



Historic Environment (Amendment) (Scotland) Act 2011

2011 asp 3

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th January 2011 and received Royal Assent on 23rd February 2011

An Act of the Scottish Parliament to make provision amending certain aspects of the law relating to ancient monuments and listed buildings, including provision in relation to unauthorised works, powers of enforcement in connection with such works, offences and fines, powers of entry to ancient monuments, the control and management of certain ancient monuments, and liability for the expenses of urgent works on listed buildings; to make provision for the creation of inventories of gardens and designed landscapes and of battlefields; to provide for grants and loans in respect of the development and understanding of matters of historic and other interest; and for connected purposes.

PART 1

AMENDMENT OF THE HISTORIC BUILDINGS AND ANCIENT MONUMENTS ACT 1953

1 Recovery of grants for repair, maintenance and upkeep of certain property

- (1) Section 4A of the 1953 Act (recovery of grants under section 4) is amended in accordance with this section.
- (2) In subsection (3), at the beginning, insert “ Subject to subsection (3A) below, ”.
- (3) After subsection (3) insert—

“(3A) Where a condition referred to in subsection (3) above specifies, or makes provision for calculating, the amount recoverable in the event of a condition being contravened or not complied with, that amount is the amount recoverable under subsection (3) in respect of the contravention or failure to comply with the condition.”.
- (4) In subsection (4), at the beginning, insert “ Subject to subsection (4A) below, ”.
- (5) After subsection (4) insert—

Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Amendment) (Scotland) Act 2011. (See end of Document for details)

“(4A) Where a condition referred to in subsection (3) above specifies, or makes provision for calculating, the amount recoverable in the event of a disposal by the grantee of the relevant interest, that amount is the amount recoverable under subsection (4) above in respect of the disposal.”.

Commencement Information

II [S. 1](#) in force at 30.6.2011 by [S.S.I. 2011/174](#), [art. 2](#), [Sch.](#)

PART 2

MODIFICATIONS OF THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979

Control of works affecting scheduled monuments

2 Control of works affecting scheduled monuments

In section 2 of the 1979 Act (control of works affecting scheduled monuments)—

- (a) in paragraph (a) of subsection (3), the word “written” is repealed,
- (b) after that subsection insert—

“(3A) If—

- (a) works to which this section applies have been executed without being authorised under this Part; and
- (b) the Scottish Ministers grant consent for the retention of the works,

the works are authorised under this Part of this Act from the grant of the consent.

(3B) References in this Act to scheduled monument consent include consent under subsection (3A) above.”.

Commencement Information

I2 [S. 2](#) in force at 1.12.2011 by [S.S.I. 2011/372](#), [art. 2](#), [Sch.](#)

Defences

3 Offences under sections 2, 28 and 42: modification of defences

- (1) The 1979 Act is amended in accordance with this section.
- (2) In section 2(8), for the words “prove that” substitute “show that, before executing, causing the execution of or, as the case may be, permitting the execution of the works —
 - (a) he had taken all reasonable steps to find out whether there was a scheduled monument within the area affected by the works, and”.

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- (3) In section 28(1) (offence of damaging certain ancient monuments)—
 - (a) for the word “lawful” substitute “ reasonable ”,
 - (b) after “monument”, where it first occurs, insert “ shall be guilty of an offence if the person ”,
 - (c) in paragraph (a), for the words “knowing that it is” substitute “ knew or ought to have known that it was ”,
 - (d) in paragraph (b)—
 - (i) for the word “intending” substitute “ intended ”,
 - (ii) for the word “being” substitute “ was ”,
 - (e) the words “shall be guilty of an offence” are repealed.
- (4) In section 42 (restrictions on use of metal detectors)—
 - (a) in subsection (6) for the word “prove” substitute “ show ”,
 - (b) in subsection (7)—
 - (i) for the words “prove that he had taken all reasonable precautions” substitute “show that—
 - (a) he had taken all reasonable steps”,
 - (ii) for the words “and did not believe that it was” substitute “; and
 - (b) he did not know and had no reason to believe that that place was a protected place”.

Commencement Information

I3 [S. 3](#) in force at 1.12.2011 by [S.S.I. 2011/372](#), [art. 2](#), [Sch.](#)

Fines

4 Fines: increases and duty of court in determining amount

- (1) The 1979 Act is amended in accordance with this section.
- (2) In section 2 (control of works affecting scheduled monuments)—
 - (a) in subsection (10) for “the statutory maximum” substitute “ £50,000 ”,
 - (b) after that subsection insert—

“(10A) In determining the amount of any fine to be imposed on a person under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.”.
- (3) In section 28 (offence of damaging certain ancient monuments)—
 - (a) in subsection (4) for “the statutory maximum” substitute “ £50,000 ”,
 - (b) after that subsection add—

“(5) In determining the amount of any fine to be imposed on a person under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.”.

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Commencement Information

I4 [S. 4](#) in force at 1.12.2011 by [S.S.I. 2011/372](#), art. 2, [Sch.](#)

Powers of entry

5 Powers of entry to inspect condition of scheduled monument

In section 6(1) of the 1979 Act (powers of entry for inspection of scheduled monument with a view to ascertaining its condition), for “and” substitute “; and such power may, in particular, be exercised with a view to ascertaining—”.

Commencement Information

I5 [S. 5](#) in force at 30.6.2011 by [S.S.I. 2011/174](#), art. 2, [Sch.](#)

Works affecting scheduled monuments: enforcement

6 Works affecting scheduled monuments: enforcement

(1) After section 9 of the 1979 Act insert—

“Scheduled monument enforcement notices

9A Power to issue scheduled monument enforcement notice

- (1) Where it appears to the Scottish Ministers that—
 - (a) any works have been, or are being, executed to a scheduled monument or to land in, on or under which there is a scheduled monument, and
 - (b) the works are such as to involve a contravention of section 2(1) or (6),
 they may, if they consider it expedient having regard to the effect of the works on the character of the monument as one of national importance, serve a notice under this section (in this Act referred to as a “scheduled monument enforcement notice”).
- (2) A scheduled monument enforcement notice must specify the alleged contravention and must (either or both)—
 - (a) specify any works falling within subsection (1) which the Scottish Ministers require to cease,
 - (b) require steps falling within subsection (3) and specified in the notice to be taken.
- (3) Those steps are—
 - (a) for restoring the monument or land to its former state,
 - (b) if the Scottish Ministers consider that restoration to its former state would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider are required to alleviate in a manner acceptable to them the effect

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- of the works which were carried out without scheduled monument consent, or
- (c) for bringing the monument or land to the state it would have been in if the conditions of any scheduled monument consent for the works had been complied with.
- (4) In considering whether restoration is undesirable under subsection (3)(b), the Scottish Ministers are to have regard to the desirability of preserving—
- (a) the national importance of the monument,
- (b) its features of historical, architectural, traditional, artistic or archaeological interest.
- (5) Where further works of a kind mentioned in subsection (3)(b) have been carried out on a monument or land, scheduled monument consent is treated as having been granted in respect of the works carried out on that monument or land.

9B Scheduled monument enforcement notices: further provisions

- (1) A scheduled monument enforcement notice—
- (a) must specify the date on which it is to take effect and, subject to section 9C(3), takes effect on that date, and
- (b) must specify the period (the “period for compliance”) within which—
- (i) any works required to cease must cease,
- (ii) any steps required to be taken must be taken,
- and may specify different periods for different works or steps.
- (2) Where different periods apply to different works or steps, references in this Act to the period for compliance with a scheduled monument enforcement notice, in relation to any works or step, are to the period within which the works are required to cease or the step is required to be taken.
- (3) The date specified in the notice under subsection (1)(a) must be at least 28 days after the date on which the notice is served.
- (4) A copy of a scheduled monument enforcement notice must be served—
- (a) on the owner, the lessee and the occupier of the monument to which it relates and of the land in, on or under which the monument is situated,
- (b) on any other person having an interest in the monument or land, being an interest which in the opinion of the Scottish Ministers is materially affected by the notice.
- (5) The Scottish Ministers may, at any time—
- (a) withdraw a scheduled monument enforcement notice (without prejudice to their power to issue another), or
- (b) waive or relax any requirement of such a notice and, in particular, extend the period for compliance.
- (6) The Scottish Ministers must, immediately after exercising the powers conferred by subsection (5), give notice of the exercise to every person who has been served with a copy of the scheduled monument enforcement notice or would, if the notice were reissued, be served with a copy of it.