

*Status: Point in time view as at 27/05/1997.*

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## SCHEDULES

### SCHEDULE 4

Section 33.

#### THE COMMISSION: AMENDMENTS

##### *Historic Buildings and Ancient Monuments Act 1953 (c. 49)*

1 In the Historic Buildings and Ancient Monuments Act 1953 (“the 1953 Act”) at the end of section 2 (Historic Buildings Council for Scotland) there shall be inserted—

“(4) The said Council shall consist of a chairman appointed by the Secretary of State and such number of other members so appointed as the Secretary of State may from time to time determine, and the chairman and other members of the Council shall hold and vacate office in accordance with the terms of their appointments.

(5) The Secretary of State may out of moneys provided by Parliament pay to the chairman of the said Council such remuneration and allowances as the Secretary of State may with the approval of the Treasury determine.

No person shall be disqualified from being elected to, or sitting and voting as, a member of the House of Commons by reason of his being the chairman of the said Council; but, in relation to a chairman of the Council who is a Member of the House of Commons, this subsection shall have effect with the substitution, for the words “remuneration and allowances”, of the words “allowances in respect of travelling and subsistence expenses, and in respect of other expenses (if any) necessarily incurred by him for the purpose of enabling him to perform his duties as chairman,”.

(6) The Secretary of State may out of moneys provided by Parliament pay to the other members of the said Council such allowances as he may with the approval of the Treasury determine in respect of travelling and subsistence expenses and in respect of other expenses (if any) necessarily incurred by them for the purpose of enabling them to perform their duties as members of the Council.

(7) Subject to any directions of the Secretary of State as to quorum or other matters, the procedure of the said Council shall be such as the Council may determine.

(8) The said Council shall, before such date in every year as the Secretary of State may fix, send to the Secretary of State a report in respect of the matters on which they have advised the Secretary of State during the previous year, and the Secretary of State shall lay a copy of the report before each House of Parliament.

(9) Without prejudice to the last preceding subsection, if at any time it appears to the said Council that there is need for action to be taken by the Secretary of State under this Part of this Act, they shall forthwith make to the

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Secretary of State such representations as they may think appropriate in the circumstances.”

2 At the end of section 3 of the 1953 Act (Historic Buildings Council for Wales) there shall be inserted—

“(3) Subsections (4) to (9) of section 2 of this Act shall apply to the said Council as they apply to the Historic Buildings Council for Scotland.”

3 After section 3 of the 1953 Act there shall be inserted—

**“3A Grants and loans for preservation of historic buildings etc.**

4 In section 4(1) of the 1953 Act (grants and loans for preservation of historic buildings etc.) for “appearing” there shall be substituted “ which is not situated in England and which appears ” and after “land which” there shall be inserted “ is not situated in England and which ”.

5 (1) Section 4A of the 1953 Act (recovery of grants) shall be amended as follows.

(2) In subsection (1) for “section 4” there shall be substituted “ section 3A or 4 ”.

(3) In subsections (1), (3), (4) and (8) for “the Secretary of State” there shall be substituted “ the Commission or (as the case may be) the Secretary of State ”.

(4) In subsections (3) and (4) for “he thinks” there shall be substituted “ they think or (as the case may be) he thinks ”.

6 (1) Section 5 of the 1953 Act (acquisition by Secretary of State of historic buildings etc.) shall be amended as follows.

(2) After subsection (3) there shall be inserted—

“(3A) The Commission may be a party to such arrangements as are mentioned in subsection (3) of this section if the arrangements relate to property situated in England.”

(3) In subsection (4) after “the appropriate” and after “the said” there shall be inserted “ Commission or ”.

7 After section 5 of the 1953 Act there shall be inserted—

**“5A Acquisition by the Commission of historic buildings, etc.**

(1) Subject to subsection (4) of this section, the Commission shall have power to acquire by agreement, whether by purchase, lease or otherwise, or to accept a gift of—

(a) any building which is situated in England and which appears to them to be one of outstanding historic or architectural interest;

(b) any building which is situated in England and in an area designated as a conservation area under section 277 of the Town and Country Planning Act 1971 and which appears to the Commission to be of special historic or architectural interest;

(c) any land which is situated in England and which comprises, or is contiguous or adjacent to, any building mentioned in paragraph (a) or (b) of this subsection;

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- (d) any garden or other land which is situated in England and which appears to the Commission to be of outstanding historic interest but which is not contiguous or adjacent to a building which appears to the Commission to be of outstanding historic or architectural interest.
- (2) The Commission shall have power to purchase by agreement, or to accept a gift of, any objects which it would (within the meaning of subsection (5) of this section) be historically appropriate to keep in—
- (a) a building which, or any interest in which, is vested in the Commission, or a building which is under their management or in their custody, being in either case a building appearing to the Commission to be of outstanding historic or architectural interest; or
  - (b) a building of which the Commission are guardian under the Ancient Monuments and Archaeological Areas Act 1979; or
  - (c) a building situated in England which, or any interest in which, is vested in the National Trust for Places of Historic Interest or Natural Beauty.
- (3) The Commission may make such arrangements as they may think fit as to the management or custody of any property acquired or accepted by them under this section, and as to the use of any such property, and may dispose of or otherwise deal with any such property as they may from time to time determine.
- (4) The Commission shall not acquire or accept any property under subsection (1) of this section without the consent of the Secretary of State, which may be given subject to such conditions as he thinks fit.
- (5) For the purposes of subsection (2) of this section, an object is one which it would be historically appropriate to keep in a building if—
- (a) it is or has been ordinarily kept in the building; or
  - (b) it is historically associated with the building or connected with a person or event historically associated with the building; or
  - (c) objects of its kind were produced or used in a period falling within the lifetime of the building; or
  - (d) the Commission are of opinion that it would for some other reason be historically appropriate to keep it in the building.

### **5B Grants to local authorities and National Trust for acquisition of historic buildings.**

- (1) The Commission may make grants for the purpose of defraying in whole or in part any expenses incurred by a local authority in England in the acquisition of property situated in England under section 114 or 119(1)(b) or (c) of the Town and Country Planning Act 1971 (under which buildings of special architectural or historic interest may in certain cases be acquired by a local authority).
- (2) The Commission may also make grants to the National Trust for Places of Historic Interest or Natural Beauty for the purpose of defraying in whole or in part any expenses incurred by them in the acquisition of—

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- (a) any building which is situated in England and which appears to the Commission to be of outstanding historic or architectural interest;
- (b) any land which is situated in England and which comprises, or is contiguous or adjacent to, any such building; or
- (c) any garden or other land which is situated in England and which appears to the Commission to be of outstanding historic interest but which is not contiguous or adjacent to a building which appears to the Commission to be of outstanding historic or architectural interest.”

8 At the end of section 6 of the 1953 Act (grants for acquisition of historic buildings) there shall be inserted—

“(4) This section applies only where the property or buildings are not situated in England.”

9 At the end of section 8 of the 1953 Act (endowments of historic buildings) there shall be inserted—

“(7) Where the Commission are requested in pursuance of subsection (3) of this section to manage any property the income from which is applicable for or towards the upkeep of property situated in England, they may undertake the management.”

10 After section 8 of the 1953 Act there shall be inserted—

**“8A Power of Commission to accept endowments.**

(1) Where any instrument coming into operation after the establishment of the Commission contains a provision purporting to be a gift of property to the Commission upon trust to use the income thereof (either for a limited time or in perpetuity) for or towards the upkeep of—

- (a) a building acquired or accepted by the Commission under section 5A of this Act, or a building which the Commission propose so to acquire or accept, or
- (b) a building which at the coming into operation of the trust instrument is or will shortly be vested in or under the management or in the custody of the Commission, being a building which is situated in England and which appears to them to be one of outstanding historic or architectural interest, or
- (c) a building of which at that time the Commission are or will shortly be guardian under the Ancient Monuments and Archaeological Areas Act 1979.

or for or towards the upkeep of any such building together with other property situated in England, the Commission may accept the gift, and if they do so, and the provision does not constitute a charitable trust, the following provisions of this section shall have effect.

(2) The validity of the gift and of the trust to use the income as aforesaid (hereinafter referred to as “the endowment trust”) shall be deemed not to be, or ever to have been, affected by any rule of law or equity which would not have affected their validity if the trust had been charitable.

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- (3) In relation to the property (of whatsoever nature) comprised in the gift and any property for the time being representing that property (hereinafter collectively referred to as “the trust fund”) the Commission shall during the continuance of the endowment trust have the like powers of management, disposition and investment as, in the case of land held on trust for sale, are conferred by law on the trustees for sale in relation to the land and to the proceeds of sale thereof; but this subsection shall have effect without prejudice to any additional or larger powers conferred on the Commission by the trust instrument.
- (4) If while the endowment trust continues an event happens such that immediately thereafter the Commission are neither entitled to any interest in the building to which the trust relates, nor have the building under their management or in their custody, nor are guardian of the building under the said Act of 1979, and apart from this subsection the endowment trust would not then be determined or be deemed to have failed, then on the happening of that event the endowment trust shall cease by virtue of this subsection and the trust fund shall devolve accordingly as on a failure of the trust.
- (5) If the trust instrument contains a provision whereby on the failure or determination of the endowment trust the trust fund purports to be given, or to be directed to be held, on charitable trusts, the validity of that gift or direction shall be deemed not to be, or ever to have been, affected by any rule of law or equity relating to perpetuities.

## **8B Endowment of gardens.**

- (1) Where any instrument coming into operation after the establishment of the Commission contains a provision purporting to be a gift of property to the Commission upon trust to use the income thereof (either for a limited time or in perpetuity) for or towards the upkeep of a garden or other land acquired or accepted by the Commission under section 5A(1)(d) of this Act, or a garden or other land which the Commission propose so to acquire or accept, or for or towards the upkeep of any such garden or other land together with other property situated in England, the Commission may accept the gift, and if they do so, and the provision does not constitute a charitable trust, the following provisions of this section shall have effect.
- (2) The validity of the gift and of the trust to use the income as aforesaid (hereinafter referred to as “the endowment trust”) shall be deemed not to be, or ever to have been, affected by any rule of law or equity which would not have affected their validity if the trust had been charitable.
- (3) In relation to the property (of whatsoever nature) comprised in the gift and any property for the time being representing that property (hereinafter collectively referred to as “the trust fund”) the Commission shall during the continuance of the endowment trust have the like powers of management, disposition and investment as, in the case of land held on trust for sale, are conferred by law on the trustees for sale in relation to the land and to the proceeds of sale thereof; but this subsection shall have effect without prejudice to any additional or larger powers conferred on the Commission by the trust instrument.

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- (4) If while the endowment trust continues an event happens such that immediately thereafter the Commission are not entitled to any interest in the garden or other land to which the trust relates, and apart from this subsection the endowment trust would not then be determined or be deemed to have failed, then on the happening of that event the endowment trust shall cease by virtue of this subsection and the trust fund shall devolve accordingly as on a failure of the trust.
- (5) If the trust instrument contains a provision whereby on the failure or determination of the endowment trust the trust fund purports to be given, or to be directed to be held, on charitable trusts, the validity of that gift or direction shall be deemed not to be, or ever to have been, affected by any rule of law or equity relating to perpetuities.

### 8C Register of Gardens.

- (1) This section applies where the Commission compile a register of gardens and other land situated in England and appearing to them to be of special historic interest.
  - (2) The Commission shall, as soon as practicable after including in the register an entry relating to any garden or land, notify the persons mentioned in subsection (3) of this section of the inclusion and send to them a copy of the entry.
  - (3) The persons are—
    - (a) the owner and (if the owner is not the occupier) the occupier of the garden or land,
    - (b) any county planning authority, and any district planning authority, in whose area the garden or land (or any part of the garden or land) is situated, and
    - (c) the Secretary of State.”
- 11 (1) In section 9(1) of the 1953 Act (meaning of “appropriate Council”) after “appropriate” there shall be inserted “Commission or”, in paragraph (a) for “Historic Buildings Council for England” there shall be substituted “Commission” and after paragraph (c) there shall be inserted “and the expression “the appropriate Council under this Act” shall be construed in accordance with paragraphs (b) and (c) of this subsection”.
- (2) After section 9(1) of the 1953 Act there shall be inserted—
- “(1A) In this Part of this Act “the Commission” means the Historic Buildings and Monuments Commission for England.”

### *Pastoral Measure 1968 (No. 1)*

- 12 (1) Section 66 of the Pastoral Measure 1968 (transfer of redundant churches) shall be amended as follows.
- (2) In subsection (1) after paragraph (b) there shall be inserted—
- “(c) where a redundant building or any part thereof is situated in England and is vested in the Diocesan Board of Finance, whether in pursuance of a pastoral scheme or a redundancy scheme or

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pending the making of a redundancy scheme, the Board may, with the approval of the bishop and the Commissioners, enter into and carry out an agreement with the Historic Buildings and Monuments Commission for England for the acquisition and preservation by the Commission of the building or part with or without other land so situated and so vested in the Board;

- (d) where a redundant building or any part thereof is situated in England and is vested in the Redundant Churches Fund in pursuance of a redundancy scheme or a pastoral scheme to which section 47 of this Measure applies, the Fund may enter into and carry out an agreement with the Historic Buildings and Monuments Commission for England for the acquisition and preservation by the Commission of the building or part with or without other land so situated and so vested;”

and for “the next two following subsections” there shall be substituted “ subsections (2) and (3) of this section ”.

- (3) After subsection (1) there shall be inserted—

“(1A) The Historic Buildings and Monuments Commission for England shall not enter into an agreement under subsection (1)(c) or (d) of this section without the consent of the Secretary of State.”

- (4) In subsection (2)(a) after “the Minister” there shall be inserted “ or (as the case may be) the Historic Buildings and Monuments Commission for England ”, after “him” there shall be inserted “ or them ” and after “his” there shall be inserted “ or their ”, and in subsection (2)(c) after “the Minister” there shall be inserted “ or (as the case may be) the Historic Buildings and Monuments Commission for England ”.

- (5) In subsection (3) after “the said Minister” there shall be inserted “ or (as the case may be) the Historic Buildings and Monuments Commission for England ” and after “the Minister” (in both places) there shall be inserted “ or the Commission ”.

- (6) After subsection (3) there shall be inserted—

“(3A) Before giving his consent under subsection (3) of this section in relation to a building or part situated in England the Minister shall consult with the Historic Buildings and Monuments Commission for England.”

- (7) In subsection (4) after “the Minister” (in the first place) there shall be inserted “ or the Historic Buildings and Monuments Commission for England ” and after “the Minister” (in the second and third places) there shall be inserted “ or the Commission (as the case may be) ”.

- (8) After subsection (4) there shall be inserted—

“(4A) The Historic Buildings and Monuments Commission for England shall not enter into an agreement under subsection (4) of this section unless—

- (a) the land is situated in England, and  
(b) the Secretary of State has consented.”

- (9) In subsection (5) after “the said Minister” there shall be inserted “ or (as the case may be) the Historic Buildings and Monuments Commission for England ”.

- (10) After subsection (5) there shall be inserted—

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- “(6) Where a redundant building (or part) situated in England has been acquired for its preservation by the Minister under subsection (1) of this section either with or without any other land so situated, the Historic Buildings and Monuments Commission for England may by agreement with the Minister undertake on his behalf the management and preservation of the building (or part) together with the other land (if any).
- (7) Where the Minister has under subsection (4) of this section acquired land situated in England for its maintenance with a building (or part), the Commission may undertake, in any agreement made under subsection (6) of this section in relation to the building (or part), the maintenance of the land on behalf of the Minister.
- (8) Where the Minister has under subsection (5) of this section acquired for their preservation the contents of a redundant building (or part), the Commission may undertake, in any agreement made under subsection (6) of this section in relation to the building (or part), the preservation of the contents on behalf of the Minister.”

*Redundant Churches and Other Religious Buildings Act 1969 (c. 22)*

<sup>F1</sup>13 .....

**Textual Amendments**

**F1** Sch. 4 para. 13 repealed (1.9.1992) by [Charities Act 1992 \(c. 41\)](#), s. 78(2), [Sch. 7](#); S.I. 1992/1900, art. 2, [Sch. 1](#), Appendix

<sup>F2</sup>14 .....

**Textual Amendments**

**F2** Sch. 4 para. 14 repealed (1.9.1992) by [Charities Act 1992 \(c. 41\)](#), s. 78(2), [Sch. 7](#); S.I. 1992/1900, art. 2, [Sch. 1](#), Appendix

*Town and Country Planning Act 1971 (c. 78)*

15—17. .... <sup>F3</sup>

**Textual Amendments**

**F3** Sch. 4 paras. 15–17, 19–21, 22(1)–(5) (7), 23, 24 repealed by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, [Sch. 1 Part I](#)

18 .....

**Textual Amendments**

**F4** Sch. 4 para. 18, Sch. 5 para. 6 repealed by [Housing and Planning Act 1986 \(c. 63, SIF 123:1\)](#), s. 49(2), [Sch. 12 Pt. III](#)



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19—21. . . . . F5

**Textual Amendments**

**F5** Sch. 4 paras. 15–17, 19–21, 22(1)–(5) (7), 23, 24 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, **Sch. 1 Part I**

*Town and Country Planning (Amendment) Act 1972 (c. 42)*

22 (1) . . . . . F6

<sup>F7</sup>(6) . . . . .

(7) . . . . . F6

**Textual Amendments**

**F6** Sch. 4 paras. 15–17, 19–21, 22(1)–(5) (7), 23, 24 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, **Sch. 1 Part I**

**F7** Sch. 4 para. 22(6) repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. I** (with s. 5, Sch. 3)

23, 24. . . . . F8

**Textual Amendments**

**F8** Sch. 4 paras. 15–17, 19–21, 22(1)–(5) (7), 23, 24 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, **Sch. 1 Part I**

*Ancient Monuments and Archaeological Areas Act 1979 (c. 46)*

25 (1) In the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”) section 1 (Schedule of monuments) shall be amended as follows.

(2) At the end of subsection (3) there shall be inserted—

“The Secretary of State shall consult the Historic Buildings and Monuments Commission for England (in this Act referred to as “the Commission”) before he includes in the Schedule a monument situated in England.”

(3) At the end of subsection (5) there shall be inserted—

“In the case of a monument situated in England, the Secretary of State shall consult with the Commission before he makes an exclusion or amendment.”

(4) In subsection (6) after “Secretary of State shall” there shall be inserted “ (subject to subsection 6A) below) ”.

(5) After subsection (6) there shall be inserted—

“(6A) Subsection (6) above shall not apply as regards a monument situated in England but, as soon as may be after acting as mentioned in paragraph (a), (b)

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or (c) of that subsection as regards such a monument, the Secretary of State shall inform the Commission of the action taken and, in a case falling within paragraph (a) or (b) of that subsection, shall also send to the Commission a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.”

(6) In subsection (7) there shall be inserted at the beginning “ Subject to subsection (7A) below ”.

(7) After subsection (7) there shall be inserted—

“(7A) Subsection (7) above shall not apply as regards monuments situated in England, but the Secretary of State shall from time to time supply the Commission with a list of all the monuments which are so situated and are for the time being included in the Schedule, whether as a single list or in sections containing the monuments situated in particular areas; but in the case of a list supplied in sections, all sections of the list need not be supplied simultaneously.”

(8) After subsection (8) there shall be inserted—

“(8A) The Secretary of State shall from time to time supply the Commission with amendments of any list supplied under subsection (7A) above.”

(9) Sub-paragraph (5) does not apply in the case of an inclusion, amendment or exclusion made before the appointed day.

26 After section 1 of the 1979 Act there shall be inserted—

**“1A Commission’s functions as to informing and publishing.**

(1) As soon as may be after the Commission—

- (a) have been informed as mentioned in section 1(6A) of this Act, and
- (b) in a case falling within section 1(6)(a) or (b) of this Act, have received a copy of the entry or (as the case may be) of the amended entry from the Secretary of State,

the Commission shall inform the owner and (if the owner is not the occupier) the occupier of the monument, and any local authority in whose area the monument is situated, of the inclusion, amendment or exclusion and, in a case falling within section 1(6)(a) or (b), shall also send to him or them a copy of the entry or (as the case may be) of the amended entry in the Schedule relating to that monument.

(2) As soon as may be after the Commission receive a list or a section in pursuance of section 1(7A) of this Act, they shall publish the list or section (as the case may be).

(3) The Commission shall from time to time publish amendments of any list published under subsection (2) above, and any such list (as amended) shall be evidence of the inclusion in the Schedule for the time being—

- (a) of the monuments listed; and
- (b) of any matters purporting to be reproduced in the list from the entries in the Schedule relating to monuments listed.”

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- 27 (1) In section 2(5) of the 1979 Act (conditions attached to scheduled monument consent) for “the Secretary of State or a person authorised by the Secretary of State” there shall be substituted—
- “(a) a person authorised by the Commission (in a case where the monument in question is situated in England), or
  - (b) the Secretary of State or a person authorised by the Secretary of State (in any other case)”.
- (2) This paragraph does not apply to a consent granted before the appointed day.
- 28 (1) Section 3 of the 1979 Act (grant of scheduled monument consent by order of Secretary of State) shall be amended as follows.
- (2) At the end of subsection (1) there shall be inserted—
- “Before granting consent in relation to monuments of a class or description which includes monuments situated in England, the Secretary of State shall consult with the Commission in relation to the monuments so situated.”
- (3) At the end of subsection (3) there shall be inserted—
- “Before making a direction in relation to a monument situated in England, or withdrawing such a direction, the Secretary of State shall consult with the Commission.”
- 29 At the end of section 4(3) of the 1979 Act (modification and revocation of scheduled monument consent) there shall be inserted—
- “Where a direction would (if given) affect a monument situated in England, the Secretary of State shall consult with the Commission before he gives such a direction.”
- 30 At the end of section 5 of the 1979 Act (works to preserve scheduled monument) there shall be inserted—
- “(3) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a scheduled monument situated in England, he may (instead of acting as mentioned in subsection (1) above) authorise the Commission to enter the site of the monument and execute such works as are specified in the authorisation.
- (4) In that case, the Commission may enter the site and execute the works after giving the owner and (if the owner is not the occupier) the occupier of the monument not less than seven days’ notice in writing of their intention to do so.
- (5) Where the Secretary of State gives an authorisation under subsection (3) above, subsection (2) above shall have effect with the substitution of “Commission” for “Secretary of State” (in each place) and of “execute” for “executes”.
- 31 (1) At the end of section 6(5) of the 1979 Act (power of entry to preserve monument from damage) there shall be inserted—
- “This subsection does not apply to land in England.”
- (2) Nothing in this paragraph affects an authorisation given before the appointed day.

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32 After section 6 of the 1979 Act there shall be inserted—

**“6A Commission’s powers of entry in relation to scheduled monuments.**

- (1) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land with a view to ascertaining whether any works affecting the monument have been or are being carried out in contravention of section 2(1) of this Act and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1).
- (2) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of—
  - (a) observing the execution on the land of any works to which a scheduled monument consent relates; and
  - (b) inspecting the condition of the land and the scheduled monument in question after the completion of any such works,
 with a view to ascertaining whether the works in question are or have been executed in accordance with the terms of the consent and of any conditions attached to the consent, and so to enabling the Commission to decide whether to institute proceedings in England for an offence under section 2(1) or (6) of this Act.
- (3) Any person duly authorised in writing by the Commission may at any reasonable time enter any land in England for the purpose of inspecting any scheduled monument in, on or under the land in connection with any consultation made in respect of the monument under section 4(3) of this Act or paragraph 3(3)(c) of Schedule 1 to this Act.
- (4) Any person duly authorised in writing by the Commission may enter any land which is in England and in, on or under which a scheduled monument is situated, with the consent of the owner and (if the owner is not the occupier) of the occupier of the land, for the purpose of erecting and maintaining on or near the site of the monument such notice boards and marker posts as appear to the Commission to be desirable with a view to preserving the monument from accidental or deliberate damage.
- (5) References in this section to scheduled monument consent include references to consent granted by order under section 3 of this Act.”

33 In section 7(1) of the 1979 Act (compensation payable by Secretary of State for refusal of scheduled monument consent etc.) after “Secretary of State” there shall be inserted “ or (where the monument in question is situated in England) the Commission ”.

- 34 (1) Section 8 of the 1979 Act (recovery of compensation) shall be amended as follows.
- (2) For subsection (2)(b) there shall be substituted—
- “(b) the requirement mentioned in subsection (2A) below is fulfilled”.
- (3) After subsection (2) there shall be inserted—
- “(2A) The requirement is that—

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- (a) where the monument in question is situated in England, the Commission have caused notice of the payment of compensation to be deposited with the council of each district or London borough in which the monument is situated or (where it is situated in the City of London, the Inner Temple or the Middle Temple) with the Common Council of the City of London;
  - (b) where the monument in question is situated in Scotland, the Secretary of State has caused such notice to be deposited with the local authority of each area in which the monument is situated;
  - (c) where the monument in question is situated in Wales, the Secretary of State has caused such notice to be deposited with the council of each district in which the monument is situated.”
- (4) In subsection (3) after “his satisfaction” there shall be inserted “ or (as the case may be) has been repaid to the Commission or secured to their satisfaction ”.
- (5) Nothing in this paragraph affects a case where compensation under section 7 of the 1979 Act was paid before the appointed day.
- 35 In section 9(1) of the 1979 Act (compensation payable by Secretary of State where works cease to be authorised) after “Secretary of State” there shall be inserted “ or (where the monument in question is situated in England) the Commission ”.
- 36 At the end of section 10(1) of the 1979 Act (compulsory acquisition of ancient monuments by Secretary of State) there shall be inserted “ ; but, where the monument in question is situated in England, he shall consult with the Commission before making a compulsory purchase order. ”
- 37 (1) Section 11 of the 1979 Act (acquisition by agreement or gift) shall be amended as follows.
- (2) At the end of subsection (1) there shall be inserted “ but, where the monument in question is situated in England, he shall consult with the Commission before doing so. ”
- (3) After subsection (1) there shall be inserted—
- “(1A) With the consent of the Secretary of State, the Commission may acquire by agreement any ancient monument situated in England.”
- (4) At the end of subsection (3) there shall be inserted “ ; but, where the monument in question is situated in England, the Secretary of State shall consult with the Commission before accepting ”.
- (5) After subsection (3) there shall be inserted—
- “(3A) With the consent of the Secretary of State, the Commission may accept a gift (whether by deed or will) of any ancient monument situated in England.”
- 38 (1) Section 12 of the 1979 Act (power to place ancient monument under guardianship) shall be amended as follows.
- (2) At the end of subsection (1) there shall be inserted—
- “Where the monument in question is situated in England, the Secretary of State shall consult with the Commission before he so consents.”
- (3) After subsection (1) there shall be inserted—

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“(1A) Subject to subsection (4) below, a person who has an interest of any description mentioned in subsection (3) below in an ancient monument situated in England may, with the consent of the Commission, given after obtaining the consent of the Secretary of State, constitute the Commission by deed guardian of the monument.”

- (4) In subsections (3) and (4) after “(1)” there shall be inserted “ or (1A) ”.
- (5) In subsection (6) after “Secretary of State” there shall be inserted “ or the Commission ” and for “(as the case may be) subsection (2) above” there shall be substituted “ (1A) or (2) above (as the case may be) ”.
- (6) In subsection (10) after “Secretary of State” there shall be inserted “ or the Commission ”.
- (7) In subsection (11) for “(as the case may be) the local authority in question” there shall be substituted “ the Commission or the local authority in question (as the case may be) ”.
- 39 (1) Section 13 of the 1979 Act (effect of guardianship) shall be amended as follows.
- (2) In subsections (1) and (2) after “Secretary of State” there shall be inserted “ and the Commission ”.
- (3) In subsections (3), (4) and (5) after “Secretary of State” there shall be inserted “ or the Commission ”.
- 40 (1) Section 14 of the 1979 Act (termination of guardianship) shall be amended as follows.
- (2) In subsection (1) after “Secretary of State” there shall be inserted “ or the Commission ”.
- (3) At the end of subsection (2) there shall be inserted—
- “Where the monument in question is situated in England, the Secretary of State shall consult with the Commission before entering into any such agreement.
- The Commission shall consult with the Secretary of State before entering into any such agreement.”
- (4) In subsection (3) after “Secretary of State” there shall be inserted “ nor the Commission ”.
- 41 (1) Section 15 of the 1979 Act (acquisition and guardianship of land in vicinity of ancient monument) shall be amended as follows.
- (2) In subsection (1) after “Secretary of State” there shall be inserted “ or the Commission ” and at the end of that subsection there shall be inserted—
- “Land may be acquired, or taken into guardianship, by the Commission by virtue of this section only if the land is situated in England.”
- (3) In subsections (3) and (4) after “Secretary of State” there shall be inserted “ and the Commission ”.
- (4) In subsection (6) after “Secretary of State” there shall be inserted “ or the Commission ”.

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- 42 (1) Section 16 of the 1979 Act (acquisition of easements etc. over land in vicinity of ancient monument) shall be amended as follows.
- (2) At the end of subsection (1) there shall be inserted—
- “Where the land in question is situated in England, the Secretary of State shall consult with the Commission before entering into the agreement or making the compulsory purchase order (as the case may be).”
- (3) After subsection (1) there shall be inserted—
- “(1A) The Commission may by agreement acquire over land which is situated in England, and which adjoins or is in the vicinity of any monument under their ownership by virtue of this Act, any such easement as the Secretary of State may acquire by virtue of subsection (1) above.”
- (4) In subsection (3) after “(1)” there shall be inserted “ or (1A) ”.
- (5) In subsection (4) after “Secretary of State” there shall be inserted “ or the Commission ”.
- 43 (1) Section 17 of the 1979 Act (agreements concerning ancient monuments) shall be amended as follows.
- (2) After subsection (1) there shall be inserted—
- “(1A) The Commission may enter into an agreement under this section with the occupier of an ancient monument situated in England or of any land so situated which adjoins or is in the vicinity of an ancient monument so situated.”
- (3) In subsection (4) for “(as the case may be) by the local authority” there shall be substituted “ the Commission or the local authority (as the case may be) ” and for “(as the case may be) to the local authority” there shall be substituted “ the Commission or the local authority (as the case may be) ”.
- (4) At the end of the section there shall be inserted—
- “(9) References to an ancient monument in subsection (1A) above, and in subsection (3) above so far as it applies for the purposes of subsection (1A), shall be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to the Commission.”
- 44 (1) Section 18 of the 1979 Act (powers of limited owners) shall be amended as follows.
- (2) In subsection (1) after “(1)” there shall be inserted “ or (1A) ”.
- (3) In subsection (2) after “Secretary of State” there shall be inserted “ or the Commission ”.
- 45 (1) Section 19 of the 1979 Act (public access to monuments under public control) shall be amended as follows.
- (2) In subsection (1) after “Secretary of State” there shall be inserted “ or the Commission ”.
- (3) In subsection (2) after “Secretary of State” (in the first place) there shall be inserted “ and the Commission ”.

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- (4) In subsection (3) for “this section” there shall be substituted “ this subsection ”, and at the end there shall be inserted—
- “The Secretary of State shall consult with the Commission before he makes any regulations under this subsection in relation only to monuments situated in England.”
- (5) In subsection (4) for “this section” there shall be substituted “ that subsection ”.
- (6) After subsection (4) there shall be inserted—
- “(4A) The Secretary of State may by regulations under this subsection make such provision as appears to him necessary for prohibiting or regulating any act or thing which would tend to injure or disfigure any monument under the ownership or guardianship of the Commission by virtue of this Act or the monument’s amenities or to disturb the public in their enjoyment of it.
- (4B) The Secretary of State shall consult with the Commission before he makes any regulations under subsection (4A) above.”
- (7) In subsection (5) after “Secretary of State” (in the first place) there shall be inserted “ and the Commission ”.
- (8) In subsection (6) after “Secretary of State” (in the first place) there shall be inserted “ or by the Commission ”, and in paragraph (a) for “(as the case may be) of that local authority” there shall be substituted “ the Commission or that local authority (as the case may be) ”.
- 46 (1) Section 20 of the 1979 Act (provision of facilities for the public) shall be amended as follows.
- (2) In subsection (1) after “Secretary of State” (in the first place) there shall be inserted “ and the Commission ”.
- (3) In subsection (3) after “Secretary of State” there shall be inserted “ and the Commission ”.
- 47 (1) Section 21 of the 1979 Act (transfer of ancient monuments between local authorities and Secretary of State) shall be amended as follows.
- (2) In subsection (1) after “Secretary of State” (in the first place) there shall be inserted “ and the Commission ” and at the end of paragraph (c) there shall be inserted “or
- (d) from the Secretary of State to the Commission; or
- (e) from the Commission to the Secretary of State; or
- (f) from the Commission to the local authority; or
- (g) from the local authority to the Commission;”.
- (3) In subsection (2) after “Secretary of State” there shall be inserted “ or the Commission ”.
- (4) At the end of the section there shall be inserted—
- “(3) The Commission may not enter into an agreement under subsection (1) above in respect of a monument or land not situated in England.



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- (4) The Secretary of State may not enter into an agreement mentioned in subsection (1)(a) or (b) above in respect of a monument or land situated in England without consulting the Commission.
- (5) The Commission may not enter into an agreement mentioned in subsection (1)(f) above without consulting the Secretary of State.
- (6) The Commission may not enter into an agreement mentioned in subsection (1)(g) above without the consent of the Secretary of State.”
- 48 (1) Section 24 of the 1979 Act (expenditure by Secretary of State or local authority on acquisition and preservation of ancient monuments etc.) shall be amended as follows.
- (2) At the beginning of subsections (1), (2) and (3) there shall be inserted “ Subject to subsection (3A) below ”.
- (3) After subsection (3) there shall be inserted—
- “(3A) As respects a monument situated in England, subsections (1) to (3) above shall apply as if "Commission' were substituted for "Secretary of State'.
- (3B) References to an ancient monument in subsections (1) and (2) above, as amended by subsection (3A) above, shall be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to the Commission.”
- (4) In subsection (5) after “Secretary of State" there shall be inserted “ or the Commission ”.
- 49 (1) Section 25 of the 1979 Act (advice and superintendence by Secretary of State) shall be amended as follows.
- (2) At the beginning of subsections (1), (2) and (3) there shall be inserted “ Subject to subsection (3A) below ”.
- (3) After subsection (3) there shall be inserted—
- “(3A) As respects a monument situated in England, subsections (1) to (3) above shall apply as if "Commission' were substituted for "Secretary of State', "their' for "his' (in each place) and "they think' for "he thinks'.
- (3B) References to an ancient monument in subsections (1) and (2) above, as amended by subsection (3A) above, shall be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to the Commission.”
- (4) Nothing in this paragraph affects the giving of advice or the superintendence of work where the advice or superintendence was started before the appointed day.
- (5) Nothing in this paragraph affects a charge for advice or superintendence given before the appointed day or for advice or superintendence started before and completed after that day.
- 50 In section 28(3) of the 1979 Act (offences: meaning of “protected monument”) after “Secretary of State" there shall be inserted “ or the Commission ”.
- 51 In section 29 of the 1979 Act (compensation orders) after “Secretary of State" (in the first place) there shall be inserted “ or the Commission ” and for the words from

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- “(as the case may require)” to the end there shall be substituted “ the Commission or the local authority in question (as the case may require) ”.
- 52 (1) Section 30 of the 1979 Act (disposal of land acquired under Part I) shall be amended as follows.
- (2) In subsection (1) after “Secretary of State” there shall be inserted “ or the Commission ”.
- (3) After subsection (1) there shall be inserted—
- “(1A) The Secretary of State shall consult with the Commission before disposing of any land situated in England under this section.
- (1B) The Commission shall consult with the Secretary of State before disposing of any land under this section.”
- (4) In subsections (3) and (4) for “(as the case may be) the local authority” there shall be substituted “ the Commission or the local authority (as the case may be) ”.
- 53 In section 32(3) of the 1979 Act (interpretation of Part I) after “Secretary of State” (in the first place) there shall be inserted “ or the Commission ” and for “(as the case may be) the local authority” there shall be substituted “ the Commission or the local authority (as the case may be) ”.
- 54 (1) Section 33 of the 1979 Act (designation of areas of archaeological importance) shall be amended as follows.
- (2) At the end of subsection (1) there shall be inserted “ ; but, where the area in question is situated in England, he shall consult with the Commission before doing so. ”
- (3) At the end of subsection (2) there shall be inserted “ ; but, where the area in question is situated in England, the authority shall first notify the Commission of their intention to do so. ”
- (4) At the end of subsection (4) there shall be inserted—
- “The Secretary of State shall consult with the Commission before varying or revoking an order relating to an area situated in England.”
- 55 (1) Section 34 of the 1979 Act (investigating authorities) shall be amended as follows.
- (2) At the end of subsection (1) there shall be inserted—
- “The Secretary of State shall consult with the Commission before making an appointment under this subsection in relation to an area situated in England.”
- (3) At the end of subsection (2) there shall be inserted “ ; but, where the appointment was made in relation to an area situated in England, he shall consult with the Commission before cancelling the appointment. ”
- (4) In subsection (4) for “Secretary of State” there shall be substituted “ Commission (in the case of an area situated in England) or the Secretary of State (in any other case) ”.
- 56 In section 37 of the 1979 Act (exemptions from certain offences) at the end of subsection (3) there shall be inserted—

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“The Secretary of State shall consult with the Commission before giving or withdrawing a direction under this subsection in relation to land situated in England.”

- 57 (1) Section 38 of the 1979 Act (power of investigating authority to enter site etc.) shall be amended as follows.
- (2) At the end of subsection (3) there shall be inserted “and
- (c) where the site in question is situated in England, serves a copy of that notice on the Commission (unless the investigating authority is for the time being the Commission).”
- (3) At the end of subsection (8) there shall be inserted—
- “The Secretary of State shall consult with the Commission before giving, varying or revoking a direction under this subsection in relation to a site situated in England.”
- (4) After subsection (9) there shall be inserted—
- “(10) On giving a direction under subsection (8) above in relation to a site situated in England the Secretary of State shall send a copy of the direction to the Commission (if the investigating authority is not the Commission).
- (11) On varying or revoking a direction given under subsection (8) above in relation to a site situated in England the Secretary of State shall notify the Commission (giving particulars of the effect of any variation) if the investigating authority is not the Commission.”
- (5) Nothing in sub-paragraph (2) affects the right of an investigating authority to excavate a site in respect of which an operations notice was served before the appointed day.
- 58 In section 39 of the 1979 Act (power of investigating authority to investigate in advance of operations notice any site which may be acquired compulsorily) after paragraph (c) of subsection (4) there shall be inserted “and
- (d) where the site in question is situated in England, the Commission (if the investigating authority is not the Commission);”.
- 59 In section 41(2) of the 1979 Act (interpretation of Part II) for “Secretary of State” there shall be substituted “ Commission (in a case where the area is situated in England) or the Secretary of State (in any other case) ”.
- 60 (1) Section 42 of the 1979 Act (restrictions on use of metal detectors) shall be amended as follows.
- (2) In subsection (1) for “Secretary of State” there shall be substituted “ Commission (in the case of a place situated in England) or of the Secretary of State (in any other case) ”.
- (3) In subsection (2), in paragraph (a) of the definition of “protected place”, after “Secretary of State” there shall be inserted “ or the Commission ”.
- (4) In subsection (3) for “the written consent of the Secretary of State” there shall be substituted “ written consent ”, and at the end there shall be inserted—

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“The reference in this subsection to written consent is to that of the Commission (where the place in question is situated in England) or of the Secretary of State (in any other case)”.

- (5) In subsections (4) and (5) after “Secretary of State” there shall be inserted “ or the Commission ”.
- (6) Nothing in this paragraph affects a consent given before the appointed day.
- 61 (1) Section 45 of the 1979 Act (expenditure on archaeological investigation) shall be amended as follows.
- (2) In subsection (1) after “land” there shall be inserted “ (other than land in England) ”.
- (3) After subsection (1) there shall be inserted—
- “(1A) The Commission may undertake, or assist in, or defray or contribute towards the cost of, an archaeological investigation of any land in England which they consider may contain an ancient monument or anything else of archaeological or historical interest; and the reference to an ancient monument in this subsection shall be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to the Commission.”
- (4) In subsection (3) after “Secretary of State” there shall be inserted “ or the Commission ”.
- (5) At the end of subsection (4) there shall be inserted “ (or, as regards the powers mentioned in subsection (1A) above, England). ”
- 62 (1) Section 46 of the 1979 Act (compensation for certain damage) shall be amended as follows.
- (2) In subsection (1) after “Secretary of State” there shall be inserted “ or the Commission ”.
- (3) In subsection (2) for the words from “Secretary of State” to the end there shall be substituted “ Commission (if the area in question is situated in England) or from the Secretary of State (in any other case). ”
- (4) In subsection (3) after “6” there shall be inserted “ 6A ”.
- (5) Nothing in sub-paragraph (3) affects compensation in respect of damage caused before the appointed day.
- 63 (1) Section 49 of the 1979 Act (grants by Secretary of State to Architectural Heritage Fund) shall be amended as follows.
- (2) In subsection (1) for the words from “institution” to the end there shall be substituted “ Architectural Heritage Fund ”.
- (3) After subsection (1) there shall be inserted—
- “(1A) The Commission may make grants to the Architectural Heritage Fund for the purpose of enabling it to perform its functions in, or in relation to, England.”
- (4) In subsection (2) after “Secretary of State” there shall be inserted “ or the Commission (as the case may be) ”.

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- (5) At the end of the section there shall be inserted—
- “(3) In this section “the Architectural Heritage Fund” means the institution registered under that name under the Charities Act 1960.”
- 64 In section 53(3) or the 1979 Act (monuments in territorial waters) after “Secretary of State” (in the first place) there shall be inserted “ or the Commission ” and after “Secretary of State” (in the second place) there shall be inserted “ or by the Commission ”.
- 65 In section 54(1)(b) of the 1979 Act (treatment and preservation of finds) after “(4) (b)” there shall be inserted “ or 6A(2)(a) ”.
- 66 In section 57(1) of the 1979 Act (power to require information as to interests in land) after “Secretary of State” (in each place) there shall be inserted “ or the Commission ”.
- 67 (1) Section 61 of the 1979 Act (interpretation) shall be amended as follows.
- (2) In subsection (1) there shall be inserted at the appropriate place—
- ““The Commission” means the Historic Buildings and Monuments Commission for England;”.
- (3) In subsection (9) after “Secretary of State” there shall be inserted “ or the Commission ”.
- 68 (1) Schedule 1 to the 1979 Act (control of works affecting scheduled monuments) shall be amended as follows.
- (2) After paragraph 2 there shall be inserted—
- “2A As soon as practicable after receiving an application for scheduled monument consent in relation to a monument situated in England, the Secretary of State shall send a copy of the application to the Commission.”
- (3) At the end of paragraph 3(3) there shall be inserted “and
- (c) shall, if the monument in question is situated in England, consult with the Commission.”
- (4) After paragraph 5(1) there shall be inserted—
- “(1A) Where the monument in question is situated in England, the Secretary of State shall consult with the Commission before serving a notice under this paragraph, and on serving such a notice he shall send a copy of it to the Commission.”
- 69 (1) Schedule 2 to the 1979 Act (designation orders) shall be amended as follows.
- (2) In paragraph 2 after “concerned; and” there shall be inserted—
- “(aa) consult with the Commission (if the area which would be designated by the order is situated in England); and”.
- (3) In paragraph 3(1) for “consultation required by sub-paragraph (a)” there shall be substituted “ consultations required by sub-paragraphs (a) and (aa) ”.
- (4) In paragraph 4 after “above; and” there shall be inserted—
- “(aa) shall be sent to the Commission (if the area which would be designated by the order is situated in England); and”.

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- (5) At the end of paragraph 7 there shall be inserted “and
- (c) sent to the Commission a copy of the order and of the map to which it refers (if the area designated is situated in England)”.
- (6) After paragraph 9 there shall be inserted—
- “9A Before making a designation order a local authority shall notify the Commission of their proposal to make the order, if the area which would be designated by the order is situated in England.”
- (7) At the end of paragraph 14 there shall be inserted “and
- (c) sent to the Commission a copy of the order and of the map to which it refers, if the area designated by the order is situated in England.”

*Pastoral Measure 1983 (No. 1)*

- 70 (1) Section 66 of the Pastoral Measure 1983 (transfer of redundant churches) shall be amended as follows.
- (2) In subsection (1) after paragraph (b) there shall be inserted—
- “(c) where a redundant building or any part thereof is situated in England and is vested in the diocesan board of finance, whether in pursuance of a pastoral scheme or a redundancy scheme or pending the making of a redundancy scheme, the board may, with the approval of the bishop and the Commissioners, enter into and carry out an agreement with the Historic Buildings and Monuments Commission for England for the acquisition and preservation by the Commission of the building or part with or without other land so situated and so vested in the board;
- (d) where a redundant building or any part thereof is situated in England and is vested in the Redundant Churches Fund in pursuance of a redundancy scheme or a pastoral scheme to which section 47 applies, the Fund may enter into and carry out an agreement with the Historic Buildings and Monuments Commission for England for the acquisition and preservation by the Commission of the building or part with or without other land so situated and so vested;”
- and for “the next two following subsections” there shall be substituted “ subsections (2) and (3) ”.
- (3) After subsection (1) there shall be inserted—
- “(1A) The Historic Buildings and Monuments Commission for England shall not enter into an agreement under subsection (1)(c) or (d) without the consent of the Secretary of State.”
- (4) In subsection (2)(a) after “the Secretary of State” there shall be inserted “ or (as the case may be) the Historic Buildings and Monuments Commission for England ”, after “him” there shall be inserted “ or them ” and after “his” there shall be inserted “ or their ”, and in subsection (2)(c) after “the Secretary of State” there shall be inserted “ or (as the case may be) the Historic Buildings and Monuments Commission for England ”.
- (5) In subsection (3) after “the Secretary of State” (in the first place) there shall be inserted “ or (as the case may be) the Historic Buildings and Monuments Commission

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for England ” and after “the Secretary of State” (in the second and third places) there shall be inserted “ or the Commission ”.

(6) After subsection (3) there shall be inserted—

“(3A) Before giving his consent under subsection (3) in relation to a building or part situated in England, the Secretary of State shall consult with the Historic Buildings and Monuments Commission for England.”

(7) In subsection (4) after “the Secretary of State” (in the first place) there shall be inserted “ or the Historic Buildings and Monuments Commission for England ” and after “the Secretary of State” (in the second and third places) there shall be inserted “ or the Commission (as the case may be) ”.

(8) After subsection (4) there shall be inserted—

“(4A) The Historic Buildings and Monuments Commission for England shall not enter into an agreement under subsection (4) unless—

- (a) the land is situated in England, and
- (b) the Secretary of State has consented.”

(9) In subsection (5) after “the Secretary of State” there shall be inserted “ or (as the case may be) the Historic Buildings and Monuments Commission for England ”.

(10) After subsection (5) there shall be inserted—

“(6) Where a redundant building (or part) situated in England has been acquired for its preservation by the Secretary of State under subsection (1) either with or without any other land so situated, the Historic Buildings and Monuments Commission for England may by agreement with the Secretary of State undertake on his behalf the management and preservation of the building (or part) together with the other land (if any).

(7) Where the Secretary of State has under subsection (4) acquired land situated in England for its maintenance with a building (or part), the Commission may undertake, in any agreement made under subsection (6) in relation to the building (or part), the maintenance of the land on behalf of the Secretary of State.

(8) Where the Secretary of State has under subsection (5) acquired for their preservation the contents of a redundant building (or part), the Commission may undertake, in any agreement made under subsection (6) in relation to the building (or part), the preservation of the contents on behalf of the Secretary of State.”

#### *Interpretation*

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A reference in any paragraph of this Schedule to the appointed day is a reference to the day appointed under section 41(1) for the coming into force of the paragraph.

**Status:**

Point in time view as at 27/05/1997.

**Changes to legislation:**

National Heritage Act 1983, SCHEDULE 4 is up to date with all changes known to be in force on or before 10 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.