

Dear Sirs

**The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill:
Consultation and Draft Bill**

As part of a wide ranging package of reform, the Scottish Government is consulting on the above draft Bill to amend heritage legislation in Scotland. Glasgow City Council welcomes the opportunity to engage with Historic Scotland in this ongoing process of reforming heritage legislation in Scotland. It is acknowledged that the Bill is part of a programme of measures aimed at enhancing and stream-lining the system for protecting and managing the historic environment in a sustainable way. It also aims to avoid placing new burdens on owners of assets, businesses and local and central government.

This technical amending Bill will complement work already progressed by Historic Scotland in partnership with Glasgow City Council such as the establishment of a Joint Working Agreement and the managed removal of the duty of local authorities to notify Scottish Ministers of certain casework.

By amending three pieces of existing legislation the Bill addresses some of the limitations that have already been identified in discussions with stakeholders, but leaves the fundamentals of the original legislation in place. Key provisions in the draft Bill include:

- Aligning aspects of listing and scheduling systems, for example in relation to **levels of fines and removal of the 'defence of ignorance'** from the 1979 Act.
- Harmonising elements of the historic environment legislation with the planning regime (for example by introducing a system of **stop and temporary stop notices** for unauthorised works to scheduled monuments and listed buildings).
- Introducing new powers such as scheduled monument **enforcement notices**, and powers to serve a fixed penalty notice in relation to a breach of a **listed building enforcement notice**.
- New provisions for **certificates of immunity** from listing.
- **Greater certainty for developers** applying for grants in relation to funds recoverable.

In particular, the consultation seeks to gather views on the technical, financial and equalities implications of the draft provisions; and, any issues not currently addressed in the Bill but which fall within the scope of the proposed legislation.

It should be noted that with regard to Part 2 – Modifications of the Ancient Monuments and Archaeological Areas Act 1979, comments have been provided by West of Scotland Archaeology Service (WOSAS) and are summarised below. Full commentary will be provided under separate cover via consultation with the Association of Local Government Archaeological Officers, Scotland.

Due to timescales, the response detailed below should be considered as a **draft** which will require ratification by the Executive Committee of the Council in due course.

Yours sincerely

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Draft Provisions of the Bill:

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

Section 2 – Control of works affecting scheduled monuments

Section 2 of the Bill will amend legislation so that an offence is committed if a scheduled monument is *disturbed*, as well as damaged, where such disturbance affects the conservation, stability or national importance of the monument. Currently an offence is committed only if there are any unauthorised works ‘resulting in the demolition or destruction of or any damage to a scheduled monument’. There is a need to strengthen legislation in this area to give protection to scheduled monuments which have been ‘disturbed’ by such unauthorised works. This is consistent with the proposed provisions in the Marine (Scotland) Bill which was introduced to Parliament on 29 April.

GCC Response 1: GCC and WOSAS support this modification.

Section 3 – Works affecting scheduled monuments: consent for works without authority [harmonising amendment]

GCC Response 2: This provision parallels Planning procedures and will have no fiscal implications. It is therefore welcomed by GCC and WOSAS.

Section 4 – Defences involving knowledge or belief to certain offences under the 1979 Act [harmonising amendment]

GCC Response 3: This amendment is welcomed by Glasgow City Council and WOSAS. It will remove an historic anomaly from the legislation, strengthening heritage protection provisions.

Section 5 – Fines: increases and duty of court in determining amount [harmonising amendment]

GCC Response 4: This amendment is welcomed by Glasgow City Council and WOSAS as a further deterrent against unauthorised works and damage to protected monuments. It also brings this element of heritage protection more closely in line with planning and nature conservation legislation.

Section 7 – Works affecting scheduled monuments: enforcement [harmonising amendment]

Section 7 (inserted sections 9A to 9F) will introduce new powers to enable Scottish Ministers to serve a scheduled monument enforcement notice that will allow for the reversal or amelioration of unauthorised works or works in breach of any condition attached to scheduled monument consent to scheduled monuments in cases where such remedial works are desirable or reasonably practicable. A scheduled monument enforcement notice will also enable Scottish Ministers to specify works that are to cease. Currently there are no provisions in the 1979 Act for enforcement and remedy where works have been executed to a scheduled monument without the requisite scheduled monument consent. There are such provisions for listed buildings in the 1997 Act and the Scottish Government believes that parallel provisions for scheduled monument are required.

Stop notices and temporary stop notices for unauthorised works on scheduled monuments [harmonising amendment]

Section 7 (inserted sections 9G to 9O) will introduce new powers to enable Scottish Ministers to issue a stop notice and a temporary stop notice for unauthorised works on a scheduled monument. These will affect a halt – immediate in the case of temporary stop notices – to unauthorised works to a scheduled monument and will provide additional powers to prevent irremediable damage to such a nationally important monument through illegal and unauthorised works.

GCC Response 5: These enforcement and remedy provisions with respect to unauthorised works to Scheduled Ancient Monuments will parallel practice applied to listed buildings and are welcomed by Glasgow City Council and WOSAS.

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

The 1979 Act has been criticised for its lack of provisions to protect archaeological remains where there is nothing that can be clearly defined as a ‘structure’ or ‘work’: as a consequence many sites of early human settlement or industry (such as artefact scatters; a scatter of flint tools marking sites of human occupation and the manufacture of stone tools; archaeological deposits, for example soils containing artefacts, food remains etc) cannot be protected or managed. Section 16 will extend the range of historic environment assets that can be designated under the 1979 Act by expressly allowing Scottish Ministers to designate ‘any site comprising any thing, or group of things, that evidences previous human activity’. This is intended to cover the sorts of sites described immediately above.

GCC Response 6: The theory informing this safeguarding provision is understood and supported however it is suggested that landowners may perceive this requirement as placing an additional burden on their land. In addition, it may be difficult to define a boundary for some of the types of sites referred to such as flint scatters and archaeological deposits. Clarification is therefore sought by Glasgow City Council and WOSAS as to how this provision would be implemented in practice.

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

GCC Response 7: This provision is welcomed by Glasgow City Council and WOSAS however it is suggested that 5 years may be a more appropriate time limit for similar repeated applications.

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

Section 18 – Certificate that building not intended to be listed

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.

GCC Response 8: Whilst the rationale behind this proposal is understood, in practice there may be limitations. We would be concerned that, if a building were to be deemed not to be of listable quality and a certificate of immunity issued without the benefit of a prior full survey by a buildings archaeologist, it might make it difficult for historic building recording conditions to be attached subsequently to any planning consents for conversion/adaptation etc. The owner/developer could potentially argue that the building had been branded as not of any historical or architectural significance. If this new power is put in place, we recommend that certificates of immunity should have some form of statement saying that, although the building in question may not be of listable quality as per Historic Scotland criteria, it may nonetheless have historic elements/features/assets which are worthy of retention and/or recording, and that the local authorities should be consulted before any demolition/significant alteration is undertaken.

Point of clarification – will this override the current position regarding the ‘policy of restraint’ with respect to listing where a live planning application is in progress? These notices would be dealt with by HS therefore represent no additional burden on local authority duties. Subject to the above recommendation and point of clarification, this provision is supported by Glasgow City Council.

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

Section 19 will raise the level of fines on summary conviction under section 8 of the 1997 Act. The Bill will increase the level of fine that can be imposed on summary conviction under Section 8 to £50,000 to act as an appropriate and effective deterrent to unauthorised works. This provision will also achieve harmony between the treatment of listed buildings and scheduled monuments.

GCC Response 9: This provision is welcomed by Glasgow City Council.

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

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.

GCC Response 10: This provision is welcomed by Glasgow City Council.

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

Sections 21 and 21 will introduce new powers that will enable Scottish Ministers and local authorities to issue stop notices and temporary stop notices that will affect a halt – immediate in the case of temporary stop notices – to specified unauthorised works to listed buildings. Under existing legislation any alteration, extension or demolition of a listed building requires a listed building consent. The provisions of enforcement against works executed to a listed building without the requisite consent are detailed in Chapter IV of the 1997 Act. The enforcement provisions provide for a planning authority or the Scottish Ministers to serve a listed building enforcement notice to remedy such works. Section 21 will amend the 1997 Act to allow a listed building enforcement notice to specify such works as the planning authority or the Scottish Ministers require to be stopped.

Section 21 introduces stop notices. The new provisions will allow a stop notice to be issued where the planning authority or the Scottish Ministers consider it expedient that the unauthorised works should stop before the end of the period in which the enforcement notice requires to be complied with. A stop notice is to be served before the listed building enforcement notice comes into effect.

The existing legislation allows for an appeal to be made against the issuing of such an enforcement notice. Where an appeal is brought, the enforcement notice will not take effect until the appeal has been finally determined or withdrawn. In view of the possible delays to the aim of achieving a stop and remediation to unauthorised works, this additional provision will provide another tool to achieve a ban on works specified in the enforcement notice. The effect of the stop notice is to prohibit the carrying out of the alleged unauthorised works until such time as the enforcement notice to which it relates is withdrawn or quashed, the period of compliance of the enforcement notice expires, or the stop notice is withdrawn.

Furthermore, in an effort to achieve a more immediate conclusion to unauthorised works than a stop notice can provide for, the Bill will introduce new powers to enable planning authorities or the Scottish Ministers to issue temporary stop notices which will parallel similar powers in the planning regime. The planning authority or the Scottish Ministers will be able to issue such a notice where works have been or are being carried out to a listed building which involve a contravention of section 8(1) or (2) of the 1997 Act and where they consider it is expedient that the works are stopped immediately. This new power taken together with the new power to issue stop notices introduces a strengthened package of protection for listed buildings.

In addition section 21(2) (d) makes a minor amendment to section 34 of the 1997 Act to provide a minimum 28 day time limit before a listed building enforcement notice takes effect. This provision will bring listed building enforcement provision in to line with the planning enforcement regime.

It should be noted that a stop notice is issued only when a listed building enforcement notice is or has been given, but a temporary stop notice can be issued even if no listed building enforcement notice has been given.

GCC Response 11: This provision is welcomed by Glasgow City Council however clarification is sought with regard to potential compensation issues arising as a result of contractual obligations.

Section 23 – Non-compliance with listed building enforcement notice: fixed penalty notice [harmonising with planning]

Section 23 will introduce a new power that will enable planning authorities to issue fixed penalty notices as an alternative to prosecution in cases where a person is in breach of a listed building enforcement notice. The power parallels that introduced into the planning regime by section 25 of the Planning etc. (Scotland) Act 2006. It offers a quick, practical and viable alternative which will give local authorities an effective tool to deal with those who break the law, as well as safeguarding listed buildings. Local authorities will be able to issue a fixed penalty notice provided certain conditions are met.

The Scottish Ministers will set out the fixed penalty amounts in regulations. Further, it is intended that the amount of the fixed penalty imposed by legislation shall escalate in the event that the breach of the enforcement notice continues where the fixed penalty is paid. In such circumstances it is intended that a further enforcement notice will be issued followed by a subsequent fixed penalty notice for an increased amount and so on for escalating amounts.

GCC Response 12: This provision is welcomed by Glasgow City Council.

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

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 of 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.

GCC Response 13: At present, costs may only be recovered from the owner upon whom an urgent works notice is served. According to the above proposal, this liability will extend to any new owner and is welcomed by Glasgow City Council. It is also important that such notices are recorded at either the Land Register or the Sasines Records, and it is noted that this is the intention. However, under Section 50B, Notice of liability for expenses: further provision, it is disappointing to note that this proposed notice expires at the end of five years. It would be beneficial if this burden were preserved until such expenses have been

recovered. Confirmation is also sought that the placing of this burden against property will accrue interest at an appropriate rate.

GCC Response 14: Furthermore, the opportunity has not been taken to extend the application of the urgent works notice to those parts of a listed building which are occupied. There are numerous instances in the City of Glasgow where listed buildings at risk are fully occupied. An urgent works notice should apply without restriction to all listed buildings whether occupied or not.

GCC Response 15: Similarly, the same regulation should pertain to unlisted buildings in a Conservation Area as under the terms of the current Section 68 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act, 1997.

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

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.

GCC Response 16: This provision is welcomed.

GCC Response 17: With regard to the financial implications on Local Authorities, it is noted that the Bill will introduce new powers as opposed to duties, to be used as a matter of discretion. There will be marginal costs associated with the administration of serving a statutory repairs notice on a property, stop notices, and fixed penalties for non-compliance with the terms of a listed building enforcement notice. It is agreed however that the provision of these new powers will be a welcome enhancement to the current powers available to the Council in such situations. As noted above under Section 21/22 however, the risk of a compensation claim for contractual losses may in practice limit the usefulness of these new powers.

Summary:

It is agreed by Glasgow City Council that subject to the above comments, the amending Bill should be taken forward by Scottish Ministers in order to improve heritage protection legislation, removing barriers to the use of existing powers and enhancing the ability of local authorities to manage the historic environment.