

Consultation on The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Draft Bill

Planning Committee
6 August 2009

1 Purpose of report

- 1.1 To recommend a response to the Scottish Government consultation on the Ancient Monuments and Listed Buildings (Amendment) (Scotland) Draft Bill.

2 Summary

- 2.1 The Scottish Government is currently consulting on a draft Bill to amend heritage legislation in Scotland, through the Ancient Monuments and Listed Building (Amendment) (Scotland) Draft Bill. Comments on the draft Bill are required by 14 August 2009. The proposed amendments include certificates of immunity from listing, offences concerning authorised works to listed buildings, hearing procedures for called-in applications, enforcement and costs associated with urgent works.

3 Main report

- 3.1 The Scottish Government is currently consulting on a draft Bill to amend heritage legislation in Scotland, through the Ancient Monuments and Listed Building (Amendment) (Scotland) Bill. The deadline for comments is 14 August 2009. The Bill is a technical amending Bill which will introduce new provisions and remove barriers to the use of existing powers that will enhance the ability of planning authorities to manage the historic environment in a sustainable way.
- 3.2 In December 2007 the then Minister for Europe, External Affairs and Culture responded to the Historic Environment Advisory Council in Scotland (HEACS) report on *Whether there is a need to review heritage protection legislation in Scotland*. The report argued in favour of a major legislative review. After careful consideration Ministers came to the view that the present system did not have sufficient problems to warrant major legislative reform. While Ministers rejected the need for major reform, they did indicate that there were legislative changes that could be considered as part of a wider improvement of the system.

The draft Bill contains amending provisions corresponding to three principal Acts:

- The Historic Buildings and Ancient Monuments Act 1953
- The Ancient Monuments and Archaeological Areas Act 1979
- The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Proposed Amendments to the Historic Buildings and Ancient Monuments Act 1953 and the Ancient Monuments and Archaeological Areas Act 1979

- 3.3 The proposed amendments to the Historic Buildings and Ancient Monuments Act 1953 and the Ancient Monuments and Archaeological Areas Act 1979 relate to grants and control of work to Scheduled Monuments. Scheduled Monument legislation is mainly a matter for Historic Scotland and the majority of the proposed changes are not directly related to the work of the Council. The only proposed change which may involve the Council is the power to enable a person authorised by the Scottish Ministers to enter land to carry out essential investigatory works. This includes excavations for the purpose of archaeological investigation, where they know or have reason to believe that any ancient monument is at risk of imminent damage or destruction, if necessary without the permission of the owner.
- 3.4 The issue of lack of provisions to protect archaeological remains where there is nothing that can be clearly defined as a 'structure' or 'work' is resolved by extending the range of historic environment assets that can be designated under the 1979 Act to include 'any site comprising any thing, or group of things, that evidences previous human activity'.

Proposed Amendments to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

- 3.5 The proposed modifications to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 have more significant consequences for Planning. These are detailed below with proposed responses in italics.

Section 18 Certificate of Immunity from Listing

- 3.6 This confers a new power that will enable Scottish Ministers to provide a certificate of immunity from listing which will guarantee that a building will not be statutorily listed as being of special architectural or historic interest during the five years from the date of the certificate.
- 3.7 *Listing a building at a late stage in the preparations of planning proposals can cause delay and even the abandonment of development projects. The proposed certificate of immunity procedure would enable an early resolution to uncertainties over possible listings. By applying for a certificate of immunity it can be established that there is a clear period of five years to carry out development without the possibility of listing interrupting the programme, or that listed building consent is required for work. The resultant removal of uncertainty is welcomed.*

Section 19 Offences in relation to unauthorised works and listed building consent: increase in fines.

3.8 Raises the level of fines on summary conviction under section 8 of the 1997 Act for unauthorised works for the demolition or alteration or extension of a listed building and failure to comply with conditions attached to listed building consent from £20,000 to £50,000.

3.9 *This additional deterrent to unauthorised works to listed buildings is welcomed.*

Section 20 Introduction of Hearings in connection with applications for listed building consent.

3.10 Replaces the right to be heard at Inquiry in connection with listed building consent with Hearings. The intention is to amend the 1997 Act to bring the equivalent processes into line with those in the Town and Country Planning (Scotland) Act 1997 once the relevant provisions of the Planning etc. (Scotland) Act 2006 are commenced.

3.11 *This will contribute to faster decisions on listed building consent applications and parallels what has happened in the general Planning system. The format and representation of the Hearings panel is not specified. Ministers should ensure that Hearings are as rigorous as the current appeals procedure in considering what are likely to be contentious listed building issues.*

Sections 21 and 22 Enforcement notice: requirement to cease works and stop notices and temporary stop notices.

3.12 The existing legislation includes enforcement provisions to provide for the service of a listed building enforcement notice to remedy unauthorised works to a listed building. Where an appeal follows, the enforcement notice does not take effect until the appeal has been finally determined or withdrawn.

3.13 These sections introduce new powers that enable the issue of stop notices and temporary stop notices that will affect a halt – immediate in the case of temporary stop notices – to specified unauthorised works to listed buildings. The amendment will allow a listed building enforcement notice to specify such works which are required to be stopped. The effect of the stop notice is to prohibit the carrying out of the alleged unauthorised works until such time as the enforcement notice to which it relates is withdrawn or quashed, the period of compliance of the enforcement notice expires, or the stop notice is withdrawn.

3.14 In an effort to achieve a more immediate conclusion to unauthorised works than a stop notice can provide for, the Bill also proposes new powers to issue temporary stop notices. The issue of such a notice would require the immediate cessation of unauthorised works to a listed building.

3.15 *This additional provision is welcomed and will provide an effective method of ensuring that potentially damaging works to the character and appearance of listed buildings are stopped at the earliest possible time.*

Section 23 and 24 Non-compliance with listed building enforcement notice: fixed penalty notice.

3.16 This introduces a new power that will enable planning authorities to issue fixed penalty notices as an alternative to prosecution in cases where a person is in

breach of a listed building enforcement notice. The Scottish Ministers will set out the fixed penalty amounts in regulations.

- 3.17 *This would be a significantly more effective and viable incentive to compliance than prosecution and is therefore welcomed.*

Section 25 Liability of owner and successors for expenses of urgent works.

- 3.18 Under the terms of section 49 of the 1997 Act a local planning authority may execute any works which appear to them to be urgently necessary for the preservation of a listed building. The costs incurred through carrying out such works can be recovered under the terms of section 50 of the 1997 Act which empowers local authorities to 'give notice to the owner of the building requiring him to pay the expenses of the work'. At present this is limited to pursuing recovery of expenses from whoever was the owner at the time the notice was served.
- 3.19 The proposed new power would enable a notice of liability for expenses of the works to be placed in the Land Register of Scotland or in the Register of Sasines. The power to recover the costs from the owner at the time the notice was served would remain, but in addition the proposed new provision would provide that any new owner of the property would also be liable to pay the costs.
- 3.20 *The additional powers to recover expenses associated with Urgent Works Notices are welcomed.*

Section 26 Recovery of grants for preservation of listed buildings.

- 3.21 Amends those sections of the 1997 Act which enable the recovery of grants. The intention is to make it clear that the grant can specify the amount recoverable or can make provision for calculating the amount recoverable in certain specified circumstances, for example, in the event of a sale of the building.
- 3.22 *The clear specification of the terms and conditions of a grant at the outset removes uncertainty and can be welcomed.*

4 Financial Implications

- 4.1 This report does not result in any financial implications for the Council.

5. Environmental Impacts

- 5.1 This report involves guidance for the protection of the historic environment.

6 Conclusions

- 6.1 The new provisions of the Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill leaves the fundamentals of the legislation in place, whilst addressing a number of gaps and inconsistencies.

7 Recommendations

- 7.1 It is recommended that the Committee approves this report as its response to the Scottish Government consultation on the Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill.



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| Appendices | None |
| Contact | Jack Gillon 469 3634 jack.gillon@edinburgh.gov.uk |
| Wards affected | City wide |
| Single Outcome Agreement | Supports National Outcome 12 – We value and enjoy our built and natural environment and protect it and enhance it for future generations. Supports Local Outcome - The development of a quality built and natural environment is well supported. |
| Background Papers | The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Draft Bill. |