

**SCOTTISH HISTORIC ENVIRONMENT POLICY SERIES**

**SCHEDULED MONUMENT CONSENT**

**ANALYSIS REPORT**

National Policy Team  
Historic Scotland  
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## **ACKNOWLEDGEMENTS**

Historic Scotland would like to thank all those who responded to this consultation document and also the Built Environment Forum for Scotland for organising a workshop to gather stakeholder views on the draft SHEP document.

## 1. INTRODUCTION

1.1 This document fulfils the requirement for an ‘Analysis Report’ set out in the Scottish Government’s good practice guidance on consultation. The objective of this report is to analyse and report on the responses made to the consultation on the Scheduled Monument Consent SHEP, not to set out Scottish Ministers’ comments on or responses to those suggestions. The inclusion of a comment or suggestion does not imply that any contribution is accepted as accurately characterising the actual policy position or operational practice; footnotes provide more information where necessary.

1.2 The responses to the consultation process seemed to suggest that Historic Scotland (HS) should provide more information about the purpose and context of the SHEP series. The Scottish Historic Environment Policy (SHEP) series is a new series of documents which sets out Ministers’ policy for the historic environment and is intended to provide clearer policy direction for Historic Scotland. The SHEPs have the same authority as and sit alongside the Scottish Planning Policy series and other relevant Ministerial policy documents.

1.3 The SHEPs arise from a recommendation in the review of HS in 2004-05 that an “Executive endorsed policy statement for the historic environment in Scotland should be developed in consultation with stakeholders...”. The Framework Document of 2004 sets out the role and responsibilities of Historic Scotland, and the respective roles of Scottish Ministers and the Chief Executive, who is accountable to Ministers for the operation of the agency. The SHEPs are mainly about the policies and roles of Ministers, although some operational matters are touched upon.

1.4 The SHEPs vary in content. *SHEP 1: Scotland’s Historic Environment* sets out strategic policy for the historic environment and provides a framework for the day-to-day work of organisations that have a role and interest in managing the historic environment. These include the Scottish Government, local authorities and the range of bodies that is accountable to Scottish Ministers, including Historic Scotland.

1.5 Other SHEPs deal in more detail with established areas of policy, such as Scheduling and Listing and the related consent processes, and for these subjects the SHEPs are intended largely to consolidate and clarify the status of existing policy, while providing an opportunity for public comment on a range of policy and some operational issues. Other SHEPs deal with less-developed areas of policy, such as Gardens and Designed Landscapes or Battlefields. These documents are more exploratory and the consultation versions will often also include more questions about operational matters.

1.6 The draft SHEP on Scheduled Monument Consent (SMC) sets out Scottish Ministers’ policy for the control of works affecting scheduled monuments. It explained the legal basis for protecting archaeological sites of national significance and set out the existing policy principles which are used to implement this law<sup>1</sup>. The document asked a number of questions relating to the principles of sustainable management of the historic environment and to existing definitions and criteria used to determine SMC applications.

1.7 The consultation document was published on 26 March 2007 and the consultation period closed on 22 June 2007.

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<sup>1</sup> The Ancient Monuments and Archaeological Areas Act 1979

1.8 Approximately 350 copies of the consultation document were sent to a variety of organisations and individuals. A list of respondents is attached at Annex A. A total of 20 responses was received, representing a 6% response rate. A breakdown of responses is provided below. In most cases, responses formed the official response of the organisation. Responses from consultees who agreed that their submissions be made public are available at <http://www.historic-scotland.gov.uk/index/consultations/pastconsultations/repsonsetoconsultationonsmc.htm> .

1.9 This SHEP did not ask explicit questions about the operation of the SMC system, but some respondents made comments on operational matters. While the majority of responses were closely related to the subject of the consultation, others were not. While not relevant to Ministerial policy, we have noted these responses at the end of the Analysis section and, where appropriate, will respond to them, or note them for further consideration within Historic Scotland.

**Table 1: Responses to consultation by interest group**

	Local Authorities <sup>2</sup>	Heritage Bodies	NDPBs	Private Companies
<b>Number of Respondents</b>	11	5	2	2

1.1 During the consultation period, Historic Scotland ran a workshop in conjunction with the Built Environment Forum for Scotland (BEFS). The workshop was attended by 13 individuals and representatives of organisations with an interest in the process of scheduled monument consent. Historic Scotland has received a report from this workshop (available at: <http://www.befs.org.uk/issues.htm> ) and although its findings are not included in this analysis report they will be used to inform Historic Scotland’s consideration of the issues.

## **2. METHODOLOGY**

2.1 The response data were recorded, organised and summarised on a spreadsheet. A record was made of positive and negative responses and other issues raised. A frequency count was made of the overall number of responses by interest group and of the responses to each question. A qualitative analysis of the data was then carried out using this framework. The summarised data for each question were reviewed and key themes and contrasting views were identified.

2.2 It is important to note that the findings of the report are specific to the responses (few in number in this case) made to the consultation exercise and cannot reflect the weight or range of views likely to be found within the population as a whole.

## **3. BREAKDOWN OF RESPONSES**

3.1 In spite of the large number of documents distributed, only 20 responses were received. Many of the responses received were very detailed. Table 1, above, shows the distribution of responses received.

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<sup>2</sup> Including National Park Authorities.

3.2 The consultation asked five questions, all of which invited yes/no responses as well as respondents' views. A breakdown of responses is provided below.

**Table 2: Breakdown of Responses to Questions**

<b>Questions</b>	<b>Yes</b>	<b>No</b>	<b>Qualified agreement with statement</b>	<b>Substantial suggestions for change</b>	<b>Question not answered</b>
<b>1. Are there other significant documents that should be listed here?</b>	1	7	0	5	7
<b>2. Is this a satisfactory statement of the purpose of the sustainable management of the historic environment and if not, why not?</b>	7	0	2	6	5
<b>3. Is this the appropriate measure to use? If you do not believe it is, please explain why.</b>	5	2	1	6	6
<b>4. Are the criteria mentioned in 5.4 to 5.9 the correct ones? If not then why not?</b>	5	0	7	3	5
<b>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?</b>	5	0	9	1	5

#### **4. SUMMARY OF RESPONSES**

##### Question 1 – ‘Are there other significant documents that should be listed here’?

4.1 Thirteen consultees responded to this question. Of those who responded, the majority were content with the list of significant documents, but consultees from across the interest groups made suggestions for changes to the list. There was a near-universal view among those suggesting amendment that the European Landscape Convention should be included. There was also support for the inclusion of NPPG 18, Strategic Environmental Assessment documentation and further European Union documents such as the Venice and Athens Charters. One respondent noted, correctly, that a new Scottish Planning Policy document was

being prepared to amalgamate NPPG 5 and 18. Another respondent recommended that the English PPG 16 on Archaeology and Planning be included and suggested that *The Conservation of Architectural Ancient Monuments in Scotland* should be identified as Historic Scotland guidance rather than government policy.

4.2 The consultation responses indicate a general consensus of opinion on the key relevant conservation policy documents for SMC. There was a view that the European context should be taken into consideration and that a holistic approach should be adopted to encompass planning and biodiversity issues.

Question 2 – ‘Is this a satisfactory statement of the purpose of the sustainable management of the historic environment and if not, why not?’

4.3 Fifteen responses were received to this question. Of those who responded, there was consistent support for the draft SHEP’s statement of the purpose of the sustainable management of the historic environment. Two thirds of respondents to this question expressed full or qualified agreement with the statement.

4.4 A number of responses, from private companies, local authorities and heritage bodies suggested amendments to the statement. Responses from private companies involved in the heritage sector accepted the need for protection but supported more active interventions where appropriate.<sup>3</sup> One respondent expressed the view that the existing policy promoted principles for which there was no legislative basis in the Ancient Monuments and Archaeological Areas Act 1979; for example, that the Act did not support the principle of preserving the monument ‘without unnecessary change or loss’.<sup>4</sup> Another respondent noted that:

*‘doing nothing...except providing legal protection is not sustainable management. Sustainable management requires an active approach of monitoring and intervention as necessary to preserve a site, not just leave it to decay.’*

Private Company

4.5 Responses from local authorities focused on the wider value of scheduled sites. These responses suggested that the statement could be strengthened by including indicators of sustainable management such as biodiversity, and noted that scheduled monuments contributed to cultural sustainability. One response noted the impossibility of preserving sites in situ where they were threatened by coastal erosion.

4.6 Responses from heritage bodies suggested that the definition of ‘unnecessary change or loss’ be reviewed. One respondent suggested that the phrase ‘most important’ should be omitted because:

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<sup>3</sup> It may be suggested that there is already a wide range of options available, as each application is considered on its merits.

<sup>4</sup> The policy context within which legislation is interpreted and applied is not static: Ministerial policy may be issued and policy will be tested and amplified, for example at Public Local Inquiries. National Planning Policy Guideline 5: Archaeology and Planning (1994) was the first published statement that ‘Scheduled monuments are of national importance and it is particularly important that they are preserved *in situ* and within an appropriate setting’.

*'importance' is often impossible to accurately assess without excavation and anyway ...the concept of the 'importance' of any monument is likely to vary through time.'*

Heritage Body

4.7 Although there was consistent support for a statement on the sustainable management of the historic environment, there was a range of views across interest groups and geographical areas. Heritage bodies were concerned with establishing clear definitions of the concepts while urban local authorities emphasised the management of the historic environment within the broader context of economic sustainability and biodiversity. Private companies working in the heritage sector expressed the view that there needed to be greater flexibility in the statement to allow for more than minimal interventions to be made in some cases.<sup>5</sup>

Question 3 – 'Is this the appropriate measure to use? If you do not believe it is, please explain why'.

4.8 Fourteen consultees responded to Question 3. Of those who responded, 6 agreed or gave qualified agreement that the value of the monument to the nation's heritage should be the primary consideration in determining applications for SMC. The more consistent view however (8 of those who answered the question) was that the measure should be expanded to include other factors which should be taken into account when determining applications for SMC, such as:

- the cultural significance of the monument;
- international as well as national implications and World Heritage Sites;
- the impact of the proposed works on the monument;
- environmental influences and the ongoing management of the monument.

4.9 One respondent suggested that the concept of 'value' could be defined and linked to the scheduling criteria set out in SHEP 2.

4.10 Another respondent suggested that the inclusion of a monument in the Schedule might be to ensure its proper evaluation and investigation prior to destruction as well as to secure its long term legal protection.

4.11 Suggestions for alternative criteria came from local authorities, heritage bodies and NDPBs in almost equal measure. Although there was consensus that a monument's value to the nation's heritage was an important measure, there was scope for clearer definition of this value. As part of this process, the determining criteria for SMC applications could be expanded to include other factors. The position can be summed up by the contribution from a local authority:

*'[T]he immediate and long term threats to a monument and the likelihood of managing them must also be measures used to determine consent'.*

Local Authority

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<sup>5</sup> See footnote 3.

Question 4 – ‘Are the criteria mentioned in 5.4 to 5.9 the correct ones? If not then why not?’

4.12 Fifteen consultees responded to this question directly. Of those who responded, 5 gave unqualified agreement that the criteria for determining applications for SMC were the correct ones; 7 expressed qualified agreement and 3 made substantial suggestions for change. The responses were spread across sectors, as can be seen from Table 3, below.

**Table 3: Breakdown of responses to Question 4 by sector.**

	<b>Local Authority</b>	<b>Heritage Body</b>	<b>NDPB</b>	<b>Private Company</b>
<b>Yes</b>	2	1	1	1
<b>Qualified Agreement</b>	4	2	1	0
<b>Substantial suggestions for change</b>	1	2	0	1

4.13 This question evinced a wide and complex range of views. On the one hand, some respondents supported the principle of minimum intervention, while others felt that this principle should be relaxed. In the main, local authorities and private companies were more in favour of a relaxation of the minimum intervention principle in appropriate circumstances.<sup>6</sup> This is possibly a result of the perceived development constraints associated with scheduled monuments acting as a barrier to economic growth. Heritage bodies supported the retention of the minimum intervention principle.

4.14 The balance of opinion supported the criteria set out in the draft SHEP with minor adjustments, the more substantial of which are listed below:

- it may be useful to link the 'cultural significance' criteria back to the statement about 'sustainable use and management' at 5.1;
- at 5.4, 'preserving' should be replaced with 'conserving';
- a monument's statement of significance should be regularly evaluated;
- the precautionary principle should be highlighted at Para 5.6.

4.15 Diverse views were expressed in relation to the concept of public benefit. Some respondents felt that 'public benefit' should be more clearly defined, while an opposing view stated that because there was no provision under the Ancient Monuments and Archaeological Areas Act 1979 to consider public benefit, this aspect could arguably be more appropriately considered as part of the planning system. This was cited as an argument for conjoining the Scheduling and Listing systems. A further view suggested that Para 5.7 should emphasise that research excavation is in the public interest.

4.16 Recurrent themes touched on by respondents from all sectors were:

- the need to combine responsible access to monuments with their protection;
- ensuring appropriate management of different types of monument through active management plans;

<sup>6</sup> See footnote 3.

- setting.<sup>7</sup>

4.17 Expanding on these themes, respondents noted that the rate of loss of monuments was likely to increase due to climate change and that attempts should be made to mitigate that loss by retrieval of information and recording wherever possible. One NDPB expressed the view that the criteria for conserving monuments should take explicit account of the different needs of scheduled remains and scheduled buildings.<sup>8</sup> Consents needed to recognise the different management required to achieve the best future for each:

*‘For buildings to be protected for the future they need to have a future use and preparation for, and maintenance of, such use requires intervention. [...] We would also like to see the consent process acknowledge that the ownership of a site by a sympathetic custodian [who] is dedicated to the preservation and interpretation of the site for the public benefit, represents the most significant factor favouring the long term preservation of the site’.*

NDPB

4.18 A common view was that the concept of setting should be explained.<sup>9</sup> It was also noted that clarification would be helpful at 5.8 that applications affecting the setting of a monument are dealt with by local authorities through the planning system. Consideration of cumulative impacts should be included in the consideration of setting.

4.19 One heritage body suggested that SMC applications with a significant impact on the monument should be published. A view was expressed that it was important that Historic Scotland enter into a dialogue with applicants and allow detailed studies of significance to be commissioned. This was a recurrent view among heritage bodies and was expressed in their general comments on the draft SHEP.

4.20 A small number of respondents suggested that Historic Scotland should consider whether local authorities could be involved in granting SMC in future.

4.21 In conclusion, although there was consistent support for the criteria used for determining applications for SMC, the responses indicated that the criteria included a number of concepts whose interpretation could be more clearly defined. There was a recurrent view that the interpretation of these criteria could be more flexible. There was a near universal view that the process should be transparent and accountable.

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?’

4.22 Fifteen respondents answered this question. Five of those gave full agreement that the common conditions of consent were adequate and clearly expressed. Nine made minor suggestions for change while one made suggestions for more far-reaching change.

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<sup>7</sup> The issue of setting falls outside the scope of the 1979 Act.

<sup>8</sup> It can be argued that this is already the case, as each case is considered on its merits.

<sup>9</sup> See footnote 7.

4.23 The consistent view was that the requirements set out in Para 5.11 a-h were adequate, but a number of suggestions for improvements were made. One respondent noted that upstanding structures required architects as well as archaeologists and suggested that it would be appropriate to acknowledge the need for these skills for both the consideration of applications and the implementation of works.

4.24 A number of respondents emphasised the importance of survey and recording where works were to be carried out on a scheduled monument. One respondent noted:

*'It is essential to make a record during the work and especially after the work has been done so that there is a before and after record and future generations do not have to re-investigate a site to work out what has been done to it and when'.*

Private Company

4.25 One heritage body suggested that it could be useful to include an explicit reference to specifications and method statements under (d) and (h). Heritage bodies and local authorities shared the view that the requirement to differentiate between new and old work at (f) should extend to all materials, and that there could be clearer guidance on how new works could be made reversible and identifiable. As part of this survey and recording process, one local authority expressed the view that it should be a condition of consent that a site survey be undertaken to ascertain whether protected species would be affected.

4.26 One heritage body expressed the view that it may be unrealistic to insist on using an archaeologist with a satisfactory track record because all archaeologists had to manage and publish their first project. This body suggested that it would be appropriate to use 'appropriately skilled and experienced archaeologist fully trained to direct, manage, complete and publish such projects'.<sup>10</sup>

4.27 Heritage bodies suggested that it would be useful to see a mention of conservation planning principles as good practice in appropriate circumstances. One view was expressed that the requirements of other legislation may need to be mentioned, e.g. in relation to listed buildings.

4.28 One local authority respondent expressed the view that where the need for intervention in scheduled monuments is accepted, a statement of cultural significance should accompany applications for SMC.

*'Such a statement requiring the cultural significance of the monument to be identified and a policy for the appropriate management of the site would help the applicant to develop and demonstrate an understanding of the scheduled monument and the appropriate type and level of intervention'.*

Local Authority

4.29 The view was expressed that a number of class consents cause damage to scheduled ancient monuments and that this situation should be reviewed. It was also suggested that,

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<sup>10</sup> It can be argued that one of the limited number of nationally important monuments would not be an appropriate candidate for anyone's 'first project'.

because cultural significance has its roots in local and regional value systems, there should be a mechanism to involve local government in the administration of SMC.

## 5. OTHER ISSUES

5.1 Most of those who responded to the consultation took the opportunity to comment on the whole of the consultation document and on wider issues, which are either operational matters or would require new or amended primary or secondary legislation, as well as responding to the specific questions. Four themes emerge from these general comments which are explored in more detail below. The themes are:

- a) greater transparency and accountability;
- b) broader perspective and opportunity for more local input;
- c) effectiveness of class consents;
- d) interaction with the planning system.

### 5.2 Greater transparency and accountability

- more statistics should be published on the handling of SMC cases (heritage body);
- an audit of the condition of scheduled monuments should be carried out (local authority);<sup>11</sup>
- the current SMC application form should be redesigned to be more user friendly; guidance and best practice examples should be produced to enable individuals and communities to engage more fully with the process (two heritage bodies);
- a flow diagram of the consent process should be incorporated into the SHEP document (local authority);
- applications for SMC seeking to restore and re-use ancient monuments such as castles should be given consideration (private company);<sup>12</sup>
- details of SMC applications likely to have a significant impact on a scheduled monument should be published (two heritage bodies);
- applications for SMC should be published in the Edinburgh Gazette and members of the public should be entitled to submit comments (heritage body);
- Historic Scotland should make publicly available the reasoning behind its determination of applications for SMC (heritage body);
- there may be a potential conflict of interest within Historic Scotland when dealing with its own sites (private company).<sup>13</sup>

### 5.3 Broader perspective and opportunity for more local input

- Incorporate a broader approach to designation and determination to include biodiversity and nature conservation issues (some local authorities);
- local authorities should have delegated responsibility for scheduled monuments in some circumstances (local authority).

### 5.4 Effectiveness of class consents

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<sup>11</sup> A continuous process of condition-reporting has been undertaken since the 1980s.

<sup>12</sup> All applications are considered on their merit and a significant number of consents have been given for the restoration and re-use of scheduled ruined buildings.

<sup>13</sup> Stringent procedures are in place to ensure that this is not the case (see the SHEP on Properties in Care).

- The current system of class consents does not provide adequate protection for monuments (heritage body and local authority);
- management agreements could be explored further (heritage body).

#### 5.5 Interaction with the planning system

- scheduled monument consent should be incorporated into the planning system to allow greater local say on the appropriate management of monuments and because the process involved considerations such as setting and public benefit which were more appropriately associated with the planning process (private company).

5.6 The consultation on the Scheduled Monument Consent SHEP generated a broad and complex debate about the principles and application of scheduled monument consent. There was a reasonable spread of responses from heritage bodies, local authorities and the private sector. Although there was broad support for most of the draft SHEP, a number of respondents made suggestions for change, in particular in relation to the criteria for determining applications for SMC. Scottish Ministers and (on operational matters, Historic Scotland) will give careful consideration to all of the views expressed as part of the consultation process and will consider the policy document further in light of these comments.

## 6. ANNEX

### **SCHEDULED MONUMENT CONSENT CONSULTATION RESPONDEES**

#### Local Authorities

Comhairle Nan Eilean Siar  
East Ayrshire Council  
Falkirk Council  
Glasgow City Council  
Highland Council Archaeology Unit  
Loch Lomond & Trossachs National Park Authority Hyde  
North Ayrshire Council  
North Lanarkshire Council  
The City of Edinburgh Council  
The Highland Council  
South Ayrshire Council

#### NDPBs

National Museums Scotland  
Scottish Natural Heritage

#### Heritage Bodies

British Waterways  
Council for Scottish Archaeology  
The National Trust for Scotland  
Scottish Civic Trust  
Society of Antiquaries of Scotland

#### Private Companies

Austin-Smith: Lord LLP  
Firat Archaeological Services