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Historic Scotland
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Please ask for	Kirsty Cameron
Direct Dial:	01463 702250
Your ref:	-
Our Ref:	-
Date	14 August 2009

Dear Sirs

**THE ANCIENT MONUMENTS AND LISTED BUILDINGS (AMENDMENT) (SCOTLAND) BILL:
CONSULTATION AND DRAFT BILL**

Thank you for consulting the Highland Council on the above. We concur with the response prepared by the Association of Local Government Archaeological Officers (ALGAO: Scotland) – of which Highland Council is a member - and would like reiterate here those comments in full:

General Comments

"We note that the Bill is intended to address some of the gaps and weaknesses that were identified during the stakeholder engagement process, but within the context that the Scottish Government is keen to avoid placing new burdens on owners of assets, businesses and local and central government, as mentioned in the Purpose of Consultation section. We also note that the Bill is intended to be seen as complementing other work by the Scottish Government to streamline, simplify and clarify the system for protecting and managing the historic environment. We are aware of these other areas of work and we have expressed concerns during consultation, particularly in relation to two elements of this work - the replacement of SPP 23 by a proposed new consolidated SPP; and the wording of the Joint Working Agreement with Local Authorities, which did not originally include references to the important role which local authorities have in managing and protecting undesignated historic environment resources.

In general we have no difficulties with what has been included in this draft Bill, as it relates entirely to designated historic environment matters. ALGAO Scotland members have no locus for dealing with Scheduled Monuments, which are reserved to Scottish Ministers, but professionally we welcome all of the proposed provisions in Part 2 of the draft Bill in respect of Scheduled Monuments. I append below detailed comments on Sections of the Bill, where we consider that we have a comment to offer.

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We appreciate that the Bill has been closely circumscribed to matters of amending existing legislation in respect of designated historic environment resources, but nonetheless we take this opportunity to make comments below in relation to our wider concerns about the way the processes for protecting and managing undesignated historic environment resources have been treated in recent work by the Scottish Government to streamline, simplify and clarify the system of protection and management of the historic environment. We are concerned that the protection and management of the undesignated historic environment resource is being marginalised, as most of the Scottish Government's work in recent times has been concentrated on improving the protection and management of designated historic environment resources.

The opportunity has not been taken in this Bill to give consideration to making Sites and Monuments Record/Historic Environment Record Services a statutory duty of local government. We understand that the Scottish Government is anxious to avoid imposing a new burden on local government. However we also understand that for the first time ever in Scotland all Councils now voluntarily have in place arrangements for access to a Sites and Monuments Record/Historic Environment Record Service of their own. In our view, since this is now the position in Scotland, there can be no argument that introducing such a duty would be a new burden for local government. Having statutory Sites and Monuments Records/Historic Environment Record Services would greatly help to clarify a number of areas of our work, would help greatly towards achieving standards for the provision and maintenance of such Services, and would provide stability for the future.

Detailed Comments on the Draft Provisions of the Bill

Section 2. We particularly welcome the new offence of disturbance of a Scheduled Monument. We note that the type of disturbance is clarified in Section 13 and would support this.

Section 4. We particularly welcome the removal of the defence of ignorance. This has long been a weakness in the Scheduled Monument legislation.

Section 5. We believe that the increase in the level of the fine on summary conviction is fully justified, and is not out of keeping with levels of fines in other areas, such as fines for offences in relation to wildlife and planning breaches.

Section 7. We welcome the introduction of new powers in relation to the issuing of stop notices and temporary stop notices. These are fully in keeping with the way the planning legislation operates.

Section 16. We are very happy to support the extension of the meaning of a "monument", but we have some concerns about how this will work in practice, as it may be difficult to define a boundary for some of the types of sites mentioned, such as flint scatters and archaeological deposits. We would welcome some clarification of how this might work in practice.

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Section 17. We fully support the provisions of Section 17. We are aware of some repeat applications for Scheduled Monument Consent and fully understand how this can prove time consuming and costly for all concerned.

Section 18. 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 very worthy of retention and/or recording, and that the local authorities should be consulted before any demolition/significant alteration is undertaken.

We have no comments to offer on the Financial Assessment, the Partial Regulatory Assessment, or the Equalities Assessment for the draft Bill.

Detailed Comments on Matters Not Contained within the Bill

Our main concerns are:

- the marginalisation of the protection and management of the undesignated historic environment resource in recent Scottish Government policy initiatives, and
- the non-counterbalancing of this by positive Scottish Government policy and guidance for Sites and Monuments Records/Historic Environment Records.

We have already provided detailed comments on the draft consolidated SPP. We are principally concerned that the original wording in SPP 23 about archaeological resources being a material consideration within the planning process had been changed to make it weaker, and that all references to local authorities maintaining Sites and Monuments Records/Historic Environment Records had been dropped. We will not know the results of the consultation exercise on the draft consolidated SPP, and whether or not our consultation responses have been accepted, until the autumn of this year, after the closing date for this consultation.

We also commented upon the draft Joint Working Agreements between Historic Scotland and Planning Authorities to the effect that no mention had been made about the important local authority role in maintaining a Sites and Monument Record/Historic Environment Record Service and in protecting undesignated historic environment resources. We note that there have been some changes to the wording of the finalised, and now published Joint Working Agreement, for which we are grateful, but we do not feel that these changes fully address our issues.

Should the changes we have requested to the new consolidated SPP be put in place, we may take some comfort from this, but until we see the results of that consultation exercise, we feel we must

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raise again the issue of statutory Sites and Monuments Record/Historic Environment Record Services. It is an issue, which has been raised twice before at different legislative opportunities. On both of these occasions we were advised that non-statutory approaches would be taken to address our concerns, for example, by amending NPPG 5. These have not materialised in the way we would have hoped to see.

If the Scottish Government was to work with us to develop and issue detailed standards and guidance to local authorities for Sites and Monuments Record/Historic Environment Record Services, we might be persuaded that this would be a better option than the statutory route for the time being. It may be that the much needed revision of Planning Advice Note (PAN) 42 would provide an opportunity to explore this option - PAN 42 is currently the only document which provides a very limited definition of a Sites and Monuments Record and it needs some serious updating to bring it in line with modern approaches to such Records. There may also be other opportunities, for example, by including standards and guidance for Sites and Monuments Record/Historic Environment Record Services within published Historic Scotland guidance.'

I trust that these comments are helpful. Please get in touch if you wish to address any of these issues in more detail.

Yours sincerely



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Head of Countryside, Heritage & Natural Resources

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