



## **BEFS WORKSHOP REPORT: BEFS/Historic Scotland consultation day on the HEACS reports: The review of heritage protection legislation**

Held at the Council Rooms of the Royal Institution of Chartered Surveyors in Scotland, 9 Manor Place, Edinburgh, on 5<sup>th</sup> July 2007

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# 1 Introduction

## 1.1 Background

In August 2006, the Historic Environment Advisory Council for Scotland (HEACS) made a recommendation<sup>1</sup> to the then Minister for Tourism, Culture and Sport that Scotland's heritage protection legislation (HPL) should be reviewed, with a view to introducing new historic environment legislation. The purpose of the workshop was to consider how best to take forward this recommendation. The workshop was chaired by Robin Turner, Head of Archaeology at the National Trust for Scotland. The following items were highlighted by way of background:

- The UK Government 1996 Green Paper for Scotland, *Protecting the built heritage*<sup>2</sup> which looked broadly at how the system of historic environment legislation could be improved;
- The White Paper for England and Wales, *Heritage Protection for the 21<sup>st</sup> Century*<sup>3</sup> published in March this year;
- The BEFS/HEACS workshop in November 2006 which looked in part at the HEACS report on the review of heritage protection legislation. Participants at the workshop gave unanimous support to the recommendation that the HPL be fully reviewed;
- The Minister for Tourism, Culture and Sport within the last Labour administration had replied to HEACS indicating that the choice between options two and three (see below) is a 'difficult judgement';
- A review of HPL was one of the four key asks taken from the BEFS Manifesto and discussed with MSPs from five of the main political parties in preparation for the 2007 Scottish Parliament elections;
- The SNP, the new administration, have committed to a review of HPL within their party manifesto for the parliamentary elections.

Gordon Barclay, Head of National Policy at Historic Scotland (HS), thanked participants for contributing their time to this workshop and outlined the basis for discussing the HEACS report. The HEACS report on a review of HPL arrived at three potential options. Option 1, that there is no need for a review and that minor shortcomings can be addressed incrementally, was not considered by the Minister in her response in December 2006. This leaves Options 2 and 3:

- Option 2: Ministers should identify and address minor shortcomings and introduce provisions to deal with major issues requiring a legislative solution;
- Option 3: Ministers should set in train a review of heritage protection legislation with a view to introducing new historic environment legislation.

The last BEFS stakeholder event had supported Option 3. The Minister for Tourism, Culture and Sport's response (December 2006) had considered Option 2 and 3, was concerned about the resource implications of a review, and suggested other options, such as administrative changes and increased resources, as other ways forward. The Minister called for further discussion with stakeholders.

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<sup>1</sup> HEACS report: *Report and recommendations on whether there is a need to review heritage protection legislation in Scotland*, August 2006

<sup>2</sup> In England and Wales the corresponding Green Paper was *Protecting Our Heritage*.

<sup>3</sup> This White Paper also covers the protection of the marine historic environment for the whole UK including Scotland.

A fuller ministerial response is expected for October/November and Historic Scotland is to provide a briefing to support the Minister in deciding how to take forward change and a review. The Local Authority Historic Environment Forum (LAHEF) and its own Working Group have now both met; their thinking and the outcomes from this workshop will help inform Historic Scotland's briefing on HPL. There is no other direction from the new Minister for Europe, External Affairs and Culture beyond the manifesto commitment to a review of HPL.

It was noted that in England and Wales, Government has consulted on the White Paper and is now looking to make legislative change. The focus is on Listed Buildings with other areas of heritage protection to be shoe-horned alongside. There is a desire for uniformity for its own sake. It was emphasised that Scotland is a different country and can develop its own approach. There is widespread agreement on the need for change; the question is should it be Option 2, 'significant change', or Option 3 'a complete overhaul'.

## 1.2 Questions from participants

*What would be the consequences for Scotland of repealing in England the 1979 Act (Ancient Monuments and Archaeological Areas)?*

*HS comment:* The 1979 Act and Listed Building legislation will be repealed but can be repealed on a geographical basis. We may live with the 1979 Act for a good while yet. It's taken England nine years already to review legislation and the new legislation is expected in 2009.

*Is there any other direction from the new Minister?*

*HS comment:* Not at the moment: the minister is waiting for the briefing due in the autumn.

## 1.3 Introduction to the workshop paper

Robin Turner introduced a paper entitled '*Historic Environment Legislation Review: Summary of potential legislative changes*' which builds on the HEACS report using the following additional sources:

- the notes of the meetings of the HEACS working group on a review of HPL;
- 1996 Green Paper for Scotland;
- the Heritage Protection White Paper in England and Wales (2007);
- the discussions of the Local Authority Historic Environment Forum – notes from their meeting in March 2007.

It provides a framework for considering the need for legislation via four categories:

- Listed/historic Buildings;
- Scheduled Ancient Monuments;
- Cultural landscapes (including Conservation Areas);
- General.

It asks participants to consider whether:

- Either, primary or secondary legislation **will/may** be required ... and note which;
- Or, whether, primary and secondary legislation **will not/may not** be required;
- And, what the priorities for change should be.

It was noted that items needing secondary legislation would be easier to deal with as they can be ‘dealt with without returning to first principles’ i.e. the principles that form primary legislation. The aim was for the summary to act as a springboard to move the discussions forward and for organisations present to outline their broad concerns; more detailed work could be done later.

*HS comment:* Discussions with the LAHEF Working Group had raised the importance of a consistent approach across different aspects of the historic environment (HE) and HE legislation. It was important too for participants to consider how change would work across the HE – what its full impact would be. Over-optimistic generalisations would not help take this process forward. Historic Scotland staff would be able to inform participants on policy and technical issues.

**1.4 Comments from participants**

*A balance needs to be struck between optimism and pessimism – participants need to be thinking positively.*

*HS comment:* It’s important to avoid going into the next stage without having developed an understanding of the full context of what is involved in changing elements of HPL. We need to think about the resources needed, and the consequences for people and organisations whose buildings and assets are being impacted on by legislation.

*It’s important to think strategically and consider what system/structures we want ten years from now. It is possible to do both – make short-term changes and longer-term changes.*

*HS comment:* Long-term changes impact on institutions and reduce on their motivation to make short and medium term changes work. You have to go one way or the other. As both Options 2 and 3 require resources this consultation process is important. Other policy-making is happening, the SHEP series for instance, and this was stretching the capacity of Historic Scotland.

*Chair comment:* Additional resources from Government are needed for the sector.

**2 Break-out group discussions**

**2.1 Listed/historic Buildings**

The table below is taken from the workshop paper, and formed the starting point for discussion on Listed (LB)/historic Buildings; items in bold are considered likely to require primary legislation.

<i><b>Will/may require primary/secondary legislative changes</b></i>	<i><b>May/would not require primary/secondary legislative changes</b></i>
• <b>Time limit to consents (5 years)</b>	• Powers to reject incomplete or incompetent consent applications
• <b>Legal definition of ‘curtilage’</b>	• Requirement of Conservation Impact Assessment for LB Consent applications
• <b>Join listed building with planning legislation</b>	• Requirement for historic building recording of buildings archaeology
• <b>Stop Order powers for LB Consent cases</b>	• Ability to charge fees for LB Consent

<b><i>Will/may require primary/secondary legislative changes</i></b>	<b><i>May/would not require primary/secondary legislative changes</i></b>
<ul style="list-style-type: none"> <li>• Completion Certificates for LB Consent</li> </ul>	<ul style="list-style-type: none"> <li>• Requirement for site plans and boundaries, cf. 'curtilage'</li> </ul>
<ul style="list-style-type: none"> <li>• Listability of roads and pavements</li> </ul>	<ul style="list-style-type: none"> <li>• Greater delegation of power to Local Authorities</li> </ul>
<ul style="list-style-type: none"> <li>• Building Preservation Notices – liability on Planning Authorities if no subsequent Listing</li> </ul>	

The following points were raised:

***Will/may require primary/secondary legislative changes:***

**Time limits to consent**

- Time limit to consents to be addressed through joint planning and listed building legislation.

*HS comment:* The Planning Act has now dealt with this.

**Legal definition of 'curtilage'**

- A definition may not be possible but conservation statements can handle this.
- Guidance on definitions would be useful.
- A definition of curtilage is required and should have a high priority. There is recognition that this has been an issue for a long time.

*HS comment:* There are four tests which, informed by case study, can confidently be used to support a definition of curtilage; these are supplied by HS staff, distilled from the current overview of curtilage in the *Memorandum of Guidance on Listed Buildings and Conservation Areas* when required.

**Join listed building with planning legislation**

- There is currently limited dialogue between Planning Division and the HE sector. Planning Division does communicate with HS.
- There needs to be stronger recognition that the historic environment is addressed within planning legislation, or at least a system whereby the historic environment runs parallel with the planning system/is at least consistent.
- Time limit to consents to be addressed under joint planning and listed building legislation.
- The importance of completion certificates for Listed Building Consent; also to be considered within the joint listed building and planning legislation.
- The suggestion for the requirement of enforced start notices for planning.
- Archaeology that lies beneath the ground is often not recognised as an important consideration when considering planning applications as outlined in the *National Planning Policy Guidance (NPPG) 5 – Archaeology and Planning*.

**Stop Order powers for Listed Building Consent cases**

- Local authorities need to do this and it's a resource issue for local authorities; there are also legal implications.

- Linking GPDO (General Permitted Development Orders) and HPR (Heritage Protection Review) - would need cross-sector work to handle the politics of this.

*Related discussion – dangers of missing ‘hidden assets’ and planning and conservation departments working together:*

- Many buildings have hidden assets e.g. encapsulated medieval walls. A significance based approach would help highlight these.
- A divergence of practise: planning officers are development-based; conservation officers are conservation-based.

### **Completion Certificates for Listed Building Consent**

- The importance of completion certificates for Listed Building Consent; also to be considered within the joint listed building and planning legislation.

### **Listability of roads and pavements**

- Listability of road and pavements – good idea.

*HS comment:* Can be and has been done already though used with appropriate caution. Legal definition of eligible matter is ‘any man-made structure’.

### ***May not/ would not require primary/secondary legislative changes:***

#### **Powers to reject incomplete or incompetent consent applications**

- Local authorities in Scotland won’t ask for additional information even on incomplete forms (unlike in England).
- Need for guidance: there is a lack of clear guidance; competence in application - needs guidance.
- By the time an application has come to the conservation officer it has already been validated, and it is too late.

*HS comment:* Guidance has been drafted. All owners are issued, at the point of listing, with a copy of *Scotland’s Listed Buildings* which contains (on pages 35-38) advice on this matter.

*Related discussion – Planning Act and guidance:*

- The implementation of the new Planning Act requires greater consultation and preparation of information.

### **Requirement of Conservation Impact Assessment for Listed Building Consent applications**

- The cost of preparing a Conservation Impact Assessment (or conservation statement) for every listed building consent should be met by the developer. This will give an explanation of change that can be recorded.
- Change and justification of change – where does this fit in the ‘system’.
- Conservation Statements, what level of information is needed – within the planning system the expectations are higher.
- Conservation is the management of change.

**Requirement for historic building recording of buildings archaeology**

- There is a need for appropriate recording and not just of those things that are going to be lost. A private buildings archaeologist, architect or historian can do a very competent assessment in 2-3 days.
- If a building is to be ‘removed’ there needs to be full recording.
- Key issue: tension between appropriate levels of information versus the burden of providing it.
- Recording work is not making its way to the national record.
- We need to move to a significance-based approach.
- Conservation Statements will provide more knowledge.

*Comment from HS:* Recording needs to be at an appropriate level and at an appropriate juncture.

*Related discussions – Transparency, and an integrated approach:*

- Transparency is for professionals, not the public who only see the ‘one system’.
- Public perception is that conservation is opposed to change.
- An integrated approach to coastline needs to bring together both planning and protection, and go beyond the Town and Country Planning Acts. It needs to include marine heritage assets, e.g. finds, landscapes, shipwrecks, and to consider the inter-tidal area below the high-water mark, which is at the point of interaction between the marine and the terrestrial. Bringing together the whole heritage system into a single system needs considerable expertise in order to handle the different assets – considerable work will be needed to make it work.

**Ability to charge fees for Listed Building Consent**

- Ability to charge fees is crucial, and use the ‘polluter pays’ principle.
- Is there a carrot for listed building owners and developers in relation to such a fee? Beyond the value of the change itself?
- Could there be a sliding scale?
- There is a need to consider the needs and interests of different sectors when considering a fee.
- Where does the benefit for LBC and SMC system lie – with the developer or with the site?

**2.2 Scheduled Ancients Monuments**

The table below is taken from the workshop paper and formed the starting point for discussion on Scheduled Ancient Monuments; items in bold are considered likely to require primary legislation.

<i><b>Will/may require primary/secondary legislative changes</b></i>	<i><b>May/would not require primary/secondary legislative changes</b></i>
• <b>Removal of defence of ignorance</b>	• Resolve question of primacy over Listed Building legislation
• <b>Removal of all finds without a licence to be an offence</b>	• Increase level of fines
• <b>Inclusion of finds scatters and of</b>	• Power to spot Schedule, including interim

<b><i>Will/may require primary/secondary legislative changes</i></b>	<b><i>May/would not require primary/secondary legislative changes</i></b>
palaeo-environmental remains	protection
<ul style="list-style-type: none"> <li>• <b>Power to force remedy of unauthorised works</b></li> </ul>	<ul style="list-style-type: none"> <li>• Delegate management powers to Local Authorities, including for urgent works</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Statutory Statements of Significance, including ‘setting’</b></li> </ul>	<ul style="list-style-type: none"> <li>• Clearer definition of ‘setting’ and its implications</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Review occupation restrictions</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Grading system, cf. Listed Buildings</li> </ul>	
<ul style="list-style-type: none"> <li>• Remove Class Consents system, e.g. ploughing</li> </ul>	
<ul style="list-style-type: none"> <li>• Remove General Permitted Development Rights, e.g. for utility companies</li> </ul>	
<ul style="list-style-type: none"> <li>• Specify SMC amendments process</li> </ul>	
<ul style="list-style-type: none"> <li>• Article 4 directions to address archaeological issues</li> </ul>	

The following points were raised:

***Will/may require primary/secondary legislative changes:***

**Removal of defence of ignorance**

- the public understanding can change.

*HS comment:* Defence of ignorance is not disputed, it needs to go; unique to UK law.

**Removal of all finds without a licence to be an offence**

- There is a need to protect important portable artefacts.

*HS comment:* Fines are un-police-able. There is a need to protect portable elements e.g. gravestones, but cannot cover everything e.g. flints.

**Power to force remedy of unauthorised works**

- Once damaged, loses its value?
- Linked to the problem of considering change.

*HS comment:* No power at the moment to do this.

**Statutory Statements of Significance, including ‘setting’**

- Support for statutory statements of significance, including ‘setting’.
- Statutory statements of cultural significance were recommended, a system which operates in the Netherlands.

*HS comment:* Already in most scheduling documents and in all list descriptions since 2004 as explanations of special interest. Setting is a criterion for listing.

## Review occupation restrictions

- Arbitrary decision re. cultural significance/ national importance.
- Occupation restrictions – would fall away with integrated approach.

*HS comment:* If it is occupiable it should be listed.

## Grading system, cf. Listed Buildings

- Significance-based approach produces an informed approach.
- Needs work to learn how to do it.
- There is a successful grading system currently operating in parts of Europe for ancient monuments.

*HS comment:* Considerable work involved, more than making observations.

## Remove Class Consents system, e.g. ploughing

*HS comment:* Ploughing seems to be the problematic aspect.

## Remove General Permitted Development rights, e.g. for utility companies

- Within a bill to wrap up the loose-ends.

*HS comment:* Can we afford this? Is this a priority?

## **May not /would not require primary/secondary legislative changes:**

### Increase level of fines

- Increasing levels of fines – good
- Fines – education issue.

*HS Comment:* Criminal offence and fines increased - education is the issue.

## 2.3 Cultural landscapes (including Conservation Areas)

The table below is taken from the workshop paper and formed the starting point for discussion on cultural landscapes (including Conservation Areas); items in bold are considered likely to require primary legislation.

<b><i>Will/may require primary/secondary legislative changes</i></b>	<b><i>May/would not require primary/secondary legislative changes</i></b>
<ul style="list-style-type: none"><li>• <b>Cultural Areas designation, to include CAs, gardens and designed landscapes, battlefields, wider cultural landscapes, and World Heritage Sites</b></li></ul>	<ul style="list-style-type: none"><li>• NGOs to be able to lead Town Schemes</li></ul>
<ul style="list-style-type: none"><li>• <b>Amendment of 'protect or enhance' wording</b></li></ul>	
<ul style="list-style-type: none"><li>• Grading of Conservation Areas</li></ul>	
<ul style="list-style-type: none"><li>• Stronger powers for officials dealing with</li></ul>	

<b><i>Will/may require primary/secondary legislative changes</i></b>	<b><i>May/would not require primary/secondary legislative changes</i></b>
CAs	
• Recognition of intangible values of landscapes	
• Buffer zones for CAs	
• Tighter controls over demolition in CAs	
• Requirement for CA Appraisals	
• Requirement for Design/Conservation Statements for proposed developments	

The following points were raised:

***Will/may require primary/secondary legislative changes:***

***Cultural Areas designation, to include CAs, gardens and designed landscapes, battlefields, wider cultural landscapes, and World Heritage Sites***

- World Heritage (WH) sites are UK-wide so there needs to be a similarity between England, Scotland and Wales; World Heritage Committee wouldn't want disparity. A circular is being drafted and UK-wide guidance awaited.
- A good conservation (management) plan is critical – we need to enhance plans for WH sites.
- Management plans don't necessarily work.
- Designated Conservation Areas need controls over new buildings, agricultural buildings, local landscape features.
- Battlefield unit at Glasgow University is getting better at defining sites.
- General landscape project characterisation.
- Battlefield protection what is appropriate? A Conservation Area can do this e.g. bringing in SSSIs (Sites of Special Scientific Interest).
- Concept of evolved landscapes.
- Area designation to encompass cultural heritage area. To define what it is and its value e.g. archaeological areas. Define issue of curtilage and setting. Management of designation.
- Keep it integrated within whole planning system and work out how to do this.
- What is the benefit of cultural landscapes – protection and change?
- What would be done with an enhanced designation for cultural landscapes/areas?
- Example given of the Mourne Homesteads Scheme in Ireland (work of the Mourne Heritage Trust), and application of the idea of a rural conservation area to Westray, Orkney (ref Westray Development Trust).
- Requirement for cultural areas designation/cultural landscape areas which will protect, recognise and place value.
- The importance to inform and educate within the area of cultural landscapes.
- National Scenic Areas legislation only recognises the rural element.
- The importance of the UK adoption of the European Landscape Convention.
- The term 'sense of place' is an issue that should be addressed with Planning.
- Conservation Area is adequate if broadened.

*HS Comments:* A SHEP is coming on this.

Conservation Areas need clearly defined limits e.g. the problem with battlefield sites. Also there needs to be clarity about who/ what's going to be important within it.

Royal Commission works on landscapes, gardens and designed landscapes. SHEP 3: covers gardens and designated landscapes - battlefields stay outside.

This would be moving into areas of control not found in the planning system before – extending into agriculture and rural; opposition to this from within the Executive.

### **Amendment of 'protect or enhance' wording**

- Shimizu statement/decision (case law) – needs a re-statement.
- Significance-based approach.

### **Grading of Conservation Areas**

- Can't see the value of this.

### **Stronger powers for officials dealing with Conservation Areas**

- Cultural areas powers in wider landscape.
- Sit policies into powers available.
- Powers to do what in designation?

*HS comment:* We have powers to write in local authority roles. Where Article IV's exist the quality of conservation in the Conservation Area is generally higher.

### **Recognition of intangible values of landscapes**

- We require a system for recording the intangible.

### **Buffer zones for Conservation Areas**

- Buffer zones already being considered.

### **Tighter controls over demolition in Conservation Areas**

- Shimizu statement/decision (case law) – needs a re-statement<sup>4</sup>.

### **Requirement for Design/Conservation Statements for proposed developments**

- Conservation Areas – does this do anything? Unless you come back to a Conservation Plan.

## **2.4 General issues**

The table below is taken from the workshop paper and formed the starting point for discussion on general issues; items in bold are considered likely to require primary legislation.

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<sup>4</sup> See Scottish Executive Development Department circular for details of the judgement in the Shimizu judgement at: <http://www.scotland.gov.uk/Resource/Doc/159010/0043220.pdf>

<b><i>Will/may require primary/secondary legislative changes</i></b>	<b><i>May/would not require primary/secondary legislative changes</i></b>
<ul style="list-style-type: none"> <li>• <b>Statutory Duty of Care for the historic environment</b></li> </ul>	<ul style="list-style-type: none"> <li>• Human Rights Convention issues re designation and management of historic environment assets</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Statutory Historic Environment Records, plus the resources to maintain and utilise them</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Revision of marine historic environment designations, i.e. Heritage Protection Bill marine section</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Interim protection during designation process</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Removal of Ecclesiastical Exemptions</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Management Agreements for all historic environment assets to be put on a statutory footing</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Requirement to undertake essential care and maintenance of historic assets</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Removal of Crown Immunity</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Third Party Right of Appeal for consents</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Owners to have right of appeal against designating assets</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Combine natural and cultural designations, cf. marine designation</b></li> </ul>	
<ul style="list-style-type: none"> <li>• <b>More flexibility to grants regime, e.g. 1953 Act</b></li> </ul>	
<ul style="list-style-type: none"> <li>• Grading of all heritage assets, cf. HP White Paper for marine, with protection based on significance</li> </ul>	
<ul style="list-style-type: none"> <li>• Improved public consultation for designating assets and for changing them</li> </ul>	
<ul style="list-style-type: none"> <li>• Tighter control of agricultural and forestry works</li> </ul>	
<ul style="list-style-type: none"> <li>• Encouragement of local designation, e.g. archaeological sites, cf. AGLVs</li> </ul>	

The following points were raised:

***Will/may require primary/secondary legislative changes:***

**Statutory duty of care for the historic environment**

- Strong support for statutory duty of care for the historic environment including archaeology and General Permitted Development Orders.
- It was considered that the responsibility for a statutory duty of care should reside with public bodies.

- The desire to increase the scope of community development rights. It was agreed that a statutory duty of care could fix this.
- Recognition for the success of the Scottish Planning Initiative and The Tenement Act.
- The need for utility companies to recognise the importance of archaeology within their construction works. Concordats should be set up with utility companies e.g. Scottish Water. It was believed that General Permitted Development Orders could act as a mechanism to achieve this.
- A suggestion was made that a 'Conservation Utility Bill' be established which would go a long way to contributing to sustainable development e.g. Victorian sewage systems.
- Important that planning recognises and contributes to sustainable development.

*HS comment:* There is strong general support for both statutory duty of care and a statutory historic environment record.

### **Statutory Historic Environment Records, plus the resources to maintain and utilise them**

- Heritage record rather than just Historic Environment record.
- Heritage research: natural and cultural heritage brought together; nature, archaeological and historic environment – an integrated approach.
- This is a basis for a central record (RCAHMS).
- It was recognised that there was a requirement for historic building recording of buildings archaeology ... and that this should be the role of the Royal Commission.

*HS comment:* There is strong general support for both statutory duty of care and a statutory historic environment record.

### **Revision of marine historic environment designations, i.e. Heritage Protection Bill marine section**

*HS comment:* Scottish or UK-wide? Awaiting London. Marine SHEP, due 07, will give us the options.

### **Interim protection during designation process**

- If malicious, use of legislation.

### **Removal of Ecclesiastical Exemptions**

- Sense that there's no case for maintaining this – being considered presently by HEACS working group.

*HS comment:* This is a voluntary system that's only used for some Christian denominations.

### **Requirement to undertake essential care and maintenance of historic assets**

- Reaching too far, too ambitious?
- Like MOTs?
- Desirability of maintaining your property.
- Generate a lot of work within the private sector; we could move to this over the longer period.
- Without protection people/organisations are free to do what they want.

*HS comment:* Incredibly wide range of owners and assets – need to consider costs/capacity. Concerns at a possible backlash e.g. as with wind-farms.

### **3 Final discussion**

#### **3.1 Feedback from break-out groups**

##### **Group 1**

*Range of comments:*

- Be pragmatic and disciplined.
- Historic environment record – develop in the broadest sense.
- Produce information and guidance that is digestible for user groups.
- Importance of developing skills.
- A single, joined-up grading for Scheduled Ancient Monuments and Listed Buildings.
- Importance of prioritisation of legislation.

##### **Group 2**

*Support for a statutory duty of care:* using the Tenement Scotland Act as a model, where ‘habitable standards’ are enforceable by estate and neighbours. A more general duty is important, but one that needs to be supported by access to suitably skilled staff.

*One main statutory tool:* such as a Cultural Landscape Area where there is instruction/duty to provide protection and to inform, educate and value. This could cover both the small and large scales.

*Topics for BEFS to support further discussion of:*

- Wider definition of culture; the Culture Bill ignored the historic environment as part of national identity.
- Broader definition of heritage.
- Absolute requirement for information.
- RCAHMS/HS merger.

#### **3.2 Concluding remarks**

*Using a significance-based approach:*

A more integrated approach, which tackles each case on its merits once change is proposed. Such a system is less of a burden on the public purse as it uses the ‘polluter pays’ principle, and at the same time improves the quality of information that is recorded when change occurs.

*Holistic thinking and understanding change:*

- There’s an inherent thread or threat that the historic environment is not seen as linked with anything else within these discussions. In fact it is not isolated; in legislation it is linked with building regulations; supply of materials (Quarry Act); Streets and Roads Act etc. Think holistically or will be undermined and isolated ... we need to demonstrate the connections.
- We should look in a new-way that brings natural and cultural heritage together – Northern Ireland has done this already. A way that brings together record-keeping, heritage protection, the national estate etc. In the short-term, this is impractical, but we must learn from international changes, and look to the longer term.
- As with the European Landscape Convention, the National Trust for Scotland has developed a single set of principles for both the natural and cultural, and found that it

works. Getting this to happen at a national level would be a matter of politics and finding the right timings.

- It is important for BEFS Members to understanding all the connections within the HE, and how BEFS can support the development of such interconnectedness.
- HEACS has done the thinking on the different connections. We now need to work with the concept of a statutory duty of care, and then consider the small details, and the consequences of change – rather than start with the small details/step first.

#### *Option 2 or Option 3?*

- The list provided in the workshop paper, and the number of items that may require primary legislation is lengthy, and remains significantly so after discussion in break-out groups. Option 2, legislative change as opportunities present, is progressive, but how long might that take? Option 3, a full review, will take time too, perhaps 10 years ... but what are the opportunity costs of not doing this and waiting for the opportunity to arise.
- We need to learn from the heritage review in England; the discussions are the same but we need to bring in a Scottish perspective.
- There are constitutional issues here, for instance, the difference between unauthorised works relating to Listed Building Consent and unauthorised works relating to planning consent. The nature of the offence (criminal or civil) will determine the level of evidence required to prove a case.

#### *Comment from HS:*

We don't need to reform everything. We need to take the strategic long-term view and also be practical and make progress, rather than over-complicate the process.

We're beyond an opportunistic process here. The SNP manifesto has called for a Bill rather than an incremental approach. We need to see the interconnectedness and move to a new coherent structure. There is widespread agreement on this and the number of major areas of disagreement is limited.

A briefing will be produced for the Minister which will examine the two current options; Option 2: reform by amendment, and Option 3: a full review. It will draw on this workshop and the work of the Local Authority Historic Environment Forum, and think through a range of questions including:

- Is this too complicated to deal with by amendment?
- Is there a danger of protections being removed through a full review?
- Would the public support changes that increase bureaucracy and costs, e.g. listings?  
The need to be realistic.

## **Appendix 1 Participants and acknowledgements**

### **Participants**

Association of Local Government Archaeology Officers (ALGAO)  
Association for the Protection of Rural Scotland (APRS)  
Council for Scottish Archaeology (CSA)  
Edinburgh World Heritage Trust (EWHT)  
Heritage Futures – Glasgow Caledonian University  
Historic Environment Advisory Council for Scotland (HEACS)  
Historic Scotland (HS)  
Institute for Historic Building Conservation (IHBC)  
National Trust for Scotland (NTS)  
Royal Commission on the Ancient and Historical Monuments Scotland (RCAHMS)  
Royal Town Planning Institute (RTPI)  
Scottish Civic Trust (SCT)  
Scottish Stone Liaison Group (SSLG)  
Simpson & Brown Architects  
Society for the Protection of Ancient Buildings in Scotland (SPABis)

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