B(3) of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 in commenting on Historic Environment Scotland's response to the appeal;
- regulation 6(4) of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and 18C(4) of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 in commenting on the interested parties' responses to the appeal;
- regulation 12 of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and 11 of the Town and Country Planning (Appeals) (Scotland) Regulations 2013, where the appointed person seeks further written submissions;
- the Hearing Session Rules; or
- the Inquiry Session Rules.

143. These requirements are intended to ensure that the relevant matters and items of information are provided efficiently at the start of the appeal process, rather than at varying points throughout the process.

144. An application should not be varied after an appeal has been made. This provides clarity about the extent to which the appeal process should focus on the proposal that was considered by Historic Environment Scotland. Where an applicant considers that it would be beneficial to revise a proposal, a new scheduled monument consent application should be submitted for consideration by Historic Environment Scotland.

INTIMATION TO HISTORIC ENVIRONMENT SCOTLAND

145. At the same time that the appellant gives notice of appeal to Scottish Ministers, the appellant must also inform Historic Environment Scotland. Regulation 5 of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and regulation 18B of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 requires that the appellant sends to Historic Environment Scotland a copy of the notice of appeal and a list of all documents, materials and evidence which the appellant intends to rely upon and which accompanied the notice of appeal. There is no need for the appellant to send copies of documents that have already been submitted to us. The appellant must, however, also send us a copy of any documents, materials and evidence which had not already been provided to us while we had been considering the application or proposal.

HISTORIC ENVIRONMENT SCOTLAND RESPONSE

146. Having received the notice of appeal from the appellant, regulation 16(2) of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and regulation 18B(2) of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 require Historic Environment Scotland to provide a response within 21 days, beginning with the date of receipt. It is important that the body meets this deadline, as any delay at this stage has a particularly detrimental effect on the running of the appeal as a whole. Historic Environment Scotland must send to Scottish Ministers and the appellant:

- A note of the matters that we consider should be taken into account in determining the appeal and by what procedure (or combination of procedures) we think these should be examined.

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- A copy of the documents (other than those specified by the appellant in his or her list of documents, materials and evidence) which were taken into consideration by us in making our decision.
 - In the case of scheduled monument consent applications, the conditions that we consider should be imposed in the event that scheduled monument consent is granted.
147. The Planning and Environmental Appeals Division provides a form to assist in the drafting of this submission. The form is available at www.gov.scot/Topics/Built-Environment/planning/Appeals
148. Regulation 5(3) of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and regulation 18B(3) of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 allow that, having received Historic Environment Scotland's response, the appellant can, within 14 days beginning with the date of receipt, send to Scottish Ministers and to Historic Environment Scotland any comments on matters raised by Historic Environment Scotland which had not previously been addressed in the designation notification or scheduled monument consent decision notice. At the same time, the appellant can also provide any further documents or other evidence in support of those additional comments. We are expected to provide full reasons in our designation notification or scheduled monument decision notice, and so this provision should not normally be needed. This is not intended to be an opportunity for appellants to add their response to issues raised in the decision notice.
149. Under the terms of the regulations, no additional response will routinely be sought from Historic Environment Scotland, although the appointed person may specifically require further submissions from the appellant, Historic Environment Scotland and any other specified party, through a subsequent procedure notice (see paragraphs 162 and 181).

NOTIFICATION OF INTERESTED PARTIES

150. Regulation 6 of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and regulation 18C of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 require Historic Environment Scotland to give interested parties notice of the appeal within 14 days of the body being notified of the appeal. 'Interested parties' are any statutory consultees or any other persons who made representations to Historic Environment Scotland during the body's consideration of the designation or scheduled monument consent application, which were not subsequently withdrawn. Interested parties must be advised of where the notice of appeal can be inspected, and also that the representations they have previously made will be sent to Scottish Ministers and the appellant by Historic Environment Scotland.
151. As representations previously made and lodged with Historic Environment Scotland by interested parties will be taken into account before a decision is reached on an appeal, there is no need or expectation for the same matters to be raised again with Scottish Ministers. Nevertheless, regulation 6(3) of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and regulation 18C(3) of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 allow that interested parties may make further representations to Scottish Ministers in respect of the appeal within 14 days, beginning with the date on which notice is given of the appeal. In turn, the regulations require Scottish Ministers to send a copy of any representations received by them to the appellant and to Historic Environment Scotland, each of whom are provided with an opportunity to respond within a specified period, being not less than 14 days after the copies were sent.

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152. We are to make all the relevant appeal papers available for inspection and for copying at our office (regulation 7 of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and regulation 18D of the Town and Country Planning (Appeals) (Scotland) Regulations 2013).

DEADLINES FOR PROVISION OF STATEMENTS AND OTHER EVIDENCE

153. As noted above, the regulations set a number of statutory deadlines for the provision of:
- Historic Environment Scotland's response to the appeal (21 days);
 - the appellant's further comments (14 days);
 - Historic Environment Scotland's notification of interested parties (14 days);
 - further representations from interested parties (14 days); and
 - the appellant's and Historic Environment Scotland's comments on representations from interested parties (specified date, not less than 14 days).
154. In the interests of efficiency in decision-making, the Scottish Government expects parties to provide this information at the earliest opportunity.

PROCEDURE FOR DETERMINATION

155. The procedure for determination of scheduling, listing and scheduled monument consent is the same. Procedures for determining appeals against scheduling and scheduled monument consent are set out in the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 [scheduled monuments]. The equivalent procedures for appeals against listing are set out in the Town and Country Planning (Appeals) (Scotland) Regulations 2013 [listed buildings].
156. Once the exchange of information set out in the paragraphs above has been completed, and where the person appointed to decide the appeal has sufficient information to make a decision, regulation 8 (scheduled monuments) and regulation 7 (listed buildings) allow the decision to be made without there being any further procedure or information-gathering. It is for the appointed person's discretion whether further procedure is needed. For example, a request by the appellant or Historic Environment Scotland for a hearing session or an inquiry session does not mean that such a session would automatically be arranged.

FURTHER EVIDENCE

157. However, if the appointed person decides that further information or additional representations are required to enable him or her to determine the appeal, the appointed person may do this by one of, or a combination of, the procedures set out in regulation 10 (scheduled monuments) and regulation 9 (listed buildings), i.e. further written submissions, hearing sessions, inquiry sessions or a site inspection. The appointed person will identify each of the matters on which further information is needed and also the procedure to be used to obtain it. This will be clearly set out to the parties involved in what the Regulations refer to as a 'procedure notice'.

OPT-IN NOTICE

158. Where further information is required, regulation 9 (scheduled monuments) and regulation 8 (listed buildings) allow the appointed person to write to interested parties seeking their confirmation that they wish to be involved in the further processing of the case (e.g. hearing or inquiry sessions). Interested parties will be given a specified period (being at least 14 days from when notice is given) within which to give confirmation; otherwise they may lose the opportunity to be involved. In any event, their original representation will still be given due consideration and they will be informed of the decision on the appeal in due course.
159. The intention is that this 'opt-in' procedure will be used in those cases where there are a significant number of interested parties; for example, where a large number of representations has been made by petition or by standard letter. The aim is to identify those interested parties who wish to play an active role in any further procedure in the appeal, and to avoid repeatedly sending information about the progress of an appeal to people who, though they may be interested in the case and want their original views to be considered, do not want to be involved in any further appeal procedure.

SITE INSPECTIONS

160. The appointed person may, at any stage of an appeal, decide to carry out an inspection of the appeal site. Regulation 13 (scheduled monuments) and regulation 12 (listed buildings) set out details about site inspections. These may be either unaccompanied or accompanied. Where the appointed person intends to make an unaccompanied inspection of the site, they will inform the appellant and Historic Environment Scotland. If, for any reason, the appointed person considers that an accompanied site inspection would be appropriate, then the appellant, Historic Environment Scotland and all interested parties (subject to any 'opt-in' procedure – see above) will be informed of the arrangements, including the date and time. The appointed person is not obliged to defer the site inspection if any of the parties or interested persons are not present or available on the set date.
161. The purpose of the site inspection, even if accompanied, is to allow the appointed person to see the site, and is not an opportunity for parties to discuss with him or her the merits of the case.

PRE-EXAMINATION MEETINGS

162. In some instances it will be helpful for the appointed person to hold a pre-examination meeting to consider how the appeal, or a particular stage of it, can best be conducted efficiently and expeditiously. Regulation 11 (scheduled monuments) and regulation 10 (listed buildings) provide a procedure for this and for involving the appellant, Historic Environment Scotland and the interested parties (subject to any 'opt-in' procedure – see above). The arrangements for holding and giving notice of such a meeting and for deciding the matters to be discussed are for the appointed person to determine. It is likely that pre-examination meetings will only be required in a small number of complex cases.

WRITTEN SUBMISSIONS

163. Regulation 12 (scheduled monuments) and regulation 11 (listed buildings) set out the procedure for seeking further written submissions on an appeal. The appointed person is free to seek additional representations or information from the appellant, Historic Environment Scotland or from any other body or person. The procedure notice will set out what information is required and by what date, and will provide details of those who have been requested to provide the additional information.
164. Parties providing such further information (a procedure notice response) to the appointed person should at the same time send copies to all parties specified in the procedure notice, including the appellant and Historic Environment Scotland. All of these parties then have an opportunity to send comments on a procedure notice response to the appointed person within 14 days from the date they received it, again providing copies to the appellant, Historic Environment Scotland and others specified in the procedure notice. The timetables for the provision of this information must be observed; late submissions might not be taken into consideration in the final decision.

HEARING SESSIONS

165. Schedule 1 (scheduled monuments) and schedule 1 (listed buildings) sets out the Hearing Session Rules. These provide the appointed person with scope to determine what procedure should be followed at a hearing on the specified matters or topics that are set out in the procedure notice. The hearing is intended to take the form of a discussion led by the appointed person. Formal cross-examination of participants will not be allowed. While the rules provide discretion for the procedure the appointed person thinks appropriate to follow during the hearing, they also provide a framework to ensure that the relevant parties have clear notice of the hearing session, the other participants in the process and clarity about the issues and evidence to be considered.
166. Where the appointed person intends to hold a hearing session, he or she must give written notice to the appellant, Historic Environment Scotland and those parties who made representations on the specified matters (subject to any 'opt-in' procedure – see above). Any party intending to participate in the hearing session must inform the appointed person within 14 days of the date of the notice as set out in rule 1(4) (scheduled monuments) and rule 2 (listed buildings). Only those matters specified in the procedure notice will be considered at the hearing: consequently, only those who made related representations are required to be given notice of the hearing. The appointed person may also give notice to any other body or person who is to provide further representations on the specified matters.
167. It is for the appointed person to give those entitled to appear notification of when and where the hearing is to take place, and to give whatever notice he or she considers to be reasonable in the circumstances (rule 3 (scheduled monuments) and rule 3 (listed buildings)). Those who are entitled to appear at a hearing session may be required to send a hearing statement and any supporting documents to the other parties entitled to appear at the hearing and to the appointed person (rule 4 (scheduled monuments) and rule 4 (listed buildings)). This will not be required in every case and will be for the appointed person to determine. Rule 4(5) (scheduled monuments) and rule 4(5) (listed buildings) confirms a hearing statement to be a written statement which fully sets out the case relating to the specified matters on which the appointed person has sought information in the procedure notice, together with a list of supporting documents to be relied upon and a list of any persons who are to speak at the hearing session, including the matters to be covered by each

person and their relevant qualifications. The rules are intended to ensure that all parties are clear on the issues and evidence to be considered at the hearing session.

168. At the start of the hearing session, the appointed person is to explain the procedure that they intend to adopt, taking into account submissions made by any of the parties entitled to appear. Parties may be represented or, where two or more persons have a similar interest, one or more may appear for the benefit of some or all. The appointed person may proceed with the hearing in the absence of anyone entitled to appear.

INQUIRY SESSIONS

169. Schedule 2 (scheduled monuments) and schedule 2 (listed buildings) sets out Inquiry Session Rules. In common with the procedure for hearing sessions, the inquiry sessions will examine only those matters specified in the procedure notice issued under rule 1. The parties entitled to appear at inquiry sessions will be:

- the appellant;
- Historic Environment Scotland;
- any interested party who made representations in relation to specified matters; and
- those who the appointed person wishes to make representations on the specified matters.

170. Those provided with written notice of the inquiry session by the appointed person must confirm their intention to attend the session within 14 days of the date of the notice.

171. Rule 3 (scheduled monuments) and rule 3 (listed buildings) requires the appointed person to provide such notice of the date, time and place fixed for holding the inquiry session as he or she considers reasonable to those parties entitled to appear at the inquiry session. However, he or she may also require Historic Environment Scotland to take one or more of the following additional steps to publicise the inquiry session:

- publish notices in a local newspaper and on a website not less than 14 days before the inquiry session; or
- serve notice of the inquiry session in a form and on such parties as the appointed person specifies.

172. Where required to by notice from the appointed person, those entitled to appear at the inquiry session need to provide copies of an inquiry statement to the appointed person and to the appellant and Historic Environment Scotland. This should set out the particulars of the case relating to the specified matters, a list of documents to be relied upon, and a list of any persons who are to speak at the inquiry session, including the matters to be covered by each person and their relevant qualifications. The appointed person will provide those entitled to appear at the inquiry session with details of when information should be submitted.

173. The appointed person's notice will also specify the date by which the documents listed in the inquiry statement must be submitted to the appointed person and to the appellant, planning authority and other persons entitled to appear at the inquiry session. It will also specify the date for submission of precognitions setting out the evidence to be given by the witnesses listed in the inquiry statement. The Inquiry Session Rules require that precognitions should not exceed 2,000 words in length.

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174. The rules provide the appointed person with scope to determine the procedure at the inquiry session, but he or she is to state at commencement of the session what the procedure will be, taking account of submissions from those entitled to appear. The rules require the appointed person to explain the order in which specified matters are to be considered and the order in which those entitled to appear are to be heard. Parties may be represented or, where two or more persons have a similar interest, one or more may appear for the benefit of some or all.
175. Those entitled to appear at an inquiry session may call evidence, cross-examine witnesses and make closing statements. However, the appointed person can refuse to permit this wherever he or she considers it to be irrelevant or repetitious.

NEW EVIDENCE

176. Where, following conclusion of any further procedure, such as a hearing session or inquiry session, the appointed person intends to take into account new evidence, the regulations require him or her to give the appellant, Historic Environment Scotland and other relevant parties described in the Regulations an opportunity to make representations on the new evidence before a decision can be made on the appeal. The regulations define 'relevant party'. Where new evidence relates to a specified matter which was the subject of a hearing or inquiry session, everyone entitled to appear at that session is a relevant party. Where new evidence relates to a matter on which further written representations or information was sought by a procedure notice under regulation 12 (scheduled monuments) and regulation 11 (listed buildings), a relevant party is anyone to whom the procedure notice was sent.

APPEALS AGAINST SCHEDULED MONUMENT ENFORCEMENT NOTICES UNDER THE ANCIENT MONUMENTS ACT

177. Part 4 of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 provides (under regulations 15–18) some detailed procedural requirements for appeals against scheduled monument enforcement notices (section 9C of the Ancient Monuments and Archaeological Areas Act 1979) which are different from the processes for considering designation and scheduled monument consent appeals described above.
178. The Scheduled Monuments (Appeals) (Scotland) Regulations 2015 require appeals to be made to Scottish Ministers. These regulations set out the procedure for providing information in support of these appeals, exchanging relevant information and informing other parties in a way that is consistent with the provisions for scheduled monument consent appeals.
179. Appeals in these cases must be made before the date (specified in the notice) on which the notice takes effect. *For example, if the date specified on the notice as the date it takes effect is 1 June, then any appeal against it would have to be received by the Planning and Environmental Appeals Division on or before 31 May.*
180. Appeals against scheduled monument enforcement notices can be made by the person on whom the notice is served or by any other person having an interest in the monument to which it relates or the land in, on or under which it is situated. There is no third party right of appeal.

STATEMENT OF APPEAL

181. The Ancient Monuments and Archaeological Areas Act 1979 requires that a statement should be provided by an appellant specifying the grounds of appeal and providing such other information as may be prescribed. Regulation 15 of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 requires that the statement should include the following information, consistent with the approach for scheduled monument consent appeals:
- all matters which the appellant intends to raise in the appeal;
 - the name and address of the appellant;
 - a copy of the notice against which the appeal is made;
 - the name and address of any representative of the appellant for correspondence purposes; and
 - a note of what matters the appellant considers require determination and by what procedure they should be examined.
182. The statement is to be accompanied by copies of all documents, materials and evidence which the appellant intends to rely upon in the appeal and these should make the appellant's full case. Regulation 15(5) specifies that the appellant may only raise additional matters (i.e. new issues) to those set out in the statement of appeal and accompanying documents either:
- in response to particular matters raised by Historic Environment Scotland (regulation 16); or
 - where further information or evidence is specifically requested by the appointed person (whether through written submissions (regulation 12), hearing sessions or inquiry sessions).

INTIMATION TO HISTORIC ENVIRONMENT SCOTLAND AND RESPONSE

183. At the same time as giving notice of appeal to Scottish Ministers, regulation 16 requires the appellant to send to Historic Environment Scotland a copy of the notice of appeal, the statement of appeal and all supporting documents, materials and evidence to be used to support his or her case. We have a period of 21 days, beginning with the date of receipt of this information, within which we must provide our response to Scottish Ministers and the appellant.
184. Our response is to take the form of a statement incorporating a response to each ground of appeal, stating the matters that we consider require determination and by what procedure we wish the appeal to be conducted. We must also send to the appellant and to Scottish Ministers copies of all documents that were before them and taken into account in reaching the decision to issue the notice which is the subject of the appeal.
185. The appellant is entitled to send to Scottish Ministers and Historic Environment Scotland comments on Historic Environment Scotland's response. This must be done within 14 days, beginning with the date of receipt of our response. Regulation 16(4) requires that we are to make copies of the appeal papers available for inspection at its offices. The legislation does not rule out electronic provision in this regard; however, it must be possible to view the information effectively.

NOTIFICATION TO OTHER PARTIES

186. Regulation 17 requires that Historic Environment Scotland must give notice of the appeal to each person, other than the appellant, on whom the original enforcement notice was served. This is to be done no later than 14 days following notification of the appeal. This notice of the appeal is to set out the following information:
- the name of the appellant and the address of the land which is the subject of the appeal;
 - the steps required by the notice;
 - that representations can be made to Scottish Ministers; and
 - an explanation of how and when these can be made, and where a copy of the notice of appeal can be inspected.
187. The period allowed for making responses is to be no less than 14 days from the date on which notice is given by Historic Environment Scotland.
188. Parts 1, 3, 7 (except regulation 22) and 8 of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and the schedules containing Hearing Session and Inquiry Session Rules apply to these appeals in the same way as they do to scheduled monument consent appeals.

CALLED-IN APPLICATIONS

189. Scottish Ministers may direct that applications for scheduled monument consent, variation or discharge of scheduled monument consent conditions or applications for subsequent approval required by a scheduled monument consent condition are referred to them, instead of being dealt with by us.
190. Regulation 18 of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 confirms that the definitions set out in Part 1 of the regulations, the procedures set out for determining appeals in Part 3, the general provisions in Part 7 as well as the Hearing Session Rules and the Inquiry Session Rules, generally apply to applications called in for determination by Scottish Ministers (section 3C of the Ancient Monuments and Archaeological Areas Act 1979) in the same way as they do to scheduled monument consent appeals under section 4B. Technical modifications are made in the application of these provisions to allow for the fact that decisions will be made by Scottish Ministers rather than an appointed person.

GENERAL PROVISIONS

191. Part 7 of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 [scheduled monuments] sets out general provisions covering a number of aspects of the procedures in the regulations. Part 9 of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 [listed buildings] contains the equivalent provisions.

NON-DELEGATED APPEALS

192. Regulation 20 (scheduled monuments) and regulation 26 (listed buildings) relate to non-delegated appeals, where the decision on an appeal will be taken by Scottish Ministers rather than delegated to an appointed person. They apply to the provisions in Parts 1, 3, 7 and 8 of the regulations and the Hearing Session and Inquiry Session Rules with the same technical amendments as in relation to called-in applications.

NATIONAL SECURITY

193. Regulation 21 (scheduled monuments) and regulation 27 (listed buildings) deal with national security. They allow that where an appellant withholds security-sensitive information on the grounds that public disclosure would not be in the national interest that does not invalidate an appeal. The appeal must be accompanied by a written statement explaining that this is the reason for withholding the information.

FURTHER COPIES OF DOCUMENTS

194. Regulation 22 (scheduled monuments) and regulation 28 (listed buildings) enable the appointed person to require any party who has submitted documents, materials or evidence under the regulations to provide him or her or other parties with such additional copies as he or she specifies. He or she may also require Historic Environment Scotland to make copies of the documents, materials or evidence available for inspection to our offices until the appeal is determined, and to allow anyone reasonable opportunity to inspect the documents and, where practicable, to take copies of them.

APPOINTMENT OF ASSESSORS

195. Infrequently Scottish Ministers may appoint an assessor to sit with the appointed person at a hearing session or at an inquiry session to advise on such matters as Scottish Ministers may specify – regulation 23 (scheduled monuments) and regulation 30 (listed buildings). Where this happens, Scottish Ministers must notify every person entitled to appear at the inquiry or hearing session of the name of the assessor, and of the matters that the assessor is to advise upon.

DECISION NOTICE

196. The appointed person is required by regulation 24 of the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 to give notice of the decision (the decision notice) to the appellant and to Historic Environment Scotland, and to notify every person who has made and not withdrawn representations in respect of the appeal that a decision has been made and where a copy of the decision notice is available for inspection.

ELECTRONIC COMMUNICATIONS

197. Regulation 25 (scheduled monuments) and regulation 32 (listed buildings) enable key transactions to be carried out electronically and to have the same effect as if they had been provided in paper copy. There are certain conditions to be met in order to facilitate this use of electronic communications:
- the recipients have agreed, or are deemed to have agreed, to receive the information electronically;
 - any person sending information electronically is to be taken to have agreed to the use of electronic communication for the purpose of the appeal; and
 - the transmitted document is capable of being accessed by the recipient, is legible and is sufficiently permanent for subsequent reference.
198. Consent to use electronic communication can be withdrawn by parties by giving notice, and this will take effect not later than seven days from that notice.

APPENDIX I

CHECKLIST – WHEN TO CONSULT HISTORIC ENVIRONMENT SCOTLAND

We require formal consultations but we welcome pre-application consultations in relation to development proposals, to which one or more of the following apply.

| Designation | ✓ |
|---------------------------------|--------------------------|
| Listed buildings | <input type="checkbox"/> |
| Scheduled monuments | <input type="checkbox"/> |
| Gardens and designed landscapes | <input type="checkbox"/> |
| Historic battlefields | <input type="checkbox"/> |
| World heritage | <input type="checkbox"/> |
| Royal Park | <input type="checkbox"/> |

| Environmental Impact Assessment | ✓ |
|---|--------------------------|
| Screening requests only where a specific historic environment issue has been identified following initial assessment by the decision-maker. The issue in question should be made clear. | <input type="checkbox"/> |
| Scoping requests and Environmental Statements produced in connection for a development proposal that requires Environmental Impact Assessment. N.B. in practice Historic Environment Scotland will also be consulted on the related development proposal. | <input type="checkbox"/> |

| Planning and Development | ✓ |
|---|--------------------------|
| Applications for conservation area consent (demolition of an unlisted building in a conservation area) | <input type="checkbox"/> |
| Applications for listed building consent for demolition | <input type="checkbox"/> |
| Applications for listed building consent by planning authorities | <input type="checkbox"/> |
| Applications for listed building consent for alterations to A and B listed buildings | <input type="checkbox"/> |
| Development which may affect a category A listed building or its setting | <input type="checkbox"/> |
| Development which may affect a scheduled monument or its setting | <input type="checkbox"/> |
| Development which may affect a site included on the inventory of gardens and designed landscapes in Scotland | <input type="checkbox"/> |
| Non-Householder Development which may affect an inventory battlefield | <input type="checkbox"/> |
| Non-Householder Development which may affect a World Heritage Site | <input type="checkbox"/> |
| Development affecting the preservation objectives of a historic marine protected area | <input type="checkbox"/> |
| Development of land which is situated within 800 metres from any Royal Palace or Park, and might affect the amenities of that Palace or Park. | <input type="checkbox"/> |

| Other | ✓ |
|--|--------------------------|
| Marine licence applications (for development that may affect designated heritage assets) | <input type="checkbox"/> |
| Dangerous building notices | <input type="checkbox"/> |

APPENDIX 2

HISTORIC ENVIRONMENT LEGISLATION AND POLICY

1. Historic Environment Scotland Act 2014 ('the 2014 Act'). The 2014 Act established Historic Environment Scotland as a Non-departmental Public Body which took over the functions of Historic Scotland and the Royal Commission on Ancient and Historical Monuments of Scotland.
2. The 2014 Act set out Historic Environment Scotland's role and legal status including changes in processes for the designation of monuments and buildings (scheduling and listing) and for consents relating to scheduled monuments, listed buildings and conservation areas. A right of appeal against certain decisions by Historic Environment Scotland was also introduced.
3. The Act amended the following legislation:
 - Ancient Monuments and Archaeological Areas Act 1979;
 - Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997;
 - Environmental Assessment (Scotland) Act 2005; and
 - Marine (Scotland) Act 2010.
4. An overview of these changes can be found below.
5. The Regulations set out further details of these processes. They are:
 - The Scheduled Monument Consent Procedure (Scotland) Regulations 2015 [2015/229];
 - The Scheduled Monuments (Notification and Publication) (Scotland) Regulations 2015 [2015/230];
 - The Scheduled Monuments (Appeals) (Scotland) Regulations 2015 [2015/231];
 - The Scheduled Monuments (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2015 [2015/232];
 - The Town and Country Planning (Appeals) (Scotland) Regulations 2013 as amended by The Town and Country Planning (Appeals) (Scotland) Amendment Regulations 2015 [2015/233];
 - The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Amendment Regulations 2015 [2015/236];
 - The Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015 [2015/237];
 - The Planning (Listed Buildings Consent and Conservation Areas) (Urgent Works to Crown Land) (Scotland) Regulations 2015 [2015/240];
 - The Listed Buildings (Notification and Publication) (Scotland) Regulations 2015 [2015/241]; and
 - The Planning (Listed Buildings Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 [2015/243].
6. In addition, the following Orders make some other relevant changes, commence relevant provisions of the Historic Environment Scotland Act 2014 and deal with transitional arrangements:
 - The Historic Environment Scotland (Ancillary Provision) Order 2015;

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- The Historic Environment Scotland Act 2014 (Commencement No.3) Order 2015;
 - The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2015; and
 - The Historic Environment Scotland Act 2014 (Saving, Transitional and Consequential Provisions) Order 2015.
7. The Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015 amended a number of pieces of legislation. The impact of this was that where Historic Scotland previously acted as a statutory consultee on behalf of Scottish Ministers, Historic Environment Scotland will carry out that function under its own authority from 1 October 2015.
 8. These regulations provide that Historic Environment Scotland will be a named statutory consultee on applications for listed building consent and conservation area consent and on planning applications affecting certain aspects of the historic environment. The Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015 also provide that Historic Environment Scotland is a key agency for development planning, a consultation authority for Strategic Environmental Assessment (SEA) and a consultation body in its own right on a number of pieces of legislation for Environmental Impact Assessment (EIA) in Scotland.

DESIGNATION

Changes made by the Historic Environment Scotland Act 2015

1. Historic Environment Scotland has statutory duty to compile, maintain and publish the Schedule (of Ancient Monuments) and the List (of buildings of special architectural or historic interest), the Inventory of historic battlefields and the Inventory of gardens and designed landscapes.

Changes made by the Scheduling Regulations

2. The Scheduling Regulations include:
 - procedures for Historic Environment Scotland to formally notify the owner/occupier and the relevant planning authority when a change is made to the Schedule; and
 - the requirement to publish the Schedule on the internet and make it available for public inspection at our principal office.

Changes made by the Listing Regulations

3. The Listing Regulations include:
 - procedures for Historic Environment Scotland to formally notify the owner/occupier and the relevant planning authority when a change is made to the List. This procedure was previously carried out by the planning authority; and
 - the requirement to publish the List on the internet and make it available for public inspection at our principal office.

HISTORIC ENVIRONMENT SCOTLAND'S ROLE IN THE PLANNING SYSTEM

4. Historic Environment Scotland is named as a key agency for development planning.
5. Historic Environment Scotland is named as a statutory consultee in the planning system.
6. In both cases, Historic Scotland was not previously named because the agency shared the legal identity of Scottish Ministers
7. Historic Environment Scotland is a named consultation body under a range of Environmental Impact Assessment regulations. Planning authorities will need to make their own arrangements for consulting Historic Environment Scotland under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 on scoping requests and Environmental Statements. Historic Scotland was previously consulted on Planning Environmental Impact Assessment cases through the Scottish Government's Planning Decisions Team. This ceased with the creation of Historic Environment Scotland.

SCHEDULED MONUMENT CONSENT

Changes made to the Ancient Monuments and Archaeological Areas Act 1979 by the Historic Environment Scotland Act 2014

8. Historic Environment Scotland, rather than Scottish Ministers, will determine applications for scheduled monument consent unless Scottish Ministers have called in the case for their own determination.
9. The administrative arrangement whereby applicants were given a provisional view on the outcome of their application has ceased. Applicants will instead be able to appeal decisions to Scottish Ministers.
10. Historic Environment Scotland must publish all applications for scheduled monument consent and the decisions taken on those applications. These will be published online.
11. The regulations specify the nature of the decision notice which Historic Environment Scotland must serve on an applicant and every person who has made representations to them.
12. Scottish Ministers have a new power to call-in and determine applications for scheduled monument consent. Historic Environment Scotland will notify Scottish Ministers when granting consent would allow a greater level of intervention than the minimum level of intervention that is consistent with conserving what is culturally significant in the monument
13. Applications for scheduled monument consent for works to properties that Historic Environment Scotland cares for on behalf of Scottish Ministers will be determined through the same scheduled monument consent process.
14. The regulations introduce a new requirement to apply to vary or discharge conditions attached to scheduled monument consents. Decisions on such applications must be published, and can be subject to appeal if the application is refused, part-granted/part-refused, granted with additional condition(s).

LISTED BUILDING CONSENT AND CONSERVATION AREA CONSENT

15. The Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 introduce a range of changes to the process of applying for and determining applications for listed building consent and conservation area consent. The regulations revoke and replace the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987.
16. Requirement to consult Historic Environment Scotland: prior to 1 October 2015 there was no statutory requirement to consult Historic Scotland on any application for listed building consent or conservation area consent. The Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 require planning authorities to consult Historic Environment Scotland before granting or refusing applications for listed building consent or conservation area consent.
17. Notification to Scottish Ministers: prior to 1 October 2015, there was a requirement for planning authorities to notify Scottish Ministers (through Historic Scotland) when they were minded to grant listed building consent, for demolitions, for alterations to category A and B listed buildings or for conservation area consent. From October 2015, planning authorities are required to notify Scottish Ministers where they are minded to grant consent only if Historic Environment Scotland has objected to such applications.
18. As a result of this change, the 'Removal of Duty to Notify' Directions in place with many local authorities are no longer required and are revoked for applications made from 1 October 2015.
19. The Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 (regulation 11) make provision for non-disclosure of security information in certain circumstances without affecting the validity of an application.
20. Regulation 14 allows for electronic communications subject to certain conditions.
21. Regulation 6 introduces a requirement for applications for listed building consent to be accompanied by access statements setting out how disabled access has been taken into account.
22. Applications by planning authorities: prior to October 2015, applications for listed building consent and conservation area consent by planning authorities were made to Scottish Ministers. In practice these applications were initially processed in the same way as applications from a third party by the planning authority but were sent to Historic Scotland, acting on behalf of Scottish Ministers, to grant or refuse consent. From 1 October 2015, applications for listed building and conservation area consent by planning authorities are treated in the same way as any other application made by a third party, subject to different consultation requirements
23. Recording: until 1 October 2015, as part of the authorisation of a listed building consent application or conservation area consent for demolition, applicants were required (under section 7(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997) to give the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) notice of any proposal to execute works for the demolition. A period of at least three months following the grant of listed building or conservation area consent was then required before the commencement of works, to allow this recording work to be carried out. The responsibility for carrying out recording in these circumstances or confirming that they do not wish to record the building has now passed to Historic Environment Scotland.

APPEALS

Changes made by the 2015 Appeal Regulations

24. The Scheduled Monuments (Appeals) (Scotland) Regulations 2015 include procedures for a number of new rights of appeal to Scottish Ministers introduced by the Historic Environment Scotland Act 2014 against:
- inclusion of a monument on the Schedule;
 - amendment of an entry in the Schedule relating to a monument;
 - refusal of an application for scheduled monument consent;
 - granting of an application for scheduled monument consent subject to conditions;
 - refusal of an application for variation or discharge of conditions (related to a scheduled monument consent application);
 - granting of an application for variation or discharge of conditions (related to a scheduled monument consent application) subject to conditions;
 - refusal of an application for subsequent approval required by a condition to which a scheduled monument consent is subject; and
 - failure to determine scheduled monument consent or variation thereof within a two-month period.
25. Note that these rights only apply to applications made for scheduled monument consent and decisions on designations made from 1 October 2015 and are not retrospective.
26. The Scheduled Monuments (Appeals) (Scotland) Regulations 2015 include provisions for appeals against scheduled monument enforcement notices to be made to Scottish Ministers rather than to the Sheriff.
27. The Town and Country Planning (Appeals) (Scotland) Regulations 2013 include procedures for a number of new rights of appeal to Scottish Ministers introduced by the Historic Environment Scotland Act 2014, namely to include provision for appeals to Scottish Ministers against:
- inclusion of a building on the List; and
 - amendment of an entry on the List relating to a building.
28. Note that these rights only apply to decisions on designations made from 1 October 2015 and are not retrospective.

Changes made by the Scheduled Monuments (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2015 and the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Amendment Regulations 2015

29. The regulations make provisions for the determination of appeals against listing, scheduling and scheduled monument consent by Scottish Ministers.

APPENDIX 3

EXEMPTION FROM DEMOLITION CONTROL IN CONSERVATION AREAS

Extract from SDD Circular No 17/1987 – New provisions and revised guidance relation to Listed Buildings and Conservation Areas

Note that this Direction still applies, but formed part of the otherwise redundant document (SDD Circular No. 17/1987):

ANNEX IV

EXEMPTION FROM DEMOLITION CONTROL IN CONSERVATION AREAS

Direction

The Secretary of State hereby directs, in pursuance of his powers under section 262A(4) of the 1972 Act, that section 262A (control of demolition in conservation areas) shall not apply to:

- i. Any building with a total cubic content not exceeding 115 cubic metres or any part of such building, and for this purpose ‘building’ does not include any part of a building;
- ii. Any gate, wall, fence or railing which is less than 1 metre high where abutting on a road used by vehicular traffic or on an open space or 2 metres high in any other case;
- iii. Any temporary buildings erected on land in, on, over or under which operations (except mining operations) are being or have been carried out and required in connection with those operations;
- iv. Any building erected for the purposes of agriculture or forestry since 1 January 1914;
- v. Any part of a building erected since 1 January 1914 and used for an industrial process, provided that such part (taken with any other part which may have been demolished) does not exceed 10% of the cubic content of the original building (as ascertained by external measurement) or 500 square metres of floor space, whichever is the greater;
- vi. Any building required to be demolished by virtue of a discontinuance order made under section 49 of the Town and Country Planning (Scotland) Act 1972;
- vii. Any building required to be demolished by virtue of any provision of an agreement made under section 50 of the Town and Country Planning (Scotland) Act 1972;
- viii. Any building in respect of which the requirements of an effective enforcement notice served under section 84 or section 92 of the Town and Country Planning (Scotland) Act 1972 require its demolition, in whole or in part, however expressed;
- ix. Any building required to be demolished by virtue of condition of a planning permission granted under section 26 of the Town and Country Planning (Scotland) Act 1972;

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- x. Any building included in an operative clearance order or compulsory purchase order made under Part III of the Housing (Scotland) Act 1966 when the order was made prior to the designation of the conservation area;
 - xi. Any building which is the subject of a demolition order under Part VI of the Housing (Scotland) Act 1987 when the order was made prior to the designation of the conservation area;
 - xii. Any building included in an operative compulsory purchase order made under Part I of the Housing (Scotland) Act 1969 which is to be demolished in pursuance of a housing treatment area resolution under section 4 of that Act when the order was made prior to the designation of the conservation area; and
 - xiii. Any building included in an operative compulsory purchase order made under Part II of Schedule 8 to the Housing (Scotland) Act 1987 which is to be demolished in pursuance of a final housing action area resolution under Part I of Schedule 8 to that Act when the order was made prior to the designation of the conservation area.

The previous direction by the Secretary of State under these powers exempting certain classes of building from demolition control, which was contained in SDD Circular No 28/1980 dated 1 October 1980, is hereby withdrawn.

Guidance

Whereas Circular 28/1980 defined a number of the exempt classes by cross-reference to the General Development Order, the new direction is for simplicity self-contained. Planning authorities will note that there is no category of exemption for demolition within the curtilage of a dwellinghouse as such, but in practice much curtilage demolition will be exempt under the size criterion outlined in paragraph (i). The exemptions for agricultural, forestry and industrial buildings have also been limited by date of construction.

The exemptions set out in paragraphs (vi) – (xiii) are essentially identical to those in paragraphs (vii) – (xiv) of Circular 28/1980, with references updated where necessary to take account of the consolidating Housing (Scotland) Act 1987.



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HISTORIC
ENVIRONMENT
SCOTLAND

ÀRAINNEACHD
EACHDRAIDHEIL
ALBA

Historic Environment Scotland
Longmore House
Salisbury Place
Edinburgh EH9 1SH

Telephone 0131 668 8716
Email HMEenquiries@hes.scot
www.historicenvironment.scot

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