# Properties in the Care of Scottish Ministers

Cover picture: Historic Scotland staff carry out ongoing conservation work at Glasgow Cathedral

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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 their estate of properties in care.

## Responding to this consultation paper

1.2 We are inviting written responses to this consultation paper by **6 July 2007**. Please send your response to:

hs.shep@scotland.gsi.gov.uk

or

SHEP on Properties in Care 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 the is 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 If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.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 3 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 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 5 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, tel: 0131 244 4556).

1.14 All Scottish Executive consultation papers and related publications (eg, analysis of response reports) can be accessed at: 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 for consultation Scottish Ministers' policy on the conservation of and access to, the properties in their care which are looked after by Historic Scotland on their behalf.

2.4 Historic Scotland cares for 345 ancient monuments on behalf of Scottish Ministers. While no collection of properties can cover all aspects of the historic environment, the national portfolio of properties in care is representative of the sites and buildings that successive generations have seen as being worthy of the investment and special protection offered by state care. The estate covers a wide geographical and period spread, from Muness Castle in Shetland to New Abbey Corn Mill in Dumfries, and from Calanais Standing Stones in the west to Edinburgh Castle in the east. It extends from early prehistory through to the industrial age. The properties cared for by Historic Scotland complement what is held by other bodies and individuals.

2.5 The purpose of the state taking properties into its care is for the long term preservation, for the public benefit, of a collection of monuments which define significant aspects of Scotland's past. Much of that benefit lies in the properties being accessible to the people of Scotland and visitors to the country, now and for the future. In promoting these policies Ministers seek to ensure that the properties in care are a showcase for Scotland, demonstrating exemplary practice in conservation, enhancing their understanding and improving the provision of access and interpretation in a way which can stand comparison with the best in the world.

2.6 The properties in care have great cultural significance. They illustrate the history and development of Scotland and its people, and help to define its identity. They are a source of wonder, enjoyment and learning both for Scots and visitors, many of whom see Scotland's long history and rich culture as their principal reason for coming to this country. The properties and their associated collections of artefacts are unique and irreplaceable, which makes their preservation vital to our understanding of each monument's past and to its part in Scotland's history.

2.7 Fewer than 25% of the properties in care are owned by Scottish Ministers. Most monuments are in guardianship, which means that each is held under an individual arrangement with the monument's owner. This requires Historic Scotland to comply with a range of obligations, rights and constraints arising principally from the legislation (see 3.3 below) or from the terms of the specific deed of guardianship or leasehold (see Note 2). All have been taken into care for their preservation in perpetuity.

2.8 The principles that underpin Historic Scotland's work at the properties have developed over time. Initially, the simple preservation of the monument was all that was expected of the state. The provision of public access was added as a responsibility in 1900: since then the public perception of access and the requirements of the international conservation charters have continued to broaden (see Note 3). Historic Scotland has to meet these expectations by investing in the wider public benefits that come from understanding and interpreting monuments for a wide range of visitors.

2.9 The properties in care currently attract around three million recorded visitors a year, with many more visiting the non-staffed sites. This supports Scottish Ministers' important role in the promotion of tourism in Scotland. Entrance to more than 250 of these monuments is free. For properties where an entrance fee is charged, prices are set in line with similar properties operated by others in the sector. Visitors expect high standards of care, interpretation and visitor facilities, that reflect the character of each property and do not detract from its qualities. They expect that so far as possible, the properties will be accessible to all. Many of the properties are on occasion used for private or public events, for international gatherings, or as film locations. These various demands can make the management of often fragile sites a considerable challenge and such activities can only be encouraged where they do not conflict with Ministers' principal duties of care in relation to the properties.

2.10 Works at properties in care undertaken by Historic Scotland are currently covered by Crown immunity. This means that Historic Scotland's works at properties which are scheduled monuments do not require Scheduled Monument Consent. Ministers, however, have put in place a parallel system of 'scheduled monument clearance' for works at properties in care. This will apply to all properties in care and applies the same standards and tests to works. Works proposed by third parties, however, require formal Scheduled Monument Consent. Depending on the terms under which the monument is held in care, such works are also likely to require the permission of Historic Scotland as guardian, owner or leaseholder. Developments at properties in care are not exempt from the requirement to obtain planning permission from the local authority

# 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 3). 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*'. Article 5 ensures that 'the opening of archaeological sites to the public...does not adversely affect the archaeological and scientific character of such sites and their surroundings'. Article 9 provides an obligation to 'promote public awareness' through research, education, interpretation and display.

3.2 The United Kingdom has had legislation in place to protect ancient monuments since 1882. One part of that protection was the power of the Commissioners of Works to acquire ancient monuments for their protection and maintenance, by gift, purchase or agreement. It also provided powers for owners to retain nominal ownership of a monument, while passing the control and maintenance to the state by means of a deed of guardianship. Obligations and duties under the ancient monuments legislation have been extended over time.

3.3 Scottish Ministers' powers relating to the estate of properties in care are enshrined in the Ancient Monuments and Archaeological Areas Act 1979 (see Note 4). The Act places a duty on Scottish Ministers to maintain the monuments in their care and provides the powers to do 'all such things as may be necessary for the maintenance of the monument and for the exercise of proper control and management', including the provision of public access. Up-to-date information on the properties in state care is available from Historic Scotland either by writing or by visiting www.historic-scotland.gov.uk

3.4 Access to properties in care is regulated under section 19(1) of the 1979 Act and section 19(2)–(9) empowers Scottish Ministers to control and regulate that access (see Note 4).

3.5 Artefacts associated with the properties in care are not normally specifically scheduled under the 1979 Act but are protected by property law.

3.6 Historic Scotland is required to take full account of the requirements of all current health and safety legislation. It also recognises its requirement under the anti-discrimination legislation and is implementing its duty to promote race, gender and disability equality by the provision of an operational policy to further the elimination of inequalities. It will shortly produce a Gaelic language plan for its operations.

# 4. Scottish Ministers' policy on properties in their care

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 (see Note 5). In the context of properties in care sustainable use and management means ensuring the long-term preservation of a broad collection of properties, while enabling as many people as possible to access, understand and enjoy them.

## Composition of the estate

4.2 Scottish Ministers will maintain an estate of properties with their associated collections in state care to preserve and make available a representative collection of the archaeological and architectural past, both for the enjoyment and understanding of the nation, and to ensure that it is preserved for future generations.

4.3 The legislation envisages monuments and sites being taken into care in perpetuity. Proposals to add to the estate, therefore, must be very carefully considered. In addition to assessing their merit in terms of their cultural significance, the implications for the balance of the types of property within the estate, and present risks to the monument, Historic Scotland also considers what alternative options for care there might be and assesses the public benefit that would flow from the new investment. The costs of caring for the existing estate have tended to rise in real terms, so that a realistic approach needs to be taken to targeting public funds where they will best achieve the primary aims of Scottish Ministers in relation to their properties in care.

4.4 Because of the importance of the properties in care as a collection, and because of the level of state investment involved, it is currently expected that monuments will be held for the long term by the state. Only in exceptional circumstances is a monument likely to go back out of care, and then only

once satisfactory arrangements are in place for the long-term preservation of the property. In coming to a view on disposals, Scottish Ministers will also take account of the implications for the balance of the remainder of the estate and any possible loss of public access or understanding of the monument. Each case will require the approval of Scottish Ministers. This policy will not prevent Historic Scotland delegating by agreement to local bodies responsibilities for managing the visitor facilities at particular properties, as happens at present.

4.5 The Historic Environment Advisory Council for Scotland has recently reported to Ministers on '*the criteria that should be used to assess whether a property should be taken into state care*'. In their conclusions (see Note 6) they suggested that the criteria to be used should be as follows:

Eligibility – must be of national importance;

Suitability – must contribute something additional to the balance of the current collection of properties;

Feasibility – must be available, capable of management by the state and affordable;

Appropriateness – alternative operators have been fully considered.

## Question 1:

***In the light of the conclusions in the HEACS report, do you agree with the draft policies set out in paragraphs 4.3 to 4.5 above? If not, why not?***

## Conservation of properties

4.6 The primary purpose of monuments coming into care is for their long-term preservation. Scottish Ministers therefore see the long-term preservation of the monument as their principal consideration. They will put in place procedures that support this aim.

4.7 Proposals for works by Historic Scotland at all properties in care will be subject to rigorous internal assessment, closely comparable to the statutory consent regime and will be considered in the context of Scottish Ministers' policies for Scheduled Monument Consent (see Scottish Historic Environment Policy on Scheduled Monument Consent).

4.8 The duties to preserve and provide public access to properties in care are laid out in the 1979 Act and are undertaken by Historic Scotland on behalf of Scottish Ministers. Consequently, requests to Historic Scotland to use or to provide activities at any property in care (whether or not the request would involve works covered by Scheduled Monument Consent) will be the subject of careful scrutiny to assess the impact of the proposed activity on the monument and the public's understanding and enjoyment of it. This assessment will be made in the context of policies contained in this document and other Scottish Historic Environment Policies including that on Scheduled Monument Consent and will, in particular, consider the effect of the proposals in relation to the maintenance of the monument, public access to the monument, and the proper control and management of the monument by Scottish Ministers. Historic Scotland, encourages early discussion with them, as guardians, owners or leaseholders of the property about any proposal to use or provide activities at a property in care.

4.9 Works proposed by third parties at properties in care are likely to require Scheduled Monument Consent. They may require other consents including Listed Building Consent, and planning permission, depending on the designation of the property and the nature of the works. They will be considered against the appropriate Scottish Historic Environment Policies and Scottish Planning Policies and the assessment of the impact of a proposal as mentioned in paragraph 4.8 will be an important material consideration to be taken into account in the determination of a Scheduled Monument Consent application.

4.10 Scottish Ministers will ensure that all conservation decisions at properties in care are based on an evaluation of significance, informed by a thorough knowledge and understanding of their monuments. Scottish Ministers will ensure that an assessment of significance is provided for all properties in care, measured against internationally-recognised criteria and a broad understanding of Scotland's past (see Note 7). They will seek to promote conservation and an understanding of Scotland's past through appropriate evaluation, survey, research, investigation, study and interpretation of the properties in care.

4.11 In order to secure the maintenance of conservation standards Scottish Ministers will ensure that Historic Scotland, on their behalf, maintains an appropriate record of the buildings, sites and monuments in their care, and the work carried out upon them. It is recognised that improvements in knowledge, understanding, international conservation practice and techniques of analysis may lead to reassessment of conservation needs.

4.12 Scottish Ministers are committed to the proper management and implementation of conservation at their properties in care, each of which has its own particular requirements. They therefore expect Historic Scotland to run an effective programme of inspection, consolidation, maintenance and repair at properties in care, employing the best available techniques and the most suitable materials. Scottish Ministers also expect that this work is implemented by staff with the appropriate knowledge, expertise, craft skills, training and resources. The quality of conservation work at properties in care should stand up to comparison with the best in the world and will ensure that they are preserved in the condition in which it has come down to them,

4.13 Scottish Ministers expect Historic Scotland to balance the need to minimise the disturbance of archaeology with the enhancement of knowledge through excavation. Such excavation will be carried out to the highest standards and the results made widely available (see Note 8).

4.14 The process of preserving monuments and presenting them to the public inevitably involves the introduction of new elements. Historic Scotland will aim to protect the authenticity of the monuments by ensuring that interventions and works will be the minimum necessary in order to preserve what is culturally significant, or to enhance understanding of the monument.

4.15 Major conservation interventions, new facilities or additions will only be undertaken where it is clearly necessary to secure the longer-term preservation of the monument, where they add significantly to the understanding of the monument or will clearly generate public benefits which outweigh any impact on the cultural significance of the monument. Historic Scotland will seek to make all such work reversible, and as sympathetic as possible with the historic fabric, and will implement it in a way which ensures that that modern interventions do not appear to be part of the historic part of the monument and respects their nationally important setting.

4.16 Scottish Ministers recognise that properties in care are more than the sum of their constituent parts. They have important historical, cultural or emotional associations that give them a particular significance to the life of the nation, as well as to the local community within which they are set. Many have outstanding landscape or picturesque values and settings. Scottish Ministers will conserve the properties in care in a way that preserves these qualities within an appropriate setting, and will work with others to protect the wider setting.

4.17 Recording change and the decisions that led to it will form an important part of the conservation archive. Scottish Ministers expect Historic Scotland to learn from its own conservation experiences and to encourage best practice.

## Access to properties

4.18 The provision of access to properties in care is one of Scottish Ministers' principal responsibilities. The control and management of sites requires the provision of visitor facilities and information to support this. Access and the associated understanding and promotion of the sites lies at the heart of the sustainable management of properties in care.

4.19 Subject to the overriding objective of conservation and to the careful consideration of the safety of visitors and staff, Scottish Ministers are committed to improving, enhancing and encouraging all forms of access and understanding at their properties and their collections, and to setting the highest standards.

4.20 The process of planning for access put in place by Scottish Ministers will seek to optimise access. It will not, however, always be possible to provide full physical and intellectual access to the same degree at all sites. Some of the properties were designed to be difficult to access, and providing full access to these, or to parts of others, would require interventions that would be physically damaging or visually intrusive to an extent which is inconsistent with the primary duty of Scottish Ministers to conserve the properties in their care. Where full access is not possible they expect Historic Scotland to make efforts to provide other forms of access, particularly at popular sites.

4.21 Scottish Ministers are committed to developing the highest standards of practice in the presentation and interpretation of the properties, both on and off site. Where local or national interest groups, including equality and disability groups, exist, they expect Historic Scotland to involve user groups and local communities in planning and developing site facilities and in monitoring the effectiveness of the new provision.

4.22 A small number of properties in care is not currently accessible to the public on a regular basis, and occasionally parts of other properties may be closed for safety or security reasons. This could be because special events are taking place or for other operational reasons. Scottish Ministers expect Historic

Scotland to manage such closures and to advertise changes to opening times effectively. A clear explanation should be provided for the closure in each case.

4.23 Scottish Ministers are committed to promoting the use, understanding and enjoyment of Scotland's historic environment as a valuable resource for learning and teaching. They expect the properties to provide a focus to inspire, motivate and nurture learners of all ages and backgrounds, through both formal education and lifelong learning across Scotland. There is a commitment to continuing free educational access to properties in care.

4.24 The cost of caring effectively for the estate of properties in care is high. Scottish Ministers are conscious of the wider economic benefits which arise from visits to the properties and do not expect the estate to generate sufficient revenue to cover these costs. They do however consider that, as in most other countries, visitors should meet part of the costs of operating the estate. They expect Historic Scotland to set admission and other charges which are broadly comparable with those at attractions operated by others and to take into account the facilities provided at each site in setting these charges. For a range of reasons, well over 250 of the properties are likely to remain free for the foreseeable future.

## Question 2:

***Do these policies give a clear indication of how properties in care will be managed and why; and do they achieve the right balance between preservation, access and enjoyment of the properties. If not, why not?***

# 5. Implementation

5.1 Implementation of the principles laid out in this policy paper will be embedded in business planning, processes and procedures across Historic Scotland. Where there are particular requirements, operational policy or guidance will be put in place after appropriate consultation. These will include operational policy or guidance on conservation, equality duties (including disability, gender, race and language), admissions charging, acquisitions and disposals, and the natural environment at properties in care. An early outcome will be the publication of an Access Guide to properties in care.

5.2 In order to improve knowledge, increase understanding and prioritise resources Historic Scotland will maintain a programme of research on different aspects of work on properties in care.

5.3 Historic Scotland will continue an active programme of conservation at properties in care. This is planned and documented in Historic Scotland's annual works programme.

5.4 Historic Scotland will continue an active programme of interpretation, education and lifelong learning through the properties in care.

5.5 Historic Scotland will implement its health and safety policy for properties in care.

5.6 Historic Scotland will include equality and disability training in its training programmes.

# 6. Contacts

6.1 Further information on Properties in Care can be found on Historic Scotland's website www.historic-scotland.gov.uk or from Historic Scotland at the address below.

6.2 Specific queries on properties care or this document should be directed to:

The Head of Cultural Resources
Properties in Care
Historic Scotland
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Tel: 0131 668 8763
Doreen.grove@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. Properties in the care of Scottish Ministers are held either by ownership (around a third of the estate), guardianship (by far the majority), or a small number by leasehold.

Note 3. The Valetta Convention can be accessed at: conventions.coe.int/Treaty/en/Treaties/Html/143.htm

In addition, information on the development of international conservation charters is available in Historic Scotland *Technical Advice Note 8*.

Note 4. The legal effect of guardianship is set out in section 13 of the Ancient Monuments and Archaeological Areas Act 1979. The Act can be accessed at: www.statutelaw.gov.uk

Section 13.2 of the 1979 Act details the specific duty to maintain the monuments and to exercise proper control and management.

Access is regulated under section 19(1):

- subject to the provisions of this section, the public shall have access to any monument under the ownership or guardianship of the Scottish Ministers.

Section 19 (2)–(9) empowers Scottish Ministers to control and regulate access by:

- setting the times of normal public access (what constitutes 'normal' is not defined by the Act, thereby enabling Scottish Ministers and Historic Scotland on their behalf to take account of a variety of considerations including location, the fragility of the monument and visitor safety);
- charging admission;
- excluding the public from all or any part of a monument in the interests of safety or of the maintenance or preservation of the monument;
- prohibiting or regulating any act or thing which would tend to injure or disfigure a monument or to disturb the public in their enjoyment of it;

- refusing admission to anyone where there is reasonable cause to believe they will injure or disfigure a monument or its amenities, or are likely to disturb the public enjoyment of it.

Although the portable objects associated with the properties in care are not normally scheduled under the 1979 Act, they are protected by property law. Access is a major element underpinning the Museums, Libraries and Archives Council's (MLA) accreditation scheme. On behalf of Scottish Ministers, Historic Scotland operates as a museum authority registered with MLA and is working towards accreditation status in 2008.

Note 5. *Choosing Our Future: Scotland's Sustainable Development Strategy,* para 1.3.

Note 6. Historic Environment Advisory Council for Scotland *Report and recommendations on the criteria that should be used to assess whether a property should be taken into state care July 2006.* The report can be accessed at: www.heacs.org.uk/documents/2000/propertycare.pdf or by writing to HEACS, Longmore House, Salisbury Place, Edinburgh EH9 1SH.

Note 7. The categories 'artistic, archaeological, architectural, historic and traditional' are set out in section 61(12) of the Ancient Monuments and Archaeological Areas Act 1979; this is discussed in *Scottish Historic Environment Policy 2*: *Scheduling: protecting Scotland's nationally important monuments*. In assessing the cultural significance of properties in care, spiritual importance is also included where appropriate, in line with international best practice.

Note 8. Following the principles laid out by Scottish Ministers in SHEP on *Scheduled Monument Consent*.

# Annex

## Equality Impact Assessment

Historic Scotland will produce an Equality Impact Assessment for this SHEP on Properties in the Care of Scottish Ministers 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.