SCOTTISH STATUTORY INSTRUMENTS

2015 No. 231

ANCIENT MONUMENTS

The Scheduled Monuments (Appeals) (Scotland) Regulations 2015

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CONTENTS

PART 1
Preliminary

1. Citation, commencement and application
2. Interpretation

PART 2
Appeals under section 4B of the Act

3. Notice of appeal
4. Notice to owners
5. Intimation to Historic Environment Scotland
6. Notification to interested parties
7. Publication of appeal documents

PART 3
Procedure for determination

8. Determination without further procedure
9. Opt-in notice to interested parties
10. Decision as to further procedure
11. Pre-examination meetings
12. Written submissions
13. Site inspections
14. New evidence

PART 4
Appeals under sections 9C of the Act

15. Statement of appeal
16. Intimation of appeal to Historic Environment Scotland
17. Notification to other parties

PART 5
Appeals under section 1C of the Act

18. Notice of appeal

PART 6
Called-in applications

19. Called-in applications

PART 7
General

20. Non-delegated appeals
21. National security
22. Further copies of documents etc.
23. Appointment of assessor
24. Notice of decision
25. Electronic communications

SCHEDULE 1 — Hearing Session Rules
SCHEDULE 2 — Inquiry Session Rules
SCHEDULE 3 — Notices under regulation 4
PART 1 — Notice for service on owner of the building
PART 2 — Notice for publication in local newspaper

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1E, 3C, 4B(3), 4D, 9C(3A), 9CB and 23B of the Ancient Monuments and Archaeological Areas Act 1979(**a**) and all other powers enabling them to do so.

PART 1

Preliminary

Citation, commencement and application

1.—(1) These Regulations may be cited as the Scheduled Monuments (Appeals) (Scotland) Regulations 2015 and come into force on 1st October 2015.

(2) These Regulations, other than Parts 4 to 6, apply to appeals under—

(**a**) 1979 c.46. Sections 1E, 3C, 4B, 4D were respectively inserted by paragraphs 32, 35 and 33 of schedule 2 to the Historic Environment Scotland Act 2014 (asp 19) ("the 2014 Act). Section 23B was inserted by section 21 of the 2014 Act. Section 9C was inserted by section 6 of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3) and is amended by paragraph 19 of schedule 2 to the 2014 Act. Section 9CB was inserted by paragraph 20 of schedule 2 to the 2014 Act.

(a) section 4B(2) of the Act (appeal against refusal of, or conditional consent to, applications for scheduled monument consent or against refusal of approval required by a condition); and

(b) section 4B(3) of the Act (appeal in default of decision on application for scheduled monument consent or for approval required by a condition).

(3) These Regulations apply in accordance with regulation 15(6) to appeals under section 9C of the Act (appeal against scheduled monument enforcement notice) made in respect of a scheduled monument enforcement notice served on or after 1st October 2015.

(4) These Regulations apply in accordance with regulation 18(4) to appeals under section 1C of the Act (appeal against inclusion etc. in schedule of monuments).

(5) These Regulations apply in accordance with regulation 19 to applications referred to the Scottish Ministers following a direction under section 3B(1) of the Act (referral of certain applications to the Scottish Ministers).

Interpretation

2. In these Regulations—

"the Act" means the Ancient Monuments and Archaeological Areas Act 1979;

"appellant" means the person making an appeal under section 1C, 4B or 9C of the Act, as the case may be;

"application" means, in the case of an appeal, the application to which the appeal relates;

"appointed person" subject to regulations 19 and 20, means a person appointed under paragraph 1 of Schedule 1A to the Act (determination of certain appeals by person appointed by the Scottish Ministers) to determine an appeal instead of the Scottish Ministers;

"decision notice" means the notice given by Historic Environment Scotland under paragraph 3(4) of Schedule 1 to the Act (applications for scheduled monument consent) of the decision on the application to which the appeal relates;

"hearing session" means a hearing held or to be held into matters specified in a procedure notice given under rule 1(1) of the Hearing Session Rules;

"Hearing Session Rules" means the rules set out in Schedule 1;

"Historic Environment Scotland's response" has the meaning given in regulation 5(2)(a) or 16(2)(a), as the case may be;

"inquiry session" means a local inquiry held or to be held under—

(a) section 23A of the Act (local inquiries); or

(b) paragraph 6 of Schedule 1A to the Act (determination of certain appeals by person appointed by the Scottish Ministers),

into matters specified in a procedure notice given under rule 1(1) of the Inquiry Session Rules;

"Inquiry Session Rules" means the rules set out in Schedule 2;

"interested party" means—

(a) in the case of an appeal under section 1C of the Act any person (other than the appellant) who is the owner, tenant or occupier of the monument to which the appeal relates;

(b) in the case of an appeal under section 4B of the Act any person from whom Historic Environment Scotland received representations (which were not subsequently withdrawn) in connection with the application;

(c) in the case of an appeal under section 9C of the Act any person given notice of the appeal in accordance with regulation 17(1) and from whom representations were received (and not subsequently withdrawn); and

(d) in the case of an application referred to the Scottish Ministers following a direction under section 3B of the Act, any person from whom Historic Environment Scotland received

representations (which were not subsequently withdrawn) in connection with the application;

"person" includes authorities and other bodies;

"procedure notice" means a notice given (whether separately or in combination) under regulation 12(1), rule 1(1) of the Hearing Session Rules or rule 1(1) of the Inquiry Session Rules;

"rule" means a rule set out in Schedule 1 or 2 to these Regulations; and

"specified matters" are in relation to a particular hearing session or inquiry session, those matters which are set out in the procedure notice.

PART 2

Appeals under section 4B of the Act

Notice of appeal

3.—(1) An appeal to the Scottish Ministers under section 4B of the Act is to be made by giving notice in writing in accordance with this regulation.

(2) The period prescribed for the purposes of section 4B(3) of the Act is the period of two months after the validation date.

(3) The notice of appeal must be served on the Scottish Ministers within the period of three months beginning with, in the case of an appeal under—

(a) section 4B(2) of the Act, the date of the decision notice; and

(b) section 4B(3) of the Act, the date of expiry of—

(i) the period of two months after the validation date; or

(ii) such longer period as may be agreed between the applicant and Historic Environment Scotland under section 4B(3) of the Act.

(4) The notice of appeal (on a form obtained from the Scottish Ministers) must include—

(a) the name and address of the appellant;

(b) the date and the reference number assigned by Historic Environment Scotland to the application in respect of which the appeal is made;

(c) the name and address of the representative of the appellant (if any) and whether any notice or other correspondence which is required by these Regulations to be sent to the appellant should be sent to the representative instead of the appellant;

(d) a statement setting out full particulars of the appeal including a note of the matters which the appellant considers require to be taken into account in determining the appeal and by what, if any, procedure (or combination of procedures) mentioned in regulation 10(4) the appellant considers the appeal should be conducted; and

(e) where the appeal is made under section 4B(2) of the Act, a copy of the decision notice.

(5) Subject to paragraph (6)—

(a) all matters which the appellant intends to raise in the appeal must be set out in the notice of appeal or in the documents which accompany the notice of appeal; and

(b) all documents, materials and evidence which the appellant intends to rely on in the appeal must accompany the notice of appeal.

(6) In addition to matters set out in the notice of appeal and documents which accompany the notice of appeal, the appellant may raise matters and submit further documents, materials or evidence only in accordance with and to the extent permitted by regulations 5, 6 and 12, the Hearing Session Rules and the Inquiry Session Rules.

(7) An appeal under section 4B of the Act is not to be entertained by the Scottish Ministers unless it is accompanied by a certificate required under regulation 4.

(8) In this regulation "validation date" means—

(a) in the case of an application for scheduled monument consent, the date on which the last of the items or information required to be contained in or accompany the application in accordance with regulation 3 of the Scheduled Monument Consent Procedure (Scotland) Regulations 2015 is received by Historic Environment Scotland;

(b) in the case of an application for the variation or discharge of conditions to which a scheduled monument consent is subject, the date on which the last of the items or information required to be contained in or accompany the application in accordance with regulation 4 of those Regulations is received by Historic Environment Scotland; and

(c) in any other case, the date on which the application is received by Historic Environment Scotland.

Notice to owners

4.—(1) The appellant is to give notice in the form set out in Part 1 of Schedule 3 to any person (other than the appellant) who at the beginning of the prescribed period is the owner of the monument to which the appeal relates.

(2) Where the appellant is unable to give notice to every person (other than the appellant) who at the beginning of the prescribed period was the owner of the monument to which the appeal relates, the appellant must publish a notice in a local newspaper circulating in the locality in which the monument is situated.

(3) Notice under paragraph (2) is to—

(a) be in the form set out in Part 2 of Schedule 3; and

(b) be published before the beginning of the prescribed period.

(4) The appellant must issue a certificate stating, as appropriate—

(a) that at the beginning of the prescribed period no person (other than the appellant) was the owner of the monument to which the appeal relates;

(b) that the appellant has given notice to every person (other than the appellant) who at the beginning of the prescribed period was the owner of the monument to which the appeal relates; or

(c) that the appellant is unable to give notice to every such person.

(5) A certificate issued—

(a) under paragraph (4)(b) or (c) must state the name of every person to whom notice was given and the address at and date on which such notice was given;

(b) under paragraph (4)(c) must certify that—

(i) the appellant has taken reasonable steps (specifying them) to ascertain the names and addresses of those persons to whom the applicant has been unable to give notice; and

(ii) that a notice has been published in accordance with paragraph (2) (specifying the date and place of publication).

(6) In this regulation "prescribed period" means the period of 21 days ending with the date on which notice of appeal is given to the Scottish Ministers under section 4B of the Act.

Intimation to Historic Environment Scotland

5.—(1) The appellant must at the same time as giving the notice of appeal to the Scottish Ministers send to Historic Environment Scotland—

(a) a copy of the notice of appeal;

(b) a list of all documents, materials and evidence which the appellant intends to rely on in the appeal and which accompanied the notice of appeal in accordance with regulation 3(5)(b); and

(c) a copy of all documents, materials and evidence specified on such list which the appellant has not already provided to Historic Environment Scotland in connection with the application to which the appeal relates.

(2) Historic Environment Scotland must, not later than 21 days beginning with the date of receipt of notification of an appeal under paragraph (1), send to the Scottish Ministers and the appellant—

(a) a note ("Historic Environment Scotland's response") of the matters which Historic Environment Scotland consider require to be taken into account in determining the appeal and by what, if any, procedure (or combination of procedures) mentioned in regulation 10(4) Historic Environment Scotland wish the appeal to be conducted;

(b) a copy of the documents (other than those specified on the list mentioned in paragraph (1)(b)) which were before Historic Environment Scotland and which were taken into account in reaching their decision; and

(c) the conditions (if any) which Historic Environment Scotland presently consider should be imposed in the event that the Scottish Ministers or the appointed person, as the case may be, decide that permission be granted.

(3) The appellant may, within 14 days beginning with the date of receipt of Historic Environment Scotland's response, send to the Scottish Ministers and Historic Environment Scotland—

(a) comments on any matters raised in Historic Environment Scotland's response which had not been raised in the decision notice; and

(b) any documents, materials or evidence on which the appellant intends to rely in relation to such comments.

Notification to interested parties

6.—(1) Historic Environment Scotland must not later than 14 days following notification of the appeal under regulation 5(1) give notice of the appeal to each interested party.

(2) Notice under paragraph (1) is to—

(a) state the name of the appellant;

(b) in the case of an appeal under section 4B of the Act, include, a description of the works to which the appeal relates;

(c) include—

(i) the name of, or a brief description of, the monument to which the appeal relates; and

(ii) the postal address of the monument, or if the monument in question has no postal address, a description of the location of the monument;

(d) state that copies of any representations previously made to Historic Environment Scotland, other than representations which the interested party has asked to be treated as confidential, will be sent to the Scottish Ministers and the appellant and will be taken into consideration in the determination of the appeal;

(e) state that further representations may be made to the Scottish Ministers and include information as to how any representations may be made and by what date they must be made; and

(f) state how a copy of the notice of appeal and other documents related to the appeal may be inspected.

(3) An interested party may, within 14 days beginning with the date on which notice is given under paragraph (1), make representations in respect of the appeal to the Scottish Ministers.

(4) The Scottish Ministers are to send a copy of any representations received under paragraph (4) to the appellant and to Historic Environment Scotland and are to inform them how and by what date (being a date not less than 14 days after the date on which such copy is sent under this paragraph) they may make comments to the Scottish Ministers on such representations.

(5) The appellant and Historic Environment Scotland may, on or before that date, make comments on such representations to the Scottish Ministers.

Publication of appeal documents

7.—(1) Historic Environment Scotland must, in relation to an appeal, make copies of—

(a) the notice of appeal;

(b) Historic Environment Scotland's response and any comments sent under regulation 5(3)(a);

(c) the documents—

(i) specified on the list mentioned in regulation 5(1)(b);

(ii) sent in accordance with regulation 5(2)(b) and (3)(b);

(d) any notice given under regulation 6(1); and

(e) any representations or comments made under regulation 6(3) or (5),

available for inspection at an office of Historic Environment Scotland until such time as the appeal is determined.

(2) Historic Environment Scotland are until such time as the appeal is determined to afford to any person who so requests the opportunity to inspect and, where practicable, take copies of any such documents (or any part thereof).

PART 3

Procedure for determination

Determination without further procedure

8. Where the appointed person considers that no further representations are, or information is, required to enable the appeal to be determined, the appointed person may determine the appeal without further procedure.

Opt-in notice to interested parties

9.—(1) Where the appointed person does not determine the appeal without further procedure, the appointed person may (but is not required to) invite, by notice given in accordance with this regulation, any or all interested parties to confirm if they wish to participate in any further procedure.

(2) The notice given under paragraph (1) is to—

(a) state that if the interested party wishes to participate in any further procedure conducted in relation to the appeal they must send a notice ('an opt-in notice') to the appointed person informing the appointed person of that wish;

(b) include information as to how the opt-in notice may be given and specify the date (being not less than 14 days after the date on which the notice under paragraph (1) is given) on or before which the opt-in notice must be given to the appointed person; and

(c) inform the interested party that if they do not give an opt-in notice to the appointed person before that date they may lose the opportunity to participate in any further procedure.

(3) Where notice is given under paragraph (1) any reference in regulations 11 and 13 and in the Hearing Session Rules and Inquiry Session Rules to an interested party is to be treated as including only those interested parties who have given an opt-in notice to the appointed person in accordance with this regulation.

(4) In this regulation "opt-in notice" has the meaning given in paragraph (2)(a).

Decision as to further procedure

10.—(1) Where the appointed person does not determine the appeal without further procedure, the appointed person may determine the manner in which the appeal is to be conducted.

(2) The appointed person may determine at any stage of the appeal that further representations should be made or further information should be made available or provided to enable the appeal to be determined.

(3) Where the appointed person so determines, the appeal or a stage of the appeal is to be conducted by one of, or by a combination of, the procedures mentioned in paragraph (4).

(4) The procedures are—

(a) by means of written submissions;

(b) by the holding of one or more hearing sessions;

(c) by the holding of one or more inquiry sessions;

(d) by means of an inspection of the land to which the appeal relates.

(5) Where the appointed person considers that further representations should be made or further information should be made available or provided by means of—

(a) written submissions, regulation 12 applies;

(b) a hearing session, the Hearing Session Rules apply;

(c) an inquiry session, the Inquiry Session Rules apply;

(d) an inspection of the land, regulation 13 applies.

(6) Notices given under regulation 12(1), rule 1(1) of the Hearing Session Rules or rule 1(1) of the Inquiry Session Rules may be given separately or combined into a single notice.

Pre-examination meetings

11.—(1) The appointed person may hold a meeting ("a pre-examination meeting") to consider the manner in which the appeal or any stage of the appeal is to be conducted with a view to securing that the appeal or any stage of the appeal is conducted efficiently and expeditiously.

(2) The appointed person is to determine (and may subsequently vary) the date, time and place for the holding of a pre-examination meeting.

(3) The appointed person must give such notice of the holding of a pre-examination meeting and of the date, time and place where it is to be held (and any subsequent variation thereof) as may appear to the appointed person to be reasonable in the circumstances—

(a) where a pre-examination meeting is to be held in connection only with the conduct of a particular hearing session or inquiry session, to those persons entitled to appear at that hearing session or inquiry session; and

(b) in any other case, to the appellant, Historic Environment Scotland and any interested party.

(4) The appointed person is to determine the matters to be discussed and the procedure to be followed at the pre-examination meeting.

(5) In this regulation "pre examination meeting" has the meaning given in paragraph (1).

Written submissions

12.—(1) Where the appointed person has determined that further representations should be made or further information should be provided by means of written submissions, the appointed person may request such further representations or information and is to do so by giving written notice to that effect to—

(a) both the appellant and Historic Environment Scotland; and

(b) any other person from whom the appointed person wishes to receive further representations or information.

(2) The procedure notice given under paragraph (1) is to—

(a) set out the matters on which such further representations or information is requested;

(b) specify the date by which such further representations or information are to be sent to the appointed person; and

(c) state the name and address of any person to whom the procedure notice is given.

(3) Any further representations made or information provided in response to the procedure notice ("procedure notice response") are to be sent to the appointed person on or before the date specified for that purpose in the procedure notice and a copy of any procedure notice response is to be sent on or before that date to any other person to whom the procedure notice was given.

(4) Within a period of 14 days from receipt of a copy of the procedure notice response, any person to whom the procedure notice was given—

(a) may send comments to the appointed person in reply to the procedure notice response; and

(b) must, when doing so, send a copy of such comments to any other person to whom the procedure notice was given.

(5) A copy of any procedure notice response or any comments required to be sent to a person under this regulation is to be sent to the person at the address stated for that person in the procedure notice.

(6) In this regulation "procedure notice response" has the meaning given in paragraph (3).

Site inspections

13.—(1) The appointed person may at any time make—

(a) an unaccompanied inspection of the land to which the appeal relates; or

(b) an inspection of the land in the company of such of the persons notified under paragraph (3) as desire to attend the inspection.

(2) Where the appointed person intends to make an unaccompanied inspection, the appointed person is to inform the appellant and Historic Environment Scotland of such intention.

(3) Where the appointed person intends to make an accompanied inspection, the appointed person is to give such notice of the date and time of the proposed inspection as may appear to the appointed person to be reasonable in the circumstances to—

(a) the appellant;

(b) Historic Environment Scotland; and

(c) any interested party.

(4) The appointed person is not bound to defer an inspection if any person to whom notice was given under paragraph (3) is not present at the time appointed.

New evidence

14.—(1) If, after the conclusion of any further procedure conducted by virtue of regulation 10, the appointed person proposes to take into consideration any new evidence which is material to the determination of the appeal, the appointed person must not reach a decision on the appeal without

affording the appellant, Historic Environment Scotland and any other relevant party an opportunity of making representations on such new evidence.

(2) In this regulation—

"relevant party" means—

(a) where the new evidence relates to a specified matter considered at a hearing session or inquiry session, any person entitled to appear at that hearing session or inquiry session;

(b) where the new evidence relates to matters in respect of which further written representations or information was sought by a procedure notice under regulation 12, any person to whom such notice was sent.

PART 4

Appeals under sections 9C of the Act

Statement of appeal

15.—(1) The appellant must at the same time as giving notice of appeal to the Scottish Ministers under section 9C(2A) of the Act submit a statement ("statement of appeal") on a form obtained from the Scottish Ministers.

(2) The statement of appeal, in addition to specifying the grounds of appeal as required by section 9C(3A)(a) of the Act is to give the information specified in paragraph (3).

(3) The information is—

(a) all matters which the appellant intends to raise in the appeal;

(b) the name and address of the appellant;

(c) a copy of the scheduled monument enforcement notice against which the appeal is made;

(d) the name and address of the representative of the appellant (if any) and whether any notice or other correspondence which is required by these Regulations to be sent to the appellant should be sent to the representative instead of the appellant; and

(e) a note of the matters which the appellant considers require determination and by what, if any, procedure (or combination of procedures) mentioned in regulation 10(4) the appellant considers the appeal should be determined.

(4) The statement of appeal is to be accompanied by copies of all documents, materials and evidence which the appellant intends to rely on in the appeal.

(5) In addition to matters set out in the statement of appeal and the documents accompanying the statement of appeal, the appellant may raise matters only in accordance with and to the extent permitted by regulations 12 and 16, the Hearing Session Rules and the Inquiry Session Rules.

(6) The following provisions apply in relation to appeals under section 9C of the Act—

(a) this Part and Parts 1, 3 and 7 (other than regulation 23); and

(b) the Hearing Session Rules and the Inquiry Session Rules.

Intimation of appeal to Historic Environment Scotland

16.—(1) The appellant must at the same time as giving the notice of appeal to the Scottish Ministers send to Historic Environment Scotland a copy of—

(a) the notice of appeal;

(b) the statement of appeal; and

(c) all documents, materials and evidence which the appellant intends to rely on in the appeal and which accompanied the notice of appeal in accordance with regulation 15(4).

(2) Historic Environment Scotland must, not later than 21 days beginning with the date of receipt of notification of an appeal under paragraph (1), send to the Scottish Ministers and the appellant—

(a) a statement ("Historic Environment Scotland's response") incorporating a response to each ground of appeal and stating the matters which Historic Environment Scotland consider require determination and by what, if any, procedure (or combination of procedures) mentioned in regulation 10(4) Historic Environment Scotland wish the appeal to be conducted; and

(b) copies of documents which were before Historic Environment Scotland and which were taken into account in reaching its decision to issue the notice which is the subject of the appeal.

(3) The appellant may, within 14 days beginning with the date of receipt of Historic Environment Scotland's response, send to the Scottish Ministers and Historic Environment Scotland comments on any matters raised in Historic Environment Scotland's response.

(4) Historic Environment Scotland must until such time as the appeal is determined make copies of—

(a) the notice of appeal;

(b) Historic Environment Scotland's response and any comments made under paragraph (3); and

(c) documents which accompanied the notice of appeal or which were sent with the planning authority's response,

available for inspection at an office of Historic Environment Scotland and to afford any interested party who so requests an opportunity to inspect and, where practicable, to take copies of any such documents (or any part thereof).

Notification to other parties

17.—(1) Historic Environment Scotland must not later than 14 days following notification of the appeal under regulation 15 give notice of the appeal to each person (other than the appellant) on whom the scheduled monument enforcement notice was served.

(2) Notice under paragraph (1) is to—

(a) state the name of the appellant and the address of the land to which the appeal relates;

(b) describe the steps required by the notice to which the appeal relates;

(c) state that representations may be made to the Scottish Ministers and provide information as to how and by when such representations may be made;

(d) state where a copy of the notice of appeal and Historic Environment Scotland's response may be inspected.

(3) The period allowed for making representations is to be no less than 14 days from the date on which notice is given under paragraph (1).

PART 5

Appeals under section 1C of the Act

Notice of appeal

18.—(1) An appeal to the Scottish Ministers under section 1C of the Act is to be made by giving notice in writing in accordance with this regulation.

(2) The notice of appeal must be served on the Scottish Ministers within the period of three months beginning with the date of the notice given under section 1(6) of the Act of the inclusion

of a monument in the Schedule or the amendment of an entry in the Schedule relating to monument, as the case may be.

(3) The notice of appeal (on a form obtained from the Scottish Ministers) must include—

(a) the name and address of the appellant;

(b) the name and address of the representative of the appellant (if any) and whether any notice or other correspondence which is required by these Regulations to be sent to the appellant should be sent to the representative instead of the appellant;

(c) a statement setting out full particulars of the appeal including a note of the matters which the appellant considers require to be taken into account in determining the appeal and by what, if any, procedure (or combination of procedures) mentioned in regulation 10(4) the appellant considers the appeal should be conducted; and

(d) a copy of the notification given by virtue of the regulations made under section 1B(2)(c) of the Act.

(4) In relation to an appeal made under section 1C of the Act—

(a) this Part and Parts 1, 3 and 7, the Hearing Session Rules and the Inquiry Session Rules apply; and

(b) the following provisions of Part 2 apply as they apply to an appeal under section 4B of the Act—

(i) regulation 3(5) and (6);

(ii) regulation 5 (other than paragraph (2)(c)); and

(iii) regulations 6 (other than paragraph (2)(b)) and 7.

PART 6

Called-in applications

Called-in applications

19.—(1) This Part and Parts 1, 3 and 7, the Hearing Session Rules and the Inquiry Session Rules apply to an application referred to the Scottish Ministers following a direction under section 3B(1) of the Act (referral of certain applications to the Scottish Ministers) with the modifications specified in paragraph (2).

(2) The modifications are—

(a) references (other than in Part 1) to the appeal and the appellant are to be treated, respectively, as references to the application and the applicant;

(b) references to the appointed person—

(i) in Parts 3 and 7 (other than in regulation 23), rule 1(1) of the Hearing Session Rules and rule 1(1) of the Inquiry Session Rules are to be treated as references to the Scottish Ministers; and

(ii) in regulation 23, the Hearing Session Rules (other than in rule 1(1)) and the Inquiry Session Rules (other than in rule 1(1)) are to be treated as references to the person appointed to hold the hearing session or inquiry session, as the case may be; and

(c) in regulation 8 and 10(5), "considers"; in regulation 9(1) and 10(1), "does"; in regulation 10(3), "determines"; in regulation 11(2) and (4) and 13(3) and (4), "is"; in regulation 12(1), "has"; in regulation 12(1)(b), "wishes"; in regulation 13(2) and (3), "intends" and in regulation 14(1), "proposes" are respectively to be read as "consider", "do", "determine", "are", "have", "wish", "intend" and "propose".

PART 7

General

Non-delegated appeals

20.—(1) Parts 1, 3 and 7, the Hearing Session Rules and the Inquiry Session Rules apply to a non-delegated appeal as they apply to a delegated appeal with the modifications specified in regulation 19(2)(b) and (c).

(2) In this regulation—

"delegated appeal" means an appeal to the Scottish Ministers which falls to be determined by a person appointed by the Scottish Ministers for that purpose by virtue of powers contained in Schedule 1A to the Act;

"non-delegated appeal" means—

(a) a recalled appeal;

(b) an appeal within such classes of case as may be—

(i) for the time being prescribed; or

(ii) specified in directions given,

under paragraph 1(2) of Schedule 1A to the Act; and

"recalled appeal" means an appeal which is to be determined by the Scottish Ministers in accordance with a direction under paragraph 3(1) of Schedule 1A to the Act.

National security

21. The validity of an appeal is not affected by failure to disclose information as to—

(a) national security; and

(b) the measures taken, or to be taken, to ensure the security of any premises or property,

where the notice of appeal is accompanied by a written statement from the appellant that, in the opinion of the appellant, the information relates to the matters mentioned in paragraph (a) or (b) above, and that public disclosure of that information would be contrary to the national interest.

Further copies of documents etc.

22.—(1) The appointed person may require any person who has submitted documents, materials or evidence under these Regulations in connection with the appeal to—

(a) provide to the appointed person such number of additional copies of such of those documents, materials or evidence as the appointed person may specify;

(b) provide to such other persons as the appointed person may specify such copies or additional copies of any document, materials or evidence as the appointed person may specify.

(2) The appointed person may require Historic Environment Scotland to make copies of such documents, materials or evidence as the appointed person may specify available for inspection at an office of Historic Environment Scotland until such time as the appeal is determined and to afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any such documents, materials or evidence (or any part thereof) which, or a copy of which, has been sent to Historic Environment Scotland in accordance with this regulation.

Appointment of assessor

23.—(1) The Scottish Ministers may appoint a person to sit with the appointed person at a hearing session or inquiry session to advise the appointed person on such matters arising as the Scottish Ministers may specify ("an assessor") and where they do so they are to notify every

person entitled to appear at the inquiry session or hearing session, as the case may be, of the name of the assessor and of the matters on which the assessor is to advise the appointed person.

(2) Where an assessor has been appointed, the assessor may (and if so required by the appointed person, must), after the close of the hearing session or inquiry session, make a report in writing to the appointed person in respect of the matters on which the assessor was appointed to advise.

(3) In this regulation "assessor" has the meaning given in paragraph (1).

Notice of decision

24. The appointed person must—

(a) give notice of the decision to the appellant and to Historic Environment Scotland; and

(b) notify every person who has made (and did not subsequently withdraw) representations in respect of the appeal that a decision on the appeal has been made and where a copy of the notice of the decision is available for inspection.

Electronic communications

25.—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

(a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and

(b) the document transmitted by the electronic communication is—

(i) capable of being accessed by the recipient;

(ii) legible in all material respects; and

(iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communications is to be taken to have agreed—

(a) to the use of such communications for all purposes relating to the appeal which are capable of being carried out electronically; and

(b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.

(4) Deemed agreement under paragraph (3) subsists until that person gives notice to revoke the agreement.

(5) Notice of withdrawal of consent to the use of electronic communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(6) In this regulation—

"address" includes any number or address used for the purpose of such communications or storage;

"document" includes any notice, consent, agreement, decision, representation, statement, report or other information or communication;

"electronic communication" has the meaning given in section 15(1) of the Electronic Communications Act 2000(**a**);

"legible in all material respects" means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and

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(**a**) 2000 c.7. Section 15 was amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158.

"sent" includes served, submitted or given and cognate expressions are to be construed accordingly.

FIONA HYSLOP
A member of the Scottish Government

St Andrew's House,
Edinburgh
2nd June 2015

SCHEDULE 1

Regulation 2

Hearing Session Rules

Notice of hearing session and specified matters

1.—(1) Where the appointed person has determined that a hearing session should be held the appointed person is to give written notice to that effect to—

(a) the appellant;

(b) Historic Environment Scotland;

(c) any interested party who made representations in relation to specified matters; and

(d) any person who the appointed person wishes to make further representations or to provide further information on specified matters at the hearing session.

(2) The notice given under paragraph (1) is to specify the matters to be considered at the hearing session.

(3) Only specified matters are to be considered at the hearing session.

(4) A person given notice under paragraph (1) and who intends to appear at the hearing session must within 14 days of the date of such notice inform the appointed person in writing of that intention.

Appearances at hearing session

2. The persons entitled to appear at a hearing session are—

(a) the appellant;

(b) Historic Environment Scotland; and

(c) any other person who, in response to a procedure notice, has informed the appointed person of their intention to appear at the hearing session in accordance with rule 1(4).

Date and notification of hearing session

3.—(1) The date, time and place at which the hearing session is to be held is to be determined (and may subsequently be varied) by the appointed person.

(2) The appointed person is to give to those persons entitled to appear at the hearing session such notice of the date, time and place fixed for the holding of a hearing session (and any subsequent variation thereof) as may appear to the appointed person to be reasonable in the circumstances.

Service of hearing statements and documents

4.—(1) Where required to do so by notice given by the appointed person, a person entitled to appear at the hearing session must, by such date as is specified in the notice, send to—

(a) the appointed person—

(i) a hearing statement; and

(ii) where that person intends to refer to or rely on any documents when presenting their case a copy of every document (or the relevant part of a document) on the list of such documents comprised in that hearing statement; and

(b) the appellant and Historic Environment Scotland and to such other persons entitled to appear at the hearing session as the appointed person may specify in such notice—

(i) a hearing statement; and

(ii) where that person intends to refer to or rely on any documents when presenting their case a copy of every document (or the relevant part of a document) on the list comprised in that hearing statement which is not already available for inspection under regulation 7, 16(4) or 22(2) or paragraph (2) of this rule.

(2) Historic Environment Scotland are, until such time as the appeal is determined, to afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any hearing statement or other document (or any part thereof) which, or a copy of which, has been sent to them in accordance with this rule.

(3) Any person who has served a hearing statement in accordance with this rule must—

(a) when required by notice in writing from the appointed person provide such further information about the matters contained in the statement as the appointed person may specify; and

(b) at the same time send a copy of such further information to any other person on whom the hearing statement has been served.

(4) Different dates and different persons may be specified for the purposes of paragraph (1).

(5) In this rule, "hearing statement" means, and is comprised of—

(a) a written statement which fully sets out the case relating to the specified matters which a person proposes to put forward to a hearing session;

(b) a list of documents (if any) which the person putting forward such case intends to refer to or rely on; and

(c) a list of any other persons who are to speak at the hearing session in respect of such case, any matters which such persons are particularly to address and any relevant qualifications of such persons to do so.

Procedure at hearing

5.—(1) Except as otherwise provided in these Hearing Session Rules, the procedure at a hearing session shall be as the appointed person determines.

(2) The appointed person is, having considered any submission by the persons entitled to appear at the hearing session, to state at the commencement of the hearing session the procedure the appointed person proposes to adopt.

(3) Any person entitled to appear may do so on that person's own behalf or be represented by another person.

(4) Where there are two or more persons having a similar interest in the issues being considered at the hearing session, the appointed person may allow one or more persons to appear on behalf of some or all of any persons so interested.

(5) A hearing is to take the form of a discussion led by the appointed person and cross-examination is not permitted.

(6) The appointed person may proceed with a hearing session in the absence of any person entitled to appear at the hearing session.

(7) The appointed person may from time to time adjourn the hearing session and, if the date, time and place of the adjourned hearing session are announced before the adjournment, no further notice is required otherwise rule 3 applies as it applies to the variation of the date, time or place at which a hearing session is to be held.

SCHEDULE 2

Regulation 2

Inquiry Session Rules

Notice of inquiry session and specified matters

1.—(1) Where the appointed person has determined that an inquiry session is to be held the appointed person is to give written notice to that effect to—

(a) the appellant;

(b) Historic Environment Scotland;

(c) any interested party who made representations in relation to specified matters; and

(d) any person who the appointed person wishes to make further representations or to provide further information on specified matters at the inquiry session.

(2) The notice given under paragraph (1) is to specify the matters to be considered at the inquiry session.

(3) Only specified matters are to be considered at the inquiry session.

(4) A person given notice under paragraph (1) and who intends to appear at the inquiry session must within 14 days of date of such notice inform the appointed person in writing of that intention.

Appearances at inquiry session

2. The persons entitled to appear at the inquiry session are—

(a) the appellant;

(b) Historic Environment Scotland; and

(c) any other person who, in a response to a procedure notice, has informed the appointed person of their intention to appear at the inquiry session in accordance with rule 1(4).

Date and notification of inquiry

3.—(1) The date, time and place for the holding of the inquiry session is to be fixed (and may subsequently be varied) by the appointed person.

(2) The appointed person is to give to those persons entitled to appear at the inquiry session such notice of the date, time and place fixed for the holding of the inquiry session (and of any subsequent variation thereof) as may appear to the appointed person to be reasonable in the circumstances.

(3) The appointed person may require Historic Environment Scotland to take one or more of the following steps—

(a) not less than 14 days before the date fixed for the holding of the inquiry session, to publish—

(i) in one or more local newspapers circulating in the locality in which the land is situated; and

(ii) on a website,

such notices of the inquiry session as the appointed person may direct; or

(b) to serve notice of the inquiry session in such form and on such persons or classes of persons as the appointed person may specify.

Service of inquiry statements, documents and precognitions

4.—(1) Where required to do so by notice given by the appointed person, a person entitled to appear at the inquiry session must, by such date as is specified in the notice, send to—

(a) the appointed person—

(i) an inquiry statement;

(ii) a copy of every document (or the relevant part of a document) on the list of such documents comprised in that inquiry statement; and

(iii) a precognition in respect of any evidence to be given to the inquiry session by a person included on the list of witnesses comprised in that inquiry statement; and

(b) the appellant and Historic Environment Scotland and to such other persons entitled to appear at the inquiry session as the appointed person may specify in such notice—

(i) an inquiry statement; and

(ii) a copy of every document (or the relevant part of a document) and precognition sent to the appointed person under sub-paragraph (a)(ii) or (iii) and which is not already available for inspection under regulation 7, 16(4) or 22(2) or paragraph (2) of this rule.

(2) Historic Environment Scotland are, until such time as the appeal is determined, to afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any inquiry statement, precognition or other document (or any part hereof) which, or a copy of which, has been sent to them in accordance with this rule.

(3) A precognition must not, unless the appointed person otherwise so agrees, contain more than 2000 words.

(4) Different dates and different persons may be specified for the purposes of paragraph (1).

(5) In this rule—

"inquiry statement" means, and is comprised of—

(a) a written statement which contains particulars of the case relating to the specified matters which a person proposes to put forward to an inquiry session;

(b) a list of documents (if any) which the person putting forward such case intends to refer to, rely on or put in evidence; and

(c) a list of witnesses specifying the persons who are to give, or be called to give, evidence at the inquiry session, the matters in respect of which such persons are to give evidence and the relevant qualifications of such persons to do so; and

"precognition" means a written statement of the evidence which it is proposed that a witness will give to the inquiry session.

Procedure at inquiry session

5.—(1) Except as otherwise provided in these Inquiry Session Rules, the procedure at the inquiry session shall be as the appointed person determines.

(2) The appointed person is, having considered any submission by the persons entitled to appear at the inquiry session, to state at or before the commencement of the inquiry session the procedure which the appointed person proposes to adopt and in particular is to state—

(a) the order in which the specified matters are to be considered at the inquiry session; and

(b) the order in which the persons entitled to appear at the inquiry session are to be heard in relation to a specified matter (a different order may be chosen for different specified matters).

(3) Any person entitled to appear may do so on that person's own behalf or be represented by another person.

(4) Where there are two or more persons having a similar interest in the matter under inquiry, the appointed person may allow one or more persons to appear for the benefit of some or all persons so interested.

(5) Subject to paragraph (6), any person entitled to appear at the inquiry session is entitled to call evidence and to cross-examine persons giving evidence and to make closing statements.

(6) The appointed person may refuse to permit—

(a) the giving or production of evidence;

(b) the cross-examination of persons giving evidence; or

(c) the presentation of any other matter,

which the appointed person considers to be irrelevant or repetitious.

(7) If any person entitled to appear at the inquiry session fails to do so, the appointed person may proceed with the inquiry session at the appointed person's discretion.

(8) The appointed person may from time to time adjourn the inquiry session and, if the date, time and place of the adjourned inquiry session are announced before the adjournment, no further notice is be required, otherwise rule 3 applies as it applies to the variation of the date, time or place at which a inquiry session is to be held.

SCHEDULE 3

Regulation 4(1) and (3)

Notices under regulation 4

PART 1

Notice for service on owner of the building

SCHEDULED MONUMENT (APPEALS) (SCOTLAND) REGULATIONS 2015

Notice under regulation 4(1) of appeal under section 4B of the Ancient Monuments and Archaeological Areas Act 1979

Proposed works at [Note 1]

TAKE NOTICE

1. That appeal is being made to the Scottish Ministers by [Note 2]

*(i) against the decision of Historic Environment Scotland.

*(ii) on the failure of Historic Environment Scotland to give a decision on an application to them.

2. If you wish to make representations to the Scottish Ministers about the appeal, you should make them in writing not later than [Note 3] to [Note 4].

Signed ……..

*On behalf of ……...

Date ……..

*Delete where inappropriate

Note 1 - Insert address or location of monument and brief description of the proposed works.

Note 2 - Insert name of applicant.

Note 3 - Insert date. The date must not be earlier than 21 days after the date on which notice is given.

Note 4 - Insert address. The address is the same address to which the notice of appeal is sent.

PART 2

Notice for publication in local newspaper

SCHEDULED MONUMENT (APPEALS) (SCOTLAND) REGULATIONS 2015

Notice under regulation 4(2) of appeal under section 4B of the Ancient Monuments and Archaeological Areas Act 1979

Proposed works at [Note 1]

TAKE NOTICE

1. That appeal is being made to the Scottish Ministers by [Note 2]

*(i) against the decision of Historic Environment Scotland.

*(ii) on the failure of Historic Environment Scotland to give a decision on an application to them.

2. Representations about the appeal may be made by any owner of the monument. If you wish to make representations you should make them in writing not later than [Note 3] to [Note 4].

Signed ……..

*On behalf of ……...

Date ……..

*Delete where inappropriate

Note 1 - Insert address or location of monument and brief description of the proposed works.

Note 2 - Insert name of applicant.

Note 3 - Insert date. The date must not be earlier than 21 days after the date of publication of the notice.

Note 4 - Insert address. The address is the same address to which the notice of appeal is sent.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with appeals to the Scottish Ministers under sections 1C, 4B and 9C of the Ancient Monument and Archaeological Areas Act 1979 (c.46) ("the Act") These Regulations also apply in relation to the procedure for dealing with applications called-in for determination by the Scottish Ministers by virtue of a direction under section 3B of the Act.

Part 1 of the Regulations sets out how the Regulations apply to these various appeals and applications.

Part 2 of the Regulations makes provision in relation to the time period within which and how an appeal under section 4B must be made. Regulation 3 sets out the requirements for the form and content of the notice of appeal and the documents which must accompany such notice. Regulation 3(3) requires the notice of appeal to be given to the Scottish Ministers within three months of the date of Historic Environment Scotland's decision or of expiry of the period of two months from the validation date, which is defined in regulation 3(8). Regulation 4 requires notice to be given to the owner of the monument (if not the appellant) and for certificates to be issued in respect of notification. Regulation 5 requires the notice of appeal to be given to Historic Environment Scotland and makes provision for Historic Environment Scotland to respond to the notice and for the appellant to make comments on such response. Regulation 6 makes provision for notification of the appeal and gives interested parties an opportunity to make representations on the case to the Scottish Ministers. The appellant is given the right to respond to any such representations. Regulation 7 requires Historic Environment Scotland to make the documents relating to the appeal available for inspection and, where practicable, to allow copies to be made of such documents.

Part 3 of the Regulations relates to the process of determination of the appeal. Where the appointed person considers that no further information is required to enable the case to be determined the appointed person may, under regulation 8, do so without any further procedure. The appointed person is not required to determine the case without further procedure and may under regulation 10 seek further information or representations by means of further procedure. The procedures available are those described in regulation 10(4). The procedures to be followed are, in terms of regulation 10(5), further written submission in accordance with regulation 12, a hearing session held under the Hearing Session Rules in Schedule 1, an inquiry session held under the Inquiry Session Rules in Schedule 2 and a site visit in accordance with regulation 13. Regulation 11 makes provision for the holding of pre-examination meetings to consider how the appeal may be conducted. Regulation 9 enables the appointed person to seek confirmation from interested parties as to whether they wish to be involved in any further procedure.

Regulation 14 requires the appointed person to afford the appellant and other parties a further opportunity to make representations in respect of any new and material evidence which the appointed person proposes to take into account in determining the appeal.

Part 4 of the Regulations makes provision relating to how an appeal under sections 9C of the Act is made. Regulation 15 specifies information which must be included in a statement of appeal. Regulation 16 requires the appellant to give a copy of the notice of appeal and supporting documents to the Historic Environment Scotland when making an appeal and allows Historic Environment Scotland to respond to the appeal and the appellant to make comments on their response. Regulation 17 provides for the notification to be given to other parties on whom a notice which is the subject of the appeal was served and allows such persons to make representations.

Part 5 of the Regulations makes provision in relation to appeals under section 1C of the Act.

Part 6 of the Regulations makes provision in relation to applications called-in by the Scottish Ministers for determination by a direction under section 3B of the Act. In these situations the determination is made by the Scottish Ministers rather than by a person appointed to do so. Regulation 19 applies specified provisions of the Regulations with modifications to take account of this distinction in both cases and, in the case of called-in applications to refer to an application and applicant rather than an appeal and appellant.

Part 7 of the Regulations contains general provisions. Regulation 20 sets out how the Regulations apply in relation to non-delegated appeals. The provisions of the Regulations are generally framed in the context of delegated appeals. An appeal is a delegated appeal where it is to be determined by a person appointed for that purpose under Schedule 1A to the Act. The prescribed classes of appeals which are to be determined by an appointed person are specified in the Scheduled Monuments (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2015. Those Regulations also set out classes of appeal which are reserved for determination by the Scottish Ministers. Appeals falling within that class or within a class specified in directions made under Schedule 1A to the Act are, together with those appeals which are recalled for determination by virtue of powers contained in those Schedules, defined as non-delegated appeals. Part 7 in addition makes provision relating to cases giving rise to national security issues (regulation 21), the provision of further copies of documents (regulation 22), the appointment of an assessor to advise the appointed person (regulation 23) and the use of electronic communications (regulation 25). Regulation 24 makes provision for the content and publication of the decision on the appeal or application.

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