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Historic Environment Scotland Bill

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The Scottish Government's Historic Environment Scotland Bill, introduced on 3 March 2014, proposes the merger of Historic Scotland and the Royal Commission on the Ancient and Historic Monuments of Scotland (RCAHMS).



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EXECUTIVE SUMMARY

The Historic Environment Scotland Bill, introduced on 3 March 2014 by Fiona Hyslop, the Cabinet Secretary for Culture and External Affairs, proposes the merger of Historic Scotland, a Scottish Government Agency, and the Royal Commission on the Ancient and Historic Monuments of Scotland (RCAHMS).

The Bill follows a number of consultations on the future of RCAHMS and the development of a national strategy for the historic environment. Its main provisions deal with the establishment of a new Non-Departmental Public Body, Historic Environment Scotland.

The new body will take on the functions currently carried out by Historic Scotland and RCAHMS, including those relating to:

- protecting and managing the historic environment
- listed buildings
- scheduled monuments
- promotion of understanding of the historic environment and its collections
- leadership with regard to the historic environment.

The Bill also deals those functions, currently carried out by Historic Scotland on behalf of Scottish Ministers, which will be retained by Ministers, including those relating to:

- properties in care and their collections, defined in the Bill
- designation and regulation of historic Marine Protected Areas.

The Bill also has provisions permitting the new body to apply to become a charity.

The new body will also have a role in promoting the new strategy for the historic environment in Scotland, *Our Place in Time*, which was published two days after the Bill. The strategy provides a definition of the historic environment which does not appear in the Bill.

BACKGROUND

The main policy aim of the Historic Environment Scotland Bill, introduced by the Cabinet Secretary for Culture and External Affairs, Fiona Hyslop, on 3 March 2014, is to merge two existing bodies. The proposed merger, of Historic Scotland (HS) and the Royal Commission on Ancient and Historic Monuments for Scotland (RCAHMS), will create a new body: Historic Environment Scotland. The intention is that the new body will take over the assets, staff and liabilities of the existing bodies.

The new body will be the lead Scottish body for the historic environment. There is currently no statutory definition of historic environment in Scottish legislation. In *Our place in time: the historic environment strategy for Scotland* (Scottish Government 2014b), published by the Scottish Government on 5 March 2014, the historic environment is defined as:

“the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand.”

(Scottish Government 2014b p. 2)

An earlier definition appeared in a consultation document on the strategy, published by the Scottish Government in 2013, as:

“the cultural heritage of places’, and is a combination of physical things (tangible) and those aspects we cannot see – stories, traditions and concepts (intangible)”

(Scottish Government 2013c p.6)

The historic environment had previously been defined in *Public Appointments & Public Bodies etc (Scotland) Act 2003*. This Act, which established the Historic Environment Advisory Council for Scotland, had defined the historic environment (Section 19), in relation to the functions of the Council, as:

“any or all of the structures and places in Scotland of historical, archaeological or architectural interest or importance.”

This piece of legislation was repealed when the Council was abolished under the provisions in the *Public Services Reform (Scotland) Act 2010*.

It should be noted that the natural heritage in Scotland has been defined in legislation, for example, Section 1 of the *Natural Heritage (Scotland) Act 1991* c. 28 states that:

“For the purposes of this Act, “the natural heritage of Scotland ”includes the flora and fauna of Scotland, its geological and physiographical features, its natural beauty and amenity; and references to “natural heritage” shall be construed accordingly.”

Annex 1 of this briefing provides information on the key facts relating to the historic environment in Scotland. The information is taken from the latest audit of the historic environment in Scotland, carried out by Historic Scotland in 2012. The facts include: the number of listed buildings, the number of sites recorded by RCAHMS, and the historic environment’s contribution to the Scottish economy.

As well as introducing the Bill, the Scottish Government also launched its historic environment strategy for Scotland, *Our Place in Time* (Scottish Government 2014b). The strategy was the outcome of a consultation process which had sought to involve as many of the stakeholders in the historic environment landscape as possible.

This Bill briefing will look at the two existing bodies, the consultation process, which has led to the proposed merger and a new historic environment strategy, and the provisions in the Bill which have been the subject of comment by stakeholders in the historic environment sector.

HISTORIC SCOTLAND

Historic Scotland is a Scottish Government Executive Agency. Directly responsible to Scottish Ministers, Historic Scotland has “wide-ranging responsibilities for the historic environment” (Historic Scotland 2012a p. 1), these include:

- protecting and promoting the historic environment (statutory functions performed on behalf of Ministers)
- acting as leader and enabler to ensure that the historic environment delivers economic, social, cultural and environmental benefits for Scotland
- providing financial assistance through its grants programme
- fostering a strong sense of identity by telling Scotland’s story through interpretation of the sites it manages and through outreach in its broadest sense.

Executive Agencies support Ministers in their work, focussing on delivering parts of Government business or providing a specialised function. They have well-defined remits which are aligned with and help deliver the Government’s purpose and objectives. Agencies carry responsibility for a discrete area of Government policy and activity and thus work very closely with Ministers. The Agency staff are civil servants, including the Chief Executive, who is directly accountable to Ministers.

Executive Agencies are not statutory bodies but operate in accordance with a Framework Document which is approved by Ministers and may be reviewed, amended or revoked at any time. The present Framework Document 2013 (Historic Scotland 2012b) was rewritten in order to reflect the proposed merger with RCAHMS.

Historic Scotland comprises the Chief Executive’s Group and five Directorates: Commercial and Tourism, Conservation, Finance, Heritage Management and Human Resources.

In July 2013, the responsibility for historic environment policy was removed from HS and placed directly with the Scottish Government.

Although not a statutory body Historic Scotland has specific responsibilities in respect of statutory and non-statutory historic environment designations and acts as a statutory consultee (on behalf of Scottish Ministers), under Strategic Environmental Assessments (for more information on this process see below), Environmental Impact Assessments and the General Development Procedure Orders (planning permission) (Scottish Government 2008 p.1-2).

In 2009, in order to inform its work with local authorities, Historic Scotland initiated The Joint Working Agreement between Historic Scotland and Planning Authorities in Relation to Statutory Casework and Consultations (Historic Scotland 2009a) The agreement set out the current working practices and was intended to ensure that planning authorities and Historic Scotland, work consistently and transparently to an agreed standard in taking forward the management of the historic environment. Historic Scotland has additional one-to-one agreements with individual local authorities.

Budget

Historic Scotland is funded from the Scottish Government's Culture portfolio. In the draft budget for 2014-15 it is allocated £37.7 million.

The Agency also derives income from commercial activities and from the fees from visitors to some of the sites it is responsible for, including Edinburgh and Stirling Castles, which are among the most visited paid for attractions in Scotland.

In its 2012-13 annual report, Historic Scotland stated that one of its key performance targets for the year was to:

“Generate income over £33.2 million from our sites and other commercial activities”

(Historic Scotland 2013 p. 11)

The report showed that, although there was a 2.5% increase in visitor income, the body fell short of its target, raising £32.3 million. This figure represented approximately two fifths of the Agency's funding.

Staff

The following staffing figures for Historic Scotland are taken from Historic Scotland's annual report for 2012-2013 (Historic Scotland 2013 p. 40):

<u>ii Average number of employees</u>		
The average number of whole-time equivalents persons employed during the year by occupational group was:		
	2012-13 Number of Employees	2011-12 Number of Employees
Senior management	8	9
Policy Staff	44	40
Heritage Management Staff	54	59
Investments Staff	8	10
Conservation Staff	380	365
Commercial & Tourism Staff	447	414
Central Services Staff	118	106
Agency/temporary staff	8	10
	1,067	1,013

In July 2013 – in anticipation of the merger of the two bodies and in order to mainstream the historic environment within the core Scottish Government policy – the Policy Staff were transferred to the Scottish Government.

Membership

Historic Scotland has a membership scheme, annual or life time, with various categories. The benefits of an annual membership include:

- Free entry to all Historic Scotland properties including Edinburgh and Stirling Castles
- Half price entry to over 500 heritage attractions in England, Wales and the Isle of Man, and free entry for renewal or life members
- Free entry to over 400 Historic Scotland daytime events, including living history and battle re-enactments
- 20% retail discount in all Historic Scotland shops - includes books, clothing and gifts
- 10% discount in all Historic Scotland cafés

The following tables show the various categories and their relevant costs:

Category - ANNUAL	Description	Monthly Direct Debit	Annual Direct Debit	Credit/Debit Card
Adult	One person aged 16-59	£3.80	£45.60	£48.00
Adult plus children	One person aged 16-59 plus up to 6 children (aged 5-15)	£4.19	£50.35	£53.00
2 Adults	Two people aged 16-59	£6.65	£79.80	£84.00
2 Adults plus children	Two people aged 16-59 plus up to 6 children per card (aged 5-15)	£7.04	£84.55	£89.00
Concession	One person aged 60 or over, full time student, in receipt of state benefit, Young Scot card holder	£3.04	£36.57	£38.50
Concession plus children	One person aged 60 or over, full time student, in receipt of state benefit, Young Scot card holder; plus up to 6 children (aged 5-15)	£3.44	£41.32	£43.50
2 Concessions	Two people where one or both are: aged 60 or over, full time student, in receipt of state benefit, Young Scot card holder	£5.30	£63.65	£67.00
2 Concessions plus children	Two people where one or both are: aged 60 or over, full time student, in receipt of state benefit, Young Scot card holder, plus up to 6 children per card (aged 5-15)	£5.70	£68.40	£72.00

Category - LIFE	Description	Credit/Debit Card only
Single Life	One person aged 16-59	£1,250
Joint Life	Two people aged 16-59	£1,662.50
Senior Life	One person aged 60 or over	£750
Joint Senior Life	Two people aged 60 or over	£997.50

According to its 2012/13 Annual Report, Historic Scotland had 131,481 members. At the end of March 2014, it had 3932 life memberships which equates to 5454 life members. The members have no role in governance or policy formation of Historic Scotland.

ROYAL COMMISSION ON THE ANCIENT AND HISTORICAL MONUMENTS OF SCOTLAND

The Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) was established by Royal Warrant in 1908, the last Warrant was given in 1992.

The Commission is treated as a Non-Departmental Public Body (NDPB) and is sponsored by the Scottish Government. NDPBs, unlike Executive Agencies, are not part of the Scottish Government. They carry out administrative, commercial, executive or regulatory functions on behalf of Government and operate within a framework of governance and accountability set by Ministers. The staff of NDPBs are not civil servants.

Accountable to a board of 11 Commissioners, appointed by Scottish Ministers, RCAHMS's role has developed over the years from its initial responsibility of making a list or inventory of the surviving heritage from earliest times up to the year 1707, to a broader set of responsibilities as set out in the 1992 Royal Warrant, to:

“provide for the survey and recording of ancient and historical monuments and constructions connected with, or illustrative of, the contemporary culture, civilisation and conditions of the life of the people in Scotland from the earliest times (including ancient and historical monuments and constructions in, on or under the sea bed within the United Kingdom territorial sea adjacent to Scotland) by compiling, maintaining and curating the National Monuments Record of Scotland as the basic national record of the archaeological and historic environment.”

The Commission also holds the National Collection of Aerial Photography and has a duty defined in statute to record listed buildings and buildings in conservation areas for which permission to demolish or part-demolish has been granted under the Town and Country Planning (Scotland) Act 1997.

The Commission comprises six departments: Survey and Recording, Collections, Education and Outreach, Information Systems, Corporate Affairs and Enterprises.

RCAHMS is partnered with SCRAN. The SCRAN Trust, which is a registered charity, aims to provide educational access to digital assets representing Scotland's material culture and history. This is provided through the wholly owned trading arm SCRAN Ltd. SCRAN Ltd trades as RCAHMS Enterprises and is a wholly owned trading subsidiary of the SCRAN Trust.

Budget

RCAHMS is funded through the Scottish Government's Culture portfolio. In the draft budget for 2014-15 it is allocated £4.2 million.

Staff

RCAHMS has a smaller staff base than HS, the following table was taken from the Annual Report & Accounts 2012/13 (Royal Commission on Ancient and Historic Monuments 2013):

Staffing in 2012-13

Staff Numbers	Permanent	Temporary	Total
Male	43	10	53
Female	34	17	51
Total	77	27	104

CONSULTATIONS

Between 2011 and 2013 the Scottish Government initiated a number of consultations relating to the historic environment. The first was on the future of RCAHMS, carried out by Historic Scotland and involving a survey of stakeholders. In 2012 a consultation on the historic environment strategy was carried out. The final consultation was a joint one on the Historic environment strategy for Scotland and the possible merger of Historic Scotland and RCAHMS (Scottish Government 2013a-c).

FUTURE OF RCAHMS

In November 2011, the Scottish Government asked Historic Scotland to commission an options review on the future of RCAHMS. The review took place against concerns about RCAHMS' long term sustainability. The review resulted in the publication, in May 2012, of the final report of the Strategic option appraisal on the future of the Royal Commission on the Ancient and Historical Monuments of Scotland (Scottish Government 2012a).

The review had shortlisted three potential options to secure the future of the Commission and protect its functions. They were:

- status quo
- merger with Historic Scotland
- establishment of a statutory NDPB.

In July 2012, the Cabinet Secretary for Culture and External Affairs, Fiona Hyslop, announced her preferred option was that HS and RCAHMS should come together to form one new organisation (Scottish Government 2012b).

After making her decision in favour of a merger the Cabinet Secretary announced that she had commissioned a business case for the merger. The Cabinet Secretary's intention for the business case was to "achieve a more resilient, sustainable and effective heritage service for the nation, rather than generate financial savings" (Scottish Government 2013b p. 4).

The Cabinet Secretary's brief also set out that, amongst other expectations, the merger should:

- create a single new public body that draws on the strengths of both RCAHMS and Historic Scotland which is equipped to research, record and protect Scotland's historic environment

- provide certainty that RCAHMS' functions will be sustained and nurtured, by placing them on a statutory basis for the first time
- provide clarity of governance, ensuring that the merged organisation strikes the right balance between curatorial independence and public accountability
- improve and simplify the delivery of public services, in line with the Scottish Government's existing commitments, by creating a single public body better equipped to deliver improved public services and capitalise on the synergies between the functions of RCAHMS and Historic Scotland.

An outline business case for the merger of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) (Scottish Government 2013b) was published in May 2013 as part of a joint consultation on the historic environment strategy for Scotland and the proposed merger. The consultation lasted from 8 May 2013 until 31 July 2013.

MERGER OF HISTORIC SCOTLAND AND RCAHMS

The outline business case set out the possibility of the new body either being an Executive Agency or an NDPB and ended with the conclusion that:

“There is a clear case for merger of RCAHMS and Historic Scotland to create a new lead organisation for the historic environment in Scotland and to support the delivery of the emerging Historic Environment Strategy. The case for merger is supported by the leadership of both organisations. A final decision on the type of body is for Scottish Ministers to determine, with an analysis of the benefits and risks of each to support that decision. Once a decision on how to proceed has been reached, the organisations are prepared to move quickly to consult with stakeholders, staff and the public and to support the transition to a new organisation.”

(Scottish Government 2013b p. 110)

HISTORIC ENVIRONMENT STRATEGY

In the joint consultation, the Scottish Government sought views on the future care and management of Scotland's historic environment for the long term, asking for comments in particular on the draft definition and vision and on the proposed strategic direction, priorities and structure for developing the detail of the Strategy, as well as how success could be measured over the next 10 years.

The work on the historic environment strategy took as its starting point the Scottish Historic Environment Policy (SHEP), the latest version of which had been published by Historic Scotland in December 2011. The SHEP had set out Scottish Ministers' policies for the historic environment, providing greater policy direction for Historic Scotland and a framework to inform the day-to-day work of a range of organisations that have a role and interest in managing the historic environment. These included the Scottish Government, local authorities and a range of bodies accountable to Scottish Ministers, including Historic Scotland. The SHEP complemented and had the same authority as the Scottish Planning Policy and other relevant Ministerial policy documents.

The 2013 consultation on the strategy had been accompanied by a series of national engagement events, where stakeholders had the opportunity to discuss both the strategy and the outline business case for the merger.

The analysis of the consultation responses on the strategy and the merger, carried out by Why? Research (Granville, Fawcett and Mulholland. 2013) was published in November 2013.

HISTORIC ENVIRONMENT STAKEHOLDERS

A number of different bodies in Scotland are recognised as important players in safeguarding and promoting the Scottish historic environment. These groups include the owners and caretakers of the historic environment in Scotland. Interested parties are very wide ranging and include: the Scottish Civic Trust, the National Trust for Scotland, the Architectural Heritage Society of Scotland, Archaeology Scotland, the Built Environment Forum for Scotland (BEFS), the Garden History Society, the Historic Houses Association and Scottish local authorities.

OUR PLACE IN TIME: THE HISTORIC ENVIRONMENT STRATEGY FOR SCOTLAND

The Scottish Government published Our Place in Time: the historic environment strategy for Scotland (Scottish Government 2014b) on 5 March 2014, setting the vision, principles, priorities and outcome for the historic environment in Scotland.

The Ministerial foreword acknowledged that the strategy had been developed collaboratively by a wide range of organisations and specialists and stated that, in the view of the Scottish Government, it did not belong to government or any particular sector but to the people of Scotland. It was the Cabinet Secretary's hope that the strategy was for everyone and that everyone should play a part in ensuring it delivers positive outcomes for Scotland's historic environment.

The strategy does not appear on the face of the Bill but Section 2(8) of the Bill states that:

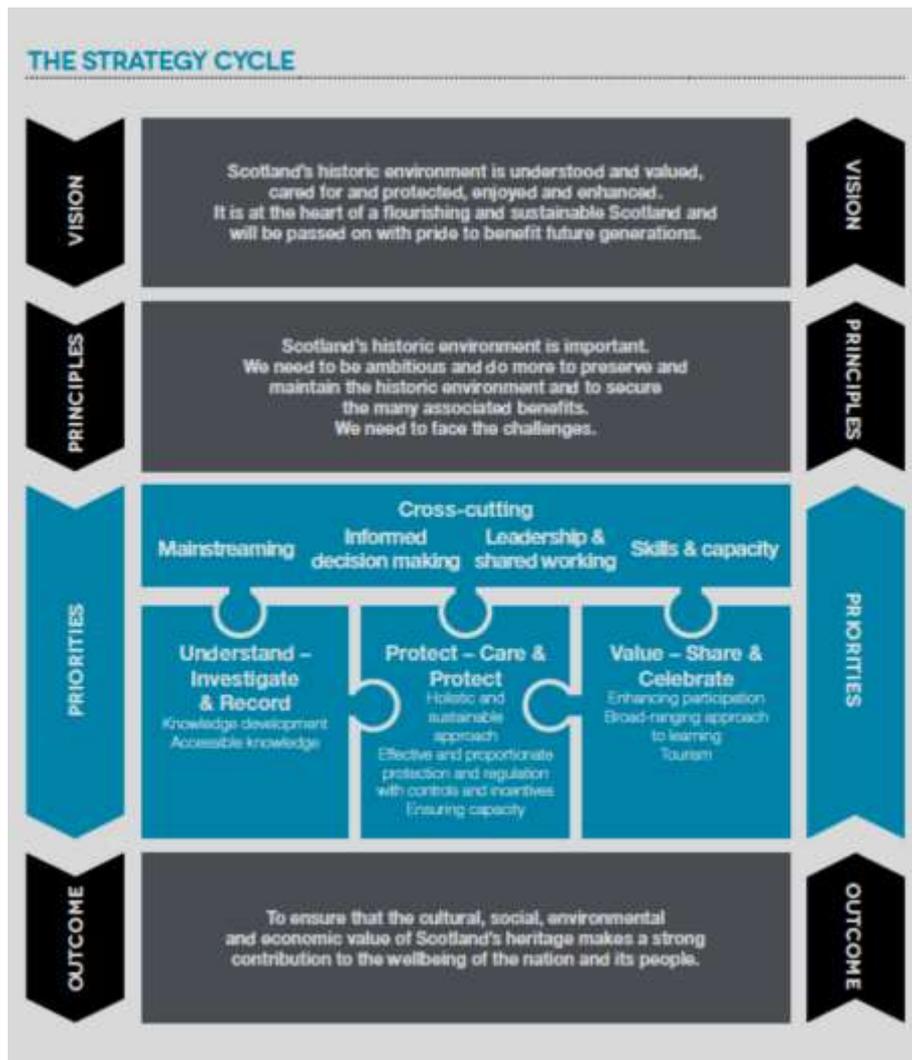
“In exercising its functions, Historic Environment Scotland must have regard to any relevant policy or strategy published by Scottish Ministers.”

The strategy provides a definition of historic environment as

“the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand.”

(Scottish Government 2014b p. 2)

The document also sets out the strategy cycle which shows how the strategy aims to include the whole sector, bottom up and top down, in setting the priorities:



(Scottish Government 2014b opposite p. 1)

The governance model, which will ensure the delivery of the strategy, is a three tier one: Historic Environment Board, Operational Board and a number of Working Groups:

- Historic Environment Board: chaired by the Cabinet Secretary, will include senior stakeholders from across the sector and beyond, mainly the Chairs of partnership organisations. This high level, overarching, group will authorise activity and hold people and bodies to account for delivery
- Operational Board: membership will be mainly the Chief Executive/Directors of partnership organisations, from across the historic environment sector and beyond. It will coordinate and manages those activities identified as key priorities by stakeholders and will act as a link between the Board and the Working Groups
- Working Groups, so far four have been identified:
 - Joint Historic Environment Group: members come from central and local government. Its remit is to consider how the historic environment is managed and maintained, within the context of dwindling public resources, examining the potential for existing and future delivery models; empowering local communities and exploring the potential for shared services

- Heritage Tourism Group: members come from the historic environment and tourism sectors. The group has no remit yet but it will be expected to consider how best to make full use of Scotland's heritage tourism assets to grow the overall value of heritage tourism in Scotland
- Measuring Success Group: members come from central government and the wider historic environment sector. Its remit is to support the development of an inclusive and shared evidence framework which will measure the collective progress against the Historic Environment Strategy and ultimately the success of the Strategy itself. The group will consider what success will look like, how to measure collective success against the vision and how to identify collective roles and responsibilities within that process
- Education and Volunteering Group: this Group has not yet been established but the National Trust for Scotland is expected to take the lead. The members of the Group will be expected to work together to explore scope for more joining up across the sector, measuring impact, enhancing volunteering activity and broadening access across the social spectrum.

Each of the strands of governance are expected to work in an open and transparent manner and webpages on the Scottish Government's website already exist (Scottish Government: Topics: Arts, Culture & Sport: Arts & Culture: Historic Environment: Historic Environment Strategy: Delivering the Strategy) to provide access to the papers and minutes for each of the tiers of governance. A new website for the strategy is currently being developed and will become available later this year.

HISTORIC ENVIRONMENT SCOTLAND BILL

The Historic Environment Scotland Bill was introduced by the Scottish Government on 3 March 2014 with the intention of establishing a new lead body for the historic environment. The policy aim is that the new body, Historic Environment Scotland, will undertake the functions, including those relating to historic environment designation and regulation and the wider planning system, currently delivered through Historic Scotland and RCAHMS.

The expectation is that the new body will start-up in a two step process:

- Chair and Board appointed (after the Bill is given Royal Assent, by April 2015)
- Six months later the new body takes on its full set of functions, including transfer of staff and assets (October 2015).

The Bill sets out the functions carried out by the existing bodies which will pass to the new body and proposes changes to those powers and functions. It also sets out the functions currently carried out by the Historic Scotland which will be retained by Scottish Ministers. Some of the functions are put on a statutory basis for the first time, in particular the functions of RCHAMS.

This briefing considers the responsibilities, currently held by Historic Scotland, with regard to the properties in care and the designation of marine protected areas, which will be retained by the Scottish Ministers. It also describes HS's current responsibility, Strategic Environmental Assessment, which is not specifically mentioned in the Bill. The briefing will then consider some other aspects of the new Body, including its potential charitable status, the Board and Ministerial direction, some of which have been seen during the consultation process as potentially problematic.

CALL FOR EVIDENCE

The Education and Culture Committee was designated as the lead committee for the Bill on 12 March 2014. It had issued a call for evidence on 6 March with a closing date of 22 April 2014. By the end of the call for evidence the Committee had received thirty responses, which may be read on the Committee's webpages.

FINANCIAL MEMORANDUM

The Financial Memorandum (FM), which accompanied the Bill, was considered by the Finance Committee. The Committee issued a call for evidence on the FM on 12 March 2014 giving a deadline for responses of 18 April 2014. The Committee received six responses, which can be accessed on its Scrutiny of Financial Memoranda webpage. The Committee also received a letter from the Government highlighting that some of the figures in the FM did not reflect the two step approach to the establishment of the new body (Hyslop 2014).

DELEGATED POWERS AND LAW REFORM COMMITTEE

The Delegated Powers and Law Reform Committee considered the delegated powers in the Bill. It published its report on the Bill on 29 April 2014 (Scottish Parliament Delegated Powers and Law Reform Committee 2014).

Section 24 states that any secondary legislation made under Section 25(1) will be subject to the affirmative procedure. Any other order, except for commencement orders, will be subject to the negative procedure.

PROPERTIES IN CARE

Scottish Ministers currently have 345 properties in their care. The properties range from standing stones to abbeys and castles, including Edinburgh Castle. In 2013, Edinburgh Castle was the number one paid-for visitor attraction in Scotland– with 1,420,027 visitors, a 15% increase on the previous year – and was the most visited paid-for UK attraction outside London.

Section 8 of the Bill defines 'property in care' in statute for the first time as:

- (a) any heritable property which is of historical, archaeological, architectural or cultural significance or interest, and
- (b) which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers.

At present, Historic Scotland is responsible for managing these properties on behalf of Ministers. Section 3 of the Bill will ensure that the functions relating to properties stay with Scottish Ministers who will have the power to delegate any of these functions to, either the new body or some other "appropriate person". The provisions in Section 7 deal with the collections held within the properties in care, and again ensure that the responsibility for the functions relating to these collections will remain with Scottish Ministers.

Ministerial responsibilities include any statutory duties relating to conservation, public access and any powers under the Ancient Monuments and Archaeological Areas Act 1979 and the Historic Buildings and Ancient Monuments Act 1953.

The policy memorandum for the Bill points out that in the future there may be circumstances when it may be more appropriate for a property in care to be managed by another body, such as

the National Trust for Scotland or a community based trust. The memorandum does not provide specific examples of such trusts which may already be in existence.

MARINE PROTECTED AREAS

Another function, presently carried out by Historic Scotland, on behalf of Scottish Ministers, which will be retained by the Scottish Government, is the designation and regulation of historic Marine Protected Areas (MPAs).

In April 2012, Historic Scotland published a Strategy for the protection, management and promotion of marine heritage 2012-15 (Historic Scotland 2012c), setting out priorities for protecting, managing and promoting Scotland's outstanding marine heritage under the Marine (Scotland) Act 2010. The strategy underpinned the aims of:

- helping to advance knowledge about marine heritage and make information widely available
- improving stewardship of key marine heritage sites
- developing wider understanding and enjoyment of marine heritage.

The new body, Historic Environment Scotland, will become the expert advisor to Scottish Ministers with regard to historic MPAs. The provisions in Schedule 4 of the Bill will amend the Marine (Scotland) Act 2010 to reflect this. This would bring the role of the new body into line with Scottish Natural Heritage's expert adviser role with regard to Nature Conservation MPAs.

STRATEGIC ENVIRONMENTAL ASSESSMENT

A number of the submissions to the Education and Culture Committee's call for evidence on the Bill, including those from the Built Environment Forum Scotland (BEFS) and Historic Houses Association Scotland, mention that Historic Scotland's existing role with regard to Strategic Environmental Assessment is not mentioned in the Bill or its accompanying documents

Historic Scotland is not specifically named as one of the three Scottish statutory Consultation Authorities in the Environmental Assessment (Scotland) Act 2005. The Act names Scottish Ministers, Scottish Environment Protection Agency (SEPA) and Scottish Natural Heritage (SNH). In practice, as stated in the Strategic Environmental Assessment guidance (Scottish Government 2013e p. 8), Historic Scotland has acted for Scottish Ministers as one of the Consultation Authorities, alongside SEPA and SNH.

A Strategic Environmental Assessment (SEA) is a means to judge the likely impact of a public plan on the environment and to seek ways to minimise that effect, if it is likely to be significant.

SEAs therefore aim to offer greater protection to the environment by ensuring public bodies and those organisations preparing plans (including programmes, policies and strategies) of a 'public character' consider and address the likely significant environmental effects. Under the Environmental Assessment (Scotland) Act 2005, those bodies preparing qualifying Scottish plans are required to undertake a SEA for plans that are likely to have significant environmental effects, if implemented.

The role of the statutory Consultation Authorities with regard to SEAs is to bring their individual environmental expertise to the assessment process.

Neither the HES Bill, nor the accompanying documents, mention consequential changes to the Environmental Assessment (Scotland) 2005 Act to substitute the new body for Scottish Ministers, so it would appear that Ministers also intend retaining this function currently carried out for them by Historic Scotland.

CHARITABLE STATUS

The Bill does not confer charitable status on the new body but it is the Government's intention to make an order under Section 7(5) of the Charities and Trustee Investment (Scotland) Act 2005 (the charities test). The order would disapply the requirement in that Act that a body's constitution is not directed or controlled by Ministers. Such an order would allow the Board of the new body to apply for charitable status if it so wished.

RCAHMS was granted charitable status in 1992. It is also partnered with the SCRAN Trust, which is a registered charity.

Historic Scotland itself does not have charitable status but an associated body which, Historic Scotland Foundation, established in 2001 as a company limited by guarantee, does. The Foundation operates independently of Historic Scotland, but has objectives which are closely aligned with Historic Scotland's work. According to its financial statements for the year ending 31 March 2013 it received a total of £404,589 from charitable trusts, voluntary and other organisations and individuals.

The Bill does not give Ministers power to transfer the assets of either the SCRAN Trust or Historic Scotland Foundation, so these two charities will have to make their own arrangements with the new body.

The issue of the charitable status of the potential new body had been the subject of specific questions in the consultation on the possible merger.

The analysis of the consultation responses (Granville, Fawcett and Mulholland p. 6) had noted that:

“1.37 There were mixed opinions on issues relating to charitable status and some respondents commented that these are considerations best left to the Office of the Scottish Charities Regulator. More respondents agreed (37) than disagreed (8) that the functions and activities of the new organisation will fulfil the charitable purposes set out on p32 of the consultation paper. However, fourteen respondents felt there are there functions of the new organisation that do not fit the proposed charitable purpose, compared with 19 that did not. The main functions cited as potentially not fitting were regulation and grant giving.

1.38 Twenty seven respondents could see no reason why Ministers should not disapply the Ministerial direction clause in the Charities Act to enable the new organisation to apply for charitable status, whilst 9 felt there were reasons why Ministers should not disapply.”

THE BOARD OF HISTORIC ENVIRONMENT SCOTLAND

The provisions in Schedule 1 of the Bill will establish a Board for the new Body which will consist of no fewer than 10 and no more than 15 members, including the Chair, who will all be appointed by Scottish Ministers.

The suggested number of Board members for the new body is similar to the number of members for the boards of the other National Collections:

- National Library of Scotland Act 2012, a chair and, no fewer than 8 and no more than 13, other members appointed by the Scottish Ministers for no specified length of time
- National Galleries of Scotland Act 1906 between 7 and 12 members appointed for a four year term of office in the first instance and may be offered a second term
- National Heritage (Scotland) Act 1985, National Museums Scotland between 9 and 15 members, normally appointed for a term of four years, who may serve for a second term.

The Bill also specifically states that Ministers must make appointments to the Board “in a manner which encourages equal opportunities, in particular the observance of equal opportunity requirements”. The legislation for the other national collections does not such an explicit equal opportunities statement in relation to board members.

Appointments to all of the Scottish public body boards, including the current RCAHMS Commissioners, are regulated by Public Appointments Commissioner for Scotland. Whilst the Commissioner regulates the process used to make appointments, the process is run by civil servants on behalf of the Scottish Government. All of the boards, are appointed through an open appointments system, with the appointments based on merit and selection following the Code of Practice for Ministerial Appointments to Public Bodies in Scotland which was revised in 2013 (Commission for Ethical Standards in Public Life in Scotland 2013).

The Code of Practice states that:

“Public appointments must be advertised publicly in a way that will attract a strong and diverse field of suitable candidates. The process itself must provide equality of opportunity.”

In February 2014, the Scottish Government published a Model code of conduct for members of devolved public bodies (Scottish Government 2014a), which sets out the conduct expected of board members.

In April 2014, the Scottish Government launched a consultation on the introduction of gender quotas on public boards: Women on board: quality through diversity (Scottish Government 2104c). The consultation is looking at whether mandatory quotas, that ensure a minimum of 40% of women’s representation on public boards, should be introduced.

Currently the Scottish Parliament does not have legislative powers to address this issue, but the Scottish Government has opened up a dialogue with the UK Government on transferring powers by way of an Order under section 30 of the Scotland Act 1998.

The Policy Memorandum for the Bill states that in order to assist in the transition to the new body the Chair and Board should be appointed as soon as possible, with at least the Chair designate identified by the end of Stage 3 of the Bill.

MINISTERIAL DIRECTION

The provisions in Section 12 of the Bill state that Scottish Ministers may give HES directions (of a general or specific nature) about the exercise of its functions. This ability to provide direction is restricted by section 12(2), so that Scottish Ministers may not give directions with regard to any particular historic property, collection or object. In addition, the ministerial direction cannot be

used with regard to grants or loans which HES may make. The restriction on ministerial direction does not extend to properties in care and the collections contained in them.

The Bill also states that in exercising its functions HES must have regard to any relevant policy or strategy published by Scottish Ministers (Section 2(8))

The use of ministerial direction was the subject of much discussion during the passage of the National Library of Scotland Bill in 2012. The concerns were that Scottish Ministers could use their power of direction to influence the independence of an expert NDPB.

CONSERVATION AREAS AND LISTING BUILDINGS

Section 15 and Schedule 3 of the Bill make provision for the new body's functions with regard to listed buildings and conservation areas (Part 3 of Schedule 3). The following paragraphs on conservation areas and listed buildings are supplemented by the information provided in Annex 2, which explains how the listed building system operates at present, including Historic Scotland's role.

Conservation Areas

Under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, conservation areas are defined as 'areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance'. All planning authorities are required from time to time to determine which areas meet this definition and to designate them as conservation areas. Most conservation areas contain groups of buildings extending over areas of a village, town or city. However, they can also cover historic land, for example, battlefields, public parks, designed landscapes or railways. Defining the character of an area is fundamental to decision-making in conservation areas. The overall layout and spaces may be just as important to that character as the individual buildings that are within the area and are protected whether they are listed or not. Unlisted buildings in conservation areas have protection under the planning system through Conservation Area Consent.

The responsibility for designation of conservation areas is mainly undertaken by local authorities, although Section 62 of the 1997 Act does indicate that the Secretary of State may designate a conservation area. In practice this role would have been undertaken by Historic Scotland on behalf of Scottish Ministers. To date, neither the Scottish Government nor Historic Scotland appear to have used this power of designation.

Listed Buildings

Historic Scotland (HS), working on behalf of Scottish Ministers, maintains a list of historic buildings which are deemed worthy of statutory protection from unauthorised alteration, extension or demolition which would affect the building's character as a building of special architectural or historic interest under the provisions of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The criteria for determining whether a building is of "special architectural or historic interest" for listing are set out in Annex 2 of the Scottish Historic Environment Policy (SHEP) (Historic Scotland 2011) and are broadly:

- age and rarity
- architectural interest
- close historical association

The term “building” is very broadly defined in the 1997 Act and can include structures as diverse as bridges, walls, pillar boxes, chimneys, statues, war memorials and mile posts.

Exclusions to listings

Section 21 of the Bill amends Section 1 of the 1997 Act by inserting a new subsection (4A). This new subsection allows for any entry for a listed building to specify that an object or structure is not to be treated as part of the building for the purposes of the Act and also that any part or feature of the building is not of special architectural historic interest. This new power will apply to future entries and to future amendments of existing entries. The policy intention is to ensure that protection is more precisely targeted upon those elements of a building which are of particular historical or architectural significance. For example, a relatively modern extension to a historic building could be excluded from the protection and any restrictions applied to the remainder of the listed building.

SCHEDULED MONUMENTS

Section 14 and Schedule 2 of the Bill make provision for the new body’s functions with regard to scheduled monuments, including enforcement and stop notices. The following paragraph provides background information on scheduled monuments and is supplemented by the information in Annex 2, which explains how the scheduled monument process, including enforcement notices, stop notices and temporary stop notices, operates at present, including the role of Historic Scotland.

Scheduled Ancient Monuments

A scheduled ancient monument is a monument of national importance that Scottish Ministers have given legal protection under the Ancient Monuments and Archaeological Areas Act 1979. Examples of such monuments include prehistoric burial mounds, Roman camps, medieval castles and World War II defensive sites. The statutory definition of a scheduled ancient monument is very broad and includes:

- any building, structure or work located above or below the surface of the land, including caves and excavations
- any site comprising the remains of any such building, structure or work, or any cave or excavation
- any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure or part thereof which neither constitutes nor forms part of any work which is a monument as described above.
- any machinery attached to a monument is part of the monument if it could not be detached without being dismantled.

The following cannot be scheduled monuments:

- ecclesiastical buildings that are currently being used for ecclesiastical purposes
- occupied dwelling houses (except monuments with a resident caretaker)
- portable objects
- sites designated under the Protection of Wrecks Act 1973

It is worth noting, that while all monuments that have been scheduled can be referred to as “ancient monuments”, not all ancient monuments are necessarily scheduled.

Historic Scotland operates an Ancient Monuments Grant Scheme which provides financial assistance aimed at preserving and maintaining scheduled ancient monuments. Funds are limited, so priority is given to monuments of particular interest or importance. Certain monuments are not eligible for these grants, principally:

- Inhabited buildings
- Buildings undergoing restoration with the intention of making them habitable
- Buildings in ecclesiastical use.

Appeals relating to scheduling of monuments

As a result of the transfer of duties to the new body, previously performed on behalf of Ministers by Historic Scotland, Part 5 of Schedule 2 of the Bill introduces an appeals system which will be operated by Scottish Government. The provisions in the Bill will amend the 1979 Act, providing owners, tenants and occupiers with a right of appeal to Scottish Ministers against a decision of HES to include a monument in the Schedule or to amend an entry relating to a monument already in the Schedule.

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ANNEX 1: KEY FACTS

The following table of Key Facts on the historic environment in Scotland is taken from *Scotland's historic environment audit 2012* (Historic Scotland 2012)

Scotland's historic environment, which includes thousands of historic buildings and monuments, attracts millions of visitors each year and generates income and jobs across the country. Key facts about the historic environment are provided below.

Designations in Scotland	<ul style="list-style-type: none"> • 5 World Heritage Sites • 47,672 listed buildings • 8,205 scheduled monuments • 645 conservation areas • 390 gardens and designed landscapes • 28 historic battlefields on the Inventory • 8 protected wrecks and 7 scheduled wrecks • 2 National Parks • 40 National Scenic Areas
Records of known sites	<ul style="list-style-type: none"> • There are 295,784 unique records of known sites held in the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) databases.
Condition and management	<ul style="list-style-type: none"> • 8.2% of Scotland's A-listed buildings are at risk in 2011, compared to 8.7% in 2009, representing an improving performance www.scotlandperforms.com • The percentage of monuments in a satisfactory condition has increased over the last 13 years, and is currently around 87%. • Older buildings are more likely to have disrepair than newer ones. Around three quarters of buildings built pre-1919 have critical disrepair to some elements, compared to a quarter of buildings built after 1982. • Performance in dealing with planning consents is improving and in 2011/12 local authorities decided half of listed building and conservation area consents within two months. • Those involved in caring for the historic environment are seeking creative ways of working together to respond to increasing constraints on budgets. • The Historic Environment (Amendment) Scotland Act 2011 was enacted.
Employment	<ul style="list-style-type: none"> • The historic environment provides 2.5% of Scotland's total employment. It directly supports 41,000 full time equivalent (FTE) employees and 60,000 FTE employees (including indirect and induced effects).

Economy and leverage from grants	<ul style="list-style-type: none"> Investment in the historic environment has economic benefits for local business and the wider economy. The historic environment contributes in excess of £2.3 billion (2.6%) to Scotland's Gross Value Added (GVA). Between 2002 and 2012 Historic Scotland awarded grants of £123 million that assisted repairs of over £563 million.
Funding	<p>Funding for the historic environment comes from a wide variety of sources across the public, private and voluntary sectors. The main sources are:</p> <ul style="list-style-type: none"> In 2011/12, the Scottish Government through Historic Scotland spent £77.9m, including £31.5m in income from properties in care. In real terms Historic Scotland's expenditure has decreased since 2010/11 (£82.0m) and income from properties in care has increased from 2010/11 (£28.5m). The Heritage Lottery Fund awarded £29.6m in grants to 107 different heritage projects in Scotland in 2011/12, an increase in both the amount of finance awarded and the number of projects on 2010/11. Around 43% of all HLF funding in Scotland is to historic environment projects. CiPFA figures show that in 2011/12 local authorities' net expenditure on heritage (including the historic environment) was £7.6m, compared to £7.4m in 2010/11 in real terms. The National Trust for Scotland's total expenditure was £42.1m in 2011/12, compared to £51.2m in 2010/11 in real terms. Private investment is the largest source of funding for the historic environment.
Tourism, reputation and attitudes	<p>The historic environment is a key driver of tourism and Scotland's reputation:</p> <ul style="list-style-type: none"> VisitScotland estimate that 16 million tourists visited historic environment attractions in 2011, representing more than one in three of recorded visits to all Scottish attractions. The Nation Brands Index (2012) shows that Scotland retains a strong reputation for tourism and heritage. Out of 50 nations, Scotland is ranked 13 for tourism and 12 for being rich in historic buildings and monuments. The Scottish Household Survey shows that one in five (21%) adults had visited a historic or archaeological site in the 12 months prior to 2011.

	<ul style="list-style-type: none"> • Attitudes to heritage are extremely positive with more than 9 out of 10 saying that historic features are an important part of the identity of our villages, towns and cities.
Membership, participation and volunteering opportunities	<ul style="list-style-type: none"> • Membership of the National Trust for Scotland (312,000 members) and Historic Scotland (122,000) are at a high level and on the increase. • Participation levels in European Heritage Days, Doors Open Days and Scottish Archaeology Month are high and continue to attract healthy numbers of visitors and volunteers. • Each year more than 18,500 volunteers contribute to the historic environment in Scotland, with an economic value estimated at over £28 million per annum, based on survey estimates.
Education and training	<ul style="list-style-type: none"> • 1 in 5 of all school visits are to historic sites (129,587 school children), based on Visit Scotland's 2011 data. • Increasing numbers of candidates are entering for history highers and intermediate exams and increasing numbers of students are studying historic environment related courses in higher education, between 2007/8 and 2010/11. • The sector plays an important role in promoting vocational training and in improving the skills of the construction workforce. For example, the Heritage Lottery Fund funds paid training opportunities in the heritage sector and Historic Scotland develops traditional skills through employment and apprenticeships.
Climate change and sustainability	<ul style="list-style-type: none"> • The historic environment and its ongoing upkeep is inherently sustainable as it reuses existing buildings and minimises the use of new resources. • One fifth of the housing stock is now more than 90 years old (traditionally built), so the sensitive re-use of historic buildings is crucial if Scotland is to meet the 80% target for reducing carbon emissions by 2050. These buildings comprise the bulk of the vernacular architecture which gives Scotland its unique character.

ANNEX 2 LISTED BUILDINGS, SCHEDULED MONUMENTS, ENFORCEMENT NOTICES, STOP NOTICES AND TEMPORARY STOP NOTICES

WHAT IS A LISTED BUILDING?

In order to be listed, a building need not be functioning for the purpose for which it was originally intended, for example, a disused church may be listed even though it has continued its life as a block of flats or even a pub. Similarly, a building's state of repair is not normally a relevant factor in HS's consideration of its architectural interest or historical association. It only becomes a factor when the building's condition has devalued the particular architectural or historic interest to the degree that it can no longer be regarded as special.

Any listing applies to the whole building or structure at the address named, including any object or structure fixed to the building and any object or structure within the curtilage of the building which though not fixed to the building forms part of the land and has done so since before 1 July 1948. Listing always covers both the interior and exterior of a building.

Categories of Listed Building

Every listed building is assigned by Historic Scotland to one of three categories according to their relative architectural and historic importance. It is important to note that all categories of listed building provide statutory protection that applies equally to the interior and exterior of listed buildings. The three categories are: **Category A:** Buildings of national or international importance, either architectural or historic, or fine, little-altered, examples of some particular period, style or building type. **Category B:** Buildings of regional or more than local importance, or major examples of some particular period, style or building type which may have been altered. **Category C(S):** Buildings of local importance, lesser examples of any period, style, or building type, as originally constructed or moderately altered; and simple traditional buildings which group well with others in categories A and B.

What is listed building consent?

The fact that a building is listed does not mean that it can never be altered, extended or even demolished. There is a presumption against demolition or other works that adversely affect the special architectural or historic interest of a listed building or its setting. The SHEP sets out criteria to assess the circumstances where demolition of a listed building may be acceptable.

In addition to obtaining planning permission and a building warrant where required, work to the interior and/or exterior of a listed building which would affect its character as a building of special architectural or historic interest also requires listed building consent.

Applications for listed building consent are made to the relevant local authority. The authority will consider an application in the light of the advice in SHEP, other national policy documents and their own policies. The only exception to this is where the local authority itself is the owner of the listed building and wishes to make alterations, in which case the decision is referred to Historic Scotland.

On receipt of an application, the local authority will register and advertise the application for 21 days. Once the 21 day period is over, the authority will consider any representations received and make a decision following its usual decision making procedures. The local authority may then decide to grant listed building consent unconditionally, subject to conditions, or to refuse permission. An applicant can appeal to Scottish Ministers against the imposition of conditions or

a refusal of permission. Appeals are considered by a Reporter appointed by Scottish Ministers, who will normally make a decision on behalf of Scottish Ministers. However, Ministers can choose to determine an appeal themselves, in which case the appeal will still be handled up to the decision stage by a Reporter who will compile a report for ministerial consideration. This will normally only happen if the case is of particular significance. The only way to challenge an appeal decision is on a point of law to the Court of Session.

A planning authority may ask Historic Scotland for application-specific advice at any stage during the consent process and must notify Historic Scotland if they intend to grant consent for developments affecting category A or B listed buildings and for all demolitions, regardless of category. Scottish Ministers have the power to direct that notification is not required for specified classes of applications, other than for demolition. Once notified, Historic Scotland must consider whether there are special circumstances – such as the particular importance of the building, the degree of national interest or local concern about the proposals – to recommend that the application is called in for decision by Scottish Ministers. These are also handled by a Reporter appointed by Scottish Ministers, in much the same way as an appeal.

Certain listed buildings are exempt from the requirement to obtain listed building consent. These include:

- Buildings which are both listed and scheduled; in these cases proposals require only scheduled monument consent.
- Any ecclesiastical building which is for the time being used for ecclesiastical purposes. However, even in these cases, proposals for total demolition require listed building consent.

There is a voluntary consent arrangement currently in place for churches in ecclesiastical use by certain denominations. This arrangement deals with proposals for works to the external fabric of buildings in ecclesiastical use which, were it not for the exemption, would require listed building consent.

Listed building consent lasts for three years from the date it was granted, unless there is a condition attached to the consent specifying another date by which the works must be complete.

What happens if unauthorised work is undertaken on a listed building?

Failure to obtain listed building consent prior to undertaking work to alter, extend or demolish a listed building in a way that would affect its character is an offence which can result in prosecution or an enforcement notice, the consequences of which can include:

Prosecution: A person found guilty of an offence can be liable, on summary conviction, to imprisonment for a term not exceeding six months, a fine not exceeding £50,000 or both. Conviction on indictment can result in imprisonment for up to two years, a fine, or both. In considering whether someone is guilty of an offence, the judge will not consider the defendant's intent, state of mind, motive or knowledge. However, these issues may be relevant to any sentence.

It is a defence to show that:

- (a) The works were urgently necessary in the interests of health and safety or the preservation of the building
- (b) Health and safety or the preservation of the building could not be secured through works of repair or works affording temporary support or shelter

(c) The works were limited to the minimum immediately necessary

(d) That written notice justifying in detail the carrying out of the works was sent to the local authority as soon as reasonably practicable.

Enforcement Notice: A listed building enforcement notice can be issued by a local authority where it considers there to be unauthorised works which have been or are being executed to a listed building. An enforcement notice can be served on the land owner, occupier, lessee and any other person with an interest in the land if that interest is materially affected by the notice. An enforcement notice will set out the works that have been carried out that are considered to be unauthorised, describe any remedial steps which must be taken to restore the building to its previous state or, if this is not possible, what works should be undertaken to alleviate the effect of the unauthorised works or bring the building to the state it would have been in if consent had been complied with. The notice will also set a time-scale within which these steps must be taken. The terms of the notice take effect on a specific date. There is a right of appeal to Scottish Ministers against the issue of an enforcement notice. An appeal must be lodged prior to the enforcement notice taking effect.

Failure to comply with an enforcement notice is an offence. Anyone found guilty of such an offence would, on summary conviction, be liable for a fine of up to £20,000 or an unlimited fine if convicted on indictment.

Stop Notices: Where a planning authority consider that a breach of listed building control has to be dealt with as a matter of urgency, before the expiry of the period of compliance with a listed building enforcement notice, they can issue a stop notice.

A stop notice is served at the same time as an enforcement notice, or any time after an enforcement notice had been served but has yet to take effect. A stop notice can be served on any person who appears to Scottish Ministers to have an interest in the listed building or causing the works specified in the enforcement notice to be stopped. A stop notice sets out the works to cease, which would be the same as those set out in the enforcement notice. However, a stop notice need not apply to everything set out in the enforcement notice, i.e. it could relate only to part of the building in question or some of the breaches of control mentioned in the enforcement notice.

A stop notice comes into effect not less than three and no more than 28 days after it has been issued, unless Scottish Ministers considered there were special reasons to justify it taking effect earlier.

There is no right of appeal to Scottish Ministers against the service of a stop notice, although it can be challenged on a point of law through judicial review. There are four situations where the recipient, who must have an interest in the building, of a stop notice could lodge a claim for compensation for specified loss or damage against the planning authority:

- If the stop notice was withdrawn
- If the enforcement notice was withdrawn
- If the enforcement notice was varied in such a way as to exclude the provisions of the stop notice
- If there was a successful appeal against an enforcement notice and a stop notice was also served.

Failure to comply with a stop notice is an offence. Anyone found guilty of such an offence would, on summary conviction, be liable for a fine of up to £20,000 or an unlimited fine if convicted on indictment.

Temporary Stop Notices: Similar to a stop notice but taking immediate effect, A planning authority can issue a temporary stop notice if they consider that unauthorised works or works in breach of a condition attached to the consent had been or was being carried out to a listed building and they considered it expedient that the works be stopped immediately. A temporary stop notice has to prohibit the execution of specified works and set out the authority's reasons for issuing the notice. A temporary stop notice can be served on the person carrying out the works which are the subject of the notice, the land owner, the occupier or anyone with an interest in the listed building. As well as serving the notice to one or more of these parties, the authority would have to affix a copy of the notice on the building to which it applied. The notice would take effect from the time it was displayed on site and could last for a period of up to 28 days, during which time an enforcement notice and associated stop notice could be served.

Failure to comply with a temporary stop notice is an offence. Anyone found guilty of such an offence would, on summary conviction, be liable for a fine of up to £20,000 or an unlimited fine if convicted on indictment.

As with a stop notice, a person who was subject to a temporary stop notice would be able to claim compensation from the planning authority in certain circumstances, as described below:

- Consent for the works specified in the temporary stop notice was granted on or before the date that the notice was first displayed
- The temporary stop notice was withdrawn by Scottish Ministers.

Interdict: Although not a specific listed building power, a local authority can apply to the Sheriff Court or Court of Session for an interdict where they consider a breach of listed building control has occurred, or is about to occur.

WHAT IS SCHEDULED MONUMENT CONSENT?

The fact that a monument has been scheduled does not mean that an owner or occupier can never alter, extend or even demolish it. However, in addition to obtaining planning permission and a building warrant where required, any work that would demolish, destroy, damage, remove, repair, alter or add to a scheduled ancient monument also requires scheduled monument consent. Consent is also required to use a metal detector within a scheduled area. There is a presumption that scheduled monuments will remain as far as possible in the form and condition which they have come down to us.

The Scheduled Monument Consent (SMC) process is administered by Historic Scotland on behalf of Scottish Ministers. An applicant must complete an application form and submit it to Historic Scotland with sufficient information to allow a decision to be made. Historic Scotland may ask for further information or arrange a site visit by one of its inspectors prior to reaching a decision. Historic Scotland will then normally issue a provisional view on whether it will grant consent unconditionally, with conditions or refuse consent. Unless there are any objections to this provisional decision, full consent will follow 28 days later. Any objections or representations will be considered prior to making a final decision.

If Historic Scotland is minded to refuse SMC, an applicant can have the case heard by an independent Reporter at a Public Local Inquiry or more informal hearing. The final decision on

the Reporter's recommendations is then taken by Scottish Ministers without the further involvement of Historic Scotland.

Certain classes or types of works do not require consent and these are set out in the Ancient Monuments (Class Consents) (Scotland) Order 1996 (SI 1996/1507). The types of works listed in this Order are deemed to have been granted scheduled monument consent.

Scheduled monument consent lasts for five years from the date it was granted, unless a different period is specified in the consent.

What happens if unauthorised work is carried out on a scheduled ancient monument?

If a person carries out works to a scheduled ancient monument without consent, or causes or permits such works to be carried out, or fails to comply with conditions attached to consent then they are guilty of an offence. They would be liable to prosecution under the 1979 Act and could be fined up to £10,000.

Where works are carried out without consent, it is a defence to prove that the person took all reasonable precautions and exercised due diligence to avoid or prevent damage to the monument. Where there has been non-compliance with a condition attached to historic monument consent, it is a defence to prove that the person charged with the offence took all reasonable precautions and exercised all due diligence to avoid contravening the condition. It is also a defence for an accused person to prove that they did not know and had no reason to believe that the monument was within the area affected by the works or that it was a scheduled monument.

ENFORCEMENT NOTICES, STOP NOTICES AND TEMPORARY STOP NOTICES

Enforcement notices and stop notices have been a feature of the Scottish town and country planning systems for decades, while temporary stop notices were introduced by the Planning etc. (Scotland) Act 2006. The Historic Environment (Amendment) (Scotland) Act extended the operation of these notices to the scheduled monument system, and introduced listed building stop notices and temporary stop notices, as described below:

Scheduled Monument Enforcement Notices: under the provisions in the Act Scottish Ministers are able to serve a scheduled monument enforcement notice where they consider there has been a breach of the scheduled monument consent regime. An enforcement notice could be served on the land/monument owner, occupier and any other person with an interest in the land/monument if that interest is materially affected by the notice. An enforcement notice will set out any remedial steps which must be taken, or any works which must cease, and a set time-scale within which the steps must be taken, or the works ceased, to ensure that the terms specified in the notice are complied with. The terms of the notice would take effect on a specific date, which must be at least 28 days after the notice was served. If the works were not completed by the required date then Scottish Ministers could choose to carry out the work themselves and recover the costs incurred from the owner or tenant.

There is a right of appeal to a sheriff against the issue of an enforcement notice. The terms of the notice are suspended until a decision on the appeal has been reached. In addition, an enforcement notice would cease to have effect (wholly or partly) if Scottish Ministers granted retrospective permission for the works to which the notice applied.

Failure to comply with a scheduled monument enforcement notice is an offence. Anyone found guilty of such an offence would, on summary conviction, be liable for a fine of up to £20,000 or an unlimited fine if convicted on indictment.

Scheduled Monument Stop Notices: under the provisions in the Act where Scottish Ministers consider that a breach of scheduled monument control has to be dealt with as a matter of urgency, before the expiry of the period of compliance with a scheduled monument enforcement notice, they may issue a stop notice.

A stop notice may be served at the same time as an enforcement notice, or any time after an enforcement notice had been served but has yet to take effect. A stop notice may be served on any person who appears to Scottish Ministers to have an interest in the land/monument or causing the works specified in the enforcement notice to be stopped. A stop notice sets out the works to cease, which is the same as those set out in the enforcement notice. However, a stop notice need not apply to everything set out in the enforcement notice, i.e. it could relate only to part of the land/monument in question or some of the breaches of control mentioned in the enforcement notice.

A stop notice comes into effect not less than three and no more than 28 days after it had been issued, unless Scottish Ministers considered there were special reasons to justify it taking effect earlier.

There is no right of appeal to Scottish Ministers against the service of a stop notice, although it may be challenged on a point of law through judicial review. There are four situations where the recipient, who must have an interest in the land/monument, of a stop notice may lodge a claim for compensation for specified loss or damage against Scottish Ministers:

- If the stop notice was withdrawn
- If the enforcement notice was withdrawn
- If the enforcement notice was varied in such a way as to exclude the provisions of the stop notice
- If there was a successful appeal against an enforcement notice and a stop notice was also served.

Failure to comply with a stop notice is an offence. Anyone found guilty of such an offence, on summary conviction, is liable for a fine of up to £20,000 or an unlimited fine if convicted on indictment.

Temporary Stop Notices: Similar to a stop notice but taking immediate effect, Scottish Ministers may issue a temporary stop notice if they consider unauthorised works or works in breach of a condition attached to the consent had been or was being carried out to a scheduled monument and they considered it expedient that the works be stopped immediately. A temporary stop notice has to prohibit the execution of specified works and sets out Scottish Ministers' reasons for issuing the notice. A temporary stop notice may be served on the person carrying out the works which are the subject of the notice, the land owner, the occupier or anyone with an interest in the land/monument. As well as serving the notice to one or more of these parties the authority has to affix a copy of the notice on the land/monument to which it applied. The notice takes effect from the time it is displayed on site and may last for a period of up to 28 days, during which time an enforcement notice and associated stop notice could be served.

Failure to comply with a temporary stop notice is an offence. Anyone found guilty of such an offence, on summary conviction, is liable for a fine of up to £20,000 or an unlimited fine if convicted on indictment.

As with a stop notice, a person who is subject to a temporary stop notice is able to claim compensation from Scottish Ministers in certain circumstances, as described below:

- Consent for the works specified in the temporary stop notice was granted on or before the date that the notice was first displayed

The temporary stop notice was withdrawn by Scottish Ministers.



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