

ANGUS COUNCIL

INFRASTRUCTURE SERVICES COMMITTEE – 25 AUGUST 2009

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

REPORT BY DIRECTOR OF INFRASTRUCTURE SERVICES

Abstract: This report comments on and provides a suggested basis for the Council's response to the consultation on the proposed amendments to The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill. The consultation introduces the possibility of greater discretionary powers which can be applied to the built heritage, including Scheduled Ancient Monuments.

1 RECOMMENDATION

It is recommended that the Committee:-

1. notes the content of The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill; and
2. agrees this report as the basis for the Council's response to Historic Scotland.

2 INTRODUCTION

- 2.1 In May 2009, Historic Scotland issued a consultative draft bill regarding "The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill, hereinafter referred to as "the Bill". A copy of the Bill has been placed in the Members' Lounge.
- 2.2 The Bill is proposed as a tightly-focused technical amending Bill that will introduce new provisions and remove barriers to the use of existing powers that will enhance the ability of planning authorities to manage the historic environment in a sustainable way for the enjoyment and benefit of future generations. It is not intended that the contents of the Bill place new burdens on owners of assets, businesses and local and central government.
- 2.3 The consultation seeks views as to what is proposed to be included in the draft Bill as well as any views on:-
 - the potential financial implications of the Bill;
 - the Partial Regulatory Impact Assessment; and,
 - the equalities impact of the Bill.

3 SUMMARY OF KEY POINTS OF THE ANCIENT MONUMENTS AND LISTED BUILDINGS (AMENDMENT) (SCOTLAND) BILL CONSULTATION

3.1 The consultation document has been produced by Historic Scotland on behalf of the Scottish Ministers.

3.2 The Bill is an amending piece of legislation and the scope and content are formed by a series of amending provisions identified by Historic Scotland and local government, and during the course of discussions with stakeholders during 2007, which followed the publication of a report by the Historic Environment Advisory Council for Scotland (HEACS) on the need for a review of heritage legislation in Scotland.

3.3 The draft Bill is made up of four Parts. The first three parts comprise amending provisions corresponding to the three principal Acts that will be amended by the Bill and the fourth Part which includes provisions on "Interpretation" and "Short title and commencement". The principal Acts are:-

- The Historic Buildings and Ancient Monuments Act 1953;
- The Ancient Monuments and Archaeological Areas Act 1979; and,
- The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

3.4 The overarching aims of the Bill as set out by the consultation document are to improve the management and protection of our historic environment by addressing the gaps and weaknesses of the current historic environment legislative framework that were identified during a year-long stakeholder engagement process; to avoid introducing significant new burdens or duties; and in a challenging economic period to keep the implementation costs low.

3.5 The overarching policy aims of the Bill are proposed to be met through a range of amending provisions:-

- The removal of uncertainty, for example, by introducing a new power that will enable Scottish Ministers to offer any person a certificate of immunity from listing that will guarantee that a building will not be listed during the five years from the date of the certificate;
- Enhancing the ability of the regulatory authorities to work with developers by making it clear that Scottish Ministers can specify in a grant award letter the amount of grant that would be recoverable in certain circumstances;
- Aligning aspects of the listing and scheduling systems, for example by enabling Scottish Ministers to issue a scheduled monument enforcement notice which will parallel similar provisions in the 1997 Act; and by harmonising the level of fine on summary conviction under sections 2 and 28 of the 1979 Act and section 8 of the 1997 Act;
- Contributing to planning improvement by removing the right to be heard in connection with applications and appeals under the 1997 Act in line with similar procedures in planning legislation;
- Increasing deterrents by raising the level of fines on summary convictions; by empowering 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 conditions attached to a scheduled monument consent to scheduled monuments; and, by enabling local planning authorities to issue fixed penalty notices as an alternative in cases when a person is in breach of listed building enforcement;
- Improving the capacity to deal with urgent threats by introducing new powers to enable a person authorised by the Scottish Ministers to enter land and carry out essential

investigatory works, including excavations for the purposes of archaeological investigation where they have reason to believe that any ancient monument is at risk of imminent damage or destruction; and,

- Removing obstacles to the use of existing powers by introducing explicit powers to enable Scottish Ministers to offer ancient monuments grants to a third party to undertake works of preservation, maintenance and management of an ancient monument.

4 DISCUSSION

Amendment of the Historic Buildings and Ancient Monuments Act 1953

- 4.1 There is only one proposal affecting the 1953 Act. The proposal will allow any grant offer to specify the amount recoverable if terms and conditions of the grant are altered such as with the sale of the building.

Modifications of the Ancient Monuments and Archaeological Areas Act 1979

- 4.2 There are a number of proposals to amend the Ancient Monuments and Archaeological Areas Act 1979 ("the 1979 Act"). The overall proposal of amendments is to make the 1979 Act more substantial and have a positive impact by introducing new powers and make provisions consistent with other legislation to ensure that further protection is given to ancient monuments and archaeological areas.

- 4.3 The proposed changes have little effect on the council as scheduled monuments are dealt with by Historic Scotland and therefore a summary of the changes to the current legislation are set out below for information:

- Currently it is only an offence to carry out works resulting in the demolition or destruction of a scheduled monument; any works for the purpose of removing or repairing a scheduled monument; or any flooding or tipping operations. It will become an offence to "disturb" a scheduled monument in such a way that it affects the conservation stability or national importance of a monument, usually as a result of unauthorised works;
- The removal of "the defence of ignorance" is proposed as information regarding the location and extent of protected monuments and buildings is much more accessible. This is also linked to the removal of the similar existing defence regarding damage to ancient monuments through unauthorised use of metal detectors;
- The current maximum fine for unauthorised works is £10,000. It is intended to increase this to £50,000 which will hopefully act as a deterrent. It is also proposed to insert a new subsection to ensure that any court will take account of any financial benefit gained by the offender as a result of the offence;
- At present there is no provision to serve an enforcement notice in respect of a scheduled monument. Changes proposed will introduce this new power. It will allow Scottish Ministers to issue a stop notice and temporary stop notice for unauthorised works on a scheduled monument. These notices have also led to new powers of entry which can be used in conjunction with the enforcement provisions; and
- Scottish Ministers will also be empowered to refuse any application for scheduled monument consent which is similar to an application that has been made within the previous two years. At present there is no limit on the number of applications for similar works to the same scheduled monument.

- 4.4 Generally the proposals for modification to the 1979 Act have more impact on Scottish Ministers in their role relating to scheduled monuments. The proposed changes are therefore welcomed in the capacity of increased and more direct forms of protection afforded to scheduled monuments.
- Modifications of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
- 4.5 There are a number of proposed modifications to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 including the certification of non-listing, increased fines and liability. Unlike the Ancient Monuments and Archaeological Areas Act 1979, these changes will have some implications for any local authority as it will provide discretionary powers which may be used by either the Scottish Ministers or local authorities.
- 4.6 A new provision will enable Scottish Ministers to provide a certificate of immunity to a building from listing to any person who applies for one. The immunity will guarantee that the building will not be listed during the five years from the date of the certificate. The onus will be on the applicant to give notice of the application to the local authority at the same time as applying to the Scottish Ministers. This will require the local authority to keep up to date records of any building which has been given immunity from listing. The ability to have a temporary listing made in urgent cases will still apply. This is similar to a mechanism used in England and Wales.
- 4.7 It is proposed to increase the maximum fine amount as exists from £20,000 to £50,000 for any offences in relation to unauthorised works and listed building consent which will hopefully act as a deterrent against unauthorised works.
- 4.8 Scottish Ministers and local authorities will be able to issue stop notices and temporary stop notices that will halt unauthorised works to listed buildings under various sections of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. This will bring listed building enforcement provision in line with the planning enforcement regime which already exists. It will also include new powers of entry to allow for the implementation of these proposed enforcement notices.
- 4.9 Local authorities will have a new discretionary power available to them in the form of fixed penalty notices as an alternative to prosecution in cases where a person is in breach of a listed building enforcement notice and parallels existing powers of the Planning etc. (Scotland) Act 2006. Local authorities will be able to provide a fixed penalty notice providing certain conditions are met. Fixed penalty amounts will be set out by Scottish Ministers as they will be the subject of Parliamentary control. It is intended that any fixed penalty imposed shall escalate in the event that the breach of enforcement continues. This would however require a further enforcement notice to be issued.
- 4.10 A significant change is in relation to the liability for expenses of urgent works completed by the local authority on a listed building. Currently it is only possible to pursue whoever was owner at the time of the notice being served. The proposed amendment ensures that existing powers remain but in addition that any new owner of the building will also be liable for the expenses. The Scottish Ministers or local authority can register a notice of liability for expenses of works in the Land Register of Scotland or Register of Sasines as appropriate.
- 4.11 Similar to the changes for grants awarded for scheduled monuments, Scottish Ministers and local authorities will be able to specify the recoverable amount of any grant award if terms and conditions of the grant are altered i.e. the sale of the building.
- 4.12 Although there are a number of changes proposed in the Bill regarding the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the changes are positive in paralleling and streamlining the array of regulations covered under the general scope of planning. As with the changes to the scheduled monuments it would be hoped that many of the changes, particularly in relation to substantially increased fines and the introduction of fixed penalty

notices, will act as a deterrent to those undertaking unauthorised work with a listed building. Many of new powers being introduced are discretionary in their use by local authorities and their introduction will not have any significant impact on their implementation by Angus Council.

5 FINANCIAL IMPLICATIONS

- 5.1 As the Bill introduces new powers as opposed to duties then there will be minimal financial burden placed on Angus Council with the exception of general administrative costs incurred when issuing any form of fixed penalty, stop notice or other enforcement notice. These powers are discretionary and are similar to those already incurred through enforcement undertaken by Planning and Transport. There may be the potential for compensation to parties for losses incurred in relation to enforcement and stop notices but the risk factor would be considered prior to the decision to serve any such notice.
- 5.2 Regarding all others who may be impacted on by the Bill, it does not appear to have the intention of providing any significant financial burden on any other parties such as the owner unless they breach the regulations regarding unauthorised works.
- 5.3 A Financial Memorandum regarding the financial implications of the Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill will be drafted and accompany the Bill on its introduction to Parliament. Any significant issues arising from the Financial Memorandum will be the subject of a further report to this committee.

6 HUMAN RIGHTS IMPLICATIONS

- 6.1 There are not any human rights implications arising from the recommendations of this report.

7 EQUALITIES IMPLICATIONS

- 7.1 The issues dealt with in this report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment is not required.

8 SINGLE OUTCOME AGREEMENT

- 8.1 This report contributes to the following local outcomes contained within the Single Outcome Agreement for Angus.
9. We live our lives safe from crime, disorder and danger
- Communities in Angus are safe, secure and vibrant
12. We value and enjoy our built and natural environment and protect it and enhance it for future generations
- The importance and benefits to society of the environment is recognised.

9 CONSULTATION

- 9.1 The Chief Executive, Director of Corporate Services, Head of Finance and Head of Law & Administration have been consulted in the preparation of this report.

10 CONCLUSION

- 10.1 The Bill gives more discretionary powers to the local authority with limited implications regarding the burden of any associated requirements. The changes proposed in the Bill assist with aligning and modernising heritage legislation with powers available in other legislation. The changes proposed will further aide the protection of the historic built environment and heritage in Angus

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NOTE: The background papers as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- The Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill (Consultation and Draft Bill): May 2009;
- Covering Letter and Questionnaire from Head of Policy, Historic Scotland: May 2009.

**P&T/GWC/KM
14 August 2009**