



Historic Houses Association for Scotland

11 August 2009

Policy Team
Historic Scotland
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Consultation response Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill

By way of background, the HHAS represents approximately 250 listed historic house, castles and gardens throughout Scotland which are independently owned, either by private individuals or charitable trusts in the main. Over 40 of our member properties are regularly open to the public, with many more open on an occasional or less formal basis. We conservatively estimate that about two thirds of Scotland's built heritage lies outwith the ownership of the state, local authorities, or the National Trust for Scotland (NTS).

The HHAS has been an active member of the Scottish political scene since the opening of the Holyrood Parliament in 1999. Currently we are members of the National Access Forum, the Built Environment Forum for Scotland (BEFS), and the Historic Properties Group (HPG). This latter group, of which we are members with Historic Scotland (HS) and the NTS, has proved a particularly valuable medium for discussing built heritage and heritage tourism matters.

HHAS is broadly in favour of the amendments to the Heritage Bill and would like to draw to your attention the following:

Section 1/What the Bill will do/1.16

1.16 The Bill, by amending the three pieces of legislation noted above, will address some of the gaps and weaknesses that were identified during the stakeholder engagement process, but will leave the fundamentals of the legislation in place: i.e. there will still be scheduling of monuments of national importance and listing of buildings of special architectural or historic interest and separate consent processes for the 1979 and 1997 Acts. There is a sound rationale for having different legal frameworks for scheduled monuments and listed buildings. For scheduled monuments (which are mainly sites of archaeological importance), the default position is that they should, as far as possible, remain in the state to which they came down to us. For listed

buildings, the default position is that they should remain in active use. Not all things needing protecting are the same, and it is widely considered in Scotland that the different approaches of the legislation governing each group are rational and useful.

We support the above and wholeheartedly agree that listed buildings should remain in active use wherever possible.

Section 2

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

Section 18 – Certificate that building not intended to be listed

2.28 Section 18 will introduce a new power that will 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 five years from the date of the certificate. The beneficiaries of the provision will be owners and developers of buildings as it will provide certainty for owners and developers preparing proposals for a building or group of buildings.

We support the above

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

2.30 Section 20 will remove the right to be heard in connection with applications and appeals under the 1997 Act. This directly parallels what has happened in the planning system. 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 (the TCPS Act) once relevant provisions of the Planning etc. (Scotland) Act 2006 are commenced.

We should like more information on the above

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

2.40 Section 25 will amend existing legislation by enabling a notice of liability for expenses to be registered in the appropriate property register against the listed building. 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 in their district. The Scottish Ministers have similar powers. 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 the planning authority and Scottish Ministers are limited to pursuing recovery of expenses from whoever was the owner at the time notification under section 50(2) was served. The Scottish Government wish to improve the powers to recover such expenses. The power to be able to recover the costs from such persons will remain but in addition the new provision will provide that any new owner from time to time of the property will also be liable to pay the costs. This new power will enable the

planning authorities or Scottish Ministers to register a notice of liability for expenses of works in the Land Register of Scotland or record such information contained in the notice in the Register of Sasines as appropriate. It is proposed that the notices will be in the form prescribed in Schedule 4 inserted into the 1997 Act by section 25(5) of the Bill and contained in the schedule to the Bill. Provision is proposed to cover the situation where the Scottish Ministers make a determination as to the amount recoverable where representations are made to them under section 50 of the 1997 Act against the notice received requiring the expenses of the works to be paid. Provision is also made for the discharging of a notice of liability for expenses.

We are concerned that the above might greatly complicate the sale of any building?

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

2.41 Section 26 will amend those sections of the 1997 Act which enables the Scottish Ministers and local authorities to recover grants made under sections 51, 52 and 70 of the Act. 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. This will ensure certainty for developers applying for grants who require knowledge of the terms and conditions of a grant at the outset in order to make financial arrangements.

We support the above.

Schedule – Form of notices

2.44 The schedule to the Bill sets out the form of notices of determination, discharge and liability for expenses in relation to section 25 of this Bill regarding the liability of an owner and successors for expenses of urgent works.

We should like more information on the above

Section 4

Partial Regulatory Impact Assessment

Purpose and Intended effect

4.4 Rationale for government intervention

The stakeholder engagement process identified a series of largely technical gaps and weaknesses in the current heritage protections framework that can only be addressed through primary legislation. Scottish Ministers are aware of the important role that Scotland's historic environment plays in helping to define our sense of nationhood, and fully recognises the significant part it can play in helping to ensure a sustainable economic future for Scotland. Addressing these issues now will make the existing system more efficient and will result in a much improved heritage protection system that will ensure that we leave a valuable legacy in which future generations can take pride.

We fully support the above if this is what will happen.

Costs and Benefits

Sectors and Groups affected

4.9 It is the Government's view that if we do not take this opportunity to legislate to improve heritage protection legislation the people of Scotland will ultimately be disadvantaged.

Although this is largely a technical, amending Bill, it will introduce new provisions and remove barriers to the use of existing powers that will enhance the ability of the regulatory and planning authorities to manage our historic environment in a sustainable way for the enjoyment and benefit of future generations.

We support the sentiment of the above as long as it does result in more bureaucracy.

Alexander Hays
Chairman HHAS
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