



Outline for a Review of Scotland's Heritage Protection Legislation

The Need for a Review - Context

In 2003, the Minister for Tourism Culture and Sport asked the newly established advisory NDPB, HEACS (the Historic Environment Advisory Council for Scotland), to consider: ***Whether there is a need to review heritage protection legislation in Scotland.***

From 2003-06, a HEACS working group took evidence on this question from a range of stakeholders including representation from Historic Scotland, the Scottish Executive Planning Division, developers, professional institutes and non-governmental organisations. Stakeholders were also kept informed of the group's developing awareness on this issue via two workshops held by Built Environment Forum Scotland (BEFS).

The group considered the current legislation in Scotland and the historical context for this; compared the legislation with provision in England; and considered current contextual issues such as the programme for modernising the planning system and the ongoing review of heritage protection in England. The group made its report to the Minister Patricia Ferguson MSP in August 2006. The outcome of its deliberations was that:

Scottish Ministers should set in train a review of the heritage protection legislation, with a view to introducing new historic environment legislation.

This recommendation was made on the basis that the shortcomings of the current legislative framework are fundamental:

- the legislation has grown piecemeal and as a result has become complex and difficult to understand;
- the legislation is geared towards protection of individual sites – this does little to enable the historic environment to be managed in a holistic, sustainable way;
- there is overlap between designations;
- there are significant gaps in coverage.

In November 2006, the HEACS recommendation for a review was strongly endorsed by stakeholders at a BEFS workshop; for details of the workshop visit the BEFS website at: <http://www.befs.org.uk/06.11.17.WorkshopReport.HEACSReps.pdf>

Although the initial response from the Minister has been somewhat hesitant, BEFS Members subsequently reconfirmed their support for the HEACS proposals at a meeting in February 2007.

The Review – Outline for a Terms of Reference

The HEACS report makes comments on the scope of a review as follows:

- a review should be based on the presumption that the current levels of protection afforded to heritage assets should not be diminished;
- a review should recognise that change to primary legislation should form part of a package of proposals relating to delivery of the legislation.

The HEACS report makes some specific suggestions as to what the review could cover:

- introduction of a new designation that recognises the significance of historic/cultural *areas*;
- consideration of the merits of a single designation regime, a unified consent regime, a unified system of financial assistance;
- consideration of ways in which greater transparency and accountability could be brought into the administrative and decision-making process (including improved understanding of why an asset is designated);
- exploration of appropriate levels of decision-making – HEACS indicating preference for a presumption that the designation of assets of national importance should be decided by central government, and local importance by local authorities;
- the case for introducing a ‘Duty of Care’ provision in heritage protection legislation for public bodies, which would parallel protection afforded to the natural environment. This might then have implications with respect to the statutory need for Historic Environment Records and associated resources.

BEFS members would expect a review to:

- be underpinned by the HEACS research, and by appropriate bodies of research from elsewhere, including from the Heritage Protection Review in England and Wales;
- be supplemented by new research into areas that have not yet been examined in sufficient detail in a Scottish context;
- identify and close loopholes and weaknesses in current legislation;
- consider whether a tiered system of designation, like that for Listed Buildings, could help identify different levels of significance;
- take into account the intangible cultural values that are associated with historic sites and places;
- consider, in line with the European Landscape Convention but going beyond landscapes, how the local historic environment can appropriately be identified and protected;
- look carefully at the implementation issues, and make the new system work better for everyone, including those who must navigate through it when initiating change.

The Built Environment Forum Scotland (BEFS) is strongly supportive of this recommendation that HEACS has made to the Minister, and has been advocating this via its Manifesto ‘Pride of Place’.

BEFS considers a review of the Scotland’s heritage protection legislation, with a view to introducing improved historic environment legislation, a key priority for the next parliamentary session.

To view the HEACS Report, visit: <http://www.heacs.org.uk/documents.htm>