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Historic Scotland
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email version

19th August 2009

Dear Sirs

Response to *The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill* by Archaeology Scotland

As a key centre for knowledge and expertise for Scottish archaeology, we welcome the opportunity to respond to the draft Bill. While the focus of the Bill is on technical, detailed amendments to the current legislation as it affects ancient monuments and listed buildings, we believe that the proposed changes also afford an opportunity for the third sector, local government and planning authorities to promote protection, interpretation and access to all archaeological sites and landscapes in Scotland and we are keen to work with Historic Scotland and others to achieve this.

We particularly welcome the availability of grants to “any organisation or individual involved in promoting the development or understanding of historic, architectural, traditional, artistic or archaeological interest” in **Section 14**. It seems to us and our members that one of the main areas where the third sector can help government is in raising awareness of Scotland’s unique archaeological heritage. It is only through public engagement and appreciation that the status of the historic environment will be lifted and it should be firmly in our minds that the historic environment sector is estimated to contribute in excess of £2.3 billion to Scotland’s economy¹. It should also be noted that the level of interest in the historic environment is very high, as indicated by the range and scale of volunteering activity, but that more needs to be done to support this enthusiasm.²

We welcome the removal of the defence of ignorance, but again would emphasise that people need to know about historic sites and why they are important, and this relates back to the need for more information and promotion about the historic environment. Bodies such as Archaeology Scotland, RCAHMS and local authorities have a key role here in working together to make information accessible to all.

While largely supportive of the majority of amendments proposed and consider that the clarification of the existing legislation will both simplify processes and ensure better protection for designated sites and buildings, we have concerns over the narrow scope of the Bill and would advocate additional provisions. We argued for some of these provisions to be

¹ *Report and recommendations on the economic impact of the historic environment in Scotland*, HEACS, 2009

² *Volunteering and the Historic Environment*, Volunteer Development Scotland, 2009

taken into consideration through the recent Planning legislation. Unfortunately, this was not seen as the appropriate vehicle for such changes.

1. A duty of care for the historic environment

Any plan of action prepared or reviewed under this Act must make adequate provision for the protection, conservation, enhancement and interpretation of sites of local archaeological interest as well as national assets.

The Bill makes much of comparison between cultural and nature conservation legislation and it is fitting, therefore that it should extend beyond its current scope and include in the proposed toolkit, a duty of care for the historic environment. The proposed legislative changes as they currently stand, though welcome in improving the protection of Ancient Monuments and Listed Buildings, do not address the protection of Scotland's historic and ancient sites and landscapes that do not have statutory protection. This neglect of Scotland's historic environment asset has been going on for too long and recent changes to planning legislation restricting third party objections and expanding permitted development rights, means that the opportunity for further damage to these sites and areas has been significantly increased.

2. A statutory duty on local authorities to maintain or have access to a Historic Environment Records Service

We would strongly advocate that in discharging its duty, a planning authority must have regard to the advice provided to it by a Historic Environment Records Service. Historic Scotland has been pro-active in pump-priming local authority archaeology posts to develop such services and is to be commended on this action. We are now in the enviable situation where every local authority has access to a Sites and Monuments Service or Historic Environment Records Service. It would seem that this is an opportune time to make this a statutory function and to add in that such services should be maintained by the planning authority with respect to its local government area. As all local authorities are currently carrying out these functions, it will not be an additional burden on them and it will allow consistent standards to be maintained in different areas across the country.

*3. Certificates of Immunity - **Section 18***

A certificate of immunity from listing has some merit in offering owners and potential developers protection against subsequent listing. However, we have some concerns both over the time involved in processing claims of immunity, especially in relation to other listing programmes and the procedure to be followed if additional information should come to light (whether architectural, archaeological or documentary) after granting the initial certificate that could substantially alter the assessment. Costs for granting the certificate of immunity should be charged to the applicant, though this should not be seen as a cash-raising fund for Historic Scotland, as this would have the potential to distort the work programme of the listing teams towards supporting a revenue stream.

As became clear in a recent BEFS workshop, there is confusion over the issue of serving notice and the obligation of owners and tenants to prevent damage or repair both ancient monuments and listed buildings. It will be important in the new legislation to set out the obligations of both owners and tenants towards scheduled monuments and listed buildings so that there is no ambiguity here. The provision of guidance material will clearly help, and perhaps this is as much a procedural as a legislative requirement, but clarification of responsibilities of both owners and tenants towards protecting ancient monuments and listed buildings would be useful.

There is concern among some commercial contractors and voluntary groups in Scotland that geophysical works that require probes to be inserted into the ground (primarily resistivity surveys) requires Scheduled Monument Consent in Scotland a similar restriction does not apply south of the border. While this is perhaps more an interpretation of existing legislation, it may be worth clarifying in this Bill or accompanying guidance what is, or is not, permitted.

4. *Conservation*

Conservation areas are primarily designated for architectural and visual interest and only incidentally cover archaeological deposits (Culloden Battlefield being a notable example). However Conservation Area designations often include areas of significant archaeology and it is important that protection of archaeological deposits below ground and in the fabric of buildings is made more explicit. This is particularly relevant in urban areas with multiple-ownership and where significant archaeological deposits may remain to inform us on the development, both social and material of our burghal history. The 3 metres of anaerobic deposits in the centre of Perth, for example, would have greater significance if designated as being of national importance rather than through Conservation Area designation which is of local importance. Archaeology Scotland would wish to see either a strengthening of the conservation area designation process and management to offer greater protection to archaeological deposits and material within built structures, (this could be through more detailed guidance) or through development of more rigorous guidance through the planning system. We do not believe that Article 4 directions would solve this problem, unless the areas protected under Article 4 Directions are made explicit to the public through e-planning and other accessible information sources.

5. *Ecclesiastical Exemption*

Archaeology Scotland believes that the issue of ecclesiastical exemption is anomalous. While still awaiting the HEACS *Report with recommendations on the long term conservation of the ecclesiastical heritage in a time of demographic change*, it is clear that the traditional parochial structure of the Church of Scotland in particular is breaking down³, leading to a widening gap between delivering its mission and caring for its heritage assets. Archaeology Scotland believes that the issue of Ecclesiastical Exemption should be at least discussed and tested in parliament.

6. *Archaeological Areas*

Archaeology Scotland consider that greater protection should be given to archaeological areas as opposed to sites, as Scotland has some of the finest archaeological landscapes surviving in Europe. Some aspects of these are addressed under existing Scheduled Monument legislation but in general the 1979 Act has not often been used to protect extensive areas of archaeological interest. In distinction to natural heritage designations which cover more than 12% of Scotland, Scheduled Monument cover only c0.3% of Scotland, though some areas protected primarily under natural heritage criteria (National Parks and National Scenic Areas) have dual natural and cultural heritage designation.

Given the considerable land use changes projected and planned until 2050 in response to climate change and other natural and social pressures, the archaeological resource that survives in both upland and lowland Scotland is particularly under threat. The threats

³ cf Church without Walls <http://www.churchofscotland.org.uk/churchwithoutwalls/index.htm> & http://www.theherald.co.uk/search/display.var.2520616.0.kirks_cash_crisis.php

of coastal erosion, increased intensification and expansion of agriculture, reduction in upland grazing and increased afforestation to a proposed 25% cover will all impinge on the preservation of Scotland's archaeological heritage. Unless there is an increased use of areal rather than site designation of Scotland's resource, whole archaeological landscapes, rich in the history of many periods, will have been lost. Archaeology Scotland therefore recommends that the opportunity afforded by interest in this Bill should be used to consider how to protect historic landscapes as opposed to sites. This may not be through the statutory route but would require a willingness to designate areas of special historic interest.

7. Removal of agricultural class consents for scheduled monuments

The Ancient Monuments (Class Consents Order) 1996 is a serious concern to Archaeology Scotland because of the very real evidence that permitted activities, particularly agricultural works such as ploughing are having both medium and long-term impacts on the survival of archaeological monuments.⁴ Given that there is no effective mechanism for monitoring damage to sub surface archaeological deposits and that Monument Wardens are only able to monitor Scheduled Monuments on a quinquennial basis, there are significant concerns that scheduling may, at best, limit the attrition of nationally important monuments.⁵ We realise that rescinding the Class Consents rights of owners and tenants may depend on compensation for loss of income but Archaeology Scotland also believes that Historic Scotland should have targets, such as SNH's for natural heritage protected areas, to have all designated sites within a 'favourable or improving condition' by an agreed timescale. This will require Historic Scotland to work closely with other colleagues within the Scottish Government, particularly those within the Rural Directorate, to achieve significant protection to monuments at risk.

In summary, we welcome this Bill and look forward to discussing in more detail how our concerns might best be addressed.

Yours faithfully



Eila Macqueen
Director

⁴ This is especially true for sites under arable cultivation, cf Burke *Assessing risk and damage to cropmark sites using land surface curvature & Managing Archaeological Sites in Arable Landscapes* - see <http://www.archaeologyscotland.org.uk/?q=node/51> for references.

⁵ Recent survey has established that 21% of England's Scheduled Monuments are at high level of risk both from natural processes and intense agricultural activity. *Heritage at Risk 2008* http://www.english-heritage.org.uk/upload/pdf/HAR_Summary_Acc.pdf?1243182711 It is probable that similar levels of damage are occurring on Scottish Scheduled Monuments, though comparable figures are not currently available.