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EDUCATION AND CULTURE COMMITTEE: WRITTEN EVIDENCE

Historic Environment Scotland Bill

Built Environment Forum Scotland (BEFS) welcomes the opportunity to provide written evidence on the Historic Environment Scotland Bill. BEFS brings together professional and voluntary non-governmental organisations under one umbrella to influence strategic policy relating to the protection, management and enhancement of Scotland's built environment. Represented within BEFS membership includes the interests of historic environment organisations in Scotland reaching out to over 500 local groups. This written evidence has been prepared by a taskforce leading on the Bill within the Forum.

1. How will the creation of Historic Environment Scotland help to improve the overall management and promotion of Scotland's historic environment? Will it help to make Scotland's historic environment more attractive to communities, families and tourists?

Sustaining RCAHMS and HS: The purpose of the Bill is to sustain the functions of the two predecessor bodies Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). We note and welcome the fact that the functions of RCAHMS are expressly embedded into the functions of HES – specifically recognised at, for example, 2 (3) as the 'function of managing its collections as a national resource for reference, study and research'.

HES - a key player but one of many: There are many organisations involved in the overall management and promotion of Scotland's historic environment. The recently published document *Our Place in Time – the Historic Environment Strategy for Scotland* recognises this and provides a framework for collaborative working across the historic environment sector. We welcome section 2 (8) of the Bill which requires HES to have regard to 'relevant policy or strategy published by the Scottish Ministers'.

Use of existing legislation and policy: BEFS has previously advocated that public bodies should, in exercising their functions, protect, enhance and have special regard to Scotland's historic environment. In so doing we wished to highlight the need to for better, more consistent use of existing legislation and policy. This still applies – there is a raft of legislation and policy that can be used to care for and protect the historic environment, however anecdotally we understand that practice, and capacity to deliver, varies. We need a clearer understanding of how these mechanisms are being used – the Strategy provides opportunity for this through work on 'measuring success' and development of a performance management framework. Monitoring and promotion of good practice could usefully be built into the joint working agreements that currently exist between Historic Scotland and Local Authorities.

Conservation areas: A further issue has been that of the management of conservation areas – covered at schedule 3, part 3, which confers existing arrangements to HES. We would be interested

in seeing a strengthened connection with local planning, in particular in relation to monitoring and the preparation of conservation area appraisals.

2. Are the functions proposed for Historic Environment Scotland the correct ones or are there any omissions? Are the outcomes expected of the new body ambitious enough or could they be strengthened?

Breadth of HES' role: There is currently a lack of clarity on the breadth of HES' role in relation to the whole historic environment beyond the tightly defined statutory functions pertaining to designated assets. The language of the Bill is broadly drafted – general functions applying to the 'historic environment'. As enabling legislation the broader language may well be appropriate since it will not constrain future operations of HES. We anticipate that the detail of roles and responsibilities between HES, Local Authorities and the voluntary sector will be worked through and BEFS will monitor these developments closely. However, we would flag at this point that on the face of it, the broad language used means that there is some confusion around where HES' functions end, and where activities undertaken by other bodies begin. For comparison, the text of the 1991 Act which created Scottish Natural Heritage (SNH) makes explicit reference to the relevant planning legislation in setting out SNH's advisory role. A similar explicit reference does not exist in the Bill as drafted, but this is a crucial element in ensuring the Vision, as expressed in the Historic Environment Strategy, is achieved.

Relationship with Local Authorities – advisory function: We see the relationship with, and support for, Local Authorities as critical in achieving overall effective management of Scotland's historic environment. Concerns have been expressed in recent years around a weakening of the regulatory system. To help address this we think that the advisory relationship between HES and Local Authorities should be more explicitly recognised at section 11, which deals in more detail with advice and directions. The Bill sets out at 11 (1) and (2) the role of providing advice to Scottish Ministers. We would like to see similar, additional, provisions inserted here to recognise, explicitly in the main text of the Bill, the advisory relationship with Local Authorities.

Promotion of historic environment skills: We anticipate that the promotion of skills fits under general function (2) (c) 'learning about, and education other about, the historic environment' but consider that the promotion and support for skills (including 'traditional' skills) are sufficiently distinct that they should be explicitly referenced as a crucial function of HES. The policy memorandum recognises workforce development at section 40 as one of the four pillars of public service reform and the Historic Environment Strategy identifies 'developing skills and capacity' as a cross-cutting priority.

Strategic Environmental Assessment (SEA): Historic Scotland's role as a consultation authority (under Scottish Ministers) in relation to SEA does not appear in the Bill text currently, however we understand that this function will continue and be passed to HES. We look forward to seeing the relevant provisions. Indeed BEFS would welcome this function passing to an NDPB in the interests of transparency and independence from Government.

3. Does the Bill establish a clear and appropriate relationship between Historic Environment Scotland and all other public and private bodies with an interest in Scotland's historic environment?

Relationships with other players: At the consultation stage BEFS highlighted the need to better understand the relationship between HES and other parts of the historic environment sector. It is important to recognise that Local Authorities are a major player with consenting and advisory responsibilities. As well as this, Local Authorities and the voluntary sector undertake a broad range of activities, facilitating community engagement and managing often complex projects, to ensure

the appropriate protection and conservation of both designated and, far more extensively, undesignated assets. We do very much welcome the collaborative ethos of the Historic Environment Strategy - BEFS expects that any Directions from Ministers will enshrine this ethos.

Charitable status: The policy memorandum recognises the concerns raised by stakeholders during consultation over the impact of a major new charity on the rest of the voluntary historic environment sector. We understand that it is the intention that HES will work in a collaborative fashion with other bodies and that OSCR is interested in seeing a healthy charitable sector. The Historic Environment Strategy provides the context for a sector working together – much depends on how this will play out in practice and again BEFS would seek assurance that any Directions from Ministers will enshrine this ethos.

4. In what ways will the Bill help you/ your organisation to better manage and promote Scotland's historic environment?

BEFS provides a forum for organisations within the historic environment sector to address strategic issues of interest. As such the relationship between HES and the voluntary sector is relevant to all of BEFS members. The move of Historic Scotland's policy unit into central Government has been significant; we hope that the Historic Environment Policy Unit will continue to hold relevant expertise and to promote the historic environment, as it has done over recent months, within central and local Government. BEFS' role will potentially become even more important in ensuring that the historic environment sector has a chance to independently discuss and debate strategic issues.

5. Are there any areas of the Bill that you consider could be strengthened or improved?

Definition: we believe that it would be useful to include the definition of historic environment (which is there in the policy memorandum) in the main text of the Bill. We recognise that definitions change with practice, however there is a precedent with the 1991 Natural Heritage (Scotland) Act and we think this would help those using the Bill understand its scope; as well as helping to effect the concept of mainstreaming in advocacy.

Transparency: greater transparency is one of the key tenets of the Bill especially in the operation of consents for Scheduled Monuments where HES is the applicant, consents for Listed Buildings and Conservation Areas and also in the power to award grants. The policy memorandum indicates at paragraphs 123 (regarding Scheduled Monument consents) and 134 (regarding grants) the expectation that HES will publish all consent applications and decisions, and details of Ministerial authorisations and grant decisions. This is such an important area we believe this policy intention ought to be articulated in the main text of the Bill. It would also be useful to have some form of commitment to publishing criteria for grant schemes and also demand for grants – to get a measure of the level of demand for grant in relation to supply. These wider aspects could be published as part of regular reporting by HES.

Delegation of functions regarding Properties in Care and Collections: Sections 3 and 7 address the delegation of functions and give the option to delegate functions not only to HES, but 'any other person Ministers consider appropriate'. The terms of the delegation enabled by these sections will be critical and BEFS would expect that they are consulted on or at least published. The policy memorandum highlights (at paragraph 108) that the power to delegate these functions is there to ensure appropriate management and accessibility. There is a question regarding the guardianship of the collection into the future *should* HES choose *not* to apply for charitable status; for example, items having been gifted to RCAHMS on the understanding that it is a charity.

Properties in Care - acquisition and disposal: We raise a point as to whether Scottish Ministers should be obliged to publish their policy on acquisition and disposal of Properties in Care.

Corporate Plan: We question why the language used in section 8 is conditional e.g. 'Scottish Ministers may approve the Corporate Plan'. We would welcome further clarification on the process of corporate planning – who advises Ministers and what is the timescale for approval?

6. Do you consider that the Bill's Policy Memorandum adequately sets out: the Bill's policy objectives; whether alternative ways of meeting the objectives were considered; the consultation undertaken on the objectives; the Bill's effects on equal opportunities, human rights, island communities, local government and sustainable development?

A theme within this written evidence is how HES' roles and responsibilities relate to those of other bodies. This is recognised at paragraph 87 of the policy memorandum, where it is stated that the functions have been drafted to take account of concerns – to ensure that there is a clear link for all functions to the general functions of investigating, caring for and promoting the historic environment. However, since other organisations are also responsible for undertaking these types of activity, there is still a lack of clarity *at this stage* on the detail of roles and responsibilities, largely because the general functions are so broadly specified in the Bill.

7. The Scottish Government's newly published historic environment strategy also seeks to improve enjoyment and understanding of Scotland's historic environment. The Committee does not wish to repeat the extensive consultation undertaken on the strategy, but would welcome your views on whether it and the Bill together:

- o establish clearly who is responsible and accountable for delivering the strategy;
- o will involve appropriately all those public and private bodies with a role in improving the historic environment;
- o How will the Strategy lead to demonstrably better access to, and enjoyment and management of, the historic environment?

BEFS has welcomed the publication of the Strategy *Our Place in Time – the Historic Environment Strategy for Scotland*. The Strategy provides, at the highest level, a focus for identifying and promoting, and indeed monitoring and assessing, overall impact right across the sector. The governance structure for the Strategy, and performance measurement framework, are currently being developed. Once in place, these should support practitioners by providing high-level, commonly-held strategic objectives and a means of assessing overall impact across the sector. However, we accept that currently there is some concern over accountability, and BEFS is ready to help articulate this better in collaboration with Ministers and Scottish Government.

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This written evidence has been prepared on behalf of the BEFS Historic Environment Scotland Bill Taskforce.

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