

Loch Lomond & The Trossachs National Park

Pàirc Nàiseanta Loch Laomainn
is nan Tròisichean

10th August 2009

Policy Team
Historic Scotland
Longmore House
Salisbury Place
Edinburgh EH9 1SH

Dear Sir/Madam

Comments on the Ancient Monuments and Listed Buildings (Amendment) (Scotland) draft Bill

The National Park Authority welcomes the opportunity to comment on the consultation paper which sets out proposed changes to the following three principal Acts:

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

It is recognised that the Bill is a technical amending Bill rather than a major legislative review and that the aim of the draft Bill, by amending the three pieces of legislation above, is to address some of the gaps and weaknesses in the existing legislation. The draft Bill leaves the fundamentals of the legislation in place so there will still be scheduling of monuments and listing of buildings with separate consent processes as set out in the 1979 and 1997 Acts.

We broadly support the amendments to the Ancient Monument and Listed Building legislation set out in the draft Bill and our detailed comments are set out below.

Detailed Comments

Modifications of the Ancient Monuments and Archaeological Areas Act 1979

Section 2 and 13 - We support the additional control of works affecting scheduled monuments to include disturbance as well as damage of monuments.

Section 3,4,5 - We support the harmonising amendments which harmonise provisions within the 1979 and 1997 Acts which remove the 'defence of ignorance' from the 1979 Act in line with listed building and nature conservation legislation and which increase the level of fines for unauthorised work or damage to a monument to £50,000.

Section 7 - We also support the introduction of enforcement provisions (scheduled monument enforcement notices, stop notices and temporary stop notices) to scheduled monuments to be served by Scottish Ministers which will give better protection to scheduled monuments.

Section 6 and 12 - We support the additional powers of entry to inspect the condition of sites and where sites are at risk.



Section 11 and 14 – We support the provision of grants to third parties and additional grant funding for organisations and individuals involved in promoting the development or understanding of archaeological sites. The National Park Plan 2007 sets out aims and actions for promoting better understanding of the Park’s archaeological sites and there is widespread interest among the Park’s communities in protecting and interpreting their local heritage.

Sections 15 – 17 – Support.

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

Section 18 – The introduces a new power to enable Scottish Ministers to offer any person a certificate of immunity from listing which will guarantee that a building will not be listed during the 5 years from the date of the certificate. The provision is aimed at providing certainty for owners and developers preparing proposals for a building. We understand this provision is in place in England and in practice there have been very few applications for immunity. We would like to see a requirement within the legislation that Scottish Ministers should consult with the Local Authority before issuing a certificate.

Additional comment - We would have liked to see a new power as part of this review of the 1997 Act which provided interim protection for buildings proposed for listing. Historic Scotland carried out a major resurvey of listed buildings in the National Park in 2005 and the vulnerability of buildings to demolition or unsympathetic alterations between consultation on the listing proposal and formal designation was highlighted during that process.

Section 19 – We support the increase of fines to £50,000 for unauthorised works to listed buildings.

Sections 21 to 24 – We support the new powers enabling local authorities to issue stop notices and temporary stop notices to specified unauthorised works to listed buildings and the introduction of fixed penalties.

Section 25 – This section proposes amending existing legislation by enabling a notice of liability for expenses of urgent works to be registered in property register against the listed building. Under the present legislation Local Planning Authorities can execute works which are urgently necessary for the preservation of a listed building. However, at present, a local authority can only recover expenses for those works from whoever was the owner at the time. The power to recover the costs from the owner at the time will remain but in addition the new provision will provide that any new owner will also be liable to pay the costs. The Scottish Government have proposed this amendment to improve the powers to recover such expenses. As a local planning authority we support this amendment. The only concern is that hopefully this will not discourage a new owner from taking on responsibility of a listed building where this liability of expenses is registered against the property.

Additional comment – Some sections of the draft Bill are aimed at harmonising listed building legislation with the new Planning Act. It would be useful to introduce a requirement similar to that in the new Planning Act where Local Authorities are notified on the start and completion of implementation of Listed Building Consent.

Financial Implications of the Bill

We would agree with the assessment set out in para 3.9 and 3.10. The Bill introduces new powers rather than duties and the Authority welcomes those powers. There may be some

LOCH LOMOND & THE TROSSACHS NATIONAL PARK AUTHORITY

Carrochan, Carrochan Road, Balloch, G83 8EG Scotland

t: 01389 722600 f: 01389 722633 e: info@lochlomond-trossachs.org w: www.lochlomond-trossachs.org

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additional costs associated with the new enforcement powers for listed buildings and this may mean additional work for our Planning Enforcement Team.

Yours sincerely



Gordon Watson
Executive Director of Planning & Rural Development

e-mail: gordon.watson@lochlomond-trossachs.org
tel: 01389 722603

