



WORKSHOP REPORT

HEACS Reports on Heritage Protection Legislation and on the Role of Local Authorities in Conserving the Historic Environment: Opportunity for Stakeholder Feedback

Contents

Introduction	2
Introduction to Reports by HEACS	2
Explanation of Process by Historic Scotland	2
Comments on Scope and Content of Reports	2
Discussion of Recommendations	4
Taking Priorities Forward	8
Closing Remarks	9
Summary	10
Participating Organisations	11

Introduction

The workshop took place on Friday 17th November 2006 and was attended by 19 individuals and representatives of organisations with an interest in two reports recently published by the Historic Environment Advisory Council for Scotland (HEACS) entitled:

‘Report and recommendations on whether there is a need to review heritage protection legislation in Scotland’ and
‘Report and recommendations on the role of local authorities in conserving the historic environment’.

Robin Turner, Vice Chair of BEFS and Head of Archaeology at the National Trust for Scotland, introduced the purpose of the workshop as being an opportunity for stakeholders to discuss the content and scope of the reports, the recommendations made, identify priorities, and identify possible action for stakeholders. As the recommendations constituted ministerial advice, the workshop was not consultative, but rather sought to identify reaction and level of support to the recommendations amongst stakeholders. Representatives from Historic Scotland and HEACS were welcomed as observers at the workshop.

This report summarises the discussions that took place. Some queries were clarified in the workshop and responses are given in italics.

Introduction to Reports by HEACS

Andrew Wright, convener of the HEACS working group that examined the heritage protection legislation, introduced the reports to the workshop. He noted that the reports are the product of a lengthy consultative process, with views being gathered from witnesses and, in relation to the legislation report, views expressed in two seminars facilitated by BEFS. Following publication, views on the content and scope were also taken on board at the HEACS conference held in September 2006. HEACS is keen to get a feel for stakeholder views on the content and scope of its reports.

Explanation of Process by Historic Scotland

Gordon Barclay, Head of National Policy at Historic Scotland, provided an explanation of the process of providing advice to the Minister and where the current reports sit within this process. HEACS is a non-departmental public body which provides strategic advice to the Minister. HEACS is sponsored by Historic Scotland. Historic Scotland is an executive agency which sits within the Scottish Executive’s Education Department. Historic Scotland advises Ministers on issues relating to the historic environment. A lead branch within Historic Scotland looks at any advice provided to the Minister and consults with other parts of the Scottish Executive. This branch then makes a written submission to the Minister giving a consideration of the advice and anticipated outcomes arising from the advice. In relation to the current HEACS reports, Historic Scotland is currently undertaking this activity. On receipt of advice from Historic Scotland, the Minister may consult with cabinet colleagues before she decides on her response.

Comments on Scope and Content of Reports

Participants considered the scope of the reports, in particular whether they contain gaps. The following gaps were identified:

Heritage Legislation Report:

Survey: There is little information on survey, recording, and the role of the RCAHMS. *HEACS noted that this is picked up in the Local Authorities Report.*

Marine environment: The report does not consider the marine historic environment. It was noted that there is due to be an inquiry by the Environment and Rural Development Committee into the marine environment, which is of relevance for the historic environment sector in terms of issues regarding submerged landscapes, shipwrecks and artefacts. *Historic Scotland noted that the Department of Culture Media and Sport consulted on this issue in 2005 on behalf of all the home countries; it is proposed that the marine environment continue to be protected by UK-wide legislation.* It was still observed that there will be non-legislative issues arising that should be considered within the Scottish context.

Local Authorities Report:

National Parks: The report does not recognise the role of national parks, particularly in relation to developing best practice. *HEACS noted that the group did have discussions with national park representatives, particularly on the integration of the historic environment into broader activity within the park.*

Statutory Sites and Monuments Record Services/Historic Environment Record Services: The report does not specifically address this issue. *HEACS noted that there is ongoing debate on whether or not provision of such a service should become statutory, and what such a service would look like. HEACS is of the view that this needs further exploration.* Another term suggested for a locally-held information service on the historic environment was a 'Historic Environment Information System'. It was reported that a White Paper from Westminster is anticipated on creating statutory Historic Environment Record Services.

General comments:

Planning Bill: It was observed that the opportunity for using the Planning Bill to address problems with the historic environment legislation had now passed. *HEACS observed that it had been in close contact with the Scottish Executive's Planning Division during its own deliberations on the historic environment legislation.* The final Bill as passed will have implications for the historic environment. For example, the Planning Act 2006 makes revised provisions for designating National Scenic Areas; factors for designation including historical, cultural and environmental importance. The Act will create greater sophistication in delegation of powers relating to the administration of listed building consents. Also local authorities will be able to require statements concerning design principles and concepts. It was noted that two of the amendments that were put forward at stage 2 were dropped, as the Bill was not deemed the correct vehicle for such amendments. These called for a Duty of Care on public bodies for the Historic Environment, and for Sites and Monuments Record Services to be provided on a statutory basis. Despite not reaching the face of the Act, the profile of these issues was raised.

Actions not requiring legislative change: It was noted that there are various actions arising in the reports which do not require legislative change. These must be undertaken in the short-medium term, and not be held back by actions requiring legislative change.

Alignment of cultural and natural heritage designations: it was observed by some participants that in the longer term, there would be advantages in aligning cultural and natural heritage designations.

Discussion of Recommendations

Discussions on the two reports took place in two break-out groups.

Heritage Protection Legislation Report

Context for the Review:

Participants indicated that the report findings reflected well the shortcomings associated with the current legislation. Both groups agreed with HEACS' favoured option, option 3 – that Scottish Ministers should set in train a review of the heritage protection legislation with a view to introducing new historic environment legislation. It was observed that there are problems in all areas of the historic environment legislation. It was agreed that there is an element of risk in undertaking a comprehensive review, but that the extent of change required to fix the problems justifies the call for a comprehensive review. A review should not preclude action to improve problem areas which could be resolved without the need for changes to primary legislation.

Some disappointment was expressed that existing gaps in the heritage protection legislation had not been addressed within the Planning Bill, along with frustration that perhaps the historic environment sector was not being 'heard'. It was noted that the Planning Act 2006 provides for further delegation of decision-making; this places an even stronger requirement for a sufficiently robust system to enable effective management of the historic environment. It was observed that gaps within the existing legislation should be addressed strategically within the context of a review. There will be an ongoing requirement to champion the historic environment within the context of a review process.

Scope of the Review:

Associated guidance: It was agreed that a review should look at associated guidance ie the planning policy guidance along with the Scottish Historic Environment Policy series currently being developed. It was noted that work on revising NPPG 5 'Archaeology and Planning' and NPPG 18 'Planning and the Historic Environment' will commence in the Spring of 2007. This will be led by the Scottish Executive Planning divisions, with an expert focus group to be convened. It was argued that NPPG 18 states little beyond the provisions of the legislation. A great deal of the front-line activity is carried out at the local level: there is therefore a big role for local authorities in shaping such documents.

Aligning cultural and natural heritage designations: It was argued by some participants that a review should consider the case for greater alignment between cultural and natural heritage designations. This could be a longer term objective, although there are opportunities for a more radical approach. For example, it was observed that the Landscape Forum is discussing a designation for landscape which would start to bring together these elements. Recent developments in the designation of landscapes which, it was argued, should afford protection to a variety of features including battlefields, were noted. It was pointed out that the review process of NPPG 14 'Natural Heritage' had commenced and that during discussion there had been an unresolved debate on dealing with cultural perspectives. It was suggested that a landscape designation presented an ideal opportunity to meld together protection of the cultural and natural environments and thus introduce the concept of a combined system of protection. On the other hand it was recognised that there were impediments, for example the natural environment is subject to various European Directives.

Informed decision-making: It was suggested that a review could consider how to accommodate information on the rationale behind planning proposals. Conservation Statements play a key role in demonstrating significance of historic environment assets. The Planning Act 2006 will introduce greater scope for pre-application discussion, which will provide an opportunity to consider at an early stage impacts on the historic environment. It was noted that this will require additional resources within the planning system and may cause tension with 'productivity'. Adoption of the 'polluter pays' principle was identified. It was argued that authorities should be able to specify requirements for information in an application although one should be cautious of expecting 'one size to fit all' in terms of information requirements.

Reference to other practice/experience: It was suggested that a review should undertake research in identifying how cultural heritage is supported and protected within other small European countries. Scotland should also benefit from the lessons learned by the current Heritage Protection Review being undertaken in England.

Suggestions for the review:

Duty of Care for the Historic Environment: HEACS supports the case for introducing a 'Duty of Care' provision in heritage protection legislation for public bodies, in parallel with legislation governing the natural environment. Participants strongly endorsed this view. Participants highlighted the need for the definition of standards and indicators to support management of the historic environment; current reliance on planning guidance gives insufficient support to those required to advise on decisions relating to the historic environment. A key issue would be the availability of resources to implement a Duty of Care requirement.

Standards/performance indicators and skills: It was observed that some local authorities are falling below minimum standards. The importance of performance indicators in unlocking resources was also identified.

Sustainability: It was argued that a review should include consideration of sustainability issues, particularly energy usage.

Local Authorities Report

Participants were asked to prioritise the various recommendations in the report under the four sections. Priorities were given as follows:

Recommendation		Group A				Group B				Total Score
		Top priority	Second priority	Third priority	Score ¹	Top priority	Second priority	Third priority	Score	
1	Duty of Care	7	0	0	21	6	1	0	19	40
2	Survey of policies, staffing, resources		2	3	9	0	3	0	6	15
3	Balance of working between HS and local authorities	0	4	1	9	0	3	1	7	16
4	Develop concordats between HS and local authorities	0	0	0	0	0	0	3	3	3
5	Joint historic environment services for adjoining local authorities	0	1	2	4	1	0	3	6	10
Setting new standards of performance for local authorities										
6	Key performance indicators for historic environment	4	1	0	14	2	3	1	13	27
7	Minimum national standards for local authority historic environment service	1	5	0	13	4	1	1	15	28
8	Review resources for HS to build capacity with local authorities and voluntary sector	2	0	5	11	0	0	0	0	11
9	Re-convene local authority Historic Environment Forum	0	0	0	0	0	1	0	2	2
10	Skills training programme linked to national occupational standards	0	1	1	3	1	0	2	5	8
11	Grant mechanisms to fund specialist posts within local authorities	0	0	0	0	0	1	1	3	3
12	Promote principle of staff exchange between local authorities and HS	0	0	0	0	0	0	2	2	2
13	HS Corporate Plan	0	0	0	0	0	1	0	2	2

¹ Score is based on weighting of results as follows: top priority: 3 points, second priority: 2 points, third priority: 1 point.

	performance measure on relationship with authorities										
Improving Scottish Executive internal communication											
14	Guidance on significance of the historic environment to broader policies	1	4	1	12	4	2	0	16	28	
15	Promote broader understanding of historic environment within SE departments	3	2	2	15	1	3	0	9	24	
16	Support for further development of linked historic environment database	2	1	3	11	2	2	0	10	21	
17	Continue to develop SHEPs in partnership	1	0	0	3	0	0	6	6	9	
Community Planning and the Historic Environment											
18	Performance indicators for including the historic environment in community planning	5	2	0	19	1	2	2	9	28	
19	Concordat with COSLA	0	1	1	3	0	1	3	5	8	
20	Concordats with local authorities	2	0	2	8	1	1	0	5	13	
21	Explore establishment of HELM	0	4	2	10	3	1	0	11	21	

The table shows that participants most strongly favoured the following recommendations:

1 – Duty of Care for the Historic Environment

6 and 7 – addressing performance indicators and national standards

14 and 15 – relating the historic environment to other Scottish Executive policy agenda

18 and 21 – addressing performance indicators in relation to community planning and exploring the establishment of a Historic Environment Local Management (HELM) initiative in Scotland

Improvements to the historic environment sector:

It was observed that recommendations 3 and 4 are interrelated and that recommendations 1 and 5 are the more strategic. Recommendation 2 should take place within the context of the Historic Environment Audit. *It was noted that there is a lack of up-to-date evidence, particularly on conservation officers in relation to numbers and skills, hence the recommendation for the survey.*

There was support for the recommendation that Local Authorities could undertake those functions within the planning system that could be delivered at a local level as part of the wider initiative on

community involvement and culture change. It was hoped that this delegation would bring greater clarity to the role of the local authority in relation to its responsibility for archaeological sites and monuments.

Participants identified a need for stronger 'championing' of the historic environment; relating to contemporary design issues with promotion of the historic environment as part of the 'whole' of the built environment, at a grass roots level and within government.

Setting new standards of performance for local authorities:

The preferred recommendations largely related to establishment of standards and indicators. Concern was expressed over any presumption that such changes will be funded out of existing budgets. It was suggested that the provision of sufficiently qualified staff will require a 'critical mass' of skilled staff; this could take the form of larger units of say twenty, serving a number of authorities. It was considered that professional bodies representing professionals working in building conservation (the Institute of Historic Building Conservation) and archaeology (the Association of Local Government Archaeology Officers in Scotland) provide useful structures and benefits, over and above the benefits derived from the former Local Authority Historic Environment Forum.

Improving Scottish Executive internal communication:

Participants highlighted that better sharing of information across Scottish Executive departments is required for good decision-making and that there is a strong need for the Executive to recognise where and how the historic environment holds potential for joined-up thinking across departments. It was noted that the historic environment must be viewed within a regeneration context rather than a development context.

Community Planning and the Historic Environment:

There remains a strong need for encouraging participation and understanding. The importance of the Historic Environment Local Management (HELM) initiative as a mechanism for increasing awareness of the historic environment within local authorities, particularly amongst elected members, was highlighted. This would enable decisions to be taken on the basis of better knowledge and understanding. Community Planning is (in part) about 'communities of interest' as well as geographic communities. In addition, community planning proposals should encompass wider cultural environment issues. It was concluded that the historic environment sector needs to better organise itself to enable engagement at the appropriate level.

At present the historic environment is not considered a priority within community planning. Again it was felt that there was need for a champion or a voice to represent the historic environment within this framework. It was suggested that umbrella organisations within the historic environment sector could establish partnerships with the view to profile-raising and improved engagement with community planning. There is considerable interest and engagement with the historic environment at the local level; it was felt that the historic environment could benefit from greater demonstration of good practice at this level.

Taking Priorities Forward

Urgency for Review: Participants agreed that the need for a review is urgent, particularly now that the Planning Bill has been passed. Some information will be produced as part of the Audit of the Historic Environment. It was noted that the early stage of the Audit is in progress, but that the data gathering exercise relies on the capacity of local authorities and the voluntary sector to engage. So

far this capacity has been limited. It was noted that surveys must gather qualitative as well as quantitative information.

Risk of undertaking a review: It was recognised that there is an element of risk in undertaking a comprehensive review. There are elements of the existing legislation and planning guidance that do work well – these must not be lost.

Linking to other policy statements: a review should take place firmly within the context of other policy documents such as the Architecture Policy and the policy statement ‘Designing Places’.

Sustainable Development: It was recognised that the Planning Act 2006 requires local authorities to exercise the development plan function with the objective of contributing to sustainable development. This presents a key opportunity for improving the management of the historic environment.

Closing Remarks

It was suggested that BEFS has a role to play in co-ordinating its members in relation to responding to a review, but that additional resources would be required to engage fully with a review process.

It was agreed that BEFS would write to the Minister expressing a broad overview of the outcomes of the workshop and follow up with a report of the proceedings.

By way of conclusion, it was observed that the system of protection for the historic environment cannot continue to operate on the current basis. The timing is right for change – particularly given the context of changes to the system of local governance and ever-increasing pressure on shared resources. There is a very strong opportunity now to make changes to improve the management and protection of Scotland’s historic environment.

Summary

Need for a review of Heritage Protection Legislation:

Participants endorsed unanimously the third option put forward by HEACS; that a review of heritage protection legislation should be set in train.

Participants acknowledged that there would be risk in undertaking a comprehensive review, but that given the broad range of problems associated with implementing the current legislation, a review is necessary simply to enable the system to function effectively.

Care must be taken to ensure that elements of the current legislation that do work well are not lost. Instigation of a review should not prevent progress being made on those improvements that do not require a change in primary legislation.

Role of Local Authorities:

Participants strongly endorsed the proposal for a 'Duty of Care' provision on public bodies in relation to the historic environment.

Participants also prioritised:

the need for national standards and performance indicators to improve management of the historic environment;

the need to relate the historic environment clearly to other policy agenda within the Scottish Executive, linking for example to other policy statements, and in particular taking advantage of the new requirement under the new Planning Act for local authorities to exercise the development plan function with the objective of contributing to sustainable development;

the need to improve engagement between the historic environment sector and community planning. The Historic Environment Local Management (HELM) initiative was seen as something that could be explored for Scotland.

Participating Organisations

Representatives from the following organisations participated in the workshop:

Architectural Heritage Society of Scotland
Association of Local Government Archaeology Officers/Shetland Amenity Trust
Association of Local Government Archaeology Officers/Stirling and Clackmannanshire Council
Association of Local Government Archaeology Officers/Western Isles Archaeology
Association for the Protection of Rural Scotland
Council for Scottish Archaeology
Edinburgh World Heritage
Institute of Historic Building Conservation/Angus Council
Institute of Historic Building Conservation/East Lothian Council
Institute of Historic Building Conservation/Glasgow City Council
National Trust for Scotland
Royal Town Planning Institute in Scotland/Fife Council
Simpson and Brown Architects
Historic Scotland (observing)
Historic Environment Advisory Council for Scotland (observing)
Built Environment Forum Scotland (facilitating)