These documents relate to the Historic Environment (Amendment) (Scotland) Bill (SP Bill 43) as introduced in the Scottish Parliament on 4 May 2010

HISTORIC ENVIRONMENT (AMENDMENT) (SCOTLAND) BILL

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EXPLANATORY NOTES
(AND OTHER ACCOMPANYING DOCUMENTS)

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1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Historic Environment (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 4 May 2010:
   - Explanatory Notes;
   - a Financial Memorandum;
   - a Scottish Government Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 43–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill is an amending piece of legislation and its extent and content are formed by a series of amending provisions identified by Historic Scotland and local government, and during the course of discussions with stakeholders during 2007, which followed the publication of a report by the Historic Environment Advisory Council for Scotland on the need for a review of heritage legislation in Scotland.1

5. The Bill harmonises aspects of the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and aligns aspects of the historic environment legislation with the planning regime.

COMMENTARY ON SECTIONS

The main provisions of the Bill

6. The Bill is made up of four Parts. The first three Parts comprise amending provisions corresponding to the three principal Acts that will be amended by the Bill and a fourth Part which includes provisions on “Interpretation”, “Ancillary provision” and “Short title and commencement”. The principal Acts are:

- the Historic Buildings and Ancient Monuments Act 1953 (“the 1953 Act”);
- the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”); and

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THE BILL – SECTION BY SECTION

PART 1 – AMENDMENT OF THE HISTORIC BUILDINGS AND ANCIENT MONUMENTS ACT 1953

Section 1 – Recovery of grants for repair, maintenance and upkeep of certain property

7. Section 1 amends section 4A of the 1953 Act which enables the Scottish Ministers to recover grants made under section 4 of that Act. This provision will allow Scottish Ministers to specify, or to set out the terms for calculating, in a grant award letter the amount that would be recoverable when a condition of grant is either contravened or not complied with or in the event that the property is disposed of.

PART 2 – MODIFICATIONS OF THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979

Section 2 – Control of works affecting scheduled monuments

8. Section 2 amends section 2 of the 1979 Act to provide Scottish Ministers with a specific power to grant consent for the retention of unauthorised works.

Section 3 – Offences under sections 2, 28 and 42: modification of defences

9. Section 3 modifies two defences and one offence in the 1979 Act. The defence in section 2(8) is adjusted so that, in addition to the existing “defence of ignorance”, an accused is also required to establish that he took all reasonable steps to discover whether the area affected by the unauthorised works which he is accused of executing or causing or permitting to be executed, contained a scheduled monument.

10. Section 42(7), which contains a defence in respect of unauthorised use of a metal detector in a protected place (as defined in section 42(2)), is amended to provide for a similar dual element defence to that in section 2(8).

11. Section 3 of the Bill also modifies the offence in section 28(1) of the 1979 Act of damaging or destroying a protected monument without reasonable excuse. The effect of the change is that for the offence to be committed, it must be established that the accused knew, or ought to have known, that the monument in question was protected (within the meaning of section 28(3)). This is in addition to the element of the offence specified in paragraph (b) of section 28(1) that the damage or destruction was done intentionally or recklessly.

Section 4 – Fines: increases and duty of court in determining amount

12. Section 4 raises the level of fines on summary conviction under section 2 and section 28 of the 1979 Act to £50,000 for offences tried summarily.

13. Subsections (2)(b) and (3)(b) make it a requirement that the court, in determining the amount of the fine to be imposed on a person convicted of an offence under section 2 or 28 of
the 1979 Act takes into account the extent of any financial gain that has accrued or is likely to accrue to the offender.

**Section 5 – Powers of entry to inspect condition of scheduled monument**

14. Section 5 clarifies that paragraphs (a) and (b) of section 6(1) of the 1979 Act merely provide particular instances of how the general power to enter land (as provided under section 6 of the 1979 Act) may be used.

**Section 6 – Works affecting scheduled monuments: enforcement**

15. Section 6(1) inserts new sections 9A to 9O into the 1979 Act. This establishes enforcement powers for Scottish Ministers to protect scheduled monuments. New sections 9A to 9F allow scheduled monument enforcement notices to be served, new sections 9G to 9N allow stop notices and temporary stop notices to be served and new section 9O makes provision for interdict proceedings to be raised.

**New section 9A – Power to issue scheduled monument enforcement notice**

16. Subsection (1) allows Scottish Ministers to serve a scheduled monument enforcement notice in respect of unauthorised works carried out to a scheduled monument or to land in, on or under which there is a scheduled monument or a breach of conditions in scheduled monument consent. This section also makes it clear that it is a matter of discretion for the Scottish Ministers to issue such an enforcement notice and that Scottish Ministers are required to have regard to the effects of the works on the character of the monument as one of national importance.

17. Subsections (2) and (3) require a scheduled monument enforcement notice to specify the works that are to cease and/or the steps that must be taken to either restore the monument or land to its former state, alleviate the effects of the unauthorised works or to bring the monument or land into a state fully compatible with the terms of the scheduled moment consent.

18. Subsection (4) sets out that in considering whether restoration would be undesirable, the Scottish Ministers must have regard to the desirability of preserving the national importance of the monument or its features of historical, architectural, traditional, artistic or archaeological interest.

19. Subsection (5) sets out that where further works are carried out under the terms of subsection (3)(b) scheduled monument consent is deemed to have been granted for such works.

**New section 9B – Scheduled monument enforcement notices: further provisions**

20. Subsections (1) to (7) set out detailed procedures (e.g. on content and service) relating to scheduled monument enforcement notices. Subsections (1) to (3) require that the notice must specify the effective date and the time period within which works must cease or steps must be taken (“the period for compliance”) and provide for a minimum 28 day period between service of the notice and the date on which it is to take effect. Subsection (4) sets out the persons on whom a copy of the notice must be served. Subsection (5) provides Scottish Ministers with the power to withdraw an enforcement notice or waive or relax any requirement of such a notice,
including extending the period for compliance. Where that power is exercised, subsection (6) requires notification to be given and specifies on whom such notification must be served. Subsection (7) sets out that the Scottish Ministers must keep a list of monuments in respect of which enforcement notices have been served which must be published electronically. Copies of the notices must also be provided on request.

New section 9C – Appeal against scheduled monument enforcement notice

21. This section sets out the process and grounds for an appeal against an enforcement notice. In particular, subsection (1) provides for a right of appeal to the sheriff for the person on whom the notice is served or any other person having an interest in the monument to which it relates or the land in, on or under which it is situated. An appeal must be made before the date it takes effect under section 9B(1). Subsection (2) sets out the grounds of appeal. Subsection (3) states that the notice is of no effect until the appeal is withdrawn or finally determined. Subsection (4) sets out that a sheriff has the power to determine an appeal against a scheduled monument enforcement notice by upholding or quashing the notice.

New section 9D – Execution of works required by scheduled monument enforcement notice

22. Section 9D gives Scottish Ministers power to enter the land in, on or under which the scheduled monument is situated to undertake any works which have not been carried out within the period for compliance with the notice and provides for the recovery of expenses incurred in carrying out such works from the owner or lessee of the monument or land.

23. Subsection (3) provides a power for the sheriff to authorise by warrant an owner of the scheduled monument or land to go on the land and carry out the works where prevented to do so by the occupier.

24. Subsections (4) and (5) allow the removal from the monument or land of materials by the Scottish Ministers and their subsequent sale after a period of 3 days during which they are unclaimed by the owner, requiring any proceeds from such a sale, less expenses, to be paid to the owner. Subsections (6) and (7) limits liability for recovery of expenses from owners receiving rent in respect of the monument or land merely as a trustee, tutor, curator, factor or agent of some other person. If the owner does not have, and had not since the demand for payment from the Scottish Ministers had, sufficient money to discharge the whole demand, his liability for expenses is limited to the amount which he has, or has had, in his hands on behalf of that other person. Where Scottish Ministers have not recovered the whole of any such expenses from an owner recovery of any unpaid balance from the person on whose behalf the rent is received is allowed.

25. Subsection (8) makes it a criminal offence to wilfully obstruct the Scottish Ministers from carrying out works required by the enforcement notice under the powers available under subsection (1).

New section 9E – Offence where scheduled monument enforcement notice not complied with

26. Section 9E sets out that where an enforcement notice has not been complied with within the period for compliance, the owner for the time being of the monument or of the land in, on or under which it is situated is in breach of the notice and is guilty of an offence and sets out the
penalties. It is a defence to show that a person did everything they could be expected to do to ensure compliance with the notice or that they were not served with a copy of the notice and did not know of its existence.

New section 9F – Effect of scheduled monument consent on scheduled monument enforcement notice

27. Section 9F applies where a scheduled monument enforcement notice has been issued, and scheduled monument consent is then granted under new section 2(3A) of the 1979 Act (inserted by section 2 of the Bill) for the retention of works or of works which do not comply with a condition in the original scheduled monument consent. In such cases, the notice ceases to have effect in so far as it requires the works to cease, steps to be taken involving the works not being retained or compliance with that condition.

New section 9G – Stop notices

28. Inserted section 9G gives the Scottish Ministers power to issue a stop notice in relation to unauthorised works to a scheduled monument or to land in, on or under which the monument is situated, or to any part of the monument or land specified in the stop notice.

29. Subsections (1) and (2) set out the circumstances in which Scottish Ministers may issue a stop notice. Subsection (1) requires that the Scottish Ministers must consider it expedient for the works to cease before the expiry of the period for compliance with a scheduled monument enforcement notice. Subsections (2) and (4) provide the power to serve a stop notice prohibiting the execution of “relevant works” and make it clear that a stop notice may be served at the same time as or after a copy of the scheduled monument enforcement notice has been served but may not be served after the enforcement notice has taken effect.

30. Subsection (3) clarifies that “relevant works” means any works specified in the enforcement notice as works that the Scottish Ministers require to cease and associated works.

31. Subsection (5) sets out that a stop notice must specify the date that it is to come into effect. The date must not be earlier than 3 days (unless the Scottish Ministers consider there are special reasons for specifying an earlier date) after the date, nor later than 28 days after the date, when the notice is served.

32. Subsection (6) sets out that Scottish Ministers may serve the notice on any person who appears to them to have an interest in the monument or the land in, on or under which it is situated or who is executing, or causing to be executed, the relevant works specified in the enforcement notice.

33. Subsection (7) allows Scottish Ministers to withdraw a stop notice at any time by notice which must be served on all persons who were served with the original stop notice. It also sets out that the notice withdrawing the stop notice must be displayed for 7 days in place of all or any site notices publicising a stop notice.
New section 9H – Stop notices: supplementary provisions

34. Subsection (1) sets out the circumstances in which a stop notice ceases to have effect. Subsection (3) sets out how Scottish Ministers may publicise the serving of a stop notice by displaying a site notice and provides what such a notice must state.

New section 9I – Compensation for loss due to stop notice

35. Subsection (1) sets out that where a stop notice ceases to have effect a person with an interest in the scheduled monument or the land in, on or under which the monument is situated is entitled to compensation in respect of any loss or damage that can be attributed to the matters in subsection (2). Those matters are the prohibition in the stop notice or the prohibition of works which cease to be relevant works due to the waiving or relaxing of a requirement in the scheduled monument enforcement notice. For the purposes of determining if compensation is payable a stop notice is taken to have ceased to have effect in the circumstances specified in subsection (3). Essentially these are where the stop notice is withdrawn or the associated enforcement notice is quashed or withdrawn. Subsection (4) clarifies that any compensation payable includes any sum payable in respect of a breach of contract caused by taking action necessary to comply with the stop notice. No compensation is, however, payable in the circumstances set out in subsection (5). The compensation provisions in section 9I are caught by section 47 of the 1979 Act which provides that any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

New section 9J – Penalties for contravention of stop notice

36. New section 9J sets out the circumstances in which a person is guilty of an offence for contravening a stop notice and makes provision in relation to the contravention and the offence including allowing for conviction for any number of offences with reference to different days or periods. Subsection (6) sets out the applicable penalties, and subsection (7) imposes a requirement on the court to have regard to any financial benefit which might accrue to the convicted person as a result of the execution of the works which constituted the offence.

New section 9K – Temporary stop notices

37. New sections 9K to 9N cover the operation of the new system of temporary stop notices. While a stop notice is always issued in relation to a scheduled monument enforcement notice, a temporary stop notice may be issued even if no enforcement notice is in place. In new section 9K (temporary stop notices) subsection (1) sets out the circumstances in which Scottish Ministers may issue temporary stop notices. The Scottish Ministers have to consider that the works are unauthorised or fail to comply with a condition attached to consent and to consider there is a reason for stopping the works immediately having regard to the effect of the works on the character of the monument as one of national importance.

38. Subsection (2) requires that the notice must be in writing and specify the works which are to stop, prohibit execution of the works and set out Scottish Ministers’ reasons for issuing the notice.

39. Subsection (3) states that notice may be served on a person who either appears to be executing or causing to be executed works and/or a person who has an interest in the scheduled monument or the land in, on or under which the monument is situated.
40. Subsection (4) states that the Scottish Ministers must display a copy of the notice and a statement on the effect of section 9M (relating to offences) on the land in, on or under which the monument is situated or on the monument (except where doing so damages it).

41. Subsections (5) to (7) set out when the notice starts and ceases to have effect. It may have effect for a maximum of 28 days. Subsection (8) provides that if the notice is withdrawn before 28 days the notice ceases to have effect at that point.

**New section 9L – Temporary stop notices: restrictions**

42. In new section 9L subsections (1) and (2) prohibit the issue of further temporary stop notice unless another enforcement action has been taken e.g. the service of an enforcement notice.

**New section 9M – Temporary stop notices: offences**

43. In new section 9M, subsections (1) to (4) set out the circumstances in which a person is guilty of an offence for contravening a temporary stop notice and allow for conviction to be made for any number of offences with reference to different days or periods.

44. Subsection (5) sets out the statutory defence under this section, which is that the notice was not served on the accused and that he did not know, and could not reasonably have known, of its existence.

45. Subsections (6) and (7) set out the penalties for offences under these new sections, including a requirement for the court to have regard to any financial benefit which might accrue to the convicted person as a result of the execution of the works which constituted the offence.

**New section 9N – Temporary stop notices: compensation**

46. Subsection (1) sets out who is entitled to compensation in respect of any loss or damage which can be directly attributed to the notice being served. Subsection (2) limits the entitlement to compensation to particular circumstances. These are that the works in the notice are authorised by scheduled monument consent granted on or before the date the temporary stop notice is first displayed, and/or the Scottish Ministers withdraw the notice other than following such grant of scheduled monument consent. Subsection (3) applies subsections (4) and (5) of new section 9I to compensation under this section which provide details of what the compensation may cover and sets out the circumstances when no compensation is payable under this section. New section 9N will be caught by section 47 of the 1979 Act which provides that any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

**New section 9O – Interdicts restraining unauthorised works on scheduled monuments**

47. New section 9O sets out that whether or not Scottish Ministers have exercised any of their powers under this Act they may restrain or prevent any actual or apprehended breaches of the controls provided by the Act by applying for an interdict.
48. Subsection (2) of section 6 of the Bill gives persons duly authorised by Scottish Ministers rights of entry in relation to the service of and enforcement of scheduled monument enforcement notices, stop notices, and temporary stop notices.

Section 7 – Control and management of monuments and land under guardianship

49. Subsection (2)(a) of section 7 inserts a new subsection (2A) into section 13 of the 1979 Act. This new subsection clarifies that the power conferred by section 13(2) of the 1979 Act includes power to control the holding of events; power to control and manage events; power to charge for events and the power to control public access to the monument in connection with such events. Section 7(2)(b) inserts a new subsection (8) in section 13 of the 1979 Act which clarifies that reference to “events” in the new inserted section 2A includes functions and any other organised activity.

50. Subsection (3)(a) amends section 15 of the 1979 Act (acquisition and guardianship of land adjoining or in the vicinity of an ancient monument). This will ensure that the powers in paragraphs (a) and (b) of section 15(3) are exercisable without prejudice to the general power in that section to control and manage land associated with ancient monuments which is under guardianship.

51. Subsection (3)(b) inserts a new subsection (3A) into section 15 of the 1979 Act. This new subsection clarifies that the power conferred by section 15(3) of the 1979 Act includes power to control the holding of events; power to control and manage those events; power to charge for events and the power to control public access to the monument in connection with such events. Section 7(3)(d) inserts a new subsection (7) in section 15 of the 1979 Act which clarifies that reference to “events” in the new inserted subsection (3A) includes functions and any other organised activity.

52. Subsection (3)(c) inserts a new subsection (4A) in section 15 of the 1979 Act. This provides that the powers conferred by subsections (3), (3A) and (4) could not be used in relation to an event or type of event that was contrary to any express provision in the guardianship deed.

53. Subsection (4) of section 7 amends subsection (1) of section 19 of the 1979 Act to ensure that the right of public access to monuments under public control is subject to inserted sections 13(2A) and 15(3A) of the Bill. This gives Scottish Ministers and local authorities the power to control public access to the monument in connection with the holding of the event or function.

54. Section 7(5) repeals paragraph 6(1) of Schedule 3 (transitional provisions) to the 1979 Act. This amendment makes clear that Scottish Ministers may manage properties taken into guardianship before 1979 and those taken into guardianship after the enactment of the 1979 Act in exactly the same way.

Section 8 – Provision of facilities, etc. at ancient monuments

55. Section 8(a) amends section 20 of the 1979 Act to remove the requirement that facilities and information or other services may be provided for the public only in connection with affording public access. Section 8(b) substitutes a new subsection (2) and new subsection (2A)
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in section 20 of the 1979 Act. These new provisions clarify that any reference to a monument includes references to any land associated with the monument and set out the specific facilities and services that may be provided for the public under section 20 of the 1979 Act. The section applies to monuments owned or under the guardianship of the Scottish Ministers or a local authority and monuments otherwise under the control or management of the Scottish Ministers.

Section 9– Financial support for preservation etc. of monuments

56. Section 9 amends section 24 of the 1979 Act so as to make clear that the power of the Scottish Ministers and local authorities to defray or contribute towards the cost of preserving, maintaining or managing an ancient monument is exercisable without the owner’s having requested such action.

Section 10 – Power of entry on land where monument at risk

57. Section 10 modifies the power in section 26(1) which enables a person authorised by the Scottish Ministers to enter land where an ancient monument is known or believed to be to record matters of archaeological or historical interest. This includes a power to carry out excavations with the consent of anyone who requires to give consent for such excavations. The effect of the amendment is that such consent is not required where the Scottish Ministers know or have reason to believe that any ancient monument is at risk of imminent damage or destruction.

Section 11 – Inventories of gardens and designed landscapes and of battlefields

58. Section 11 inserts new sections 32A and 32B in the 1979 Act which create a new statutory duty for Scottish ministers to compile and maintain an inventory of gardens and designed landscapes and an inventory of battlefields.

New section 32A – Inventory of gardens and designed landscapes

59. Subsection (1) places a new statutory duty on Scottish Ministers to compile and maintain an inventory of gardens and designed landscapes which, in their view, are of national importance.

60. Subsection (2) defines gardens and designed landscapes for the purposes of the new section.

61. Subsection (3) provides Scottish Ministers with the power to add, remove or amend entries in the inventory from time to time.

62. Subsection (4) states that when adding a garden and designed landscape to the inventory or modifying the inventory Scottish Ministers must inform the owner and (when the owner is not the occupier) the occupier of the grounds in question and the local authority in whose area the grounds are situated.
63. Subsection (5) states that Scottish Ministers must from time to time and in a manner they think fit publish a list of the gardens and designed landscapes included in the inventory at the time of publication.

New section 32B – Inventory of battlefields

64. Subsection (1) places a statutory duty on Scottish Ministers to compile and maintain an inventory of battlefields.

65. Subsection (2) defines battlefield for the purposes of the new section.

66. Subsection (3) applies subsections (3) to (5) of new section 32A to an inventory of battlefields compiled under section 32B(1). The effect of this is that the functions of the Scottish Ministers set out in those subsections are also exercisable in respect of the inventory or battlefields.

Section 12 – Development and understanding of matters of historic, etc. interest: grants and loans

67. Section 12 inserts a new section 45A into the 1979 Act to provide a new power of financial assistance to the Scottish Ministers. Subsection (1) states that Scottish Ministers may make grants or loans in connection with or with a view to the promotion of the development or understanding of matters of historic, architectural, traditional, artistic or archaeological interest. Subsection (2) of the new section 45A sets out that such grants or loans may be subject to such conditions as the Scottish Ministers think appropriate. Subsection (3) provides that, without prejudice to any powers of the Scottish Ministers under any enactment (including this Act), the total amount of grants and loans which may be made under this section must not exceed £100,000 in any one year period.

Section 13 – Regulations and orders under the 1979 Act

68. Section 13 amends section 60 of the 1979 Act and confirms that any regulation or order making powers conferred by the 1979 Act include power to make any incidental, supplemental, consequential, transitory, transitional or saving provisions that Scottish Ministers consider necessary or expedient.

Section 14 – Meaning of “monument” in the 1979 Act

69. Section 14 amends the meaning of “monument” in section 61(7) of the 1979 Act (interpretation) and extends the range of historic environment assets that can be designated under the 1979 Act to include “any site comprising any thing, or group of things, that evidences previous human activity”.

Section 15 – Scheduled monument consent: regulations as respects applications, etc.

70. Section 15(2) inserts a new sub-paragraph (1A) after paragraph 1(1) of Schedule 1 to the 1979 Act. This enables Scottish Ministers to make regulations as to the form, manner and content of the granting of scheduled monument consent. Section 15(3) amends paragraph 2 of
Schedule 1 to the 1979 Act. This enables regulations to be made by the Scottish Ministers to make provision as to what certificates must accompany an application to enable it to be considered, the notification and publication of applications for scheduled monument consent, the form and content of certificates and notices and such further particulars of the matters to which such certificates relate.

Section 16 – Refusal to entertain certain applications for scheduled monument consent

71. Section 16 inserts a new paragraph 2B after paragraph 2A of Schedule 1 to the 1979 Act enabling Scottish Ministers to decline to consider a scheduled monument consent application in two situations. The first is where the application is similar to an application that had been made within the previous two years and Ministers consider there has been no significant change in any material considerations since the similar application was refused. The second is where the application is made while a similar application is under consideration by Ministers. Sub-paragraph (4) clarifies that an application for scheduled monument consent is taken to be similar if the scheduled monument and the works are in the opinion of Scottish Ministers the same or substantially the same.

Section 17 – Application for scheduled monument consent: inquiries and hearings

72. Section 17 amends paragraph 3(2) of Schedule 1 to the 1979 Act to replace the requirement to hold a public local inquiry or a hearing before determining whether or not to grant scheduled monument consent with a power to do so.

PART 3 – MODIFICATIONS OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997

Section 18 – Certificate that building not intended to be listed

73. Section 18 inserts a new section 5A into the 1997 Act enabling Scottish Ministers to issue a certificate that they do not intend to list a building during the five years from the date of the certificate. Any person can apply for such a certificate.

74. Subsection (2)(b) of section 5A states that for that 5 year period a local planning authority may not serve a building preservation notice in relation to the building or affix such a notice under the terms of section 4(1) of the 1979 Act.

75. Subsection (3) requires that a person applying for a certificate must, at the same time, inform the local planning authority within whose district the building is situated of the application.

Section 19 – Offences in relation to unauthorised works and listed building consent: increase in fines

76. Section 19 raises the level of fines on summary conviction under section 8 of the 1997 Act (offences) to £50,000. This relates to a conviction for an offence described in section 6 or 8(2) of the 1997 Act – the carrying out of unauthorised works on a listed building or non-compliance with a condition of listed building consent.
Section 20 – Declining to determine an application for listed building consent

77. Section 20 inserts a new section 10A after section 10 of the 1997 Act enabling planning authorities to decline to determine an application for listed building consent in certain situations. Subsections (1)(a) to (1)(e) set out the specific circumstances where a planning authority may decline to determine an application for listed building consent.

78. Section 10A(2) clarifies that an application for listed building consent is taken to be similar to another such application if the listed building and works to which the applications relate are in the opinion of the planning authority the same or substantially the same.

79. Subsection (2) of section 20 allows for an appeal to be made to the Scottish Ministers where the planning authority have failed to give notice to a person applying for listed building consent that they have declined to determine the application under the power in section 10A.

Section 21 – Hearings in connection with applications for listed building consent and appeals

80. Section 21 removes the requirement to hold a hearing before determining applications and appeals under the 1997 Act. This provision amends the 1997 Act to bring the equivalent processes into line with those in the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006. Paragraph (a) repeals subsection (4) of section 11 (reference of certain applications to the Scottish Ministers) of the 1997 Act. Paragraph (b) repeals certain provisions of Schedule 3 to the 1997 Act relating to the determination of certain appeals by persons appointed by the Scottish Ministers and certain appeals by the Scottish Ministers which, but for a direction under paragraph 3(1), would fall to be determined by an appointed person.

Section 22 – Enforcement notice: requirement to cease works

81. Section 22 amends section 34 (power to issue enforcement notice), section 35 (appeal against listed building enforcement notice), section 39 (offence where listed building enforcement notice not complied with) and section 40 (effect of listed building consent on listed building enforcement notice). The amendments allow a listed building enforcement notice to specify any works which the planning authority or the Scottish Ministers require to cease and/or to specify steps which must be taken, and makes the necessary amendments following on from this to the enforcement process.

Section 23 – Stop notices and temporary stop notices

82. Section 23 inserts new sections 41A to 41I into the 1997 Act giving local authorities the power to serve stop notices and temporary stop notices in relation to unauthorised works on a listed building.

New section 41A – Stop notices

83. Subsections (1) and (2) set out the circumstances in which local planning authorities may issue a stop notice. In so doing local planning authorities must consider it expedient for the
works to cease before the expiry of the period for compliance with a listed building enforcement notice.

84. Subsections (2) and (4) provide the power to serve a stop notice prohibiting the execution of “relevant works” and make it clear that a stop notice may be served at the same time as or after a copy of the listed building enforcement notice has been served but may not be served after the listed building enforcement notice has taken effect.

85. Subsection (3) of new section 41A clarifies that “relevant works” refers to the “works” that the local planning authority require to cease under the terms of the enforcement notice together with any associated works.

86. Subsection (5) sets out that a stop notice must specify the date that it is to come into effect. The date must not be earlier than 3 days (unless the planning authority consider there are special reasons for specifying an earlier date) after the date, nor later than 28 days from the date, when the notice is served.

87. Subsection (6) sets out that the local planning authority may serve the notice on any person who appears to them to have an interest in the building or is executing or causing to be executed the relevant works specified in the listed building enforcement notice.

88. Subsection (7) allows local planning authorities to withdraw a stop notice at any time by notice which must be served on all persons who were served with the stop notice. It also sets out that the notice withdrawing the stop notice must be displayed for 7 days in place of all or any site notices publicising a stop notice.

New section 41B – Stop notices: supplementary provisions

89. New section 41B sets out supplementary provisions relating to stop notices. Subsections (1) and (2) set out the circumstances in which a stop notice ceases to have effect. Subsection (4) sets out how the planning authority may publicise the serving of a stop notice by displaying a site notice and provides what such a notice must state.

New section 41C – Power of the Scottish Ministers to serve stop notice

90. New section 41C allows Scottish Ministers to serve a stop notice under section 41A. It clarifies that notices so served have the same effect as those served by a local planning authority and that provisions of the Act relating to stop notices apply to those served by Scottish Ministers as they apply to those served by the planning authority. Scottish Ministers may serve a stop notice either where a planning authority have issued an enforcement notice or where Scottish Ministers themselves have issued the enforcement notice.

91. Subsection (3) makes it clear that Scottish Ministers must consult the planning authority before issuing a stop notice.
New section 41D – Compensation for loss due to stop notice

92. Subsection (1) sets out that a person with an interest in the building is entitled to compensation in respect of any loss or damage that can be attributed to the prohibition in the stop notice. Compensation is also payable where works prohibited by the stop notice cease to be “relevant works” (within the meaning of section 41A(3)) as a result of a variation of the listed building enforcement notice. For the purposes of determining if compensation is payable a stop notice is taken to have ceased to have effect in the circumstances specified in subsection (3). Essentially these are when the stop notice is withdrawn or the associated enforcement notice is quashed, withdrawn, or varied. Subsection (6) provides that the compensation that may be payable under this section includes any sum payable in respect of a breach of contract caused by taking action necessary to comply with the stop notice. No compensation is, however, payable in the circumstances set out in subsection (7). Subsection (8) provides that any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

New section 41E – Penalties for contravention of stop notice

93. New section 41E sets out the circumstances in which a person is guilty of an offence for contravening a stop notice and makes provision in relation to the contravention and the offences including allowing for conviction to be made for any number of offences with reference to different days or periods. Subsection (6) sets out the applicable penalties, and subsection (7) imposes a requirement for the court to have regard to any financial benefit which might accrue to the convicted person as a result of the execution of the works which constituted the offence.

94. New sections 41F to 41I cover the operation of the new system of temporary stop notices.

New section 41F – Temporary stop notices

95. In new section 41F subsection (1) sets out the circumstances in which planning authorities may issue temporary stop notices. The planning authority has to consider that the works to a listed building are unauthorised or fail to comply with a condition attached to consent and consider there is a reason for stopping the works immediately having regard to the effect of the works on the character of the building as one of special architectural or historic interest.

96. Subsection (2) requires a notice to be in writing and to specify the works in question, prohibit execution of the works and set out the planning authority’s reasons for issuing the notice.

97. Subsection (3) states that notice may be served on a person who either appears to be executing, or causing to be executed the works and/or a person who has an interest in the building.

98. Subsection (4) states that the planning authority must display a copy of the notice and a statement on the effect of section 41H (relating to offences) on the building in question.

99. Subsections (5) to (7) sets out when the notice starts and ceases to have effect. It may have effect for a maximum of 28 days.
100. Subsection (8) provides that if the notice is withdrawn before the end of the 28 day period (or specified shorter period), it ceases to have effect at that point.

New section 41G – Temporary stop notices: restrictions

101. In new section 41G, subsection (1) enables regulations to be made prescribing types of work the execution of which is not prohibited by a stop notice; and subsection (2) prohibits the issue of further temporary stop notice unless another form of enforcement action has been taken e.g. the service of an enforcement notice.

New section 41H – Temporary stop notices: offences

102. In new section 41H subsections (1) to (4) set out the circumstances in which a person is guilty of an offence for contravening a temporary stop notice and allow for conviction to be made for any number of offences with reference to different days or periods.

103. Subsection (5) sets out the statutory defences under this section, which are that the notice was not served on the accused and that he did not know, and could not reasonably have known, of its existence.

104. Subsections (6) and (7) set out the penalties for offences under these new sections, including a requirement for the court to have regard to any financial benefit which might accrue to the convicted person as a result of the activity which constituted the offence.

New section 41I – Temporary stop notices: compensation

105. In new section 41I subsection (1) sets out who is entitled to compensation in respect of any loss or damage which can be directly attributed to the notice being served. Subsection (2) limits the entitlement to compensation to particular circumstances. These are that the works in the notice are authorised by listed building consent granted on or before the date the temporary stop notice is first displayed and/or the planning authority withdraws the notice other than following such grant of listed building consent. Subsection (3) applies subsections (5) to (9) of new section 41D to compensation under this section. Any question of disputed compensation will be referred to and determined by the Lands Tribunal.

106. Subsection (2) of section 23 gives persons duly authorised by a planning authority rights of entry in relation to the enforcement of listed building enforcement notices, stop notices, and temporary stop notices.

Section 24 – Non-compliance with listed building enforcement notice: fixed penalty notice

New section 39A – Fixed penalty notice where listed building enforcement notice not complied with

107. Section 24 inserts new section 39A into the 1997 Act. This establishes powers for planning authorities to issue fixed penalty notices as an alternative to prosecution in cases where a person is in breach of a listed building enforcement notice provided the conditions set out in subsection (9) are met. The conditions in subsection (9) are that the fixed penalty notice must be issued within 6 months of the failure to comply with the listed building enforcement notice, and
that a fixed penalty notice cannot be issued where a person has already been charged with an
offence in respect of the breach of the listed building enforcement notice.

108. Subsections (6) and (7) set out that a person who receives a fixed penalty notice has 30
days to pay the penalty, and that the penalty is reduced by 25% if payment is made within 15
days.

109. Subsection (12) provides that any payment received by a planning authority in respect of
a fixed penalty notice is retained by the authority.

110. Subsection (13) allows Scottish Ministers to prescribe in secondary legislation different
levels of fine for different cases. This will also allow Ministers to set out in regulations an
incremental scale of fines related to previous breaches of listed building enforcement notices
relating to the same steps or works.

Section 25 – Liability of owner and successors for expenses of urgent works

111. Section 25 inserts new sections 50A to 50G into the 1997 Act. These new sections will
enable a notice of liability for expenses to be registered in the appropriate property register
against a listed building.

New section 50A – Liability of owner and successors for expenses of works executed under
section 49

112. New section 50A deals with the apportionment of liability for the expenses of urgently
necessary works for the preservation of a listed building when a property is sold. It makes it
clear that an owner does not cease to be liable when he or she ceases to own a property.
Subsection (1) provides that an owner will remain liable for relevant costs after the property has
been sold.

113. Subsection (2) deals with the liability of an incoming or “new” owner of a property. A
new owner is severally liable with the outgoing owner. If there are further new owners, both or
all are bound. This is, however, subject to the provisions of subsection (3) which provides that
an incoming owner will be liable for the cost of any urgent works which have been carried out
prior to the date on which the new owner becomes the owner of the property only if a notice of
liability for expenses has been registered in the property registers (on or before a date 14 days
prior to the new owner becoming the owner) and the notice has not expired before that date or
that a notice of renewal has been registered and has not expired. Liability for the cost of
completed urgent works where no notice has been registered is thus excluded. In other words, if
no notice is registered, the purchaser is not liable. Where a notice is registered, then a new
owner would be liable for the full amount of the cost of the urgent works as described in the
notice.

114. Where the new owner pays any relevant costs, under subsection (8) they may recover the
amount paid from a former owner, if the former owner is liable.
New section 50B – Notice of liability for expenses: further provision

115. Subsection (1) of new section 50B sets out who may register a notice of liability for expenses and provides that a notice may be registered in relation to different works executed on a listed building. A notice will expire after 5 years, though it may be renewed.

116. Subsection (2) provides that the Keeper of the Registers of Scotland will not be required to determine whether or not the information contained in a notice of potential liability for expenses is accurate.

New section 50C – Notices of renewal

117. Subsection (1) sets out that a notice of renewal may be registered only when a notice of liability for expenses has been registered and has not expired.

118. Subsection (2) provides Scottish Ministers and planning authorities with the power to register a notice of renewal in a form prescribed under inserted section 50G.

119. Subsection (3) allows for a second or subsequent notice of renewal to be registered in respect of the same expenses and works as specified in the original notice of liability.

120. Subsection 4 sets out that a second or subsequent notice of renewal cannot be registered if a notice of renewal for expenses has expired.

121. Subsection (5) makes it clear that where a notice of liability for expenses has been registered by Scottish Ministers a notice of renewal may be registered only on application of Scottish Ministers. Subsection (5) also makes it clear that where a notice of liability for expenses has been registered by a planning authority a notice of renewal may be registered only on application of that authority.

122. Subsection (6) states that a notice of renewal expires after a period of 5 years.

123. Subsection (7) makes it clear that the Keeper of the Registers of Scotland will not be required to determine whether or not the information in a notice of renewal is accurate.

New section 50D – Notice of determination following representations under section 50

124. Subsection (1) makes it clear that subsections (2) and (3) apply only where a notice of liability of expenses or a notice of renewal has been registered and the owner has made representations to the Scottish Ministers under the terms of section 50(4) of the 1997 Act or section 50(6) of the 1997 Act as inserted by section 25(2) of this Bill.

125. Subsection (2) sets out that when a notice of liability has been registered by a planning authority the authority must apply to register a notice of determination in a form prescribed under new section 50G as soon as practicable after the Scottish Ministers have given notice of their determination under the terms of section 50(5).
126. Subsection (3) sets out that when the original notice of liability has been registered by Scottish Ministers they must apply to register a notice of determination as soon as practicable after they have made their determination.

127. Subsection (4) sets out that a notice of determination must specify the amount recoverable in connection with a notice of liability for expenses.

128. Subsection (5) makes it clear that when the amount recoverable as set out in a notice of determination is less than the amount specified as the expenses of the works set out in the original notice of liability the amount specified in the notice of determination is to be treated as the amount recoverable.

129. Subsection (6) makes it clear that the Keeper of the Registers of Scotland will not be required to determine whether or not the information in a notice of determination is accurate.

New section 50E – Discharge of notice of liability for expenses and notice of renewal

130. Subsections (1)(a) and (b) clarify that subsections (2) and (3) apply only when a notice of liability for expenses or a notice of renewal have been registered and any liability for expenses under section 50(2) has been fully discharged.

131. Subsection (2) states that when a planning authority has registered the original notice of liability for expenses the authority must register a notice of discharge in a form prescribed under section 50G stating that the liability has been fully discharged.

132. Subsection (3) states that when Scottish Ministers have registered the original notice of liability for expenses they must register a notice of discharge in a form prescribed under section 50G stating that the liability has been fully discharged.

133. Subsection (4) confirms that when registered a notice of discharge discharges a notice of liability for expenses or, where applicable, a notice of renewal.

134. Subsection (5) makes it clear that the Keeper of the Registers of Scotland will not be required to determine whether or not the information in a notice of discharge is accurate.

New section 50F – Meaning of “register” in relation to notices

135. Section 50F defines “register” in relation to a notice of liability for expenses; a notice of renewal; a notice of determination and a notice of discharge as either the Land Register of Scotland or the Register of Sasines.

New section 50G – Power to prescribe forms

136. Section 50G gives the Scottish Ministers power to prescribe the forms of notices for liability for expenses, notices of renewal, notices of determination and notices of discharge.
Section 26 – Recovery of grants for preservation etc. of listed buildings and conservation areas

137. Section 26 amends sections 52 and 70 of the 1997 Act which enables the Scottish Ministers and planning authorities to recover grants made under sections 51 and 69 of that Act.

138. These new provisions mean that Scottish Ministers and planning authorities can specify in a grant award letter the amount that would be recoverable (or set out the terms for calculating the amount that would be recoverable) when a condition of grant is either contravened or not complied with, or in the event the property is disposed of.

Section 27 – Provisions that do not bind the Crown

139. Section 27 amends section 73A of the 1997 Act to ensure that new sections 41E, 41H and 50A(2) do not bind the Crown.

Section 28 – Regulations in connection with inquiries, etc

140. Section 79(1) of the 1997 Act applies various provisions of the Town and Country Planning (Scotland) Act 1997 (“the TCPS Act”) for the purposes of the 1997 Act including the power to hold inquiries under section 265 of the TCPS Act. Section 52 of the Planning etc. (Scotland) Act 2006 introduced a new section 275A into the TCPS Act which enables the procedure to be followed in such inquiries to be set by regulations made by the Scottish Ministers.

141. Section 28(1) of the Bill inserts a reference to the new section 275A into section 79(1) and so will enable such regulations to be made in relation to inquiries held under the 1997 Act.

142. Section 28(2) of the Bill removes the power to make rules under the Tribunals and Inquiries Act 1992 for inquiries held under Schedule 3 to the 1997 Act.

Section 29 – Regulations and orders under the 1997 Act

143. Subsections (2) and (5) amend subsections (2) and (4) of section 82 of the 1997 Act and confirm that the power to make regulations and orders under the 1997 Act may be exercised to make different provisions for different purposes.

144. Subsection (4) inserts a new section 3A into section 82 of the 1979 Act to provide that a statutory instrument containing regulations prescribing the fixed penalty amounts made by virtue of section 39A(5) is subject to affirmative procedure in the Scottish Parliament.

145. Subsection (6) confirms that any regulation making powers conferred by the 1997 Act include power to make any incidental, supplemental, consequential, transitory, transitional or saving provision that Scottish Ministers consider necessary or expedient.
PART 4 – GENERAL

Section 31 – Ancillary provision

146. Subsection (1) confers powers on the Scottish Ministers enabling them to make supplementary, incidental, consequential, transitory, transitional or saving provision in connection with the Bill where such provision is considered necessary or expedient.

147. Subsection (2) states that the provision which can be made under section 31(1) includes provision to amend or repeal any enactment, including any contained in the Bill, or any other instrument.

148. Subsection (5) provides that any order which adds to, replaces or omits any part of an Act shall be subject to an affirmative resolution procedure in Parliament. Other than this, orders will be subject to negative resolution procedure.

Section 32 – Short title and commencement

149. Subsections (2) and (3) set out the arrangements for commencement of the provisions of the Bill. Sections 30 and 31 commence on Royal Assent. Section 32 comes into force on Royal Assent, and all other provisions are to be commenced by order.

FINANCIAL MEMORANDUM

INTRODUCTION

150. This memorandum sets out the financial implications of the Historic Environment (Amendment) (Scotland) Bill. This Financial Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Background

151. The Historic Environment (Amendment) (Scotland) Bill is an amending piece of legislation. The Bill will remove barriers to the use of existing powers, and enhance the ability of the regulatory and planning authorities to manager our historic environment in a sustainable way for the enjoyment and benefit of future generations.

152. The draft Bill is made up of four Parts. The first three parts comprise amending provisions corresponding to the three principal Acts that will be amended by the Bill and a fourth Part which includes provisions on “Interpretation” and “Short Title and commencement”. The Principal Acts are:

- the Historic Buildings and Ancient Monuments Act 1953 (“the 1953 Act”);
- the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”); and
General comment on the financial implications of the Bill provisions

153. The Bill builds on and modifies well-developed and established structures and legislation. For example, a system for scheduling monuments in Scotland was first put in place in 1882, and one for listing buildings in 1947. The provisions are designed to carry no or absolutely minimal ongoing costs and also no significant one-off costs. The Bill is intended to place no new significant burdens or duties on central or local government or owners of assets, businesses or individuals.

154. The primary effect of the Bill is to enhance the ability of Historic Scotland and local authorities to achieve existing objectives. The use of the new powers that the Bill will introduce will largely be a discretionary matter for the regulatory authorities (Historic Scotland and local authorities), not a duty, and one important intended effect of the Bill is to allow these bodies greater flexibility and discretion about how to achieve best value and produce improved results for the same input of resources. In most cases it is not possible to estimate readily the number of occasions on which individual new powers may be used, which will depend on what cases arise and what judgements are made in the future about what action offers best value, in terms of potential costs and outcomes. For most of these powers, the principal cost incurred will be in terms of staff time, which will be found through the re-prioritisation of work as appropriate. In many instances, there is unlikely to be a predictable annual pattern of use, and Ministers expect many of these powers to be used only occasionally. Historic Scotland, local authorities and other public bodies are content that no additional resources are required.

155. Where information below is presented as a range of possible costs, unless specifically indicated otherwise, it is regarded as very unlikely that figures will fall outwith this range, based on the most relevant evidence and experience to date.

Consultation

156. The content of the Bill is based on a series of provisions identified by Historic Scotland and local government, and developed further in discussion with other stakeholders during 2007. The Bill was subject to a full public consultation between 20 May and 14 August 2009. The outcome of the consultation has informed the Scottish Government’s assessment of the cost implications of the Bill.

157. The Scottish Government consultation specifically invited consultees’ comments on an initial financial assessment of the costs associated with the Bill provisions that were included in the consultation document and any potential financial implications of the Bill that they could identify. COSLA agreed that the proposed amendments would not carry any direct financial implications for its members and were unlikely to have a significant overall impact on their day-to-day costs. Individual local authorities who commented on the financial implications of the Bill provisions generally agreed. Historic Scotland, as an Executive Agency, has led the work within the Scottish Government on the Bill and is satisfied that it will not require additional resources as a result of the Bill.
COSTS ASSOCIATED WITH THE BILL PROVISIONS

158. Sections 1 to 18 and section 26(4) are concerned with activities which fall within the remit of Historic Scotland, principally the designation of scheduled monuments and listed buildings and the granting and enforcement of scheduled monument consent (SMC). The best assessment of the cost for Historic Scotland of each section is provided, wherever possible. There are no costs for local authorities in any of these sections. There are no potential costs for other bodies or individuals unless mentioned.

159. Sections 19 to 25 and section 26(2) and(3) are concerned with activities which fall within the remit of local authorities, principally the granting and enforcement of listed building consent (LBC). There are no costs for Historic Scotland in these sections. There are no potential costs for other bodies or individuals unless mentioned.

SECTIONS WITH RELEVANCE TO COSTS ON THE SCOTTISH ADMINISTRATION

160. No additional funding will be required from the core Scottish Government to enable Historic Scotland to implement the new powers that will be introduced by the Bill.

Legal proceedings

161. As a general issue, a number of the provisions create additional circumstances in which prosecutions could be brought under the 1979 Act. This potential already exists under current legislation. In practice, cases are rarely taken to that point. For example, at present, of the thirty damage cases reported and investigated each year on average, only about two per year have potential to progress to prosecution, as the majority of others are either minor and/or the perpetrator is unknown. However, fewer cases than that proceed to court in practice: whether prosecution is in the public interest will always be taken into account, as will whether prosecution is in the best interests of the monument’s future management and protection.

162. As general background, only seventeen prosecutions under the 1979 Act have been sought by Historic Scotland, and its predecessors: the last case Historic Scotland led to court (this was successfully prosecuted) was in 1998. It is not considered that this Bill will significantly change that position and, therefore, rather than attempt to estimate the number of possible new cases under each relevant provision, which is extremely difficult, it is assumed that the legislation taken as a whole would increase the number of cases reaching the courts by between 0 and 2 cases every 5 years, with the likely position being at the low end of that range. This would give rise to overall costs as below.

Costs on the Scottish Administration

163. Historic Scotland has no recent costings to use as a baseline for its involvement in court cases. For these purposes, we estimate that such costs would be between £5,000 to £10,000 per case: comprising £3,555 for Historic Scotland costs, £810 for legal representation and a general allowance for non-estimable costs for, e.g., expert witnesses and commissioned reports. This implies a range of costs on any five years of between £0 and £20,000.
164. In relation to the Scottish Courts Administration and the Crown Office the average cost of bringing a case in the sheriff courts under summary proceedings, which it is assumed would be the usual approach, although other proceedings are not ruled out, is £260 (£95 for judicial salaries plus £165 for SCS running costs) to the SCS and £244 for the Crown Office. This suggests a total cost over a period of 5 years of between £0 and £520 for SCS and between £0 and £488 for the Crown Office. Both organisations believe the costs associated with the Bill will not be significant for them and are readily absorbable.

Sections 1 and 26(4) – Recovery of grants for repair, maintenance and upkeep of certain property and recovery of grants for preservation etc. of listed buildings and conservation areas

165. No costs are expected to arise from these provisions. These provisions deal with grant schemes for outstanding buildings and conservation areas which Historic Scotland already operates. Under both the relevant schemes, Ministers are entitled to recover a proportion of their grant in certain circumstances, including the sale of the building, within a ten-year period. As a general rule, grant is reclaimed at a rate of 100% in the first year, 90% in the second year and so on: but it is not possible to specify a particular approach at the start of the project. The provision will in future allow Ministers, where they wish, to specify in the grant award for a project the amount recoverable or the means of calculating the amount in the event of a sale or breach of conditions. This is intended to facilitate those cases where the anticipated proceeds from the onward sale of the building, including certainty about the basis on which any grant will be recovered, will make an important contribution to the viability of the project.

Section 2 – Control of works affecting scheduled monuments (section 2(a))

166. This provision clarifies that the use of electronic communication for the issuing of SMCs will be possible. This will allow a very modest saving in terms of the stationary and postal costs of preparing and issuing hard copy SMCs. In 2008-09, 239 SMC cases were handled by Historic Scotland. This suggests an annual saving of around £220. There may be some savings for the recipients of consents, in terms of enabling earlier response, but this cannot be estimated with any reliability.

Section 2 – Control of works affecting scheduled monuments (section 2(b))

167. This provision recognises that in certain circumstances it would be expedient for Ministers to be able to grant consent retrospectively for works coming to their attention for which SMC should have been sought. This facility currently exists in respect of listed buildings, but not scheduled monuments. Up to 10 such cases typically come to attention each year. Historic Scotland believes the administrative costs of dealing with such cases will be unchanged by this provision: however, there will now be the option of drawing a clearer line under each one.

Section 3 – Offences under sections 2, 28 and 42: modification of defences

168. This will replace the existing defences based on lack of knowledge or belief under the 1979 Act, to make these more comparable with what exists in other legislation, in terms of expectation that a person will take reasonable steps to establish whether a site is protected. It is hoped this provision will encourage greater use of the current sources of information on the location of scheduled monuments and reduce the number of incidents of unauthorised works,
Although it is not possible to put any reliable estimate on how many such cases, with the potential enforcement and remediation costs, may be avoided.

169. Potential prosecution-related costs are covered at paragraph 163 above. Information about the location of scheduled monuments is already readily available, for example on the Historic Scotland website and on PASTMAP, and the scope for developing such sources of information is already being considered.

Costs on other bodies and individuals

170. Some consultees were concerned that these provisions, as consulted on\(^2\), would increase costs on those undertaking works, particularly in rural settings, by placing them under an obligation to check exhaustively on the location of scheduled monuments. In finalising the Bill, Ministers have recognised this concern and modified the original proposal so that a person will still have a defence if they can demonstrate that they took all reasonable steps to establish if a site was protected. Given the existence of information on the Historic Scotland website and elsewhere, the further consideration being given to how this is presented and Historic Scotland’s commitment to work with owners and their representative bodies to raise awareness of sources of information, Ministers do not believe that this section will create any significant new costs for those contemplating works.

Section 5 – Powers of entry to inspect condition of scheduled monument

171. This section clarifies the drafting of the legislation. No additional costs are expected for Historic Scotland or any other organisation or individual. There is a possibility of minor savings in staff time for Historic Scotland, in terms of reducing time spent in occasional disputes with owners over the scope of the existing powers (which Historic Scotland draws on extensively) but these cannot be sensibly quantified and will be small.

Section 6 – Works affecting scheduled monuments: enforcement

172. This section introduces into the 1979 Act enforcement powers already available in the context of listed buildings; and stop notice and temporary stop notice powers already available in the planning system. At present the only mechanism for intervening in a situation where unauthorised works on scheduled monuments come to attention is for Ministers to seek an interdict. Section 6 (inserted sections 9A to 9F) will introduce new powers to enable Scottish Ministers to serve a scheduled monument enforcement notice (SMEN) that will allow for the reversal or amelioration of unauthorised works to scheduled monuments or works in breach of any condition attached to scheduled monument consent, in cases where such remedial works are desirable or reasonably practicable. Section 6 (inserted sections 9G to 9N) will introduce new powers to enable Scottish Ministers to issue stop notices and temporary stop notices for unauthorised works on a scheduled monument. These will effect a halt – immediate in the case of temporary stop notices – to unauthorised works to a scheduled monument and will provide additional powers to prevent irremediable damage to such nationally important monuments though illegal and unauthorised works.

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\(^2\) The original proposal was to repeal the defences based on lack of knowledge without any replacement.
173. Historic Scotland estimates that it may issue up to 10 notices a year under this provision. The cost of such a notice is estimated as £188 in staff time (further breakdown available) and £100 in travel costs, recognising that in some cases the notice will need to be fixed to the land, giving a cost of £288 per notice. In addition there are potential costs in checking that a notice has been complied with. These are estimated as £71 in staff time (further breakdown available) and £100 in travel, giving an additional cost of £171 per notice. This provides an overall upper estimate of costs of £4,590 a year. Historic Scotland is content that this is readily absorbable. These provisions will in theory reduce the need to seek interdicts: however, in recent years Historic Scotland has not used this mechanism at all, so it does not seem sensible to identify a specific saving.

174. Section 6 (inserted section 9I) provides for compensation to be paid for loss due to a stop notice in certain specified circumstances when a stop notice ceases to have effect. A stop notice ceases to have effect when the SMEN is quashed or the SMEN or the stop notice is withdrawn by Scottish Ministers. The loss or damage in respect of which compensation is payable under this section includes any sum payable in respect of a breach of contract caused by the taking of the action necessary to comply with the prohibition. There is clearly potential for compensation costs to arise in certain circumstances in relation to stop notices, but Scottish Ministers would simply need to factor the risk of a successful compensation claim into any decision to serve a notice. The Scottish Government is satisfied that cases would only be pursued when Historic Scotland is sure of its ground and the risk of a successful claim for compensation is very low. It is not possible to provide reliable estimates for potential compensation sums, which would be highly specific to individual cases. Given that these powers are unlikely to be used where it was assessed likely that compensation could be successfully pursued, and that the circumstances around any such claim are unpredictable, it is not considered that any reliable estimate can be provided for potential costs. Historic Scotland is content that this provision does not raise any significant financial issues for Historic Scotland.

175. In relation to the Scottish Courts Service the new provisions relating to SMENs provide for an appeal to the sheriff against the notice and on the grounds of procedural error. This may have marginal cost implications for the Scottish courts. However, it is impossible to say how many cases will reach appeal. It is not believed that a significant number of SMENs will be issued and it is the Scottish Government’s view that not many will be appealed: it is estimated between 0 and 2 a year. Where an appeal to the sheriff does take place, the cost is expected to be £260 per case, as above, giving an estimate of between £0 and £520 a year. This section of the consultation document attracted no comment from consultees and it remains the Government’s view that there will be very few appeals under the new regime. Any reduction in interdicts as above would represent a small saving to the courts, but as noted above this is expected to have minimal impact.

Section 7 – Control and management of monuments and land under guardianship

176. This provision removes differences in the provisions for monuments taken into guardianship pre- and post-1979 in recognition that over the past 30 years the legal distinction has not proved to have any practical effect: its removal therefore simplifies the legal framework. The section also clarifies that Ministers’ powers in respect of monuments under guardianship include the power to hold events and charge for these, putting beyond doubt Historic Scotland’s ability to respond to the twenty-first century expectations of communities and individuals. It will
also put beyond doubt Historic Scotland’s responsibilities towards visitors in relation to health and safety and other legislation relevant to the holding of events. Historic Scotland does not expect any significant new costs to arise from this. The provision enabling charging for events at these sites does not have capacity to generate new income at a level which would be significant for Historic Scotland

Although Historic Scotland has significantly developed its programme of events in recent years, particularly at the key sites of Edinburgh Castle and Stirling Castle (both Crown owned) events still contribute a relatively small proportion of income: admissions, retail and catering continue to provide almost 95% of income. The nature of guardianship properties means that events at these properties will overwhelmingly be small scale community events, and other small events, for which only modest charges focused on cost recovery could be set, and which would not be expected to make any significant contribution to Historic Scotland’s overall income. Events are already held at these sites and the total income from them in the last 3 years has been: £104,364 in 2007-08; £108,032 in 2008-09; and, £78,608 in 2009-10. Historic Scotland does not expect the sums raised in this way to increase significantly in the future.

Section 8 – Provision of facilities, etc. at ancient monuments

177. This provision puts beyond doubt that Ministers may provide facilities for the public at properties in care and clarifies what such facilities may include. Historic Scotland has provided such facilities for many years and therefore has no specific programme of works contingent on the Bill and expects this provision to carry no specific costs.

Section 9 – Financial support for preservation etc. of monuments

178. The provision removes a barrier to providing grants from within the existing archaeology programme to tenants and other third parties. At present grants can only be provided to such persons at the request of the owner. The provision is particularly intended to deal with occasions where a third party – such as a trust – wishes to seek grant aid, but the owner, though content with a project going ahead, would prefer not to be drawn directly into the grant process. The new provision will allow greater flexibility within current budgets and it is not possible to provide any reliable estimate of the value of grants within that budget which may be payable in future specifically as a result of the change.

Section 10 – Power of entry on land where monument at risk

179. The amendment removes the requirement for the owner to consent to an excavation when a site is at risk or believed to be at risk of imminent damage or destruction. It is most likely to be called on in circumstances where an owner or their representative cannot be quickly contacted, despite best efforts, and the threat appears to be particularly acute. For more major investments, Historic Scotland would always by preference choose sites where an excavation is undertaken with the owner’s consent. The nature of excavations under this new power is therefore expected to be short-term and small-scale – e.g. the rescue of suddenly exposed vulnerable organic materials or limited exploratory investigation, to establish the potential significance of a newly-exposed site. We would expect between 3 and 6 cases every 5 to 10 years where the new power would be invoked to enable an excavation. The cost of excavations, which Historic Scotland contracts in, varies considerably but the typical cost of a small-scale emergency excavation is about £4,000. This suggests a cost from such activity over 5 to 10 years of between £12,000-

3 Historic Scotland’s income from its properties in care in 2008-09 was £17.462m. This income is used for the upkeep and repair of properties in care.
These documents relate to the Historic Environment (Amendment) (Scotland) Bill (SP Bill 43) as introduced in the Scottish Parliament on 4 May 2010

£24,000. Costs would be found from within existing programmes and the decision would be at the discretion of Ministers (in practice Historic Scotland).

180. Compensation may be claimed: similar arguments as at paragraph 174 above apply, in terms of the provision of an estimate and the reason why Ministers do not believe that these potential costs should be estimated here.

Section 11 – Inventories of gardens and designed landscapes and of battlefields

181. Historic Scotland already maintains an inventory of gardens and designed landscapes and Ministers announced their intention to introduce a register of battlefields on 27 July 2009: no change in legislation is required to implement this. This provision does not affect that position. The new provision makes a technical change in the way these sites will be brought within scope of the planning system, through which they are protected. Rather than requiring, as now, periodic revision to the General Development Regulations, the inventories maintained by Historic Scotland will themselves have statutory standing. There will be a new duty to publish these documents in such form and at such time as Ministers think fit: Historic Scotland already publishes the gardens and designed landscapes inventory on its website and would expect to do the same for the battlefields inventory in due course, and so this duty is not expected to incur any additional cost. There will be an efficiency and effectiveness gain for local authorities, which will no longer be required to consult a list which over time may become out of date. There should also be benefits to applicants. However, it is not possible to cost these in any reliable way.

Section 12 – Development and understanding of matters of historic, etc. interest: grants and loans

182. The provision introduces an express power for Ministers to use grants and loans to fund a wider range of bodies than is currently recognised explicitly in legislation for a broad range of work in support of the historic environment, such as publications, feasibility studies of buildings and conferences. The total amount payable under this new power in any given year is limited to £100,000, to put beyond doubt that this provision is intended only to create some marginal flexibility and there is no wish here to open the way either to significant new expenditure or to any substantial change in the pattern of grant spending by Historic Scotland. It is not possible to estimate what additional sums may be payable as a result of this new power, as this will depend in part on what approaches Historic Scotland receives in future and how it chooses to respond. However, Historic Scotland is content that this provision does not require any increase in its budget, and that it simply provides it with greater flexibility and capacity for responsiveness in terms of the use of its overall grants budgets.

Section 14 – Meaning of “monument” in the 1979 Act

183. Section 14 of the Bill will extend the range of historic environment assets that can be designated under the 1979 Act by expressly allowing Ministers to designate as a scheduled monument “any site comprising any thing, or group of things, that evidences previous human activity”. This will lead to the scheduling of a very small number of sites that do not currently fall within the statutory definition of monument. Historic Scotland estimates the number of such sites to be around 10 (as against a total number of around 8,000 scheduled monuments). Whether individual sites should be scheduled under this new power will generally be considered
within Historic Scotland’s routine scheduling programme, which undertakes a rolling programme of area visits, reviewing existing sites and considering potential new ones. It is not practicable to identify additional new costs for scheduling individual sites within this programme. Historic Scotland is not aware of immediate threats to any of the potential new sites under this provision, which would require such a site to be considered urgently outwith that programme. If however an urgent separate consideration was required, the cost of an ad hoc scheduling is estimated at £1,129, comprising £1,029 in staff costs (further breakdown available) and £100 in travel. It is anticipated that this will be a rare occurrence, possibly once every 5 to 10 years. Historic Scotland is content that any costs will be easily absorbed.

Costs on other bodies and individuals

184. One respondent to the Bill consultation felt that this proposal would have financial implications for those that managed land on which “new” monuments were situated. The Scottish Government does not accept the view that the revised definition will have financial implications for land managers, although it does recognise that scheduling does have some impact. For instance, it brings owners within the consents regime, which is not charged but could involve additional process, depending on whether the owner wishes to undertake any works on the site. Scheduling in itself places very few burdens on the owners of monuments. The effects of scheduling may be summarised as follows:

- a scheduled monument remains the property of its owner. Once a monument is scheduled, the prior written consent of Scottish Ministers is required for most works that affect the monument, including repairs.
- a legal process known as “class consents” allows certain works to take place without the need for SMC. For example, if ploughing was taking place on the monument in a ten-year period up to the date it was scheduled, similar ploughing may continue without SMC.
- moreover a change from ploughing to grazing will not require SMC.

185. While the Scottish Government recognises the key role that owners, occupiers and managers can play in helping to ensure the survival of scheduled monuments and actively encourages positive management of sites, owners are not obliged to maintain or repair monuments. Indeed Historic Scotland is frequently asked by owners if they are required to fence a scheduled monument – the answer is no. The type of monument that the revised definition will capture, notably sites evidencing the earliest human activity in Scotland, some prehistoric and medieval industrial sites and parts of battlefields, will be extremely rare. The nature and quality of the presently available evidence for artefact scatters in general means that only a small number of new scheduling proposals are likely. Historic Scotland is not aware of any sites likely to be affected by this new provision where the nature of the site would bring into prospect the possibility of a significant impact on the operation of an existing business. Scottish Ministers, through Historic Scotland, would in any case expect to work closely with site owners, occupiers and managers to positively manage any such impacts.

Section 15 – Scheduled monument consent: regulations as respects applications, etc.

186. This provision will move some of the detail of the SMC application regime from primary to secondary legislation, enabling it to be kept more readily up to date and responsive to wider
developments in public administration and customer needs. No costs, other than the costs of producing a new regulation picking up some of the provisions of an existing schedule, are envisaged. No significant changes are planned to the regime, although the opportunity will be taken to modernise and simplify forms, which may generate some efficiency savings for users of the system and in Historic Scotland: however, these cannot be reliably estimated.

Section 16 – Refusal to entertain certain applications for scheduled monument

187. Section 16 makes provision which will provide Ministers with limited discretion to refuse to entertain repeat applications for SMC, in line with existing provisions in the planning regime. It will carry no cost and when used will create a saving, being the cost which would otherwise have been incurred in reconsidering the case. This power is expected to be used extremely rarely. The cost of considering a SMC case is estimated as £109 (further breakdown available) in staff costs and £100 in travel costs, giving a total saving of £209 per such case, expected once every 5 to 10 years.

Section 17 – Application for scheduled monument consent: inquiries and hearings

188. Section 17 brings SMC into line with planning, by passing the decision on whether to conduct an oral hearing or inquiry on applications for SMC to the body responsible for consideration of the decision rather than, as now, providing the appellant with the right to require one. This provision is principally intended to simplify the law by harmonising provisions and while there is a theoretical possibility of savings, it is expected in practice that the overall number of cases going to public local inquiry will be unaffected and there is no recent history of the cheaper hearings procedure being used.

Section 18 – Certificate that building not intended to be listed

189. This provision will enable Ministers to issue a certificate declaring that they have no intention to list a building for a period of 5 years. This is intended to provide certainty to those considering the development of an unlisted building, who wish to deal early on with any potential for listing. An application may result in listing, if appropriate, rather than the issue of a certificate. Drawing on the experience of a similar regime in England, Historic Scotland estimates that there are likely to be between 20 and 30 cases a year under this new provision. These will be dealt with within the existing ad hoc listing programme, under which the average cost of listing a building is £605, comprising £505 staff costs (further breakdown available) plus £100 in travel costs. This provides an estimated cost of between £12,100 and £18,150 per annum. As there is no experience of operating a provision of this type in Scotland and experience in England is only a partial guide, the degree of uncertainty around the range of possible costs here is potentially somewhat higher than for others provided. However, against this can be set a potential saving which is not quantifiable, from avoiding more time consuming and costly interventions at a later stage when owners, developers and local authority officers have invested in plans which must be relegated pending a listing consideration or redrafted in response to a listing.

Costs and savings on other bodies and individuals

190. It is expected that this provision will create savings for local authorities and developers, which have potential to be significant, by enabling greater certainty about whether a building
These documents relate to the Historic Environment (Amendment) (Scotland) Bill (SP Bill 43) as introduced in the Scottish Parliament on 4 May 2010

will fall within the LBC regime while plans for development are still at an early stage. A change in the status of a building may affect the validity of work done at an earlier stage and introduce delays and additional cost if earlier preparations or decisions have to be revisited. The potential for such savings cannot however be reliably estimated. One organisation felt that as regulation does not constrain who can apply for a certificate, a high volume of solicitors might do so when handling property transactions, and therefore there would be a widespread increase in conveyancing costs. However, it is the Scottish Government’s view that this is unlikely and that solicitors will not apply for a certificate where there is no obvious reason to do so and users of conveyancing services will not be willing to pay for this work when it is not required for any specific purpose.

SECTIONS WITH RELEVANCE TO COSTS ON LOCAL AUTHORITIES

Section 20 – Declining to determine an application for listed building consent

191. Following section 16 (see paragraph 187 above), section 20 makes a similar provision for local authorities in relation to listed building consent, providing local authorities with limited discretion to refuse to entertain repeat applications for LBC, in line with existing provisions in the planning regime. This will carry no costs and has some potential for savings, but is only expected to be used rarely in practice.

Section 21 – Hearings in connection with applications for listed building consent and appeals

192. Following section 17 (see paragraph 188 above), section 21 brings LBC into line with planning, by passing the decision on whether to conduct an oral hearing or inquiry on appeals for LBC to the body responsible for consideration of the decision rather than, as now, providing the appellant with the right to require one. As with section 17, this provision is principally intended to simplify the law by harmonising provisions and while there is a theoretical possibility of savings, it is expected in practice that the overall number of cases going to public local inquiry will be unaffected and there is no recent history of the cheaper hearings procedure being used.

Sections 22 to 24 – Enforcement notices: requirement to cease works and non-compliance with listed building enforcement notice: fixed penalty notice

193. These provisions bring the LBC regime into line with that for planning. Enforcement notices are already in place for LBC, and the provision in relation to those simply harmonises further detail with the planning regime. Stop notices and temporary stop notices offer local authorities an alternative to interdicts where they wish to obtain the urgent cessation of works: stop notices may only be issued alongside enforcement notices, though temporary stop notices are not restricted in that way and take immediate effect. Assuming the cost of issuing a stop or temporary stop notice is similar to the cost of issuing an enforcement notice, this would suggest a cost of around £150 per case (further breakdown available). In those cases where it is decided that further action is needed to ensure compliance, additional costs may be incurred, which are likely to be between £300 and £500 per case. However, it is not possible to estimate the frequency with which local authorities will choose to use these new powers. No data is gathered centrally on the use of enforcement notices at present. Without a reliable estimate of potential frequency, it is not possible to put a reliable figure on the potential costs an authority may incur.

4 These costs will not be incurred in every case and will not be additional where they simply substitute, or reduce the need, for enforcement action which would be taken at a later stage under existing arrangements.
which will also tend to vary, depending on the number of listed buildings in its area. However, given that councils will be able to decide when the use of these powers offers best value, as opposed to other approaches they may take, such as use of interdict, it seems reasonable to assume that the net costs, if any, will not be significant in relation to any individual council’s budget and local authorities have confirmed they expect this to be the case. Similar arguments as at paragraph 174 above apply in relation to the cost of compensation provisions.

194. Section 24 provides for a new regime of fixed penalty notices, again in line with the planning regime. The relevant provision (section 25 of the Planning etc. (Scotland) Act 2006) has only been in force a relatively short time and local authorities have therefore not been able to provide an estimate of the cost of issuing a fixed penalty notice under the current planning regime for comparison. Again it is not possible to estimate how frequently an individual council may choose to use these powers. Overall, however, local authorities do not expect these costs to be significant.

Section 25 – Liability of owner and successors for expenses of urgent works

195. This provision will enable local authorities to register a liability for the cost of any urgent works against the title of a property. The purpose of the provision is to make it easier for local authorities to recover the costs of urgent works and so to encourage the more frequent use by councils of these powers, particularly at an early stage when lower-cost interventions may prevent the need for more expensive works later. The cost of preparing an urgent works notice is estimated at around £300 and the estimated cost of a registration with the Keeper of Registers will be £30 per title. Costs to local authorities will depend on the frequency of use. Data is not held centrally on the frequency of use of urgent repairs powers. However, all local authority expenses are recoverable from owners and so any costs are expected to be fully off-set, while an improved ability to recover these costs should generate overall savings. It is not, however, possible to provide a reliable figure for the savings that may arise.

Costs on other bodies and individuals

196. Existing legislation empowers the Keeper of the Registers of Scotland to charge fees in line with existing Registers of Scotland policy, in order to recover operational costs.

197. Costs of urgent works may already be recovered from owners. However, under the Bill, owners will no longer be able to avoid reimbursing the cost of urgent works simply by giving up title, by whatever means. Owners who keep their property in good order will not be affected. Any new owners will be properly informed about any outstanding liabilities at a point where they can take that into account in their transaction with the seller.

Section 26(2) and (3) – Recovery of grants for preservation etc. of listed buildings and conservation areas

198. Section 26(3) is intended to have similar effect as section 26(4) (see paragraph 165) and no costs are expected to arise from these provisions. Section 26(2) ensures that this applies both to grant and loan-making powers.
OTHER COSTS

Other costs on the Scottish Administration

One-off Bill implementation costs

199. There will be one-off costs of activities which, though not strictly required by the proposed legislation, would support its implementation. These are the production of updated policy guidance; training, particularly for Historic Scotland and local authority officers; and awareness-raising with key groups, including through paper and web publication. Historic Scotland intends to discuss further with stakeholders how these activities would be most effectively delivered and what sums will be required, but is confident that any costs can be absorbed within its current budget lines. Historic Scotland provisionally estimates that the total cost of these activities will fall in the range £65,000 to £90,000, over the period 2010-11 to 2011-12. More precise estimates will be made available as discussions with stakeholders progress. Historic Scotland has a well-established programme of continuing professional development for the staff involved in its regulatory work, into which training on new provisions in the Bill can be readily integrated. In terms of the new local authority powers, the close modelling of these on existing planning provisions should be helpful in containing training costs. Historic Scotland is already working closely with the Improvement Service, as part of its modernisation programme, to develop independent learning materials for relevant local authority staff, into which training on the Bill can be easily fitted.

200. The Bill also includes certain regulation making powers, which are individually difficult to cost but which collectively might be expected to cost between £5,000 and £10,000 to take forward, mainly in staff time, which can be managed within existing budgets.

Other costs on other bodies and individuals

Sections 4 and 19 – Fines: increases and duty of court in determining amount and Offences in relation to unauthorised works and listed building consent: increase in fines

201. These sections simply increase the maximum fines for offences under the 1979 Act and the 1997 Act to £50,000 (maxima are currently £10,000 and £20,000 respectively). This is the figure in the Marine (Scotland) Act 2010 and also more closely in line with maximum fines under nature conservation legislation. In the case of the 1979 Act, the courts are also instructed to take into account any likely financial benefit accruing to the person being fined from the unauthorised works, to bring that Act into line with other comparable areas of legislation. No costs are expected to arise for any organisation or individual, other than to those who have been found to contravene the law.

5 Based on estimates ahead of stakeholder discussion of minimum costs of £5,000 for policy preparation, £15,000 for direct communications with owners of monuments, £5,000 for internal Historic Scotland training and £40,000 for events and materials for stakeholders, including local authorities. The upper estimate makes an allowance for additional costs of just over one-third of the minimum.

6 The Improvement Service was set up in 2005 to help improve the efficiency, quality and accountability of local public services in Scotland by providing advice, consultancy and programme support to councils and their partners. See http://www.improvementservice.org.uk/the-improvement-service/

7 Parallels with nature conservation legislation are regarded as particularly relevant here, given the commitment in National Outcome 12 to protecting and enhancing both the built and natural environment. The provisions in the Marine (Scotland) Act 2010 include fines for offences in relation to Historic Marine Protected Areas.
Provisions not referred to above

202. Where provisions are not referred to above, Scottish Ministers are content that no issues requiring further comment in the Financial Memorandum arise.

SUMMARY

203. The table annexed summarises the expected financial impact of the Bill, in terms of best estimates of costs and savings to the Scottish Administration, local authorities and other bodies, for those provisions against which a specific figure can be provided. Any ongoing costs and savings have potential to take effect from 2011-12 onwards.
<table>
<thead>
<tr>
<th>Section</th>
<th>Scottish Administration</th>
<th>Local authorities</th>
<th>Others</th>
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<tbody>
<tr>
<td></td>
<td>Cost</td>
<td>Saving</td>
<td>Cost</td>
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<tr>
<td><strong>Annually</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2</td>
<td>Removal of requirement for scheduled monument consent to be written</td>
<td>-</td>
<td>£220 (HS)</td>
</tr>
<tr>
<td>6</td>
<td>Works affecting scheduled monuments: enforcement</td>
<td>Up to £4590 (HS)</td>
<td>-</td>
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<tr>
<td>18</td>
<td>Certificate that building not intended to be listed</td>
<td>£12,100-£18,150 (HS)</td>
<td>-</td>
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<tr>
<td>22-24</td>
<td>Listed buildings: enforcement – notices</td>
<td>-</td>
<td>-</td>
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<tr>
<td>25</td>
<td>Liability of owners and successor for expenses of urgent works</td>
<td>-</td>
<td>-</td>
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<tr>
<td><strong>Every 5 – 10 years</strong></td>
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<tr>
<td>10</td>
<td>Legal proceedings</td>
<td>£0-£20,000 (HS)</td>
<td>£0 - £520 (SCS)</td>
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<tr>
<td>14</td>
<td>Power of entry where monument at risk</td>
<td>£12,000-£24,000 (HS)</td>
<td>-</td>
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<tr>
<td>16</td>
<td>Refusal to entertain repeat applications</td>
<td>-</td>
<td>-</td>
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<tr>
<td><strong>One-off costs</strong></td>
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<tr>
<td>10</td>
<td>Policy guidance, education and awareness raising</td>
<td>£65,000-£90,000 (HS)</td>
<td>-</td>
</tr>
<tr>
<td>14</td>
<td>Preparation of regulations</td>
<td>£5,000-10,000 (HS)</td>
<td>-</td>
</tr>
</tbody>
</table>

¹ Potential small savings, not possible to estimate
² Potential larger savings, not possible to estimate
³ Frequency of use not possible to estimate
⁴ Excludes any further costs associated with enforcement in certain cases
⁵ Assumes one title per case: some cases may involve further £30 per additional title
⁶ Local authorities entitled to seek full recovery of costs from owners
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

204. On 4 May 2010, the Minister for Culture and External Affairs (Fiona Hyslop MSP) made the following statement:

“In my view, the provisions of the Historic Environment (Amendment) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

205. On 28 April 2010, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Historic Environment (Amendment) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
HISTORIC ENVIRONMENT (AMENDMENT) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)


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