

Planning and Environmental Appeals (DPEA)

APPEAL TO SCOTTISH MINISTERS:

NOTES FOR APPELLANTS SUBMITTING A SCHEDULED MONUMENT

ENFORCEMENT NOTICE APPEAL

(FORM SME)



Scottish Government
Riaghaltas na h-Alba
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Notes for appellant

These notes relate to appeals to the Scottish Ministers under section 9C of the [Ancient Monuments And Archaeological Areas Act 1979](#) [the “Ancient Monuments Act”]; in conjunction with [The Scheduled Monument \(Appeals\) \(Scotland\) Regulations 2015](#) [the “Appeals Regulations”]

If you want to appeal to Scottish Ministers against a scheduled monument enforcement notice served on you by HES, you should use form SME.

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 must 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 must be supplied.

You must also confirm whether correspondence should be sent to the agent rather than the appellant by using the check box provided.

E-mail 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.

Monument affected

To help us identify the location of the works that are the subject of the enforcement notice and appeal, you should provide the postal address and/or monument name.

OS map grid reference or post code

To ensure we have properly identified the location, you should provide either the ordnance survey national grid reference or the site's post code.

Date on which notice is to take effect

The enforcement notice served by HES will specify a date on which the notice is to take effect. Please note this date in this part of the appeal form.

Your appeal must be received by the Planning and Environmental Appeals Division before that date. The Scottish Ministers have no scope or discretion to accept a late appeal.

Interest in the land

An enforcement notice can be served on more than one person. It can be served separately on the owner, the occupier, the lessee and on any other person having an interest in the land. Please state your interest in the land on this part of the form, either by marking the appropriate box or by explaining in the text box provided.

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Grounds of appeal

Section 9C of the Ancient Monuments Act, as amended by Schedule 2 of the Historic Environment Scotland Act 2014, sets out the grounds on which you can base an appeal against a scheduled monument enforcement notice. These grounds are detailed on the

appeal form and you must base your appeal on at least one, by marking the appropriate box(es).

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Facts in support of each ground of appeal (Statement of appeal)

The appeal process is designed to ensure all matters to be considered in an appeal are raised at the earliest possible stage, to allow the Scottish Government to reach decisions quickly, avoiding protracted processes. For this reason, the Appeals Regulations require that you must provide a statement setting out full particulars of your appeal, including a note of all matters you think ought to be taken into account.

You will want to ensure that the matters you raise relate to the specific grounds of appeal you have pleaded.

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. You will however be given an opportunity to provide comments on any matters which HES might raise in its response to your appeal.

List of documents/ evidence

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.

Appeal procedure

The appeal process will be managed by the person appointed by the Scottish Ministers to consider and decide your appeal. If, having received your appeal and HES's response, the appointed person has sufficient information to be able to make a decision on the appeal, then that is what will happen.

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:

- Inspection of the site - 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 appeal with the appointed person.
- Further written submissions - 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.
- Hearing session - 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.
- Inquiry session - 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.

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.

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.

Site inspection

This section of the form seeks your assistance and opinion in relation to the accessibility of the appeal site, 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 on the appeal form or provide on a separate sheet.

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Other appeals

If you have any other planning (or related) 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 Scheduled 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 or post. 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);
- your statement of appeal (page 3 of the form, or in a separate document); and
- a copy of all documents and other information relating to your appeal which you intend to rely on in support of your appeal (as listed on page 3 of the form).

The contact details for HES are also at the end of the form.

Further information

For further information about HES related appeal processes please see [Historic Environment Circular 1](#). Hard copies of this circular can be obtained by calling the Heritage Management Directorate on 0131 668 8716.

If you wish to discuss any aspect of the appeal form or the process, please contact Planning and Environmental Appeals (DPEA) on 0300 244 6668. Written queries can be sent to us at either by e-mailing dpea@gov.scot or by post to Planning and Environmental Appeals Division, Hadrian House, Callendar Business Park, Falkirk, FK1 1XR.

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