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Dear Policy Team,

The Ancient Monuments and Listed Buildings (Amendment) (Scotland) draft Bill

Thank you for the opportunity to comment upon the Ancient Monuments and Listed Buildings (Amendment) (Scotland) draft Bill.

Built Environment Forum Scotland (BEFS) is a forum that brings together 25 non-governmental organisations – both professional and voluntary – that work within the built environment sector. The purpose of BEFS is to raise awareness of policy issues within the sector, encourage debate and share information, with a view to influencing policy and legislation.

This consultation response is designed to complement the responses submitted by individual members, which include more detailed commentary.

General Comments

BEFS welcomes this draft bill which will strengthen the ability to effectively and sustainably manage our heritage. It will simplify processes without weakening controls, and close some loopholes that presently allow unacceptable threats to the historic environment.

Generally BEFS calls for a regime of greater transparency; this is particularly important with the removal of the right to be heard in connection with applications and appeals under the 1997 Act. Once the Act is in place there will also be a need to follow up with education about heritage legislation and heritage assets in general, and especially their accurate location and known extents. (See also comments regarding removal of the defence of ignorance below).

Comments on contents

- **Offence of disturbance** (section 2)

BEFS supports the introduction of these provisions making it an offence to disturb, as well as damage a monument.

- **Removal of defence of ignorance** (section 4)

We welcome the removal of the defence of ignorance, but we wish to emphasize the importance of educating the public about what and where heritage assets are in Scotland.

- **Monuments under guardianship** (section 8-10)

We think that all “guardians” of monuments should be treated equally; we therefore do not believe that Scottish Ministers (Historic Scotland) should be given rights to take actions unavailable to others.

- **Grants and loans** (section 14)

We support the introduction of express powers for Ministers to provide grants for “development and understanding of historic etc matters”. Related to this issue we believe that similar powers to provide grants should also be introduced for urgent works. (Could be included in section 49 or 50 of the PLBCA Act or in section 25 of this Bill.)

- **Meaning of monument** (section 16)

We welcome the more inclusive meaning of “monument”. We would welcome guidance on what particular types of sites are envisaged as being included in this new definition.

- **Certificates of Immunity** (section 18)

BEFS recognises that Certificates of Immunity (Col) can be a useful instrument to offer owners and potential developers some protection against the risk of subsequent listing. But we feel that this area needs further work, and that the following issues need attention:

Resources - There is a risk that Cols will take up valuable time and resources from Historic Scotland. Although the provision relating to Cols differ in this draft bill compared to the legislation introduced in England, we feel that lessons can be learned from south of the border, where the experience from the NGO-perspective is that Cols take up a lot of time and resources. If no additional resources are allocated to deal with Cols, there is a risk that Historic Scotland will not have the capacity for more strategic work, keeping lists up-to-date etc.

Safeguards – We are concerned that appropriate safe guards are not in place, e.g. to prevent solicitors requesting Cols as a matter of course for any property they are buying for a client, or contractors pursuing Col’s as a matter of course during pre-development work.

Process – We feel that the process surrounding Cols needs further attention and clarification: To avoid conflict between conservation interests and development interests, we believe thorough research is needed. We also strongly request a high degree of transparency. The issuing of a Col should be subject to the same kind of prior consultation process as is used for listing applications. This should at least include local planning authorities, and where suitable also other stakeholders and the local community.

BEFS would support a proposal to charge a fee for Col applications.

BEFS would welcome a continued discussion with Historic Scotland on this issue.

- **Increase in Fines for unauthorized Listed Building Works** (Section 19)

We welcome the proposed increase in fines as a deterrent to unauthorised LB works.

- **Stop Notices** (section 21-24)

BEFS welcomes the introduction of Stop Notices and Temporary Stop Notices. We do however believe that there is a need for HS to look into the issue of compensation for loss due to a Stop Notice (e.g. restriction on the level of compensation to reasonable loss, liability in the event of stop notices being withdrawn/altered).

- **New Penalties for Breaches of LB Enforcement** (Sections 23/24)

We welcome the new fixed penalty fines for breaches of LB enforcement, including escalation if breaches continue, provided fines are sufficiently large to act as a strong deterrent.

- **Registration of Urgent Works Costs against a property** (Section 25)

We welcome the new measure that liability for Urgent Works costs would be registered against the property (and any new owner), instead of the owner at the time of service only.

- **Conservation Areas**

Conservation Areas have not been addressed sufficiently in this draft Bill and we suggest could benefit from more attention; there is an opportunity here for streamlining. While we hope we will have the opportunity to discuss this issue further (as discussed at the joint HS – BEFS consultation workshop on 16 July), we wish to bring up two proposals at this point:

There is a need to simplify control on development in Conservation Areas, for instance through universal conservation area restrictions on permitted development (could be added after Section 65 of 1997 Act), thereby reducing the burden on Local Authorities to prepare Article 4 Directions. Another option could be to introduce a simpler method for Local Authorities to withdraw permitted development rights in conservation areas where appropriate.

Local Authorities should be required to carry out Conservation Area appraisals and management plans. BEFS recognises that this may be addressed through education efforts when the Act is in place, but believes that provisions should be included in this Bill. (Could be added after Section 63 of 1997 Planning LB's & CA's Act.)

Provisions currently not included in the Bill

- **Duty of care**

We believe that a duty of care for the historic environment is essential to ensure that government (local and national), and those in receipt of government aid, do not neglect their responsibility to protect and sustainably manage the historic environment in a tougher economic climate.

While we recognise that there may be other possible ways to address this issue, we believe that this draft Bill offers an unmissable opportunity to introduce a duty of care for the historic environment.

- **Notification of start date and completion certificates for Consent works**

The introduction of a process for designated historic assets similar to that currently used for work on all buildings which requires the Local Authority Building Control to be notified of the start of works, and the application for a completion certificate at the end of works, would not only help to harmonise with other areas of the building process, but would aid in transparency and clarity, and potentially reduce a monitoring burden on Local Authorities.

- **Inventory registers amendments**

Historic Scotland should be enabled to amend the inventory register of Gardens and Designed Landscapes without parliamentary approval and re-publication. The same should apply to the newly announced Historic Battlefields inventory.

- **Agricultural class consents**

Agricultural class consents for Scheduled Monuments should be removed to minimise the threat to scheduled monuments from agricultural activity (particularly ploughing). This will not introduce a new burden if applied only to new designations.

- **Interim protection**

An interim protection should be introduced for assets under consideration for listing/scheduling. This would make historic assets less vulnerable to damage or destruction

during the process of listing or scheduling. (Could be added after Sec 3/4 of 1997 Planning LB's & CA's Act)

- **Historic Environment Record Service**

Detailed consideration should be given to a statutory duty on Local Authorities to maintain or have access to a Historic Environment Record Service. Local Authorities play a central role in the management and protection of the historic environment and Historic Environment Records and the services they provide are key tools in such management and protection. This provision could help underpin the relevant sections of SHEP.

- **Up-to-date lists**

This Bill could be an opportunity to address the problem that Local Authorities do not have up-to-date lists of Listed Buildings; we think that there should be a review of lists every 10 years. If provisions requiring that lists are kept up-to-date are not included in the Bill, this needs to be addressed some other way. Getting the listings process right should also help create certainty for developments – and minimise potential problems with Cols.

We hope these comments are useful – please get in touch if you require any further clarification. We would be grateful if you could keep us informed on the outcome of this consultation process.

Yours sincerely



Pernilla Rinsell
Forum Co-ordinator

This response is supported by the following Members and Subscribers of the Built Environment Forum Scotland

Members:

Archaeology Scotland
Architectural Heritage Society of Scotland
Association for the Protection of Rural Scotland
Association of Preservation Trusts Scotland
Institute for Archaeologists
Institute of Historic Building Conservation
National Trust for Scotland
Garden History Society in Scotland
Royal Town Planning Institute in Scotland
Scottish Civic Trust
Society of Antiquaries of Scotland

Subscribers:

ALGAO Scotland
Society for the Protection of Ancient Buildings