

APPEAL TO SCOTTISH MINISTERS NOTES FOR APPELLANTS SUBMITTING A SCHEDULED MONUMENT CONSENT APPEAL (FORM SMC)

These notes relate to appeals to the Scottish Ministers under:

- Section 4B of the Ancient Monuments and Archaeological Areas Act [*the "Ancient Monuments Act"*]; in conjunction with
- the Scheduled Monument (Appeals) (Scotland) Regulations 2015 [*the "Appeals Regulations"*]

in respect of decisions made by Historic Environment Scotland (HES) on applications for scheduled monument consent, or in respect of the non-determination of such applications.

(A TEMPLATE FOR NOTICES THAT MAY BE REQUIRED TO BE SERVED ON ANY OTHER OWNERS OF THE MONUMENT ARE AT THE END OF THESE NOTES)

If you want to (a) appeal against a refusal of scheduled monument consent, (b) challenge conditions attached to a consent or (c) appeal against HES's failure to determine such an application, you should use form SMC.

Deadline for making an appeal

The Appeals Regulations state that an appeal must be made within the period of 3 months beginning with the date of HES's decision notice on the application. This means that your full appeal must be received by Planning and Environmental Appeals (DPEA) **before the end of the third month**. If HES has not made a decision on your scheduled monument consent application and the date by which it should have done so has passed, you can make an appeal against non-determination of your application; in which case the 3-month period starts from the date by which HES should have made its decision. Check with HES if you are unsure of this date.

For example:

- (1) *The date of HES's decision notice is 1 September - your full appeal must be received by DPEA on or before **30 November** (note: 1 December would be the start of the fourth month, and so too late).*
- (2) *If HES has not made a decision on your application, and it should have done so by 15 March. You can make an appeal against non-determination, but the last day by which you can do so is **14 June**. However, if you do not make an appeal against non-determination and wait for HES's decision on your application, and you subsequently want to make an appeal against that decision, the 3-month clock will start again from the date of the decision notice.*

The Scottish Ministers have no scope to accept and consider an appeal made after the deadline. This includes any incomplete appeal form or documents received before the deadline, but not fully documented by the time it passes. To avoid any risk of your appeal being turned away due to being out of time, we strongly advise that you make your appeal in plenty of time before the end of the 3 month period.

Completing the appeal form

The notes below are intended to help you complete the appeal form. This form is mandatory and should be carefully completed to ensure your appeal is valid.

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Appellant(s)	This section should be fully completed with the name, address and contact details of the appellant. The Appeals Regulations require that the appellant's name and address <u>must</u> be supplied.
Agent	This section needs to be completed if the appeal is being submitted by an agent acting on behalf of the appellant (e.g. planning consultant, solicitor, architect, friend). The Appeals Regulations require that, where an agent is appointed, the agent's name and address <u>must</u> be supplied. You must also confirm whether correspondence should be sent to the agent rather than the appellant by using the check box provided

Email communications	We seek to use electronic communications wherever possible. Please mark the appropriate Yes/No box to confirm whether you are content to receive correspondence by e-mail.
HES's application reference number	Each scheduled monument consent application is given a unique reference number by HES. This will feature on correspondence from HES and on the decision notice. The Appeals Regulations require that the reference number <u>must</u> be supplied with your appeal.
Name and address of monument	To help us identify the location of the proposed works, you should provide the address of the monument and, if applicable, its name.
Description of proposed works	This should describe the works you wish to carry out on the site, and must be the same proposal HES considered (i.e. you must not change the nature of your proposal for consideration at appeal).
Date of application to HES	This is the date on which HES received your scheduled monument consent application (or any outstanding information) and so validated your application. HES will have confirmed this date to you when acknowledging receipt of your application.
Date of HES's decision	Where HES has made a decision on your application, you should provide the date stated on the decision notice.
OS map grid reference or post code	To ensure we have properly identified the location of the subject of your appeal you should provide either the ordnance survey national grid reference or the site's post code.
Area of appeal site	Please provide a note of the area of the site, either in square metres or in hectares.
Nature of application	There are 3 options in this section and you should select <u>one</u> of them, to demonstrate what you were seeking through your application. <ul style="list-style-type: none"> · The first option is where you applied for scheduled monument consent · The second option is where you applied to HES to change or delete a condition attached to a scheduled monument consent. · The third option is where you applied for approval of matters requiring approval as specified on condition(s) attached to a prior scheduled monument consent.
Appeal against	There are 3 options in this section and you should select one of them, to demonstrate what decision or action of HES you now wish to appeal against. <ul style="list-style-type: none"> · If you have received a notice from HES stating that it has refused your scheduled monument consent, and you want to challenge that decision, you should mark the first box. · If you have not received a decision on your application within the timescale you were advised previously by HES, and you wish to exercise your right of appeal rather than wait for them to make a decision, you should mark the second box. · If HES has approved your application, but has attached any condition(s) to the terms of the consent which you wish to challenge, you should mark the third box.
Specific grounds of appeal	As well as any other grounds you may give for making a scheduled monument consent appeal, section 4B(4) of the Ancient Monuments Act allows for the claiming of the specific grounds listed here as <u>part</u> of the appeal. You may select none, one or both of the options but if you select option (b) you should note that it is only the statutory element of the schedule entry which can be appealed - that is the legal scheduling document which contains the name of the scheduled site, a summary description of the monument and its location, and a map. If you do select any of these options you must, as you would with other grounds, explain your reasons for claiming these grounds in your statement of appeal - simply selecting an option is not enough.

<p>Statement of appeal</p>	<p>Your statement of appeal should include full particulars of your appeal and the matters you think ought to be taken into account, and all documents, materials and evidence upon which you intend to rely in your appeal <u>must</u> accompany this form. All matters which you intend to raise in the appeal <u>must</u> be set out in your appeal or in the accompanying documents.</p> <p>The Appeal Regulations provide that once you have submitted your appeal you may raise additional matters or submit further documents only in very limited circumstances.</p> <p>For example, if, in its response to your appeal, HES raise matters which had not previously featured in its decision on your application, you would have the opportunity to comment and submit additional documents on those matters. And if you are making an appeal against the non-determination of your application by HES, at that stage you will have an opportunity to respond to HES's view (which would be unknown to you at the time you first make your appeal).</p> <p>Other interested parties (who had previously expressed a view on your application) will be advised of your appeal to Scottish Ministers. If they provide further comments in respect of your appeal, you will be entitled to respond to those comments before a final decision is made.</p> <p>Nevertheless, depending on the terms of HES's (and any other party's) response to your appeal and the possible need for any further procedure (see below), the point at which you lodge your appeal might be your only opportunity to state your case, and so you must be content that you have raised all relevant issues.</p>
<p>List of documents/ evidence</p>	<p>As well as providing a full statement of your appeal at the outset, the Appeals Regulations require that all documents, materials and evidence that you intend to rely on in support of your appeal must be provided alongside your appeal form. To ensure we have received all of this information from you, please provide a full list of all supporting documents etc. in this text box.</p>

<p>Appeal procedure</p>	<p>The appeal process will be managed by the person appointed by Scottish Ministers to consider and decide your appeal. If, having received your appeal, HES's response and any other correspondence received from any interested parties, the appointed person has sufficient information to be able to make a decision on the appeal, then that is what will happen.</p> <p>However, the appointed person may consider it necessary to obtain some further information, perhaps just on a single issue/matter (rather than on the appeal as a whole), before reaching a final decision. There are several methods available to the appointed person to obtain this information:</p> <p><u>Inspection of the site</u> The appointed person visits the site to view it and its surroundings. The appointed person will undertake an unaccompanied visit wherever possible. If an accompanied site inspection is necessary, there will be no scope to discuss the merits of the proposed works with the appointed person.</p> <p><u>Further written submissions</u> Parties will be invited to provide information on a specific issue in writing - and each of these parties will then be entitled to respond to the written submissions provided by others.</p>
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	<p><u>Hearing session</u> This involves a discussion between the parties. This will be restricted to the specific matters identified for discussion, and will be led by the appointed person. Formal cross-examination of hearing participants is not allowed.</p> <p><u>Inquiry session</u> Where a more formal inquiry structure is needed, this session can be held to examine the specific matters identified by the appointed person. Cross-examination of witnesses is likely to occur in inquiry sessions if the appointed person decides that any further written submissions, a hearing session or an inquiry session is needed to consider a specific matter, both you and HES will always be invited to participate, along with anyone else who the appointed person wishes to receive relevant information from.</p> <p>While ultimately it is the appointed person's role to decide whether (and, if so, what) further procedure is necessary to inform the decision on your appeal, both you and HES are entitled to express an opinion on which procedure (or combination of procedures) you think are appropriate. This section of the appeal form invites you to do so. It also provides an option (box 1) where you can express if you are content for a decision to be made without any further procedure.</p> <p>Where there is to be some further procedure, you will always be advised of what is happening and of what might be expected of you.</p>
Site inspection	This section of the form seeks your assistance and opinion in relation to the accessibility of the site of your proposed works, to assist our preparations if the appointed person decides to inspect the site before reaching a decision.
Bio-security	Good bio-security practice helps prevent outbreaks and the spread of animal and plant pests which may affect agriculture, forestry, aquaculture and angling industries. It is helpful for the reporter to know in advance if there are any such issues they need to be aware of before they carry out a site inspection. If there are, please give details in the comments box in the appeal form or provide a separate sheet.

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Certificate of Owner Notification	<p>If you are not the sole owner of the monument you must, serve notice of appeal on all of the other owners of the monument concerned. For the purposes of the appeal it is all others who were owners of the monument 21 days prior to submission of the appeal that need to be notified.</p> <p>Notice of appeal should be given in a format prescribed by the Appeals Regulations. A notice template in the prescribed format is provided at the end of these notes for your convenience.</p> <p>Notice should be given in writing to every other owner. However, where you are unable to notify some or all other owners in writing, you must publish a notice in a local newspaper which circulates in the monument's locality. This notice needs to be published at least 22 days prior to the appeal being given to us, Planning and Environmental Appeals (DPEA).</p> <p>If you have carried out the above correctly there is no need to submit copies of completed notices with the appeal, although we may contact you for more information if we need any clarification. If these steps have not been taken prior to submission of the appeal, you must do so immediately and provide us with a copy of the notice(s).</p> <p>In all instances, whether you are the sole owner or not, you must complete the "Certificate of Owner Notification" on Page 4 of the appeal form confirming that you have carried out the appropriate steps.</p>
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Other appeals	If you have any other appeals currently with the Scottish Ministers concerning the same or neighbouring land, please provide the details on this part of the form.
Checklist	The appeal form is structured to guide you in making a full and valid appeal which will comply with the terms of the Ancient Monuments Act and the Appeals Regulations. The checklist allows you to ensure that you have provided us with all the information we need to progress your appeal.
Declaration	To confirm that you are making an appeal to the Scottish Ministers in the manner set out on your form and supporting documents, please sign and date the form before you send it. If you are sending the form electronically, you can simply type your name and date - your e-mail address will act as an electronic signature.

What next?

Once you are happy with the terms of your appeal, you should send the form and all supporting information to Planning and Environmental Appeals, either by e-mail, post or fax. The contact details are at the end of the form.

The Appeals Regulations also require that, at the same time as you send the appeal to us, you must send to HES:

- a copy of the notice of appeal (*the form*);
- a list of all documents and other information relating to your appeal which you intend to rely on in support of your appeal (*you will have provided this on page 2 of the form*); and
- a copy of any documents or other information from that list which you have not already provided to HES when they were handling your application.

HES's contact details are given on their acknowledgement letter and their decision letters, and they are also given at the end of our form.

Further information

If you wish to discuss any aspect of the appeal form or the process, please contact Planning and Environmental Appeals on 0300 244 6668. Written queries can be sent to us at the e-mail and postal address on the appeal form.

Scottish Government
Planning and Environmental Appeals (DPEA)

November 2020

Notes for completion of notices to owners using template on next page

At the "Select appropriate Notice regulation" dropdown, select "Notice under regulation 4(1)" for notices being given in writing. For notices being published in a local newspaper select "Notice under regulation 4(2)".

Any text within square brackets is a guide to what needs to be added to the text immediately preceding the brackets, and as such said text and the brackets themselves can be deleted and replaced as appropriate.

At "Select Date" in 2., the date must not be earlier than 21 days after the date on which notice is given.

Signatures may be typed or handwritten

If you are an agent signing on behalf of the appellant, select "Signed on behalf of the appellant" in the dropdown box below the signature. If not, leave blank.

SCHEDULED MONUMENT (APPEALS) (SCOTLAND) REGULATIONS 2015

of appeal under section 4B of the Ancient Monuments and Archaeological Areas Act

TAKE NOTICE

2. If you wish to make representations to the Scottish Ministers about the appeal, you should make them in writing no later than

to Planning and Environmental Appeals (DPEA),
Hadrian House,
Callendar Business Park,
Falkirk
FK1 1XR

or by email to dpea@gov.scot

Signed:

Date:

(select Current Page in the print dialogue box)