

RESPONSE FROM DUNDEE CITY COUNCIL

THE ANCIENT MONUMENTS AND LISTED BUILDINGS (AMENDMENT) (SCOTLAND) BILL

Dundee City Council welcomes the opportunity to comment on the proposed Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill. The City Council would like to make the following comments;

It is noted that The Bill seeks to amend the three principal Acts, namely; 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.

Sections 1 to 17 specifically alters or amends elements of the 1979 Act and broadly these appear to be sound and well balanced amendments that will enable the existing legislation to operate more effectively in achieving the desired aims of the original act. The City Council does have two main reservations in specific areas that it is felt important to highlight:

Section 12 Power of Entry

The expansion of the powers of entry to include the ability to undertake intrusive works against ancient monuments (not scheduled monuments) at imminent danger of loss is a substantial expansion of the 1979 Act as this ability was explicitly excluded from the original act. While the guidance (Para 2.22, pg 21) identifies a natural impact (coastal erosion) there is no suggestion in the proposed amendment that this power is so limited. Further the guidance is contradictory suggesting the powers are for 'essential investigatory works' while going on to propose a scenario of effective full excavation before erosion where remedial works (i.e. coastal protection works) are not possible. It is suggested that the amendment should explicitly be limited to the essential investigatory works prior to a decision on scheduling the ancient monument for the preservation of monument (once information gathered has clarified its character) and be time limited; otherwise these powers of entry appear very broad and intrusive with the potential for substantial impact on businesses. It is noted that issue of compensation of loss as a result of this amendment is covered by section 46 of the 1979 Act but the potential scale of impact on small businesses is high once this facility is enacted.

Section 2 & 13 Addition of Disturbance

Dundee City Council supports the introduction of the concept of disturbance to ensure the original intent of the 1979 Act to protect Scheduled Monument is well served. The Council is uncertain as to whether the amendment, as drafted,

achieves this aim without significantly broadening the remit of the 1979 Act. Specifically the phraseology 'affecting its conservation, stability or national importance' resonates with issues surrounding indirect impacts (i.e. the amenity or setting of a monument, noise intrusion etc) as well as remote impacts which have consequent direct impacts (blasting, hydrological changes etc). With a lower threshold word being utilised (i.e. disturb rather than damage) and this explicitly being linked to the disturbance of the 'national importance' of a Scheduled Monument this may be a wedge that will be used to expand this legislation to have far reaching consequences beyond the original scope of the 1979 Act. We could see a potential for this amendment to form the basis for extending the 1979 Act to constrain currently legitimate activity beyond the boundaries of the designated Scheduled Monument unless the amendment specifically identifies the disturbance as being physical in nature.

In addition to these reservations it is noted that while the amendment bill recognises a benefit to the public in the concept of a certificate of an immunity to listing covering a 5 year period to facilitate confident development, no comparable certificate is proposed with regard to Scheduled Monuments

Important HEACS issues on the 1979 Act not addressed by the amendment bill include: (i) making it an offence to remove finds from scheduled monuments without permission (the act is limited to metal detector finds); (ii) giving a right of appeal to a proposal to schedule an ancient monument. The latter is very important, there is no mechanism for a party outwith Historic Scotland to test the validity of a scheduling or challenge it under the 1979 Act. Some ability to appeal and test the legally test the validity of the constraint on ownership generated by a scheduling should be introduced.

Dundee City Council welcomes the harmonizing of the proposed Bill with the Town and Country Planning (Scotland) Act 1997 as amended by the Planning Etc (Scotland) Act 2006. *Part 3 Section 18 – Certificate that a building not intended to be listed*, shall help to stream line the listing process, however the Council would like it noted that this amendment to the Bill shall require specific guidance on the process of applying and issuing the certificate and whether consultation with the Local Authority shall be given prior to issuing a decision.

Dundee City Council is supportive of the overall aims of The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill, in order to help improve the management and protection of the historic environment.

Gary Knox
Conservation Officer
Dundee City Council
City Development Department
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