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Historic Scotland
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12 August 2009

Dear Sir / Madam,

**The Ancient Monuments and Listed Buildings (Amendment) (Scotland) draft Bill
[CON 1153]**

Thank you for the opportunity to comment upon the Ancient Monuments and Listed Buildings (Amendment) (Scotland) draft Bill.

The Institute for Archaeologists

The Institute for Archaeologists (IfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

The IfA has over 2,800 members and more than 60 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors. The IfA's Scottish Group (which has over 200 members practising in the public, private and voluntary sector in Scotland) has contributed to this response.

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

The IfA welcomes Scottish Government's recognition of the significant role that the historic environment has to play in developing a sustainable economic future for Scotland and its desire, through the draft Bill, to *'improve the ability ... to manage this unique historic asset for the benefit of future generation'* (see the Foreword to the Consultation and Draft Bill

by the Minister for Culture, External Affairs and the Constitution).

In particular, the Institute welcomes

- the more inclusive definition of ‘monument’ proposed in section 16 of the Bill (to include sites comprising any thing, or group of things, that evidence previous human activity) in line with the proposed definition of marine historic assets in the Marine (Scotland) Bill
- the extension of the framework for the provision of grants and other financial assistance in relation to the historic environment
- improved enforcement provisions in respect of scheduled monuments (including greater control of works affecting scheduled monuments; increased fines and the removal of the ‘defence of ignorance’ in relation to offences concerning scheduled monuments; the introduction of enforcement notices and the introduction of stop notices and temporary stop notices)
- the harmonisation of the law relating to listed building control with planning law (including provisions relating to enforcement notices, the introduction of stop notices and temporary stop notices and the introduction of fixed penalty notices).

We consider the draft Bill to contain useful measures that will clarify the processes by which designated heritage assets are protected, and will close a number of loopholes presently exploited.

However, there are concerns about the detail of some of the provisions, and about the narrow focus of the draft Bill – we feel that some additional provisions could be made that would not add significant extra burdens or costs.

- (1) *A statutory duty on local authorities to maintain or have access to a Historic Environment Record* – Local authorities play a central role in the management and protection of the historic environment and Historic Environment Records are a key tool in such management and protection. The Institute would like to see a duty imposed upon local authorities to create and maintain or at least to have access to Historic Environment Records.
- (2) *A statutory duty on local authorities of care for the historic environment* – The Institute would support the inclusion of such a duty in the Bill (as to which, see paragraph (10) below). In the absence of any such duty in the draft Bill, it is important that any future revisions to SHEP and/or PAN42 make clear the nature and extent of the duties upon local authorities with regard to the historic environment. Indeed, it may be argued that a duty of care for the historic environment is already effectively encompassed within the ‘sustainability duties’ imposed upon authorities: see, for example, section 36(A1)(c) of the newly enacted Climate Change (Scotland) Act 2009 and section 1(5) of the Local Government in Scotland Act 2003.
- (3) *Certificates of immunity* – The benefits of certificates of immunity as proposed in section 18 of the draft Bill are acknowledged but the Institute strongly advises that such a certification procedure should only be introduced alongside up-to-date lists and, once introduced, (a) certificates should not be issued without as thorough an appraisal (including consultation) as is required for listing and (b) there should be an appropriate mechanism for review during the period of immunity.
- (4) *Conservation Areas* – It is felt by many that Article 4 Directions are an unwieldy tool to withdraw permitted development rights in Conservation Areas and that further

controls upon development in Conservation Areas might be achieved by provisions in the current Bill or amendment of the General Permitted Development Order further to restrict permitted development within Conservation Areas. Statutory provision encouraging appropriate appraisals and management schemes for all Conservation Areas would also be welcome.

- (5) *Greater transparency with regard to scheduling / listing* – Although it is appreciated that there would be potentially significant resource implications in extending rights of appeal in this regard (and that section 20 of the draft Bill provides consistency with the planning system), a number of concerns have been expressed as to the need for greater transparency with regard to consultation, designation, notification, and explanation of importance/significance in the operation of the scheduling / listing regime. Such matters may, however, be better addressed by the development of policy and practice rather than through primary legislation.
- (6) *Interim protection of assets under consideration for listing / scheduling* – Provisions introducing interim protection are an essential measure to accompany greater transparency, as they would render historic assets less vulnerable to damage or destruction during the process of listing or scheduling. There are a number of instances in the United Kingdom of buildings having been demolished upon the owners learning that their property is being considered for listing¹.
- (7) *Removal of agricultural class consents for scheduled monuments* – The threat to scheduled monuments from agricultural activity (and particularly ploughing) has long been recognised in the United Kingdom (see, for example, paragraph 5 of PAN 42 and *Ripping Up History: Archaeology under the Plough* (2003) English Heritage) and the removal of agricultural class consents would do much to address these issues. Although there may be compensation implications for existing scheduled

¹ The guard house of a WW1 army camp which subsequently became a 'Home for Heroes' at Woldingham in Surrey was demolished earlier this year following an application for spot listing, but before that application could be determined.

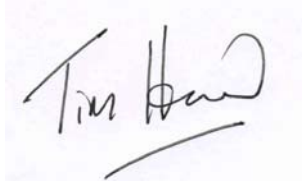
monuments, this should not be the case for those monuments scheduled after the enactment of any such provision.

- (8) *Urgent works* – Consideration should be given as to whether there is any legal impediment to the carrying out of urgent works to an *occupied* building. If not, section 49(4) of the 1997 Act should be repealed to allow local authorities to carry out works to occupied and unoccupied buildings alike. It would also be helpful to extend the framework of grant aid to provide financial assistance to local authorities with regard to urgent works.
- (9) *'Disturbance' of scheduled monuments* – There is concern as to the need for a clearer definition of the word 'disturbance' in section 13 of the draft Bill. If broadly construed (for instance to include visual intrusion) there is potential for development in the vicinity of a scheduled monument to 'disturb' the monument albeit that it has planning consent.
- (10) *Local listing* – The Institute would like to see provisions in the draft Bill enabling local authorities, if they so wish, to create and maintain local lists providing statutory recognition and protection for those assets so designated. Nevertheless, the criticism remains that the draft Bill is largely, if not wholly, concerned with the protection of nationally important and specifically protected, designated assets. The vast majority of the historic environment has no such recognition or protection. Although it is the role of the planning regime to protect the wider historic environment, it would be helpful if there were embedded in this draft Bill at least some recognition of the crucial role of local authorities in this regard and of their duties with regard to the historic environment as a whole.

Some of these concerns might be better addressed by other means and the IfA (and its Scottish Group) would be pleased to contribute further to the consideration of such issues.

In the meantime, if there is anything further that I can do to assist please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink that reads "Tim Howard". The signature is written in a cursive style with a horizontal line underneath the name.

Tim Howard LLB, Dip Prof Arch
Policy and Recruitment Manager