

Listed Building Consent

Cover picture: Detail of Dymock's Building in Bo'ness which was converted to flats in 2004

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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 Listed Building Consent.

Responding to this consultation paper

- 1.2 We are inviting written responses to this consultation paper by **3 August 2007**. Please send your response to:

hs.shep@scotland.gsi.gov.uk

or

SHEP on Listed Building 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 If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.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 31 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 2 November 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 for the control of works affecting buildings included in the statutory List of buildings of special architectural or historic interest, and thus legally protected as 'listed buildings'. It should be read in conjunction with the SHEP on the process of listing – the adding of buildings and structures to the statutory list. The purpose of this control is to ensure that before any proposed alterations are agreed the implications of the proposed works for the architectural and historic interest of the building are carefully considered.
- 2.4 Scotland's listed buildings reflect the broad range of Scotland's historic environment, from tower-houses to 20th-century churches and schools. They are a finite resource which not only contain unique information about Scotland's past but help to define a strong sense of place for communities and visitors. Such buildings are part of Scotland's evolving identity, whether at a local or a national level, and are valuable both for their own sake and as a resource for research, education, social and economic regeneration, leisure and tourism.
- 2.5 There is a close relationship between the planning and Listed Building Consent systems (see Annex A). Scottish Ministers' policy on Listed Building Consent should be read in conjunction with *National Planning Policy Guideline (NPPG) 18: Planning and the Historic Environment*, which deals primarily with listed buildings, conservation areas, World Heritage Sites, historic gardens, designed landscapes and their settings. It complements *NPPG 5: Archaeology and Planning*, which sets out the role of the planning system in protecting ancient monuments and archaeological sites and landscapes. Historic Scotland and Planning Division in the Scottish Executive

Development Department are working together to fulfil a commitment to review the possibility of combining consent regimes, in the wider context of considering the desirability of changes in the historic environment legislation. Scottish Ministers may consult on policy on conservation areas in the SHEP series in due course.

3. The legal context

- 3.1 The law providing for the listing of buildings and for Listed Building Consent in Scotland is the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Note 2 provides more information on what aspects of a listed building are covered by the Listed Building Consent provisions, on what categories of works are exempt from the requirement for Listed Building Consent and on what processes have to be followed by applicants and by planning authorities in dealing with applications.
- 3.2 Applications for Listed Building Consent are determined by the planning authority except where cases are called in by Scottish Ministers for their own determination or where the local authority is the applicant. The key principle in the determination of an application for Listed Building Consent, is that the planning authority is required to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses (see Note 2).

4. Scottish Ministers' policy on Listed Building Consent

- 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 3). Sustainable management in the context of Listed Building Consent is ensuring that changes are based on the proper understanding of the building and the basis on which it was listed.
- 4.2 In the vast majority of cases listed buildings have survived because they are adaptable and have met the needs of successive generations of owners. Conservation and re-use prolongs the life of a building but there is clearly a balance to be struck between achieving flexible re-use and carrying out works that will adversely affect the internal or external character of a building or its setting. Each case must be judged on its own merits but in general terms listing is not meant to 'fossilise' a building nor to prevent it from being adapted to modern requirements. The appropriate balance between sympathetic adaptation to the character and to the special interest of the building and unnecessary damage is a difficult one, requiring careful consideration of the particular significance of the asset and the likely effects of alterations.
- 4.3 There is a presumption against development that adversely affects the character of a listed building or its setting.
- 4.4 It is often the case that physical changes are necessary to prolong the sustainable life of a building but it is important to understand how to minimise the impact of alterations or interventions. Knowing what is important about the building is central to an understanding of how to tailor proposals to minimise any adverse effect on its character. Applications should demonstrate that in arriving at a strategy for intervention, the importance of the building and the potential impact of development proposals upon its special interest and setting (see Annex B) has been fully understood. That special interest will include particular physical features of the building that justify its listed status. Special interest is likely to be in one or more of the following areas:

- a. age and rarity;
- b. architectural interest;
- c. close historical associations.

Applications should also take into account any adverse impact on adjacent listed buildings.

- 4.5 Where significant change is proposed to a listed building applicants should prepare a statement of significance and a consideration of the impact of the proposals (at a scale appropriate to the building) before submitting the application. Any proposed intervention should be planned carefully and sensitively having regard to the special architectural and historic interest, character and setting of the building.
- 4.6 It is also often the case that a change in the use of a building is necessary to prolong its sustainable life. Applicants should seek to demonstrate that their proposals represent the best viable use for the building and should set out the likely economic or public benefits. The benefits which would flow from a change in use, and the associated alterations to the building, must be set against the potential impact on the special interest of the building and its setting. The best viable use may not necessarily be the most profitable use. The aim should be to find a new economic use that is viable over the long term with minimum adverse impact upon the special interest of the building and its setting. Deciding whether development proposals demonstrate best viable use will require careful judgement, based on market awareness, technical knowledge and a proper understanding of the relative importance of the different aspects of the historic asset in question.

Question 1:

Are these reasonable tests to set for applications for listed building consent for alterations? If not, why not?

- 4.7 Within the context of the presumption set out at 4.3, Ministers expect the following considerations to be taken into account when applications for Listed Building Consent are being determined:
- a. the importance of the building, the special interest of which is likely to lie in its age and rarity, architectural interest and close historical associations;

- b. the impact of the proposals on that special interest;
- c. any impact on adjacent listed buildings;
- d. whether the proposals represent the best viable use;
- e. the economic or public benefits of the proposals.

Question 2:

Are these considerations the appropriate ones to be applied when considering an application for listed building consent? If not then why not?

Demolition

- 4.8 There is a presumption against the demolition of any listed building unless it is demonstrated that every effort has been exerted by all concerned to find realistic ways of keeping it.
- 4.9 Applications for the demolition of listed buildings should demonstrate an understanding of the special interest of the building and its setting. They should normally be considered along with proposals for the subsequent use of the site. They should demonstrate that reasonable attempts have been made to find a suitable alternative use for the building which would safeguard its future. For example, applicants who cannot find a suitable use for a listed building are expected to place it on the market for sale or lease, at a price reflecting its condition and location, for a reasonable length of time, without success, before consent for demolition could be granted (see Note 4). They should provide an assessment of the costs and benefits associated with other possible alternative uses, as compared with the benefits associated with the proposed new use of the site.
- 4.10 Ministers expect the following considerations to be taken into account when applications for Listed Building Consent for demolition are being determined:
 - a. the importance of the building;
 - b. any impact on adjacent listed buildings;
 - c. the scope for alternative uses for the building which would safeguard its future;
 - d. the adequacy of efforts to find practical ways of keeping the building;
 - e. the economic and public benefits associated with the proposal.

- 4.11 Consent should not be granted for demolition unless the authority proposing to grant the consent has itself thoroughly investigated the scope for avoiding demolition. Where consent is granted a condition should be imposed prohibiting demolition until a contract has been let for a replacement development, thereby avoiding the possibility of a gap-site.

Question 3:

Are these considerations the appropriate ones to be applied when considering applications for listed building consent for demolition? If not, then why not?

5. Implementation

- 5.1 Historic Scotland acts on behalf of Scottish Ministers, working closely with planning authorities, in implementing this policy on consent for works affecting listed buildings. In carrying out this work Historic Scotland will:
- a. publish in its corporate plan the targets set by the Scottish Ministers' for dealing with Listed Building Consent casework;
 - b. keep the policies on Listed Building Consent under review;
 - c. communicate information on Scottish Ministers' role in Listed Building Consent in clear language;
 - d. make information on listed buildings readily available;
 - e. make its decision-making process transparent.

Question 4:

Are there any other principles which Historic Scotland should adhere to when implementing Scottish Ministers' policy on listed building consent? If so, then what should they be and why?

- 5.2 Ministers expect that the information provided with applications for Listed Building Consent should be sufficient to enable planning authorities and Scottish Ministers to form a judgement, not only on the intended development of the listed building itself, but also any associated development of which the listed building forms a part. This requirement is in addition to those in place to notify Scottish Ministers of proposals involving the alteration or extension of listed buildings. The responsibility lies with the applicant to ensure that applications contain all the necessary information. Where significant change is being proposed on economic grounds, Scottish Ministers would expect applicants to provide supporting information to demonstrate this case clearly and that no realistic alternative exist.
- 5.3 When considering a developer's proposals to integrate listed buildings into an overall development, Ministers expect planning authorities to take into account not only the desirability of preserving the building's historic fabric but the need to maintain it in an appropriate setting. Planning authorities involved in discussions with developers where Listed Building Consent

for category A and B buildings, or for significant buildings within a World Heritage Site, will be an issue will usually find it useful to involve Historic Scotland at an early stage in discussions.

6. Contacts

- 6.1 Further information on Listed Building Consent 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 Bearing in mind that planning authorities have primary responsibility for the Listed Building Consent process, specific queries on Historic Scotland's role should be directed to:

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

Tel: 0131 668 8981/8717

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. a. The text of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 can be found at: www.statutelaw.gov.uk

What is covered by listing

b. Any object or structure which is fixed to a listed building, or which is 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 included within the scope of listing if physically attached to the 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 plasterwork or painted ceilings, chimneypieces and panelling.

Effects of listing

e. Once a building is listed it becomes a criminal offence under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1997 to carry out or cause to be carried out, without Listed Building Consent, any demolition works or any works which alter or extend the building which would affect the character of the listed building as a building of special architectural or historic interest. The impact of works on a building's character must be judged carefully in respect of each application for Listed Building Consent.

When is Listed Building Consent required?

f. Where a planning authority considers that proposed works would not affect a building's character, it may indicate to an applicant that Listed Building Consent is not required. If a planning authority judges that Listed Building Consent is needed, the applicant must prepare drawings and any

other related documents as required. The scope of the information required will vary considerably depending on the circumstances of the case.

g. Listed Building Consent is also not required in the following circumstances:

i. for works to objects or structures erected within the curtilage of a listed building since 1 July 1948 and not physically attached to the building;

ii. for works of alteration or extension to ecclesiastical buildings in use as such;

iii. for works to buildings which are scheduled as monuments and protected by the Ancient Monuments legislation, although consent under the terms of that legislation will almost certainly be required (Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, section 55);

iv. for erection of a free-standing building in the curtilage of a listed building. Exceptionally, however, a proposal to build a substantial new structure extremely close to the listed building, but not physically attached, which the planning authority considers would be clearly out of character with the building or its setting could be regarded as constituting an alteration or extension to the listed building. Therefore it may be subject to listed building control. However, when considering a planning application for development within the curtilage of a listed building a planning authority must take into account the impact on its setting. It must also take account of alterations to any buildings within its curtilage (Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, section 59).

h. Applications for Listed Building Consent are determined by the local authority, unless the local authority is itself the applicant, in which case Historic Scotland would consider the proposal. Where any application proceeds to Public Local Inquiry the final decision is taken by the Planning Division of the Scottish Executive Development Department, acting for Scottish Ministers.

i. Under section 14(2) of the 1997 Act, in the determination of an application for Listed Building Consent, the planning authority is required to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.

j. If a local authority is minded to grant Listed Building Consent affecting a listed building, the application is passed to the Scottish Ministers, who have

a statutory 28-day period (unless extended) in which to decide whether to call in the application for their own decision. Scottish Ministers are advised by Historic Scotland in such cases. Applications for Listed Building Consent which are refused by a council's planning committee are not referred to the Scottish Ministers. In such cases, and in instances where Listed Building Consent is granted subject to conditions which the applicant considers unreasonable, the applicant may appeal to Scottish Ministers.

Setting

k. Under section 59(1) of the 1997 Act the planning authority, in determining any application for planning consent for development that affects a listed building or its setting, is required to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.

l. Planning authorities must consult Scottish Ministers in respect of applications under the Town and Country Planning (Scotland) Act 1997 that affect a category A listed building or its setting (Town and Country Planning (General Development Procedure) (Scotland) Order 1992).

Demolition

m. Listed Building Consent is required for the demolition of a listed building. Demolition means the destruction, or substantial destruction, of the whole building. Less significant downtakings are regarded as works of alteration. The question of whether a proposal falls into the category of demolition or alteration is ultimately one of fact and degree, and requires careful consideration by the planning authority.

Exemptions

n. Under the terms of section 54 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 all places of worship in ecclesiastical use in Scotland are exempt from the need to apply for Listed Building Consent. The exemption for ecclesiastical buildings does not cover the demolition of a listed ecclesiastical building, since by definition ecclesiastical use must cease before demolition is carried out. Neither does it apply to any works to a former ecclesiastical building which has passed into secular use or which is disused. Exemption does not apply to a building used or available for use by a minister of religion as a residence. Similarly, listed churchyards taken over by local authorities as graveyards are not exempt from the requirement to obtain Listed Building Consent for works to those graveyards.

o. Notwithstanding the exemption, there is a voluntary arrangement currently in place and agreed by Historic Scotland, the Scottish Churches Committee and COSLA, in consultation with the Scottish Society of Directors of Planning. Under this arrangement it was agreed to apply listed building control to buildings used by certain denominations in respect of works proposed to the exterior of churches in ecclesiastical use. The following denominations only, being members of the Scottish Churches Committee, are included:

Associated Presbyterian Churches

Baptist Union of Scotland

Church of Scotland

Free Church of Scotland

Free Presbyterian Church

Methodist Church in Scotland

Roman Catholic Church in Scotland

Scottish Episcopal Church

United Free Church of Scotland

United Reformed Church Scotland Synod (formerly Scottish Congregational Church)

Miscellaneous

p. Certain permitted development rights that would not normally require planning permission do not apply within the curtilage of listed buildings. This means that planning permission is required for minor forms of development such as erecting fences, walls, gates or small sheds.

q. From 12 June 2006 the Crown must obtain Listed Building Consent for works to a listed building.

r. In some cases buildings or structures are both scheduled ancient monuments and listed. In such cases anyone wanting to undertake works which affect or cover the monument must apply only for Scheduled Monument Consent. The application is made to Scottish Ministers, and the relevant parts of the listed buildings legislation do not apply (see Note 2, para g iii above). Where planning permission for development work is sought

in respect of a building which is both scheduled and listed the planning authority must still consider whether it will affect the listed building's setting. If it thinks it would, it must advertise the application. For departments and agencies of the UK government and Scottish Executive bodies undertaking works there is a parallel system known as Scheduled Monument Clearance. This is a process which Historic Scotland also applies to itself. The same principles and procedures govern both the Scheduled Monument Consent and the Clearance processes. This process is also applied to the few properties that are in the care of Scottish Ministers that are listed but not scheduled and is additional to fulfilling any requirement to seek Listed Building Consent from local authorities.

Note 3. *Choosing Our Future: Scotland's Sustainable Development Strategy, 2005*, para 1.3.

Note 4. When considering whether a listed property has been adequately marketed, planning authorities may wish to use the services provided by the Buildings at Risk Officer, funded by Historic Scotland and administered by the Scottish Civic Trust, The Tobacco Merchants House, 42 Miller Street, Glasgow G1 1DT. The Scottish Civic Trust maintains a website (www.buildingsatrisk.org.uk) which provides information on properties of architectural or historic merit throughout the country that are considered to be at risk. The Buildings at Risk Officer assists in the sale or lease of historic buildings by maintaining a register of available buildings.

Annex A

Listed Building Consent and planning permission

1. Listed Building Consent and planning permission are two quite separate statutory requirements governed by different laws which serve different purposes. Both are required where development defined in section 26 of the Town and Country Planning (Scotland) Act 1997 is to be undertaken. Consent granted under one regime is without prejudice to the other. Where both are required the applicant must obtain both 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 SPP 1. Following from that, *National Planning Policy Guideline 18: Planning and the Historic Environment* confirms that the preservation of listed buildings and their setting is a material consideration in both the development planning and development control processes.

Annex B

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 C

Partial Regulatory Impact Assessment

1. Title of proposal

1.1 **Scottish Historic Environment Policy (SHEP) on Listed Building Consent.**

2. Purpose and intended effect

2.1 **Objectives**

SHEP on Listed Building Consent

When finalised, the SHEP on Listed Building Consent will set out Scottish Ministers' policy for the control of works affecting listed buildings included in the statutory List of buildings of special architectural or historic interest, and thus legally protected.

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 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Ancient Monuments and Archaeological Areas Act 1979) 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 Listed Building 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 main 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 up-to-date 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. The lack of an up-to-date policy statement will create uncertainty amongst applicants for consent.

Option 2 – produce a policy document about Listed Building 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 Listed Building 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 expect change to listed buildings to be managed. There should be full compliance with it by Historic Scotland staff but how planning authorities comply with it may need to be considered.

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

d. *implementation and ownership* – planning authorities must notify Scottish Ministers if they propose to grant Listed Building Consent for the demolition of any listed building or for alteration or extension of any listed building in categories A or B. Given this, planning authorities will be responsible for some of the implementation. Local authorities are already implementing a consent system under the legislation and no new duties or responsibilities are imposed. When the policy document is finalised Historic Scotland will publish and distribute it.

Options for changes to Listed Building Consent

The consultation draft of the document will ask for comments about the tests to set for applications for Listed Building Consent for alterations; the considerations to be applied when considering an application for Listed Building Consent including consent for demolition and which principles historic Scotland should adhere to when implementing Scottish Ministers' policy on Listed Building Consent. Depending on the responses and subsequent policy consideration it may be that certain aspects of Listed Building Consent will change slightly. Specific options have not been offered in the consultation and it is, therefore, difficult to say what these might be or 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, and local authorities.

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 Listed Building 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 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 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 Listed building Consent or any changes to the system arising from 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 for this 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 D

Equality Impact Assessment

Historic Scotland considers it may have to produce an Equality Impact Assessment for this SHEP on Listed Building 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 as a result of the consultation. In your response it would be helpful to know what you consider the equality issues to be.

