

1996 No. 1507 (S.134)

ANCIENT MONUMENTS

The Ancient Monuments (Class Consents) (Scotland) Order 1996

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| <i>Made</i> | <i>4th June 1996</i> |
| <i>Laid before Parliament</i> | <i>20th June 1996</i> |
| <i>Coming into force</i> | <i>11th July 1996</i> |

The Secretary of State, in exercise of the powers conferred on him by section 3, as read with section 60(1), of the Ancient Monuments and Archaeological Areas Act 1979, and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement, extent and revocation

- 1.—(1) This Order may be cited as the Ancient Monuments (Class Consents) (Scotland) Order 1996 and shall come into force on 11th July 1996.
- (2) This Order shall extend to Scotland only.
- (3) The Ancient Monuments (Class Consents) (Scotland) Order 1981 is hereby revoked.

Interpretation

2. In this Order-

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

"domestic gardening works" includes works executed in the non-commercial cultivation of allotments;

"horticultural works" includes domestic gardening works;

"ploughed land" means land on which ploughing has been executed regularly and lawfully and at intervals not exceeding 10 years in duration as part of an established agricultural regime.

Grant of scheduled monument consent

- 3.—(1) Subject to the provisions of this article, scheduled monument consent is hereby granted under section 3 of the Act for the execution of works of any class or description specified in the Schedule to this Order.

(2) The scheduled monument consent hereby granted is subject to any conditions specified in the Schedule referred to in paragraph (1) above in relation to works of a particular class or description.

(3) Nothing in this article shall operate so as to grant scheduled monument consent for the execution of works contrary to any condition attached to a scheduled monument consent granted under Part I of the Act otherwise than by this Order.

Transitional provision

4. Nothing in this Order shall operate so as to require the grant of scheduled monument consent for the execution of works commenced, though not completed, before this Order comes into force, where, but for this Order, execution of those works would not have required the grant of such consent.

Lindsay
Parliamentary Under Secretary of State, Scottish Office
St Andrew's House, Edinburgh
4th June 1996

SCHEDULE

Article 3

CLASSES OR DESCRIPTIONS OF WORKS FOR THE EXECUTION OF WHICH SCHEDULED MONUMENT CONSENT IS GRANTED BY VIRTUE OF THIS ORDER

- Class I:
Agricultural, Horticultural
and Forestry Works**
- Agricultural, horticultural and forestry works, being works of the same kind as works previously executed lawfully in the same location and on the same spot within that location during the period of 6 years (or 10 years in the case of ploughed land) immediately preceding the date on which the works commence, but excluding-
- (a) in the case of ploughed land, any works likely to disturb the soil of any part of that land below the depth at which ploughing of that part has previously been executed lawfully;
 - (b) in the case of land other than ploughed land, any works likely to disturb the soil below the depth of 300 millimetres;
 - (c) sub-soiling, drainage works, the planting or uprooting of trees, hedges or shrubs, the stripping of top soil, tipping operations, the felling or removal of trees or the commercial cutting and removal of turf;
 - (d) the demolition, removal, extension, alteration or disturbance of any building, structure or work or of the remains thereof;
 - (e) the erection of any building or structure;
 - (f) in the case of works other than domestic gardening works, the laying of paths, hard-standings or foundations for buildings or the erection of fences or other barriers.
- Class II:
Works by the Coal
Authority or their
Licensees**
- Works executed more than 10 metres below ground level by the Coal Authority or any holder of a licence granted under Part II of the Coal Industry Act 1994 .
- Class III:
Works by the British
Waterways Board**
- Works executed by the British Waterways Board in relation to land owned or occupied by them, being works of repair or maintenance not involving a material alteration to, or a reconstruction of, a scheduled monument which are essential for the purpose of ensuring the functioning of a canal.
- Class IV:**
- Works for the repair or maintenance of

Works for the Repair or Maintenance of Machinery

machinery, not involving a material alteration to, or a reconstruction of, a scheduled monument.

**Class V
Works urgently necessary for health or safety**

Works which are urgently necessary in the interests of health or safety, provided that:

- (a) the works are limited to the minimum measures immediately necessary; and
- (b) notice in writing justifying in detail the need for the works is given to the Secretary of State as soon as practicable.

**Class VI:
Works of Archaeological Evaluation**

Works of archaeological evaluation executed by or on behalf of a person who has applied for scheduled monument consent, being works executed—

- (a) in order to supply the Secretary of State with information required by him for the determination of that application;
- (b) under the supervision of the Secretary of State or a person approved for that purpose in writing by the Secretary of State;
- (c) in accordance with a written specification approved for the purpose by the Secretary of State; and
- (d) with the written agreement of the owner or owners of the scheduled monument where that person is not the sole owner.

**Class VII:
Certain works executed under Agreements under section 17 of the Act.**

Works for the maintenance or preservation of a scheduled monument or its amenities executed in accordance with a written agreement between the occupier and the Secretary of State under section 17 of the Act.

**Class VIII:
Certain works grant aided under section 24 of the Act.**

Works for the preservation, maintenance or management of a scheduled monument being works executed in accordance with the terms of a written agreement under section 24 of the Act whereby the Secretary of State undertakes to defray or contribute towards the costs of such works.

**Class IX:
Certain works undertaken by the Royal Commission on the Ancient and Historical Monuments of Scotland.**

Works comprising the placing of survey markers to a depth not exceeding 300 millimetres for the purpose of measured surveying of visible remains undertaken by the Royal Commission on the Ancient and Historical Monuments of Scotland.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which re-enacts with amendments the Ancient Monuments (Class Consents) (Scotland) Order 1981, grants scheduled monument consent under Part I of the Ancient Monuments and Archaeological Areas Act 1979 ("the Act") for the execution in Scotland of works of any class or description specified in the Schedule to this Order.

The Schedule specifies—

- (a) certain agricultural, horticultural, and forestry works;
- (b) works executed more than 10 metres below ground level by the Coal Authority or a licensee thereof;
- (c) certain works executed by the British Waterways Board;
- (d) certain repair or maintenance works to machinery;
- (e) certain works urgently necessary in the interests of health or safety; and
- (f) certain works of archaeological evaluation;
- (g) certain works under agreements under section 17 of the Act;
- (h) certain works grant-aided under section 24 of the Act;
- (i) certain works undertaken by the Royal Commission on the Ancient and Historical Monuments of Scotland.

The main changes from the 1981 Order are—

Agricultural, Horticultural and Forestry Works—

- (a) the 5 year period during which certain works previously executed (the "qualifying works") are granted scheduled monument consent under the 1981 Order has been replaced by a new 6 year period (10 years in the case of ploughed land) which starts from the date when the qualifying works commence;
- (b) scheduled monument consent under this Order does not include works (not being ploughing) involving soil disturbance beyond a depth of 300 millimetres nor forestry works involving soil disturbance of any depth.

Health or Safety Works—

scheduled monument consent under this Order only extends to the minimum works which are urgently necessary.

Archaeological Evaluation Works—

this new class of works applies to works to be executed by or on behalf of an applicant for scheduled monument consent.

Section 17 Agreement Works—

this new class of works applies to certain works executed in terms of an agreement entered into under section 17 of the Act.

Grant Aided Works—

this new class of works applies to certain works grant aided under section 24 of the Act.

Works by the Royal Commission on the Ancient and Historical Monuments of Scotland ("RCAHMS")—

this new class of works applies to certain works undertaken by RCAHMS.