

A Joint Consultation on the Historic Environment Strategy for Scotland and the Merger of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS).



RESPONDENT INFORMATION FORM Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

The National Trust for Scotland

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

OR

Yes, make my response available, but not my name and address

OR

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

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Group/Org Type (please tick one)

- | | | | |
|-----------------------------------|--------------------------|-------------------------|-------------------------------------|
| Local Authority | <input type="checkbox"/> | Commercial Organisation | <input type="checkbox"/> |
| Professional Body | <input type="checkbox"/> | Voluntary Organisation | <input checked="" type="checkbox"/> |
| Contractor/Developer | <input type="checkbox"/> | Housing Provider / RSL | <input type="checkbox"/> |
| Designer/Consultant | <input type="checkbox"/> | NDPB/Agency | <input type="checkbox"/> |
| Academic Body | <input type="checkbox"/> | Advisory Body/Committee | <input type="checkbox"/> |
| Industry Association/Manufacturer | <input type="checkbox"/> | Other (Please Specify) | <input type="checkbox"/> |

(d)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

4. I will be responding to:

Please tick as appropriate

Both parts of the consultation

Part 1 - Historic Environment Strategy

Part 2 – Business case for the Merger

CONSULTATION QUESTIONS

To select an answer click one of the tick boxes. To change your answer click in the box again e.g. Yes No

To enter comments please use the blue comments boxes as below which will automatically expand as you type.

Comments

Part 1 Historic Environment Strategy for Scotland

Q1. Do you agree that the definition appropriately describes the 'historic environment'?

Yes what do you like about it?
No how do you think it could be improved?

The definition of the historic environment is good, though very broad. For the National Trust for Scotland this is not problematic, as we cover natural, cultural and built heritage, but for the sector as a whole it suggests the final strategy will need to be embraced by a much broader range of actors, including cultural and natural heritage organisations. These organisations should therefore be involved in the drafting of the strategy.

Q2. Does the Vision take account of your aspirations for the historic environment?

Yes what do you like about it?
No what would you change?

Yes. We support the aspirations contained in the Vision.

Q3. Are the overarching principles the right principles to guide our activities over the next 10-15 years?

Yes what do you like about them?
No what would you change?

We would suggest the following amendments and additions:

Second bullet point - "It enhances the quality of life and economic wellbeing for its people" – quality of life indicators typically include economic elements such as employment or income therefore "economic wellbeing" is not needed. We suggest either "quality of life" or alternatively "wellbeing" are quite adequate.

Third bullet point – "assumption to conserve" is "presumption to conserve" meant here? This would fit with the Stirling Charter's Article 4 that there should be "a general presumption in favour of preservation." We would support conservation interests being brought into any relevant public or

private decision-making.

Sixth bullet point – “best value for money” – “money” is an inadequate definition of what constitutes value. We would recommend referencing the Best Value characteristics set out in the Scottish Public Finance manual: Commitment and leadership; Responsiveness and consultation; Sound governance arrangements at strategic, financial & operational levels; Sound management of resources; Use of review and options appraisal; Competitiveness, trading and the discharge of authority functions; Accountability; Joint working; Sustainable development; and Equal opportunities. This would eliminate the need for the eighth bullet point in the current text.

Seventh bullet point – “take a flexible approach” – we believe an informed, rather than a flexible, approach is needed. Professional expertise needs to be harnessed to avoid short-term, and potentially counter-productive, decision-making.

Reference should be made to the international frameworks which will inform activity in Scotland, including the Stirling Charter, Burra Charter, UNESCO Conventions, Venice Charter, Faro Convention, etc.

Other relevant national policies should also be referenced here, e.g. the Architecture and Placemaking policy statement, the Land Use Strategy, etc.

In planning how to deliver the aims and vision of the strategy, staff worked in collaboration with stakeholders to produce a series of high level strategic priorities, these included cross cutting overarching priorities and a series of priority areas for the sector.

Q4. Cross-cutting

(i) Does the overarching aim reflect your ambition for the historic environment?

Yes what do you like about it?
No what would you change?

We welcome efforts to mainstream the historic environment in other areas of public policy.

We believe that conservation decisions should be based on evidence, drawing from experience in Scotland and from other countries.

The availability of the skills needed to care for the historic environment is a critical issue, especially given the reductions in public sector budgets. As a community, we need to ensure that we have the resources needed to conserve our historic environment at both national and local levels.

(ii) Do the cross-cutting priorities take account of what you think is important for the future of the historic environment?

Yes which priorities do you like most?
No what would you change?

The ordering of the Priorities is somewhat odd, we would expect the Priorities for the sector to come first, with the cross-cutting Priorities to come last in the running order.

The cross-cutting Priorities given overlap with the Principles.

(iii) Do the suggested high level, cross-cutting actions provide a reasonable basis to begin to take the Strategy forward?

Yes which actions are particularly important?
No what actions should be taken forward and which need to be changed or added?

Mainstreaming of the historic environment, and the retention and development of skills and experience, are both important but need to be underpinned by the collection, analysis and publication of relevant evidence. These actions are all linked.

However, the creation of partnerships should not be a priority action. In the first instance, actors should be encouraged to contribute to existing partnerships (e.g. Built Environment Forum Scotland, Scottish Tourism Alliance, Scottish Environment LINK, Historic Houses Association, Heritage Education Forum, etc.).

An action that could be included here (or perhaps more appropriately in a preceding section) is to set out a framework of roles and responsibilities in delivering the strategy. At this stage, it will only be possible to identify the envisaged roles and responsibilities of public sector actors, but this will help voluntary and private sector actors to better understand how the public sector is changing in relation to the historic environment, and where their own efforts can therefore best be focused.

(iv) How will the cross-cutting proposals impact on you and how will you be able to contribute to its success?

The strategy currently has no quantifiable baseline or targets – any “success” will be based on self-assessment – a subjective measure.

The strategy in its current formulation may be better being recast as a framework with defined roles and responsibilities, and which could then help coordinate the actions of individual organisations and groups and assess development in the sector as a whole. As the evidence base is developed, it will then be possible to populate it with priorities, actions and resources.

Q5. Investigate and Record

(i) Does the aim for investigate and record reflect your ambition for the historic environment?

Yes what do you like about it?
No what would you change?

Yes, this is a good statement.

(ii) Do the priorities for investigate and record take account of what you think is important for the future of the historic environment?

Yes which priorities do you like most?
No what would you change?

The priorities currently given are so general as to not be priorities, rather they encompass all aspects of knowledge creation and dissemination.

This is a theme that would benefit from further research and consultation to identify weaknesses in our current knowledge base and therefore set priorities for development. This would need to involve the academic community to a greater degree than has been possible to date. It may be better to state that a list of priorities will be developed, based on current threats and opportunities.

Learning - both of the skills of investigation and recording, and the interpretation of results - should be referenced here.

We have a question as to what constitutes a "basic understanding" (page 23, paragraph 4 of the draft Historic Environment strategy document) and how this can be defined?

One of our concerns over the proposed merger of Historic Scotland and the Royal Commission was the probable loss of the RCAHMS status as an Arts & Humanities Research Council-accredited research body. RCAHMS was unique in Scotland in having this status and we would like the strategy to commit to retaining this status for a Scottish body.

(iii) Do the suggested high level actions for investigate and record provide a reasonable basis to begin to take the Strategy forward?

Yes which actions are particularly important?
No what actions do you think should be taken forward and which need to be changed or added?

The actions mostly relate to existing activity. Without an assessment of the current state of our knowledge base, the extent of gaps or weaknesses in this, or priorities for its development, it is not possible to say if these are the most appropriate actions or if others should be substituted.

(iv) How will proposals for investigating and recording the historic environment impact on you and how will you be able to contribute to its success?

We will continue to contribute to community efforts to collect, analyse and share data, and to involve the public in better understanding and enjoying Scotland's historic environment.

Q6. Care and Protect

(i) Does the aim for care and protect reflect your ambition for the historic environment?

Yes what do you like about it?
No what would you change?

Yes, this is a good statement.

(ii) Do the priorities for care and protect take account of what you think is important for the future of the historic environment?

Yes which priorities do you like most?
No what would you change?

The first priority bullet-point describes an approach rather than a priority.

The second bullet-point is a positive statement of the need for appropriate protection and regulation.

The third bullet-point does not identify a priority, unless it is intended to imply that there is currently a lack of capacity in the sector or a risk of losing capacity. If this is the case, to provide justification, the type of skills and the capacity required should be identified in the strategy's environmental analysis.

Reference should be made to the Land Use Strategy which is intended to address both climate change adaptation and mitigation by informing land use decisions.

Reference should be made to the role of learning in supporting owners and managers in understanding their responsibilities and being able to meet these.

(iii) Do the suggested high level actions for care and protect provide a reasonable basis to begin to take the Strategy forward?

Yes which actions are particularly important?
No what actions do you think should be taken forward and which need to be changed or added?

As above, in the absence of an evidence base or analysis it is not possible to state that these are the most appropriate actions.

Bullet point one – “appropriate and sustainable economic growth and

development” would be more succinctly expressed by “sustainable development.”

(iv) How will proposals for caring for and protecting the historic environment impact on you and how will you be able to contribute to its success?

We will continue to manage the historic heritage in our care on behalf of the nation, based on the principles of conservation, access, learning and enjoyment.

Q7. Share and Celebrate

(i) Does the aim for share and celebrate reflect your ambition for the historic environment?

Yes what do you like about it?
No what would you change?

The aim is generally good, but could perhaps be strengthened by the inclusion of “experiencing” to stress that being in the historic environment is an important part of its enjoyment.

(ii) Do the priorities for share and celebrate take account of what you think is important for the future of the historic environment?

Yes which priorities do you like most?
No what would you change?

In the absence of an evidence base and analysis, it is not possible to state that “enhancing participation” or a “broad approach to learning” are adequate statements of priorities.

Analysis is needed to identify patterns of participation and understanding by social, economic and geographical characteristics to develop these priorities (and to identify any others).

(iii) Do the suggested high level actions for share and celebrate provide a reasonable basis to begin to take the Strategy forward?

Yes which actions are particularly important?
No what actions do you think should be taken forward and which need to be changed or added?

As above, in the absence of an evidence base or analysis it is not possible to state that these are the most appropriate actions.

We would note that while "enhancing volunteering activity" is given as an action here, this action is also equally applicable to Investigate and Record and to Care and Protect. This action is the only substantive mention of volunteering in the joint consultation document.

Volunteer activity plays a much greater role in heritage than is currently recognised in the draft Strategy. For example, the Scotland's Rural Past initiative described under Investigate and Record was delivered through volunteer efforts.

The draft Strategy does commit to better harnessing volunteer activity to benefit the historic environment. We would support this, but we also support volunteering for the benefits it offers individuals and communities.

The National Trust for Scotland has been built on the efforts of volunteers, and we continue to develop approaches and processes that engage potential volunteers and deliver satisfying experiences for them. We would note that to deliver good volunteering opportunities there needs to be a framework of support (which can require paid staff) and that the personal development of the volunteers needs to be incorporated into the design of the volunteer roles. Organisations committing to volunteering also need to identify a lead person to ensure that volunteer interest can be harnessed and channeled to mutual benefit.

Similarly, in the current draft, learning appears to be a subset of the Share and Celebrate theme, when it has a critical role in delivering both the Investigate and Record and the Care and Protect themes.

(iv) How will proposals for sharing and celebrating the historic environment impact on you and how will you be able to contribute to its success?

We support the development of closer working relationships with other heritage organisations on issues of common concern. In the case of tourism, we would note that there is a well-established Scottish tourism group, the Scottish Tourism Alliance, which owns and directs Scotland's tourism strategy. The National Trust for Scotland and the Historic Houses Association are already members of the Alliance, while VisitScotland, Scottish Enterprise and Highlands & Islands Enterprise provide support to the Alliance. Using the STA as a platform for promoting heritage tourism would also fit with the strategy's mainstreaming aspirations.

Similarly, as a voluntary organisation, NTS has been closely involved with other partners in developing volunteer opportunities in heritage in Scotland. Currently, the Heritage Volunteer Organisers Scotland network provides a forum for the exchange of experience in volunteering across all aspects of heritage, and we would seek to develop these exchanges.

Learning in the historic environment sector is also covered by an existing partnership - the Heritage Education Forum - bringing together NTS, Museums and Galleries Scotland, National Records, National Museums, National Galleries Scotland, Archaeology Scotland and Education Scotland. Again, there is the risk that without assessing current roles and responsibilities, and understanding the institutional context, that duplicative structures are put in place rather than building on existing community efforts.

Q8. Delivering the Vision

Do you agree that the Strategy will help the historic environment to remain in a position to:

(i) Continue to deliver positive outcomes?

Yes

No

The strategy as it currently stands can contribute to the conservation and enjoyment of the historic environment, however it needs to be further developed to make a major contribution to the care of Scotland's heritage.

In its current form the strategy has no assessment of the current state of the historic environment, nor of the forces acting on it, nor of strengths, weaknesses, opportunities or threats. It is therefore not possible to say whether the actions currently proposed will by themselves deliver positive outcomes, harness opportunities or address challenges.

The national government also has a critical role in maintaining the health of the sector through providing resources . Historic Scotland is currently forecast to have its grant-in-aid reduced by some 28% between 2010-11 and 2014-15 (from £49.6 million to £35.7 million), when the Scottish Government's budget is only reducing by 12.6% over the same period (and Creative Scotland will have its budget reduced by only 11.3% over the same period). We would look to the Scottish Government to match its political commitment to the sector with continued financial support.

(ii) Harness available opportunities for the historic environment?

Yes

No

At this stage, we cannot make the assessment requested. There is no systematic identification of opportunities nor what actions are needed to harness these, who will undertake the actions, or what resources are required. Again, these need to be developed.

(iii) Address the challenges it faces?

Yes

No

There is no systematic identification of the challenges facing the historic environment, the scale, type or location of these, nor of the actions, actors and resources that would be required to address these challenges.

(iv) If yes, which aspects of the Strategy do you support in particular? If no, what is missing?

The clear definition of the historic environment is welcome, though it needs to be recognised that future discussions will therefore involve a broader range of actors.

We endorse the commitment to partnership working (which should build on existing partnerships wherever possible), to basing decisions on a sound evidence base, to ensuring that we retain and develop needed skills, and that other relevant actors incorporate the conservation and enjoyment of the historic environment into their own decision-making processes.

Q9. Do you agree with the proposed structure which will govern how we realise the ambition set out in the Strategy?

Yes what do you like about it?
No what would you change?

As a strategy intended to inform the work of an entire economic sector, the proposed strategy will be unique in Scotland in not being wholly prepared or owned by the sector.

For example, the following sector strategies were prepared by sector-led groupings rather than public sector actors:

Scottish Aerospace, Defence & Marine Industry Strategy – Aerospace,
Defence & Marine Industry Advisory Group
Platform for Growth - Chemical Sciences Scotland
Building for the future – Construction Scotland
Digital inspiration – Digital Media Advisory Group
Strategy for the Financial Services Industry in Scotland - Financial Services
Advisory Board
Fresh Thinking - Scotland Food & Drink
Roots for Future Growth - Scottish Forest and Timber Technologies
Advisory Group
Framework for Action - Technology Advisory Group
A strategy for the Textiles Industry in Scotland – Textiles Scotland
Tourism Scotland 2020 - Scottish Tourism Alliance

Ideally, the strategy would be completed, owned and managed by a representative group of the sector (including public, private and voluntary actors). Currently, it would be challenging for the sector to undertake such a task (though the Built Environment Forum Scotland could provide the nucleus for such a group) and the Civil Service has therefore taken the lead. In future, it may be possible to develop the sector's capacity and skills to the point where a sector body can take the lead, and this would be our preferred outcome.

The structure proposed in the consultation would need to be further developed in terms of membership, remit and its relationship with government to assess how successful it might be in coordinating the work of a sector whose members vary so greatly in constitution, size, capacity and interests.

Q10. What do you think success will look like for the Strategy and how do you think success should be measured?

Please indicate below if you would like to be involved in further discussions about measuring success.

Yes No

Baseline data, analysis, and identification of trends are still needed to develop the strategy. It is therefore too early to define what success would look like - we don't yet know enough about the current situation.

The strategy could usefully define the roles and responsibilities of public sector actors, with clear remits and methods of working. This would provide a framework in which voluntary and private sector actors can best contribute their own efforts.

It could also be helpful to learn from our mistakes and highlight areas where we are losing elements of the historic environment. One of the benefits from merging the two organisations should be a better understanding on a national scale of what we have and what the threats are.

We would be happy to contribute to further development of the strategy, including how success can be defined and measured. Members of the Built Environment Forum Scotland network are currently considering how we can best develop the evidence base for Scotland, building on the work of the Historic Environment Advisory Council for Scotland.

Q11. Do you think that the proposals presented in the Strategy might impact on people differently depending on characteristics such as age, disability, gender, race, religion or belief, sexual orientation or gender identity? If so, please tell us more.

The actions proposed in this draft of the strategy are generally quite broad. It is therefore difficult to say if they would have significantly different impacts on different groups.

With a developed evidence base and accompanying analysis, the strategy may be able to identify groups where participation or understanding is weak and better target activities to address these.

We would note that volunteering can have a positive effect across society and with good design and support can be a route to engaging with individuals under-represented in heritage activities, such as disabled people and ethnic minorities. Volunteering in the heritage sector also attracts a higher proportion of older people, and this has been found to have positive health effects for participants.

Q12. Do you think that the proposals presented in the Strategy might impact on businesses, the third (voluntary) sector or have any regulatory impact? If so, please tell us more.

The actions proposed in the strategy are generally quite broad and, with the

exception of a small number of specific actions relating to the public and voluntary sector, do not appear to have a sectoral impact.

Further development of the priorities and actions, along with responsibilities and resources, would be needed before making an assessment of the potential sectoral impact.

Q13. Do you think that the strategic environmental assessment has identified the key issues associated with the environmental implications of the Strategy?

Yes

No what is missing or needs to be changed?

The current SEA appears to understand the draft Strategy to be primarily for the public sector to execute. The text in Section 2, Background to the Strategy, Paragraph 1 makes reference only to public sector organisations (though not the Royal Commission). This is reflected in the text on “High Level Alternatives” in Section 4 which considers only public resources – the great majority of historic environment ownership sits outside of government.

The text on landscape in Annex 1: Baseline information could be strengthened by reference to SNH’s landscape character assessment reports, a comprehensive exercise covering the whole of Scotland and which incorporates archaeological and built heritage features. The text should also reference Scotland’s World Heritage Sites and the National Performance Framework.

The current SEA was written before the policy functions of Historic Scotland were relocated to the Culture and Heritage Directorate of the Scottish Government. Annex 3 needs to be updated to reflect this shift in roles and responsibilities.

The current text in Annex 3 reflects the fact that Historic Environment Strategy is still in draft form. As specific actions are developed, and responsibilities assigned, the evaluators will be able to make a more informed assessment of the environmental impacts of the Strategy. In our view, the text in this section does not currently give due recognition to the contributions that a well-cared for historic environment can make to individual and community wellbeing.

Q14. Please use this section to provide any other comments you think are relevant to the Strategy

The draft strategy sets out a positive (though ambitious) definition of the historic environment, along with a generally good set of aims for the sector.

However, the draft strategy currently lacks an evidence base or accompanying analysis that would support the development of appropriate priorities and actions.

Once developed, the delivery of the strategy will require owners for these

actions to be identified, along with appropriate resources.

In turn, this will support the development a suitable performance measurement framework that will inform the management of strategy delivery.

- End of Part 1 -

Part 2 Merger of Historic Scotland and RCAHMS

To select an answer click one of the tick boxes. To change your answer click in the box again e.g. Yes No

To enter comments please use the blue comments boxes as below which will automatically expand as you type.

Comments

Q15. Do you agree with the functions set out for the new body (see p. 24 of Consultation paper)?

Yes No

If there is anything missing, what, and why should it be included?

The absence of the Historic Scotland's current role in development planning and development management is a major omission. A new organisation will need to carry these out in place of Historic Scotland, preferably one that is not dependent on raising funding from donors and which is independent of any commercial interest.

We agree with other the functions identified, however not all of these will be carried out by the proposed new organisation. The draft Historic Environment strategy is an opportunity to establish the roles and responsibilities of organisations active in conserving Scotland's historic environment. This would provide the context for the new organisation or organisations to channel their efforts to where they would provide the greatest public benefit.

A framework of roles and responsibilities would also help identify the future roles of organisations currently supported in part by tax-payer funds channeled through Historic Scotland but which may not be a priority for the new organisation.

The proposed definition of the Historic Environment is an expansive one, and goes beyond the current remits of either the Royal Commission or Historic Scotland. With a declining budget settlement, the combined organisations may have to reduce still further the scope and intensity of their activities. The current business case does not explore how the necessary re-prioritisation of combined activities will be achieved and there is a risk that without an objective assessment of national needs, decisions will be driven by immediate financial pressures, rather than building national resilience over time.

For example, would a new national survey and recording organisation have a rescue role in providing support to local authorities whose own archaeological or conservation complement had been reduced or disappeared altogether? Would the former Royal Commission's survey teams continue to set their own priorities for survey, or would they risk becoming subordinated to supporting the scheduling and listing processes of the new organisation?

The Business Case document states that the new organisation functions would include:

- Representing and promoting Scotland's heritage at UK and international levels.
- Leading, supporting and enabling the delivery of Scotland's historic environment strategy.
- Acting as an advocate for Scotland's heritage.
- Ensuring that the work of the organisation influences and is influenced by all relevant areas of government policy.
- Working with other organisations and individuals with an interest in Scotland's heritage to establish and maintain clarity and coherence of roles and responsibilities.

RCAHMS does currently have a role in promoting Scotland's heritage at UK and international levels, however Historic Scotland is largely limited to promoting the heritage it itself conserves under the Properties in Care, rather than promoting the work of other owners and managers. Given the budgetary and competitive pressures the new organisation would be under, it is unlikely that it would have the capacity or interest to promote all of Scotland's heritage.

The advocacy and influencing roles, in the shape of the new strategic policy unit, have already shifted from Historic Scotland to the Scottish Government's Culture and Heritage Directorate. The new unit will also be responsible for overseeing the Historic Environment strategy which will help establish roles and responsibilities for work in the sector.

These significant changes render both the business case and this consultation question substantially out of date.

Q16. Do you agree that the values are an appropriate foundation for the culture, ethos and behaviour of the new organisation?

Yes

No If not, what values should the organisation adopt?

"Passion" depends on a subjective assessment and would not therefore make a good criterion to assess individual or organisational performance.

The Nolan Principles are well established and in our view provide the basis for good public administration:

- Selflessness – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- Integrity – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- Objectivity – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards

and benefits, holders of public office should make choices on merit.

- Accountability – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- Honesty – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Leadership – Holders of public office should promote and support these principles by leadership and example.

Q17. Do you agree that the desired outcomes will provide a good measure of the success of the merger?

Yes

No If not, what should the desired outcomes be?

The “outcomes” (“The likely or achieved short-term and medium-term effects of an intervention’s outputs” to quote the OECD) given in the consultation document are more properly described as activities (“actions taken or work performed”) and outputs (“changes resulting from the intervention which are relevant to the achievement of outcomes”).

As the draft Historic Environment strategy develops, we are hopeful that a suitable evidence base and performance measurement framework, including outcomes, is developed which would allow the new organisation’s delivery to be assessed. For example, these could include:

- Conservation status of Properties in Care
- Public enjoyment of the heritage in the care of the new organisation

However, we also recognise that the founding legislation for the new body will necessarily be broadly framed, and specific performance management outcomes will not be included in the text. The new body will have new management and, if not its own strategy, a new operational plan that will set organisational priorities and allocate resources. The results of this may be significantly different from what is currently envisaged by the Scottish Government.

Q18. Do you agree that the proposed approach to the discharge of Scottish Ministers’ Heritage Management functions is appropriate?

Yes

No If not, what should the desired outcomes be?

No.

There is no reference in the document to the Scottish ministers’ responsibilities in development control in relation to the historic environment

sector, currently delivered through Historic Scotland.

We would look for a positive statement of the role of regulation in helping conserve the historic environment and a commitment that in redesigning the structures, this function will be safeguarded and delivered on a consistent and adequately resourced basis.

In relation to the Properties in Care, the proposed approach is unclear on both in how the current portfolio of Properties in Care will be transferred and on what terms, and in how the portfolio will be added to or reduced in the future.

We would recommend that the current conservation deficit of the Properties in Care is assessed and that a requirement to address this goes with any transfer of management responsibilities.

Q19. Which approach to the management of Scheduled Monument Consent for properties in the care of Scottish Ministers is most appropriate?

- Option 1
Option 2
Option 3

Tell us why?

The new organisation aspires to become “Scotland’s leading heritage tourism provider.” As with the aspiration to become self-supporting through charitable donations, there is concern that a new super-body that is both the regulatory authority and a private competitor could use its powers to create an uneven playing field, either deliberately or inadvertently.

The potential conflicts of interest include Scheduled Monument Consent, specifically favourable treatment (through processes, evidentiary requirements or adjudications) of the new body’s own applications for consents, should this responsibility be placed with the new body.

We would recommend that Option 2 is adopted, with the proviso that all such consents are handled in future within government, with the new organisation on an equal footing with all other property managers. This could sit in the Scottish Government’s Directorate of Planning, and would be a good example of mainstreaming.

We note that a similar conflict of interest has been identified in relation to the Forestry Commission, with a legislative solution recommended to resolve this conflict (Forestry Devolution Review, 2011). We would prefer for a similar conflict of interest not to be created.

Q20. Do you agree that the principle of exempting certain aspects of the organisation’s work from Ministerial direction provides an appropriate balance between public accountability and scrutiny and the need to provide for independent professional decision making?

Yes
No If not, why and what approach should be adopted?

Relationship with ministers

We strongly endorse the findings of the Committee on Standards in Public Life and would look to the founding legislation for any new body to require appointment on merit and with an independent element on all selection panels.

Collections

The text in the consultation document appears to contradict itself. The fourth paragraph on page 30 (entitled Collections) states that ministers would be prevented from directing the organisation on acquisitions and disposals, including Properties in Care. The ninth paragraph (section entitled Collections in the Care of Scottish Ministers) states that the decision to take properties into care or to remove them from care would still be a ministerial decision.

Heritage management

The proposal is to bundle regulatory powers for the sector with commercial activity in competition with the sector which will depend in part on the execution of those powers, creating a conflict of interest. We would prefer the regulatory element of Historic Scotland's functions to remain in government.

Grants

The proposal is to make the new organisation responsible for awarding Scottish Government grant support for the sector an organisation that will itself be in competition with the sector, and which will be managing a declining budget, creating conflicts of interest. Our preference would be for grant-giving to be the responsibility of an organisation not itself involved in delivery and which makes its decisions based on published criteria and a transparent bidding process.

Q21. Are there any other areas of work where there should be additional safeguards to ensure operational independence from Ministers?

Yes If so, please specify
No

Yes.

Grant-giving

The Scottish Government proposes that the new body would take over Historic Scotland's role as a grant-making body, while at the same time the new body would seek to access for its own purposes other sources of grants for heritage conservation ("to benefit from grants and funds specifically aimed at charities", page 62 of the "Outline Business Case for the Merger") as well as seeking to raise funds from charitable sources.

There is therefore the potential for a conflict of interest in both providing taxpayer funds to the sector while also seeking to access external funding streams – resulting in the new body either redirecting its own grant programme or reducing the overall expenditure.

This could be resolved by passing responsibility for grant-giving to an independent party (one not involved in commercial delivery or seeking grant support).

Cross-subsidy from government departments and agencies
Historic Scotland, as part of the Scottish Government, currently enjoys close links with other government departments and agencies, as well as direct support from the political level.

In moving to a more self-sustaining status in competition with the wider sector there is a need to ensure that the new organisation is treated on an equal footing by the political level and by government departments and agencies. All relevant government support (for example access to financial or technical resources) should be on an equal footing for all organisations active in the historic environment sector who are providing public benefit.

Q22. Is this the right approach with regards to collections in the Care of Scottish Ministers (see p. 30 of Consultation paper)?

Yes
No If not, what approach should be used?

No.

Historic Scotland currently manages on behalf of the Scottish Government some 345 sites and properties, of which 30 are Crown properties (owned by the Crown) and 240 are under guardianship agreements (the property of a variety of public, private and charitable owners).

It is proposed that the new organisation take over the care of these assets in place of Historic Scotland. The new organisation is at the same time aspiring to become “Scotland’s leading heritage tourism provider” using these Crown, private and voluntary sector assets.

There is currently a lack of clarity over how the new body will take over these responsibilities from Historic Scotland, including:

- How the minister will contract with the new organisation to deliver these responsibilities;
- Whether the contracting of these responsibilities will be opened up to competition by private or voluntary sector providers;
- Whether the organisation in taking on some or all of these management responsibilities will also take on responsibility for the conservation deficit of these assets (the backlog of repair work).

There is also a lack of clarity as to how (or if) any future guardianship

responsibilities undertaken by ministers would involve the new organisation.

These issues are not adequately addressed in the consultation text.

At a minimum, the scale and type of the conservation deficit on the existing portfolio of properties in care needs to be established ahead of any transfer of responsibility. This is needed to inform any contractual agreement between the Scottish Government and delivery bodies. In the event of the new organisation being granted charitable status by OSCR, this information is needed to inform trustees of the risks they will be managing.

Clarification is also required on how existing Properties in Care might be retained in management or ownership by the new organisation, and how new properties may enter into the care of the organisation (by government direction or by the new organisation's choice?). The leadership team of the new organisation will need to be given a clear framework in which to manage their resources.

Q23. Do you agree that the functions established for the new organisation and the development of clear transparent policy in relation to the operation of those functions is sufficient to handle any perceived conflict?

Yes

No If not, what additional provisions are appropriate?

No.

The new organisation aspires to become "Scotland's leading heritage tourism provider." As with the aspiration to become more self-supporting through charitable donations, there is concern that a new super-body that is both the regulatory authority and a private competitor could use its powers to create an uneven playing field.

The potential conflicts of interest include:

- Consents - Favourable treatment of the new body's own applications for scheduled monument/listed building consents (should this responsibility be placed with the new body);
- Cross-subsidy - Use of tax-payer funding to compete commercially with the wider sector (a possible State Aid infringement);
- Undue influence - Use of connections with other arms of government (e.g. tourism marketing, skills development, planning authorities) to undertake commercial initiatives not open to private or voluntary sector competitors.

We consider that it is better to design out potential conflicts of interest at this stage, rather than build them in and then seek to manage them.

We do not consider that internal management arrangements are a sufficient safeguard given the potential impact of any unaddressed conflict of interest.

Q24. Do you agree that the functions and activities of the new organisation will fulfil the charitable purposes set out on p32 of the consultation paper?

Yes
No If not, why not?

No.

One of the declared motives for seeking charitable status for the new organisation is to secure donations to sustain its activities, previously funded through tax-payer support and commercial activities.

As a state body with secure tax-payer funding, as well as privileged access to government ministers and other government departments, there is a risk that the new body does not operate on a level playing-field and squeezes out the voluntary sector.

To ensure a level playing field, we are asking that the new body has instructions set out in legislation that ensure a level playing field for fundraising and state:

- For what purposes donations will be sought (e.g. conservation work or salaries for public officials?)
- What relationship the new body will have with other arms of government and with politicians in raising its profile and establishing relationships with potential funders.

Charitable status is typically granted to private bodies where individuals come together to act in the public interest. Public sector organisations by definition are set-up and run to deliver public benefits. There is therefore no additional public benefit should the new organisation be awarded charitable status.

Whether or not the new body is awarded charitable status, we would recommend that its governing body be assembled by following the principles of public appointment as set out by the Committee on Standards in Public Life.

Q25. Are there functions of the new organisation that do not fit the proposed charitable purpose?

Yes No

Please specify what those functions are

The current regulatory functions exercised by civil servants on behalf of the minister need to be continued on a comprehensive, independent and adequately resourced basis.

Moving these functions to a charitable-status organisation, with uncertainty over income, and with the potential for conflict in regulating those it is

dependent on fund-raising from, could degrade the coverage, effectiveness and independence of these functions.

Q26. Is there any reason why Ministers should not disapply the Ministerial direction clause in the Charities Act to enable the new organisation to apply for charitable status?

Yes If so, please specify
No

Yes.

There are a number of reasons why we cannot currently support the proposed exemption from the Charity Test for a new body or bodies (which would in turn allow them to apply for charitable status from the Office of the Scottish Charity Regulator).

Specifically, in the form proposed at present:

- The current proposal would see a new super-organisation seeking to access charitable giving while being able to access grant-in-aid support and the subsidisation of staff costs by government, in a way that no voluntary organisation can. The rationale for direct support to property managers providing public benefit will need to be revisited and a consistent and equitable programme of support for the whole sector put in place.
- The existing bodies are part of government and well-connected to other departments and agencies. In shifting to a competitive stance with the wider sector, we would expect a commitment for these arms of government to treat the new body on the same terms as other public-benefit organisations (for example in marketing and promotion, financial and technical support, etc.).
- As a government agency, the current Historic Scotland element of the proposed super-body does not have to meet HMRC rules on benefits provided through voluntary sector membership schemes. If the Historic Scotland membership scheme was transferred to the new super-body, we would expect assurances that any membership scheme would comply with the HMRC rules.

These are not insurmountable obstacles, but will require a well-thought through division of functions, along with safeguards to ensure a level playing field for the whole sector.

The simplest solution is to carry out an audit on the conservation status of the properties in care and identify and quantify any conservation deficit. The new body would then apply for Scottish Government funding for conservation activity on the same terms as other public interest organisations, demonstrating value for money and public benefit.

We would prefer the regulatory function currently delivered by Historic Scotland to be delivered by a separate body, funded directly by government.

Q27. Do you agree that existing brand names should be retained?

Yes
No If not, why not?

Yes, Historic Scotland, Canmore and SCRAN are well established brands with good customer and public recognition.

Q28. Do you agree that the new organisation should have a new name and identity?

Yes If so, what should it be called?
No If not, why?

For the creation of the new body to be presented as a merger, rather than a takeover by Historic Scotland, it would be politic to choose a new name.

Balanced against this is the cost of changing the Historic Scotland branding that is already in place across Scotland.

We would recommend that the leadership team of the new organisation weigh up the benefits and costs of a name change from the main surviving brand of Historic Scotland, including whether any other mergers with related organisations, such as the National Collections, are being considered by the Scottish Government and which might overtake a rebranding exercise.

Should the preference be to remove potential conflicts of interest at source by separating the management of Properties in Care from regulatory responsibilities, then it would be logical to continue with the Historic Scotland brand for the Properties in Care element.

Q29. Do you think that the proposed legislation might impact on people differently depending on characteristics such as age, disability, gender, race, religion or belief, sexual orientation or gender identity?

If so, please tell us more

We would need to see and review any such legislation before forming a view.

In principle, it should be possible to draft the legislation in a way that avoided any unfair discrimination.

Q30. What is the likely impact of the proposed creation of a new organisation on business?

The current proposal is to combine a regulatory role for the sector with a competitive role (against a background of declining grant-in-aid from the Scottish Government). We are concerned that this proposal creates the conditions for unfair competition with the wider sector with the super-body both judge and jury on the development of its own estate and that of its competitors.

In the interests of avoiding unfair competition and establishing a level playing field we would recommend that the regulatory function be separated from the commercial activities. The recent example of English Heritage moving to a self-supporting status, but with the regulatory function moving to a separate body, points up the potential conflicts in the merger and the need to resolve them through structural design.

Q31. Do you expect the proposed creation of a new organisation to impact on you or any particular group of stakeholders?

If so, how?

The creation of a super-body, combining a regulatory role for the sector, with a commercial role in the sector, privileged links with other government departments and agencies, along with the possibility of charitable status, could have a distorting effect on the wider historic environment sector, including other public bodies, private owners and the voluntary sector.

The specific issues are the potential for conflicts of interest in:

- Combining regulation with a competitive role;
- Combining a competitive role with the assurance of privileged access to grant-in-aid from government for the collection of public, private and voluntary properties in its care along with staff subsidies (e.g. access to the Principal Civil Service Pension scheme);
- Combining a competitive role with privileged access to other government departments and agencies, unlocking financial and technical support;
- Combining a competitive role with responsibility for Scottish Government grant-giving for the wider sector;
- Combining a competitive role using the assets entrusted to the Scottish Government, without needing to address the associated conservation deficit;
- Combining a charitable fundraising role with privileged access to other government departments and agencies providing profile and promotional platforms.

Our concern is that the potential for conflicts of interest, unless designed out at this stage, run the risk of being realised as the new organisation struggles to meet continuing conservation demands with a progressive reduction in Scottish Government support.

These potential conflicts could be eliminated by:

- Separating the regulatory role from the commercial role (the former to be retained in government);
- Separating the grant-giving role from the commercial role (the former to be retained in government);
- Assessing the conservation deficit of the properties in care and requiring that any new managing authority works to reduce this over time
- Opening up Scottish Government support for historic environment conservation support to all property managers providing public benefit;
- Ensuring that all bodies active in the sector and providing have equal

access to support from government departments and agencies.

Q32. What is the likely impact of the proposed creation of a new organisation on Scottish firms?

For private owners and managers, many of the issues identified in Question 31 will also apply. Specifically:

- Combining regulation with a competitive role;
- Combining a competitive role with the assurance of privileged access to grant-in-aid from government for the collection of public, private and voluntary properties in its care;
- Combining a competitive role with privileged access to other government departments and agencies, unlocking financial and technical support;
- Combining a competitive role using the assets entrusted to the Scottish Government, without needing to address the associated conservation deficit.

One example of the risk of potentially unfair competition would be for the former RCAHMS teams to compete for archaeological contracts, but not to do so on a fully-costed basis (staff costs, pensions, etc.).

However, the benefit for Scottish firms could be in having an active participant in visitor economy discussions, including working within the Scottish Tourism Alliance, to help represent the heritage interest.

Q33. What is the likely impact of the proposed creation of a new organisation on competitiveness?

The impact on Scotland's competitiveness will depend on how the current functions are carried out in the future.

There is the risk that combining a regulatory role with a commercial role could suppress healthy competition. The risk is that the new organisation applies different processes and standards to its own activities and to those of competitors.

There is a risk that the new organisation uses privileged access to state support to compete with the wider sector.

There is a risk that the new organisation uses the Properties in Care assets to compete with the wider sector with the liability for the physical condition of the properties remaining with the Ministers.

There is a risk that the new organisation leverages existing privileged connections to government departments and agencies to compete with the wider sector in a way not open to other public, private or voluntary sector operators.

These risks can be avoided through the separation of potentially conflicting

functions and ensuring that a level playing field is created.

Responding to the consultation

Please send your completed response together with the **Respondent Information Form** (first page of this document) by the **31st July** to:

Email: HEstrategy_merger@scotland.gsi.gov.uk

Post: Strategy/Merger Consultation responses
Room 2.31
Longmore House
Salisbury Place
EDINBURGH
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Queries

Any queries about the consultation process, accessing the various documents, or responding to the consultation should be directed to:

Hannah Eamer for the strategy or Lorna Aird for the merger on 0131 668 8600