

The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill

CONSULTATION AND DRAFT BILL

Response by The Prince's Regeneration Trust

The Prince's Regeneration Trust is one of HRH The Duke of Rothesay's group of charities. It works throughout the UK, focusing on areas of social and economic deprivation, to ensure that historically important buildings at risk of demolition or decay are conserved, regenerated and reused. The Trust's projects demonstrate the benefits of heritage-led regeneration, including the creation and safeguarding of jobs, the attraction of inward investment to deprived areas, strengthening communities and place-shaping.

The Prince's Regeneration Trust welcomes the opportunity to respond to this consultation and our comments follow below. The Trust would be pleased to discuss or provide clarification of any of the matters raised herein.

A completed Respondent Questionnaire form is separately attached.

The Trust welcomes the draft Bill which will serve to strengthen the ability of the statutory authorities to manage and protect Scotland's built heritage.

The Trust's comments on the Bill follow the sections as set out in Section 2 of the Consultation document:

Part 1 – Amendment of the Historic Buildings and Ancient Monuments Act 1953

Section 1 – Recovery of grants, for repair, maintenance and upkeep of certain property

Trust comment: This clarification is welcome and the certainty that it will provide.

Part 2 – Modifications of the Ancient Monuments and Archaeological Areas Act 1979

Section 2 – Control of works affecting scheduled monuments

Trust Comment: We welcome this amendment.

Section 3 – Works affecting scheduled monuments: consent for works without authority

Trust comment: No comments

Section 4 – Defences involving knowledge or belief to certain offences under the 1979 Act

Trust comment: This is welcomed. The Trust believes that it would be beneficial for legal amendment to be shored up by a programme of education and awareness raising. The removal of a defence of ignorance alone, although welcome, is unlikely to result in a change of attitude.

Section 5 – Fines: increases and duty of court in determining amount

Trust Comment: This is welcomed, although as an isolated measure, it would not necessarily prevent unauthorised works if the potential financial gain to an owner/developer is much greater. As above, this legal amendment should be augmented by statutory authorities bringing to bear any influence available to them and for them to be sufficiently resourced to do so.

Section 6 – Powers of entry to inspect condition of scheduled monument

Trust comment: This is welcomed

Section 7 – Works affecting scheduled monuments: enforcement

Trust comment: This is welcomed

Stop notices and temporary stop notices for unauthorised works on scheduled monuments

Trust comment: This is welcomed

Sections 8, 9 and 10 – Monuments under guardianship

Trust comment: No comments

Section 11 – Financial support for preservation etc. of monuments

Trust comment: The Trust particularly welcomes the introduction of an explicit power to enable Scottish Ministers to offer ancient monument grants to third parties such as building preservation trusts.

Section 12 – Power of entry on land where monument at risk

Trust comment: This is welcomed

Section 13 – Offence of disturbance of certain ancient monuments

Trust comment: This is welcomed

Section 14 – Development and understanding of matters of historic, etc. interest: grants and loans

Trust comment: This is particularly welcomed. However, whilst acknowledging that the Bill should provide for flexibility, it would be helpful to have some clarity on how Scottish Ministers/Historic Scotland envisage that this will work in practice; what is the scope of the financial assistance (e.g. buildings, emergency works - for which there is no other source of financial assistance, interpretation, project development etc) and what level of resources Ministers are minded to propose. Subject to that clarification, it has the potential to provide vital support for the type of projects that this Trust and other building preservation trusts are engaged with as part of their core activity.

Section 15 – Retention of found objects of archaeological or historical interest

Trust comment: No comment

Section 16 – Meaning of ‘monument’ in the 1979 Act

Trust comment: No comment

Section 17 – Refusal to entertain certain applications for scheduled monument consent

Trust comment: No comment

Part 3 – Modifications of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Section 18 – Certificate that building not intended to be listed

Trust comment: We welcome this new power to the extent that it will provide owners and developers with certainty for their projects. However, the Trust has some specific concerns:

- Regarding the proposed duration of a COI at 5 years, the Trust thinks 3 years is likely to be more appropriate
- There is a real danger that owners (or would be owner/developers) of large scale sites that include a number of buildings, will move to immediately seek certificates of immunity from listing across the whole site – this could potentially lead to large scale demolition to produce a vacant site
- The Trust suggests that consideration should be given to whether COIs are issued for individual buildings or groups of buildings on a single site
- Consideration should also be given to whether the COI can only be issued to an owner rather than e.g. to a speculative developer
- The Bill does not describe the process for issuing COIs – we would request that a process of consultation should be required before a certificate is issued (this should include the local planning authority, other key stakeholders and the local community)
- The Trust would support a proposal for a fee to be charged for COI applications.

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

Trust comment: This is particularly welcomed. As previously described at Section 5, as an isolated measure, it would not necessarily prevent unauthorised works if the potential financial gain to an owner/developer is much greater. As above, this legal amendment should be augmented by statutory authorities bringing to bear any influence available to them and for them to be sufficiently resourced to do so. Local authorities should be required, through a statutory duty of care to take action when unauthorised works to listed buildings are threatened or carried out.

Section 20 – Hearings in connection with applications for listed building consent and Appeals

Trust comment: No comment

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

Trust comment: This is welcomed

Section 23 – Non-compliance with listed building enforcement notice: fixed penalty notice

Trust comment: This is welcomed

Section 24 – Amount specified in fixed penalty notices for breach of listed building enforcement notice: procedure

Trust comment: This is welcomed

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

Trust comment: This is particularly welcomed and should result in local authorities being more willing to use their statutory enforcement powers on recalcitrant owners. It is the Trust's experience that the fact there is currently the real possibility of local authorities being unable to recover their costs has made them understandably reluctant to serve Urgent Works Notices.

Section 26 – Recovery of grants for preservation of listed buildings, etc

Trust comment: This is welcomed if it provides certainty for owners/would be developers of listed property.

Section 27 – Regulations in connection with inquiries, etc.

Trust comment: No comment

Schedule – Form of notices

Trust comment: No comment