

**The Historic Environment (Amendment)
(Scotland) Act 2011**

CONSULTATION ON DRAFT REGULATIONS



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Section 1 – Introduction and Background: Consultation on Draft Regulations

Purpose

1.1 This consultation seeks comments on four draft statutory instruments copies of which can be found at the end of this document. These are as follows:

- **The Ancient Monuments and Archaeological Areas (Compensation) (Scotland) Regulations 2011;**
- **The Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 2011;**
- **The Town and Country Planning (Listed Buildings) (Amount of Fixed Penalty) (Scotland) Regulations 2011; and,**
- **The Town and Country Planning (Listed Buildings) (Prescribed Forms of Notices) (Scotland) Regulations 2011.**

1.2 The draft regulations are discussed in more detail in section 2 of this consultation document.

Background

1.3 The Historic Environment (Amendment) (Scotland) Act 2011 (“the 2011 Act”), which received Royal Assent on 23 February 2011, is an amending piece of legislation which will enhance the ability of the Scottish Ministers and planning authorities to manage our historic environment in a sustainable way for the enjoyment and benefit of future generations.

1.4 The Act is made up of four Parts. The first three parts comprise amending provisions corresponding to the three principal Acts amended by the 2011 Act and a fourth Part which includes provisions on “Interpretation” and “Short Title and Commencement”. The principal Acts are:

- The Historic Buildings and Ancient Monuments Act 1953 (“the 1953 Act”);
- The Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”); and,
- The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the 1997 Act”).

Delegated Powers in the 2011 Act

1.5 The 2011 Act contains a number of delegated powers provisions which are explained in detail in the Delegated Powers Memorandum (DPM) which

accompanied the Historic Environment (Amendment) (Scotland) Bill on its introduction to Parliament on 4 May 2010. This document, which was updated during the passage of the Bill through Parliament to take account of any amendments, can be found on the Scottish Parliament's website.¹

1.6 The 2011 Act confers powers on the Scottish Ministers to make orders and regulations in relation to a range of matters dealt with in the Act. Some of the powers contained in the Act are new, whilst others replace or update existing powers in the 1979 and 1997 Acts to take account of the changes made by the 2011 Act.

1.7 While consultation on the attached draft Regulations is not required by statute the Scottish Government takes the view that, in this case, and in line with the open and inclusive engagement with stakeholders that has characterised the legislative process to date, it is best practice to consult various interested bodies and individuals on those draft regulations that have a significant or practical policy dimension.

1.8 Certain delegated powers in the 2011 Act (under sections 20, 23, 29(1), 32 and 33) are technical in nature and will simply require consequential changes to be made to existing subordinate legislation. As these relate to minor technical consequential changes rather than matters of policy we have not provided draft amending regulations for comment.

Business And Regulatory Impact Assessment (BRIA)

1.9 A Business Regulatory Impact Assessment has not been prepared for these draft statutory instruments as no financial impact on business is foreseen. The reasons underpinning this approach are outlined below.

The Impact of the Draft Regulations

1.10 The 2011 Act is a tightly focused technical amending piece of legislation, which placed no new duties or burdens on public or private bodies, or on individuals. The draft Regulations which are drafted under powers contained in the Act do not:

- impose additional cost or reduce existing costs on businesses or the third sector;
- impose additional costs on public sector organisations that deliver public services; or,
- involve some kind of redistribution even where it does not yield an overall net change in costs and benefits, or a change in administrative costs.

1.11 In summary the draft Regulations will not lead to new or significant costs or savings for business, third or public sector organisations, regulators or consumers.

¹ See: <http://www.scottish.parliament.uk/s3/bills/43-HistoricEnvironment/b43as3-stage2-dpm2.pdf>

The Regulatory Impact of the 2011 Act

1.12 The provisions of the Historic Environment (Amendment) (Scotland) Bill² were subject to a full Business Regulatory Impact Assessment which was signed-off by the Minister on 27 October 2010.³ The BRIA accompanying the Bill concluded that:

“In the main, the new provisions will only affect those businesses that do not comply with existing statutory controls i.e. those who carry out unauthorised works on designated historic assets or those who do not comply with the terms and conditions of a scheduled monument consent or listed building consent”;

That the Bill provisions would have “...very limited regulatory impact”;

That it was the view of the Scottish Government that “proportionate engagement with Scottish businesses during consultation on the draft Bill did not reveal significant concerns”, about the impact of the Bill provisions on Scottish business;

That it was the Scottish Government’s view that the Bill provisions would have “an extremely limited, if any, impact on commercial competition”; and,

that the Bill provisions “would have an extremely limited, if any, impact on the Legal Aid Fund”.

1.13 No substantive amendments were introduced to the Bill during its passage through Parliament. Given the full BRIA which accompanied the Bill remains directly relevant it is not thought proportionate to carry out a fresh BRIA for each of the draft Regulations contained in this consultation document.

1.14 Before a final decision is made we would however welcome your comments on this assessment.

Strategic Environmental Assessment (SEA)

1.15 Historic Scotland has applied the criteria specified in Schedule 2 of the Environmental Assessment (Scotland) 2005 Act to the proposed Regulations and have determined that they are exempt from Strategic Environmental Assessment under Section 7(1). A copy of the Agency’s determination can be viewed via the Scottish Government’s SEA database.⁴

² The draft Bill was subject to a full public consultation in 2009. The consultation sought comments on a Partial Regulatory Impact Assessment which accompanied the draft Bill. Responses to the consultation on the draft Bill in general, and more particularly comments on the Partial Regulatory Impact Assessment, informed the drafting of the final BRIA which was signed-off on 27 October 2010.

³ <http://www.historic-scotland.gov.uk/bria.pdf>

⁴ www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/SEAG

Equalities Impact Assessment

1.16 Historic Scotland considers it unlikely that the Regulations would have significant equalities impacts, but invites views on the draft statutory instruments in that regard. We would also welcome any information which may assist us with that assessment. In your response it would be helpful to know what you consider the equality issues to be.

The Consultation Process

1.17 The Scottish Government would welcome comments on what is proposed to be included in the draft Regulations.

1.18 While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Responding to this consultation paper

1.19 We are inviting written responses to this consultation paper by **14 June 2011**.

1.20 Please send your response with the completed Respondent Information Form (see 'Handling your Response' below) to:

heasact2011@scotland.gsi.gov.uk

or

Policy Team
Historic Scotland
Room 2.9
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

1.21 If you have any queries contact Hannah Chadwick on 0131 668 8836.

1.22 We would be grateful if you would clearly identify individual Regulations you wish to comment on, and structure any general comments in such a way as to aid our analysis of the responses received.

Handling your response

1.23 We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** enclosed with this consultation paper. as this will ensure that we treat your response appropriately. If

you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

1.24 All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and, whatever the wishes of the respondent, would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

1.25 Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library. (See the attached Respondent Information Form). These will be made available to the public in the Scottish Government Library by 12 July 2011 and on Historic Scotland's consultation web page by the same date. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next ?

1.26 Following the closing date, all responses will be analysed and considered along with any other available evidence to help Ministers reach a decision on the content of the regulations. We aim to issue a report on this consultation process by 31 August 2011.

1.27 It is envisaged that the draft Regulations will be laid in late autumn for Parliamentary scrutiny and that they will come into force in December 2011.

Comments and complaints

1.28 If you have any comments about how this consultation exercise has been conducted, please send them to:

Hannah Chadwick
Policy and Legislation Team
Historic Scotland
Room 2.9
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

hannah.chadwick@scotland.gsi.gov.uk

Section 2 – Summary and Purpose of Draft Regulations

A - The Ancient Monuments and Archaeological Areas (Compensation) (Scotland) Regulations 2011 (Annex A)

Background

2.1 The 2011 Act (section 6 - which inserts new sections 9A to 9O into the 1979 Act) introduces new powers to enable Scottish Ministers to serve a scheduled monument enforcement notice that will allow for the reversal or amelioration of unauthorised works to a scheduled monument or works in breach of any condition attached to scheduled monument consent, in cases where such remedial works are desirable or reasonably practicable. The scheduled monument enforcement provisions follow the model for listed buildings in the 1997 Act.

2.2 The 2011 Act also introduces new provisions to enable stop notices and temporary stop notices to be issued in relation to unauthorised works to a scheduled monument or works in breach of any condition attached to scheduled monument consent. These new powers provide a strengthened package of protection for scheduled monuments and bring the regime into line with that for listed buildings and the planning system more generally.

2.3 The new enforcement provisions relating to stop and temporary stop notices also provide that a person with an interest in the scheduled monument or the land in, on or under which the monument is situated is entitled to compensation in certain circumstances in respect of specified loss or damage.

Summary and purpose of the regulations

2.4 The draft Regulations (Annex A) provide for the manner in which, and the time within which, claims for compensation under sections 7, 9, 9I, 9N and 46 of the Ancient Monuments and Archaeological Areas Act 1979 are to be made.

2.5 The compensation provisions in new inserted sections 9I (re stop notices) and 9N (temporary stop notices) are caught by section 47 of the 1979 Act which in effect provides that any claim for compensation under the Act shall be made within the time and in the manner prescribed by regulations. Currently any claims for compensation made under the terms of the 1979 Act are governed by the Ancient Monuments and Archaeological Areas (Compensation) (Scotland) Regulations 1981 which apply to all compensation claims under the 1979 Act.

2.6 The existing Regulations being so out of date, it was believed preferable to revoke them entirely and to produce fresh Regulations rather than to amend the existing 1981 Regulations.

2.7 The draft Regulations at Annex A will therefore replace the Ancient Monuments and Archaeological Areas (Compensation) (Scotland) Regulations 1981 and will apply to all claims for compensation under the 1979 Act.

2.8 Stakeholders are invited to note that no provision however is made for a prescribed form of claim for compensation as currently exists in the 1981 Regulations. This new approach will harmonise the scheduled monument enforcement compensation process with similar powers in relation to listed buildings as set out under regulation 9 of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987.

2.9 Stakeholders are also invited to note that advice on service procedures relating to claims for compensation will be dealt with in guidance notes rather than on the face of the Regulations.

B - The Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 2011 (Annex B)

Background

2.10 Section 15 of the 2011 Act amends the regulation making powers available to Scottish Ministers in relation to the scheduled monument consent (SMC) regime. The regulation making powers available relate to the administrative process relating to SMC and will allow for the scheduled monument application process to be brought into line with the model used in the listed building and planning legislation.

Summary and purpose of the regulations

2.11 The draft Regulations make provision in respect of applications for scheduled monument consent. They also make provision as to the certificates which must accompany an application and prescribe the form of notice of application which must be given by the applicant to owners of the monument to which the application relates.

2.12 In addition the Regulations make provision as to the person who is to be treated as the owner of the monument for the purposes of such notices and certificates.

2.13 In particular stakeholders are invited to note that the Regulations provide that the application is to be on the form provided by the Scottish Ministers and not in a form set out in the regulations. This will help ensure that the application forms for scheduled monument consent continue to be fit for purpose.

2.14 Stakeholders will also wish to note that the Regulations do not make provision about issuing directions for further information but do include a separate further information provision which is based on that found in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.⁵

⁵ These Regulations make provision for the manner in which applications for planning permission, for approvals required by a condition imposed on a grant of planning permission in principle and for certificates of lawful use and development under the Town and Country Planning (Scotland) Act 1997 are to be made.

C - The Town and Country Planning (Listed Buildings) (Amount of Fixed Penalty) (Scotland) Regulations 2011 (Annex C)

Background

2.15 Section 24 of the 2011 Act introduces a new power into the 1997 Act that will enable planning authorities to issue fixed penalty notices as an alternative to prosecution in cases where a person is in breach of a listed building enforcement notice. The power parallels that introduced into the planning regime by section 25 of the Planning etc. (Scotland) Act 2006. It offers a quick, practical and viable alternative which will give local authorities an additional tool to deal with those who break the law, as well as safeguarding listed buildings. Local authorities will be able to issue a fixed penalty notice provided certain conditions are met.

2.16 The provisions in the 2011 Act also provide for Scottish Ministers to set out the fixed penalty amounts in regulations. Further it is intended that the amount of the fixed penalty imposed by legislation shall escalate in the event that the breach of the enforcement notice continues where the fixed penalty is paid. In such circumstances it is intended that a further enforcement notice will be issued followed by a subsequent fixed penalty notice for an increased amount and so on for escalating amounts.

Summary and purpose of the Regulations

2.17 The draft Regulations prescribe the amount of the penalty payable under a fixed penalty notice served under section 39A of the Planning (Listed Buildings and Conservation Areas) Act 1997 inserted by section 24 of the 2011 Act.

2.18 As fixed penalties are to be imposed on persons who are believed to have committed an offence, there is likely to be significant stakeholder interest in the level of the fixed penalty and so it was considered appropriate for the Regulations to require an affirmative resolution of the Parliament. Section 82 of the 1997 Act is therefore amended by section 30(4) of the 2011 Act to insert a new subsection (3A) providing for affirmative procedure.

2.19 The provisions also allow for the amount of the fixed penalty to escalate in the event that the breach of the enforcement notice continues. This escalation of the penalty differs from Planning legislation.

2.20 There is provision in inserted section 39A to encourage early payment of the penalty amount – subsection (8). If payment is made within the first 15 days then the amount payable is reduced by 25%.

2.21 In the draft regulations there are only 3 specified amounts – the initial £2,000 increasing to £2,500 in respect of a breach of the second listed building enforcement notice and then £5,000 in respect of the breach of a subsequent notice. As it is unlikely that there will be numerous subsequent fixed penalty notices issued the Scottish Government is of the view that there seems to be little need for numerous levels of small increments.

2.22 As mentioned above, fixed penalty notices are an option available to the planning authority with the recipient having an option to pay the amount. If the person pays the penalty amount then they will not be able to be prosecuted for an offence under section 39 of the 1997 Act.

D - The Town and Country Planning (Listed Buildings) (Prescribed Form of Notices) (Scotland) Regulations 2011 (Annex D)

Background

Notice of Liability

2.23 Section 26 of the 2011 Act amends the 1997 Act by enabling a notice of liability for expenses to be registered in the appropriate property register against the listed building. This will address the difficulties that can arise in terms of recovering costs when ownership of a property has changed or when the regulatory authorities have to deal with an absentee owner. Currently under the terms of section 49 of the 1997 Act a planning authority may execute any works which appear to them to be urgently necessary for the preservation of a listed building in their district. The Scottish Ministers have parallel powers. The cost incurred through carrying out such works can be recovered under the terms of section 50 of the Act which empowers local authorities to “give notice to the owner of the building requiring him to pay the expenses of the work”. At present the planning authority and Scottish Ministers are limited to pursuing recovery of expenses from whoever was the owner at the time notification under section 50(2) was served. In practice, once an owner sells or otherwise disposes of the property it can become very difficult to recover these costs.

2.24 The power to recover costs from such persons will remain but in addition, by enabling, in effect, a charge to be placed against the property itself, the new provision provides that any new owner from time to time of the property will also be liable to pay the costs. This new power enables the planning authorities or Scottish Ministers to register a notice of liability for expenses of works in the Land Register of Scotland or the Register of Sasines as appropriate. The 2011 Act also provides that the notices will be in the form prescribed in regulations.

Notice of Renewal

2.25 A notice of liability for expenses will expire after 5 years, although provision is made in section 50C to renew the notice. This section sets out that a notice of renewal may be registered only when a notice of liability for expenses has been registered and has not expired. Subsection (2) of new inserted section 50C provides Scottish Ministers and planning authorities with the power to register a notice of renewal. The form of the notice of renewal (and the information it must contain) is to be prescribed by the Scottish Ministers by regulations. (See section 50G).

Notice of Determination

2.26 New inserted section 50D provides that owners and new-owners (under certain circumstances) can make representations to the Scottish Ministers on any matter mentioned in any of the paragraphs (a) to (c) of subsection (4) of Section 50 of the 1997 Act and that Scottish Ministers shall determine to what extent the representations are justified. In pursuance of subsection (5) of section 50 of the 1997 Act Scottish Ministers shall give notice of their determination, the reasons for it

and the amount recoverable. A “notice of determination” shall be in the form prescribed by Scottish Ministers under section 50G.

Notice of Discharge

2.27 New inserted section 50E provides that when any notice for liability has been fully discharged either the Scottish Ministers or the planning authority, as the case may be, must apply to register a “notice of discharge”. A notice of discharge is to be in the form prescribed by Scottish Ministers under section 50G.

Summary and purpose of the regulations

2.28 Section 26(3) of the 2011 Act inserts new sections 50A to 50G (liability of owner and successors for expenses of urgent works executed under section 49) into the 1997 Act. Section 50G(1) gives the Scottish Ministers power to prescribe the form of notices specified in that section. These are: a notice of liability for expenses, a notice of renewal, a notice of determination and a notice of discharge.

2.29 The draft Regulations at Annex D therefore prescribe the following Forms of Notices under inserted section 50A to 50E of the 1997 Act:

- a notice of liability of expenses registered in pursuance of section 50A;
- a notice of renewal registered in pursuance of section 50C;
- a notice of determination registered in pursuance of section 50D; and,
- a notice of discharge registered in pursuance of section 50E.

Section 3 – List of Consultees

<u>Consultees</u>	
<p>All Local Authorities NHS Trusts Scotland Scottish Enterprise Network Equalities and Human Rights Commission CoSLA</p> <p><u>Other interested organisations</u></p> <p>Aberdeen City Archaeological Unit Aberdeen Society of Architects</p> <p>Addyman Archaeology Alexander Greek Thomson Trust Archaeological Heritage Services Architectural Heritage Society of Scotland Argyll Lomond and the Islands Energy Agency(AliEnergy) Association of Local Archaeological Officers Association of Scottish Community Councils</p> <p>Association of Woodworkers Ayrshire and Dumfries and Galloway Energy Agency Black & Ethnic Minority Infrastructure Scotland BRE Scotland Business Enterprise Scotland Cairngorms National Park</p> <p>Capability Scotland Cardiff University CFA Archaeology Ltd</p> <p>Changeworks Chartered Institute of Building in Scotland (COIB) Chartered Institute of Housing in Scotland Clare Ellis Archaeology and Micromorphology Cockburn Conservation Trust Communities Scotland Confederation of British Industry, Scotland</p> <p>Council for British Archaeology Council for Scottish Archaeology Council of Mortgage Lenders Department of Archaeology</p>	<p>Aberdeen City Heritage Trust Association of Chief Officers of Scottish Voluntary Organisations Age Concern Scotland AOC Archaeology Group Archaeology Scotland Architecture + Design Scotland Association of Regional and Island Archaeologists Association of Preservation Trusts Association of Scottish Visitor Attractions (ASVA) Association of Scottish Visitor Attractions Black Environment Network</p> <p>Blairgowrie, Rattray & District Civic Trust Built Environment Forum Scotland Cadw Campbell Palmer Associates (Energy Specialists) Carbon Trust in Scotland Carnegie UK Trust Chairman Institute of field Archaeologists – Scottish Group Charles Rennie McKintosh Society Chartered Institute of Housing in Scotland</p> <p>Construction Industry Training Board Cockburn Association Commission for racial equality in Scotland Community Service Volunteers Scotland Construction Industry Training Board (CITB) in Scotland Council for Scottish Archaeology Council Of Independent Archaeologists Crail Preservation Society Department Of Archaeology</p>

<p>Department of Architecture – Edinburgh Disability Rights Commission Duncan of Jordanstone College of Art, Department of Architecture Dundee Historic Environment Trust EASE: Environmental and Archaeological Services Edinburgh College of Art School of Architecture Edinburgh World Heritage Trust Enable Scotland Energy Action Scotland English Heritage</p> <p>Equal opportunities commission Scotland</p> <p>Equality network Federation of Master Builders FIRAT Archaeological Services Forward Scotland Gaia Group Glasgow Building Preservation Trust (GBPT)</p> <p>Environment Glasgow chamber of commerce Glasgow Institute of Architects</p> <p>GUARD: Glasgow University Archaeological Research Division Headland Archaeology Heriot-Watt University School of the Built Environment Heritage Railway Association</p> <p>Highlands and Islands Enterprise Historic Environment Advisory Council for Scotland Homes for Scotland</p> <p>Institute of field Archaeologists Inverness Architectural Association John Gilbert Architects Kirkdale Archaeology Loch Lomond & Trossachs National Park Mackintosh School of Architecture</p> <p>Mansfield Traquair Trusts Napier University, School of Engineering & the Built Environment National Services Scotland</p>	<p>Dept. of Architecture – Strathclyde Dundee and Angus chamber of commerce Dundee Institute of Architects</p> <p>Edinburgh Architectural Association Edinburgh Council Archaeology Service</p> <p>Employers in Voluntary Housing (EVH)</p> <p>EnConsult (Energy Specialists) Energy Savings Trust Scotland Environment & Regeneration Team Equality and Human rights Commission in Scotland Farming and Wildlife Advisory Group for Scotland Fife Chamber of Commerce Forestry Commission Scotland Friends of the Earth Scotland Garden History Society Glasgow Caledonian School of Built and Natural Glasgow Caledonian University (Historic Environment Reporting Team) Glasgow City Heritage Trust Glasgow Museums Resource Centre Head Of Department , Dept of Archaeology, University of Edinburgh Heriot Watt University</p> <p>Heritage Lottery Fund Highland Archaeology Services ltd</p> <p>Highlands and Vernacular Buildings Trust (HVBT) Historic Houses Association (HHA) ICOMOS UK</p> <p>Institute of Historic Building Conservation (IHBC) Inverness City Heritage Trust June Baker Trust Locate Architects LT Scotland Mackintosh school of architecture Napier University, Centre for Timber Engineering National Farmers Union of Scotland National Trust For Scotland</p> <p>Nautical Archaeology Society</p>
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<p>Natural Stone Institute New Lanark Conservation Trust NHBC Scotland Ownership Options in Scotland</p> <p>Rathmell Archaeology Rescue : The British Archaeologist Trust Royal Incorporation of Architects in Scotland Royal Town Planners Institute Saltire Society Scottish Coastal Archaeology and the Problem of Erosion. School of Town and Regional Planning – Dundee Scott Sutherland School of architecture Scottish Archaeological Services for Art and Archaeology Scottish Churches Agricultural Heritage Trust Scottish Construction Forum Scottish Crofting Foundation Scottish Ecological Design Association Scottish Environment Link Scottish FED. Of Housing Association Scottish Housing Associations Resources for Education (SHARE) Scottish Landowners Federation Scottish Museums Council Scottish Railway Preservation Trust Scottish Rural Property and Business Association Scottish Tourism Forum Scottish Wildlife Trust</p> <p>Serving Construction and Architecture in Local Authorities (SCALA) Society for the protection of ancient buildings Society of Antiquaries of Scotland Steven Dunlop, Director, British Waterways Stirling Society of Architects Scottish Trades Congress Sustainable Development Commission Scotland The Law Society The Receiver of Wreck, Maritime and Coastguard Agency The Scottish Covenanter Memorials Association (Battlefields only) The University of York Transport Scotland University of Newcastle</p>	<p>Newgrange Heritage Services Orkney College Perth Museum & Art Gallery Royal Commission on the Ancient and Historical Monuments of Scotland Royal Fine Art Commission Royal Institute of chartered Surveyors Rural Scotland Save Cash and Reduce Fuel (SCARF) School Of Architecture – Herriot Watt Scotia Archaeology</p> <p>Scottish Agricultural College</p> <p>Scottish Arts Council Scottish Churches Committee</p> <p>Scottish Consumers Council Scottish Disability Equality Forum Scottish Enterprise Network Scottish Estates Business Group Scottish Historic Buildings Trust Scottish Industrial Archaeology Panel Scottish Lime Centre</p> <p>Scottish Property Federation Scottish Renewables Forum Scottish Stone Liaison Group (SSLG) Scottish Vernacular Buildings Working Group</p> <p>Scottish Council for Voluntary Organisations Serving Construction and Architecture in Local Authorities (SCALA) Society Of Antiquaries</p> <p>Scottish Stone Liaison Group Stirling City Heritage Trust Strathclyde Building Preservation Trust SUAT Ltd Sustainable Development Commission Scotland The EDI Group</p> <p>The Lighthouse The Scottish Castles Association</p> <p>The University Of Edinburgh Dept of Archaeology Thirdwave University of Durham defence Estates University of Strathclyde School of Architecture</p>
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2011 No.

ANCIENT MONUMENTS

The Ancient Monuments and Archaeological Areas
(Compensation) (Scotland) Regulations 2011

<i>Made</i>	- - - -	[] 2011
<i>Laid before the Scottish Parliament</i>		[] 2011
<i>Coming into force</i>	- -	[] 2011

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 47(1) of the Ancient Monuments and Archaeological Areas Act 1979^(a) and of all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Ancient Monuments and Archaeological Areas (Compensation) (Scotland) Regulations 2011 and come into force on [] 2011.

(2) In these Regulations—

“the Act” means the Ancient Monuments and Archaeological Areas Act 1979; and

“claim” means a claim for compensation under section 7, 9, 9I, 9N or 46 of the Act.

Manner of claim

2.—(1) A claim —

(a) to the Scottish Ministers; or

(b) in the case of a claim under section 46 of the Act in respect of damage caused by such other authority by or on whose behalf any power referred to in section 46(3) of the Act was exercised, to that other authority

must be made in writing.

Time within which claim to be made

3. A claim must be made within 6 months of —

(a) in the case of a claim under section 7 of the Act, the date of the notice of refusal, or granting subject to conditions, of scheduled monument consent; or

(b) in the case of a claim under section 9 of the Act, the date on which the works ceased to be authorised; or

^(a) 1979 c.46. The functions of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”) conferred to the Scottish Ministers under section 53 of the Scotland Act 1998 (c.46). See section 61(1) of the 1979 Act for the definition of prescribed. Sections 9I and 9N were inserted by section 6 of the Historic Environment (Amendments) (Scotland) Act 2011 (asp 3).

- (c) in the case of a claim under section 9I or 9N of the Act, the date on which the damage or loss occurred; or
- (d) in the case of a claim under section 46 of the Act, the date on which the damage was caused, or where the damage was caused as a result of a continuing act, the date when the act ceased.

Revocation

4. The Ancient Monuments and Archaeological Areas (Compensation) (Scotland) Regulations 1981 ^(a) are revoked.

St Andrew's House,
Edinburgh

2011

A member of the Scottish Executive

^(a) S.I. 1981/1469

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the manner in which, and the time within which, claims for compensation under sections 7, 9, 9I, 9N and 46 of the Ancient Monuments and Archaeological Areas Act 1979 are to be made.

2011 No.

ANCIENT MONUMENTS

The Ancient Monuments and Archaeological Areas
(Applications for Scheduled Monument Consent) (Scotland)
Regulations 2011

<i>Made</i>	- - - -	2011
<i>Laid before the Scottish Parliament</i>		2011
<i>Coming into force</i>	- -	2011

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2 and paragraphs 1(1), 1(1A), 2(2) and (3) of Schedule 1 to the Ancient Monuments and Archaeological Areas Act 1979^(a) and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 2011 and come into force on [].

(2) In these Regulations –

“the 1911 Act means the Small Landholders (Scotland) Act 1911;

“the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991;

“the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003;

“agricultural tenant” means–

(a) in the case of an agricultural lease constituting a 1991 Act tenancy within the meaning of the 2003 Act, the tenant within the meaning of section 85 of the 1991 Act;

(b) in the case of a lease constituting a short limited duration tenancy or a limited duration tenancy under the 2003 Act, the tenant within the meaning of section 93 of that Act; and

(c) in the case of a holding within the meaning of the 1911 Act to which the 1991 Act does not apply, the landholder within the meaning of section 2(2) of the 1911 Act;

“owner” in relation to any monument includes –

(a) any person who, in respect of any part of the monument, is under the Lands Clauses Acts enabled to sell and convey the land to promoters of an undertaking;

^(a) 1979 c.46. The functions of the Secretary of State transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46). Section 2 and Schedule 1 were amended by the Historic Environment (Amendment) (Scotland) Act 2011. (asp[]).

- (b) any person who is entitled to possession of the land as a tenant under a lease, the unexpired period of which is not less than 10 years;
- (c) any tenant of a croft within the meaning of section 3 of the Crofters (Scotland) Act 2003 any part of which is comprised in the land to which an application relates; and
- (d) any agricultural tenant of land any part of which is comprised in the land to which an application relates,

and where appropriate includes a sub tenant.

Application for scheduled monument consent

2.—(1) An application for scheduled monument consent must be made to the Scottish Ministers (on a form obtained from them) in accordance with these regulations.

(2) An application for scheduled monument consent must contain—

- (a) a written description of the works to which it relates;
- (b) the postal address of the land to which the works relates, or if the land in question has no postal address, a description of the location of the land; and
- (c) 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.

(3) The application must be accompanied by—

- (a) a plan, sufficient to identify the land to which it relates; and
- (b) such other plans and drawings as are necessary to describe the works to which it relates;
- (c) one or other of the ownership certificates required under regulation 3.

Certificates and notices

3.—(1) The Scottish Ministers may refuse to entertain an application for scheduled monument consent unless it is accompanied by one or other of the certificates as required under paragraph (3).

(2) The applicant is to give notice in the form set out in Schedule 1 to any person (other than the applicant) who at the beginning of the prescribed period is the owner of the monument to which the application relates.

(3) The applicant must issue a certificate, stating as appropriate—

- (i) that at the beginning of the prescribed period no person (other than the applicant) was the owner of the monument to which the application relates;
- (ii) that the applicant has given notice to every person (other than the applicant) who at the beginning of the prescribed period was the owner of the monument to which the application relates;
- (iii) that the applicant -
 - (aa) is unable to issue a certificate in accordance with paragraph (i) or (ii);
 - (bb) has given the requisite notice of the application to such one or more of the persons mentioned in paragraph (ii); and
 - (cc) has taken reasonable steps to ascertain the names and addresses of the remainder of those persons that the applicant has been unable to do so;
- (iv) that the applicant -
 - (aa) is unable to issue a certificate in accordance with paragraph (i); and
 - (bb) has taken reasonable steps to ascertain the names and addresses of the persons mentioned in (ii) and that he has been unable to do so.

(4) A certificate issued—

- (a) under paragraph (3)(b) or (c) must set out the name of every person to whom notice was given and the address at and date on which such notice has been given;
- (b) under paragraph (3)(c) must certify that the applicant 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.

(5) In this regulation, “prescribed period” means the period of 21 days ending with the application.

Further information

4. The Scottish Ministers may, in addition to the particulars, documents, materials or evidence which are to be included in or accompany an application in accordance with these regulations, as the case may be, require from the applicant further particulars, documents, materials or evidence which they consider that they require to enable them to deal with the application.

Electronic communications

5.—(1) Where the criteria in paragraph (2) are met, any documents required or authorised to be sent by these Regulations may be sent by electronic communications.

(2) The criteria are—

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

- (c) to the use of such communications for all purposes relating to the application on which are capable of being carried out electronically;
- (d) 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) exists 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 agreements under paragraph (4), takes effect on a date specified by the person in the notice, but not less than 7 days after the date on which the notice was given.

(6) In this regulation—

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

“documents” includes any notice, consent, decision, representation, statement, list, report, form, plan, certificate, 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 documents 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

“sent” includes served, submitted or given and expressions are to be construed accordingly.

^(a) 2000 c. . as amended by para 1580 of Schedule 17 to the Communicator’s Act 2003 (c.21).

Revocation

6. The Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 1981^(a) are revoked

St Andrew's House,
Edinburgh

2011

A member of the Scottish Executive

^(a) S.I. 1981/1467

SCHEDULE 1
ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS
ACT 1979

Notice of application for scheduled monument consent

Proposal to carry out work affecting (a)

TAKE NOTICE that an application is being made to the Scottish Ministers by (b)
for scheduled monument consent to (c). If you wish to make representations to
the Scottish Ministers about the application, you should make them in writing before the time
when they consider their decision on the application. In order to ensure that representations are
received in time, they should be lodged not later than (d) with the Scottish
Ministers, Historic Scotland, Longmore House, Edinburgh.

Signed

[on behalf of]*

Date

*Delete where inappropriate.

NOTES

- (a) Insert name, address or location of the monument with sufficient precision to ensure its identification.
- (b) Insert name of applicant.
- (c) Insert description of proposed works and name, address or location of the monument.
- (d) Insert date 28 days later than the date on which the notice is served.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in respect of applications for scheduled monument consent. The Regulations also make provision as to the certificates which must accompany an application and prescribe the form of notice of application which must be given by the applicant to owners of the monument to which the application relates (regulation 3).

In addition, the Regulations make provision as to the person who is to be treated as the owner of the monument for the purposes of such notices and certificates.

Draft

Draft Regulations laid before the Scottish Parliament under section 82(3A) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2011 No.

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Listed Buildings) (Amount of Fixed Penalty) (Scotland) Regulations 2011

Made - - - -

Coming into force

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 39A(5) and (13) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997^(a) and of all other powers enabling them to do so.

In accordance with section 82(3A) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Town and Country Planning (Listed Buildings) (Amount of Fixed Penalty) (Scotland) Regulations 2011 and come into force on [] 2011.

(2) Reference to a listed building enforcement notice does not include such notices withdrawn by the planning authority prior to the service of a fixed penalty notice.

Amount of fixed penalty

2. The amount prescribed for the purposes of section 39A(5) of the Act is, in respect of the breach of—

- (a) the first listed building enforcement notice issued by a planning authority in respect of a particular contravention of section 8(1) or (2) of the 1997 Act, £2,000;
- (b) the second listed building enforcement notice issued by the planning authority in respect of the same contravention of section 8(1) or (2) of the 1997 Act, £2,500; and

^(a) 1997 c.9. Section 39A was inserted by section 24 of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3) and section 82 was further amended by section 30 of that Act. The functions of the Secretary of State under the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 (“the 1997 Act”) transferred to the Scottish Ministers under section 53 of the Scotland Act 1998 (c.46). See section 81(1) of the 1997 Act for the definition of “prescribed”.

- (c) a subsequent listed building enforcement notice issued by the planning authority in respect of that contravention of section 8(1) or (2) of the 1997 Act, £5,000.

St Andrew's House,
Edinburgh

2011

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the amount of the penalty payable under a fixed penalty notice served under section 39A of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997.

2011 No.

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Listed Buildings) (Prescribed Form of Notices) (Scotland) Regulations 2011

<i>Made</i>	- - - -	2011
<i>Laid before the Scottish Parliament</i>		2011
<i>Coming into force</i>	- -	2011

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 50G of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997^(a), and all other powers enabling them to do so.

Citation, commencement and interpretation—

1. – (1) These Regulations may be cited as the Town and Country Planning (Listed Buildings) (Prescribed Form of Notices) (Scotland) Regulations 2011 and come into force on [] 2011.

(2) In these Regulations, “the Act” means the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997.

Notice of liability of expenses

2. A notice of liability of expenses registered in pursuance of section 50A of the Act is to be in, or as near as may be in, the form specified in Schedule 1.

Notice of renewal

3. A notice of renewal registered in pursuance of section 50C of the Act is to be in, or as near as may be in, the form specified in Schedule 2.

Notice of determination

4. A notice of determination registered in pursuance of section 50D of the Act is to be in, or as near as may be in, the form of notice specified in Schedule 3.

^(a) 1997 c.9. Section 50G was inserted by section 25(3) of the Historic Environment (Amendment) (Scotland) Act 2010 (asp []). The functions of the Secretary of State under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the 1997 Act”) transferred to the Scottish Ministers under section 53 of the Scotland Act 1998 (c.46). See section 81(1) OF THE 1997 Act for a definition of prescribed.

Notice of discharge

4. A notice of discharge registered in pursuance of section 50E of the Act is to be in, or as near as may be in, the form of notice specified in Schedule 4.

St Andrew's House,
Edinburgh
2011

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SCHEDULE 2

Section 50A

FORM OF NOTICE OF LIABILITY FOR EXPENSES

NOTICE OF LIABILITY FOR EXPENSES

This notice gives details of expenses of certain urgent works carried out in relation to the listed building specified in the notice. The effect of the notice is that a person may, on becoming owner of the listed building, be liable by virtue of section 50A of Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 for any outstanding expenses relating to the works.

Listed building to which the notice relates:

(see note 1 below)

Description of the works to which the notice relates:

(see note 2 below)

Expenses of the works:

(see note 3 below)

Person giving notice:

(see note 4 below)

Signature:

(see note 5 below)

Date of signing:

Notes for completion

(These notes are not part of the notice)

- 1** Describe the listed building in a way that is sufficient to identify it. Where the building has a postal address, the description must include that address. Where title to the building has been registered in the Land Register of Scotland, the description must refer to the title number of the building or of any larger subjects of which it forms part. Otherwise, the description should refer to and identify a deed recorded in a specific division of the Register of Sasines.
- 2** Describe the works in general terms.
- 3** Give the amount of the expenses of the works.
- 4** Give the name and address of the planning authority or, as the case may be, the person acting on behalf of the Scottish Ministers applying for registration of the notice.
- 5** The notice must be signed on behalf of the planning authority or the Scottish Ministers as appropriate.

SCHEDULE 3

Section 50E

FORM OF NOTICE OF RENEWAL

NOTICE OF RENEWAL

This notice gives details of expenses of certain urgent works carried out in relation to the listed building specified in the notice. The effect of the notice is that a person may, on becoming owner of the listed building, be liable by virtue of section 50A of Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 for any outstanding expenses relating to the works. The amount relates to work in respect of which a notice of liability for expenses has been registered.

Listed building to which the notice relates:

(see note 1 below)

Description of the works to which the notice relates:

(see note 2 below)

Expenses of the works:

(see note 3 below)

Notice of liability for expenses to which the notice of renewal relates:

(see note 4 below)

Person giving notice:

(see note 5 below)

Signature:

(see note 6 below)

Date of signing:

Notes for completion

(These notes are not part of the notice)

1 Describe the listed building in a way that is sufficient to identify it. Where the building has a postal address, the description must include that address. Where title to the building has been registered in the Land Register of Scotland, the description must refer to the title number of the building or of any larger subjects of which it forms part. Otherwise, the description should normally refer to and identify a deed recorded in a specific division of the Register of Sasines.

2 Describe the works in general terms.

3 Give the amount of the expenses of the works.

4 Give details of the notice of liability to which the notice of renewal relates by reference to its date of registration in the Land Register of Scotland or the date of its recording in the Register of Sasines.

5 Give the name and address of the planning authority or, as the case may be, the person acting on behalf of the Scottish Ministers applying for registration of the notice.

6 The notice must be signed on behalf of the planning authority or the Scottish Ministers as appropriate.

SCHEDULE 4

Section 50D

FORM OF NOTICE OF DETERMINATION

NOTICE OF DETERMINATION

This notice specifies the amount recoverable in a notice given by the Scottish Ministers under section 50(5) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The amount relates to works in respect of which a notice of liability for expenses has been registered.

Amount recoverable:

(see note 1 below)

Listed building to which the notice relates:

(see note 2 below)

Description of the works to which the notice relates:

(see note 3 below)

Notice of liability for expenses to which the amount recoverable relates:

(see note 4 below)

Person giving notice:

(see note 5 below)

Signature:

(see note 6 below)

Date of signing:

Notes for completion

(These notes are not part of the notice)

1 Enter the amount specified in the Scottish Ministers' determination under section 50(5) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in respect of representations made to them under section 50(4) of that Act.

2 Describe the listed building in the same way as it is described in the notice of liability for expenses.

3 Describe the works in the same way as they were described in the notice of liability for expenses.

4 Give details of the notice of liability to which the amount recoverable relates by reference to its date of registration in the Land Register of Scotland or the date of its recording in the Register of Sasines.

5 Give the name and address of the planning authority or, as the case may be, the person acting on behalf of the Scottish Ministers applying for registration of the notice.

6 The notice must be signed on behalf of the planning authority or the Scottish Ministers as appropriate.

SCHEDULE 5

FORM OF NOTICE OF DISCHARGE

NOTICE OF DISCHARGE OF A [NOTICE OF LIABILITY FOR EXPENSES] [NOTICE OF RENEWAL] IN TERMS OF SECTION 50E OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997*

This notice discharges the [notice of liability for expenses] [notice of renewal]* described below.

[Notice of liability for expenses] [notice of renewal]* discharged:

(see note 1 below)

Listed building to which the notice relates:

(see note 2 below)

Description of the works to which the notice relates:

(see note 3 below)

Person giving notice:

(see note 4 below)

Signature:

(see note 5 below)

Date of signing:

Notes for completion

(These notes are not part of the notice)

** delete or include as appropriate*

- 1** Give details of the notice of liability or the notice of renewal as appropriate being discharged by reference to its date of registration in the Land Register of Scotland or the date of its recording in the Register of Sasines.
- 2** Describe the listed building in the same way as it is described in the notice of liability or the notice renewal as appropriate for expenses.
- 3** Describe the works in the same way as they were described in the notice of liability or the notice of renewal as appropriate for expenses.
- 4** Give the name and address of the planning authority or, as the case may be, the person acting on behalf of the Scottish Ministers applying for registration of the notice.
- 5** The notice must be signed on behalf of the planning authority or the Scottish Ministers as appropriate.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the following Forms of Notices under sections 50A to 50E of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 as inserted by section 26 of the Historic Environment (Amendment) (Scotland) Act 2011—

- (d) a notice of liability of expenses under section 50A;
- (e) a notice of renewal under section 50C;
- (f) a notice of determination under section 50D; and
- (g) a notice of discharge under section 50E.