

Scheduled Monument Consent

Cover picture: Helicopter assists with moving materials for consolidating Gylen Castle on the Isle of Kerrera

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1. The consultation process

Introduction

- 1.1 This draft Scottish Historic Environment Policy (SHEP) paper invites views on Scottish Ministers' policies for Scheduled Monument Consent.

Responding to this consultation paper

- 1.2 We are inviting written responses to this consultation paper by **22 June 2007**. Please send your response to:

hs.shep@scotland.gsi.gov.uk

or

SHEP on Scheduled Monument Consent 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 e-mail 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 If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.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 20 July 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 placing 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 21 September 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 web site 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, tel: 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 for the control of works affecting scheduled monuments. Scheduled monuments are monuments of national importance and are legally protected under the 1979 Act. A scheduled monument is included in a list of monuments (known as 'the Schedule') compiled under the Ancient Monuments and Archaeological Areas Act 1979. This document should be read in conjunction with *SHEP 2: Scheduling: protecting Scotland's nationally important monuments* (see Note 2). Works to a scheduled monument require the prior written consent of Scottish Ministers: this is known as Scheduled Monument Consent.
- 2.4 Some monuments are both scheduled and listed. Where this is the case anyone wanting to change the monument is required to apply only for Scheduled Monument Consent: the relevant parts of the Listed Buildings legislation are disapplied (see Note 3).
- 2.5 Scheduled monuments range from 10,000-year-old sites created by the first settlers in Scotland to 20th-century military defences, and from abbeys and castles to the slight traces of prehistoric and medieval farms. They are a non-renewable resource, which provide us with unique information about Scotland's past. They are part of Scotland's identity and are valuable both for their own sake and as a resource for research, education, regeneration, leisure and tourism, as well as creating a sense of local identity and community. They are often very fragile and vulnerable to damage or destruction. Up-to-date information on monuments contained in the Schedule is available from Historic Scotland, an executive agency of the Scottish Executive, or on www.pastmap.org.uk.

- 2.6 This document takes account of current conservation policies and aims, adapting them for modern Scottish circumstances. These are listed in Note 4.

Question 1:

Are there any other significant documents that should be listed here?

3. The legal context

- 3.1 The United Kingdom government is party to the European Convention on the Protection of the Archaeological Heritage (the ‘Valetta Convention’) (see Note 5). Under this convention States recognise, in Article 2, that they must have a legal system for the protection of the archaeological heritage, on land and under water. Article 4 requires provision for ‘the conservation and maintenance of the archaeological heritage, preferably *in situ*’.
- 3.2 The United Kingdom has had legislation in place to protect ancient monuments since 1882. Nationally important monuments in Scotland are protected under the provisions of the Ancient Monuments and Archaeological Areas Act 1979 (see Note 6).
- 3.3 Once a monument is a ‘scheduled monument’, it becomes an offence to carry out, without the prior written consent of Scottish Ministers (‘Scheduled Monument Consent’), any works that would have the effect of demolishing, destroying, damaging, removing, repairing, altering or adding to the monument or to carry out any, flooding or tipping on the monument (see Note 7). It is also an offence to use a metal detector within the site of a scheduled monument (see Note 8).
- 3.4 Some types of works are deemed to have consent, under the terms of the Ancient Monuments (Class Consents) (Scotland) Order 1996 (‘the Class Consents Order’) (see Note 9).
- 3.5 In considering any application for Scheduled Monument Consent, Historic Scotland, for Scottish Ministers, will have due regard to obligations arising under other protective regimes.

4. The consent process

- 4.1 Scheduled Monument Consent is the formal written consent of Scottish Ministers. Consent cannot be given orally or in outline. The Scheduled Monument Consent process is undertaken for Scottish Ministers by Historic Scotland. Applications must be made to Historic Scotland on a form set down by regulation (see Note 10). Applicants are encouraged to contact Historic Scotland as early as possible for discussion. An application should be supported by all information necessary to allow it to be fully considered. If further information is required, Historic Scotland will request it before reaching a view.
- 4.2 Scheduled Monument Consent can be given, given with conditions, or refused (see Note 11). In practice, Historic Scotland will issue a provisional view to the applicant and other interested parties. The applicant can either accept the provisional view (a response that Ministers are minded to make to the consent application) or make representations to Historic Scotland. If agreement cannot be reached (which happens in a tiny minority of cases) the applicant, and any other person the Scottish Ministers consider to be appropriate, can ask for the issues to be considered at a hearing or a Public Local Inquiry. If there is no hearing or inquiry then all representations to Scottish Ministers will be considered before a decision is made. If there is an inquiry then the final decision on the Inquiry Reporter's recommendations is taken by the Minister responsible for the planning system, rather than the Minister responsible for Historic Scotland.
- 4.3 Scheduled Monument Consent is distinct from and additional to the statutory planning process (see Annex A) (see Note 12). It can run in parallel in cases where planning consent is also necessary for any proposed work, and such cases are dealt with most effectively if applications for planning consent and Scheduled Monument Consent are prepared at the same time. The protection of ancient monuments and their settings must be taken into account when considering planning applications.
- 4.4 The protection of scheduled monuments is taken account of in policies and procedures across a wide range of Scottish Ministers' responsibilities, for example in agriculture and forestry. Work on scheduled monuments also has to take account of other requirements, for example, those covering health & safety and access. It is the responsibility of the applicant to satisfy any other legal requirements. In every case, except where covered by the Class

Consents Order (see Note 13), Scheduled Monument Consent must be obtained, no matter what other consents have been granted or what other legal requirements are being followed (for more information about class consents see Note 9).

- 4.5 Decisions on Scheduled Monument Consent are taken after the Scottish Ministers have considered all relevant issues, including any representations made, and the report following upon any Public Local Inquiry held (see Note 14). This document sets out the context in which such decisions will be made.

5. Scottish Ministers' policy on Scheduled Monument Consent

- 5.1 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 opportunity for future generations to understand, appreciate and benefit from the historic environment (see Note 15). The chief aim of the ancient monuments legislation is to ensure that the most important surviving evidence for Scotland's past is preserved *in situ*, as far as possible in the state in which it has come down to us, and is passed on to future generations without unnecessary change or loss.

Question 2:

Is this a satisfactory statement of the purpose of the sustainable management of the historic environment and if not why not?

- 5.2 Scottish Ministers include a monument in the Schedule to secure the long term legal protection of the monument in the national interest. It is the value of the monument to the nation's heritage that is the primary consideration in determining applications for Scheduled Monument Consent.

Question 3:

Is this the appropriate measure to use? If you do not believe it is, please explain why.

- 5.3 Monuments are subject to processes of decay, both of natural and human origin. Conservation is often needed to prolong the life of a monument but there is a risk that this can be so invasive that it irreversibly modifies the monument's character and affects the special interest or features that made the monument important in the first place.

- 5.4 Works on scheduled monuments should normally be the minimum level of intervention that is consistent with preserving what is culturally significant in a monument (cultural significance is explained in the Annex to SHEP 2 on Scheduling).
- 5.5 Each monument will require treatment tailored to its individual significance, characteristics and needs. Any proposed change to a monument must be fully and explicitly justified.
- 5.6 Scheduled Monument Consent applications must be considered in terms of the cultural significance of the monument, and in terms of the impact that proposals would have on the characteristics that make the monument culturally significant and nationally important in the first place. The greater the cultural significance of the monument, the stronger the case will be against unnecessary intervention. Similarly, the more important that particular features of the monument are to its cultural significance, the greater will be the case against interventions which modify these features.
- 5.7 Most applications involve minor interventions. More extensive intervention will only be allowed where it is clearly necessary to secure the longer-term preservation of the monument, or it will clearly generate public benefits which outweigh the impact to the cultural significance of the monument. In this context interventions which facilitate public access to scheduled monuments, or assist public understanding of them, may deliver the requisite level of public benefit provided they are carefully and sympathetically designed.
- 5.8 Developments that would have an adverse effect on the setting of scheduled monuments should not normally be permitted.
- 5.9 Where change is proposed, it must be carefully considered, based on good authority, properly planned and executed, and (where it is appropriate in the context of an individual monument) reversible.

Question 4:

Are the criteria mentioned in 5.4 to 5.9 the correct ones? If not then why not?

- 5.10 Scheduled Monument Consent is required for the use of certain forms of survey, such as metal-detecting and geophysical. Metal-detecting on scheduled monuments is normally permitted only as part of a properly-structured archaeological investigation (see Note 8).

- 5.11 Where the need for intervention is accepted, detailed control is usually needed over the way it is carried out. Common requirements are:
- a. use appropriate assessment methodologies to determine the full impact of any proposed management, use or development;
 - b. avoid irreversible change particularly wherever its effects cannot be adequately assessed;
 - c. where change is to proceed, adopt strategies to mitigate its impact and keep any interventions to a minimum;
 - d. ensure that management and execution of alteration, including remedial work, is sympathetic to historic character, using appropriate skills and techniques, materials and construction techniques;
 - e. ensure that an appropriate level of record is made before, and if necessary, during and after any work and deposit it in appropriate public archives;
 - f. ensure, particularly on masonry structures, that it is possible, on close inspection, to differentiate new work from old;
 - g. undertake any archaeological excavation or other intrusive investigation according to a well-founded research strategy, with adequate resources, using an appropriately skilled and experienced archaeologist with a satisfactory track record of the completion and publication of projects (see Note 16);
 - h. undertake any other necessary work using appropriately skilled and experienced people.

Question 5:

Are the requirements set out in para 5.11 a-h adequate and are they expressed clearly? If not, what changes would you suggest and why?

6. Implementation

- 6.1 Historic Scotland acts for Scottish Ministers in implementing this policy on Scheduled Monument Consent. In carrying out this work Historic Scotland will:
- a. publish in its Corporate Plan the targets set for dealing with Scheduled Monument Consent casework;
 - b. keep the strategy for Scheduled Monument Consent under review;
 - c. communicate decisions and information on scheduled monuments and Scheduled Monument Consents in clear language;
 - d. make information on scheduled monuments and on the application procedure for Scheduled Monument Consent readily available;
 - e. make its decision-making process transparent.
- 6.2 It is the responsibility of the applicant to ensure that applications for consent contain all the necessary information to allow the proposals and their impact to be assessed fully.
- 6.3 For departments and agencies of the UK government and the Scottish Executive bodies undertaking works there is a parallel system known as Scheduled Monument Clearance. This is a policy which Historic Scotland also applies to itself. The same principles and procedures govern both the Scheduled Monument Consent and the Clearance processes.
- 6.4 Most properties in the care of Scottish Ministers are also scheduled monuments. Third-party applicants for works on these sites will require Scheduled Monument Consent; the impact of works proposed in the application will be subject to the same scrutiny as for other scheduled monuments. However, Scottish Ministers hold the collection of properties in care on behalf of the nation not only for their long-term preservation but also to enable them to be understood and enjoyed as a vital part of Scotland's culture. Scottish Ministers are laying out a policy in this series to show how they expect Historic Scotland to control and manage Properties in Care, whether in ownership, guardianship or leasehold, under the 1979 Act, to

ensure their long-term preservation and to provide public access. Since these duties are likely to be the determining factor, potential third-party applicants are advised to open discussions with Historic Scotland, as guardian, owner or leaseholder of a monument, at an early stage. Evidence of the consideration of these factors and the outcome of these deliberations will be a material consideration in the determination of any subsequent Scheduled Monument Consent application.

7. Contacts

- 7.1 Further information on Scheduled Monument Consent can be found on Historic Scotland's website www.historic-scotland.gov.uk. Copies of the booklet *Scotland's Scheduled Monuments* can be obtained from Historic Scotland at the address below or on the agency website.
- 7.2 Specific queries on the operation of Historic Scotland's Scheduled Monument Consent procedures should be directed to:

The Chief Inspector
Historic Scotland
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Tel: 0131 668 8770

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. SHEP 2 can be consulted at: www.historic-scotland.gov.uk/index/policyandguidance/sheps/shep2.htm

Note 3. Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 section 55: www.statutelaw.gov.uk

Note 4. The following are the main publications that have been drawn on in the preparation of this policy paper:

- the consultation draft of SHEP 1 *Scotland's Historic Environment*;
- the final version of SHEP 2 *Scheduling: protecting Scotland's nationally important monuments*;
- Planning Advice Note 42 *Archaeology: the Planning Process and Scheduled Monument Procedures* www.scotland.gov.uk/library5/planning/pan42.pdf
- *National Planning Policy Guidance 5: Archaeology and Planning*: www.scotland.gov.uk/Publications/1998/10/nppg5
- the Valetta Convention: www.conventions.coe.int/Treaty/en/Treaties/Html/143.htm
- the Stirling Charter: www.historic-scotland.gov.uk/stirlingcharter.pdf. The Stirling Charter has been superseded by the final version of SHEP 1;
- *The Conservation of Architectural Ancient Monuments in Scotland*. Historic Scotland;
- *Passed to the Future*. Historic Scotland. The policy elements of this document have been superseded by the publication of SHEP 1;
- *The Care of Historic Buildings and Ancient Monuments by Government Departments in Scotland*. Department for Culture, Media & Sport 1994;
- *Protocol for the Care of the Government Historic Estate 2003*. Department for Culture, Media & Sport;
- *Planning & Development in the Historic Environment*. English Heritage;
- *The Burra Charter*: www.icomos.org/australia/burra.html

Note 5. The text of the Valetta Convention can be consulted at: www.conventions.coe.int/Treaty/en/Treaties/Html/143.htm

Note 6. The text of the Act is available at www.statutelaw.gov.uk In 2007 there were about 8,000 scheduled monuments.

Note 7. Section 2 of the 1979 Act.

Note 8. Section 42 of the 1979 Act. Historic Scotland has a leaflet about metal detecting which can be found at www.historic-scotland.gov.uk/textonly/revised_metal_detecting.pdf

Note 9. The classes of activity that are deemed to have consent are:

Class I - some agricultural, horticultural or forestry works;

Class II - some works by the Coal Authority or their licensees;

Class III - some works by the British Waterways Board;

Class IV - works for the repair of machinery;

Class V - works urgently necessary for health and safety;

Class VI - certain works of archaeological evaluation;

Class VII - certain works executed under Agreements under section 17 of the Act (management agreements);

Class VIII - certain works grant-aided under Section 24 of the Act;

Class IX - certain works undertaken by the Royal Commission on the Ancient and Historical Monuments of Scotland.

Note 10. The Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulation 1981.

Note 11. It should be noted that in the 10 years 1995–2005 only 16 applications were refused, out of a total of 2,156. In 2005–06 no applications were refused out of 249.

Note 12. 1979 Act, Schedule 1, Pt I, para 3.9. Only around 13% of Scheduled Monument Consent applications are associated with a planning application. The rest relate to processes not covered by the planning system.

Note 13. Or where works are urgently necessary in the interests of health and safety (section 2.9 of the Ancient Monuments and Archaeological Areas Act 1979).

Note 14. If there is no hearing or inquiry then all representations to the Scottish Ministers will be considered before a decision is made. If there is an inquiry then the final decision on the Inquiry Reporter's recommendations is taken by the Planning Minister.

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

Note 16. These provisos are made because of experience in the 1960s to 1980s, when a large backlog of unpublished excavations developed; see G J Barclay & O Owen 'Historic Scotland's Backlog Project and the Projects Database', *Proceedings of the Society of Antiquaries of Scotland*, vol 125 (1995), 1–8.

http://ads.ahds.ac.uk/catalogue/adsdata/PSAS_2002/pdf/vol_125/125_001_008.pdf

Adequacy of resources will be determined on the basis of the scale and complexity of the project. It would be expected that an applicant for Scheduled Monument Consent to excavate would have completed and published projects of a comparable scale and complexity, and not have a backlog of unpublished fieldwork.

Annex A

Relationship of scheduled monument consent to planning permission

1. Scheduled Monument Consent and planning permission are two quite separate statutory requirements, governed by different laws which serve different purposes. What is material to one decision will not necessarily be material to the other. Both are required where ‘works’ defined in section 2(2) of the Ancient Monuments and Archaeological Areas Act 1979 are also ‘development’ defined in section 26 of the Town and Country Planning (Scotland) Act 1997. Consent granted under one regime is without prejudice to the other. Where both are required, the applicant must obtain both consents before work can commence. This relationship is further explained in paragraph 57 of *Scottish Planning Policy 1: The Planning System* (SPP 1), which deals with what in planning terms is ‘other legislation’.
2. The purpose and objectives of the planning system are set out in *Scottish Planning Policy 1*. Following from that, *National Planning Policy Guideline 5: Archaeology and Planning* (NPPG 5) confirms that the preservation of scheduled monuments, *in situ* and within an appropriate setting, is a material consideration in both the development planning and development control processes. The primary planning policy is set out at paragraph 17 of that document.
3. Scheduled Monument Consent and planning permission are both required where works/development would have a direct impact on the legally protected area of the monument, as defined in the scheduling documents. However, the provisions of the Ancient Monument Act do not extend beyond that. In the case of impact on the setting of the monument, securing the preservation of the monument ‘within an appropriate setting’ as required by national policy is solely a matter for the planning system. Whether any particular development will have an adverse impact on the setting of a scheduled monument is a matter of professional judgement. It will depend upon such variables as the nature, extent, design of the development proposed, the characteristics of the monument in question, its relationship to other monuments in the vicinity, its current landscape setting and its contribution to our understanding and appreciation of the monument.

4. The role of the planning system in the protection of both the site and setting of scheduled monuments is reflected in the statutory consultation requirements set out in the Town and Country Planning (General Development Procedure) (Scotland) Order 1992, and its 1994 amendment, and in the notification requirements of the Town and Country Planning (Notifications of Applications) (Scotland) Direction 1997.

Annex B

Partial Regulatory Impact Assessment

1. Title of proposal

1.1 Scottish Historic Environment Policy (SHEP) on Scheduled Monument Consent.

2. Purpose and intended effect

2.1 Objectives

SHEP on Scheduled Monument Consent

When finalised, the SHEP on Scheduled Monument Consent will set out Scottish Ministers' policy for the control of works affecting monuments included in the Schedule to the Ancient Monuments and Archaeological Areas Act 1979.

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 Scheduled Monument Consent

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 Scheduled Monument Consent.

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

- a. *risks* – there are certain risks involved in setting out the policy for scheduled monument consent. 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 deal with applications for Scheduled Monument Consent 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 Scheduled Monument Consent

The consultation draft of the document asks a few questions about whether certain measures are appropriate, whether requirements for control over intervention are the correct ones etc. Depending on the responses and subsequent policy consideration it may be that certain aspects of sScheduled Monument Consent will change slightly. Specific options have not been offered in the consultation and it is therefore difficult to say what these might be and to offer any meaningful analysis at this stage. It is not likely, however, that the process of Scheduled Monument Consent 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 land where there is a scheduled monument or owners of ancient monuments.

5.2 Analysis of costs and benefits:

Do nothing option

There will be no additional costs associated with this option.

Produce a policy document about scheduled monument consent 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 but if there are it is unlikely that either the changes or the costs will be significant.

One of the 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 Scheduled Monument Consent 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 will 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

Scheduled Monument Consent is given by Scottish Ministers through Historic Scotland. The main legislation is the Ancient Monuments and Archaeological Areas Act 1979. 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 Scheduled Monument Consent 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. In your response it would be helpful to know what you consider the equality issues to be.

