

SCOTTISH HISTORIC ENVIRONMENT POLICY: CONSULTATION

Listing:

the identification of Scotland's special buildings

Cover picture: Forth Rail Bridge, largest listed structure in Scotland

Contents

Section 1	The consultation process	5
Section 2	Purpose and context	9
Section 3	The legal and administrative context	10
Section 4	Scottish Ministers' policy on the process of listing	13
Section 5	Implementation	15
Section 6	Contacts	16
Notes		17
Annex A	Criteria for determining whether a building is of 'special interest' for listing	20
Annex B	Partial Regulatory Impact Assessment	24
Annex C	Equality Impact Assessment	29

Published by Historic Scotland

© Crown copyright 2007

1. The consultation process

Introduction

- 1.1 This draft Scottish Historic Environment Policy (SHEP) paper invites views on Scottish Ministers' policies for listing, the designation of buildings of special architectural or historic interest.

Responding to this consultation paper

- 1.2 We are inviting written responses to this consultation paper by **20 July 2007**. Please send your response to:

hs.shep@scotland.gsi.gov.uk

or

SHEP on Listing Consultation

Historic Scotland

Room 2.9

Longmore House

Salisbury Place

Edinburgh

EH9 1SH

or

By fax to: 0131 668 8987

If you have any queries contact Christine Kelly on 0131 668 8639.

- 1.3 This consultation is available on the consultation web pages of the Historic Scotland website at www.historic-scotland.gov.uk/consultations. The consultation, and all other Scottish Executive consultation exercises, can also be accessed on line from www.scotland.gov.uk/consultations. Printed copies of the consultation can be obtained from Historic Scotland's head office at the address given above. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

- 1.4 SEconsult is an e-mail system set up by the Scottish Executive to alert you to new consultations. SEconsult is available at www.scotland.gov.uk/consultations/seconsult). The system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web addresses). SEconsult complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all SE consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

- 1.5 We need to know how you want us to deal with your response and, in particular, if you are happy for your response to be made public. Please complete and return the Respondent Information Form, which is either attached to this document or can be downloaded from the place you obtained this document, to ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.
- 1.6 You should be aware that Historic Scotland, as an agency of the Scottish Executive, is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and would therefore have to consider any request made to it under these Acts for information relating to responses made to this consultation exercise.

Next steps in the process

- 1.7 If you have given permission for your response to be made public (see the attached Respondent Information Form), it will be made available to the public in the Scottish Executive Library by 17 August 2007 and on the Scottish Executive consultation web pages by the same date. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the Scottish Executive Library on tel: 0131 244 4556. Responses can be copied and sent to you, but a charge may be made for this service.

- 1.8 Following the closing date, all responses will be analysed and considered along with any other available evidence. We aim to issue a report on this consultation process by 19 October 2007 and a final version of this policy as soon as possible.

Comments and complaints

- 1.9 If you have any comments about how this consultation exercise has been conducted, please send them to Christine Kelly as detailed above.
- 1.10 Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general, Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.
- 1.11 The Scottish Executive encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.
- 1.12 Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Executive website enabling a wider audience to access the paper and submit their responses www.scotland.gov.uk/consultations.
- 1.13 Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library (K Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD, telephone 0131 244 4556).
- 1.14 All Scottish Executive consultation papers and related publications (eg, analysis of response reports) can be accessed at Scottish Executive consultations: (www.scotland.gov.uk/consultations)

1.15 The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals;
- be used to finalise legislation before it is implemented.

1.16 Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

2. Purpose and context

- 2.1 *Scottish Historic Environment Policy* (SHEP) is a series of policy documents that sets out Scottish Ministers' strategic policies for the historic environment.
- 2.2 SHEP 1 is the overarching policy statement for the historic environment (see Note 1). It provides the framework for more detailed strategic policies and operational policies that inform the day-to-day work of a range of organisations that have a role and interest in managing the historic environment.
- 2.3 This document sets out Scottish Ministers' policy on listing, the process that identifies, designates and provides statutory protection for buildings of 'special architectural or historic interest'. Policy on Listed Building Consent is set out in another SHEP.
- 2.4 Historic buildings and structures are a highly visible and accessible element of Scotland's rich heritage. They cover a wide range of uses and periods, which together chart a great part of the history of Scotland. They affect all aspects of life, from education to recreation, to defence, industry, homes and worship. Much of Scotland's social and economic past and its present are expressed in these exceptional buildings. Listing recognises their historic importance. This in turn helps ensure that their potential for the study of history and for wider issues such as sustainability, community identity, local distinctiveness, and social and economic regeneration are all fully explored.
- 2.5 The listing process under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 set out here is entirely separate from that for scheduling under the terms of the Ancient Monuments and Archaeological Areas Act 1979 (see Note 2).
- 2.6 The Scottish Executive *National Planning Policy Guideline* (NPPG) 18: *Planning and the Historic Environment*, outlines how some aspects of the historic environment are dealt with in the planning system (see Note 3).

3. The legal and administrative context

- 3.1 Most modern countries have systems to protect and to control change on important historic buildings. The system in Scotland operates under the terms of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (see Note 4). Listing ensures that a building's special character and interest are taken into account where changes are proposed (see Note 5). The Scottish Ministers' Lists are compiled for the purposes of the 1997 Act and for the guidance of planning authorities in the performance of their duties set out in the 1997 Act. The Act sets a duty on Scottish Ministers to compile or approve lists of buildings of special architectural or historic interest (see Note 6). Listing is the statutory process by which buildings are added to these Lists. Once included on the Lists the building has statutory protection under the provisions of the 1997 Act.

What is eligible for listing?

- 3.2 To be listed, a building must meet the Act's definition of special architectural or historic interest. The non-statutory criteria (Annex A) remain substantially un-changed except for an extension to the moving date parameter (see Note 7).

Question 1:

Do you have any comments on the criteria set out in Annex A?

- 3.3 Many factors help determine the level of special architectural or historic interest. The criteria are applied consistently and subjects that fall below the margin for listing are removed from the List (see Section 4 and Annex A for more information about listing and the criteria).

Question 2:

Would there be advantage in the creation of a Focus Panel to advise on themes in the selection of subjects for listing designation? If 'yes', please say why.

- 3.4 Planning authorities and private individuals can propose buildings for listing. Buildings can be listed both routinely and in response to new development proposals which appear to threaten as yet undesignated buildings that could be of interest.

- 3.5 Listing is carried out by central government at the national level. While this ensures a national standard it may not respond sufficiently to local needs. Current guidance (see Note 8) encourages local authorities to nominate subjects for listing, ideally in advance of development proposals. However, in recent years there has been a decline in the number of local authority recommendations, despite existing guidance. In areas where the Lists have been reviewed, this may mean they are content with the findings of the resurvey but listing is a living process as new knowledge comes to light.

Question 3:

Do you have any comments on the role of the local authorities in the listing process?

The effects of listing

- 3.6 Any unauthorised works to a listed building which affect its character as a building of special architectural or historic interest, constitute a criminal offence (see Note 9). Applications for Listed Building Consent should be sought from the planning authority (see Note 10).
- 3.7 A planning authority is required to notify the owner, occupier or lessee of a building added to the list or removed from it as soon as possible after it has been notified by Scottish Ministers (see Note 11).
- 3.8 There is no right of appeal against listing, but Scottish Ministers may reconsider a subject's case for designation. Listed buildings are sometimes removed from the List. This may be because the building in question has been demolished or altered in such a way as largely to destroy its special architectural interest, or because an interested party, usually the owner, has demonstrated to the satisfaction of Scottish Ministers that the building is no longer of sufficient architectural or historical interest to merit listing.
- 3.9 Under Historic Scotland's current published policy a building will not normally be listed once a planning application in respect of it has been lodged or granted, or while works which have received planning permission are under way. However, where a Building Preservation Notice has been served by a local authority this restriction does not apply. Note that the policy differentiates between live applications and masterplans, or equivalent advanced pre-application situations. There is a presumption that the latter will not deter the designation but there remains a discretionary option to do

so. The exceptions include: (a) when the structure is subject to a Building Preservation Notice or (b) when the works are minor.

Question 4:

Do you have any suggestions as to how Historic Scotland might improve its current policy regarding restraint when there is a live application, notably the fact that we can only list when there is a Building Preservation Notice or the works are deemed to be minor?

Administration

- 3.10 Once Scottish Ministers have decided to list a building or buildings the revised List is sent to the local planning authority (see Note 12).
- 3.11 Prior to, or at the same time as, formal notification by the local authority, the owners of newly listed or regraded buildings are supplied with key documentation and supporting material (see Note 13).
- 3.12 A system of Certificates of Immunity operates in England and Wales, where certificates provide immunity from listing for 5 years. Provided that planning permission is being sought or has been obtained, any person may ask (the Department for Culture, Media and Sport/the Welsh Assembly Government) for a certificate to be issued stating that it is not intended to list the building or buildings involved in the planning application. If such a system was introduced to Scotland then it is likely changes would need to be made to primary legislation.

Question 5:

Do you have any comments on the issue of Certificates of Immunity from listing?

- 3.13 The service of a Building Preservation Notice by the local authority (see Note 14) on a building which may be subject to a planning application formally changes the position and invites the Scottish Ministers to consider the subject's case for listing.

Question 6:

Do you have any comments on the use of Building Preservation Notices.

4. Scottish Ministers' policy on the process of listing

4.1 Scottish Ministers are committed to the sustainable use and management of the historic environment, which reflects a wider UK commitment to sustainable development that enables 'all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations'. This means meeting the needs of today without compromising the ability of future generations to understand, appreciate and benefit from the historic environment. Listing is applied to secure the protection of buildings of special architectural or historic interest for future generations. The Lists are intended to inform development, provide awareness of value and character, and to support and give substance to the planning process (see Note 15).

4.2 The following principles will underpin the listing process:

- a. listing will follow the application of clear criteria;
- b. the past of all parts of Scotland is worthy of study and should be considered for conservation;
- c. the selection process is informed by a wide range of factors which help determine the level of special architectural or historic interest which the subject may possess; listing will be based on an understanding of regional differences as expressed in Scotland's architectural and built heritage;
- d. buildings that do not meet the standards set out in the Criteria for Listing will be removed from the List;
- e. the process of listing will continue to evolve to suit a changing environment and to ensure it satisfies its purpose most effectively; listing will be an ongoing process that recognises that every generation will have its own view of what comprises its heritage;
- f. decisions on listing and de-listing will be made on the basis of the best evidence available;
- g. information on listed buildings and on the processes involved with listing will be made widely and easily available;
- h. all decisions relating to listing will be explained in clear language.

- 4.3 Scottish Ministers will, other than in exceptional circumstances, consult known owners of buildings and local authorities and may consult third parties and those with special knowledge of relevant building types on proposals to list buildings; local authorities are consulted in all cases.

Question 7:

Do you have any comments on the Scottish Ministers' policies?

5. Implementation

- 5.1 Historic Scotland plays an important role in implementing the Ministers' policy on listing. In fulfilling that duty Scottish Ministers will expect the agency to:
- a. set out in its Corporate Plan the level of resources that it will commit to the programme of listing;
 - b. add to and remove subjects from the List through ongoing list maintenance, revision of topographic areas and through thematic surveys;
 - c. use a range of techniques and mechanisms such as the Welcome Pack to make relevant information available as widely as possible and pursue a programme to tell people about the process and programmes of listing;
 - d. publish and regularly update guidance for the owners and occupiers of listed property; and
 - e. review programmes of work regularly in consultation with stakeholders.

Question 8:

Are there any further matters which could usefully be addressed within this policy consultation?

6. Contacts

- 6.1 Further information on listing can be found on Historic Scotland's website, www.historic-scotland.gov.uk. Copies of the booklet *Scotland's Listed Buildings* can be obtained from Historic Scotland at the address below.
- 6.2 Specific queries on the operation of Historic Scotland's listing procedures and programme should be directed to:

Head of Listing
Historic Scotland
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Tel: 0131 668 8701/8705

HS.Inspectorate@scotland.gsi.gov.uk

Notes

- Note 1. SHEP 1 can be consulted at www.historic-scotland.gov.uk/index/policyandguidance/sheps/shep1.htm
- Note 2. See *Planning Advice Note 42*, paras 44 and 49. As a selective sample of the nation's archaeology the Schedule differs from the List of buildings both in subject matter and in the procedures which arise from inclusion. The first point of call for changes proposed to listed buildings is the local planning authority whereas Historic Scotland undertakes casework on scheduled monuments.
- Note 3. NPPG 18 can be accessed at www.scotland.gov.uk/publications/1999/04/nppg18
- Note 4. The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 can be accessed at www.statutelaw.gov.uk
- Note 5. The term 'building' is defined in the (1997 Act, amplified by *The Memorandum of Guidance on Listed Buildings and Conservation Areas*) as:
- a. a 'building' includes any structure or erection, and any part of a building in a list compiled or approved by the Scottish Ministers. This can include street furniture, cranes, fountains, bridges, bandstands and earthen works such as ha-has;
 - b. any object or structure which is fixed to a listed building, or which falls within the curtilage of such a building and, although not fixed to the building, has formed part of the land since before 1 July 1948, will be treated as part of the building. This includes ancillary structures and outbuildings such as stables, mews, garden walls, dovecots and gate lodges;
 - c. any plant or machinery within a building is excluded from the definition of 'building' but can be included within the scope of listing if physically attached to the main building and hence falling within the category of a fixed structure or object;
 - d. listing covers the interior as well as the exterior of the building: the fact that the list contains no detailed interior description does not alter this rule. As 'any object or structure fixed to a building' is also treated as listed the definition extends to major interior fixtures such as plaster work or painted ceilings, chimneypieces and panelling;

Note 6. 1997 Act, section 1(1).

Note 7. Listed buildings are given categories of listing which distinguish their relative merit. These categories have no statutory weight but are advisory. They inform levels of designation and grant award. There are three categories indicating national, regional or local importance and they are defined as follows:

A buildings of national or international importance, either architectural or historic, or fine little-altered examples of some particular period style or building type;

B buildings of regional or more than local importance, or major examples of some particular period, style or building type;

C(S) buildings of local importance, lesser examples of any period, style, or building type, as originally constructed or altered; and simple, traditional buildings which group well with others.

In addition, a system of group categories exists to highlight the contextual relationship which an individual listed building may possess in relation to others. These are A and B Groups. They are in addition to the individual category and likewise have no statutory significance. They serve to flag considerations of setting, function, design, planning and historic combinations where the individual value is enhanced by its association with others.

Note 8. *The Memorandum of Guidance on Listed Buildings and Conservation Areas*, 1998 (paras 1.16 and 1.17).

Note 9. 1997 Act, section 6.

Note 10. 1997 Act, section 9.

Note 11. 1997 Act, section 2(2)(b).

Note 12. 1997 Act, section 2(2) and 2(2)(a), sets out this requirement. Up-to-date information on the Lists can be obtained from the appropriate local planning authority or from Historic Scotland. Every planning authority is required by the Act to keep available for public inspection, free of charge, at reasonable hours and at a convenient place, copies of those Lists and the amendments to them which relate to the buildings within its area. The Scottish Ministers are similarly required to keep a copy of the full List available and does so at the headquarters of Historic Scotland at Longmore House, Edinburgh (1997 Act section 2(4) and 2(3)) and through the agency's website, www.historic-

scotland.gov.uk. The lists are also available through the Royal Commission on the Ancient and Historical Monuments of Scotland, and through Pastmap (www.pastmap.org.uk).

Note 13. Historic Scotland (since January 2006) issues a welcome pack to the owner of any newly listed or regraded building, concluding the findings of consultation and providing supporting information on the designation. Historic Scotland provides advice on what listing means to owners and occupier in the free publication *Scotland's Listed Buildings*, also available at: www.historic-scotland.gov.uk/listed_buildings.pdf

Note 14. 1997 Act, section 3(1)-(6) and section 4(1)-(3) details the powers available to a local authority to bring about temporary listing through Building Preservation Notices (BPN). It is open to planning authorities to serve a Building Preservation Notice in the case of unlisted buildings which appear to them to be of special architectural or historic interest, and which are in danger of demolition or of alteration in such a way as would affect their character. Service of the notice gives the building the same protection as inclusion in the statutory List for a period of 6 months to enable its future to be properly considered. During that period the provisions of the legislation, other than the section which relates to wilful damage to listed buildings, apply to the building as they do to a listed building. During this period the Scottish Ministers will assess the merit of the property for listing. The table below sets out use of BPN by local authorities across Scotland in the past 8 years.

Year	1998	1999	2000	2001	2002	2003	2004	2005
No of BPNs	5	10	1	8	1	3	5	5

Note 15. *Choosing Our Future: Scotland's Sustainable Development Strategy*, para 1.3.

Annex A

Criteria for determining whether a building is of ‘special interest’ for listing

1. Statutory designation is intended to safeguard the character of Scotland’s built heritage and to guard against unnecessary loss or damage. Many buildings are of interest, architecturally or historically, but for the purposes of designation this interest must be special. The following guidance sets out the criteria by which the Scottish Ministers determine whether a building is of definite quality and character.
2. To be listed, a building need not be functioning for the purpose originally intended. For example, a redundant railway viaduct may have continued its life as a walkway or cycle path, even a wildlife sanctuary.
3. Similarly, the state of repair is not a relevant consideration against the test of special interest. It only becomes a factor when the building’s condition has devalued the particular architectural or historic interest to the degree that it can no longer be regarded as special.
4. The criteria can only provide a framework within which professional judgement is exercised in reaching individual decisions.
5. The principles of selection for statutory listing under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 are broadly:
 - age and rarity;
 - architectural interest;
 - close historical associations.

Age and rarity

- a. The older a building is and the fewer of its type that survive the more likely it is to present a special interest. Age is a major factor in the evaluation process but its weight differs across the building types. Period definitions are given to facilitate the assessment but these are not intended to be watersheds or cut-off points.

- b. All buildings erected before 1840 (pre-Victorian and the arrival of the railways) which are of notable quality and survive predominantly in their original form have a strong case. The year 1840 was selected because of the change which followed, in terms of the greater standardisation of materials and design, improved communications and the birth of the architectural press.
- c. Buildings put up between 1840 and 1945 which are of definite character either individually or as part of a group may be listed. As the survival rate increases after 1914, greater selectivity will be applied to take account of lesser rarity and relative age.
- d. Those erected after 1945 may merit inclusion on the lists if they are of definite architectural quality.
- e. The listing of buildings under 30 years old requires exceptional rigour because those making the judgement do not have the advantage of a long historical perspective. Threats to building types is often a trigger for advance consideration of buildings from this period.

Architectural interest

- f. *Regional Variations:* The best examples of local vernacular buildings will normally be listed because together they illustrate the importance of distinctive local and regional traditions. It is important to ascertain distinctive regional variations in type, material and form.
- g. *Plan Form:* The internal planning of buildings is instructive and can be ingenious although it may not be evident on the exterior. For example, the original flatting arrangement in terraced houses and tenements may not be obvious from the street and the plan of a farm steading, hospital or prison may reflect the latest theories in the design of each of these structures.
- h. *Interior:* Interior design and fixed decorative schemes of houses or business premises can add to the case for listing. Examples include skirting boards, plasterwork, dado rails, chimneypieces, staircases, doors and over-door panels, ornate radiators, floor grilles, sanitary ware, the existence of box-beds, vaulted basement or wine cellar divisions, slate shelving, servant bell systems, shop or pub fittings and fixed internal machinery. If fittings or machinery are not fixed but can functionally be considered as part of the integral entity, such as the communion table in a church, the fire basket in a grate or the bagger in a corn mill, a defensible case may be made for considering it to contribute to the character of the building and potentially be covered by the listing.

- i. *Technological excellence or innovation, material or design quality:* Evidence of structural or material innovation adds weight to a decision. Exceptional structural form can be significant and is found across the wide variety of building types from a cruck-framed barn to an early iron-framed jute mill or steel-framed office block. Exceptional use of materials or use of fine material may be a factor. Style will be considered against relevant conventions particularly for its quality or exceptional interest.
- j. *Setting:* The context in which a structure sits can be a critical factor in its evaluation. It invariably accounts for its form and should not be under-rated. A structure whose setting has changed adversely, removing the original contextual character, or which has been removed from its context, has one less factor in support of its case for designation.

Close historical association

Close associations with nationally important people, or events whose associations are well-documented, and where the physical fabric of the building is also of some quality and interest can be a significant factor. In consideration of such cases it is essential that the information is accurate and dependable. The association must be well authenticated and significant. The fabric should reflect the person or event and not merely be a witness to them. Local traditions are not always trustworthy. In most cases the building in question will have other qualities which combine to give it special interest, such as Walter Scott's house in Castle Street, Edinburgh, which is in a fine classical tenement. Where architectural interest is weak the Scottish Ministers require the case for listing on historical association to be strong. The building must be well preserved in a form and condition which directly illustrates its historical associations with the person or event in question. The transient association of short term guests, lodgers and tenants, however eminent, will not usually justify listing.

- 6. In choosing buildings within the above broad principles:
 - a. particular attention is paid to the special value of particular building types, either for architectural or planning reasons, or as illustrating social and economic history. Examples could include: industrial buildings both urban and rural; railway and other transport buildings; schools; hospitals; theatres; civic buildings; markets; exchanges; charitable institutions; prisons; and street furniture;

- b. Scottish Ministers may list a building for its contribution to an architecturally or historically interesting group, such as a planned burgh, town square or model village as well as its intrinsic merit considered in isolation;
 - c. the impact of vernacular buildings in particular is often made not only by individual buildings but by grouping in a street or location in the countryside as a whole. At the other end of the spectrum, a major country house may well be enhanced by adjacent buildings such as stables, lodges, gatepiers and bridges in its curtilage, and vice versa;
 - d. authenticity, that is a building's ability to convey its significance, and levels of integrity, carry weight. It need not be the case that a building is as originally built, because changes made to it may have added to its significance. What is added or taken away will be considered for the overall benefit or detriment to its character.
7. It is important to stress that when buildings are being considered for listing, no factors other than architectural or historic interest as set out above can be taken into account. The condition of a property, for example, is not a factor in the evaluation unless it detracts significantly from the architectural or historic interest so that it can no longer be defined as special.

Annex B

Partial Regulatory Impact Assessment

1. Title of proposal

1.1 **Scottish Historic Environment Policy (SHEP) on listing.**

2. Purpose and intended effect

2.1 **Objectives**

SHEP on listing

When finalised, the SHEP on listing will set out Scottish Ministers' policy for the identification, designation and statutory protection of buildings of 'special architectural or historic interest' known as listing.

SHEPs overall

Scottish Historic Environment Policy (SHEP) is a new series of policy documents. The aim of these is to

- set out Scottish Ministers' vision and strategic policies for the wider historic environment;
- provide greater policy direction for Historic Scotland;
- codify existing policy.

2.2 **Background**

Historic Scotland takes the lead on advising Scottish Ministers about policy matters relating to the historic environment. This includes listing of historic buildings, scheduling of ancient monuments and looking after properties in the care of Scottish Ministers. Historic Scotland was reviewed in 2003 and one of the recommendations from the review was that there should be a policy statement for the historic environment in Scotland developed in consultation with stakeholders.

By putting in place a strategic policy framework for the historic environment it is hoped that;

- the historic environment is cared for, protected and enhanced for the benefit of our own and future generations;
- there is increased public appreciation and enjoyment of the historic environment amongst all people of Scotland and visitors to the country;
- the historic environment's importance as a key asset in Scotland's economic, social and cultural success is recognised.

2.3 Rationale for government intervention

Historic Environment

Our environment, whether rural or urban, on land or underwater has a historical dimension that contributes to its quality and character. This historic environment contributes to a sense of place and of cultural identity. People want to see the historic environment protected, cared for and used sustainably so that it can be passed on to benefit future generations.

The UK is party to various international and European treaties and conventions (for example the European Convention on the Protection of the Archaeological Heritage – more commonly known as the ‘Valetta Convention’) that ensure the historic environment is protected and that change is undertaken on the basis of sound evidence. If we did not carry out these duties the UK would be in breach of its international obligations. Additionally there is legislation (the main Acts are the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997) in force which places certain obligations on Scottish Ministers.

Historic Scotland is a main player in the tourism industry in Scotland. It welcomes around 2.9 million paying visitors each year. If its sites were not managed appropriately it is possible that the numbers of visitors would decrease with a subsequent loss of revenue for Historic Scotland and possibly the tourism industry as a whole.

SHEP on Listing

One of the recommendations from the Review of Historic Scotland in 2003 was to produce a policy statement for the historic environment. If the SHEP series is not published then Historic Scotland would be failing to take forward that recommendation. There is also a Ministerial commitment to the publication of the series.

3. Consultation

Historic Scotland has consulted with other areas within the Scottish Executive and other UK Departments when drafting this SHEP and is now consulting more widely.

4. Options for achieving the policy objective

One of the aims of the series is to codify existing policy while giving the public the opportunity to provide comments. Given this, there are no major different policy options outlined in this document.

Option 1 – do nothing

If nothing is done then Historic Scotland will be ignoring one of the recommendations from the review of 2003. Moreover, the legislation will be in place but there will be no policy statement accompanying it. Policy does exist but some of it is out of date and it is not all published in the same place.

Option 2 – produce a policy document about listing

This would mean taking on board the recommendation in the review.

a. *risks* – there are certain risks involved in setting out the policy for listing. For example, it has to be ensured that the policy is in line with the legislation and its obligations. The policy has to be fit for purpose and Historic Scotland must comply with it. It must also conform to wider Scottish Executive policy.

b. *compliance and enforcement* – this policy refers to how Scottish Ministers' through Historic Scotland will list buildings and there should therefore be full compliance with it by Historic Scotland staff.

c. *unintended consequences* – if the policy is not fit for purpose then it is possible that the intended protection of the historic environment will not take place.

d. *implementation and ownership* – Historic Scotland will be responsible for implementation. When the policy document is finalised Historic Scotland will publish and distribute it.

Options for changes to listing

The consultation draft of the document asks for comments about certain non-statutory criteria used for the selection process in listing, the creation of a focus panel, the role of local authorities, the current policy on listing when there is a live planning application or permission, the issue of Certificates of Immunity and the use of Building Preservation Notices etc. Depending on the responses and subsequent policy consideration it may be that certain aspects of listing will change slightly. Specific options have not been offered in the consultation and it is therefore difficult to say what these might be and, consequently, to offer any meaningful analysis at this stage. It is not likely, however, that the process of listing will change significantly.

5. Costs and benefits

5.1 Sectors and groups affected – the main sectors and groups affected will be owners and tenants of buildings of special architectural or historic interest which may be listed.

5.2 Analysis of costs and benefits:

Do nothing option

There will be no additional costs to the Scottish Executive associated with this option.

Produce a policy document about listing option

There are certain costs associated with producing this document. For example, printing costs (likely to be around £2,500) and also staff costs. The consultation document asks certain questions about measures and requirements. Until responses to consultation have been received and are analysed it is not possible to estimate if there will be any associated costs with them but if there are it is unlikely that either the changes or the costs will be significant.

One of the main aims of the series is to codify certain existing policies while giving the public the opportunity to comment. It is unlikely that there will be additional regulations or requirements imposed. It is also unlikely that there will be new costs but we would welcome comments from anyone who thinks there may be.

6. Small firms impact test

It is not likely that the consultation SHEP on listing or any changes to the system coming out of the consultation will have a significant impact on small firms. We would, however, welcome comments from small firms who think it may have an impact. Historic Scotland shall liaise with businesses and/or their representatives if we become aware of any costs or impacts further down the line.

7. Competition assessment

Historic Scotland is not aware of any competition impact but would welcome comments from anyone who thinks there might be.

8. Enforcement, sanctions, monitoring

Buildings of special architectural or historic interest are identified and listed by Scottish Ministers through Historic Scotland. The main legislation is the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Any changes to criteria used etc following the consultation will not affect the terms of that Act but will inform Historic Scotland guidance and decisions. There will not be any new sanctions in place. Compliance will be tested in the same manner as now; that is, through inspection.

Annex C

Equality Impact Assessment

Historic Scotland considers it may have to produce an Equality Impact Assessment for this SHEP on listing and invites your views on this policy in that regard. We would also welcome any information which may assist us with an assessment and recognise that this assessment might mean that changes to this policy will be required as a result of the consultation. In your response it would be helpful to know what you consider the equality issues to be.

