Passage of the

Historic Environment Scotland Bill 2014

SPPB 209
Passage of the
Historic Environment Scotland Bill 2014
SP Bill 47 (Session 4), subsequently 2014 asp 19

SPPB 209
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We welcome written correspondence in any language.
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected.

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
Stage 2: the Bill returns to a committee for detailed consideration of amendments;
Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Stage 1 report did not include the oral and written evidence received by the committee or the Minutes of the meetings at which the Bill was considered. This material was originally published on the web only, and is now included in full in this volume.

The Finance Committee did not produce a report but, instead, forwarded the written evidence that it had received to the lead committee. The written submissions received by the Finance Committee are included in this volume.

The Delegated Powers and Law Reform Committee (DPLRC) reported to the lead committee at Stage 1 on the delegated powers provisions in the Bill. The Committee did not take oral evidence and therefore no extracts from the minutes or the Official Report of that meeting are included in this volume. The DPLRC report is included in this volume.

The DPLRC considered the delegated powers in the Bill after Stage 2, and agreed its report without debate. No extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included in this volume.
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**PART 1**

**HISTORIC ENVIRONMENT SCOTLAND**

1 **Establishment**

(1) A body corporate to be known as Historic Environment Scotland (in Gaelic, Àrainn Eachraidheil na h-Alba) is established.

(2) Historic Environment Scotland has the functions conferred on it by or under this Act and any other enactment.

(3) Schedule 1 makes further provision about the status, membership, procedures and powers of Historic Environment Scotland.

2 **Functions of Historic Environment Scotland**

(1) Historic Environment Scotland has the general function of investigating, caring for and promoting Scotland’s historic environment.

(2) In exercising its general function, Historic Environment Scotland has the following particular functions—

(a) identifying and recording the historic environment,

(b) understanding and interpreting the historic environment,

(c) learning about, and educating others about, the historic environment,

(d) protecting and managing the historic environment,

(e) conserving and enhancing the historic environment.

(3) Historic Environment Scotland also has the function of managing its collections as a national resource for reference, study and research.
(4) In exercising that function, Historic Environment Scotland has the following particular functions—
(a) preserving, conserving and developing its collections,
(b) making the collections accessible to the public and to persons wishing to carry out study and research,
(c) exhibiting and interpreting objects in the collections.

(5) Historic Environment Scotland, in exercising its functions, is to do so with a view to—
(a) encouraging education and research,
(b) promoting and contributing to understanding and enjoyment of the historic environment and of its collections,
(c) promoting the diversity of persons accessing the historic environment and its collections,
(d) offering and promoting leadership in relation to the historic environment,
(e) working with other persons (whether in partnership or otherwise),
(f) contributing, as appropriate, to the development and delivery of policies and strategies in relation to the historic environment.

(6) Historic Environment Scotland may support and assist any other person exercising functions in relation to the historic environment of a similar nature to its functions.

(7) Support and assistance under subsection (6) may take the form of financial support and assistance.

(8) In exercising its functions, Historic Environment Scotland must have regard to any relevant policy or strategy published by the Scottish Ministers.

Functions in relation to property

3 Delegation of functions in relation to properties in care

(1) The Scottish Ministers may, to such extent and subject to such conditions as they consider appropriate, delegate the exercise of any of their functions in relation to properties in care to—
(a) Historic Environment Scotland,
(b) any other person Ministers consider appropriate.

(2) Subsection (1) does not apply to any function of making, confirming or approving subordinate legislation.

(3) A function arising from an agreement may be delegated under subsection (1) despite any prohibition or restriction in the agreement on delegation of the function.

(4) A delegation under subsection (1) may be made in relation to a particular property in care, a group of properties in care or all properties in care.

(5) Where a function delegated under subsection (1) relates to the making or receiving of charges of any kind, any revenue received as a result of the exercise of that function is revenue of the person to whom the function is delegated unless provision to the contrary is made in the delegation.

(6) The delegation of a function under subsection (1) does not affect—
Part 1—Historic Environment Scotland

4 Power of entry to investigate the historic environment

(1) A person authorised in writing by Historic Environment Scotland may at any reasonable time enter any land for the purpose of inspecting the land (including any building or other structure on the land) with a view to identifying and recording any matters of historical, archaeological, architectural or cultural significance or interest.

(2) But an authorised person may not enter—

(a) any land which is occupied unless at least 14 days’ notice of the intended entry has been given to the occupier,

(b) any building or part of a building occupied as a dwelling house without the consent of the occupier.

(3) An authorised person may, on entering any land, take with the person—

(a) any other person the authorised person considers appropriate, and

(b) any equipment or materials required for any purpose for which the power of entry is being exercised.

(4) A person seeking to enter any land in exercise of the power of entry under this section must, if so required by or on behalf of the owner or occupier of the land, produce evidence of the person’s authority before entering.

(5) A person commits an offence if the person without reasonable excuse intentionally obstructs a person exercising the power of entry under this section.

(6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

5 Acquisition, deposit and disposal of objects

(1) Historic Environment Scotland may—
Historic Environment Scotland may—

(a) acquire (by purchase, exchange or gift),
(b) accept on deposit,
any object which it considers it is desirable to add to its collections.

(2) The powers in subsection (1) are in addition to any other powers or means of acquisition or acceptance on deposit that Historic Environment Scotland has.

(3) Historic Environment Scotland may dispose of any object from its collections (including any object it has created) if—

(a) the object is a duplicate of, or similar to, another object in the collections,
(b) Historic Environment Scotland considers that the object is not required for the purposes of the collections,
(c) because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections,
(d) the object is hazardous,
(e) in any other case, the Scottish Ministers agree to the disposal.

(4) Disposal under subsection (3) may be by sale, exchange, gift, return or destruction.

(5) The power in subsection (3) is in addition to any other powers of disposal that Historic Environment Scotland has.

(6) Where an object is subject to a prohibition or restriction on disposal (including one imposed by virtue of paragraph 5(5) of schedule 5), Historic Environment Scotland may dispose of the object under subsection (3) in a manner inconsistent with the prohibition or restriction only—

(a) if the person having the right to enforce the prohibition or restriction consents,
(b) in the circumstances mentioned in subsection (3)(c), if Historic Environment Scotland is unable, despite taking all reasonable steps, to ascertain the name and contact details of any person having that right, or
(c) in the circumstances mentioned in subsection (3)(d).

(7) In this section and in section 6, references to Historic Environment Scotland’s collections are to collections which are owned by, in the custody of, or otherwise under the management and control of Historic Environment Scotland (but do not include collections in relation to which Historic Environment Scotland has functions by virtue of a delegation by the Scottish Ministers under section 7).

6 Borrowing and lending of objects

(1) Historic Environment Scotland may borrow or accept loans of objects for the purposes of exhibition, study or research or in connection with the exercise of any of its functions.

(2) Historic Environment Scotland may lend any object from its collections (including any object it has created).

(3) In deciding whether or not to lend an object (and in determining the period for which and the conditions on which the object is to be lent), Historic Environment Scotland is to have regard to—

(a) the interests of users of the collections,
(b) the suitability of the prospective borrower,
(c) the purpose of the loan,
(d) the physical condition and degree of rarity of the object,
(e) any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.

(4) The powers in subsections (1) and (2) are in addition to any other powers of borrowing, accepting loans or lending that Historic Environment Scotland has.

(5) Where an object is subject to a prohibition or restriction on lending (including one imposed by virtue of paragraph 5(5) of schedule 5), Historic Environment Scotland may lend the object under subsection (2) in a manner inconsistent with the prohibition or restriction only if—
(a) the person having the right to enforce the prohibition or restriction consents, or
(b) Historic Environment Scotland is unable, despite taking all reasonable steps, to ascertain the name and contact details of any person having that right.

7 Delegation of functions in relation to collections

(1) The Scottish Ministers may, to such extent and subject to such conditions as they consider appropriate, delegate the exercise of any of their functions in relation to their collections to—
(a) Historic Environment Scotland,
(b) any other person Ministers consider appropriate.

(2) A function arising from an agreement may be delegated under subsection (1) despite any prohibition or restriction in the agreement on delegation of the function.

(3) A delegation under subsection (1) may be made in relation to—
(a) a particular collection, a group of collections or all collections,
(b) a particular object in a collection or a group of objects.

(4) Where a function delegated under subsection (1) relates to the making or receiving of charges of any kind, any revenue received as a result of the exercise of that function is revenue of the person to whom the function is delegated unless provision to the contrary is made in the delegation.

(5) The delegation of a function under subsection (1) does not affect—
(a) the ability of the Scottish Ministers to exercise the function,
(b) their responsibility for that function.

(6) Delegations under subsection (1)—
(a) must be in writing,
(b) may be varied or revoked at any time.

(7) In this section—
references to the Scottish Ministers’ collections are to collections which are owned by, in the custody of, or otherwise under the management and control of the Scottish Ministers,
“functions” includes functions—
(a) conferred by or under this Act or any other enactment, or
Historic Environment Scotland Bill
Part 1—Historic Environment Scotland

(b) arising from any agreement.

Corporate planning

8 Corporate plan

(1) Historic Environment Scotland must, before the beginning of each planning period, prepare a corporate plan and submit it for approval to the Scottish Ministers.

(2) The corporate plan must set out—

(a) Historic Environment Scotland’s main objectives for the planning period,
(b) the outcomes by reference to which the achievement of the main objectives may be measured, and
(c) the activities which Historic Environment Scotland expects to undertake during the planning period.

(3) The Scottish Ministers may approve the corporate plan subject to such modifications as may be agreed between them and Historic Environment Scotland.

(4) If the Scottish Ministers approve a corporate plan, Historic Environment Scotland must—

(a) publish the plan as it considers appropriate, and
(b) lay a copy of the plan before the Scottish Parliament.

(5) During the planning period to which a corporate plan relates, Historic Environment Scotland may review the plan and submit a revised corporate plan to the Scottish Ministers for approval.

(6) Subsections (2) to (4) apply to a revised corporate plan as they apply to a corporate plan.

(7) In this section “planning period” means—

(a) a first period specified by the Scottish Ministers by order, and
(b) each subsequent period of 3 years.

(8) The Scottish Ministers may by order substitute for the period for the time being specified in subsection (7)(b) such other period as they consider appropriate.

Grants and loans

9 Grants to Historic Environment Scotland by the Scottish Ministers

(1) The Scottish Ministers may make grants to Historic Environment Scotland.

(2) In addition to any grants made under subsection (1), the Scottish Ministers may make grants to Historic Environment Scotland for particular purposes.

(3) Grants under this section are subject to such terms and conditions (including as to repayment) as the Scottish Ministers may determine.

10 Grants and loans by Historic Environment Scotland

(1) Historic Environment Scotland may make grants and loans to such persons as it considers appropriate—

(a) for the purposes of, or in connection with, the exercise of its functions,
(b) where it appears to be conducive to the exercise of its functions.

(2) A grant or loan under subsection (1) is subject to such terms and conditions (including as to repayment) as Historic Environment Scotland may determine.

(3) A grant or loan under subsection (1) must be in accordance with any general authorisation given by the Scottish Ministers to Historic Environment Scotland as to the making of such grants and loans.

**Advice and directions**

11 **Advice, information and assistance**

(1) Historic Environment Scotland must provide the Scottish Ministers with advice, information and assistance on any matter relating to its functions when, and in the manner, Ministers require.

(2) Historic Environment Scotland may provide such advice, information and assistance at any other time.

(3) Historic Environment Scotland may provide advice, information and assistance relating to the historic environment to any other person.

12 **Directions and guidance**

(1) The Scottish Ministers may give Historic Environment Scotland directions (of a general or specific nature) about the exercise of its functions.

(2) But the Scottish Ministers may not give Historic Environment Scotland directions as to the exercise of its functions in relation to—

   (a) any particular historic property, collection or object,

   (b) the making of grants or loans under section 10.

(3) Subsection (2)(a) does not apply in relation to the exercise of functions which Historic Environment Scotland has by virtue of a delegation by the Scottish Ministers under section 3 or 7.

(4) Historic Environment Scotland must—

   (a) comply with any directions given to it by the Scottish Ministers under this section,

   (b) have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.

(5) A direction under this section is to be given in writing.

(6) The Scottish Ministers must publish directions given or guidance issued under this section.

(7) The Scottish Ministers may vary or revoke any direction given under this section.

(8) In subsection (2)(a) “historic property” means a heritable property which is of historical, archaeological, architectural or cultural significance or interest.

**Interpretation**

13 **Interpretation of Part 1**

In this Part—
“collection” means a collection of objects,
“object” means an object, document or other thing having historical, archaeological, architectural or cultural significance or interest relating to the historic environment generally or with particular reference to Scotland, and
“property in care” has the meaning given by section 3(8).

PART 2
FUNCTIONS IN RELATION TO SCHEDULED MONUMENTS

14 Historic Environment Scotland’s functions in relation to scheduled monuments

Schedule 2 makes provision for Historic Environment Scotland’s functions in relation to scheduled monuments (within the meaning of the 1979 Act) as well as making other modifications as follows—

Part 1 has the effect of conferring on Historic Environment Scotland the function of compiling and maintaining the schedule of monuments under the 1979 Act,

Part 2—

(a) has the effect of conferring on Historic Environment Scotland functions in relation to the grant, modification and revocation of scheduled monument consents,

(b) modifies the functions of the Scottish Ministers in relation to modification and revocation of such consents, and

(c) makes other consequential modifications, including to the procedure for applications for the grant, modification and revocation of such consents,

Part 3 has the effect of conferring on Historic Environment Scotland functions in relation to scheduled monument enforcement notices,

Part 4 has the effect of conferring on Historic Environment Scotland functions in relation to stop notices and temporary stop notices,

Part 5 makes provision—

(a) for appeals from decisions of Historic Environment Scotland to the Scottish Ministers, and

(b) for the referral of applications for and related to scheduled monument consent from Historic Environment Scotland to the Scottish Ministers,

Part 6 has the effect of conferring on Historic Environment Scotland the function of compiling and maintaining the inventory of gardens and designed landscapes and the inventory of battlefields,

Part 7 makes other modifications of the 1979 Act in relation to Historic Environment Scotland’s functions under that Act.
Part 3

FUNCTIONS IN RELATION TO LISTING AND CONSERVATION

15 Historic Environment Scotland’s functions in relation to listed buildings

Schedule 3 makes provision for Historic Environment Scotland’s functions in relation to listed buildings and conservation areas (within the meaning of the 1997 Act) as well as making other modifications as follows—

Part 1 has the effect of conferring on Historic Environment Scotland the function of compiling or approving lists of buildings of special architectural or historic interest,

Part 2 has the effect of conferring on Historic Environment Scotland functions in relation to the grant, modification and revocation of listed building consent,

Part 3 has the effect of conferring on Historic Environment Scotland functions in relation to conservation areas,

Part 4 makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers,

Part 5 makes other modifications of the 1997 Act in relation to Historic Environment Scotland’s functions under that Act.

Part 4

FUNCTIONS IN RELATION TO THE MARINE ENVIRONMENT

16 Historic Environment Scotland’s functions in relation to the marine environment

Schedule 4 modifies the Marine (Scotland) Act 2010 (asp 5) to make provision for Historic Environment Scotland’s functions in relation to the marine environment.

Part 5

DISSOLUTION OF RCAHMS AND TRANSFER OF STAFF ETC. TO HISTORIC ENVIRONMENT SCOTLAND

17 Dissolution of RCAHMS

The Royal Commission on the Ancient and Historical Monuments of Scotland is dissolved.

18 Transfer of staff and property to Historic Environment Scotland

Schedule 5 contains provision about the transfer to Historic Environment Scotland of staff and property of the Royal Commission on the Ancient and Historical Monuments of Scotland and of the Executive Agency of the Scottish Ministers known as Historic Scotland.
PART 6
FURTHER MODIFICATIONS IN RELATION TO THE HISTORIC ENVIRONMENT

Grants and loans

19 Grants and loans by the Scottish Ministers

(1) The Historic Buildings and Ancient Monuments Act 1953 (c.49) is amended as follows.

(2) In section 4 (grants for preservation of historic buildings etc.)—

(a) in subsection (1) “outstanding” in each place is repealed,

(b) after that subsection insert—

“(1A) The power conferred by subsection (1) to make grants for the purposes mentioned includes power to make loans for those purposes.”,

(c) in subsection (3) after “grant” in both places insert “or loan”,

(d) after subsection (4) insert—

“(5) A grant or loan made under this section is to be made on such terms and conditions (including as to repayment and, in the case of a loan, payment of interest) as the Scottish Ministers may determine.”,

(e) the title to the section becomes “Grants and loans for preservation of historic buildings etc.”.

(3) In the 1979 Act, in section 45A (grants and loans for the development and understanding of matters of historic etc. interest) subsection (3) is repealed.

Scheduled monuments

20 Local inquiries in relation to scheduled monuments etc.

(1) The 1979 Act is amended as follows.

(2) After section 23 (annual reports of Ancient Monuments Boards) insert—

“Local inquiries

23A Local inquiries

(1) The Scottish Ministers may hold a local inquiry for the purposes of the exercise of any of their functions under this Part of this Act.

(2) The Scottish Ministers must appoint a person to hold the inquiry and to report on it to them.

(3) Subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held by virtue of subsection (1) as they apply to an inquiry held by virtue of subsection (1) of that section.

23B Local inquiries: further provision

(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed in connection with inquiries or hearings conducted under or by virtue of this Act.

(2) Regulations under subsection (1) may in particular make provision—

(a) about the notification of an inquiry or hearing,
(b) about the manner in which an inquiry or hearing is to be conducted,
(c) as to procedure in connection with matters preparatory to such inquiries or hearings and in connection with matters subsequent to them.”.

Listed buildings

21 Meaning of “listed building”

(1) The 1997 Act is amended as follows.
(2) In section 1 (listing of buildings of special architectural or historical interest)—
   (a) in subsection (4) after “shall” insert “, subject to subsection (4A),”;
   (b) after that subsection insert—
      “(4A) In a list compiled or approved under this section, an entry for a building may provide—
        (a) that an object or structure mentioned in subsection (4)(a) or (b) is not to be treated as part of the building for the purposes of this Act,
        (b) that any part or feature of the building is not of special architectural or historic interest.”.

Applications for listed building consent

(1) The 1997 Act is amended as follows.
(2) In section 12 (duty to notify Scottish Ministers of applications)—
   (a) in subsection (1) after “shall” insert “, where subsection (1A) applies,”;
   (b) after that subsection insert—
      “(1A) This subsection applies where—
        (a) regulations, or
        (b) directions given to planning authorities by the Scottish Ministers, provide that the application must be so notified.
      (1B) Directions under subsection (1A)(b) may be given to—
        (a) planning authorities generally,
        (b) a particular planning authority, or
        (c) a description of planning authority.”.
(3) In section 13 (directions concerning notification of applications etc.)—
   (a) subsections (1) and (2) are repealed,
   (b) in subsection (4) “(1) or” is repealed.
PART 7

FINAL PROVISIONS

Interpretation

In this Act—

“1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979 (c.46),

“1997 Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).

Subordinate legislation

Orders under this Act are subject to the negative procedure.

Subsection (1) does not apply to—

(a) orders under section 25(1) for which provision is made in subsection (3),

(b) orders under section 29(2).

An order under section 25(1) which adds to, replaces or omits the text of an Act is subject to the affirmative procedure.

Ancillary provision

The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act or any provision of it.

An order under subsection (1) may modify any enactment (including this Act).

Consequential modifications

Schedule 6 contains amendments and repeals consequential on the establishment of Historic Environment Scotland.

Crown application

(1) No contravention by the Crown of section 4(5) makes the Crown criminally liable.

(2) But the Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), this Act applies to persons in the public service of the Crown as it applies to other persons.
28 Crown application: powers of entry

(1) A power of entry conferred by or under this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.

(2) The following table determines what is “Crown land” and who the “appropriate authority” is in relation to each kind of Crown land.

<table>
<thead>
<tr>
<th>Crown land</th>
<th>Appropriate authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown estate</td>
<td>The Crown Estate Commissioners</td>
</tr>
<tr>
<td>Other land an interest in which belongs to Her Majesty in right of the Crown</td>
<td>The office-holder in the Scottish Administration or the Government department having the management of the land</td>
</tr>
<tr>
<td>Land an interest in which belongs to Her Majesty in right of Her private estates</td>
<td>The person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers</td>
</tr>
<tr>
<td>Land an interest in which belongs to an office-holder in the Scottish Administration</td>
<td>The relevant office-holder in the Scottish Administration</td>
</tr>
<tr>
<td>Land an interest in which belongs to a Government department</td>
<td>The relevant Government department</td>
</tr>
<tr>
<td>Land an interest in which is held in trust for Her Majesty for the purposes of the Scottish Administration</td>
<td>The relevant office-holder in the Scottish Administration</td>
</tr>
<tr>
<td>Land an interest in which is held in trust for Her Majesty for the purposes of a Government department</td>
<td>The relevant Government department</td>
</tr>
</tbody>
</table>

(3) “Government department” means a department of the Government of the United Kingdom”.

(4) References to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

Commencement and short title

29 Commencement

(1) This section and sections 23 to 25, 27, 28 and 30 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

30 Short title

The short title of this Act is the Historic Environment Scotland Act 2014.
SCHEDULE 1
(introduced by section 1(3))

HISTORIC ENVIRONMENT SCOTLAND

Status
5
1 (1) Historic Environment Scotland is not a servant or agent of the Crown.
    (2) It does not enjoy any status, immunity or privilege of the Crown.
    (3) Its property is not property of, or property held on behalf of, the Crown.
    (4) Its members and staff are not to be regarded as civil servants.

Membership
10
2 (1) Historic Environment Scotland is to consist of no fewer than 10 and no more than 15 persons appointed by the Scottish Ministers as members.
    (2) The Scottish Ministers are to appoint one of those members to chair Historic Environment Scotland.
    (3) The Scottish Ministers must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of Historic Environment Scotland.
    (4) The Scottish Ministers must, when making appointments under sub-paragraph (1), do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
    (5) A member holds and vacates office in accordance with terms and conditions determined by the Scottish Ministers.
    (6) A member may resign by written notice to the Scottish Ministers.
    (7) The Scottish Ministers may reappoint as a member a person who is (or has been) a member.
    (8) The Scottish Ministers may by order amend sub-paragraph (1) to substitute for the minimum or maximum number of members for the time being specified such other number or numbers of members.
    (9) In sub-paragraph (4) “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part II of schedule 5 to the Scotland Act 1998 (c.46).

Persons disqualified from membership
3
The following persons may not be appointed as (and may not continue to be) members of Historic Environment Scotland—
(a) members of the House of Commons,
(b) members of the House of Lords,
(c) members of the Scottish Parliament,
(d) members of the European Parliament.
Removal of members

4 (1) The Scottish Ministers may, by written notice, revoke the appointment of a person as a member of Historic Environment Scotland if—

(a) the person becomes insolvent,

(b) the person has been absent, without reasonable excuse, from 3 consecutive meetings of Historic Environment Scotland,

(c) the person is otherwise unfit to be a member or unable for any reason to discharge the person’s functions as member.

(2) A person becomes insolvent when—

(a) the person’s estate is sequestrated,

(b) the person grants a trust deed for creditors or makes a composition or arrangement with creditors,

(c) a voluntary arrangement proposed by the person is approved,

(d) the person’s application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17),

(e) the person is adjudged bankrupt, or

(f) the person becomes subject to any other kind of order or arrangement analogous to those described in paragraphs (a) to (e) anywhere in the world.

Remuneration, allowances and expenses of members

5 Historic Environment Scotland must pay each member such remuneration, allowances and expenses as the Scottish Ministers may determine.

Chief executive and staff

6 (1) Historic Environment Scotland is to employ a person as chief executive.

(2) The person employed as chief executive may not be a member of Historic Environment Scotland.

(3) The chief executive is to be appointed—

(a) by Historic Environment Scotland with the approval of the Scottish Ministers,

(b) on terms and conditions determined by it and approved by the Scottish Ministers.

(4) Historic Environment Scotland may employ any other staff necessary for the exercise of its functions.

(5) Staff of Historic Environment Scotland are to be employed on terms and conditions determined by it and approved by the Scottish Ministers.

Pensions, allowances and gratuities

7 (1) Historic Environment Scotland may, with the approval of the Scottish Ministers, make provision about such pensions, allowances or gratuities in respect of any person who is or has been an employee of Historic Environment Scotland as it may determine.

(2) That provision may take the form of—
(a) payment (or making arrangements for the payment) of,
(b) payments or contributions towards the provision of,
(c) providing and maintaining schemes (whether contributory or not) for the payment of,
such pensions, allowances or gratuities.
(3) Those pensions, allowances or gratuities may include pensions, allowances or gratuities by way of compensation for loss of office.

Committees
8 (1) Historic Environment Scotland may establish committees for any purpose relating to its functions.
(2) Historic Environment Scotland is to determine the composition of its committees.
(3) Historic Environment Scotland may appoint a person who is not a member of Historic Environment Scotland to be a member of a committee.
(4) But such a person is not entitled to vote at meetings of the committee.
(5) A committee must comply with any directions given to it by Historic Environment Scotland.

Procedure and meetings
9 1) Historic Environment Scotland may determine its own procedures and those of its committees, including the quorum at any meeting of it or of a committee.
(2) The following persons may attend and take part in any meeting of Historic Environment Scotland or of a committee—
   (a) members of the Scottish Government,
   (b) persons authorised by the Scottish Ministers.
(3) The persons mentioned in sub-paragraph (2) are not entitled to vote at such meetings.

Delegation of functions
10 (1) Historic Environment Scotland may authorise any of the following to exercise such of its functions (and to such extent) as it may determine—
   (a) a member,
   (b) any of its committees,
   (c) the chief executive,
   (d) any other employee.
(2) But Historic Environment Scotland may not authorise the function of approving annual reports and accounts to be exercised by any other person.
(3) Nothing in sub-paragraph (1) affects the responsibility of Historic Environment Scotland for the exercise of its functions.
Validity of proceedings and actions

11 The validity of proceedings or actions of Historic Environment Scotland (or of a committee) is not affected by—

(a) any vacancy in the membership of Historic Environment Scotland or of the committee,

(b) any defect in the appointment of a member of Historic Environment Scotland or of the committee,

(c) the disqualification of a person as such a member after appointment.

General powers

12 (1) Historic Environment Scotland may do anything which appears to it—

(a) to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions,

(b) to be conducive to the exercise of those functions.

(2) In particular, Historic Environment Scotland may—

(a) enter into contracts,

(b) borrow money from the Scottish Ministers or, with the approval of the Scottish Ministers, from other persons,

(c) enter into any business or undertaking,

(d) form, promote or acquire (whether alone or with others) companies (within the meaning of the Companies Act 2006 (c.46)),

(e) enter into joint ventures with others,

(f) undertake or execute any charitable trust,

(g) invest sums not immediately required in relation to the exercise of its functions,

(h) accept gifts of money and other property,

(i) obtain advice or assistance from any person who is, in Historic Environment Scotland’s opinion, qualified to give it,

(j) carry out or commission research,

(k) issue publications,

(l) make charges in connection with the exercise of its functions (including charges for the provision of goods and services).

(3) Historic Environment Scotland may not acquire and dispose of land without the consent of the Scottish Ministers.

(4) In sub-paragraph (2)(f) a trust is a charitable trust if all its purposes are charitable purposes within the meaning of section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

(5) In sub-paragraph (2)(l) the reference to Historic Environment Scotland’s functions does not include functions it has by virtue of a delegation by the Scottish Ministers under section 3 or 7.
Accounts

13 (1) Historic Environment Scotland must—
   (a) keep proper accounts and accounting records,
   (b) prepare in respect of each financial year a statement of accounts, and
   (c) send a copy of the statement to the Scottish Ministers.

(2) Historic Environment Scotland must comply with any directions which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1).

(3) Historic Environment Scotland must send the statement of accounts to the Auditor General for Scotland for auditing.

Reports

14 (1) As soon as practicable after the end of each financial year, Historic Environment Scotland must prepare a report—
   (a) providing information on the exercise of its functions during that year,
   (b) containing any other information that the Scottish Ministers require, and
   (c) including a copy of the statement of accounts for that year audited by the Auditor General for Scotland.

(2) Historic Environment Scotland must—
   (a) send a copy of the report to the Scottish Ministers, and
   (b) publish the report.

(3) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.

(4) Historic Environment Scotland may publish such other reports and information on matters relevant to its functions as it considers appropriate.

SCHEDULE 2
(introduced by section 14)

FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO SCHEDULED MONUMENTS

PART 1

SCHEDULE OF MONUMENTS

1 The 1979 Act is amended as follows.

2 In section 1 (Schedule of monuments)—
   (a) in subsection (1)—
      (i) for “The Secretary of State” substitute “Historic Environment Scotland”,
      (ii) for “he” substitute “it”,
   (b) in subsection (3)—
      (i) for first “the Secretary of State” substitute “Historic Environment Scotland”,

30

35
(ii) for “him” substitute “it”,
(c) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”,
(d) in subsection (5) for “The Secretary of State” substitute “Historic Environment Scotland”,
(e) in subsection (6)—
(i) for the words from “the Secretary” to “situated” substitute “Historic Environment Scotland must inform such persons as may be prescribed in such form and manner, and within such time, as may be prescribed”,
(ii) for “him or them” substitute “those persons”,
(f) subsections (7) and (8) are repealed,
(g) in subsection (10)(b) for “the Secretary of State” substitute “Historic Environment Scotland”.

3 After section 1A (Commission’s functions as to informing and publishing) insert—

“1B Publication of the Schedule
(1) Historic Environment Scotland must—
(a) publish the Schedule compiled and maintained under section 1, and any amendments of the Schedule, and
(b) make the Schedule available for public inspection,
in such manner as may be prescribed.
(2) The Scottish Ministers may by regulations make further provision for—
(a) the publication of the Schedule,
(b) the making of the Schedule available for public inspection,
(c) the notification of the inclusion of a monument in, the amendment of an entry relating to a monument in or the exclusion of a monument from the Schedule.”.

PART 2
SCHEDULED MONUMENT CONSENT

4 The 1979 Act is further amended as follows.
5 In section 2 (control of works affecting scheduled monuments)—
(a) in subsection (3)(a) for “the Secretary of State” substitute “Historic Environment Scotland”,
(b) in subsection (3A)(b) for “the Scottish Ministers grant” substitute “Historic Environment Scotland grants”,
(c) in subsection (5) in paragraph (b) and in the fullout for “the Secretary of State” substitute “Historic Environment Scotland”,
(d) after that subsection insert—
“(5A) The conditions that may be attached to scheduled monument consent under subsection (4) include a condition reserving specified details of the works (whether or not set out in the application for consent) for subsequent approval by Historic Environment Scotland.”,

(e) in subsection (9) for “the Secretary of State” substitute “Historic Environment Scotland”.

After section 3 (grant of scheduled monument consent by order of the Scottish Ministers) insert—

“3A Application for variation or discharge of conditions

(1) Any person interested in a scheduled monument in relation to which scheduled monument consent has been granted subject to conditions may apply to Historic Environment Scotland for the variation or discharge of the conditions.

(2) The application must indicate what variation or discharge of conditions is applied for and Part 1 of schedule 1 applies to such an application as it applies to an application for scheduled monument consent.

(3) Historic Environment Scotland may, on such an application—

(a) vary or discharge the conditions attached to the consent (whether or not the application relates to the condition varied or discharged),

(b) add new conditions consequential upon the variation or discharge.”.

In section 4 (duration, modification and revocation of scheduled monument consent)—

(a) for subsections (3) and (4) substitute—

“(3) If it appears to Historic Environment Scotland that it is expedient to modify or revoke a scheduled monument consent, it may by order under this section modify or revoke the consent to such extent as it considers expedient.

(4) The power conferred by subsection (3) to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.”,

(b) in subsection (5) for “directions” substitute “orders”.

After that section insert—

“4A Modification and revocation of scheduled monument consent by Scottish Ministers

(1) If it appears to the Scottish Ministers that it is expedient to modify or revoke a scheduled monument consent, they may by order under this section modify or revoke the consent to such extent as they consider expedient.

(2) The Scottish Ministers may not make an order under this section without consulting Historic Environment Scotland.

(3) Where the Scottish Ministers propose to make such an order, they must serve notice on—

(a) the owner of the scheduled monument affected,

(b) where the owner is not the occupier of the monument, the occupier, and
(c) any other person who in their opinion will be affected by the order.

(4) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.

(5) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they make the order, give such an opportunity both to that person and to Historic Environment Scotland.

(6) The power conferred by this section to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.

(7) An order under this section has effect as if it had been made by Historic Environment Scotland under section 4 and confirmed by the Scottish Ministers under paragraph 10 of Part 2 of schedule 1.”.

In section 5(1) (execution of works for preservation of a scheduled monument in cases of urgency)—

(a) for “the Secretary of State” substitute “Historic Environment Scotland”,

(b) for “he” substitute “it”,

(c) for “his” substitute “its”.

In section 6 (powers of entry for inspection of scheduled monuments)—

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,

(b) in subsection (2) after “State” in both places insert “or Historic Environment Scotland”,

(c) in subsection (3) after “State” insert “or Historic Environment Scotland”,

(d) in subsection (3A) after “Ministers” insert “or Historic Environment Scotland”,

(e) in subsection (4) after “State” insert “or Historic Environment Scotland”,

(f) in subsection (5) after “State” in both places insert “or Historic Environment Scotland”.

In section 7 (compensation for refusal of scheduled monument consent)—

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,

(b) in subsection (3) for “the Secretary of State’s” substitute “Historic Environment Scotland’s”,

(c) in subsection (6)(b) for “the Secretary of State” substitute “Historic Environment Scotland”.

In section 8 (recovery of compensation under section 7 on subsequent grant of consent)—

(a) in subsection (1) after “State” in both places insert “or Historic Environment Scotland”,
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Part 2—Scheduled monument consent

(b) in subsection (2A)(b) after “State” insert “or Historic Environment Scotland”,
(c) in subsection (3)—
   (i) after “State” in each place insert “or Historic Environment Scotland”,
   (ii) after “his” in both places insert “or its”,
(d) in subsection (4) after “State” insert “or Historic Environment Scotland”.

In section 9(1) (compensation where works cease to be authorised) after “State” insert “or Historic Environment Scotland”.

Part 1 of schedule 1 (applications for scheduled monument consent) is amended as follows.

(2) In paragraph 1(1) for “the Secretary of State” substitute “Historic Environment Scotland”.

(3) In paragraph 2(1) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

(4) In paragraph 2B—
   (a) in sub-paragraph (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
   (b) in sub-paragraph (2)(a) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”,
   (c) in sub-paragraph (2)(b) for “their” substitute “its”,
   (d) in sub-paragraph (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

In paragraph 3—
   (a) in sub-paragraph (1) for “The Secretary of State” substitute “Historic Environment Scotland”,
   (b) for sub-paragraphs (2) and (3) substitute—
   “(2) The Scottish Ministers may by regulations make provision for the procedure to be followed by Historic Environment Scotland in considering and determining applications for scheduled monument consent.”,
   (c) in sub-paragraph (4)—
      (i) for “The Secretary of State” substitute “Historic Environment Scotland”,
      (ii) for “his” substitute “its”,
      (iii) for “him” substitute “it”.

(6) Paragraph 4 is repealed.

In Part 2 of schedule 1 (modification and revocation of scheduled monument consent)—
   (a) paragraphs 5 to 9 are repealed,
   (b) after paragraph 9 insert—
“10(1) Except as provided for in paragraph 11, an order made by Historic Environment Scotland under section 4 modifying or revoking a scheduled monument consent does not take effect unless it is confirmed by the Scottish Ministers.

(2) Where Historic Environment Scotland submits an order to the Scottish Ministers for confirmation, it must serve notice on—
   (a) the owner of the scheduled monument affected,
   (b) where the owner is not the occupier of the monument, the occupier, and
   (c) any other person who in its opinion will be affected by the order.

(3) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.

(4) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they confirm the order, give such an opportunity both to that person and to Historic Environment Scotland.

(5) The Scottish Ministers may confirm any such order submitted to them either without modification or subject to such modifications as they consider expedient.

11(1) Where sub-paragraph (2) applies, Historic Environment Scotland—
   (a) need not submit the order under section 4 modifying or revoking the scheduled monument consent to the Scottish Ministers for approval,
   (b) must instead take the steps mentioned in sub-paragraph (3).

(2) This sub-paragraph applies where—
   (a) the owner of the scheduled monument affected,
   (b) where the owner is not the occupier of the monument, the occupier, and
   (c) all other persons who in Historic Environment Scotland’s opinion will be affected by the order,

have notified Historic Environment Scotland in writing that they do not object to the order.

(3) The steps referred to in sub-paragraph (1)(b) are—
   (a) advertising in the prescribed manner the fact that the order has been made,
   (b) serving notice to the same effect on the persons mentioned in sub-paragraph (2), and
   (c) sending a copy of any such advertisement to the Scottish Ministers not more than 3 days after its publication.

(4) The advertisement under sub-paragraph (3)(a) must specify—
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(a) the period within which persons affected by the order may give notice to the Scottish Ministers that they require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose, and

(b) the period at the end of which, if no such notice is given to the Scottish Ministers, the order may take effect by virtue of this paragraph and without being confirmed by the Scottish Ministers.

(5) The period referred to in sub-paragraph (4)(a) must not be less than 28 days from the date on which the advertisement first appears.

(6) The period referred to in sub-paragraph (4)(b) must not be less than 14 days from the end of the period referred to in sub-paragraph (4)(a).

(7) The notice under sub-paragraph (3)(b) must include a statement to the effect that no compensation is payable under section 9 in respect of an order which takes effect by virtue of this paragraph.

(8) The order takes effect at the end of the period referred to in sub-paragraph (4)(b) without being confirmed by the Scottish Ministers if—

(a) no person claiming to be affected by the order has given notice to the Scottish Ministers as mentioned in sub-paragraph (4)(a) within the period referred to in that sub-paragraph, and

(b) the Scottish Ministers have not directed that the order be submitted to them for confirmation.”.

PART 3

SCHEDULED MONUMENT ENFORCEMENT NOTICES

The 1979 Act is further amended as follows.

In section 9A (power to issue scheduled monument enforcement notice)—

(a) in subsection (1)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) in paragraph (b) for “they may, if they consider” substitute “it may, if it considers”,

(b) in subsection (2)(a) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,

(c) in subsection (3)(b)—

(i) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(ii) for “they consider” substitute “it considers”,

(iii) for “them” substitute “it”;

(d) in subsection (4) for “the Scottish Ministers are” substitute “Historic Environment Scotland is”.

In section 9B (scheduled monument enforcement notices: further provision)—
(a) in subsection (4)(b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
(b) in subsection (5)—
   (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
   (ii) in paragraph (a) for “their” substitute “its”,
(c) in subsection (6) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
(d) in subsection (7) for “The Scottish Ministers” substitute “Historic Environment Scotland”.

In section 9D (execution of works required by scheduled monument enforcement notice)—

(a) in subsection (1)—
   (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
   (ii) in paragraph (b) for “them” substitute “it”,
(b) in subsection (2)(b) for “the Scottish Ministers in taking steps required by it” substitute “Historic Environment Scotland in taking steps required by the notice”,
(c) in subsection (4)—
   (i) for “the Scottish Ministers take” substitute “Historic Environment Scotland takes”,
   (ii) for “they” substitute “it”,
   (iii) for “them” substitute “it”,
(d) in subsection (5)—
   (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
   (ii) for “them” substitute “it”,
(e) in subsection (6)—
   (i) for “the Scottish Ministers seek” substitute “Historic Environment Scotland seeks”,
   (ii) in paragraph (b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
(f) in subsection (7)—
   (i) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”,
   (ii) for “they” substitute “it”.

**PART 4**

**SCHEDULED MONUMENTS: STOP NOTICES**

The 1979 Act is further amended as follows.

In section 9G (stop notices)—
(a) in subsection (1) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(b) in subsection (2)—
   (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
   (ii) for “they serve” substitute “it serves”,

(c) in subsection (3) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,

(d) in subsection (5)(a) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(e) in subsection (6)—
   (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
   (ii) for “them” substitute “it”,

(f) in subsection (7)—
   (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
   (ii) for “their” substitute “its”.

In section 9H (stop notices: supplementary provisions)—

(a) in subsection (3) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

In section 9I (compensation for loss due to stop notice)—

(a) in subsection (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (3)(c)—
   (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
   (ii) for “them” substitute “it”,

(c) in subsection (5)(b) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

In section 9K (temporary stop notices)—

(a) in subsection (1)—
   (i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
   (ii) for “they may, if they consider” substitute “it may, if it considers”,

(b) in subsection (2)(c) for “the Scottish Ministers’” substitute “Historic Environment Scotland’s”,

(c) in subsection (3) for “the Scottish Ministers” in both places substitute “Historic Environment Scotland”,

(d) in subsection (4) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

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(c) in subsection (8) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

25 In section 9L(1) (temporary stop notices: restrictions) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”.

26 In section 9N (temporary stop notices: compensation)—
   (a) in subsection (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
   (b) in subsection (2)(b) for “the Scottish Ministers withdraw” substitute “Historic Environment Scotland withdraws”.

PART 5

APPEALS AND REFERRALS

CHAPTER 1

APPEALS FROM HISTORIC ENVIRONMENT SCOTLAND

27 The 1979 Act is further amended as follows.

15 Appeal against inclusion or amendment of entry in Schedule of monuments

28 After section 1B (publication of the Schedule) (inserted by paragraph 3) insert—

1C Appeal against inclusion etc. in Schedule of monuments

(1) This section applies where Historic Environment Scotland makes a decision—
   (a) to include a monument in the Schedule,
   (b) to amend an entry in the Schedule relating to a monument.

(2) A person mentioned in subsection (3) may appeal the decision to the Scottish Ministers.

(3) The person is—
   (a) the owner of the monument,
   (b) the tenant of the monument,
   (c) the occupier of the monument.

1D Determination of appeals under section 1C

(1) The Scottish Ministers may—
   (a) dismiss an appeal under section 1C,
   (b) allow such an appeal (in whole or in part).

(2) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.
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(3) Where the Scottish Ministers vary the decision appealed against, they may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that decision.

(4) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 1C is final.

1E Procedure for appeals under section 1C

(1) The Scottish Ministers may by regulations make provision in connection with appeals under section 1C, including provision about—

(a) the grounds on which an appeal may be made,

(b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—

(a) the form, manner and time for making an appeal,

(b) the notification of an appeal,

(c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 1C.”.

Appeal in relation to scheduled monument consent

After section 4A (inserted by paragraph 8) insert—

“4B Appeal in relation to scheduled monument consent

(1) This section applies where Historic Environment Scotland makes a decision—

(a) refusing an application for scheduled monument consent,

(b) granting such an application subject to conditions,

(c) refusing an application for variation or discharge of conditions to which a scheduled monument consent is subject,

(d) granting such an application subject to conditions,

(e) refusing an application for subsequent approval required by a condition to which a scheduled monument consent is subject.

(2) A person who made the application mentioned in subsection (1) may appeal the decision to the Scottish Ministers.
(3) A person may also appeal to the Scottish Ministers where Historic Environment Scotland has not given notice of its decision on an application mentioned in subsection (1)(a), (c) or (e) within the prescribed period or such other longer period as may be agreed between the applicant and Historic Environment Scotland.

(4) An appeal under this section may include the ground that—
   (a) the monument should not be included in the Schedule,
   (b) the entry in the Schedule relating to the monument should be amended.

4C Determination of appeals under section 4B

(1) The Scottish Ministers may—
   (a) dismiss an appeal under section 4B,
   (b) allow such an appeal (in whole or in part).

(2) In determining an appeal under section 4B, the Scottish Ministers may deal with the application to which the appeal relates as if it had been made to them in the first instance.

(3) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.

(4) Subsection (5) applies where—
   (a) the grounds of appeal include the ground—
       (i) that the monument should not be included in the Schedule, or
       (ii) that the entry in the Schedule relating to the monument should be amended, and
   (b) the Scottish Ministers uphold that ground.

(5) The Scottish Ministers may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that decision.

(6) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 4B is final.

4D Procedure for appeals under section 4B

(1) The Scottish Ministers may by regulations make provision in connection with appeals under section 4B, including provision about—
   (a) subject to section 4B(4), the grounds on which an appeal may be made,
   (b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
   (a) the form, manner and time for making an appeal,
(b) the notification of an appeal,
(c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Regulations under subsection (1) may also provide that an appeal in respect of an application—

(a) for scheduled monument consent, or
(b) for the variation or discharge of conditions to which such a consent is subject,

need not be entertained unless it is accompanied by a certificate in the prescribed form as to the interests in the monument to which the appeal relates.

(5) Sub-paragraphs (2) to (4) of paragraph 2 of schedule 1 apply to regulations imposing a requirement by virtue of subsection (4) as they apply to the requirement imposed by sub-paragraph (1) of that paragraph.

(6) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 4B.”.

Determination of appeals by appointed person

After schedule 1 insert—

“SCHEDULE 1A
(introduced by sections 1E(4) and 4D(6))

DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY THE SCOTTISH MINISTERS

Determination of appeals by appointed person

1 (1) The Scottish Ministers may by regulations prescribe classes of appeals under sections 1C and 4B which are to be determined by a person appointed by the Scottish Ministers for the purpose.

(2) Those classes of appeals are to be so determined except in such classes of case—

(a) as may for the time being be prescribed, or
(b) as may be specified in directions given by the Scottish Ministers.

(3) Regulations under sub-paragraph (1) may provide for the giving of publicity to any directions given by the Scottish Ministers under this paragraph.

(4) This paragraph does not affect any provision made by or under this Act that an appeal is to lie to, or a notice of an appeal is to be served on, the Scottish Ministers.
Powers and duties of appointed person

2 (1) An appointed person is to have the same powers and duties—

(a) in relation to an appeal under section 1C as the Scottish Ministers have under section 1D,

(b) in relation to an appeal under section 4B as the Scottish Ministers have under section 4C.

(2) Where an appeal has been determined by an appointed person, the decision is to be treated as a decision of the Scottish Ministers.

(3) Except as provided for by section 55, the decision of an appointed person on any appeal is final.

Determination of appeals by the Scottish Ministers

3 (1) The Scottish Ministers may, if they think fit, direct that an appeal which would otherwise fall to be determined by an appointed person is instead to be determined by them.

(2) Such a direction must—

(a) state the reasons for which it is given, and

(b) be served on the appellant.

(3) Where an appeal under section 1C or 4B falls to be determined by the Scottish Ministers by virtue of a direction under this paragraph, the provisions of this Act which are relevant to the appeal are to apply, subject to sub-paragraph (4), as if this schedule had never applied to it.

(4) In determining the appeal, the Scottish Ministers may take into account any report made to them by any person previously appointed to determine the appeal.

4 (1) The Scottish Ministers may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.

(2) Such a further direction must—

(a) state the reasons for which it is given, and

(b) be served on—

(i) the person, if any, previously appointed to determine the appeal, and

(ii) the appellant.

(3) Where such a further direction has been given, the provisions of this schedule relevant to the appeal are to apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
(4) Anything done by or on behalf of the Scottish Ministers in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) is, unless that person directs otherwise, to be treated as having been done by that person.

Appointment of another person to determine appeal

5 (1) At any time before the appointed person has determined the appeal the Scottish Ministers may—

(a) revoke the appointment, and

(b) appoint another person under paragraph 1 to determine the appeal instead.

(2) Where such a new appointment is made, the consideration of the appeal or any inquiry or other hearing in connection with it is to be begun afresh.

(3) Nothing in sub-paragraph (2) requires any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Local inquiries and hearings

6 (1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person—

(a) may hold a local inquiry in connection with the appeal, and

(b) must do so if the Scottish Ministers so direct.

(2) Where an appointed person—

(a) holds a hearing, or

(b) holds an inquiry by virtue of this paragraph,

an assessor may be appointed by the Scottish Ministers to sit with the appointed person at the hearing or inquiry to advise the appointed person on any matters arising.

(3) Subject to sub-paragraph (4), the expenses of any such hearing or inquiry are to be paid by the Scottish Ministers.

(4) Subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.

(5) The appointed person has the same power to make orders under subsection (9) of that section in relation to proceedings under this schedule which do not give rise to an inquiry as the person has in relation to such an inquiry.

(6) For the purposes of this paragraph, references to the Minister in subsections (9) and (12) of that section are to be read as references to the appointed person.
Supplementary provisions

7  The functions of determining an appeal and doing anything in connection with it conferred by this schedule on an appointed person who is a member of the staff of the Scottish Administration are to be treated for the purposes of the Scottish Public Services Ombudsman Act 2002 (asp 11) as functions conferred on the Scottish Ministers.”.

CHAPTER 2

REFERRAL OF CERTAIN APPLICATIONS

Referral of certain applications

10 31 After section 3A (inserted by paragraph 6) insert—

“The Scottish Ministers may give directions requiring applications for—

(a) scheduled monument consent,

(b) variation or discharge of conditions to which scheduled monument consent is subject,

(c) subsequent approval required by a condition to which scheduled monument consent is subject,

to be referred to them instead of being dealt with by Historic Environment Scotland.

20  (2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.

(3) A direction under this section may be withdrawn or modified by a subsequent direction.

(4) An application in respect of which a direction under this section has effect is to be referred to the Scottish Ministers accordingly.

(5) In determining an application under this section, the Scottish Ministers may deal with the application as if it had been made to them in the first instance.

(6) Except as provided for by section 55, the decision of the Scottish Ministers on any application referred to them under this section is final.

(7) The reference in subsection (1)(c) to scheduled monument consent includes a reference to consent granted by order under section 3.

3C  Procedure for referrals under section 3B

(1) The Scottish Ministers may by regulations make provision in connection with referrals under section 3B, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the referral.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
(a) the notification of a referral,
(b) the manner in which a referral is to be conducted.

(3) Regulations made by virtue of subsection (2)(b) may also include provision that the manner in which a referral, or any stage of a referral, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).”.

**PART 6**

FUNCTIONS IN RELATION TO GARDENS, LANDSCAPES AND BATTLEFIELDS

Part 1A of the 1979 Act is amended as follows.

In section 32A (inventory of gardens and designed landscapes)—

(a) in subsection (1)—
   (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
   (ii) for “they think” substitute “it thinks”,
   (iii) for “them” substitute “it”,

(b) in subsection (3) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(c) in subsection (4)—
   (i) for “their” substitute “its”,

(d) in subsection (5)—
   (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
   (ii) for “they think” substitute “it thinks”.

In section 32B(1) (inventory of battlefields)—

(a) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
(b) for “they think” substitute “it thinks”,
(c) for “them” substitute “it”.

**PART 7**

OTHER MATTERS IN RELATION TO SCHEDULED MONUMENTS

The 1979 Act is further amended as follows.

**Interdict**

In section 90(1) (interdicts restraining unauthorised works on scheduled monuments)—

(a) for “they have exercised or propose to exercise any of their” substitute “Historic Environment Scotland has exercised or proposes to exercise any of its”,

(b) for “the Scottish Ministers” substitute “it”. 
Agreements concerning ancient monuments etc.

37 In section 17 (agreements concerning ancient monuments etc.)—

(a) after subsection (2) insert—

“(2A) Historic Environment Scotland may enter into an agreement under this section with the occupier of an ancient monument situated in Scotland or of any land so situated which adjoins or is in the vicinity of an ancient monument so situated.”,

(b) in subsection (4)—

(i) in paragraph (f), after “authority” insert “or Historic Environment Scotland”,

(ii) in the fullout, after “authority” insert “or Historic Environment Scotland”,

(c) after subsection (9) insert—

“(9A) References to an ancient monument in subsection (2A), and in subsection (3) so far as it applies for the purposes of subsection (2A), are to be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to Historic Environment Scotland.”.

Advice and superintendence

38 In section 25 (advice and superintendence)—

(a) in subsection (1) for “The Secretary of State” substitute “Historic Environment Scotland”,

(b) in subsection (2)—

(i) for “The Secretary of State” substitute “Historic Environment Scotland”,

(ii) for “his” in both places substitute “its”,

(c) in subsection (3)—

(i) for “The Secretary of State” substitute “Historic Environment Scotland”,

(ii) for “he” substitute “it”.

Power of entry: inspection and recording

39 In section 26 (power of entry on land believed to contain an ancient monument)—

(a) in subsection (1) for “the Secretary of State” in both places substitute “Historic Environment Scotland”,

(b) in subsection (4)(b)—

(i) for “the Scottish Ministers know or have” substitute “Historic Environment Scotland knows or has”,

(ii) for “they know or believe” substitute “it knows or believes”.

Power to accept voluntary contributions

40 In section 31 (voluntary contributions towards expenditure under Part 1 of the 1979 Act) after “State” insert “, Historic Environment Scotland”.

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Metal detectors

41 In section 42 (restrictions on use of metal detectors)—
   (a) in subsection (1) after “consent” insert “of Historic Environment Scotland (in the case of a place situated in Scotland),”;
   (b) in subsection (2) in the definition of “protected place”, after “State” insert “Historic Environment Scotland”;
   (c) in subsection (3) after “that” insert “of Historic Environment Scotland (where the place in question is situated in Scotland),”;
   (d) in subsection (4) after “by” insert “Historic Environment Scotland,”;
   (e) in subsection (5)(a) after “by” insert “Historic Environment Scotland.”.

Power of entry: survey and valuation

42 In section 43(2) (power of entry for survey and valuation) after “State” insert “, Historic Environment Scotland”.

Compensation

43 In section 46(1) (compensation for damage caused by exercise of certain powers) after “from” insert “Historic Environment Scotland,“.

Application to Crown land

44 In section 50 (application of Act to Crown land) after subsection (1) insert—

“(1A) For the purposes of subsection (1)(b), anything done by Historic Environment Scotland on Crown land, in relation to which it has functions by virtue of a delegation by the Scottish Ministers under section 3 of the Historic Environment Scotland Act 2014 (asp 00), is not to be treated as done by or on behalf of the Crown.”.

Finds

45 In section 54(2) (treatment and preservation of finds) after “State” in both places insert “, Historic Environment Scotland”.

Proceedings questioning certain orders

46 In section 55 (proceedings for questioning validity of certain orders)—
   (a) in subsection (1)(b) after “State” insert “or Historic Environment Scotland”,
   (b) in subsection (3)—
     (i) after first “State” insert “ or Historic Environment Scotland”,
     (ii) for “either” substitute “any”,
     (iii) for paragraph (a) substitute—
     “(a) any decision of the Scottish Ministers on an application for scheduled monument consent referred to them under section 3B,
    (aa) any decision of the Scottish Ministers on an appeal under this Act,”,
(iv) in paragraph (b) for “the giving by the Secretary of State of any direction under section 4” substitute “the making by Historic Environment Scotland of any order under section 4 or by the Scottish Ministers of any order under section 4A”,

(c) in subsection (4)(b) after “State” insert “or Historic Environment Scotland”,

(d) in subsection (7) after “State” insert “or Historic Environment Scotland”.

**Power to require information**

47 In section 57(1) (power to require information as to interests in land) after “State” in both places insert “or Historic Environment Scotland”.

**Interpretation**

48 In section 61(9) (meaning of site of monument) after “State” insert “or Historic Environment Scotland”.

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**SCHEDULE 3**

*(introduced by section 15)*

**FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO LISTING AND CONSERVATION**

**PART 1**

**LISTING OF SPECIAL BUILDINGS**

1 The 1997 Act is amended as follows.

**Compiling or approving lists of special buildings**

20 In section 1 (listing of buildings of special architectural or historical interest)—

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,

(b) in subsection (2) for “the Secretary of State” substitute “Historic Environment Scotland”,

(c) in subsection (3)—

   (i) for “the Secretary of State” substitute “Historic Environment Scotland”,

   (ii) for “him” substitute “it”,

(d) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”.

**Publication of lists and notification of listing**

30 After section 1 insert—

“1A **Publication of lists and notification of listing etc.**

(1) Historic Environment Scotland must—

(a) publish any list compiled or approved under section 1, and any amendments of such a list, and

(b) make such lists available for public inspection,
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in such manner as may be prescribed.

(2) Historic Environment Scotland must also—
   (a) notify such persons as may be prescribed, and
   (b) do so in such form and manner, and within such time, as may be prescribed,

of the inclusion of a building in, the amendment of an entry relating to a building in or the exclusion of a building from such a list.

(3) The Scottish Ministers may by regulations make further provision for—
   (a) the publication of such lists,
   (b) the making of such lists available for public inspection,
   (c) the notification of the inclusion of a building in, the amendment of an entry relating to a building in or the exclusion of a building from such a list.

(4) Regulations under subsection (3) may in particular provide for planning authorities in whose districts any buildings included in such lists are situated to take any of the steps mentioned in that subsection.”.

Section 2 (publication of lists) is repealed.

Temporary listing

In section 3 (temporary listing: building preservation notices)—
   (a) in subsection (2) for “the Secretary of State” substitute “Historic Environment Scotland”,
   (b) in subsection (4)—
      (i) for “the Secretary of State” substitute “Historic Environment Scotland”,
      (ii) in paragraph (b) for “he” substitute “it”,
   (c) in subsection (6)—
      (i) for “the Secretary of State” substitute “Historic Environment Scotland”,
      (ii) for “he” substitute “it”,
      (iii) in each of paragraphs (a) and (b) for “the Secretary of State’s” in both places substitute “Historic Environment Scotland’s”.

Certificate that no intention to list building

In section 5A (certificate that building not intended to be listed)—
   (a) in subsection (1)—
      (i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
      (ii) for “they do” substitute “it does”,
   (b) in subsection (2)—
      (i) for “the Scottish Ministers issue” substitute “Historic Environment Scotland issues”,
      (ii) in paragraph (a) for “they” and “them” substitute “it”,

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(c) in subsection (3) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

PART 2

LISTED BUILDING CONSENT

The 1997 Act is further amended as follows.

In section 7 (authorisation of works: listed building consent)—

(a) in subsection (2)—

(i) in paragraph (b) for “the Royal Commission” substitute “Historic Environment Scotland”,

(ii) in paragraph (c)(i) for “members or officers of the Commission” substitute “Historic Environment Scotland”,

(iii) for paragraph (c)(ii) substitute—

“(ii) Historic Environment Scotland has stated in writing that it has completed its recording of that building or that it does not wish to record it,”

(b) subsection (4) is repealed,

(c) in subsection (5) for “the Royal Commission” substitute “Historic Environment Scotland”.

In section 9 (making of applications for listed building consent) after subsection (4) insert—

“(4A) The regulations must also require planning authorities, before granting or refusing applications for listed building consent, to consult—

(a) Historic Environment Scotland,

(b) such other persons as may be—

(i) prescribed, or

(ii) specified in directions given to planning authorities by the Scottish Ministers.

(4B) Directions given by virtue of subsection (4A)(b)(ii) for the purposes of regulations under this section may be given to—

(a) planning authorities generally,

(b) a particular planning authority, or

(c) a description of planning authority.”.

Revocation and modification of listed building consent

In section 22(2) (procedure for orders revoking or modifying listed building consent: opposed cases) after paragraph (c) insert—

“(ca) Historic Environment Scotland,

(cb) such other persons as may be prescribed,”.
In section 23(1)(b) (procedure for orders revoking or modifying listed building consent: unopposed cases) after “land” insert “, Historic Environment Scotland, such other persons as may be prescribed”.

**PART 3**

**CONSERVATION AREAS**

The 1997 Act is further amended as follows.

In section 61(2) (designation of conservation areas)—

(a) for “The Secretary of State” substitute “Historic Environment Scotland”,

(b) for “he so determines, he” substitute “Historic Environment Scotland so determines, it”.

In section 62 (designation of conservation areas: supplementary provisions)—

(a) in subsection (1), after “State” insert “and Historic Environment Scotland”,

(b) for subsection (2) substitute—

“(2) Historic Environment Scotland must—

(a) give notice to a planning authority of—

(i) the designation of any part of their district as a conservation area under section 61(2), and

(ii) any variation or cancellation of any such designation,

(b) give notice to the Scottish Ministers of the designation and of any such variation or cancellation.”,

(c) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”,

(d) in subsection (5) for “the Secretary of State” substitute “Historic Environment Scotland”.

In paragraph 2 of schedule 1 (buildings formerly subject to building preservation orders)—

(a) for sub-paragraph (1) substitute—

“(1) Historic Environment Scotland may at any time direct that paragraph 1 no longer applies to a particular building.

(1A) The Scottish Ministers may direct that paragraph 1 no longer applies to a particular building if the building is referred to in a notice of appeal under section 5B, 18 or 35 relating to the building (whether or not they are requested to do so).”,

(b) in sub-paragraph (2) for “such a direction” substitute “a direction under sub-paragraph (1) or (1A)”,

(c) after sub-paragraph (2) insert—

“(2A) Where a direction is given under sub-paragraph (1) or (1A), Historic Environment Scotland or (as the case may be) the Scottish Ministers must notify the other.”,
(d) in sub-paragraph (3)—
   (i) for “such a direction” substitute “a direction under sub-paragraph (1) or
       (1A)”,
   (ii) for “the Secretary of State” substitute “Historic Environment Scotland or
       (as the case may be) the Scottish Ministers”.

16 Paragraph 3 of schedule 1 is repealed.

PART 4

APPEALS AGAINST LISTING

17 The 1997 Act is further amended as follows.

18 After section 5A (certificate that building not intended to be listed) insert—

“5B Appeal against listing of buildings

(1) This section applies where Historic Environment Scotland makes a decision—
   (a) to include a building in the list compiled or approved under section 1,
   (b) to amend an entry in the list relating to a building (but not where the
       amendment excludes a building from the list).

(2) A person mentioned in subsection (3) may appeal the decision to the Scottish
    Ministers.

(3) The person is—
   (a) the owner of the building,
   (b) the tenant of the building,
   (c) the occupier of the building.

5C Determination of appeals under section 5B

(1) The Scottish Ministers may—
   (a) dismiss an appeal under section 5B,
   (b) allow such an appeal (in whole or in part).

(2) Where the Scottish Ministers allow an appeal, they may vary a part of the
    decision appealed against whether or not the appeal relates to that part of the
    decision.

(3) Where the Scottish Ministers vary the decision appealed against, they may
    direct Historic Environment Scotland to exercise its power under section 1 to
    amend the list compiled or approved under that section to give effect to that
    decision.

(4) Except as provided for by sections 57 and 58, the decision of the Scottish
    Ministers on an appeal under section 5B is final.
5D Procedure for appeals under section 5B

(1) Regulations may make provision in connection with appeals under section 5B, including provision about—
   (a) the grounds on which an appeal may be made,
   (b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
   (a) the form, manner and time for making an appeal,
   (b) the notification of an appeal,
   (c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Schedule 3 (which makes provision about the determination of certain appeals by a person appointed by the Scottish Ministers) applies to an appeal under section 5B.”.

In section 19(3) (appeals: supplementary provisions) for “the Secretary of State” substitute “Historic Environment Scotland”.

In section 20(1) (determination of appeals) for paragraph (b) substitute—
   “(b) where the Scottish Ministers vary the decision appealed against, they may direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to that decision.”.

In section 37(4) (determination of appeals under section 35) for paragraph (c) substitute—
   “(c) direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to that determination.”.

In section 57(2) (validity of certain orders and decisions) before paragraph (a) insert—
   “(za) any decision of the Scottish Ministers on an appeal under section 5B,”.

In schedule 3 (determination of certain appeals by person appointed by the Scottish Ministers)—
   (a) in paragraph 1(1) after “sections” insert “5B,”,
   (b) in paragraph 2(1) before paragraph (a) insert—
       “(za) in relation to an appeal under section 5B as the Scottish Ministers have under section 5C and paragraph 2(1A) of schedule 1,”,
   (c) in paragraph 3(3) after “section” insert “5B,”,
(d) in paragraph 5(3) paragraph (a) is repealed (together with the “or” immediately following it).

PART 5
OTHER MATTERS IN RELATION TO LISTING

5 24 The 1997 Act is further amended as follows.

Compensation

25 In section 26(1) (compensation for loss or damage caused by service of building preservation notice) for “the Secretary of State” substitute “Historic Environment Scotland”.

Application of 1997 Act to land and works of planning authorities

10 26 In section 73 (application of 1997 Act to land and works of planning authorities)—

(a) in subsection (1) for “sections 1(1) and (3) and 2” substitute “section 1(1) and (3)”,

(b) in subsection (4) “section 2(2) and” is repealed.

Powers of entry

15 27 In section 76 (rights of entry)—

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,

(b) in subsection (2) for “the Secretary of State” in both places substitute “Historic Environment Scotland”,

(c) in subsection (3) for “the Secretary of State” substitute “Historic Environment Scotland”.

Building preservation notices

28 In schedule 2 (lapse of building preservation notice) in paragraph 1(b) for “the Secretary of State” substitute “Historic Environment Scotland”.

SCHEDULE 4
(introduced by section 16)

FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO THE MARINE ENVIRONMENT

1 2 The Marine (Scotland) Act 2010 (asp 5) is amended as follows.

30 2 After section 80 (advice etc. by Scottish Natural Heritage) insert—

“80A Advice etc. by Historic Environment Scotland as regards Historic MPAs

(1) Historic Environment Scotland may give advice and guidance as to—

(a) the matters which are capable of damaging or otherwise affecting any marine historic asset in a Historic MPA,

(b) how any stated preservation objectives for a Historic MPA may be furthered, or how the achievement of any such objectives may be hindered, and
(c) the assessment by a public authority of the matters in section 83(4)(b)(i) and (ii) including what factors the authority should take into account.

(2) Advice or guidance as to any of the matters in paragraph (a) to (c) of subsection (1) may be given—

(a) in relation to—

(i) a particular Historic MPA,

(ii) all Historic MPAs generally,

(b) in relation to a particular public authority or public authorities generally.”.

In section 82 (duties of public authorities in relation to marine protected areas etc.)—

(a) in subsection (3) after “Heritage” insert “or Historic Environment Scotland”,

(b) in subsection (5) after “Heritage” insert “or Historic Environment Scotland”,

(c) in subsection (6) after sub-paragraph (i) insert—

“(ia) Historic Environment Scotland has given advice or guidance to the authority under section 80A,”,

(d) in subsection (7) after “Heritage” insert “or Historic Environment Scotland”,

(e) in subsection (10) after “Heritage” insert “or Historic Environment Scotland”,

(f) in subsection (12) after “80” insert “, by Historic Environment Scotland under section 80A”,

(g) in subsection (13)—

(i) the words from “it is appropriate” to “Research MPA” become paragraph (a) of that subsection, and

(ii) after that paragraph insert—

“(b) it is appropriate to inform Historic Environment Scotland where the exercise of the public authority’s functions or the act or omission in question relates to a Historic MPA.”.

In section 83 (duties of public authorities in relation to certain decisions)—

(a) in subsection (2) after “Heritage” insert “or Historic Environment Scotland”,

(b) in subsection (8) after “80” insert “, by Historic Environment Scotland under section 80A”,

(c) in subsection (9)—

(i) the words from “it is appropriate” to “Research MPA” become paragraph (a) of that subsection, and

(ii) after that paragraph insert—

“(b) it is appropriate to inform Historic Environment Scotland where the act relates to a Historic MPA.”.

In section 84 (failure to comply with duties) after subsection (3) insert—

“(3A) In relation to a Historic MPA if, in the opinion of Historic Environment Scotland, a public authority has failed—
(a) to act in accordance with advice or guidance given by Historic Environment Scotland under section 80A,
(b) to comply with any of its duties under section 82(2) or 83(3) or (4),
Historic Environment Scotland may request from the authority an explanation in writing for the failure.

(3B) Historic Environment Scotland must send a copy of a request by it under subsection (3A) to the Scottish Ministers.

(3C) On receiving a request under subsection (3A), the public authority must—
(a) provide Historic Environment Scotland with the requested explanation for the failure,
(b) send a copy of the explanation to the Scottish Ministers.”.

SCHEDULE 5
(introduced by section 18)

TRANSFER OF STAFF, PROPERTY ETC. TO HISTORIC ENVIRONMENT SCOTLAND

15 Staff transfer schemes

1 (1) The Scottish Ministers may make a staff transfer scheme.

(2) A staff transfer scheme is a scheme making provision for or in connection with the transfer to Historic Environment Scotland of persons who are—

(a) employed by the Royal Commission on the Ancient and Historical Monuments of Scotland,
(b) subject to sub-paragraph (3), members of the staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as Historic Scotland.

(3) Sub-paragraph (2)(b) does not apply to members of the staff of the Scottish Ministers on secondment or loan to Historic Scotland from another part of the Scottish Administration.

(4) A staff transfer scheme may in particular—

(a) prescribe rules by which the transfer of specified persons, or classes of specified person, can be determined,
(b) provide that specified persons, or classes of specified person, are to become employees of Historic Environment Scotland.

(5) A staff transfer scheme may make provision only in relation to persons whose employment relates to the carrying out of Historic Environment Scotland’s functions.

(6) In this paragraph, “specified” means specified in a staff transfer scheme.

Staff transfer schemes: general

2 (1) This paragraph applies in relation to a staff transfer scheme under paragraph 1.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.
(3) The scheme may—
   (a) specify different dates for different purposes,
   (b) make different provision in relation to different cases or classes of case.

Transfers under paragraph 1: effect on contract of employment

3 (1) This paragraph applies where—
   (a) a person is to be transferred by virtue of a staff transfer scheme, and
   (b) immediately before the transfer date the person has a contract of employment with—
      (i) the Royal Commission on the Ancient and Historical Monuments of Scotland, or
      (ii) the Scottish Ministers.

(3) The contract of employment has effect on and after the transfer date as if originally made between the person and Historic Environment Scotland.

(4) The rights, powers, duties and liabilities of the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers under or in connection with the contract of employment are by virtue of this paragraph transferred to Historic Environment Scotland on the transfer date.

(5) Anything done before the transfer date by or in relation to the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers in respect of the contract of employment or the person is to be treated on and after that date as having been done by or in relation to Historic Environment Scotland.

(6) If, before the transfer date, the person informs the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers that the person does not wish to become an employee of Historic Environment Scotland—
   (a) sub-paragraphs (2) to (4) do not apply in relation to the person, and
   (b) the person's contract of employment is terminated on the day before the transfer date.

(7) A person is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the person.

(8) Nothing in this paragraph affects any right of a person to terminate the person's contract of employment if a substantial detrimental change in the person's working conditions is made.

(9) No such right arises by reason only that, by virtue of this paragraph, the identity of the person's employer changes.

Property transfer schemes

4 (1) The Scottish Ministers may make a property transfer scheme.

   (2) A property transfer scheme is a scheme making provision for or in connection with the transfer to Historic Environment Scotland of property, rights, liabilities and obligations of—
   (a) the Royal Commission on the Ancient and Historical Monuments of Scotland,
(b) the Scottish Ministers.

(3) A property transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights, liabilities and obligations relate to Historic Environment Scotland's functions.

(4) The Royal Commission on the Ancient and Historical Monuments of Scotland must provide the Scottish Ministers with such information or assistance as Ministers may reasonably require for the purposes of or in connection with the making of a property transfer scheme.

(5) On the transfer date—

(a) any property or rights to which a property transfer scheme applies transfer to and vest in Historic Environment Scotland,

(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of Historic Environment Scotland.

(6) A property transfer scheme may make provision for the payment by Historic Environment Scotland of compensation in respect of property and rights transferred by virtue of the scheme.

Property transfer schemes: general

(1) This paragraph applies in relation to a property transfer scheme under paragraph 4.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.

(3) The scheme may—

(a) specify different dates in relation to different property, rights, liabilities and obligations,

(b) make different provision in relation to different cases or classes of case.

(4) The scheme may make provision for the creation of rights, or the imposition of liabilities or obligations, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.

(5) The scheme may make provision requiring Historic Environment Scotland to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.

(6) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of a property transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.

(7) The scheme may make provision about the continuation of legal proceedings.

Transfer schemes: additional provision

(1) A staff transfer scheme under paragraph 1 or a property transfer scheme under paragraph 4 may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
SCHEDULE 6
(introduced by section 26)

CONSEQUENTIAL MODIFICATIONS

Ethical Standards in Public Life etc. (Scotland) Act 2000

1 In the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), in schedule 3 (devolved public bodies)—
(a) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed,
(b) at the appropriate place in alphabetical order insert—
“Historic Environment Scotland”.

Scottish Public Services Ombudsman Act 2002

2 In the Scottish Public Services Ombudsman Act 2002 (asp 11), in Part 2 of schedule 2 (listed authorities: entries amendable by Order in Council), under the heading “Scottish public authorities”—
(a) after paragraph 25 (the entry for Highlands and Islands Enterprise) insert—
“25ZA Historic Environment Scotland.”,
(b) paragraph 34 (the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland) is repealed.

Freedom of Information (Scotland) Act 2002

3 In the Freedom of Information (Scotland) Act 2002 (asp 13), in Part 7 of schedule 1 (Scottish public authorities: others)—
(a) after paragraph 67 (the entry for Highlands and Islands Enterprise) insert—
“67ZA Historic Environment Scotland.”,
(b) paragraph 76 (the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland) is repealed.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

4 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2 (the specified authorities), under the heading “Executive bodies”—
(a) at the appropriate place in alphabetical order insert—
“Historic Environment Scotland”,
(b) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.

Public Services Reform (Scotland) Act 2010

5 In the Public Services Reform (Scotland) Act 2010 (asp 8)—
(a) in schedule 5 (improvement of public functions: listed bodies), under the heading “Scottish public authorities with mixed functions or no reserved functions”—
(i) at the appropriate place in alphabetical order insert—
“Historic Environment Scotland”,

(ii) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed,

(b) in schedule 8 (information on exercise of public functions: listed public bodies)—

(i) at the appropriate place in alphabetical order insert—

“Historic Environment Scotland”,

(ii) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.

Public Records (Scotland) Act 2011

In the Public Records (Scotland) Act 2011 (asp 12), in the schedule (authorities to which Part 1 applies), under the heading “Others”—

(a) at the appropriate place in alphabetical order insert—

“Historic Environment Scotland”,

(b) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.
Historic Environment Scotland Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to establish Historic Environment Scotland; to make minor amendments to the law relating to the historic environment; and for connected purposes.

Introduced by: Fiona Hyslop
Supported by: Humza Yousaf
On: 3 March 2014
Bill type: Government Bill
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

HISTORIC ENVIRONMENT SCOTLAND BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Historic Environment Scotland Bill introduced in the Scottish Parliament on 3 March 2014:

- 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 47–PM.
INTRODUCTION

1. 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.

2. 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

3. The purpose of the Bill is to create a new lead body for Scotland’s historic environment – Historic Environment Scotland which will be a Non-Departmental Public Body and to equip that body with the necessary powers to be able to carry out the functions which are currently delivered by Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). The Bill provides for RCAHMS to be dissolved. The Bill also sets out the governance arrangements for the new body and provides for the delegation or transfer to Historic Environment Scotland of Ministerial powers and responsibilities under existing legislation as appropriate. The Bill enables the transfer of the property, staff and liabilities of both RCAHMS and Historic Scotland to Historic Environment Scotland (excluding properties and collections in the care of Scottish Ministers) and aligns certain functions in relation to designation and regulation of the historic environment with the rest of the planning system.

Status and functions of Historic Scotland and RCAHMS

4. Historic Scotland is an Executive Agency of the Scottish Government. This means that it has no powers of its own, but operates using powers conferred on Scottish Ministers.

5. The main functions which Historic Scotland carries out are:
   - Caring for and presenting to visitors the Properties in Care;
   - Designating places to be protected, by scheduling of monuments of national importance, by listing buildings of architectural or historic interest, by adding to the Inventory of Gardens and Designed Landscapes and the Inventory of Historic Battlefields and by designated Historic Marine Protected Areas;
   - Providing specialist advice and expert knowledge to the Scottish Government’s Historic Environment Policy Unit to inform the development of Scottish Ministers’ policies as they relate to the historic environment and other matters;
   - Providing financial assistance towards the conservation and enhancement of the historic environment; and
   - Providing guidance on the management of the historic environment.
6. RCAHMS was established by Royal Warrant in 1908. It is treated for administrative purposes as a Non-Departmental Public Body. It has been a registered charity since 1992, when the Royal Warrant was last updated. Its purpose is to:

- identify, survey and analyse the historic and built environment of Scotland;
- preserve, care for and add to the information and items in its collections; and
- promote understanding, education and enjoyment through interpretation of the information it collects and items it looks after.

7. Many of Historic Scotland’s functions are set out in statute, mainly in the Acts listed below. The Bill amends the following Acts to ensure that Historic Environment Scotland can operate as intended:

- the Historic Buildings and Ancient Monuments Act 1953 ("the 1953 Act");
- the Ancient Monuments and Archaeological Areas Act 1979 ("the 1979 Act");
- the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ("the 1997 Act"); and
- the Marine (Scotland) Act 2010 ("the 2010 Act").

8. The Bill is in seven Parts:

- Part 1 - Historic Environment Scotland;
- Part 2 - Functions in relation to scheduled monuments;
- Part 3 - Functions in relation to listing and conservation;
- Part 4 - Functions in relation to the marine environment;
- Part 5 - Dissolution of RCAHMS and transfer of staff etc. to Historic Environment Scotland;
- Part 6 - Further modifications in relation to the historic environment; and
- Part 7 – Final provisions.

9. The Bill also includes six schedules setting out the detailed arrangements in relation to a number of areas covered by the Bill and making minor and consequential amendments.

COMMENTARY ON SECTIONS

PART 1 – HISTORIC ENVIRONMENT SCOTLAND

Section 1 – Historic Environment Scotland

10. Section 1 provides for the creation of a new body to be known as Historic Environment Scotland, with the functions conferred on it by this Act and any other enactment. This section introduces schedule 1 to the Bill, which makes provision about the status, membership
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

procedures and powers of Historic Environment Scotland. Further notes on schedule 1 are given below.

Section 2 – Functions of Historic Environment Scotland

11. Section 2 sets out the functions of the Historic Environment Scotland. Subsection (1) sets out that the new body has the general function to investigate, care for and promote Scotland’s historic environment. Subsection (2) expands on the general function.

12. Subsection 2(a) gives Historic Environment Scotland the function of identifying and recording the historic environment. It might, for example, do this by undertaking field and aerial survey programmes to identify new sites or gather more information about existing sites, and creating records of discoveries.

13. Subsection 2(b) gives Historic Environment Scotland the function of understanding and interpreting the historic environment. It might do this by undertaking research into historic buildings to determine their date and building sequence and presenting the results to a variety of audiences in various media.

14. Subsection 2(c) gives Historic Environment Scotland the function of learning about, and educating others about, the historic environment. This might be done by participating in collaborative research programmes with individuals, academic institutions and other bodies, or by acquiring knowledge of traditional skills and techniques and helping to maintain these by training new craftspeople, or by using material in the collections to contribute to teaching materials for schools.

15. Subsection 2(d) gives Historic Environment Scotland the function of protecting and managing the historic environment. It could do this by engaging with the development planning process to ensure that the historic environment is considered in strategic development proposals. Its work in designating scheduled monuments, listed buildings, gardens and designed landscapes and battlefields will provide the foundation for protection of these important assets.

16. Subsection 2(e) gives Historic Environment Scotland the function of conserving and enhancing the historic environment. Its work in this respect might include undertaking or arranging hands-on maintenance and repair work at the visitor properties it manages, or supporting work to improve the general condition of a conservation area.

17. Subsection (3) gives Historic Environment Scotland the function of managing its collections as a national resource for reference, study and research. Subsection (4) expands on this function. Definitions of “collection” and “object” are given in section 13 of the Bill and explained in paragraph 70-71 of these notes.

18. Subsection 4(a) sets out that in exercising its function Historic Environment Scotland must do so with a view to preserving, conserving and developing its collections. It might, for example, do this by engaging specialist conservators to maintain or bring objects in the collections to a good condition, by ensuring that the objects in its collections are stored and
accessed in ways which seek to minimise deterioration, or by adding significant new material to its collections to ensure that their value and currency are maintained. Such activities might be undertaken within the framework of a collections strategy.

19. Subsection 4(b) sets out that in exercising its function Historic Environment Scotland must do so with a view to making the collections accessible to the public and to persons wishing to carry out study and research. This could be achieved by making public search rooms available so that objects in the collections can be brought to persons wishing to consult them or by digitally copying objects and making them available online.

20. Subsection 4(c) sets out that in exercising its function Historic Environment Scotland must do so with a view to exhibiting and interpreting objects in the collections. Ways of doing this might include organising the public display of objects on a particular theme or topic, and delivering audio, visual or audio-visual aids to assist those wishing to understand the context and cultural significance of the exhibits. It might collaborate to exhibit collections internationally to encourage tourism to Scotland, or seek the loan of another body’s collections to support particular exhibitions. This function will also be delivered online.

21. Subsection (5) sets out the manner in which Historic Environment Scotland is to exercise its functions.

22. Subsection (5)(a) sets out that in exercising its functions Historic Environment Scotland must do so with a view to encouraging education and research. This might include partnering with academic institutions and other bodies in research projects, or seeking to encourage school and university students to use its collections or visitor sites in connection with curricular studies.

23. Subsection 5(b) sets out that in exercising its functions Historic Environment Scotland must do so with a view to promoting and contributing to understanding and enjoyment of the historic environment. Activities such as organising public events and activities at the properties that it looks after, publishing accessible and useful information and running hands-on activities to engage the public in the process of discovery would be among the ways it could achieve this.

24. Subsection 5(c) sets out that in exercising its functions Historic Environment Scotland must do so with a view to promoting the diversity of persons accessing the historic environment and its collections and exhibitions. It might, for example, invest in works to improve physical access to the monuments and historic buildings it presents to the public or deliver community engagement activities that are focused on increasing diversity and tailored to meet the needs of particular groups and individuals. Online access to its services might be particularly important here.

25. Subsection 5(d) sets out that in exercising its functions Historic Environment Scotland must do so with a view to offering and promoting leadership in relation to the historic environment. This could include leading collaborative projects to develop standards in connection with the management, protection and conservation of the historic environment. It might also lead by example: demonstrating high standards of conservation work or producing attractive and informative publications.
26. Subsection 5(e) sets out that in exercising its functions Historic Environment Scotland must do so with a view to working with other persons (whether in partnership or otherwise). Ways of doing this might providing training and support to groups wishing to identify and record their local historic environment, or supporting owners who wish to repair or maintain historic buildings in the most authentic manner. It might work with others to develop online solutions that fulfil specific user needs by providing integrated access to information and digitised collections held by several different collections.

27. Subsection 5(f) sets out that in exercising its functions Historic Environment Scotland must do so with a view to contributing, as appropriate, to the development and delivery of policies and strategies in relation to the historic environment. This might involve active participation in and contributing expert knowledge to professional forums and committees. This strategic approach is currently represented by Scotland’s Historic Environment Strategy, in which Historic Environment Scotland will be a key partner.

28. Subsections (6) and (7) allow Historic Environment Scotland to support and assist (including financial support and assistance) any other person carrying out functions similar to its own functions.

29. Subsection (8) requires Historic Environment Scotland to have regard to wider relevant government policies and strategies. It might do this, for example, by ensuring that a modern building which acts as accommodation for its staff is compliant with government policies on energy efficiency and waste reduction, by ensuring that the management of visitor sites is in accord with biodiversity requirements or that it considers wider regeneration objectives when allocating grants and loans under its various programmes.

Section 3 – Delegation of functions in relation to Properties in Care

30. Section 3 allows the Scottish Ministers to delegate their functions (statutory and non-statutory) in relation to Properties in Care to Historic Environment Scotland or any other person the Ministers consider appropriate. Under subsection (7), “Property in Care” means any heritable property which is of historical, archaeological, architectural or cultural significance and which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers. Currently there are 345 such properties, consisting of a mixture of properties where Ministers hold title, properties where guardianship agreements have conferred management responsibilities on Ministers in perpetuity, and a small number of properties which are leased or held by other means. In all cases, these properties are held for the purpose of being conserved and made accessible for the public.

31. Subsection (3) allows for delegation to take place despite the existence of prohibitions or restrictions on delegation in agreements.

32. Subsection (5) makes it clear that any revenue received as a result of the exercise of any delegated function is the revenue of the person to whom the function is delegated unless Ministers provide otherwise in the delegation. Thus, Historic Environment Scotland would retain money paid for admittance to visitor properties.
33. Subsection (6) makes it clear that delegating functions does not affect the ultimate responsibility of the Scottish Ministers for properties in care.

34. The scheme(s) of delegation from the Scottish Ministers to Historic Environment Scotland or other bodies would specify expected standards of conservation and maintenance and degree of public access, and the measures by which achievement of these would be monitored. Schemes of delegation could also deal with matters such as charging for access and for additional services.

Section 4 – Power of entry to investigate the historic environment

35. Section 4 gives Historic Environment Scotland the power to enter land (including buildings or other structures on the land) to identify and record the historic environment, subject to certain provisions set out in the subsections.

36. Subsections (2) to (4) set out details of how this power may be exercised, including restrictions on the power, for example the exclusion of access to dwelling-places. Similar statutory powers of access, which already exist for Ministers and their employees, are only used as a last resort after every effort to contact the owner or occupier of a property has failed. These powers have been exercised very seldom – less than ten times in total over the past 30 years.

37. Subsection (5) makes it a criminal offence to (without reasonable excuse) intentionally obstruct a person exercising the powers of entry under subsection (1). The offence is punishable on summary conviction up to a maximum fine, set in subsection (6) of level 3 on the standard scale (currently £1000).

Section 5 – Acquisition, deposit and disposal of objects

38. Section 5 specifies Historic Environment Scotland’s powers in relation to the acquisition, acceptance on deposit of and disposal of objects. Historic Environment Scotland is empowered to acquire objects (either by purchase, exchange or gift) or accept objects on deposit to develop the collections. Deposit is an arrangement whereby a depositor charges a body (in this case Historic Environment Scotland) with the safe-keeping of an object or collection for a fixed or indefinite period of time, with ownership of the property resting with the depositor and subject to such conditions as are agreed between the body and the depositor. Deposit, which is common practice in a wide range of collections, creates additional requirements when objects are being disposed of, as set out below, in paragraphs 44-46.

39. Subsection (2) makes clear that these powers are in addition to any other powers of acquisition or acceptance on deposit that Historic Environment Scotland may have, as HES may in future be given additional statutory powers under other legislation, for example under the Museums and Galleries Act 1992.

40. Subsection (3) sets out the circumstances in which Historic Environment Scotland may dispose of any object from its collection.
41. The case for disposal in subsection (3)(a) is that an object is a duplicate of, or similar to, another object in the collections, for example where a collection of architectural drawings includes original drawings along with multiple un-annotated copies it may not be desirable to keep the copies.

42. The case for disposal in subsection (3)(b) is that Historic Environment Scotland considers that the object is not required for the purposes of the collections. This would allow Historic Environment Scotland to ensure that objects in the collection are relevant to the historic environment and consistent with its collecting policy.

43. The case for disposal in subsection (3)(c) is that because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections. This would allow disposals in cases where an object was damaged to such an extent that it had lost all information content and was therefore not worth conserving, for example a heavily water-damaged document.

44. The case for disposal in subsection (3)(d) is that the object is hazardous. This provision would allow disposal in cases where an object is hazardous, for example where a material such as a cellulose nitrate film has degraded to the point of posing a possible fire hazard. The key test here would be whether any benefits of retaining such objects were outweighed by the risks.

45. The case for disposal in subsection (3)(e) is that the Scottish Ministers agree to the disposal. This would allow disposal in a case where there was a moral claim on an object that would ordinarily not be eligible for disposal under subsection (3)(a)-(d)

46. Subsection (4) clarifies that such disposals may be made by sale, exchange, gift, return or destruction. It is implicit that disposal (other than return) of an object is only possible where Historic Environment Scotland holds the object as owner.

47. Subsection (5) makes clear that these powers are in addition to any other powers of disposal that Historic Environment Scotland may have, as HES may in future be given additional statutory powers of acquisition and disposal under other legislation, for example under the Museums and Galleries Act 1992.

48. Subsection (6) sets out that where an object is subject to a prohibition or restriction on disposal, as in the case of an object on deposit, Historic Environment Scotland cannot dispose of the object without the consent of the person having the right to enforce the prohibition or restriction. However where an object is damaged, has deteriorated or become infested and is no longer of use for the purposes of the collections, HES can dispose of that object without consent if they have taken all reasonable steps to contact the appropriate person. HES may also dispose of any object which is hazardous even without consent. It is implicit that an object on deposit or loan is, by its very nature, subject to an implied restriction or prohibition on disposal.

49. These provisions protect the interests of depositors and lenders and will serve as a reminder to Historic Environment Scotland to check for any such prohibitions or restrictions when considering any disposal under subsection (3).
50. Subsection (7) clarifies that in this section and in section 6, references to Historic Environment Scotland’s collections are references to collections of objects which are owned by, in the custody of, or otherwise under its management and control, excluding those collections they have been delegated the management of under section 7.

**Section 6 - Borrowing and lending of objects**

51. Section 6 empowers Historic Environment Scotland to borrow or accept loans of historic objects for exhibition, study or research while subsection (2) empowers Historic Environment Scotland to lend any historic object from its collections.

52. Subsection (3) specifies the factors that Historic Environment Scotland must have regard to when deciding whether or not to lend an object, and for Historic Environment Scotland to specify a period for which the object is to be lent and to place conditions on the loan.

53. The factors to which Historic Environment Scotland must have regard are: the interests of the users of the collections; the suitability of the prospective borrower; the purpose of the loan; the physical condition and degree of rarity of the object, and any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.

54. Subsection (4) makes clear that these powers are in addition to any other powers of borrowing, accepting loans or lending that Historic Environment Scotland may have, as Historic Environment Scotland may in future be given additional statutory powers under other legislation.

55. Subsection (5) protects prohibitions or restrictions on lending that donors have attached to objects in the collections and is intended to serve as a reminder to Historic Environment Scotland to check for any such conditions when considering lending objects under subsection (2). Prohibitions or restrictions on lending may only be overridden with the consent of the person having the right to enforce the condition or if the name and contact details of such a person cannot be ascertained despite Historic Environment Scotland taking all reasonable steps to ascertain them.

**Section 7 – Delegation of functions in relation to collections**

56. Section 7 enables the Scottish Ministers to delegate the management of their collections to Historic Environment Scotland or to any other person Ministers consider appropriate.

57. Subsection (2) allows for delegation to take place despite the existence of prohibitions or restrictions on delegation in agreements.

58. Subsection (3) clarifies that such delegations can apply to a particular object in a collection or group of objects. The same subsection also clarifies that such delegations can apply to a particular object in a collection, a group of such objects or all such objects.

59. Subsection (4) makes it clear that any revenue received as a result of the exercise of any delegated function is the revenue of the person to whom the function is delegated unless
Ministers provide otherwise in the delegation. Thus, money paid by a publisher in return for the right to use images of objects in delegated collections would remain with Historic Environment Scotland.

60. Subsection (5) makes it clear that delegation of functions does not affect the ultimate responsibility of the Scottish Ministers.

61. Subsection (7) clarifies that references in this section to the Scottish Minister’s collections are to collections of objects which are owned by, in the custody of, or otherwise under the management and control of the Scottish Ministers – as distinct from the collections of Historic Environment Scotland itself by virtue of section 5 and any transfer of property scheme under paragraph 4 of schedule 5.

Section 8 - Corporate planning

62. Section 8 places a duty on Historic Environment Scotland to prepare a corporate plan at the beginning of each planning period which must be submitted to the Scottish Ministers for approval. Subsection (2) outlines what such a plan must describe, subsection (3) describes the method for its approval and subsection (4) requires the plan once approved to be published. Subsections (5) and (6) allow for modifications to the agreed plan. Subsection (7) sets the normal planning period as 3 years and allows for a different period for the initial plan, while subsection (8) allows for these terms to be varied by order of Ministers – if for example experience shows that a longer or shorter period is better suited to the cycle of planning and resource allocation. Ministers will be also able to offer directions and guidance on the content and presentation of corporate plans under the provisions of section 12 (see below) if this is necessary.

Section 9 – Grants to Historic Environment Scotland by the Scottish Ministers

63. Section 9 allows the Scottish Ministers to make grants to Historic Environment Scotland. These may be for general or particular purposes – for example towards a named function or project. It also provides for such grants to be subject to such terms and conditions as the Scottish Ministers may determine. Examples might include additional funding to accelerate the delivery of a shared research project or to create a shared national resource, such as a building conservation skills training centre. Historic Environment Scotland’s funding will normally be dealt with in corporate plan and annual financial allocation discussions, with the power in this section being very much for use in exceptional circumstances, such as large projects with a high priority which emerge at short notice.

Section 10 – Grants and loans by Historic Environment Scotland

64. Section 10 provides a power for Historic Environment Scotland to make grants and loans to such persons as it considers appropriate in furtherance of its functions subject to such terms and conditions as it may determine.

65. At present, grant programmes operated by Historic Scotland on behalf of Ministers include grants for the repair of historic buildings, grants for the care and maintenance of ancient
monuments, grants for archaeology projects, grants in support of conservation skills training and grants to voluntary organisations. Total grant expenditure is in the order of £15 million per annum.

66. These grants are distributed under a variety of different powers held by Ministers, and there are a variety of terms and conditions associated with each power. The Bill gives Historic Environment Scotland a single power which will allow it to take over all existing grant-giving activities and will promote a more responsive grant programme that can adapt to current needs and a less complex approach to programme terms and conditions.

67. Subsection (3) clarifies that such grants or loans made by Historic Environment Scotland must be made in accordance with any general authorisation given by the Scottish Ministers to Historic Environment Scotland. Such an authorisation might, for example, set the broad terms and eligibility/ranking criteria of all grant programmes which Historic Environment Scotland was expected to operate over the planning period. However, an authorisation would not extend to allowing Ministers to give direction in relation to the outcome of particular grant or loan applications.

Section 11 - Advice, information and assistance

68. Section 11 places a duty on Historic Environment Scotland to provide the Scottish Ministers with advice, information and assistance on any matter relating to the organisation’s functions, and also allows Historic Environment Scotland to offer these to Scottish Ministers. It also allows Historic Environment Scotland to provide advice, information and assistance to any person. This last provision is particularly significant, since Historic Environment Scotland will employ staff who have a very varied body of expertise and skills and will frequently be asked for advice.

Section 12 - Directions and guidance

69. Section 12 provides for the Scottish Ministers to direct Historic Environment Scotland (both generally and specifically) in relation to the exercise of its functions.

70. However, subsection (2) provides that the Scottish Ministers will not be able to direct in respect of particular historic properties, collections or objects or the making of grants and loans. This is to provide for curatorial independence, allowing for decision-making to be led solely by expert knowledge and judgement in these key areas.

71. Historic Environment Scotland must comply with directions and must have regard to guidance issued by the Scottish Ministers (subsection 4). Directions must be given in writing (subsection (5)) and the Scottish Ministers must publish directions and guidance (subsection (6)).

Section 13 – Interpretation

72. Section 13 sets out how the terms “collection”, “object” and “property in care” are to be interpreted in the Bill.
73. “Collection” in the Bill means a collection of objects usually with some kind of shared characteristic, for example created by the same individual or referring to the same place. It is used in this Bill to refer specifically to collections of objects, rather than to collections of buildings or sites. The term can refer to the entire collection of material managed by Historic Environment Scotland or smaller groupings within the ‘parent collection’.

74. The collections that will be managed by Historic Environment Scotland include material of many different types and in many different formats. The term “object” has been used throughout the bill to refer to a ‘thing’ curated by Historic Environment Scotland. The definition provided in the Bill makes it clear that objects may be physical artefacts, documents or indeed any thing, provided only that it is of relevance to the historic environment.

75. “Object” in the Bill means an object, document or other thing having historical, archaeological, architectural or cultural significance or interest relating to the historic environment generally or with particular reference to Scotland. The term “document” used here takes its meaning from schedule 1 to the Interpretation and Legislative Reform Scotland Act 2010 and means “anything in which information is recorded in any form (and references to producing a document are to be read accordingly)”. “Document” would cover information recorded in electronic form, for example, digital images, databases, spread sheets and 3-D and 2-D spatial data.

PART 2 – FUNCTIONS IN RELATION TO SCHEDULED MONUMENTS

Section 14 – Historic Environment Scotland’s functions in relation to schedules monuments

76. Section 14 introduces schedule 2 to the Bill, which makes provision for Historic Environment Scotland’s functions in relation to scheduled monuments as well as making other modifications, including those relating to consents and appeals. It confers on Historic Environment Scotland the function of compiling and maintaining the schedule of monuments under the 1979 Act. It also confers designation functions on Historic Environment Scotland in relation to the inventories of gardens and designed landscapes and of battlefields. All of these matters are provided for by changes to the 1979 Act. Further notes on schedule 2 are given below.

PART 3 – FUNCTIONS IN RELATION TO LISTING AND CONSERVATION

Section 15 – Historic Environment Scotland’s functions in relation to listed buildings

77. Section 15 introduces schedule 3 to the Bill which makes provision for Historic Environment Scotland’s functions in relation to listed buildings and conservation areas as well as making other modifications including those relating to consents and appeals. It confers on Historic Environment Scotland the function of compiling lists of buildings of special architectural or historic interest. These matters are provided for by changes to the 1997 Act. Further notes on schedule 3 are given below.
PART 4 – FUNCTIONS IN RELATION TO THE MARINE ENVIRONMENT

Section 16 – Historic Environment Scotland’s functions in relation to the marine environment

78. Section 16 introduces schedule 4 to the Bill which makes provision for Historic Environment Scotland’s functions in relation to the marine environment by way of amendment to the Marine (Scotland) Act 2010. Further notes on schedule 4 are given below.

PART 5 – DISSOLUTION OF RCAHMS AND TRANSFER OF STAFF ETC. TO HISTORIC ENVIRONMENT SCOTLAND

Section 17 – Dissolution of RCAHMS

79. Section 17 provides for the dissolution of the Royal Commission on the Ancient and Historical Monuments of Scotland. The duties of serving Commissioners will cease at the commencement of this provision.

Section 18 – Transfer of staff and property etc. to Historic Environment Scotland

80. Section 18 introduces schedule 5 to the Bill which contains provisions about the transfer to Historic Environment Scotland of staff and property etc. of RCAHMS and of the Executive Agency of the Scottish Ministers known as Historic Scotland. Further notes on schedule 5 are given below.

PART 6 – FURTHER MODIFICATIONS IN RELATION TO THE HISTORIC ENVIRONMENT

Section 19 – Grants and loans by the Scottish Ministers

81. Section 19 amends the 1953 Act, which is the current basis for grant-giving in respect of the repair of historic buildings.

82. Subsection (2) removes from section 4 of the 1953 Act the requirement that buildings/land must be of “outstanding” historic or architectural interest to be eligible for grants by the Scottish Ministers under that section, as this provision is no longer of particular value. It dates from a period before Listed Buildings were assigned to categories and before grant programmes had detailed and agreed criteria. It also inserts a new section 1A which clarifies that the power to make grants under section 4 of the 1953 Act includes the power to make loans for the same purposes. This recognises the need to make wise use of public funds by allowing for approaches other than grant-giving. Subsection (2)(d) inserts a new subsection (5) in section 4 of the 1953 Act which clarifies that a grant or loan made under this section is to be made on such terms and conditions (including as to repayment) as Ministers may determine.

83. Subsection (3) repeals section 3(3) of section 45A of the 1979 Act, inserted by the Historic Environment (Amendment) (Scotland) 2011 Act, which placed an annual limit on grants and loans made by Ministers for the development and understanding of matters of historic, etc., interest. This power is currently used to give support for the work of a range of voluntary bodies.
whose objectives include cultivating the general conditions by which Scotland’s historic environment is valued and cared for. With the desired move to more collaborative action to deliver agreed strategic objectives, the work of such bodies is likely to become proportionately more significant in future and it is desired to retain flexibility to offer support in this way in situations where funding by Historic Environment Scotland might be perceived as not appropriate.

Section 20 - Local inquiries in relation to ancient monuments

84. Section 20 inserts new sections 23A and 23B into the 1979 Act to give the Scottish Ministers a power to hold inquiries in relation to functions under Part 1 of the 1979 Act including for example an appeal under new section 1C. The operation of these changes is discussed further below, under schedule 2.

Section 21 - Meaning of “listed building”

85. Section 21 amends section 1 of the 1997 Act which places a duty on the Scottish Ministers to compile and maintain a list of buildings of special architectural or historic interest by inserting a new subsection (4A). This new section allows for any such entry for a building in the list to specify that an object or structure is not to be treated as part of the building for the purposes of the 1997 Act and also that any part or feature of the building is not of special architectural historic interest. This new power will apply to future new entries and to the amendment, in the future, of existing entries. The intention is to ensure that protection is more precisely targeted upon those elements of a building which are of particular historical or architectural significance. For example, the new power would allow for a relatively modern extension to a historic building to be excluded from the protection – and restrictions – applied by listing to the remainder of the building.

Section 22 - Applications for listed building consent

86. Section 22 amends section 12 of the 1997 Act by inserting new subsections (1A) and (1B). This gives Ministers the power to set out in regulations or directions the circumstances in which a planning authority which is minded to grant listed building consent is required to notify the Scottish Ministers.

PART 7 – FINAL PROVISIONS

Section 23 - Interpretation

87. Section 23 expands the short references used in the Bill, for economy of space, to give their full citations: “the 1979 Act” to the Ancient Monuments and Archaeological Areas Act 1979 and “the 1997 Act” to the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997.

Section 24 – Subordinate legislation

88. This section provides that an order under section 25(1) which adds to, replaces or omits the text of an Act, is subject to the affirmative procedure of the Scottish Parliament otherwise
orders (except commencement orders under section 29(2)) are subject to negative procedure in Parliament.

Section 25 – Ancillary provision

89. Subsection (1) confers powers on the Scottish Ministers enabling them to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purpose of giving full effect to this Act or any of its provisions.

90. Subsection (2) states that any order made under the powers of section 25(1) may modify any enactment (including this Act).

Section 26 – Consequential modifications

91. Section 26 introduces schedule 6 which makes amendments to other Acts required as a result of the establishment of Historic Environment Scotland and repeals provisions of certain Acts.

Section 27 – Crown application: criminal offences

92. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Bill applies to the Crown in Scotland. However, subsection (1) absolves the Crown of any criminal liability, should it be in contravention of the provision in section 4(5) of this Bill.

Section 28 – Crown application – powers of entry

93. Section 28 provides that the power in section 4 (power of entry to investigate the historic environment) is exercisable in relation to Crown land, but only if the appropriate authority gives its consent. Subsection (2) provides a table to clarify what is meant by “appropriate authority”.

Section 29 - Commencement

94. Section 29 sets out the arrangements for commencement of the provisions of the Bill. Section 23 to 25, 27, 28 and 30 come into force on the day after Royal Assent. All other provisions will come into force on such day as the Scottish Ministers may by order appoint. Subsection (3) provides that a commencement order may include transitional, transitory or saving provision.

Section 30 – Short title

95. This provides for the Act, if passed, to be referred to as the Historic Environment Scotland Act 2014.
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

SCHEDULES

SCHEDULE 1 – HISTORIC ENVIRONMENT SCOTLAND

96. This schedule makes provision about the status, membership procedures and powers relating to Historic Environment Scotland.

97. Paragraph 1 clarifies the status of Historic Environment Scotland: it is not a Crown body and therefore does not have any of the special privileges of the Crown. Crown bodies are not, for example, required to obtain formal scheduled monument consent for works to properties in their ownership or care.

98. Paragraph 2 deals with membership arrangements in relation to the Board of Historic Environment Scotland. Sub-paragraph (1) sets out maximum and minimum numbers (which Ministers have a power under sub-paragraph (8) to vary from the 10-15 specified here). All Board members are to be appointed by the Scottish Ministers and must have (sub paragraph (3)) skills and expertise relevant to the functions of the body. There is no specification of particular fields of expertise, with the expectation being that Ministers will select a balanced board whose members among them combine knowledge of the functional areas with skills and experience suitable for managing a large public body. Sub-paragraph (4) specifies that Ministers must encourage equal opportunities when making appointments to the board. The specific meaning of “equal opportunities” is clarified by sub paragraph (9). More generally, it is intended to add Historic Environment Scotland to the list of bodies whose appointments are regulated by the Commissioner for Ethical Standard in Public Life in Scotland and to conduct the first round of appointments according to the Commissioner’s Code of Practice. Sub-paragraph (5) allows Ministers to set the terms and conditions of service of Board members, while sub paragraph (6) sets out arrangements for members to resign. Sub-paragraph (7) allows for Ministers to reappoint members.

99. Paragraph 3 sets out that members of certain bodies are not eligible to be appointed as Board members, or must cease to be Board members if they attain a place in these bodies. The bodies specified are the House of Commons, the House of Lords, the Scottish Parliament and the European Parliament. The reason for these exclusions is to avoid any perception of conflicts of interest between the legislative role of these bodies and the decision-making role of Historic Environment Scotland.

100. Paragraph 4 sets out the arrangements for removal of members, including insolvency, repeated non-attendance or inability to discharge the duties required of member. These factors, if they pre-existed, would debar any person from being appointed in the first instance, so only provisions for removal are required in the Bill.

101. Paragraph 5 allows for payment of remuneration, allowances and expenses to Board members, with Ministers determining the rates.

102. Paragraph 6 sets out the arrangements for appointment and employment of a person as Chief Executive, with a requirement for Ministerial approval of the Board’s chosen candidate. This paragraph also covers arrangements for the employment of staff.
103. Paragraph 7 allows for the payment of pensions, allowances and gratuities by Historic Environment Scotland, with Ministers again determining the rates.

104. Paragraphs 8 and 9 set out the arrangements for the Board’s business, including committees, procedure and meetings. Ministers and officials are permitted to attend meetings, but may not vote.

105. Paragraph 10 allows the Board to delegate any of their functions to members, committees or employees, except that the Board cannot delegate the approval of annual reports and accounts.

106. Paragraph 11 allows for proceedings of Historic Environment Scotland to remain valid, even when conducted while the Board or a committee is temporarily short of the minimum specified number of members or if a member of the Board or committee subsequently proves to be ineligible for membership or is disqualified. The normal conduct of Board business would allow the Chair to require any business conducted in such circumstances to be brought back to the Board for review.

107. Paragraph 12 sets out the general powers available to Historic Environment Scotland. Sub-paragraph (1) is a power to do anything related to the exercise of its functions while sub-paragraph (2) sets out a list of particular powers. These powers are intended to give the body a sufficiently wide range of powers to undertake any activity currently in hand at RCAHMS or Historic Scotland or foreseen.

108. Paragraphs 13 and 14 set out requirements in respect of accounts and reports, including for their publication.

**SCHEDULE 2 – FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO SCHEDULED MONUMENTS**

109. Schedule 2 to the Historic Environment Scotland Bill makes provision for Historic Environment Scotland’s functions in relation to scheduled monuments (within the meaning of the 1979 Act) as well as making other modifications.

**Part 1 – Schedule of monuments**

110. Part 1 of the schedule confers on Historic Environment Scotland the function under section 1 of the 1979 Act of compiling and maintaining a schedule of monuments of national importance as currently carried out by Historic Scotland for Scottish Ministers. It also makes other modifications of section 1 of the 1979 Act.

111. The duty of Ministers to compile and publish a list of scheduled monuments is replaced by a duty on Historic Environment Scotland to compile publish the schedule as prescribed by Ministers. The latter change will involve the replacement of a regularly published printed index to scheduled monuments by online access to digital versions of the scheduling documents (including maps) which relate to each and every scheduled monument. Online public access to this definitive material will be what the body is required to deliver, rather than a simple list, though such lists can still be generated if need arises.
Part 2 – Scheduled Monument Consent

112. Part 2 of the schedule confers on Historic Environment Scotland functions in relation to the grant, modification and revocation of scheduled monument consents; modifies the functions of the Scottish Ministers in relation to modification and revocation of such consents, and makes consequential modifications, including to the procedure for applications for the grant, modification and revocation of such consents. From the point of view of applicants for consent, the extant system is being transferred entirely to Historic Environment Scotland, with the provision of an appeal to Ministers (see below for more detail on appeals).

113. Paragraph 5 confers the power (currently held by Scottish Ministers) to grant scheduled monument consent under section 2 of the 1979 Act on Historic Environment Scotland. Sub-paragraph (d) inserts subsection (5A) in section 2 of the 1979 Act. This allows for the granting of partial consent in relation to an application for scheduled monument consent.

114. Paragraph 6 inserts new section 3A in the 1979 Act. This allows any person interested in a scheduled monument which is subject to a scheduled monument consent granted subject to conditions to apply to Historic Environment Scotland for the variation or discharge of any such conditions. The section also sets out details of what an application must specify and what actions Historic Environment Scotland may take in response.

115. Paragraph 7 further amends the 1979 Act by substituting subsections (3) and (4) of section 4 with two new subsections which allow Historic Environment Scotland to revoke or modify a scheduled monument consent at any time before works have been completed. Subsection (4) also clarifies that any modification or revocation does not apply to works already carried out.

116. Paragraph 8 inserts a new section 4A into the 1979 Act which relates to the modification and revocation of scheduled monument consent by Scottish Ministers, including arrangements for notification and hearings. The effect of these changes is to recast the provisions of Part II of schedule 1 to the 1979 Act to harmonise procedure with that for modifications and revocations in respect of listed buildings under the 1997 Act. The intended effect of these changes is to make procedures around scheduled monument consent as similar as possible to procedures around listed building consent.

117. Paragraphs 9 to 13 make changes to sections 5 to 9 of the 1979 Act to give Historic Environment Scotland the necessary powers and liabilities in relation to its newly conferred functions under the 1979 Act.

118. Paragraph 14 amends Part 1 of schedule 1 (applications for scheduled monument consent) to the 1979 Act to require applications for scheduled monument consent to be made to and dealt with by Historic Environment Scotland rather than by the Scottish Ministers. Subsection (5)(b) of paragraph 14 substitutes sub-paragraphs (2) and (3) of paragraph 3 with a new subparagraph (2) which allows the Scottish Ministers to prescribe (by way of regulations) the procedures to be followed by Historic Environment Scotland when determining applications for scheduled monument consent.
Paragraph 15 repeals 5 to 9 of schedule 1 of the 1979 Act in connection with amendments made by paragraph 7, and further amends Part 2 of schedule 1 of the same Act in this respect.

Part 3 – Scheduled monuments: enforcement notices

Part 3 of the schedule confers on Historic Environment Scotland functions in relation to scheduled monument enforcement notices currently conferred on the Scottish Ministers, by amending sections 9A, 9B and 9D of the 1979 Act to allow Historic Environment Scotland to serve a scheduled monument enforcement notice in respect of unauthorised works carried out to a scheduled monument. From the point of view of the person receiving such a notice, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

Amendments to section 9D give Historic Environment Scotland power to enter 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.

Part 4 – Scheduled monuments: stop notices

Part 4 of the schedule confers on Historic Environment Scotland functions in relation to stop notices and temporary stop notices currently conferred on Scottish Ministers by amending sections 9G, 9H, 9I, 9K, 9L and 9N of the 1979 Act. From the point of view of the person receiving such a notice, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

Amendments to section 9G of the 1979 Act enable Historic Environment Scotland to serve a stop notice, where a scheduled monument enforcement notice has been served requiring works to cease, whilst amendments to section 9K enable Historic Environment Scotland to serve a temporary stop notice requiring works to stop immediately.

Part 5 – Appeals and referrals from Historic Environment Scotland

Chapter 1 – Appeals from Historic Environment Scotland

Chapter 1 of Part 5 of the schedule makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers and for the referral of applications for and related to scheduled monument consent from Historic Environment Scotland to the Scottish Ministers. This is a new provision, consequent on transfer of duties previously performed by Ministers through their officials. Historic Environment Scotland will have internal processes which it is intended will resolve most disagreements, so it is intended that appeal processes set out in the Bill will be required relatively infrequently.

Paragraph 28 inserts a new section 1C into the 1979 Act which gives owners, tenants and occupiers the right to appeal to the Scottish Ministers against a decision of Historic Environment Scotland to include a monument in the Schedule or to amend an entry relating to the monument in question in the Schedule. Inserted new section 1D allows for the Scottish Ministers to either dismiss or allow such an appeal while inserted new section 1E provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals.
126. Paragraph 29 inserts new section 4B into the 1979 Act which gives applicants for scheduled monument consent the right to appeal to the Scottish Ministers in the following circumstances – refusal of consent, the granting of consent subject to conditions, refusal of an application for variation or discharge of conditions attached to consent, granting of consent subject to conditions and refusal of an application for subsequent approval required by a condition to which consent is subject. Paragraph 29 also inserts two further new sections: 4C which makes further provision relating to such appeals whilst 4D provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals under 4B.

127. Paragraph 30 inserts a new schedule 1A after schedule 1. This schedule makes provisions about the determination of certain appeals by a person other than the Scottish Ministers and applies to appeals under inserted sections 1C and 4B. Paragraph 1 of schedule 1A allows for the Scottish Ministers to prescribe classes of appeals under sections 1C and 4B which can be determined by a person appointed by the Scottish Ministers.

128. Paragraph 2 clarifies the powers and duties of a person so appointed. Paragraph 3 allows for the Scottish Ministers to direct that an appeal which would be determined by an appointed person is instead to be determined by them, while paragraph 4 provides for the Scottish Ministers to revoke a direction made under the powers set out in paragraph 3 at any time.

Chapter 2 – Referral of certain applications

129. Chapter 2 of Part 1 of the schedule makes provision for the referral of applications for (and related to) scheduled monument consent from Historic Environment Scotland to the Scottish Ministers by inserting a new section 3B into the 1979 Act. This enables the Scottish Ministers to call in an application for decision by them instead of by Historic Environment Scotland, offering harmonisation with wider planning procedures.

Part 6 – Functions in relation to gardens and designed landscapes and battlefields

130. Part 6 of the schedule confers on Historic Environment Scotland the function currently conferred on Scottish Ministers of compiling and maintaining the inventory of gardens and designed landscapes and the inventory of battlefields and amends sections 32A and 32B of the 1979 Act.

Part 7 – Other matters in relation to Scheduled monuments

131. Part 7 of the schedule makes other modifications of the 1979 Act in relation to scheduled monuments to enable Historic Environment Scotland to undertake functions in relation to such monuments, including provision for powers of entry.

SCHEDULE 3 – FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO LISTING AND CONSERVATION

132. Schedule 3 to the Bill makes provision for Historic Environment Scotland’s functions in relation to listed buildings and conservation areas (within the meaning of the 1997 Act) as well as other modifications.
Part 1 – Listing of special buildings

133. Paragraph 2 of Part 1 of the schedule confers on Historic Environment Scotland the function of compiling, or approving, lists of buildings of special architectural or historic interest under section 1 of the 1997 Act, currently conferred on Scottish Ministers. Paragraph 3 inserts a new section 1A into the 1997 Act which imposes a duty on Historic Environment Scotland to publish the list compiled under section 1 and to notify certain persons and gives the Scottish Ministers the power to set out in regulations the requirements of such publication and notification. From the point of view of the owner or occupier of a building, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

Part 2 – Listed Building Consent

134. Part 2 of the schedule confers on Historic Environment Scotland functions in relation to the grant, modification and revocation of listed building consent. From the point of view of the owner or occupier of a building, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

135. Paragraph 8 amends section 7 of the 1997 Act to confer the power (currently held by Scottish Ministers) on Historic Environment Scotland to grant listed building consent. Paragraph 9 inserts new subsections (4A) and (4B) into section 9 of the 1997 Act requiring regulations making provision in relation to the procedure in respect of applications for consent to require planning authorities to consult Historic Environment Scotland (and such other persons as set out in either directions or regulations) before granting or refusing an application for consent.

Part 3 – Conservation areas

136. Part 3 of the schedule confers on Historic Environment Scotland functions in relation to conservation areas currently conferred on Scottish Ministers, including functions in relation to building preservation orders. From the point of view of owners or occupiers within a Conservation Area, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

Part 4 – Appeals against listing

137. Part 4 of the schedule makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers. This is a new provision, consequent on transfer of duties previously performed by Ministers through their officials. Historic Environment Scotland will have internal processes which it is intended will resolve most disagreements, so it is intended that appeal processes set out in the Bill will be required relatively infrequently.

138. Paragraph 18 inserts sections 5B, 5C, and 5D into the 1997 Act. This allows any owner, occupier or tenant of a building to appeal to the Scottish Ministers against a decision of Historic Environment Scotland to designate a building as a listed building or to amend the list concerning the building in question (except where the amendment removes the building from the list). Inserted section 5C allows the Scottish Ministers to either dismiss or allow such an appeal and confirms that the determination by the Scottish Ministers of an appeal under this section is final,
while inserted section 5D provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals.

**Part 5: Other matters in relation to listing**

139. Part 5 of the schedule makes other modifications under that Act to enable Historic Environment Scotland to undertake functions in relation to listing, including powers of entry.

**SCHEDULE 4 – FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO THE MARINE ENVIRONMENT**

140. Schedule 4 to the Bill makes provision conferring functions on Historic Environment Scotland in relation to the marine environment by amending the Marine (Scotland) Act 2010. However, Historic Environment Scotland is not given the power to designate historic Marine Protected Areas: this power remains solely with the Scottish Ministers.

141. Paragraph 2 inserts section 80A into the 2010 Act. This sets out the circumstances in which Historic Environment Scotland may give advice and guidance as regards Historic Marine Protected Areas (MPA) designated under that Act. Amendments are also made to section 82 to 84 of the 2010 Act to require a public authority to notify Historic Environment Scotland where the exercise of any of the authority’s functions or the making of determinations is capable of affecting a marine historic asset in a Historic MPA.

**SCHEDULE 5 – TRANSFER OF STAFF, PROPERTY ETC. TO HISTORIC ENVIRONMENT SCOTLAND**

142. Schedule 5 to the Bill makes provision for the transfer of staff and property etc. to Historic Environment Scotland.

143. Paragraphs 1 to 3 make provision in relation to staff transfers. Paragraph 1 empowers the Scottish Ministers to make a staff transfer scheme making provision for or in connection with the transfer of staff employed by RCAHMS and staff of the Scottish Ministers employed in Historic Scotland to Historic Environment Scotland. Such a scheme is not subject to Parliamentary procedure.

144. Under paragraph 2, the scheme must specify the date on which the transfer is to take place. The scheme may specify different dates for different purposes and make different provision in relation to different cases or classes of case.

145. Paragraph 3 makes provision in respect of the effect of the transfer on an employee’s contract. It provides that the contract of employment for the person who is transferring has effect on or after the transfer date as if originally made between the employee and Historic Environment Scotland.

146. Sub-paragraph 3(5) provides that employed staff may object in advance of their contract being transferred to Historic Environment Scotland, in which case their contract is terminated at
the end of the day before the intended transfer. This termination will not be treated as dismissal of a person for the purposes of the legislation.

147. Paragraphs 4 and 5 cover property transfers. Paragraph 4(1) enables the Scottish Ministers to make a property transfer scheme making provision for the transfer to Historic Environment Scotland of property, rights, liabilities and obligations of Scottish Ministers or RCAHMS. This includes property rights and obligations under lease agreements and rights and liabilities under grant and loan agreements.

148. Sub-paragraph 5(3) provides that a transfer scheme may make provision in relation to different cases or classes of case and may specify different dates in relation to different property, rights, liabilities and obligations.

**SCHEDULE 6 – CONSEQUENTIAL MODIFICATIONS**

149. Schedule 6 lists consequential modifications to other Acts which are not specific to the historic environment. Historic Environment Scotland, as with all newly created public bodies, requires to be added to the list of bodies covered in areas of regulation which apply across the public sector. Schedule 6 makes these changes in the following areas, each relative to the similarly named Act:

- Ethical standards
- Public services conduct
- Freedom of information
- Public appointments and public bodies
- Public services reform
- Public records

150. Finally, schedule 6 provides for RCAHMS, once it is dissolved, to be removed from the schedules accompanying these Acts.
INTRODUCTION

1. This document relates to the Historic Environment Scotland Bill introduced in the Scottish Parliament on 3 March 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The Bill will create a new lead body for the historic environment in Scotland and is intended to provide increased resilience within and across the historic environment Sector, ensuring the sustainability of key functions and preserving and developing the expertise of staff. Thus providing support for Scotland’s historic environment sector into the future. The creation of the new body also comes within the context of Scotland’s first Historic Environment Strategy¹, which the body will be a lead partner in delivering.

3. The Scottish Government is determined to protect and improve services provided by both current bodies and to deliver the policy aims set out below.

4. The Bill establishes Historic Environment Scotland (HES) as a non-departmental public body (NDPB), which will deliver the functions currently delivered by Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). It provides that the functions, staff, resources, assets (excluding some assets in the ownership of the Scottish Ministers) and liabilities of RCAHMS and Historic Scotland will be transferred to Historic Environment Scotland.

5. HES will deliver public benefit from the historic environment by:
   (a) acting as the lead public body on matters relating to Scotland’s historic environment;
   (b) supporting and enabling partners, stakeholders, communities and individuals to fulfil their roles in investigating, protecting and celebrating our heritage; and
   (c) acting as a guardian of Scotland’s historic environment.

6. The Financial Memorandum provides estimated costs and savings resulting directly from the provisions of the Bill and those indirect costs arising as a result of the Bill as the two organisations transition into HES. Preparatory work is being undertaken in both bodies in the period prior to the intended commencement date: this will be met from existing resources and the appropriate costs from this activity are recorded in this Financial Memorandum.

7. Costs and savings presented in the Financial Memorandum are presented on the basis of total expected figures for one-off costs both pre- and post-commencement, alongside recurring costs and efficiencies. The information is presented over the ten year period from the commencement of HES in addition to the two years prior to commencement, giving a total

¹ www.scotland.gov.uk/historicenvironment
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

period of 2013/14 to 2024/25. However, it does not represent a blueprint for the finished organisation which will require decision making by the incoming Board once it is established.

SUMMARY OF FINANCIAL IMPLICATIONS

8. The summary below sets out net costs of the Bill, as well as the savings. These are summarised initially without any optimism bias (detailed later on) and then the impact of optimism bias is assessed. Finally the impact of any charitable status which HES may achieve is estimated. An overall cost summary is presented in table 1 (below) and detailed in annexes 2 and 3.

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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<td>0.089</td>
<td>1.535</td>
<td>1.054</td>
<td>0.624</td>
<td>0.219</td>
<td>0.219</td>
<td>4.907</td>
</tr>
<tr>
<td>Net position with Bias</td>
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<td>1.021</td>
<td>2.880</td>
<td>2.038</td>
<td>1.565</td>
<td>1.119</td>
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<td>15.998</td>
</tr>
<tr>
<td>Net position with charitable status</td>
<td>0.149</td>
<td>0.089</td>
<td>0.162</td>
<td>-1.582</td>
<td>-2.012</td>
<td>-2.417</td>
<td>-2.417</td>
<td>-20.193</td>
</tr>
</tbody>
</table>

Table 1 – Summary of financial position

9. The further detail presented below provides a breakdown of the net one-off costs, recurring costs and savings resulting from the Bill and provides more detail on the impact of biases and charitable status.

10. The proposals in the Bill will remain affordable in all of the scenarios profiled within this Financial Memorandum and whilst the intention of the Bill is not to generate savings, there is the potential for net savings were the new body to achieve charitable status.

11. The biased costs profiled above represent the highest anticipated level of cost, should all risks be realised. Whilst this is firmly anticipated not to be the case, these costs remain affordable within the combined budget of Historic Scotland and RCAHMS, and when averaged across the 12 years represent 1.67% of the current annual operating budget of the two bodies.

12. With a robust process of change management in place, and the development of business cases and implementation of a programme planning approach for each of the cost areas identified it is anticipated that the costs profiled can be managed down.

13. A more detailed analysis of individual areas of cost and saving is presented in parts two and three, based on the methodology outlined below, whilst the overall impact is summarised in annexes 2 to 3.
METHODOLOGY FOR FINANCIAL MEMORANDUM

14. The estimated costs and savings in this Financial Memorandum are based on information on current levels of costs from the two organisations. The process of refining the figures has included collaboration with specialists in relevant areas, and the use of Scottish Government reports, such as the recommendations of the McLelland review\(^2\) on Information Communication Technology (‘ICT’) savings. The costs identified were structured on the basis of the 2012 Audit Scotland guidance, which identified costs in the principal areas of staffing, IT, accommodation and corporate functions.

15. The costs of creating the new body are analysed using the framework of the Audit Scotland Good Practice Guide. The potential to achieve efficiencies is set out, with the assumption that any savings will be re-invested in the new organisation’s services and will offset any costs related to the transition to the new organisation.

16. The profiling of figures assumes that 1 April 2015 is the earliest possible date that the new body could come into being.

17. The intention is that the body will be commenced in two phases, with the corporate entity and Board coming into existence from April 2015, and the rest of the body commencing from October 2015. This will incur a modest cost (see below) for the parallel running of both the HES board and the RCAHMS Commissioners for a transitional period of 6 months.

18. It is acknowledged that there will be a level of uncertainty in some of the figures presented in this Financial Memorandum, as they are based on best estimates of the likely costs to HES. In line with good practice an optimism bias has been applied to costs, and more detail is provided in Part Four below. For the majority of areas a standard bias of 53% has been applied, which is consistent with other similar processes carried out by the Scottish Government. In areas where costs are based on a higher level of externally verifiable information, for example in relation to staffing, supplier or additional taxation costs a lower bias of 10% has been applied. A 75% bias was applied to ICT costs in recognition of the level of bias which is accepted as inherent within the costing for any ICT project.

19. Efficiency estimates have been decreased by 30% to account for potential optimum bias and margins of uncertainty, in line with other recent examples of public sector reforms.

COST AND EFFICIENCY FIGURES

20. The Financial Memorandum provides ranges for cost figures where there is a margin of uncertainty in the best estimates, in line with Standing Order rule 9.3.2.

21. This part of the Financial Memorandum sets out the estimated costs and savings associated with the Bill. Whilst the Bill provides for structural change, the existing functions of the two organisations will continue and many of the costs associated with providing the service will not change as a result of the Bill. Information is provided in the following order: Firstly

\(^2\) [http://www.scotland.gov.uk/Publications/2011/06/15104329/0](http://www.scotland.gov.uk/Publications/2011/06/15104329/0)
estimates of the direct one-off costs resulting from provisions of the Bill, secondly recurring costs which are beyond the current expenditure of the two bodies and thirdly the efficiencies arising from Bill provisions.

22. The Scottish Ministers believe that the functions of HES will have a charitable purpose and as such would fulfil the test for charitable status. A decision on whether, when and in what configuration any application for charitable status is made will be a decision for the new body once it is constituted. As such this Financial Memorandum does not reflect any of the potential financial benefits of charitable status in the figures presented. However, a separate section on charitable status has been included which outlines the potential impact of charitable status on the financial implications of the Bill.

COSTS TO THE SCOTTISH ADMINISTRATION

23. The costs to the Scottish Administration have been set out below in two sections, the first presenting the one-off costs and the second the recurring costs.

Part One

One-off programme costs

24. There are a number of one-off costs associated with the creation of Historic Environment Scotland, occurring between 2013/14 and 2017/18. Those costs included in 2013/14 and 2014/15, which pre-date the proposed date of commencement for Historic Environment Scotland are for preparatory work directly related to the Bill and for work to create alignment between the two existing bodies, for instance in relation to staffing, which is outlined in further detail below. This increased alignment will enhance the transition into HES, as well as providing short term financial benefits through increased joint working. These costs total £5.025m incurred over 2 years pre-commencement and 3 years post commencement. These costs are summarised below in Table 2.

<table>
<thead>
<tr>
<th>Item</th>
<th>2013/14</th>
<th>2014/15</th>
<th>2015/16</th>
<th>2016/17</th>
<th>2017/18</th>
<th>Item total</th>
</tr>
</thead>
<tbody>
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<td>Staffing</td>
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<td>0.635</td>
<td>0.605</td>
<td>0.835</td>
<td>0.405</td>
<td>2.930</td>
</tr>
<tr>
<td>Branding and Website</td>
<td>-</td>
<td>0.075</td>
<td>0.075</td>
<td>-</td>
<td>-</td>
<td>0.150</td>
</tr>
<tr>
<td>Heritage Management</td>
<td>-</td>
<td>0.030</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.030</td>
</tr>
<tr>
<td>Transition Programme</td>
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<td>0.403</td>
<td>0.366</td>
<td>-</td>
<td>-</td>
<td>1.165</td>
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<tr>
<td>ICT</td>
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<td>0.300</td>
<td>0.300</td>
<td>-</td>
<td>-</td>
<td>0.700</td>
</tr>
<tr>
<td>Estates</td>
<td>-</td>
<td>-</td>
<td>0.050</td>
<td>-</td>
<td>-</td>
<td>0.050</td>
</tr>
<tr>
<td><strong>Total one off costs</strong></td>
<td><strong>0.946</strong></td>
<td><strong>1.433</strong></td>
<td><strong>1.396</strong></td>
<td><strong>0.835</strong></td>
<td><strong>0.405</strong></td>
<td><strong>5.025</strong></td>
</tr>
</tbody>
</table>

Table 2 – Summary of one-off costs
Staffing costs

25. Staffing costs and efficiencies have been developed in line with the commitment given in the Outline Business Case for merger (‘OBC’) that any transfer of staff to HES would be at no detriment to their existing terms and conditions.

26. Whilst the creation of HES is not to secure savings, the efficiencies which can be achieved through managing a joint pay settlement for both Historic Scotland and RCAHMS provide a sustainable cost base for the new organisation. Savings achieved will be used to ensure the long term delivery of the functions of HES.

27. Additional staffing costs have been developed following detailed profiling of current staffing costs by the HR departments of both Historic Scotland and RCAHMS and in consultation with the relevant trades unions. These costs and the efficiencies detailed below have also undergone detailed scrutiny by Scottish Government analysts as the majority of the data profiled forms part of the 2013/14 joint pay settlement for the two organisations.

28. The costs profiled are consistent with previous examples of public sector reform and with earlier pay settlements for both Historic Scotland and RCAHMS.

29. These costs are primarily accounted for by a voluntary early exit scheme (VES) equating to £1.950m between 2013/14 and 2017/18. However, this cost is more than offset by associated savings (see paragraph 71) in staffing costs through the reduction in salary and associated costs of posts not being replaced like-for-like. These costs have been calculated on the basis of the actual impact of proposed changes on the staffing budgets of both organisations by Human Resources as part of the agreement of a pay remit.

30. Additional one-off costs in this area are for the harmonisation of grades, totalling £0.785m and for costs to align the salary structures between the two organisations, which total £0.195m.

31. This brings the total one-off costs for staffing to £2.93m.

Branding and website

32. One-off costs of £0.150m are included for branding. These costs primarily relate to the establishment of a web presence for HES, and are split between 2014/15 and 2015/16 to ensure that a website is in place for the anticipated commencement of HES. A decision on the operational names and branding for HES will be for the board to make following commencement and any additional branding or website costs will be absorbed by existing budgets for these areas.

Heritage Management

33. One-off costs of £0.030m are included for the Heritage Management functions which are currently delivered by Historic Scotland. These costs relate to the requirement to alter existing back-office systems to accommodate changes in practice under provisions in the Bill for this

3 http://www.scotland.gov.uk/Publications/2013/05/1373/18
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

area. These costs have been established on the basis of advice from the suppliers of the systems for the scope of changes required.

**Transition programme**

34. A number of one-off costs also relate to the transition programme budget, which include organisational development work on a corporate plan for the new organisation (primarily work with all tiers of the organisations by change management specialists to build capacity amongst managers); and taxation and legal advice on potential business structures. These costs total £1.165m over the financial years 2013/14 – 2015/16. In summary the main components of these costs relate to:

- external consultation (aggregation of individual costs) - £0.300m
- road-shows following commencement - £0.040m
- board and appointment costs - £0.024m
- staffing costs - £0.681m
- organisational development - £0.120m

35. These costs have been established on the basis of discussions with the transition programme team and comparison with other recent public sector reforms. The range of costs included within this section provide for the development and establishment of the new organisation. Individual costs were calculated on the basis of previous examples of similar work undertaken by both organisations. For example RCAHMS has significant experience in the appointment of Commissioners (the equivalent of Board members) and the costs involved in this which informed the development of costs for board appointments. This information was also supplemented by advice from CAPITA on benchmarked costs for similar processes in both public and private sectors.

36. Staffing costs were calculated using full staff costs of a range of different post types based on information from Human Resources teams in both organisations. These costs were then applied to the resource requirements developed by the transition programme team on the basis of their programme plan to create an overall total cost for the staff resources required. Staff costs directly associated with the transition programme team have been included within these costs, and they are already profiled within the staffing budget of Historic Scotland and RCAHMS. These costs amount to £0.681m over the three years from 2013/14 to the commencement of the body in 2015.

37. The costs of appointing a new Board and senior management team have been included within this section as appointment rounds will be required in 2015/16 to appoint the Chair and Board, the Chief Executive Officer and Senior Management Team. These costs total £0.023m.

38. A period of six months, from April to October 2015, has been allowed for the commencement of HES. During this period there will be additional costs from having multiple extant boards to support Historic Scotland, RCAHMS and HES. This additional cost would not
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

exceed £0.001m. This cost is based on the full cost of both of the un-remunerated boards for Historic Scotland and RCAHMS being extended for a further period of six months.

ICT

39. ICT costs have been calculated on the basis of detailed consultation with staff in Historic Scotland and RCAHMS to understand the current ICT costs and structures of both organisations and to provide baseline figures for the costs and efficiencies. In addition to this, experience from other public sector reforms was used to inform the likely ICT requirements of Historic Environment Scotland and the phasing of the development of these following commencement. Recent Government reports, including the McLelland report, have also been referred to. The indicative costs for additional SCOTS licences were developed by Government ICT specialists.

40. The total additional one-off costs of ICT beyond current expenditure will be £0.700m. This is composed of:

- Development of a new website - £0.200m
- Alterations to align existing systems for Heritage Management function with changes to workflow resulting from the Bill - £0.200m
- Re-purchasing of application licences following loss of charitable status - £0.300m

41. The individual costs itemised above have been calculated on the basis of previous projects, for example Historic Scotland’s development of corporate and public facing websites. Costs for alterations to externally developed systems and re-purchasing of licences have been developed following contact with external suppliers to obtain outline costs for the work required.

42. In line with good practice, costs have been profiled for the development of a detailed business case on any new system requirements which the organisation may have. This will be for the Board of HES to consider in due course, and would form part of on-going project spend in this area if approved.

43. The maintenance of existing systems post the commencement of HES Scotland is not included within the Financial Memorandum as these are not additional costs as a result of the creation of the body. However, some costs to make minor alterations to existing systems required by the change are profiled within these costs, for example alterations to the Heritage Management Casework Management System to reflect changes to workflows.

44. In addition to these one-off costs, the recurring costs required to develop a shared IT solution for the new organisation are detailed in the section below.

Estates

45. Costs for accommodation primarily relate to the movement of staff between the two headquarter buildings following commencement. A cost of £0.050m is reflected to support the movement of staff between the two headquarters buildings at commencement in order to enable

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4 Half year rate of expenses to cover additional costs over 6 months.
5 http://www.scotland.gov.uk/Publications/2011/06/15104329/20
more effective business structures. This cost was calculated on the basis of the cost per staff member for previous similar moves within both organisations, multiplied by the number of staff who are anticipated to require relocation.

46. It is not envisaged that there will be a need to merge headquarters accommodation in the short to medium term, given the proximity of the two buildings and the current leasing structures which offer no matched lease break date until 2022.

47. In the longer term, options for a single headquarters function may be examined in the context of the efficient use of the government estate and in conjunction with the Scottish Futures Trust. A full option appraisal to ensure value for money from combining headquarters buildings would be carried out at that time.

48. Any additional costs of running two headquarters buildings would be small in comparison with the costs of an early termination of either lease.

49. Any decision on a merged headquarters is also dependent upon developing a long-term storage solution for the collection currently held by RCAHMS. There is on-going discussion between bodies within the Culture portfolio, including RCAHMS to develop a shared storage facility for their collections and HES would continue to explore this option. Some funding has been set aside for this work within the portfolio and as such, these discussions are not factored into the Financial Memorandum.

Part two

Recurring additional costs

50. Recurring additional costs total £16.170m between 2015/16 and 2024/25. The principal areas of recurring costs relate to additional taxation costs and ICT. These costs are summarised below in table 3.
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

Table 3 – Summary of recurring costs.

Staff costs

51. Recurring costs of £0.025m per annum are also included for the additional legal services which will be required to support the HR function of the new organisation. This additional cost results from the change in status of Historic Scotland to an NDPB meaning that it will no longer have access to legal services from within the Scottish Government although it will be able to procure legal services through Scottish Government framework contracts. This cost has been established from the framework contract for the current level of legal support required by the HR functions of both organisations.

52. In order for HES to be able to make an application for charitable status it is not anticipated that Board members will be remunerated.

53. The remuneration package for the new CEO will be consistent with the existing packages of the two extant CEOs of Historic Scotland and RCAHMS and so no additional cost has been reflected for this. An efficiency of half a remuneration package has been reflected (see paragraph 74). However, the agreement to a remuneration package for the new body will require benchmarking with other similar public bodies followed by agreement under the current Public Sector Pay policy for Senior Appointments.

Heritage Management

54. The Bill will introduce an appeals system to some regulatory decisions made by Historic Environment Scotland, in particular the designation of listed buildings and scheduled monuments and the determination of scheduled monument consent. Appeals will be determined by Ministers, and there will be an additional staff costs to handle the anticipated level of appeals, projected at around 30-50 per year. The full staff costs of a C1 post have been included to cover these costs, totalling £0.090m per annum (including allowances for travel and subsistence and

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6 http://www.scotland.gov.uk/Topics/Government/public-sector-pay/senior-appointment-pay

7 Average costs of £0.066m
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

back-office support), based on initial information on the likely volume of appeals and in consultation with other areas of Scottish Government.

Administration

55. The recurring costs for additional administration requirements relate primarily to the need for access to additional legal services as an NDPB will not have access to the services of the Scottish Government Legal Division as Historic Scotland currently do. This cost has been calculated at £0.030m per annum on the basis of the costs of a framework contract operated elsewhere in the business by Historic Scotland.

56. An additional cost of £0.110m per annum is also included from 2016/17 onwards to cover the additional costs of audit which will be required as Historic Scotland will no longer be able to access Scottish Government wide arrangements for internal audit.

Vehicles

57. There are additional recurring costs for vehicles of £0.094m per annum as HES will be liable for road tax and additional insurance costs following the loss of crown exemption enjoyed by Historic Scotland.

58. These figures have been profiled following a review of the liabilities for road tax in relation to all of the vehicles in the Historic Scotland fleet. Additional insurance costs have been calculated by analysing the current level of hire car use in Historic Scotland and adding a cost for additional insurances provided by Arnold Clark Ltd. Additional costs are not provided for RCAHMS who already provide appropriate insurances, a situation which will not be changed by the provisions of the Bill.

Taxation

59. Historic Scotland currently benefits from Section 41 status as part of the core Scottish Government in relation to VAT and can reclaim the majority of any VAT liability. Historic Environment Scotland’s status as an NDPB will remove any eligibility for Section 41 status and bring an additional liability for VAT.

60. A comprehensive analysis of this liability has been carried out and the additional annual costs to Historic Environment Scotland are assessed as £0.885m per annum. This figure has been developed following a comprehensive analysis of the current levels of VAT reclaim from Historic Scotland and has been benchmarked externally.

61. Although a cost to Historic Environment Scotland, this represents additional income to Her Majesty’s Revenue and Customs (‘HMRC’).

ICT costs

62. As suggested by Green Book methodology the ‘no change’ option in relation to ICT has been considered within the remit of this Financial Memorandum. This would deliver the same level of service which both organisations currently have for HES. In line with this methodology the costs included represent those which would be required to deliver the same standard of
service provision, for example a single email system and file sharing, for HES. In order to facilitate a single shared network and email system the existing network of the larger organisation would require to be expanded to provide capacity for the staff of RCAHMS to join the network in line with staff currently working in Historic Scotland. The costs of the SCOTS network (the Scottish Government IT system) has been used as an exemplar cost in these calculations as the ‘no change’ option for ICT provision to the new body. However, the final solution will be subject to the agreement of a business case by the incoming Board of HES.

63. Costs for a minimum level of ICT provision included here will be used as a baseline against which any business case for an alternative solution can be assessed by the Board of HES and are included.

64. There are recurring costs in relation to the ICT requirements for Historic Environment Scotland totalling £2.090m. These costs can be summarised as follows:

- Licence costs following loss of discounted licences - £0.110m per annum
- Additional network costs to support use of single network – £0.099m per annum

65. An additional cost of £0.990m (over ten years) occurs from 2015/16 to bring 110 additional staff from RCAHMS onto the same network as Historic Scotland staff to provide shared network facilities for the whole of Historic Environment Scotland. This represents the minimum change option to provide shared infrastructure for all staff at the new body and is profiled as the baseline additional cost for this, using the average costs for a SCOTS licence as an indicative cost.

66. Any further decisions on a change in network supplier, or further systems development would be subject to a full business case and agreement by the Board of HES, with appropriate budget assigned to the project. Existing systems, such as the Canmore database, which is the principal public facing element of the RCAHMS collections allowing users to search online for individual items through a range of individual criteria, will remain extant and are an on-going cost which is currently borne by both organisations and so fall out-with the scope of this Financial Memorandum.

Estates

67. Additional recurring costs of £0.185m are also included as the rates relief currently enjoyed by RCAHMS as a charitable organisation will be lost. This may be off-set by rates relief on the wider estate of HES should it achieve charitable status (see paragraph 91 below). This cost could also be off-set by any future decision on a merged headquarters.

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8 SCOTS network costs provided by Scottish Government ICT Specialists
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

Part three

Savings

68. The purpose of the creation of Historic Environment Scotland as a new lead body for Scotland’s historic environment is not to generate savings. However, some modest efficiencies are likely to be available to the organisation. Over the period of reporting for this Financial Memorandum these savings total £16.288m, between 2013/14 and 2020/25. These savings are summarised in table 4 below:

<table>
<thead>
<tr>
<th>Item</th>
<th>2013/14</th>
<th>2014/15</th>
<th>2015/16</th>
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<th>2017/18</th>
<th>Recurring from 2018/19</th>
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<td>-0.029</td>
<td>-0.029</td>
<td>-0.029</td>
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</tr>
<tr>
<td>ICT</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-0.030</td>
<td>-0.030</td>
<td>-0.030</td>
<td>-0.350</td>
</tr>
<tr>
<td>Total efficiencies</td>
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<td>-1.379</td>
<td>-1.363</td>
<td>-1.409</td>
<td>-1.409</td>
<td>-16.288</td>
</tr>
</tbody>
</table>

Table Four – Annualised summary of savings

Please note: In the above table the positive figures represent costs, negative figures represent savings

69. The vast majority of these efficiencies relate to savings from staffing costs, achieved alongside the transition of all staff from Historic Scotland and RCAHMS to Historic Environment Scotland without detriment to current terms and conditions for staff. Additional efficiencies are also available from savings in administrative costs, including audit and ICT.

Staffing efficiencies

70. Staffing efficiencies have been established following detailed profiling of the impact of proposed changes to the staffing structure on the data held on staff by HR departments in both organisations, and the previous impact of voluntary early exit schemes by Historic Scotland’s HR department. The figures provided have also undergone additional scrutiny by Government analysts as part of the 2013/14 pay settlement for both organisations.

71. Staffing efficiencies totalling £15.648m are available to HES between 2013/14 and 2025/26. These savings mainly relate to the pay settlement which was agreed in 2013/14 for both Historic Scotland and RCAHMS. The pay settlement agreed provides recurring savings. These savings primarily relate to efficiencies on posts following voluntary early exit schemes between 2013/14 and 2017/18. Whilst a pay settlement was due across both organisations the proposed creation of HES provided the opportunity to realise some potential efficiencies, for instance through alignment of terms and conditions, at an early stage. Financial savings against the baseline staff costs for both organisations will be carried through into the creation of HES.

72. In addition to these savings, reductions in overtime costs, consistency of provision for childcare vouchers and a one-off buy-out of public and privilege holidays (included in the costs

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9 An additional saving of £0.80m occurs in 2020/21 following the termination of an ICT support contract for the Heritage Management function.
above) provide further recurring savings. Without the alignment between structures in Historic Scotland and RCAHMS it would not have been possible to deliver these changes to the pay structure. The figures included have been calculated on the basis of detailed analysis of the impact of proposed changes on the full staff costs for both organisations as part of the development of a pay settlement.

73. These savings have been achieved in full consultation with the trades unions and are consistent with the commitment made in the OBC that there would be no detrimental impact on staff from either Historic Scotland or RCAHMS.

Administration

74. There are recurring savings of £0.029m from commencement (2015/16) onwards achieved through corporate efficiencies of merged support functions such as HR and Chief Executive’s office. These efficiencies have been calculated on the basis of shared service arrangements which are being established to deliver corporate functions jointly between the two organisations and this has provided detail on which functions are currently duplicated to allow for an estimation of the cost savings in this area.

ICT

75. There are projected savings of £0.350m in relation to Heritage Management, which is wholly accounted for by the removal of costs associated with the current casework management system and associated support contract which would no longer be required following the implementation of a new system. These figures have been calculated on the basis of existing costs from an external supplier which will no longer be required.

76. The McLelland Report anticipated savings of £230m would be possible on an overall spend of £1000m giving a metric for public sector savings of up to 23%. It is likely that similar savings would be available for HES in the implementation of a new ICT solution, and would form part of any business case on the development of a new system. However, as any additional savings to those already made by both bodies under McLelland’s recommendations would be dependent on the agreement of a business case for change they have not been factored into this cost analysis.

OPTIMISM BIASES

77. The cost figures in this Financial Memorandum were adjusted for optimism bias in accordance with HM Treasury Green Book guidance. Biases have been applied to figures presented in this Financial Memorandum. Adjusting for optimism bias is the recommended method of mitigating the risk that the costs of major projects are underestimated, particularly in the early stages of development. The likely level of optimism bias was assessed individually for each element of cost, informed by evidence of the costs of other UK public sector reforms and advice from government analysts and the authors of individual cost models for specific areas on the level of uncertainty in any figures. The adjustments for optimism bias ranged between zero and 75%, depending on the margin of uncertainty.

10 http://www.scotland.gov.uk/Publications/2011/06/15104329/20
78. In most cases, the estimates were increased by 53% to account for optimism bias. This level of adjustment is the accepted standard bias which has been used in other similar examples of public sector reform. In other instances, ranges have been based on relevant guidance documents. No adjustments were made where there was a limited margin of uncertainty, for instance where figures are based on a known cost or legal structure as is the case in relation to taxation. In these cases, a single estimate is shown.

79. Efficiency estimates have been decreased by 30% to account for potential optimum bias and margins of uncertainty, in line with other recent examples of public sector reforms.

80. It is anticipated that as figures continue to be refined the level of uncertainty will decrease and figures will become closer to those profiled in the initial three parts of this document.

81. A summary of the impact of biases on the overall costs and savings is presented in Annex 2.

**COSTS TO LOCAL AUTHORITIES**

82. Charging policy for services currently provided by Historic Scotland and RCAHMS will not change as the result of the creation of the new body. There are therefore no additional costs associated with the formation of the merged body on local government.

83. There will be some process changes required for local authorities to administer regulatory consents for designated items, including listed buildings, in the planning system. However, these processes are moving in line with those elsewhere in the planning system, so no additional costs are anticipated.

84. HES will be working with local authorities to manage the transition to the new system and to build capacity within local authority partners. This will form part of a wider collaboration with local authorities and other partners through the Historic Environment Strategy, including working with COSLA, to ensure the regulatory system is as proportionate as possible.

85. Longer term savings, including the potential removal of 28 days statutory consultation time from a number of consent cases are anticipated as part of the changes brought about by the Historic Environment Scotland Bill. This time saving results from changes to the process for Planning Authorities to determine Listed Building Consent applications. The current 28 day statutory period at the end of the process during which Historic Scotland can comment on an application will become a parallel process with other consultations, and a consequential time saving will be delivered for a high proportion of applications.

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11 Scotland’s Historic Environment Strategy will be published alongside the Bill and available for download from [www.scotland.gov.uk/historicenvironment](http://www.scotland.gov.uk/historicenvironment). The strategy provides the strategic framework for the historic environment sector, and Historic Environment Scotland will be a lead body in its delivery. More detail is provided in the background section of the Policy Memorandum which accompanies the Bill.
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

COSTS TO OTHER BODIES, INDIVIDUALS AND BUSINESSES

86. There are no additional costs to business resulting from the creation of the new body.

87. There are anticipated time savings for the statutory consents process for listed buildings and scheduled monuments which will provide service improvements for users, including developers. These benefits are detailed in the Business Regulatory Impact Assessment which accompanies this Bill.

Scottish Administration grant support

88. The level of grant in aid (or equivalent) funding currently allocated to Historic Scotland and RCAHMS will be re-allocated to Historic Environment Scotland as part of the Budget Bill process, as the new body will deliver all of the functions currently delivered by the two bodies.

89. Provisions in the Bill for charges and grant making are enabling clauses to allow HES to continue to operate charges and distribute grants in the same manner as HS and RCAHMS currently do. Any future activity relating to these two clauses will be a continuation of the activities currently being carried out by HS and RCAHMS therefore neither provision will represent an increase in the charges to those currently levied by these two bodies, or the level of grant distributed.

Costs to individuals

90. Any costs, for instance in the form of admissions charges for individuals to access properties in care (the majority of which are accessible free of charge), in the Bill, do not represent a change to the existing arrangements under which Historic Scotland charge admission fees for some properties. Historic Scotland has agreed these charges with Scottish Ministers and this would continue to be the case for HES.

CHARITABLE STATUS

91. The new body may apply for charitable status, which could be expected to bring significant financial benefit to the organisation. Since the decision relating to seeking charitable status is for the new body to make, and for the Offices of the Scottish Charities Regulator and HMRC to examine and confirm, these financial benefits to the organisation do not flow from the legislation and have not been included in the financial analysis set out above. However, the potential benefits are significant and relevant to the decision to create a new body. A table summarising the potential benefits of charitable is therefore set out below.
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

<table>
<thead>
<tr>
<th></th>
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<td><strong>2.636</strong></td>
<td><strong>2.636</strong></td>
<td><strong>26.363</strong></td>
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</table>

| Net position after charitable status | 0.149 | 0.089 | 0.162 | -1.582 | -2.012 | -2.417 | -20.193 |

**Table 5 – Summary of charitable status**

Please note: In the above table the positive figures represent costs, negative figures represent savings

92. Work has been undertaken, drawing on experience from other similar bodies, including English Heritage and the Historic Royal Palaces to analyse the potential benefits of charitable status. This has resulted in an estimate of £1.270m per annum in gift aid following a detailed analysis of the 2012 annual accounts of Historic Scotland.

93. The potential benefits in the table above have been calculated following analysis of the accounts of Historic Scotland and information on the current charitable benefits from the charitable status of RCAHMS. Jointly commissioned work by both bodies to further analyse the potential benefits of charitable status has also validated these figures.

94. Income from HMRC as a result of gift-aid would more than off-set any additional taxation costs to HMRC giving net income after additional tax to the Charitable NDPB from HMRC of £0.415m per annum.

95. This income would also be further enhanced by possible charitable rates relief of £9.085m over the ten years from commencement. This figure is calculated on the basis of the recoverable rates for the RCAHMS HQ and then 80% of the current cost of rates for Historic Scotland. The recoverable rates for Historic Scotland have been reduced by 20% to allow for the differences in levels of rates relief available nationally due to the range of approaches taken by different local authorities. It should be noted that this would not represent a saving to the Scottish Administration as a whole as Scottish Government would refund the cost of any rates relief to individual local authorities.

96. The total estimated benefits associated with charitable status also takes account of the expected donations of around £0.300m per year in line with the estimates in the outline business case.
97. In addition to this recurring savings of £0.110m per annum are profiled on the basis of discounts on ICT licences.

98. This amounts to a total benefit to the new body of charitable status of £26.363m. When set against the net cost of the new body this creates an overall surplus to HES of £20.193m.
Annexes
Annex 1 - Overall cost summary
Annex 2 - Summary position comparing biased figures
Annex 3 – Summary impact of charitable status
These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

ANNEX 1 – OVERALL COST SUMMARY

Net Position without Bias

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</table>

12 This lower figure results from the termination of contracts for the support of back office systems for the Heritage Management function which will have been superseded by a new system, which deliver a one-off saving.
ANNEX 2 SUMMARY POSITION COMPARING BIASED FIGURES, £M

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ANNEX 3 – SUMMARY IMPACT OF CHARITABLE STATUS, £M

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<th>Annual Total</th>
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<tr>
<td>Total</td>
<td>2.636</td>
<td>26.363</td>
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</table>
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 3 March 2014, the Cabinet Secretary for Culture and External Affairs (Fiona Hyslop MSP) made the following statement:

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

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 3 March 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Historic Environment Scotland Bill would be within the legislative competence of the Scottish Parliament.”
This document relates to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

HISTORIC ENVIRONMENT SCOTLAND BILL

———

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Historic Environment Scotland Bill introduced in the Scottish Parliament on 3 March 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 47–EN.

2. The purpose of the Bill is to establish a new lead body for Scotland’s historic environment, to be known as Historic Environment Scotland, which sustains the functions of two predecessor bodies, Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS).

3. The Bill is proposed at the same time as the publication of Scotland’s first Historic Environment Strategy. The policy aim of the Bill is for a more outcome-focused, resilient, efficient and effective service in support of the historic environment and the people of Scotland, and for Historic Environment Scotland to be enabled to deliver on a range of National Outcomes.

4. This policy memorandum provides an overview of the two predecessor bodies, Historic Scotland and RCAHMS, outlines how Scotland’s first Historic Environment Strategy sets the creation of a new lead body for the sector and summarises the policy intent and consultation which has informed the provisions of the Bill.

BACKGROUND

5. As defined in Scotland’s Historic Environment Strategy, Our Place in Time, “Scotland’s historic environment is the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand.” The historic environment is part of people’s everyday lives.

6. People cherish places, and the values of the historic environment lie in that connection of people to a place. It provides roots. It enhances regional and local distinctiveness. It forges connections between people and the places they live in and visit. The sense of place and strong cultural identity provided by the historic environment play a large part in the sustainability and wellbeing of communities and in promoting a positive image of Scotland across the world.

1 www.scotland.gov.uk/historicenvironment
Scotland’s historic environment is intrinsic to the nation’s sense of place and strong cultural identity. It is diverse, but collectively it tells the story of a shared past. It is important in its own terms, providing key evidence of the lives and creativity of people in the past. It also helps to create a sense of place, identity and physical and social wellbeing, and benefits the economy, civic participation, tourism and lifelong learning. It is dynamic and ever-changing and that dynamism lies at the heart of the need for sound principles of stewardship. For the people of Scotland to continue to gain real, and increasing, benefits from their historic environment, it needs to be understood, valued and championed. This requires a strategy, and a series of coordinated actions by a range of players from the public, private and the third sector through which that strategy can be delivered. The publication of Scotland’s Historic Environment Strategy\(^2\) (“the Strategy”) alongside the introduction of the Historic Environment Scotland Bill represent the beginning of this.

The Strategy sets the strategic context for the proposals contained within the Bill to create a new lead body which will be integral to the delivery of the strategy. The Strategy is explained in more detail in the subsequent sections of this document.

Currently there are two principal public bodies operating within the historic environment sector in Scotland, Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). This Bill will create a new lead body for the Historic Environment in Scotland to sustain the functions of the two predecessor bodies and play a lead role in the delivery of Scotland’s first Historic Environment Strategy.

The current roles of Historic Scotland and RCAHMS are set out below.

**Historic Scotland**

Historic Scotland is an Executive Agency of the Scottish Government, which sits within the Culture and External Affairs Ministerial portfolio. The Chief Executive is directly accountable to the Cabinet Secretary for Culture and External Affairs, and its functions and accountability are defined in the Historic Scotland Framework Document 2013\(^3\).


Historic Scotland’s core functions as outlined in the most recent Framework Document are:

- caring for and presenting to visitors the properties in care on behalf of Scottish Ministers;

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\(^2\) [www.scotland.gov.uk/historicenvironment](http://www.scotland.gov.uk/historicenvironment)

This document relates to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

- maintaining the statutory schedule of monuments of national importance, the statutory list of buildings of architectural or historic interest, the inventory of Gardens and Designed Landscapes, the Inventory of Historic Battlefields and Marine Protected Areas;
- providing specialist advice and expert knowledge to the Historic Environment Policy Unit (HEPU) to inform the development of Scottish Ministers’ policies as they relate to the historic environment and other matters;
- providing financial assistance towards the conservation and enhancement of the historic environment; and
- providing guidance on the management of the historic environment.

14. In 2013, the policy function, previously operated from within Historic Scotland, was transferred into the core of the Scottish Government to discharge the policy making functions of Scottish Ministers in relation to the historic environment. This decision was taken so that the importance of the historic environment would be better reflected across all aspects of Scottish Government policy, and to address a perception of a potential conflict of interest between the policy setting and delivery functions of Historic Scotland. It also delivers better alignment of culture and heritage policy. This change was taken following extensive stakeholder discussion around the need for a shared sector-wide strategy for the historic environment.

Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS)

15. RCAHMS is a Royal Commission originally established by Royal Warrant. It is treated as an Executive NDPB of the Scottish Government for administrative purposes, and is overseen by a board of Commissioners. In addition it has been a registered charity since 1992, when the Royal Warrant was last updated.

16. RCAHMS was established in 1908 to “make an inventory of the ancient and historical monuments and constructions connected with or illustrative of the contemporary culture, civilisation and conditions of life of the people of Scotland from the earliest times to the year 1707”.

17. RCAHMS’ work, and remit, has evolved to include the curation of a large collection including an online database and a substantial archive relating to the historic environment. There is also now a much stronger emphasis on promoting understanding through knowledge sharing, education and outreach. The original “inventory” is still at the core of this collection with the results of investigative field survey by RCAHMS preserved alongside material collected from elsewhere including excavation archives, architectural drawings, photo albums, aerial photography and other records of the historic environment.

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4 Charity No. SC026749 https://www.oscr.org.uk/search-charity-register/charity-extract/?charitynumber=sc026749
5 http://www.rcahms.gov.uk/rcahms_media/files/about_us/royalwarrant.pdf
18. The purpose of RCAHMS, as defined by ‘Future RCAHMS’ the most recent five year business strategy for the organisation, is to:
   - identify, survey and analyse the historic and built environment of Scotland;
   - preserve, care for and add to the information and items in its collections; and
   - promote understanding, education and enjoyment through interpretation of the information it collects and the items it looks after.

Options appraisal of RCAHMS and Outline Business Case

19. An options appraisal, commissioned in November 2011 amidst concerns about RCAHMS’ long term sustainability, concluded that the status quo was no longer a viable option. RCAHMS’ future had been the subject of repeated consideration over recent years and the appraisal recognised that this was detrimental to the organisation and that current and future financial pressures risked undermining its viability.

20. Two alternatives were considered for RCAHMS – merger with Historic Scotland or formal establishment in legislation as a separate NDPB. Merger between RCAHMS and Historic Scotland was subsequently identified as the preferred option and an Outline Business Case (OBC) was commissioned by Ministers to examine this option in more detail.

Decision to create a new lead NDPB

21. Based on the evidence set out in the OBC, Ministers concluded that a new Non-Departmental Public Body should be established in legislation to carry out the functions formerly carried out by RCAHMS and Historic Scotland, and that the body should act as a lead body for the historic environment and in the delivery of Scotland’s Historic Environment Strategy.

22. The OBC considered two main alternatives for the creation of a new public body, an Executive Agency or an NDPB. Based on the evidence in the OBC the Scottish Ministers decided that an NDPB was the most viable option for the new body.

23. The Executive Agency model was considered to be inconsistent with the majority of other bodies within the Scottish Government Cultural and Heritage portfolio, where Historic Scotland is currently unusual in terms of its closeness to government. Positioning Historic Environment Scotland on a par with the majority of National Collections, such as National Museums Scotland or National Libraries of Scotland was felt to provide even greater opportunities to develop existing collaboration and partnership within the portfolio.

24. In addition, a greater degree of distance from government would place the new body more in line with other bodies with a similar regulatory function such as Scottish Natural

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7 http://www.scotland.gov.uk/Publications/2012/07/5774
8 http://www.scotland.gov.uk/Publications/2013/05/1373/20 and http://www.scotland.gov.uk/Publications/2013/05/1373
Heritage and the Scottish Environment Protection Agency. This would create a more transparent separation between the role of Ministers in setting regulations and the application of those regulations by appropriately skilled professionals.

25. The NDPB model provides for Ministerial oversight and public accountability while allowing for the specialist nature of the work which the body will undertake. It is important to stakeholders that the new body has the independence to make operational decisions based on the specialist knowledge and experience of its staff and on appropriate sector standards and ethics.

26. Ministers believe that the functions of Historic Environment Scotland meet with the definition of charitable purposes set out by the Office of the Scottish Charity Regulator (OSCR) and NDPB status is consistent with this. However a decision on whether or not to apply for charitable status would be a decision for the board of Historic Environment Scotland, with OSCR determining whether charitable status ought to be granted. This issue was subject to consultation and further detail is provided below (page 9).

SCOTLAND’S HISTORIC ENVIRONMENT STRATEGY

27. The decision to create a new lead body, to be called Historic Environment Scotland, was made in the context of the development of Scotland’s first Historic Environment Strategy: Our Place in Time.

28. The vision of the Strategy, that “Scotland’s historic environment is understood and valued, cared for and protected, enjoyed and enhanced. It is at the heart of a flourishing and sustainable Scotland and will be passed on with pride to benefit future generations” has been integral to the development of policy for the creation of Historic Environment Scotland.

29. The Strategy has been developed in collaboration with key participants in Scotland’s historic environment sector. It sets out a shared vision, definition and desired outcomes for the historic environment as well as a set of overarching principles and strategic objectives, with the intention of ensuring that Scotland’s historic environment will be understood, protected and valued.

30. The three key aims of the strategy are:

- **Understanding - By investigating and recording** the historic environment to continually develop our knowledge, understanding and interpretation of our past and how best to conserve, sustain and present it.

- **Protecting – By caring for and protecting** the historic environment, ensuring that we can both enjoy and benefit from it and conserve and enhance it for the enjoyment and benefit of future generations.

- **Valuing – By sharing and celebrating** the richness and significance of our historic environment, enabling us to enjoy the fascinating and inspirational diversity of our heritage.
31. As a key partner in the Strategy, Ministers will expect Historic Environment Scotland to work alongside other bodies in the sector in discharging its functions. It will seek to ensure that knowledge, understanding and appreciation of the historic environment continues to grow and that this knowledge is made readily available as a means of encouraging individuals, communities and decision makers to better understand and enjoy their historic environment, for example:

- By increasing and disseminating knowledge, understanding and appreciation of the historic environment, it is believed that it will be better protected and managed according to both its cultural significance and to its potential to contribute to the wellbeing of communities.

- More knowledge, understanding and appreciation should also support the delivery of better place-making, ensuring that the historic environment plays a stronger and more central role, contributing context, identity and connection in decisions about the future of Scotland’s communities.

32. The Strategy will be published alongside the Bill⁹ and will continue to set the strategic context both for the Bill and the historic environment sector in Scotland, establishing a series of collaborative working groups to address key issues, such as the role of local government in the management of the historic environment.

33. The Strategy will provide the opportunity to align activity across the sector and create common agendas between Historic Environment Scotland and other members of the sector. This collaborative approach is supported through the creation of a single NDPB which is able to sustain and deliver the functions of Historic Scotland and RCAHMS in the context of the Strategy and with increased emphasis and opportunity to work in partnership across the historic environment sector.

34. A high-level board will oversee the delivery of the Strategy, supported by working groups which will focus on particular key themes. This model has already promoted a shared improvement agenda and will provide a continued opportunity for the widest range of stakeholders to influence future policy agendas, informing the role of Historic Environment Scotland and other bodies in the sector.

35. An example of this approach is through one of the shared working groups, which is focused on how both central and local government look after the historic environment with wide representation including from central and local government, and organisations such as Historic Scotland, Scottish Sustainability Network, SLAED¹⁰ and VOCAL¹¹. This group establishes a shared improvement agenda for the protection and regulation of Scotland’s historic environment and has influenced policy development for this Bill and has ensured support for the proposals in relation to the planning system from organisations such as COSLA and their engagement in policy development.

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⁹ The strategy will be available via [www.scotland.gov.uk/historicenvironment](http://www.scotland.gov.uk/historicenvironment)
¹¹ VOCAL - The Voice of Chief Officers of Cultural and Leisure Services in Scotland
POLICY OBJECTIVES OF THE BILL

36. The policy ambition of the Bill is for a more outcome-focused, resilient, efficient and effective service in support of the historic environment and the people of Scotland, and for Historic Environment Scotland to be enabled to deliver on a range of National Outcomes.

37. There is a common perception in the sector that the historic environment has unrealised potential to contribute to a range of other public policy areas including place-making and regeneration, to deliver key national priorities including sustainable economic growth, health, education, wellbeing and biodiversity.

38. Through a more focussed approach, with a lead body able to work in partnership with the sector, the historic environment will realise its potential in delivering these outcomes for Scotland.

39. For example, by further connecting the functions previously delivered by Historic Scotland and RCAHMS, Historic Environment Scotland will be able to provide greater opportunities for the tangible and intangible historic environment to contribute directly to public policy through areas such as Curriculum for Excellence, by providing enhanced information and materials for teaching.

40. The policy is also part of the public service reform agenda. Bringing together the functions of RCAHMS and Historic Scotland maximises synergies. This will be delivered through the functions of Historic Environment Scotland as set out in the Bill, which deliver on the four pillars of public service reform set out in Renewing Scotland’s Public Services\(^\text{12}\):

- Prevention: through acting to promote better maintenance of the historic environment rather than repairing it at greater expense once damage has been done, and by intervening with information and advice early in decisions about change, rather than coming later in the process and acting as an obstacle.

- Greater integration of public services at a national and local level: not just through bringing the two existing bodies together, but by working more through partnership and collaboration with other national and local bodies and with individuals.

- Investment in the people who deliver services through enhanced workforce development and effective leadership: not simply by clearly defining the core functions and therefore the core skills and expertise required by Scotland’s historic environment, but by ensuring training and learning opportunities are made widely available, thus widening the skills and knowledge base, promoting employment opportunities as well as better care for the historic environment.

- A sharp focus on improving performance, through greater transparency, innovation and use of digital technology: the creation of an NDPB with clear and open reporting will in itself enhance transparency, while the considerable achievements of both bodies in the areas of new technology and digital solutions will benefit from the synergies available through the merging of complementary skills and expertise.

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41. In order to deliver on these broad policy objectives, the Bill will confer on Historic Environment Scotland functions currently carried out by RCAHMS, and functions currently carried out by Historic Scotland on behalf of the Scottish Ministers.

42. The Bill will put the functions of RCAHMS on a clear statutory footing for the first time, and will clarify the functions of Ministers, currently carried out by Historic Scotland, including the broader range of non-statutory functions which Historic Scotland delivers, for example educational activities.

43. Doing so will ensure that these core functions are sustained for the long term, and are capable of being delivered in such a way that they fulfil the policy objectives described above and support the delivery of the Strategy.

CONSULTATION

44. The Scottish Government has consulted widely throughout the process of policy development which has underpinned both the decision to create Historic Environment Scotland and the development of Scotland’s first strategy for the historic environment. This has included consultation with staff from both Historic Scotland and RCAHMS and with stakeholders during the initial Options Appraisal and Outline Business Case in 2011 and 2012.\(^{13}\)

45. On 8 May 2013, the Scottish Government launched a Joint Consultation on the Historic Environment Strategy for Scotland and the merger of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). The consultation sought views on the proposed Strategy and on the merger of the two organisations. The 12 week public consultation closed on 31 July 2013, and 96 responses were received from a wide range of stakeholders from public, private and third sector organisations, and individuals. More detail is given on specific issues raised in the specific policy sections which follow below.

46. Non-confidential consultation responses were published on 31 August 2013 on the Scottish Government website. The Scottish Government commissioned the independent research company, Why Research, to undertake a formal analysis of consultation responses, and this was published on 7 November 2013.\(^{14}\)

47. In parallel with the written consultation exercise, the Scottish Government also conducted a series of national engagement events in conjunction with partners\(^\text{15}\) to discuss the proposals around the Strategy and the Bill with a wide range of stakeholders. These events were held over the summer of 2013 and were attended by over 250 people from the public, private and third sectors. An online survey of Historic Scotland members (approximately 26,540 people) was also undertaken during the 12 week consultation period.


48. Further tailored consultation meetings and events with key stakeholders have taken place throughout the process. For example, a seminar was held specifically to explore the views of equalities groups and to consider opportunities for positive impacts and included for instance a session with the Scottish Council for Development and Industry.

Outcome of consultation and engagement

49. Overall the consultation responses were supportive of the merger and did not raise any new issues which had not already been discussed with stakeholders during the development of the OBC and Strategy, reflecting the inclusivity of the approach taken to policy development.

50. In respect of the merger proposals, consultation responses confirmed a number of concerns, those relating to the policy of the bill are dealt with in the specific sections below in the discussion of specific provisions:

- Charitable status both in terms of the potential distorting effect of a new large charitable body and potential unfair competition with other charities (see paragraph 51);
- Changes to heritage management functions altering the balance of work for local government and reducing heritage protection standards; and
- The body may be at an unfair advantage should it be able to access its own grants or apply different standards to applications for listed building or scheduled monument consents relating to the sites it directly manages.

Charitable status

51. No specific provision is required in this Bill to enable the board of Historic Environment Scotland to make application for charitable status. However it is discussed here as it was an issue raised during consultation.

52. Scottish Ministers’ view is that the functions of Historic Environment Scotland are consistent with charitable purposes as defined by OSCR. Following the example of other bodies who manage National Collections, the board may wish to make an application for charitable status. There is extensive precedent of similar bodies with charitable status, most notably RCAHMS itself, National Galleries of Scotland, National Libraries of Scotland, National Museums of Scotland and the Royal Botanic Gardens (Edinburgh).

53. There were mixed views on this issue amongst respondents. While a majority agreed that the purposes of the proposed new body were, in their view, charitable, there was some concern about the presence of grant-giving and regulatory functions in a charitable body alongside commercial functions.

54. The potential financial impact of a large new body with charitable status on other bodies in the sector was also a source of concern during the consultation. The Scottish Government is committed to the historic environment sector as a whole and Historic Environment Scotland will be expected to work in a collaborative manner within the sector. The functions of Historic Environment Scotland set out in the Bill specifically require it to offer and promote leadership in
This document relates to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

the sector and to work with others. Whether or not Historic Environment Scotland were to become a charitable body, operating in a manner that was detrimental to the interests of other bodies in the sector (such as the National Trust for Scotland) would be inconsistent with these requirements.

55. This Bill will not confer charitable status on Historic Environment Scotland and it is for the board to determine whether, when and in what configuration an application for charitable status should be made, and for the Office of the Scottish Charity Regulator to determine the application. There will be an expectation that potentially conflicting functions are clearly separated in Historic Environment Scotland, with transparent processes in place, and the policy intention for the Bill delivers this.

56. Accordingly it is Scottish Government’s intention to bring forward an order under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 to dis-apply the requirement in the 2005 Act which requires that a body’s constitution is not directed or controlled by Ministers, in order to enable a future application for charitable status by Historic Environment Scotland.

Objectives added after the end of the formal public consultation

57. A number of policy areas were subject to further development or emerged in full subsequent to the launch of the consultation. However, views have been sought on these additional provisions from key partners in the sector. No objections were expressed in respect of any of these additional proposals.

Extent of listing

58. The first additional issue related to improving the focus of protection in relation to listed buildings, by providing the ability to exclude aspects of a statutory address from the designation of a listed building and to specify exactly which elements of a building are and are not protected. While not necessary for the creation of Historic Environment Scotland, it was decided to include this overdue and non-contentious provision into the Bill.

Protection and regulation of marine zone

59. The second additional issue concerned how best to engage Historic Environment Scotland in relation to the protection and regulation of activities in the marine zone. To position Historic Environment Scotland consistently with Scottish Natural Heritage within the integrated system of designation and regulation operated by Marine Scotland under the Marine (Scotland) Act 2010, it was decided to depart from the original policy intention that Historic Environment Scotland would undertake all historic designations, and position it as an expert advisor only, in respect of Marine Protected Areas. The policy advantage of maintaining an integrated system for the marine zone was assessed as outweighing the attractions of a single body as designation authority for all historic assets on land and at sea.

Diversity and equal opportunities

60. A third issue that has been further developed since consultation is equal opportunities and diversity. During policy development and consultation it was identified that there is a need to improve the diversity of people accessing the historic environment. Access is broadly defined
and includes improving the diversity of people working and volunteering in the historic environment sector, visiting properties, accessing collections and all other ways of engaging with the historic environment.

61. The Bill contains two provisions relating to equality. One is a provision that states that Historic Environment Scotland must carry out its functions with a view to promoting the diversity of people accessing the historic environment and the second relates to how people are appointed to the Board of Historic Environment Scotland. Diversity should be considered in its widest sense including groups that are not covered by the protected characteristics under equalities legislation such as socio-economic diversity or linguistic diversity. The second provision gives a clear statement on equalities by placing a duty on Ministers to make appointments in a manner that encourages equal opportunities.

Properties in care

62. Finally, the policy regarding properties in care was further developed in response to issues raised during the consultation. The policy aim is that Ministers are able to delegate management of properties in care to a body other than Historic Environment Scotland should this be appropriate. This approach allows for future flexibility, is consistent with the policy aims of the Scottish Government in relation to community empowerment, and ensures that Ministers can take a decision regarding who manages properties based on the best interests of both the properties and the people of Scotland. More detail on this is provided on page 19.

POLICY OBJECTIVES: SPECIFIC PROVISIONS

63. This summary offers more details on the key policy areas to be addressed by the Bill. Each section below sets out what will change from the present situation and why, the effect of these changes, and how stakeholder views have been considered.

64. It should be noted that the Bill is not a self-contained re-statement of all of the statutory arrangements relevant to the historic environment. Rather, it sets out changes. The Bill is therefore silent where new arrangements are not being proposed or where existing legislation is not being modified.

Establishment of the body, governance and general powers

Policy aims

65. The policy aim is for Historic Environment Scotland as a new lead body for Scotland’s Historic Environment, to play a principal role in investigating, recording, caring for, protecting and celebrating Scotland’s Historic Environment. The policy will help maximise the benefit for, and derived from, Scotland’s historic environment by ensuring it is valued, enjoyed and protected, both now and for future generations through delivery, in partnership with others, of Scotland’s Historic Environment Strategy.

66. The policy aim is for a more transparent relationship with Government allowing for clear and accountable decision making based upon expert knowledge, striking the right balance between professional independence and public accountability. The policy is also to create an
organisation better placed to work alongside Scotland’s other cultural institutions in celebrating its rich and diverse cultural heritage. This will be delivered in the Bill through specific provision on the role of Scottish Ministers in agreeing the operational framework for the body (through its corporate plan) and a clear position on the areas in which Ministers are able to direct Historic Environment Scotland.

67. Historic Environment Scotland will be free to consider choosing a public-facing name after considering the interaction of the identity and character of the body with the existing suite of brands operated by the two current bodies. This will be a matter for the Board of the new body once in place.

Bill provisions

68. The Bill will establish a new body, to be known as Historic Environment Scotland. The Gaelic name of Historic Environment Scotland will be Àrainneachd Eachdraidheil na h-Alba.

69. The Bill will establish Historic Environment Scotland as an NDPB of substantial size in terms of staff (over 1100) and budget (around £80 million), with a wide range of duties including managing a substantial collection. The proposed establishment and governance are in line with modern practice and other recent examples of NDPBs.

70. The Bill makes provision for Ministers to appoint a Chair and Board members. The Board will appoint a Chief Executive, subject to the approval of Ministers, and will employ staff. The Chair of the Board will report to Ministers and Ministers must lay copies of reports before Parliament.

71. The Board size will be between 10 and 15 members. Members will be chosen to create a balanced mix relative to the responsibilities of Historic Environment Scotland, but there is no proposal to specify a list of required areas of expertise on the face of the Bill. The standard public appointments process will be followed, which includes taking account of equal opportunities requirements.

72. To support the transition, a Chair and Board will be recruited as soon as possible, with the process ideally beginning after the Stage 1 debate, so that a Chair designate, at least, has been identified by the end of Stage 3 of the Parliamentary process, permitting early appointment once the Bill’s provisions are commenced.

73. A two-step approach will be taken to start-up whereby the Chair and Board will be appointed first, and the body will take on its full functions approximately 6 months later. This is in line with best practice as recommended by Audit Scotland in its review of public sector mergers\(^\text{16}\).

Consultation and alternative approaches

74. Some stakeholder groups would have preferred that Board members should come from specific named specialist backgrounds – for example archaeology, building conservation or records management. The Bill does not follow this approach, allowing instead for a Board that is flexibly defined in terms of its skills and experience, in recognition that the needs of the body will change, with areas of particular interest and expertise changing over time. Schedule 1 to the Bill sets out the detailed arrangements for governance, including around appointments.

75. The arrangements proposed were formulated following analysis of existing board structures for other broadly similar bodies and in the context of the wide range of functions which will be delivered by the new body.

General functions and powers of the new body

Policy aims

76. The main policy aim is that Historic Environment Scotland will carry out all of the functions of Historic Scotland and RCAHMS with the exception of the strategic policy function which, as noted above, has moved into the core of Scottish Government. The policy is to simplify and adjust some functions in passing them to the new body, ensuring that Historic Environment Scotland’s functions are sustainable and support the delivery of a collaborative approach to the Historic Environment Strategy.

77. These general powers are also designed to give Historic Environment Scotland the maximum ability to operate as efficiently as possible, providing the best value for money by managing its operations and business effectively. The provisions for Ministerial oversight will ensure that there is appropriate transparency and that suitable checks and balances are in place.

78. The policy aim is to provide a long term strategic approach through the Corporate Plan for the body, which will act as a key tool in promoting the necessary long-term strategic approach to functions and in delivering Ministerial oversight at a strategic level.

79. In combination with the usual sponsorship relationship with Scottish Government, the Corporate Plan will provide visibility on the key planned activities, allowing Ministers to have confidence that significant departures from agreed priorities will be identified and addressed, as well as ensuring the new body will play its proper role in the delivery of the Historic Environment Strategy for the long term.

80. The current functions and specific powers of RCAHMS are set out in a Royal Warrant, mostly recently updated in 1992. As an Executive Agency of the Scottish Government the functions of Historic Scotland are set out in various Acts, for example the Ancient Monuments and Archaeological Areas Act 1979. In order to clarify and secure the functions of RCAHMS, a policy commitment was made that its functions would be put on a statutory footing. Although many of the functions of Historic Scotland are already statutory functions, it was considered that these functions also need to be represented as high-level functions of Historic Environment Scotland to ensure clarity and to put all of the functions on an even basis.
Bill provisions

81. The Bill will confer on Historic Environment Scotland the powers associated with a modern public body, with the ability to be flexible and responsive over time. For instance the Bill permits Historic Environment Scotland to enter into contracts, create and own companies, charge for the provision of certain good and services and borrow money from Ministers, all subject to appropriate oversight by Ministers.

82. The Bill gives Historic Environment Scotland the general function of investigating, caring for and promoting Scotland’s historic environment. In doing so, it has the following particular functions:
   - identifying and recording the historic environment;
   - understanding and interpreting the historic environment;
   - learning about, and educating others about, the historic environment;
   - protecting and managing the historic environment;
   - conserving and enhancing the historic environment.

83. Historic Environment Scotland also has the function of managing its collections as a national resource for reference, study and research:
   - preserving, conserving and developing its collections;
   - making the collections accessible to the public and to persons wishing to carry out study and research;
   - exhibiting and interpreting objects in the collections.

84. Historic Environment Scotland, in exercising its functions, is to do so with a view to:
   - encouraging education and research;
   - promoting and contributing to understanding and enjoyment of the historic environment and its collections;
   - promoting the diversity of persons accessing the historic environment and its collections;
   - offering and promoting leadership in relation to the historic environment;
   - working with other persons (whether in partnership or otherwise);
   - contributing, as appropriate, to the development and delivery of policies and strategies in relation to the historic environment.

85. These functions support the advancement of education and the arts, heritage and culture and therefore it is considered they will not present a barrier should the Board of Historic Environment Scotland wish to make an application to OSCR for charitable status.

86. The Bill provides that Historic Environment Scotland will be required to present a plan for Ministerial approval, setting out its most significant planned activities for a defined period.
Consultation and alternative approaches

87. The key themes in stakeholder comments were general support for the merger as a positive move forward and confirmation that the functions listed were comprehensive and appropriate. The most common themes in terms of concerns related to overlapping responsibilities between the new body and other organisations, the need for greater clarity regarding advice and guidance and potential conflicts with other bodies in relation to collecting policies. Drafting of the functions as put forward in the Bill has taken account of these concerns, to ensure that there is a clear link for all functions to the general function of investigating, caring for and promoting the historic environment.

Powers of direction and guidance

Policy aims

88. The policy aim is to enable the Scottish Ministers to give directions to Historic Environment Scotland, which is a standard approach in founding legislation for a body of this type and ensures appropriate oversight and public accountability. However, Scottish Ministers will not give directions on specific cases, objects or properties. Within the NDPB model there is clear precedent for exempting certain areas of work from Ministerial Direction, ensuring operational independence. Recent examples include exemptions for Creative Scotland in the Public Services Reform Act 2010 and for the National Library of Scotland in the National Library of Scotland Act 2012.

Bill provisions

89. The Bill provides that the Scottish Ministers will not be able to give directions on specific cases, objects or properties. This will emphasise that Ministers will maintain an appropriate distance from operational decisions, in particular those which more properly rest solely or primarily upon expert judgement and operational managerial decisions of the Board. The areas in which distance from Ministerial involvement is of particular interest to stakeholders include designation and regulatory work, the allocation of grants and the management of collections.

90. The Scottish Ministers will, however, be able to give Historic Environment Scotland general and specific directions to which the Board must have regard. This is consistent with modern arrangements for public bodies. As with all NDPBs, there will be a range of financial and operational planning cycles. The Scottish Ministers will engage with these processes to exercise strategic oversight.

Consultation and alternative approaches

91. The nature and extent of Ministerial oversight and direct engagement in specific areas were key issues during early work on the OBC, and further work with key stakeholders has been undertaken to understand and respond to any concerns. The general principle of independence for collections, grants and heritage management is widely agreed. However there was also strong feeling that Ministers do need to have some oversight in these areas. Thus the Bill provides for certain regulatory decisions to be made by Historic Environment Scotland along with a new right of appeal to Ministers in some cases.
92. The main alternative approach considered was to give Ministers the power to direct on any of the functional areas of the new body. However, this approach did not allow for the required level of curatorial and regulatory independence.

93. Removing any statutory role for the Scottish Ministers was also considered, but this was deemed to be inappropriate due to the nature of the body and the level of public funding it will receive.

Transfer schemes

Policy aims

94. The key policy aim in this area is that the staff, assets and liabilities of RCAHMS and Historic Scotland should transfer to Historic Environment Scotland. In achieving this there should be minimal disruption for staff during the transfer for Historic Environment Scotland and a seamless transfer of assets ensuring no break in service delivery or additional bureaucracy. The policy intention is that there should be no changes to the terms and conditions of staff in the transfer and staff will continue to be eligible for the Civil Service Pension Scheme.

95. An exception to the transfer of assets is in respect of heritable property either owned or currently managed by Ministers through Guardianship or similar arrangements. These primarily comprise the 345 properties in the care of the Scottish Ministers including Edinburgh Castle and associated operational properties such as visitor centres. The collections associated with the properties in care such as objects on display in a property will also remain with Ministers. Arrangements for these are set out on page 19.

Bill provisions

96. The Bill gives Ministers the power to transfer staff employed by RCAHMS and Historic Scotland to Historic Environment Scotland by way of a transfer scheme. Pre-transfer terms and conditions of employment will be preserved and Ministers will seek a Section 104 order under the Scotland Act 1998 to add Historic Environment Scotland to schedule 1 of the Superannuation Act 1972. Both current bodies are already working with the trades unions to establish best process and to respond to staff interest and concerns.

97. The Bill gives Ministers the power to transfer to Historic Environment Scotland, by way of a transfer scheme, operational assets currently controlled by Historic Scotland, with the exception of the properties in state care. Ministers will also have the power to transfer assets from RCAHMS to Historic Environment Scotland and this will include the collections currently held by RCAHMS. These transfers will include assets currently held under leases, deposits, loans or similar, and Historic Environment Scotland will be bound by the original terms of these agreements.
The Bill does not give Ministers power to transfer any assets of the Historic Scotland Foundation\textsuperscript{17} or SCRAM\textsuperscript{18}, and these independent charities will be able to make their own arrangements with Historic Environment Scotland.

Consultation and alternative approaches

There were no major external stakeholder concerns in these areas. There has been ongoing consultation with appropriate unions and support for the policy approach. This has been an area of attention internally within the two bodies, in particular the commitment that staff will benefit from no-detriment terms at the point of transfer and will remain members of the Principal Civil Service Pension Scheme, and there has been ongoing internal consultation and updates around this issue.

Making the transfer of staff and assets on the face of the Bill was considered as an alternative, but using a transfer scheme offers maximum flexibility and ensures that transfers can be co-ordinated with staff and the assets they manage transferring at the same time after the establishment of Historic Environment Scotland.

Management of collections

Policy aims

Historic Environment Scotland will be able to manage, develop and enhance its collections through acquisitions and disposals and through lending and borrowing. This will allow it to ensure that the collections retain appropriate to the core purpose of the body and to look for creative ways to enhance public access through borrowing, outward loans and exhibitions.

There is also a recognition that many other bodies hold important collections relating to the historic environment, including the other National Collections and local museums and archives. Historic Environment Scotland will be expected to work in collaboration with these other bodies to ensure best value for the people of Scotland and to recognise the complementary role of other bodies in curating and presenting Scotland’s historic environment collections. The provision for lending and borrowing powers will allow Historic Environment Scotland to work with other bodies in providing access to its collections, for example through long-term loans to local archives.

Bill provisions

The Bill gives Historic Environment Scotland powers to acquire and dispose of objects and collections, and powers to both borrow and lend objects.

\textsuperscript{17} The Historic Scotland Foundation is an independent charity established in 2001 to support the work of Historic Scotland. \url{http://www.historic-scotland.gov.uk/hsfoundation}

\textsuperscript{18} SCRAM Trust is an independent charity which manages an online learning resource base with over 370,000 images & media from museums, galleries, and archives. It is a company limited by guarantee, which is constituted as a wholly owned subsidiary of RCAHMS. \url{http://www.scran.ac.uk/}
104. Historic Environment Scotland will not be able to dispose of objects where that object is subject to a prohibition or restriction without consent from the person with the right to enforce any prohibition or restriction. However, in certain circumstances HES could still dispose of items:

- Where objects are damaged or infested they can be disposed contrary to a restriction if the person with the right to enforce any restriction cannot be identified or contacted despite reasonable efforts to ascertain their name and contact details;
- If the object is hazardous (for example objects that have severe mould which could be hazardous to health) then it can be disposed of.

105. With regards to lending, Historic Environment Scotland will be required to have regard to a number of factors when deciding whether or not to lend an object, including taking account of the needs of users, the purpose of the loan and the condition of the object. Similar to the disposal powers, Historic Environment Scotland will only be able to lend contrary to a restriction on lending if they obtain consent. However if the person with the right to enforce any restriction or prohibition cannot be contacted despite all reasonable efforts then HES will be able to lend the object.

Consultation and alternative approaches

106. A key issue in the consultation with regards to collections was the role of Ministers and the need to ensure curatorial independence. In addition there were concerns from some other collecting bodies about the wide definition of the historic environment in the strategy, with some expressing concern due to the fact that objects within their collections also relate to the historic environment and therefore there could be overlap in the collecting policies of Historic Environment Scotland and other bodies. There is always a degree of overlap in the collecting policies of different bodies and it is important to ensure that this is not detrimental, for example through unnecessary duplication in multiple collections. The initial collecting policies of Historic Environment Scotland will be broadly the same as those of Historic Scotland and RCAHMS, which already co-exist with the other National Collections, and its collecting policy will be developed in consultation with the other collecting bodies operating within the Scottish Government Culture and Heritage portfolio. It will be expected to work in collaboration with other these and other collecting bodies to ensure responsible collecting and to avoid unnecessary and wasteful duplication or competition.

107. Under the current arrangements RCAHMS uses its general powers under the Royal Warrant to develop and manage its collections. This does not include specific powers for acquisitions and disposals, borrowing and lending. The alternative approach would involve relying on the general collections functions of Historic Environment Scotland to allow them to carry out these activities. However, the approach taken in the Bill of providing for more specific and modern powers, similar to other National Collections, with appropriate restrictions, will help the body to manage its collections effectively through adding to them and also disposing of objects not required for the purposes of its collections and maximise potential for public access through lending and borrowing.
Properties in care and associated collections

Policy aims

108. Scottish Ministers hold an estate of 345 Properties in Care for the nation which together illustrate significant aspects of Scotland’s past\textsuperscript{19}. It is the policy intention that these properties remain in the care and responsibility of Ministers, whether they are currently owned by Ministers, in guardianship or held under other arrangements. Ministers will be able to delegate their functions with respect to these properties to ensure that they are appropriately managed and made accessible.

109. Ministers hold these properties for the purposes of long term preservation for public benefit. The estate has evolved over many years and now represents a diverse portfolio dating from pre-history to the industrial era and includes many different types of monument. The estate also includes a collection of some 35000 objects associated with the properties. Historic Scotland currently manages this estate and makes it accessible to the public, and it is proposed that the Historic Environment Scotland will continue to carry out this function.

110. However it is also recognised that in future there may be properties in the care of Ministers that could be best managed by another body, for example the National Trust or a community based trust.

111. Ministers will maintain their responsibilities for the properties in care (including their statutory duties of conservation and public access and powers under the 1979 Act and previous acts). This preserves the original intentions in giving them over to state care. However, Ministers will delegate management of these properties to Historic Environment Scotland, and could also delegate to another body if this was appropriate in the future. This ensures that such properties can be managed with a degree of curatorial independence, and day to day decisions would be taken by experts. Ministers would ensure oversight by attaching conditions to the delegation for example covering the condition of the properties, conservation and access principles and standards, charging policy and mechanisms for reporting on performance.

Bill provisions

112. Under the Bill, the Scottish Ministers are given a power to delegate their functions with regards to the properties in care to Historic Environment Scotland or any other body which Ministers deem appropriate. Ministers will be able to attach any conditions to a scheme of delegation, which can relate to a particular property, a group or all properties in care.

113. Ministers will have similar powers with regards to the collections associated with the properties. These powers are not specific to the collections associated with the properties in care as there is no specific legal definition of these collections, rather this is drafted to be enabling and to ensure that all the collections currently managed by Historic Scotland are covered. Such an arrangement could also cover any other objects of historic value that Ministers currently own or care for, however the scheme of delegation would give additional detail about the specific objects covered. There are currently no intentions that this power would be used to delegate

\textsuperscript{19} \url{http://www.historic-scotland.gov.uk/index/places/aboutourproperties.htm}
management of any collections or objects other than those managed at present by Historic Scotland.

**Consultation and alternative approaches**

114. One of the main concerns raised in consultation responses was that title of the properties would be passed to Historic Environment Scotland. Ministers are clear that they will retain title to those properties that they currently own, and will retain responsibility for guardianship and similar agreements regarding other properties. Another concern was that there would be no clear definition of Historic Environment Scotland’s responsibilities with respect to the conservation of the properties. This will be addressed through conditions in the scheme of delegation that will set out standards for how the estate is managed and expectations on performance.

115. Concerns raised about unfair advantages regarding grants and works to properties in the estate have also been addressed. The Bill provides that Historic Environment Scotland will not be a Crown body and will therefore not be able to exercise Crown immunity. This means it will have to apply for consents through the same process as an external applicant. In addition, it will not be able to apply for funding through its own grant schemes. There has been an active dialogue with key stakeholders such as the National Trust for Scotland on these issues and this will continue when the scheme of delegation is drawn up.

116. Transferring ownership of the collections associated with the properties in care that are currently managed by Historic Scotland to Historic Environment Scotland was considered. However, the large majority of objects in this collection are inextricably linked to the properties in care and it was considered that they could lose some or all of their significance if separated from the properties themselves. This would be a risk if these objects were held by Historic Environment Scotland while the properties were held by Ministers. Therefore Ministers will retain all associated collections along with the properties. This also allows for flexibility in future management arrangements, should there be a requirement for some or all of the properties to be managed by a party other than Historic Environment Scotland.

**Heritage management**

**Policy aims**

117. The policy aim is for Historic Environment Scotland to undertake the functions previously delivered through Historic Scotland and RCAHMS in relation to the historic environment designation and regulation and the wider planning system. These functions have been reviewed and are being streamlined where appropriate to ensure that they are delivered in a manner consistent with the simplification and public service reform agendas and in line with the rest of the Scottish planning system. The intention is for the Bill to take an enabling approach where possible.

118. This policy also recognises that there is a wider improvement agenda being developed for this area as part of the Strategy, for example a review of regulatory functions in partnership with local authorities and through a working group established with COSLA. This group has fed in to the development of policy for the Bill and will continue to identify issues which can be addressed in the longer term. It will provide a forum for the identification and debate of a wider suite of potential reforms to the planning system than is within the policy aim of this Bill.
119. The operation of designation and regulatory functions is complex within the existing system and relates to a range of acts, powers and duties. It would create duplication in the system to transfer the heritage management functions across to the new body without making some changes to the system, to clarify which duties will pass to Historic Environment Scotland, which will remain with Ministers and how these inter-relate. The separation between Historic Environment Scotland and Ministers also offers an opportunity to streamline the system, improving transparency and providing for separate Ministerial oversight of the system.

120. Historic Environment Scotland will have powers to undertake all national-level designation functions: scheduling monuments, listing buildings. It will maintain the national inventories of battlefields and historic gardens and designed landscapes. The sole exception is in relation to designating and managing Marine Protected Areas, where it is important to maintain the integrated approach recently set in place. In marine matters, therefore, Historic Environment Scotland will act as expert adviser to Ministers.

121. Historic Environment Scotland will issue all consents for works to scheduled monuments.

122. In order to deliver on regulatory reform and simplification in relation to listed building consent (LBC) the existing arrangements have been simplified. Streamlining the existing system by placing the new body as a consultation body on the same footing as other NDPBs, for example Scottish Natural Heritage or the Scottish Environment Protection Agency, could potentially remove 28 days of process from a high proportion of LBC. This parity of approach will allow Historic Environment Scotland to operate with a clear role in the process and develop a stronger role as an expert advice-giving body for the wider sector, as well as promoting early engagement through the planning system.

123. It is the firm policy intention that when proposing works to the properties it manages on Ministers’ behalf, Historic Environment Scotland will be required to apply for consent in exactly the same way as any private operator. Scottish Ministers will expect Historic Environment Scotland to publish all consent applications and decisions. This approach is in line with the views expressed during public consultation on the issue.

Bill provisions

124. The Bill will include a large number of consequential amendments to the 1979 Act and 1997 Act to ensure that the policy aims described above can be met, in Historic Environment Scotland playing a role as a consultee in the Planning system, designating listed buildings and scheduled monuments and issuing scheduled monument consent.

125. The Bill introduces new rights of appeals to the Scottish Ministers against decisions of Historic Environment Scotland to designate property as a listed building or a scheduled monument and against decisions to refuse scheduled monument consent. These rights of appeal do not extend to the designation of Gardens and Designed Landscapes or Battlefields, as these are not subject to a consenting regime but are protected through the planning system.

126. The Bill provides for changes to the 1979 Act and 1997 Act to harmonise appeals processes with each other and with the Town and County Planning system, where possible. It
also gives Ministers powers to set out the detailed procedure in relation to appeals in regulations, to enable flexibility to deal with changes in the future, including any changes to the planning system.

Consultation and alternative approaches

127. The delivery of designation and regulatory functions was a key issue during consultation and a number of issues were raised by stakeholders about the balance of simplification gains against concerns over workload, and particularly the shortage in some local authorities of specialised expertise. Officials have been working through COSLA with local authority officials and individual authorities on this.

128. These concerns have been addressed through further consultation on this area. Agreement in principle has been reached that simplifying and clarifying roles will allow Historic Environment Scotland to offer even more targeted expert support and advice than Historic Scotland can presently deliver, with the same resources. Sharing services and working in partnership can support local authorities in taking informed decisions where they should be taken: at local level. This will also allow for an enabling approach to future change following the outcomes of work within the framework of the strategy. The call-in process through which Ministers can ensure the Historic Environment is protected appropriately will remain in place, for use where this is required.

129. The overall approach to heritage management is also consistent with the response in the consultation regarding the role of Ministers, with a clear message that expert judgement should be used in heritage management decisions, but also the concerns that removing the role of Ministers could weaken the system. The clear separation between Historic Environment Scotland and Ministers signalled by the exemption from Ministerial direction, alongside the creation of an appeal system, means that Historic Environment Scotland has the power to exercise its expert judgement as appropriate, while Ministers will retain a role in determining any appeals and offering strategic guidance and direction.

130. A range of alternative approaches were considered during the development of the policy in this area, including the designation and regulatory functions, and possibly grant-giving, being retained by the Scottish Ministers while other functions where transferred to an NDPB. However, this option was rejected following the commitment given in the OBC that the existing functions of both Historic Scotland and RCAHMS would be passed to the new body, and due to the fact that creating separation between the roles of Historic Environment Scotland and Ministers in this area improves transparency and protects expert decision making.

131. Alternative roles for Historic Environment Scotland in relation to the powers it will operate in place of the Scottish Ministers in regulation and designation were also considered. These included the body becoming a specialist advisor to the existing processes, with Ministers retaining a decision making role on the basis of advice from the new body. This option was rejected on the basis of the duplication it would cause and the impact of this on available resources. There was also stakeholder concern around the independence of decision making in relation to designation and regulation, which also supported the rejection of this option.
132. As noted above, marine designation and regulation will continue to be carried out by Ministers, with Historic Environment Scotland acting as expert advisor. An alternative approach would have been to provide for it to take on the power currently exercised by Ministers, but it was felt that the benefits to stakeholders of maintaining a unified system in the marine zone outweighed any benefits of making this change. Marine Scotland has been consulted and is content with this approach.

Grants and loans

Policy aims

133. The policy aim is for Historic Environment Scotland to have a broad power to award grants and offer loans for any activity contributing to its overall purposes.

134. Historic Environment Scotland will operate this power under a general authorisation from Ministers, which will set out, amongst other matters, details of programmes and eligibility criteria. Ministers will be excluded from being able to direct at the level of decisions on individual funding rounds or applications. In the interests of transparency, it is expected that details of Ministerial authorisations and of grant decisions will be published.

135. Existing statutory grant powers will remain with the Scottish Ministers, as there may be situations where for Historic Environment Scotland to fund might be perceived as creating a conflict of interest. However, Historic Environment Scotland will undertake all normal grant and loan provision in respect of its functional areas.

Bill provisions

136. The Bill contains a single broad grant making power which will enable Historic Environment Scotland to issue grants in line with its functions as expressed in the Bill. This power would allow existing grant programmes to continue or new or modified programmes to be commenced. All existing grant commitments and agreements will be transferred to Historic Environment Scotland.

Consultation and alternative approaches

137. During consultation, stakeholders were concerned about the maintenance of current levels of financial resource for the sector, with a particular concern that the value of grants available for distribution by Historic Environment Scotland might be reduced by diversion of funding into operational budgets. While it is not appropriate for the Bill to address matters of financial allocation such as this, the Bill’s provisions in respect of transparency and publication will allow concerned stakeholders to monitor the disposition of funds.

138. Two principal alternative approaches to grant giving by the new body were considered during policy development.

139. Grant giving for all programmes or for specified major programmes might have remained with Ministers, rather than being delivered through Historic Environment Scotland, which might have reassured some stakeholders who expressed concern about fairness and conflict of interest.
There would then have been no need to create or transfer any powers, so continuity with existing schemes could be assured. However, this approach was rejected as it goes directly against the spirit of clear and increasing distance of Ministers from individual funding decisions, which applies widely across the culture and heritage sector, for example in Creative Scotland. In addition the operation of any new grant system would have needed to be resourced and to ensure independence from Historic Environment Scotland, new sources of specialist advice would have been required.

140. The second option considered was for grant giving to be moved to another body – either an existing body or a new one. This might have reassured some stakeholders but would not have delivered the same benefits in terms of the public sector simplification agenda, sharing many of the same drawbacks as retaining grant and loan giving in Ministers’ hands. In addition, this option would have required transitional powers and capacity for Ministers or Historic Environment Scotland to complete existing commitments over 10 years or more, since grant claw-back may be triggered by events up to 10 years after a grant-aided conservation project is completed.

141. Neither of these options was consistent with the overall policy intention of the Bill, which is to integrate functions in a single body.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

142. A draft partial Equalities Impact Assessment (EQIA) was included in the consultation launched by the Scottish Government on 8 May 2013. In addition, a seminar was held with equalities groups to examine the possible impacts and opportunities provided by the Bill and the Historic Environment Strategy.

143. Based on this assessment and consultation the Scottish Government considers that the Bill will have no negative impacts on the basis of age, sex, race, gender-reassignment, pregnancy and maternity, disability, religion or belief, or sexual orientation.

144. There are potential positive impacts: Historic Environment Scotland will be given a specific duty to promote the diversity of people accessing the historic environment and its collections. In addition, the increased clarity of role and position of Historic Environment Scotland should mean that the organisation is more visible, so that more people will be aware of the services it provides and what the historic environment can offer, including opportunities for employment and volunteering.

145. Lack of awareness among minority groups of services already offered by RCAHMS and Historic Scotland was identified as a key barrier during consultation, and there are opportunities for action in this area. Positive impacts will require to be realised by the policies and actions of Historic Environment Scotland itself: these will be informed by the consultation and assessment already carried out.
This document relates to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

Human rights

146. The Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights (ECHR). The Bill essentially operates to transfer existing functions exercised by Historic Scotland (for the Scottish Ministers) and RCAHMS to Historic Environment Scotland. The powers under which these functions are exercised in particular engage Articles 6 and 8 and Article 1 of Protocol 1 of the ECHR. Article 6 of the ECHR gives individuals a right to a fair trial, Article 8 gives individuals the right to respect for private life and Article 1 of Protocol 1 affords individuals the right to peaceful enjoyment of their property. The existing powers are considered to be compliant with the Convention and the transfer of functions will not alter this.

147. The Bill creates some new rights of appeals to the Scottish Ministers against a decision to designate property as a listed building or a scheduled monument and against a decision to refuse scheduled monument consent as the Bill transfers the functions of designation and the determination of applications for scheduled monument consent from Historic Scotland to Historic Environment Scotland. The Scottish Government considers that the new appeal processes themselves are compatible with the ECHR and that, together with the right of judicial review to an Article 6 compliant tribunal, the overall processes to which they relate will continue to be compatible with the Convention.

148. The Bill introduces a power of entry for Historic Environment Scotland to investigate the historic environment and also introduces limited powers for the disposal of objects. Beyond these, the Bill does not introduce any new powers which interfere with property rights.

149. The existing powers which would enable Historic Environment Scotland to interfere with property rights and these new powers are considered to be compatible with Article 1 of Protocol 1. The rights protected by Article 1 of Protocol 1 are not absolute and they may be interfered with if this can be justified in the public interest, is proportionate and is in accordance with the law. Although there may be interference in the enjoyment of an individual’s property, such interference is considered limited in scope and subject to certain safeguards in pursuit of the aim of securing and managing the historic environment for future generations. This meets the fair balance test and does not offend Convention rights.

150. The provisions also strike a fair balance between the right to respect for home in Article 8 and the public interest. The provisions do not go beyond what is necessary and proportionate and any interference will be in accordance with the law.

Island communities

151. The Bill will apply to all communities across Scotland, including island communities. Comhairle nan Eilean Siar and Shetland Islands Council both submitted formal consultation responses. Neither of these Councils had any significant objections to the proposals in principle. Both offered some specific suggestions which have been addressed during development of the Bill, but these were matters relating to the role of local authorities in general and not specific to their island situation.
Local Government

152. The Bill will directly impact on local authorities in discharging their duties, and this effect is already set out in this Policy Memorandum and in the other Accompanying Documents to the Bill.

153. 17 Local Authorities submitted formal responses to the consultation on the Bill proposals. Significant numbers of local government staff, including many historic environment professionals, attended the national consultation and engagement events.

154. Engagement has been undertaken with COSLA on a Ministerial, official and informal level. COSLA and specific local authorities have been extensively engaged during development of the provisions of the Bill. COSLA have indicated that they are content with the policy aims, subject to detailed development of the Bill and working practices. Local authorities will be involved in this development work, which has already begun.

Sustainable development

155. The historic environment has potential to contribute to sustainable economic growth and the Strategy provides the overarching direction to unlock these potential benefits. The Bill will contribute to these aims by enabling Historic Environment Scotland to play a key role in the delivery of the strategy, and their collaboration in projects which support key Scottish Government outcomes in this area such as town centre regeneration (see paragraph 37).

156. The Bill will streamline the planning system, potentially removing a period of 28 days statutory consideration from a proportion of cases which will promotes more rapid and efficient decision making. The new body will be expected to take a positive and proactive approach to managing change in the historic environment, and the alignment of its role with other regulators, for example Scottish Natural Heritage, will provide increased clarity of operation.

157. The Bill will sustain the functions of Historic Scotland and RCAHMS, including the important research on the conservation of the historic environment and the development of information and guidance to support the re-use of existing buildings, through specific functions for the body relating to research and economies of scale.

158. The important role which Historic Scotland plays in research into climate change and the development of energy efficient approaches to the use and development for Scotland’s significant stock of traditional buildings will also continue.

Business and Regulatory Impact Assessment

159. A Business and Regulatory Impact Assessment has been carried out and will be published to coincide with the introduction of the Bill. This concluded that there is no significant impact on business, but highlighted that the changes proposed to heritage management processes offer benefits to businesses through simplification of handling of applications for consent and potential reduction in the time required to make decisions, as well as more clearly defining the
respective roles of Local Authorities and the new body. This has the potential to save time and money for business, contributing to sustainable economic development.

**Strategic Environmental Assessment (SEA)**

160. It is considered that the Bill is likely to have no detrimental effect in relation to the environment and, as such, is exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005.

161. A pre-screening report has been completed. This confirmed that the Bill will have minimal or no detrimental impact on the environment and consequently that a full Strategic Environmental Assessment did not need to be undertaken.

**Privacy Impact Assessment (PIA)**

162. It is considered that the Bill is likely to have minimal effects in terms of privacy. This position has been determined through the preparation of a PIA screening questionnaire, with the input of advice from Scottish Government data protection and information assets staff and information and advice from Historic Scotland and RCAHMS about current and planned data management procedures.

163. This examination concluded that the Bill itself would not raise privacy issues significant enough to warrant a full-scale Privacy Impact Assessment. Historic Environment Scotland could operate with all the same data handling systems that the two existing bodies now have, but will in practice seek to merge and improve systems to achieve simplification and streamlining. Such changes will be screened and impacts assessed as necessary as part of the wider transition programme. Ministers will require that this is kept under careful scrutiny, both before and after merger.
HISTORIC ENVIRONMENT SCOTLAND BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Historic Environment Scotland Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. The purpose of the Historic Environment Scotland Bill is to create a new lead Non-Departmental Public Body (“NDPB”) for Scotland’s historic environment - Historic Environment Scotland (“HES”), which will take over and sustain the functions currently carried out by Historic Scotland (which is an Executive Agency of Scottish Government) and the Royal Commission on the Ancient and Historical Monuments of Scotland (“RCAHMS”) (which is a body established by Royal Warrant and treated administratively as an NDPB). HES will be the lead partner in delivering the Government’s contribution to a wider Scottish Historic Environment Strategy which has been developed collaboratively with all key stakeholders and which will continue as a long term process.

4. The Bill sets out the functions of HES and how it will be governed, including provisions for Ministerial oversight, guidance, direction and reporting. The Bill makes provision for Ministers to issue guidance and directions and there is a requirement for both of these to be published. It will provide for the delegation or transfer to HES of Ministerial powers and responsibilities under existing legislation as appropriate and enable the transfer of the property, staff and liabilities of both RCAHMS and Historic Scotland to HES (excluding properties and collections in the care of Scottish Ministers). The Bill will provide for consequential changes to legislation which is not specific to the historic environment, principally to ensure that HES is added to Schedules for consultation or other purposes. Finally, the Bill will provide for the dissolution of RCAHMS at a date to be determined by Ministers. The Bill is made up of 7 parts:

- Part 1 – Historic Environment Scotland
This document relates to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

- Part 2 – Functions in relation to scheduled monuments
- Part 3 – Functions in relation to listing and conservation
- Part 4 – Functions in relation to the marine environment
- Part 5 – Dissolution of RCAHMS and transfer of staff etc. to Historic Environment Scotland
- Part 6 – Further modifications in relation to the historic environment
- Part 7 – Final provisions

5. Many of Historic Scotland’s functions are set out in statute, mainly in the Acts listed below. The Bill amends these Acts to ensure that Historic Environment Scotland can operate as intended.

   - the Historic Buildings and Ancient Monuments Act 1953 ("the 1953 Act");
   - the Ancient Monuments and Archaeological Areas Act 1979 ("the 1979 Act");
   - the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ("the 1997 Act"); and,
   - the Marine (Scotland) Act 2010 ("the 2010 Act").

RATIONALE FOR SUBORDINATE LEGISLATION

6. The Bill contains a number of delegated powers provisions which are explained in more detail below. The Government has had regard, when deciding where and how provisions should be set out in subordinate legislation rather than on the face of the Bill or the 1979 and 1997 Acts, to:

   - the need to strike the right balance between the importance of the issue and providing flexibility for changing circumstances;
   - the need to make proper use of valuable Parliamentary time;
   - the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by Parliament; and
   - the need to allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation.

7. Where subordinate legislation is required to implement Government policy some form of parliamentary procedure may be appropriate. A balance must be struck between the different levels of scrutiny involved in the procedures. In the Bill the balance reflects the view of the Government on the importance of the matter delegated by Parliament.

8. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.
9. The Bill confers powers on the Scottish Ministers to make orders and regulations in relation to a range of matters dealt with in the Bill. The powers conferred in the Bill are mainly either of a technical and procedural nature, or are concerned with matters which require, because of their nature a flexible approach. It is therefore regarded as appropriate that they be dealt with by subordinate legislation.

10. The regulations and orders are mainly subject to the negative procedure in Parliament. The Government has chosen this procedure where the delegated powers sought are required to prescribe procedural detail.

DELEGATED POWERS

Part 1 – Establishment of Historic Environment Scotland

Section 1(3) - (introducing schedule 1) - paragraph 2(8) of schedule 1 - power to vary the minimum or maximum number of board members of HES.

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

Provision

11. Section 1(3) introduces schedule 1 which makes provision about the status, membership, procedures and powers of HES. Paragraph 2(8) of that schedule gives Ministers the power to vary the minimum or maximum number of board members of HES.

12. This provision enables the Scottish Ministers to vary the minimum or maximum number of board members of HES.

Reason for taking power

13. This provision gives flexibility to vary the size of the HES board should the situation arise where the work of HES would benefit from increasing or decreasing the board’s size. The size of the board under the Bill has been set at 10 to 15 members, including a chair, which it is felt will be appropriate to enable HES to discharge its business effectively. However, circumstances could change. There is always a need to be able to deal with the unexpected when setting up a new body, and the power would allow a smaller board to be established initially for a transitional period if such a need arose.

Choice of procedure

14. Negative procedure has been chosen in this case as the power only allows for alteration of the number of HES members without changing the structure or functions of HES, as agreed by the Parliament, in any way. It is felt that this matter is of a character which requires a flexible approach without using up Parliamentary time unnecessarily.

Section 8(7)(a) Power to set the period of HES’s first Corporate Plan.
This document relates to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

Provision

15. The provision allows the Scottish Ministers to set the period that HES’s first corporate plan will cover. The corporate plan will set out HES’s main objectives, the outcomes that would demonstrate achievement of these objectives and the activities HES expects to undertake.

Reason for taking power

16. The board of HES will need time to consult on the corporate plan. As such the Scottish Ministers may need to specify that the corporate plan will cover a different period than the three year periods that subsequent plans will cover. The Bill sets out a planning period of three years. It is intended that plans will run from the first of April of the relevant three year period, however flexibility is needed in relation to the first period and this power will allow the Scottish Ministers to specify that period.

Choice of procedure

17. Negative procedure is considered appropriate for what is essentially an administrative matter.

Section 8 (8) - Power to allow Scottish Ministers to vary the length of time HES’s Corporate Plans cover.

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

Provision

18. The provision allows the Scottish Ministers to vary the period that any of HES’s corporate plans cover after the first corporate plan from the standard three years set out on the face of the Bill.

Reason for taking power

19. It is anticipated that HES’s corporate plans, following the first corporate plan, will cover a three year period. Scottish Ministers however recognise that if changes to HES’s functions were anticipated three years may be too long a period for the corporate plan to cover and may wish to change the planning period.

Choice of procedure

20. Negative procedure is considered appropriate for what is essentially an administrative matter. The planning period for HES’s corporate plans after the first corporate plan is set out...
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on the face of the Bill. The power would allow the Scottish Ministers to vary this planning period in the light of current business conditions.

Part 2 – Functions in relation to scheduled monuments

Part 1 of schedule 2 - paragraph 2 (e) - power to specify persons required to be notified in relation to excluding or including a monument in the Schedule or amending the entry in the Schedule relating to any monument under section 1 of the 1979 Act.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

21. Paragraph 2(e) of Part 1 of schedule 2 amends section 1(6) of the 1979 Act allowing Ministers to make regulations specifying the persons required to be informed and the form and manner in which they are to be so informed and the time within which they are to be informed under section 1(6) where a monument has been included in or excluded from the Schedule or where an entry in the Schedule to a monument has been amended.

Reason for taking the power

22. This provision enables Ministers to set out those persons who must be notified and the procedure for doing so. It is considered that this level of procedural detail is more appropriately left to regulations.

Choice of procedure

23. It is considered appropriate that this power is subject to negative procedure because it will be used to set details of procedure.

Part 1 of schedule 2 - paragraph 3 - power to regulate the manner in which HES must publish the Schedule and make it available for inspection and to make further provisions in that respect and in relation to notification in relation to excluding or including a monument in the Schedule or amending the entry in the Schedule relating to any monument under section 1 of the 1979 Act.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

1. Section 14 introduces schedule 2. Paragraph 3 of Part 1 of schedule 2 introduces a new section 1B into the 1979 Act allowing Ministers to make regulations specifying the manner in which HES must publish the Schedule and make it available for inspection and to make further provision in that respect and in relation to notification of excluding or including a monument in the Schedule or where an entry in the Schedule to a monument has been amended.
Reason for taking the power

2. This provision enables Ministers to set out how the Schedule is to be published and made available to the public and to allow further provision in relation to publication, availability and notification. It is considered that this level of procedural detail is more appropriately left to regulations.

Choice of procedure

It is considered appropriate that this power is subject to negative procedure because it will be used to set details of procedure

Part 2 of schedule 2 - paragraph 14 (5) - Power to make regulations to make provision for the procedure to be followed by HES in relation to applications for scheduled monument consent under the 1979 Act.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

3. Section 14 introduces schedule 2. Paragraph 14(5) of Part 2 of schedule 2 substitutes paragraph 2 of schedule 1 to the 1979 Act to allow the Scottish Ministers to make provision in relation to procedures to be followed by HES in considering and determining applications for scheduled monument consent under the 1979 Act.

Reason for taking the power

4. It is considered that this level of procedural detail is best dealt with through regulations. It allows for flexibility over time and enables procedures to be harmonised with other consenting processes - in particular in relation to listed buildings and wider planning process.

Choice of procedure

5. It is considered that negative procedure is appropriate for such administrative procedural matters.

Part 2 of schedule 2 - paragraph 15(b) - power to prescribe the manner in which a revocation or modification order under section 4 of the 1979 Act must be advertised (where no objection has been received by persons notified of the order).

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

6. Section 14 introduces schedule 2. Paragraph 15(b) of Part 2 of schedule 2 repeals paragraphs 5 to 9 of Part 2 of schedule 1 to the 1979 Act and inserts paragraphs 10 and 11 into that schedule to recast the provisions relating to the modification or revocation of
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scheduled monument consent by HES. Inserted paragraph 11(3) gives Ministers the power to prescribe the manner in which a revocation or modification order made by HES under section 4 of the 1979 Act must be advertised (where no objection has been received by persons notified of the order).

Reason for taking power

7. It is considered appropriate for regulations to deal with this level of procedural detail and allows flexibility when considering the appropriate manner of advertising over time.

Choice of procedure

8. It is considered that negative procedure is appropriate for such administrative matters.

Part 5 (Chapter 1) of schedule 2 – paragraph 28 - power to set out procedure for (a) appeals against inclusion in the Schedule of monuments and (b) appeals against a decision to amend an entry in the Schedule relating to a monument.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

9. Section 14 introduces schedule 2. Paragraph 28 of Part 5 of schedule 2 inserts sections 1C to 1E into the 1979 Act. Inserted section 1C introduces a right of appeal against a decision to include a monument in the Schedule compiled under section 1 of the 1979 Act or against a decision to amend an entry relating in the Schedule relating to a monument. Inserted section 1E allows the Scottish Ministers to make provision regarding the procedure to be followed in relation to such appeals. Such regulations may make provision about the grounds of appeal, information to be provided on appeal and the form, manner and time for making an appeal. Regulations may also make provision that the manner in which an appeal is to be conducted is to be at the discretion of Ministers (or a person appointed by them under the 1979 Act).

Reason for taking the power

10. This provision enables Ministers to set out the procedures and time limits to be followed in relation to appeals against designation. While the Bill establishes the rights of appeal, it is considered that this level of procedural detail is more appropriately left to regulations to allow for flexibility over time and to ensure harmonisation with other similar appeals processes, for example those in relation to appeals against decisions by HES in relation to applications for scheduled monument consent and those in connection with listed buildings.

Choice of procedure

11. It is considered appropriate that this power is subject to negative procedure because it will be used to set details of administrative procedure and timescales
Part 5 (Chapter 1) of schedule 2 – paragraph 29 - powers to set out the procedure for appeals against decisions of HES in relation to scheduled monument consent including powers relating to non-determination of an application by HES.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

12. Section 14 introduces schedule 2. Paragraph 29 of Part 5 (Chapter 1) of schedule 2 inserts sections 4B to 4D into the 1979 Act.

13. Inserted section 4B(1) introduces a right of appeal to the Scottish Ministers against certain decisions by HES including a decision to refuse scheduled monument consent or a decision to grant it subject to conditions. Where consent is granted subject to conditions an appeal is also allowed against a decision to refuse an application for the variation or discharge of such conditions. A right of appeal is also introduced against the decision to refuse an application for subsequent approval required by a condition to which consent is subject.

14. Inserted 4B(3) allows Ministers to set out the time period within after which a person may appeal if HES have not given notice of its decision in respect of an application for consent, an application for variation or discharge of conditions attached to consent or an application for subsequent approval required by a condition attached to consent.

15. Inserted section 4B (3) introduces the right of appeal to Ministers against the failure of HES to have given notice of its decision to refuse consent within the prescribed period.

16. Inserted section 4D allows Ministers to make provision regarding the procedure to be followed in respect of these appeals. Such regulations may make further provision including – provision about the grounds of appeal, information to be provided on appeal and the form, manner and time for making an appeal. Regulations may also make provision that the manner in which an appeal is to be conducted is to be at the discretion of Ministers (or a person appointed by them under the 1979 Act). In addition regulations may also include provision that an appeal in respect of an application for scheduled monument consent or in respect of the variation or discharge of conditions attached to consent must be accompanied by a certificate in the prescribed form as to the interests in the monument. Inserted section 4D(5) applies sub-paragraphs (2) to (4) of paragraph 2 of schedule 1 of the 1979 Act which provides that regulations may make further provision in respect of such certificates.

Reason for taking power

17. This provision relating to appeals in connections with scheduled monument consent allows Ministers to specify a period after which a person may appeal if HES have not given notice of its decision on an application for scheduled monument consent, an application for variation or discharge of conditions attached to consent or an application for subsequent approval required by a condition attached to consent. This provision enables Ministers to set out the procedures and time limits to be followed in relation to these appeals. While the Bill establishes the rights of appeal, it is considered that this level of procedural detail is more

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appropriately left to regulations to allow for flexibility over time and to ensure harmonisation with other similar appeals processes, for example those in relation to appeals against the decision to schedule a monument and those in connection with listed buildings.

Choice of procedure

18. It is considered appropriate that this power is subject to negative procedure because it will be used to set details of appeal procedure and timescales and prescribe certificates

Provision

Part 5 (Chapter 1) of schedule 2 – paragraph 30 - powers to prescribe classes of appeals under inserted sections 1C and 4B of the 1979 Act which are to be determined by an appointed person and in relation to publication of directions and expenses.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations or directions given by Ministers
Parliamentary procedure: negative procedure for regulations, none in respect of directions

Provision

19. Section 14 introduces schedule 2. Paragraph 30 of Part 5 (Chapter 1) of schedule 2 inserts schedule 1A into the 1979 Act which makes provision for appeals relating to the designation of a monument as a scheduled monument and appeals in respect of decisions by HES relating to scheduled monument consent to be determined by persons appointed by the Scottish Ministers. Inserted paragraph 1(1) enables Ministers to set out in regulations the classes of such appeals which are to be determined by such appointed persons. Paragraph 1(2)(a) allows regulations to except, for the time being, classes of case from being so determined. Paragraph 1(2)(b) allows Ministers, by direction, to except classes of case from being determined by an appointed person. Paragraph 1(3) provides that regulations made under inserted paragraph 1(1) may make provision in respect of the publicity of directions given by Ministers. Inserted paragraph 3(1) of schedule 1A allows the Scottish Ministers to direct that an appeal relating to the designation of a monument as a scheduled monument or an appeal in respect of decisions by HES relating to scheduled monument consent which falls to be determined by persons appointed by the Scottish Ministers to instead be determined by Ministers. Inserted paragraph 6(1) of schedule 1A allows Scottish Ministers to direct that an inquiry must be held in respect of an appeal relating to the designation of a monument as a scheduled monument or an appeal in respect of decisions by HES relating to scheduled monument consent.

20. Inserted paragraph 1(1) enables Ministers to set out in regulations the classes of such appeals which are to be determined by such appointed persons. Paragraph 6(1)(a) gives appointed persons the power to hold an inquiry and paragraph 6(1)(b) requires them to hold an inquiry where directed to do so by Ministers. Paragraph 6(4) applies subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997. Section 265 of that Act makes provision in connection with local inquiries. Section 265(11) gives Ministers the power to prescribe for any description of inquiry a standard daily amount of expenses.
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Reason for taking power

21. This provision enables Ministers to specify classes of appeals which are to be determined by appointed persons instead of by Ministers. It allows exception of classes of case to be made by regulations or by direction given by the Scottish Ministers. The power to give directions gives Ministers greater flexibility and allows them to act quickly. The provision mirrors that in paragraph 1 of schedule 4 to the Town and Country Planning (Scotland) Act 1997 and paragraph 1 of schedule 3 to the 1997 Act and provides for harmonisation of processes.

22. The Bill introduces new rights of appeal in relation to scheduled monuments. The Government wishes the appeal process and the administrative procedures to be as far as possible and appropriate in line with the appeals processes and administrative procedures relating to listed buildings to ensure harmonisation of the designation and regulation regimes. The power mirrors the power in paragraph 3 of schedule 3 to the 1997 Act and paragraph 3 of schedule 4 to the Town and Country Planning (Scotland) Act 1997.

23. It is considered that this level of procedural detail is more appropriately left to regulations or in the case of the exceptions, regulations to allow for flexibility over time and to ensure the classes of appeals to be determined by appointed persons remains appropriate as circumstances change over time.

24. This provision enables Ministers to prescribe a standard daily of amount of expenses in respect of any description of inquiry. It is considered such provision ought to be in regulations rather than on the face of the Bill given the detailed nature of the provision. Flexibility will also be required to update amounts over time.

Choice of Procedure

25. It is considered appropriate that this power is subject to negative procedure because it will be used to specify in detail the classes of appeals covered. It is considered that the power to except classes of cases by regulation subject to negative procedure or direction is also appropriate given the detailed nature of the provision. The power to provide for the giving of publicity to any directions given by Ministers ensures transparency. Directions will be published on the Directorate for Planning and Environmental Appeals website.

Part 5 (Chapter 2) of schedule 2 – paragraph 31 – power to make provision in connection with referrals under inserted section 3B

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

26. Section 14 introduces schedule 2. Paragraph 31 of schedule 2 inserts new sections 3B and 3C into the 1979 Act. Section 3B enables Scottish Ministers to give directions requiring applications for (a) scheduled monument consent (b) variation or discharge of conditions
attached to consent or (c) approval required by a condition attached to consent to be referred to them for determination instead of being determined by HES. A direction may relate to either a particular application or a class of applications. Section 3C enables Ministers, by regulations, to make provision in connection with referrals under inserted section 3B. Section 3B allows Ministers to require applications relating to scheduled monument consent to be referred to them instead of being dealt with by HES. Regulations may also make provision about the procedure to be followed and may include provision that the manner in which a referral is to be conducted is to be at the discretion of the Scottish Ministers.

Reason for taking power

27. The Bill confers functions on HES to deal with applications for scheduled monument consent however the Government considers there is a need to enable Ministers to deal with particular applications or classes of application should circumstances require. The Government wishes the powers and administrative procedures relating to applications for scheduled monument consent and the determination thereof to be as far as possible and appropriate in line with the administrative procedures relating to listed buildings to ensure harmonisation of the designation and regulation regimes. The power to call in applications mirrors the power in section 11 of the 1997 Act in relation to listed building consent. The power to make regulations is equivalent to the powers available in respect of the procedure for listed building cases contained in section 267 of the Town and Country Planning (Scotland) Act 1997 as applied by section 79(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Choice of procedure

28. The Scottish Government considers that the use of this power as with the powers to make equivalent provisions by regulations under section 267 of the Town and Country Planning (Scotland) Act 1997 should be by negative procedure as they set the detail of procedural matters.

Part 3 – Functions in relation to Listing and conservation

Part 1 of schedule 3 – paragraph 3 - power to specify persons required to be notified in relation to the compilation, approval or amendment of a list under section 1 of the 1997 Act.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

29. Section 15 introduces schedule 3. Paragraph 3 of schedule 3 inserts section 1A into the 1997 Act allowing Ministers to make regulations specifying the persons required to be notified of any list compiled, approved or amended under section 1 of the 1997 Act. It also allows Ministers to make provision as to the form, manner and time in relation to such notification. Regulations may in particular provide for planning authorities to publish lists and make such lists available for public inspection and to notify.
Reason for taking the power

30. This provision enables Ministers to set out those persons who must be notified and the procedure and timescale for doing so. It is considered that this level of procedural detail is more appropriately left to regulations.

Choice of procedure

31. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. The making of procedural provision is an administrative matter.

Part 2 of schedule 3 – paragraph 9 - power to specify the persons who must be consulted by a planning authority in relation to an application for listed building consent.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations or direction given by Scottish Ministers
Parliamentary procedure: negative procedure for regulations, none in respect of directions

Provision

32. Section 15 introduces schedule 3. Paragraph 9 of schedule 3 inserts subsections (4A) and (4B) into section 9 of the 1997 Act to require regulations already provided for under that section to require planning authorities to consult HES before granting or refusing an application for listed building consent. The regulations must also require planning authorities to consult persons as may be (a) specified in the regulations or (b) specified in directions given by Ministers.

Reason for taking the power

33. This provision enables Ministers to set out those persons who must be consulted before an application for listed building consent is determined. It is considered that this level of procedural requirement is more appropriately left to regulations or directions to deal with changing circumstances over time. The power to give directions allows Ministers to make prompt and effective changes. Directions can be made to planning authorities generally, a particular planning authority or a description of planning authority.

Choice of procedure

34. It is considered that the use of the regulation making power can be left to the level of Parliamentary scrutiny attached to the negative procedure. It is not considered necessary or appropriate for directions to be subject to Parliamentary procedure.

Part 2 of schedule 3 – paragraph 10 - Power to prescribe persons who must be notified where a planning authority submit an order revoking or modifying listed building consent to the Scottish Ministers for confirmation.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure
Provision

35. Section 15 introduces schedule 3. Paragraph 10 of schedule 3 amends section 22(2) of the 1997 Act giving the Scottish Ministers power to prescribe persons who must be notified where a planning authority submit an order revoking or modifying listed building consent to the Scottish Ministers for confirmation. Such persons are additional to those who must be consulted under section 22(2).

Reason for taking the power

36. This provision enables Ministers to specify the persons required to be consulted. Ministers require the flexibility to vary the persons who must be consulted in light of future changes to the Historic Environment Strategy. It is considered that this level of procedural detail is more appropriately left to regulations.

Choice of procedure

37. Negative procedure is considered appropriate for what is essentially an administrative matter.

Part 2 of schedule 3 – paragraph 11 - Power to prescribe persons who must notify the planning authority that they do not object to an order modifying or revoking listed building consent in order for the procedure for unopposed orders to apply.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

38. Section 15 introduces schedule 3. Paragraph 11 of schedule 3 amends section 23(1)(b) of the 1997 Act giving the Scottish Ministers power to prescribe persons who must notify the planning authority that they do not object to an order made by a planning authority under section 21 of the 1997 Act revoking or modifying listed building consent.

Reason for taking the power

39. This provision enables Ministers to specify the persons required to notify planning authorities. Ministers require the flexibility to vary the persons who must notify in light of future changes to the Historic Environment Strategy. It is considered that this level of procedural detail is more appropriately left to regulations.

Choice of procedure

40. Negative procedure is considered appropriate for what is essentially an administrative matter.

Part 3 of schedule 3 – paragraph 15 – power of HES to direct that a building is no longer deemed to be a listed building.
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Power conferred on: HES
Power exercisable by: directions
Parliamentary procedure: none

Provision

41. Section 15 introduces schedule 3. Paragraph 15 of schedule 3 amends paragraph 2 of schedule 1 to the 1997 Act. The provision enables HES to direct that paragraph 1 of that schedule no longer applies to a particular building. The effect is that the building is no longer deemed to be a listed building.

Reason for taking the power

42. The Bill confers the function of compiling, approving and amending lists of buildings of special historic or architectural interest (under section 1 of the 1997 Act) on HES. Given HES will take on this role, it ought to have the direction giving function under paragraph 2 of schedule 1 to the 1997 Act currently lying with Ministers. In addition, given the role of Ministers in the various appeals processes under the 1997 Act (including the newly established appeal against the designation of a listed building), the provision also allows Ministers to similarly direct in respect of a building referred to in a notice of appeal.

Choice of procedure

43. It is not considered necessary or appropriate for directions to be subject to Parliamentary procedure as the power will be used in relation to a particular building.

Part 4 of schedule 3 – paragraph 18 – power to set out procedure for appeals against inclusion in the list of buildings of special historic or architectural interest under section 1 of the 1997 Act.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

44. Section 15 introduces schedule 3. Paragraph 18 of schedule 3 inserts sections 5B to 5D into the 1997 Act. Section 5B introduces an appeal to the Scottish Ministers against the decision to include a building in the list or amend the list compiled under section 1 of the 1997 Act. Section 5D allows the Scottish Ministers, by way of regulations to make provision in connection with appeals under section 5B. Such provision may include the grounds on which an appeal may be made, information required in that connection, and the procedure to be followed. Regulations may also include provision that the manner in which an appeal is to be conducted it to be at the discretion of the Scottish Ministers.

Reason for taking the power

45. This provision enables Ministers to set out the procedures and time limits to be followed in relation to appeals against the decision to include a building in the list or amend the list

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compiled under section 1 of the 1997 Act. While the Bill establishes the right of appeal, it is considered that this level of procedural detail is more appropriately left to regulations.

Choice of procedure

46. It is considered appropriate that this power is subject to negative procedure because it will be used to set details of procedure and timescales. It is considered the level of parliamentary scrutiny should be the same as that which already applies in respect of appeals under section 18 of the 1997 Act.

Part 4 of schedule 3 – paragraph 18 - that an appeal which would otherwise fall to be determined by an appointed person is instead to be determined by them.

Power conferred on: the Scottish Ministers
Power exercisable by: directions given by Ministers
Parliamentary procedure: none

Provision

47. Section 15 introduces schedule 3. Paragraph 18 of Part 4 of schedule 3 applies Schedule 3 to the 1997 Act (see inserted section 5D(4)) to appeals under inserted section 5B which makes provision for appeals relating to the designation of a building as a listed building to be determined by persons appointed by the Scottish Ministers. Paragraph 3(1) of schedule 3 allows the Scottish Ministers to direct that an appeal under section 5B which falls to be determined by persons appointed by the Scottish Ministers to instead be determined by Ministers.

Reason for taking power

48. The power already exists in relation to appeals relating to listed building consent under section 18 of the 1997 Act. The Bill applies these powers to the newly created appeal power to ensure harmonisation of process. The power mirrors the power in paragraph 3 of Schedule 4 to the Town and Country Planning (Scotland) Act 1997. It is considered appropriate that such administrative matter be dealt with by way of direction allowing flexibility and enabling Ministers to act promptly and effectively. A similar approach is taken in respect of appeals relating to scheduled monuments.

Choice of procedure

49. It is not considered necessary or appropriate for directions to be subject to Parliamentary procedure as the power will be used in relation to a particular case. Directions will be published on the Directorate for Planning and Environmental Appeals website.

Part 4 of schedule 3 – paragraph 18 – power to direct an appointed person to hold a local inquiry.

Power conferred on: the Scottish Ministers
Power exercisable by: direction given by Ministers
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Parliamentary procedure: none

Provision

50. Paragraph 18 of schedule 3 applies Schedule 3 to the 1997 Act (see inserted section 5D(4)) to appeals under inserted section 5B. Paragraph 6(1) of schedule 3 allows Scottish Ministers to direct that an inquiry must be held in relation to an appeal relating to the designation of a building as a listed building.

Reason for taking power

51. The power already exists in relation to appeals relating to listed building consent under section 18 of the 1997 Act. The Bill applies these powers to the newly created appeal power to ensure harmonisation of process. The power mirrors the power in paragraph 6 of schedule 4 to the Town and Country Planning (Scotland) Act 1997. A power of direction is considered appropriate as it allows Ministers to act quickly where need be to ensure a local inquiry is held in a particular case. A similar approach is taken in respect of scheduled monuments.

Choice of procedure

52. It is not considered necessary or appropriate for directions to be subject to Parliamentary procedure as the power will be used in relation to a particular case. Directions will be published on the Directorate for Planning and Environmental Appeals website.

Part 4 of schedule 3 – paragraph 21 – power to direct HES to amend the list compiled or approved under section 1 of the 1997 Act.

Power conferred on: the Scottish Ministers
Power exercisable by: direction given by Ministers
Parliamentary procedure: none

Provision

53. Paragraph 21 of schedule 3 amends section 37(4) of the 1997 Act to allow Scottish Ministers to direct HES to amend the list compiled or approved under section 1 of the 1997 Act on determination of an appeal under section 35 of the 1997 Act.

Reason for taking power

54. The Bill confers the function of designating building as listed buildings on HES. This provision enables Scottish Ministers to direct HES to exercise its power under section 1 of the 1997 Act to give effect to any determination Ministers have made on an appeal against a listed building enforcement notice. The purpose is to maintain an accurate and up to date list of buildings of special historic or architectural interest.

Choice of procedure

55. It is not considered necessary or appropriate for directions to be subject to Parliamentary procedure.
Part 4 of schedule 3 – paragraph 23(a) - power to prescribe classes of appeals under inserted section 5B and section 18 of the 1997 Act which are to be determined by an appointed person.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations or directions given by Ministers
Parliamentary procedure: negative procedure for regulations, none in respect of directions

Provision

56. Section 15 introduces schedule 3. Paragraph 23(a) of Part 4 of schedule 3 applies Schedule 3 to the 1997 Act to appeals under inserted section 5B which makes provision for appeals relating to the designation of a building as a listed building to be determined by persons appointed by the Scottish Ministers. Paragraph 1(1) of Schedule 3 to the 1997 Act enables Ministers to set out in regulations the classes of such appeals which are to be determined by such appointed persons. Paragraph 23(a) of schedule 3 extends this power to the determination of appeals under new section 5B.

Reason for taking power

57. This provision enables Ministers to specify classes of appeals under section 5B which are to be determined by appointed persons instead of by Ministers. It allows exceptions of classes of case to be made by regulations or by direction given by the Scottish Ministers. The power already exists in relation to appeals relating to listed building consent (under section 18 of the 1997 Act). The Bill applies these powers to the newly created appeal power. It is considered that this level of procedural detail is more appropriately left to regulations or in the case of the exceptions, directions to allow for flexibility over time and to ensure the classes of appeals to be determined by appointed persons remains appropriate as circumstances change over time. The power to give directions gives Ministers greater flexibility and allows them to act quickly. The provision mirrors that in paragraph 1 of schedule 4 to the Town and Country Planning (Scotland) Act 1997 and provides for harmonisation of processes. A similar approach is taken in the Bill in respect of appeals relating to scheduled monuments.

Choice of Procedure

58. It is considered appropriate that this power is subject to negative procedure because it will be used to specify in detail the classes of appeals covered. It is considered that the power to except classes of cases by regulation subject to negative procedure or direction is also appropriate given the detailed nature of the provision. The power to provide for the giving of publicity to any directions given by Ministers ensures transparency.

Part 5 – Dissolution of RCAHMS and transfer of staff to Historic Environment Scotland

Paragraph 1 of schedule 5 – allows Ministers to make a staff transfer scheme.

Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: none
Provision

59. Schedule 5 provides for the transfer of staff and property etc. Paragraph 1 allows Ministers to make a staff transfer scheme making provision in connection with the transfer to HES of persons employed by RCAHMS and persons who are members of the staff of the Scottish Ministers employed in Historic Scotland. Paragraph 2(2) of schedule 5 requires the Scottish Ministers to specify the date on which staff will transfer to HES.

Reason for taking power and choice of procedure

60. It will be necessary to ensure that staff transfer to HES at the appropriate time. It may be necessary for different staff to transfer on different dates or for all staff to transfer on a particular date to support the smooth and effective transition to the new regime. The date or dates cannot at this stage be specified with certainty as this will depend on work undertaken with and by the existing bodies and the result of timescales for transition. It is therefore appropriate for the date or dates to be set by the scheme in due course. Bearing in mind the level of detail involved it is not thought that these matters could practicably be dealt with on the face of the Bill, or that they require the scrutiny of the Scottish Parliament.

Paragraph 4 of schedule 5 – allows Ministers to make a property transfer scheme.

Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: none

Provision

61. Section 18 introduces schedule 5, which provides for the transfer of staff and property etc. Paragraph 4 allows Ministers to make a property transfer scheme making provision in connection with the transfer to HES of property, rights, liabilities and obligations of RCAHMS and the Scottish Ministers (only in so far as they relate to HES’s functions). Paragraph 5(2) of schedule 5 requires the Scottish Ministers to specify the date on which the transfer to HES takes place.

Reason for taking power and choice of procedure

62. The scheme will need to make detailed provision in order to capture all property, rights, liabilities and obligations and ensure that they are dealt with in an effective and principled fashion. Bearing in mind the level of detail involved, it is not thought that these matters could practicably be dealt with on the face of the Bill, or that they require the scrutiny of the Scottish Parliament.

Part 6 – Further modifications in relation to the Historic Environment

Section 20 – power to make provision by regulations as to the procedure to be followed in connection with inquiries or hearings conducted under the Act.

Power conferred on: the Scottish Ministers
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**Power exercisable by:** regulations  
**Parliamentary procedure:** negative procedure

**Provision**

63. Section 20 inserts sections 23A and 23B into the 1979 Act. Section 23A gives Ministers the power to hold an inquiry for the purposes of any of their functions under Part 1 of the 1979 Act. Section 23B gives Ministers a power to set out in regulations the procedure to be followed in respect of such inquiries or hearings. Section 23A(3) applies subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997. Section 265 of that Act makes provision in connection with local inquiries. Section 265(11) gives Ministers the power to prescribe for any description of inquiry a standard daily amount of expenses.

**Reason for taking power**

64. This provision enables Ministers to set out the detailed procedure in relation to inquiries and hearings in regulations. It also enables Ministers to prescribe a standard daily amount of expenses in respect of any description of inquiry. It is considered that such procedural and administrative matters ought to be in regulations rather than on the face of the Bill. In respect of the amount of expenses given the detailed nature of the provision, it should also be left to regulations. Flexibility will also be required to update procedure and amounts over time.

**Choice of Procedure**

65. It is considered appropriate that this power is subject to negative procedure because it will be used to outline procedure and specific amounts.

**Part 6 – Further modifications in relation to the Historic Environment**

**Section 22 - Power to specify circumstances in which Scottish Ministers are required to be notified where planning authority are minded to grant consent.**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations or directions by the Scottish Ministers  
**Parliamentary procedure:** negative procedure for regulations, none in respect of directions Provision

66. Section 22 amends section 12 of the 1997 Act to allow either regulations or directions to make provision as to the applications which must be notified to Scottish Ministers where a planning authority is minded to grant consent to works to a listed building.

**Reason for taking the power**

67. This provision enables Ministers to set out the circumstances in which Ministers are required to be notified where a planning authority is minded to grant consent to works to a listed building. It is considered that this level of procedural detail is more appropriately left to regulations or directions to deal with changing circumstances over time. The power would allow Scottish Ministers to vary the circumstances in light of future changes, for example to the capabilities and capacity of local authorities. The power to give directions allows Ministers to make prompt and effective changes. Directions can be made to planning
This document relates to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

authorities generally, a particular planning authority or a description of planning authority.

Choice of procedure

68. It is considered that the use of the regulation making power can be left to the level of Parliamentary scrutiny attached to the negative procedure. It is not considered necessary or appropriate for directions to be subject to Parliamentary procedure.

Part 7 – Final Provisions

Section 25 – power to make ancillary provision

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: Generally negative procedure but affirmative procedure if making textual amendments to an Act

Provision

69. This provision enables the Scottish Ministers to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to, any provision of the Bill.

Reason for taking power

70. To enable the Scottish Ministers adequately to give effect to the provisions of the Bill. It is anticipated that this power will be used to modify a number of statutory instruments in consequence of section 1 establishing the new public body, Historic Environment Scotland. It may be that the consequences have not been identified and as such further changes may be required. The order-making power is considered to be necessary to allow for this flexibility.

71. It is considered that the power to make such provision should extend to the modification of enactments. Without the power to make incidental, supplementary and consequential provision, it may be necessary to return to Parliament, through subsequent primary legislation, to deal with a matter which is clearly within the scope and policy intentions of the original Bill. That would not be an effective use of either the Parliament’s or the Government’s resources.

72. The power is limited as it can only be used if the Scottish Ministers consider it appropriate to do so for the purposes of, in connection with, or for giving full effect to, this Act or any provision of it.

Choice of procedure

73. An order made under this section which contains a provision which adds to, omits or replaces any part of the text of an Act is subject to the affirmative procedure. Any other order made under this section is subject to the negative procedure. This provides the appropriate level of parliamentary scrutiny, taking account of the nature of the orders which may be made using this power.
Section 29 - power to commence provisions

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: the Order must be laid before the Parliament (subject to section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010)

Provision

74. This provision enables the Scottish Ministers to appoint a day or days on which the provisions of the Bill come into force (other than sections 23 to 30 which come into force on the day after Royal Assent). The Scottish Ministers may make any such transitional, transitory or saving provision in the commencement order as may be required (see subsection (2)).

Reason for taking power

75. To enable the Scottish Ministers appropriately and flexibly to bring the Bill’s main provisions into effect. The Bill establishes Historic Environment Scotland. RCAHMS will be dissolved. The Bill will allow for the transfer of staff of the Scottish Ministers employed in Historic Scotland and the staff of RCAHMS to HES. It also enables the transfer of certain rights, liabilities and obligations of those 2 bodies to HES, so flexibility of commencement is required. The transition between the regimes requires to be supported by transitional, transitory and saving powers to enable a smooth transition. This will allow Ministers to ensure that the powers and duties given to HES are commenced only when the new body is ready to take them forward.

Choice of procedure

76. The power is subject only to the default laying requirement under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). This is typical for commencement orders.

Powers to delegate functions and to give directions

Section [3 (1)] - Power to delegate the exercise of any of Scottish Ministers’ functions in relation to properties in care to HES or any other person considered appropriate.

Power conferred on: the Scottish Ministers
Power exercisable by: written delegation
Parliamentary procedure: none

Provision

77. This provision allows Ministers to delegate functions in relation to properties in care to HES (or to any other body), and to set out the detailed arrangements in respect of how such functions are to be exercised.
This document relates to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

Reason for taking the power

78. Ministers wish HES to be able to exercise Scottish Ministers’ management functions in relation to properties in care. They also wish to be able to delegate to another body in future, should this be considered more appropriate.

79. By delegating rather than transferring powers, Ministers will retain responsibility for the properties in care, including for their statutory duties regarding conservation and public access. Any scheme of delegation will set out what standards of performance will be expected and how these will be monitored. It will also provide for any exceptions to the general provision (at section 3(4)) that revenue received by HES (or another body in possession of such a delegation) will remain with HES (or the other body).

80. The use of a scheme of delegation will allow Ministers the flexibility to take into account the needs of the public and of the properties in care in deciding who is best placed to take on their management. Ministers may delegate their functions in respect of a particular property, a group of properties or all properties.

Choice of procedure

81. This is an administrative arrangement and it is not considered that parliamentary procedure is required.

Section 7 (1) - Ministerial power to delegate the management of their collections to HES or any other person considered appropriate.

Power conferred on: the Scottish Ministers
Power exercisable by: written delegation
Parliamentary procedure: none

Provision

82. This provision allows Ministers to delegate functions in relation to collections which are in Ministers’ care to HES (or to any other body), and to set out the detailed arrangements in respect of how such functions are to be exercised.

Reason for taking the power

83. Ministers wish HES to be able to exercise the Scottish Ministers’ management functions in relation to collections which are in Ministers care (mainly those items associated with properties in care). They also wish to be able to delegate to another body in future, should this be considered more appropriate.

84. By delegating rather than transferring powers, Ministers will retain responsibility for their collections. Any scheme of delegation will set out what standards of performance will be expected and how these will be monitored. It will also provide for any exceptions to the general provision (at section 7(3)) that revenue received by HES (or another body in possession of such a delegation) will remain with HES (or the other body).
85. The use of a scheme of delegation will allow Ministers the flexibility in deciding who is best placed to manage their collections. Ministers may delegate their functions in respect of a particular collection, a group of collections or all collections and, within any collection, in respect of a particular object, or group of objects.

Choice of procedure

86. This is an administrative arrangement and it is not considered that parliamentary procedure is required.
Education and Culture Committee

4th Report, 2014 (Session 4)

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Education and Culture Committee

Remit and membership

Remit:

The remit of the Committee is to consider and report on further and higher education, lifelong learning, schools, pre-school care, skills and other matters falling within the responsibility of the Cabinet Secretary for Education and Lifelong Learning and matters relating to culture and the arts falling within the responsibility of the Cabinet Secretary for Culture and External Affairs.

Membership:

George Adam
Clare Adamson
Jayne Baxter
Colin Beattie
Neil Bibby (Deputy Convener)
Gordon MacDonald (from 3 April 2014)
Stewart Maxwell (Convener)
Liam McArthur
Mary Scanlon (from 27 February 2014)
Liz Smith (until 27 February 2014)
Joan McAlpine (until 3 April 2014)

Committee Clerking Team:

Senior Assistant Clerk
Terry Shevlin

Assistant Clerk
Lewis McNaughton

Committee Assistant
Fiona Sinclair
INTRODUCTION

1. The Historic Environment Scotland Bill was introduced in the Parliament on 3 March 2014 by Fiona Hyslop, the Cabinet Secretary for Culture and External Affairs. On the following day the Scottish Government published Our Place in Time, which is “Scotland’s first ever Historic Environment Strategy”.¹

2. The Scottish Government has made clear throughout Stage 1 the links between the Bill and the strategy, for example, the Bill’s Policy Memorandum states—

   “The Strategy sets the strategic context for the proposals contained within the Bill to create a new lead body which will be integral to the delivery of the strategy.”²

3. Given this close relationship, our report analyses the general principles of the Bill and also considers those parts of the strategy of particular relevance to the proposed legislation.

4. We welcome the acknowledgement across the historic environment sector that improvement and reform is necessary. This is evidenced both by the publication of the new, collaborative sector-wide strategy, and in various statements made by the Scottish Government. For example, the Bill’s Policy Memorandum says—

   “There is a common perception in the sector that the historic environment has unrealised potential to contribute to a range of other public policy areas …”

5. Further, we were told by officials that while some areas in Scotland were performing well, some were "punching below their weight" in terms of the historic environment.\(^3\)

6. We hope, therefore, that the Stage 1 debate will be an occasion where members also consider how they can best help to promote Scotland’s historic environment to make sure its value is fully realised.

**Evidence**

7. We are grateful to all those who provided us with written and oral evidence. This helped us to understand more fully the possible implications of the proposed legislation and to consider how the Bill could be improved.

8. Our understanding of the Bill and appreciation of the value of the historic environment were also greatly enhanced by a visit we undertook to Orkney, which included trips to various archaeological and historical sites, and an informal meeting with local groups to gauge their views on the Bill. We thank all those who assisted during that visit.

9. A number of specific matters were raised in written evidence that we did not have time to discuss with the Cabinet Secretary. We requested a response from the Scottish Government to the issues raised and the reply is available on our website alongside all the other evidence submitted and a note of our visit to Orkney\(^4\).

**THE GENERAL PRINCIPLES OF THE BILL**

10. The remainder of this report considers the main issues that arose during our Stage 1 scrutiny and how the Cabinet Secretary responded. It also sets out our recommendations.

**Establishing Historic Environment Scotland**

11. The Bill seeks to establish a new organisation that will effectively continue the functions of its two predecessor bodies, Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). Some functions are also being "simplified" and "adjusted"\(^5\) in passing to the new body, and the Bill includes some functions that have previously been carried out on a non-statutory basis\(^6\).

12. The Bill does not re-state all the statutory arrangements relevant to the historic environment and is therefore silent where new arrangements are not being proposed or where existing legislation is not being modified.

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\(^3\) The Committee met officials from the Scottish Government, Historic Scotland and RCAHMS on a private visit to RCAHMS HQ on 18 February 2014.


\(^5\) Historic Environment Scotland Bill. Policy Memorandum, paragraph 76.

\(^6\) The Bill will put the functions of RCAHMS on a statutory footing for the first time.
Expected benefits of the Bill

13. The Bill’s policy aim is for—

“a more outcome-focused, resilient, efficient and effective service in support of the historic environment and the people of Scotland, and for Historic Environment Scotland to be enabled to deliver on a range of [Scottish Government] National Outcomes.”

14. The outcomes are not specified in the Bill or its accompanying documents.

15. The accompanying documents do set out various other changes or benefits that the establishment of the new body is expected to deliver. For example—

- “…even greater opportunities to develop existing collaboration and partnership within the [culture] portfolio.”
- “…a more transparent separation between the role of Ministers in setting regulations and the application of those regulations by appropriately skilled professionals.”
- a contribution "to a range of other public policy areas including placemaking and regeneration, to deliver key national priorities including sustainable economic growth, health, education, wellbeing and biodiversity.”
- the Bill creates some new rights of appeals to the Scottish Ministers against a decision to designate property as a listed building or a scheduled monument, and against a decision to refuse scheduled monument consent. It also aims to streamline the process of listed building consent.

16. There was support for the merger in the written evidence submitted to us, mainly on the basis the Bill would remove stakeholder confusion about the respective roles of the current organisations. Some stakeholders focussed on areas where they felt further clarity or changes were needed, and such issues are considered in more detail in the report.

The practicalities of merging

17. Audit Scotland published in 2012 guidance for public bodies on how they can learn from previous public body mergers. We asked the chief executives of Historic Scotland and RCAHMS to detail how they had taken this advice into account in their planning for the new body. We were told that key recommendations were being adhered to, for example, progress is ongoing to prepare a draft corporate plan for the new board to consider when it is formally established.

18. Existing assets and staff will transfer to Historic Environment Scotland, without any detriment to current employees. Again, planning in this area appears to be

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7 Historic Environment Scotland Bill. Policy Memorandum, paragraph 36.
well advanced – we note that no serious concerns about employment or transfer rights were raised and we received no representations from any of the four trades unions involved.

19. We welcome the intended benefits of the merger, but recognise questions have been raised by some witnesses. The extent to which the Bill and the strategy actually deliver all the anticipated benefits will only be demonstrated over time, and we intend to assess at a later date whether improvements have materialised.

20. As noted, the Bill’s accompanying documents do not specify the outcomes the new body is to deliver. However, Historic Environment Scotland is to publish regularly a corporate plan, to be approved by Scottish Ministers, that will set out the outcomes by which its main objectives are to be measured. We recommend such plans should, after a suitable period of time has elapsed, also set out which objectives have or have not been achieved i.e. they should be both forward and backward looking. Such assessment may help to inform Historic Environment Scotland’s and the Scottish Government’s future consideration of what outcomes should most appropriately be set.

The extent of Historic Environment Scotland’s functions

21. Historic Environment Scotland is to have the general function of investigating, caring for and promoting Scotland’s historic environment. It will also have—

- a number of particular functions, such as protecting and managing the historic environment;
- a function of managing its collections as a national resource for reference, study and research;
- to exercise its functions with a view to certain matters, such as offering and promoting leadership in relation to the historic environment.

22. While all its functions relate to the historic environment, Historic Environment Scotland will not own or have responsibility for all aspects of the historic environment; the vast majority of historic buildings are under private ownership and responsibility for example. In practice, Historic Environment Scotland will have delegated to it the management of 345 ‘properties in care’ and will maintain its role in relation to designation and regulation. It was originally intended that Historic Environment Scotland would undertake all historic designations in respect of marine protected areas. However, it will now be an expert advisor only as the

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9 Scottish Ministers hold an estate of 345 Properties in Care for the nation (including Edinburgh Castle, for example). These are owned or currently managed by Ministers through Guardianship or similar arrangements. Ministers will maintain their responsibilities for the properties but intend to delegate management to Historic Environment Scotland.

10 Historic Environment Scotland will have powers to undertake all national-level designation functions: scheduling monuments, listing buildings. It will maintain the national inventories of battlefields and historic gardens and designed landscapes.
Scottish Government considered the benefits to stakeholders of maintaining a unified system in the marine zone outweighed any benefits of change.\(^{11}\)

23. While Historic Environment Scotland will have a defined role, the Bill does not seem to restrict the extent to which it is to ‘investigate, care for and promote’ the wider historic environment. Some organisations expressed doubt or concern about the possible extent of the new body’s remit, for example—

“It is unclear as to whether the new organisation will be focused on the wider historic environment rather than just Scheduled Monuments and Listed Buildings (and to a lesser extent Inventory sites) and Properties in Care. Scheduled Monuments represent only c8% of the archaeological monument record which means that the other c92% of archaeological assets fall under the remit of planning authorities.”\(^{12}\)

“The Bill explicitly identifies Historic Environment Scotland as the ‘lead body’ for Scotland’s historic environment. The actual relationship it will have with local authorities is not clear. The Historic Environment covers a vast array of different types of monuments including buildings and archaeological sites, the majority of which are, and will be, largely dealt with by local authorities. This gives a misleading impression that Historic Environment Scotland will be the main contact and adviser for historic environment matters when it will often be the local authority.”\(^{13}\)

24. Given such concerns, we asked the Cabinet Secretary to explain whether Historic Environment Scotland is to investigate, care for and protect all of the historic environment.

25. The Cabinet Secretary’s response stressed two points: the new organisation will effectively continue the functions of its predecessors but, through the strategy, will be better able to work towards shared goals (such as conservation and tackling climate change) on a collaborative basis—

“I … assure the committee that maintenance of, and the relationship with, the historic environment will continue, but the new body will provide a better platform to help all the different partners to collaborate. The body will be brand new, but a lot of its functions will be inherited and it will be in a better place to collaborate. We are also doing this in the context of a strategy, and this is the first time we have ever had that.”\(^{14}\)

26. The Cabinet Secretary’s clarification of the extent of Historic Environment Scotland’s role is welcome. The new body will not be expected to have the degree of direct responsibility for the historic environment that some stakeholders had thought it would, rather, it will increasingly look to provide leadership and work collaboratively with the sector. Given the concerns raised by various bodies, it is essential that all stakeholders have a shared understanding of Historic Environment Scotland’s role and how it is to interact with other relevant

\(^{11}\) Historic Environment Scotland Bill. Policy Memorandum, paragraph 132.
\(^{12}\) Archaeology Scotland. Written submission.
\(^{13}\) Stirling Council. Written submission.
bodies. The Scottish Government should ensure this is explained as clearly as possible during the passage of the Bill and beyond.

Marine archaeology
27. There is a specific issue about Historic Environment Scotland’s responsibilities in relation to the marine environment on which we would welcome clarification from the Cabinet Secretary. As noted, Historic Environment Scotland will not undertake historic designations in respect of marine protected areas as was the original policy intention. Scottish Ministers will retain this role (with Marine Scotland undertaking it on their behalf) and Historic Environment Scotland will become an expert advisor.

28. During our discussions in Orkney some organisations were confused about the exact division of responsibilities, in particular that decision-making on submerged archaeological sites appears to sit with Marine Scotland rather than with Historic Environment Scotland. We also note the strategy’s acknowledgement that the historic environment, on which Historic Environment Scotland is to lead, encompasses underwater\textsuperscript{15}. The over-riding concern in our discussion was that responsibility for submerged sites should not fall between the remits of Marine Scotland and Historic Environment Scotland.

29. Given these concerns, we call on the Scottish Government to clarify the role of Historic Environment Scotland in relation to the marine environment and how it will interact with Marine Scotland.

National and local decision-making

30. Scotland has a wealth of historical attractions, which are to be found in abundance across all parts of the country. Our visit to Orkney brought home the importance of the historic environment but also its occasional fragility and the vital role of local knowledge in its promotion and preservation.

31. Local groups in Orkney highlighted the importance of guarding against centralised decision-making on the historic environment, by ensuring that decision-making processes are set at the appropriate levels. We discussed with the Cabinet Secretary the best means by which regionalised decision-making could be safeguarded, while at the same time recognising the need for consistency in the standard of protection being provided across the country.

32. The Cabinet Secretary’s view was that the Bill would not lead to more central control. She saw no reason why Historic Scotland’s current decentralised approach, involving different regions, would not continue and added—

“Indeed, the bill puts a responsibility on Historic Environment Scotland to work in partnership, which can be done only by working on a locality basis.”\textsuperscript{16}


\textsuperscript{16} Scottish Parliament Education and Culture Committee. Official Report, 20 May 2014, Col 4168
33. We pressed the Cabinet Secretary on how further reassurance could be provided, whether through the Bill, or by another route such as in Historic Environment Scotland’s corporate plan or a ministerial letter of guidance. The Cabinet Secretary confirmed her preference for a non-statutory approach.\textsuperscript{17}

34. We welcome the Cabinet Secretary’s assurance that the current regional approach should continue and that the Bill should not lead to a more centralised approach to decision making. However, we believe this assurance needs to be underpinned in some way, noting both the importance of the historic environment to local communities across Scotland, and the concerns raised in Orkney. We therefore suggest the Bill would be enhanced by requiring Historic Environment Scotland to exercise its functions in a way that takes due account of local issues and local decision making processes.

The role of local authorities

35. On a related issue, various written submissions considered the Bill should provide a clearer description of Historic Environment Scotland’s relationship with local authorities.

36. The new body’s relationship with local authorities did not, however, appear to be an issue of particular concern to COSLA when it provided evidence to us. COSLA considered the Bill could lead to organisations working together more effectively—

“We will be vigilant in order to ensure that the collaborative working becomes a reality and that we start to see some mainstreaming, as opposed to us all sitting in our own wee trenches doing our own little bit.”\textsuperscript{18}

37. The Cabinet Secretary considered the Bill would not significantly change relationships with local authorities, although the new body would improve working relationships and make them simpler\textsuperscript{19}.

Defining the historic environment

38. A question raised by the Bill is: what is the historic environment? No definition is provided in the Bill, but there is a definition in the strategy, part of which is quoted in the Policy Memorandum—

“Scotland’s historic environment is the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand.”\textsuperscript{20}

39. One of the main debates at Stage 1 was whether the historic environment should be defined in the Bill. Various witnesses considered it should, primarily because it would provide some legal clarity, for example—

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\textsuperscript{20} Historic Environment Scotland Bill. Policy Memorandum, paragraph 5.
“Though we appreciate the difficulty of developing a definition of the “historic environment” that would be both meaningful yet sufficiently flexible to anticipate changes over time, we believe strongly that the absence of any such definition, allied to the imprecision of the proposed general functions, will lead to confusion and potential future conflict. The Bill would benefit greatly from such a definition.”

40. Some organisations also contrasted this Bill’s position with the legislation that established Scottish Natural Heritage, which contains a definition of ‘natural heritage’22. We also note the historic environment has previously been defined in legislation, namely the Public Appointments and Public Bodies etc. (Scotland) Act 200323.

41. There is no set approach in bills to defining terms that may be particularly relevant to that legislation. We question whether the rather abstract definition contained in the strategy would be legally binding if it were included in the Bill.

42. There were mixed opinions amongst stakeholders on the issue, but the prevailing view was that the Bill itself need not provide a definition. However, it was reiterated that the term had to be clearly expressed somewhere, particularly to avoid possible legal confusion.

The Cabinet Secretary’s position

43. In oral evidence the Cabinet Secretary provided a number of reasons why the Bill does not provide a definition, which can be summarised as follows—

- the historic environment sector ‘overwhelmingly’24 wanted the definition to be set out in the strategy rather than in the Bill;
- views on what constitutes the historic environment can differ or evolve over time, for example, whether to include intangible heritage or industrial heritage. The Cabinet Secretary considered this could lead to arguments about what was or was not defined in the Bill;
- in respect of the definition of ‘natural heritage’ (see paragraph 40), the Cabinet Secretary commented “… it does not set out the boundaries. All that it does is say what can be included, but loading things in does not help to define the boundaries of where else work is done.”25
- The Cabinet Secretary argued: “The bill is not about defining the historic environment. Most of that is done in other pieces of legislation. The bill

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21 The Association of Certificated Field Archaeologists. Written submission.
22 “For the purposes of this Act, “the natural heritage of Scotland” includes the flora and fauna of Scotland, its geological and physiographical features, its natural beauty and amenity; and references to “natural heritage” shall be construed accordingly.”
23 “Any or all of the structures and places in Scotland of historical, archaeological or architectural interest or importance.”
is about setting up an organisation." She questioned whether providing a definition in the Bill would add anything.

44. **On balance, we agree the term ‘historic environment’ need not be defined in the Bill.** The most important consideration is that the term has to be clearly defined somewhere, in order to avoid possible legal confusion about the division of responsibilities between Historic Environment Scotland and other relevant bodies. There appears to be general agreement that the definition in the strategy is sufficiently clear, although the Scottish Government should continue to ensure all stakeholders have a shared understanding as the Bill and strategy are implemented.

### Funding and conflict of interest

45. Various organisations expressed concern that Historic Environment Scotland may be increasingly likely to compete for charitable funding, to the detriment of other bodies in the sector. There is a related concern that funding pressures may also lead to, or heighten the risk of, a conflict of interest within the new body. These concerns raise a number of inter-linked issues, which are discussed together in this section.

**Current funding and charitable status**

46. Historic Scotland is currently funded from the Scottish Government’s culture portfolio, and also receives income from visitor fees (for admission to Edinburgh Castle, for example) and commercial activities. RCAHMS is also funded from the Scottish Government’s culture portfolio.  

47. The Bill does not confer charitable status on Historic Environment Scotland. However, the Scottish Government intends to dis-apply relevant legislative requirements to enable a future application for charitable status to be made by the new body. The financial memorandum states that, if granted, this could be expected to bring “significant financial benefit” to Historic Environment Scotland which would principally arise from: income from HMRC as a result of gift-aid; possible charitable rates relief; and charitable donations. The Financial Memorandum estimates that charitable status could be worth around £25m in total to the new body over the period to 2024-25. Donations may be worth around £300,000 per annum.

48. The non-financial benefits of charitable status are less clearly defined, although Historic Scotland considered that it would “…provide opportunities to work with the national collections and other players in the voluntary sector to consider buildings, archives and collections more generally”.

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27 In the 2014-15 Draft Budget, Historic Scotland is allocated £373.7m, RCAHMS £4.2m. RCAHMS receives grants that support its charitable purpose.
28 Although the financial benefits do not flow from the legislation, the FM notes at para 91 that they are “significant and relevant to the decision to create a new body”.
29 Historic Environment Scotland Bill. Policy Memorandum, paragraph 96.
49. The Policy Memorandum acknowledges concerns expressed in consultation about charitable status and we explored these concerns in some depth.

**Funding concerns**

50. The National Trust for Scotland (NTS) claimed that reductions in Historic Scotland’s funding from the Scottish Government have amounted to around £15m over five years and would have to be recouped from the “overall pot for charities in the historic environment sector” (which it calculated to be worth, very approximately, around £26m).\(^{31}\)

51. Although welcoming in general terms the challenge that increased competition can bring, NTS suggested the new body would be at an unfair advantage—

> “… we would be competing for funds with a body that was advantaged by being closely related to the Government and which would … have access to Government ministers and departments.”\(^{32}\)

52. Another source of concern is the cost of paying for repairs to historic properties. NTS calculated its property maintenance backlog to total around £46m\(^{33}\), while the Historic Houses Association Scotland said its backlog amounted to around £57m\(^{34}\).

53. Separately, as noted, the Scottish Government intends to delegate management of the ‘properties in care’ to Historic Environment Scotland. NTS said it was not clear who would be responsible for any repairs to these properties. It said that if Historic Environment Scotland is not to pay any of the costs of these repairs—

> “… that will create a very unlevel playing field and, as an organisation that has to raise most of its money on its own, we are not happy about that.”\(^{35}\)

**The Cabinet Secretary’s response**

54. The Cabinet Secretary said she could not currently specify the outstanding repair and maintenance backlog for the ‘properties in care’ but expected a figure to be available by April 2015, in time for the establishment of the new body. She warned it would be a “substantial amount”.\(^{36}\)

55. The Cabinet Secretary confirmed there had been reductions in Scottish Government funding to Historic Scotland, but Historic Scotland had compensated for this by increasing its income from visitor activities. We also note that, over the three years to March 2013, cumulatively, both Historic Scotland and RCAHMS have had underspends. In response to concerns about Historic Environment Scotland potentially diverting funding from other bodies, the Cabinet Secretary replied—

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\(^{34}\) Scottish Parliament Education and Culture Committee. *Official Report, 6 May 2014, Col 4127.*


“To an extent, the current bodies are already in competition for both income and visitors. However, to see the matter simply as an internal competition for limited resource is to look at it in the wrong way. The whole point of the strategy is that we need to grow the sector as a whole in terms of both tourism and income from other areas.”

56. Should the new body be granted charitable status, the Cabinet Secretary said it could increase its income in a way that would not be detrimental to other bodies. In relation to the projected level of charitable donations to Historic Environment Scotland, £300,000 per annum, she added—

“I hardly think that would threaten the NTS, given that Historic Scotland already receives charitable donations.”

57. We note the funding concerns expressed by some bodies in the historic environment sector but accept these may not materialise. We also note the suggestion that Historic Environment Scotland, as a result of previous reductions in Scottish Government funding to Historic Scotland, may have to make up this shortfall from the overall ‘pot’ of donations available to the sector. However, we do not consider there is evidence to suggest this will materialise. As the Cabinet Secretary set out, Historic Scotland has already responded to previous funding reductions by seeking to maximise income from other sources.

58. We appreciate the Scottish Government cannot currently quantify the extent of the repair and maintenance bill for ‘properties in care’, but welcome its commitment to doing so by April 2015. Given the strong concerns about this issue, the Scottish Government should clarify how such repairs are likely to be paid for – it is not clear to stakeholders whether the Scottish Government, Historic Environment Scotland or the property owners would be responsible.

59. We acknowledge the Bill does not directly confer charitable status on Historic Environment Scotland but highlight that significant financial benefits could be realised should it be granted.

Conflict of interest

60. The discussion about funding and charitable status overlaps with the view of certain groups that Historic Environment Scotland may be at risk of a conflict of interests. We sought to understand this risk, given the new body is simply assuming the responsibilities of its predecessor bodies.

61. NTS suggested the new body could be disproportionately focussed on raising funds rather than on its regulatory role—

“The main difference will be the pressure that the organisation is under to raise its own funds and make its own money … If we consider the staffing of the new body and how many staff will be involved in managing tourism

outlets and heritage tourism properties, we can see a disproportionate emphasis on that part of the business. That leaves only a small number to cover the regulatory function ... That pressure might mean that there is a temptation to put less resource into proper scrutiny and regulation or to bend the rules a bit when it comes to the new organisation regulating itself.”

62. Concerns about possible conflicts of interest and competition for funding were raised during our meeting in Orkney, and in other written evidence—

- Scottish Environment Link referred to the dangers of the regulatory, advisory and technical functions of government being mixed with the management of services, within the same government departments or agencies. It added: “It [Historic Environment Scotland] will be left, as proposed, regulating its own 344 sites and all the other sites defined as being of national importance. This creates a clear conflict of interests, and might damagingly mix government and non-government functions.”

- “…listing of a building may be of significance in respect of the availability of grants and other financial issues. Issues may arise about the role of Historic Environment Scotland in that process if at the same time it is making grants or indeed potentially seeking grants as a charity.”

The Cabinet Secretary’s response

63. Given the level of concern expressed, we discussed these issues with the Cabinet Secretary. In short, she did not consider the Bill would give rise to conflicts of interest. For example, the Cabinet Secretary pointed out that Historic Environment Scotland would be subject to the same scheduled monument consent process as applies elsewhere. She also made it clear Historic Environment Scotland would not be able to provide grants to itself, which has been an issue of significant concern to stakeholders.

64. The Cabinet Secretary acknowledged that income generation may be a greater priority for the new body but said this did not arise from the Bill. She also rejected suggestions that focussing on increasing its income may lead Historic Environment Scotland to neglect its regulatory duties—

“I am accountable to Parliament in relation to that, so if ... we were not satisfied with the way that the regulatory function was carried out, I would be very concerned about that as part of my ministerial responsibility. However, I do not anticipate that happening.”

65. The Cabinet Secretary also highlighted the bigger picture, that Historic Environment Scotland will aim to work in accord with the rest of sector rather than seek to harm it—

40 Scottish Environment Link. Written submission.
41 The Law Society of Scotland. Written submission.
“Because Historic Environment Scotland will be charged as a lead body, it should not do anything that will cause anybody else any difficulty, because if it did so it would not be carrying out the function of being a lead body that works in collaboration.”

66. Historic Environment Scotland will inherit the functions of its predecessor bodies. The deployment of staff will be a matter for Historic Environment Scotland but we expect it to do so in a way that enables it to continue to fulfil its statutory functions.

67. We understand the concerns expressed by some stakeholders about a possible conflict of interest. However, we acknowledge that such risks are not new and note, for example, that Historic Environment Scotland will not be able to award grants to itself. We welcome that bodies such as NTS have made positive suggestions as to how their concerns could be addressed. The Cabinet Secretary should continue to consider such suggestions, as the successful implementation of the Bill and the strategy will depend to a considerable extent on partnership working and the goodwill of all parties involved.

Ministerial direction

68. When Scottish Ministers delegate to Historic Environment Scotland the exercise of functions in relation to properties in care, they can give it general or specific directions about those functions.

69. In correspondence to the Delegated Powers and Law Reform Committee, the Scottish Government said Ministers may give directions—

“… in relation to what would be regarded as “curatorial” matters in relation to those properties in care and collections, the functions in respect of which have been delegated by Ministers to Historic Environment Scotland.”

70. This position is not explained in the Bill’s Explanatory Notes. As Scottish Ministers intend to so delegate every one of the 345 properties in their care to Historic Environment Scotland, we sought to understand whether there were any implications for its curatorial independence.

The Cabinet Secretary’s response

71. The Cabinet Secretary explained there would be a requirement for checks and balances when functions in relation to ‘properties in care’ were delegated to Historic Environment Scotland—

“If we had concerns about how Stirling castle was being maintained, we would need a power to ask that those concerns be looked into … I do not think that people will accept a situation in which everything is transferred to

Historic Environment Scotland and ministers abdicate their responsibilities for ensuring that the key and main properties are looked after properly.\textsuperscript{46}

72. The Cabinet Secretary also stressed that Scottish Ministers would not seek to exercise political interference over a particular property, and considered that, in the event that ministerial directions were issued, the legislation would make this process more transparent.

73. \textbf{Given the correspondence quoted at paragraph 68, we ask the Scottish Government to explain in more detail the Bill's implications for the curatorial independence of Historic Environment Scotland.}

74. On a related point, NTS's written submission questioned the legality of Ministers delegating some properties in care to Historic Environment Scotland. It stated that the vast majority are privately owned, and to transfer management responsibility where the contracting parties are ministers and private owners would "override the contractual position to enable delegation to take place".\textsuperscript{47}

75. We asked the Cabinet Secretary to confirm the steps taken to withstand any possible challenge on this issue. She replied "we have set out in primary legislation what the delegated functions will be" and confirmed that where delegation takes place there would still be a relationship with Scottish Ministers. \textbf{We would welcome confirmation from the Scottish Government that there is minimal risk of a legal challenge arising, and that it has consulted fully on these matters with the private owners in question.}

\textbf{The historic environment strategy}

76. As noted, the Scottish Government has stressed the central importance of the accompanying strategy and Historic Environment Scotland's lead role in its delivery.

77. We discussed with witnesses what the term 'lead role' would actually mean in practice, given some of the concerns outlined earlier and considering that the Scottish Government will retain policy-making functions in relation to the historic environment and powers of direction over the new body.

78. There was support for Historic Environment Scotland adopting a lead or championing role for the historic environment, albeit with some of the caveats already highlighted. There was also broad support for the strategy but a recognition that it is still at an early stage of implementation; there was some concern that it was vague and lacking in detail.

\textsuperscript{46} Scottish Parliament Education and Culture Committee. \textit{Official Report, 20 May 2014, Col 4161.}

\textsuperscript{47} National Trust for Scotland. Written submission.
Responsibility and accountability

79. The specific outcomes the strategy will deliver are yet to be fully defined. However, we were very keen to understand the precise lines of accountability for ensuring the outcomes that are agreed are delivered.

80. Our Place in Time sets out a governance structure for the implementation of the strategy that includes an ‘overarching historic environment board’, to be chaired by the Cabinet Secretary, and an operational board. It will also include four working groups. Our Place in Time does not mention Historic Environment Scotland, or how its board fits into the governance structure that will deliver the strategy.

81. In questioning Scottish Government officials, we were particularly interested in who would ultimately be responsible for the strategy’s successful delivery. Officials said there was a partnership arrangement involving a range of different bodies and stressed the difficulties in the Scottish Government seeking to compel some of these bodies to take a particular action. We pressed officials to explain what would happen in the event of there being a problem in the strategy, for example, where there was disagreement on a specific issue relating to a body the Scottish Government did not control. Officials replied that—

“It is very difficult to put that into a specific context. The point is that we collectively agree that these are good outcomes. I imagine that there will be ways of working around any particular issue but, by bringing everyone together to agree the strategy, we have a moral agreement that it is a good thing and that we should all work together.”

82. In following up this issue with NTS, its chief executive stated—

“It is difficult to say at this point who will be accountable because we do not have any outcomes under the strategy.”

83. NTS went on to highlight the risk of a potential conflict should its trustees not agree that their strategy aligns with Our Place in Time, but acknowledged this was unlikely to arise. NTS, along with various other organisations, stressed that sufficient resources would be required to ensure the strategy is fully implemented—

“If we are to set objectives and outcomes and expect people to be accountable for them, we need to make sure that the funds are available to

48 A collaborative “Measuring Success” working group will be established through key stakeholders to begin to build up a suite of shared outcomes. Scottish Government. (2014) Our Place in Time - The Historic Environment Strategy for Scotland Available at: http://www.scotland.gov.uk/Publications/2014/03/8522 page 28 [Accessed 5 June 2014]

49 Two of these working groups have been established (on heritage tourism, and a joint central and local government group) and two are to be established (on education and volunteering, and on measuring success).


enable the delivery of those outcomes. It is not yet clear where that money will come from or how it will be distributed.”

The Cabinet Secretary’s response
84. On the question of accountability, the Cabinet Secretary reiterated that delivery of the strategy would be a “collective responsibility”; the internal governance arrangements of board members would continue to apply; and she would expect organisations to be supportive of the strategy in their respective corporate plans.

85. Ultimately, however, the Cabinet Secretary said the Scottish Government would have the final say in the event of there being a difference of opinion about the overall direction of the strategy.

86. In a subsequent letter to the Committee, the Cabinet Secretary put this remark into context—

“I clearly could not direct members of the forum overseeing the all-Scotland Strategy, nor would I seek to do so. The point I was making was that, in the unlikely event that the appointed board of Historic Environment Scotland was not, in my view, playing a sufficiently strong role in addressing matters of concern to the wider sector, as captured through the medium of the Strategy, then I would if necessary direct the board of Historic Environment Scotland to consider their duty in the Bill to work in partnership and engage more effectively.”

“…if there are points on which key players cannot find agreement or accommodation, then we will need to work around these or approach issues from fresh perspectives.”

87. In terms of properly resourcing the strategy, the Cabinet Secretary said existing funding sources would make a contribution but suggested there would have to be additional investment—

“…the nation must understand that if it wants to have a built heritage that is accessible, which people can visit and which is there for future generations, there will need to be investment in the sector going forward.”

88. The ‘overarching historic environment board’ is to hold players to account for delivery of the strategy and will report annually on the progress being made. Historic Environment Scotland is to play a lead role in the delivery of the strategy – and in relation to the historic environment as a whole – and will report in its corporate plan on the outcomes it is to achieve. The Scottish Government should clarify how the overarching historic environment board and the separate Historic Environment Scotland board are expected to work together, in particular where any problems are experienced in implementing the strategy. It should also clarify how Historic Environment Scotland’s

SC55 Minister for Culture and External Affairs. Written submission, 28 May 2014.
corporate plan will take account of the priorities and outcomes established through the strategy, which will be reported on by the overarching historic environment board. In short, we want to be satisfied that the two boards will work effectively together without duplication of effort, and in a way that will be understandable to the sector.

89. We seek an explanation from the Scottish Government of how relevant bodies are likely to work together on prioritisation, for example, in determining which parts of the historic environment most need to be repaired. We ask the Scottish Government to clarify where the ultimate decision-making power on this crucial issue lies.

CONCLUSION

90. The Scottish Government and other bodies have been commendably frank in acknowledging that the public sector’s contribution to the historic environment could and should be improved. We welcome the strategic and collaborative approach that has been adopted in an attempt to effect the necessary improvements. The extent to which these efforts have succeeded will only become fully apparent later, but we appreciate that legislating to create Historic Environment Scotland is a necessary first step. **We therefore recommend to the Parliament that the general principles of the Historic Environment Scotland Bill be agreed to.**

91. One of our specific tasks at Stage 1 is to report on the Bill’s Policy Memorandum and Financial Memorandum. No substantial comments were provided to us on the Financial Memorandum nor in the submissions forwarded by the Finance Committee. We have covered the financial implications of charitable status in some depth, but reiterate that this is not provided for in the Bill and that related figures are provided in the Financial Memorandum for illustrative purposes only. We consider the Policy Memorandum to be generally well written and informative, and that it demonstrates effective consultation took place. However, we have highlighted some issues that it, or the Explanatory Notes, could have covered in more depth. Finally, we thank the Delegated Powers and Law Reform Committee for its Stage 1 report.
Delegated Powers and Law Reform Committee

30th Report, 2014 (Session 4)

Historic Environment Scotland Bill

Published by the Scottish Parliament on 29 April 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
Delegated Powers and Law Reform Committee

30th Report, 2014 (Session 4)

Historic Environment Scotland Bill

The Committee reports to the Parliament as follows—

1. At its meetings on 25 March and 22 and 29 April, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Historic Environment Scotland Bill at stage 1 (“the Bill”)\(^1\). The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”)\(^2\).

OVERVIEW OF BILL

3. This Government Bill was introduced on 3 March 2014. The lead committee is the Education and Culture Committee.

4. The proposed new body, Historic Environment Scotland is sometimes referred to in this report as “HES”. The Royal Commission on the Ancient and Historical Monuments of Scotland is sometimes referred to as “RCAHMS”.

5. The Bill’s central objective is to create a new public body called Historic Environment Scotland. The Policy Note explains that it is intended that the new body will be a non-departmental public body (rather than a part of the Scottish Administration).

6. As a result of creating HES, the Royal Commission on the Ancient and Historical Monuments of Scotland would be abolished, and most of the assets, liabilities and staff of RCAHMS and Historic Scotland would be transferred to HES. Historic Scotland is an executive agency of the Scottish Government.

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\(^1\) Historic Environment Scotland Bill [as introduced] available here: http://www.scottish.parliament.uk/S4_Bills/Historic%20Environment%20(Scotland)%20Bill/b47s4-introd.pdf

\(^2\) Historic Environment Scotland Bill Delegated Powers Memorandum available here: http://www.scottish.parliament.uk/S4_Bills/HES_Bill_-_DPM.pdf
DELEGATED POWERS PROVISIONS

7. The Committee considered each of the delegated powers in the Bill. At its first consideration of the Bill, the Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers:

- Paragraph 2(8) of schedule 1 (introduced by section 1(3)) - Power to vary the minimum or maximum number of board members of HES
- Paragraph 8(5) of schedule 1 - Committees of Historic Environment Scotland
- Paragraph 13(2) of schedule 1 - Accounts of Historic Environment Scotland
- Section 8(8) - Power to allow Scottish Ministers to vary the length of the period of HES' corporate plan
- Paragraph 2(e) of Part 1, schedule 2 (introduced by section 14) - power to specify persons required to be notified in relation to excluding or including a monument in the Schedule of Monuments, or amending the entry in the Schedule
- Paragraph 3 of Part 1, schedule 2 - power to regulate the manner in which HES must publish the Schedule of Monuments and make it available for inspection, etc.
- Paragraph 14(5) of Part 2, schedule 2 - Power to make regulations to make provision for the procedure to be followed by HES in relation to applications for scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”)
- Paragraph 15(b) of Part 2, schedule 2 - power to prescribe the manner in which a revocation or modification order under section 4 of the 1979 Act must be advertised
- Paragraph 28 of Part 5, schedule 2 - power to set out procedure for (a) appeals against inclusion in the Schedule of Monuments and (b) appeals against a decision to amend an entry in the Schedule
- Paragraph 29 of Part 5, schedule 2 - powers to set out the procedure for appeals against decisions of HES in relation to scheduled monument consent
- Paragraph 30 of Part 5, schedule 2 - powers to prescribe classes of appeals under inserted sections 1C and 4B of the 1979 Act which are to be determined by an appointed person
Paragraph 31 of Part 5, schedule 2 - power to make provision in connection with referrals under inserted section 3B of the 1979 Act

Paragraph 3 of Part 1, schedule 3 (introduced by section 15) - power to specify persons required to be notified in relation to the compilation, approval or amendment of a list under section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the 1997 Act”)

Paragraph 9 of Part 2, schedule 3 - power to specify persons who must be consulted by a planning authority in relation to an application for listed building consent

Paragraph 10 of Part 2, schedule 3 - Power to prescribe persons who must be notified where a planning authority submits an order revoking or modifying listed building consent to the Scottish Ministers for confirmation

Paragraph 11 of Part 2, schedule 3 - Power to prescribe persons who must notify the planning authority that they do not object to an order modifying or revoking listed building consent, in order for the procedure for unopposed orders to apply

Paragraph 15 of Part 3, schedule 3 - power of HES to direct that a building is no longer deemed to be a listed building

Paragraph 18 of Part 4, schedule 3 - power to set out procedure for appeals against inclusion in the list of buildings of special historic or architectural interest under section 1 of the 1997 Act

Paragraph 18 of Part 4, schedule 3 - power to direct that an appeal under section 5B of the 1997 Act which falls to be determined by persons appointed by the Scottish Ministers shall be determined by the Ministers, etc.

Paragraph 21 of Part 4, schedule 3 - power to direct HES to amend the list compiled or approved under section 1 of the 1997 Act

Paragraph 23(a) of Part 4, schedule 3 - power to prescribe classes of appeals under inserted section 5B and section 18 of the 1997 Act which are to be determined by an appointed person

Schedule 5 - Staff and property transfer schemes

Section 20 - Local inquiries in relation to scheduled monuments etc.

Section 22 - Application for listed building consent

Section 25 - power to make ancillary provision

Section 29 - power to commence provisions
8. At its meeting of 25 March, the Committee agreed to write to the Scottish Government to raise questions on the remaining delegated powers in the Bill. This correspondence is reproduced at the Annex.

9. In light of the written responses received, the Committee determined that it did not need to draw the attention of the Parliament to these further delegated powers:
   - Section 2(8) – Functions of Historic Environment Scotland
   - Section 8(7)(a) Power to set the period of HES’s first corporate plan
   - Section 12 – Directions and guidance

Recommendations

10. The Committee’s comments, and where appropriate, recommendations on the remaining delegated powers in the Bill are detailed below. The powers in sections 3 and 7 are considered together.

Section 3(1) – Delegation of functions in relation to properties in care

Power conferred on: the Scottish Ministers
Power exercisable by: written delegation
Parliamentary procedure: none

Provisions

11. Section 3(1) allows the Ministers to delegate functions in relation to “properties in care” to HES or to any other person/body considered appropriate, and to set out the detailed arrangements in respect of how such functions are to be exercised. The delegation may be to such extent and subject to such conditions as the Ministers consider appropriate.

12. The power excludes any function of subordinate legislation (section 3(2)). Where the function relates to the making or receiving of charges of any kind, any revenue received as a result of the function is revenue of the person/body to whom the function is delegated, unless provision to the contrary is made in the delegation (section 3(5)). The “default” position would therefore be that, assuming the function of collecting fees and charges from visitors to “properties in care” is delegated under the Bill to HES, then HES would keep that revenue (unless the delegation provided otherwise).

13. Any delegation under subsection (1) does not affect the ability of the Scottish Ministers to exercise the function, or their responsibility for that function. A delegation must be written, but can be varied or revoked (section 3(7)).

14. “Property in care” is defined as any heritable property which is of historical, archaeological, architectural or cultural significance or interest, and which is owned or occupied by, under the guardianship of, or otherwise under the management and control, of the Scottish Ministers (section 3(8)). This definition
would include the more than 300 historic sites presently in the care of Historic Scotland as an executive agency of the Ministers—(including for instance Edinburgh Castle) - http://www.historic-scotland.gov.uk/index/places/aboutourproperties.htm).

**Section 7(1) – Delegation of functions in relation to collections**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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<tr>
<td>Power exercisable by:</td>
<td>written delegation</td>
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<td>Parliamentary procedure:</td>
<td>none</td>
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**Provisions**

22. Section 7(1) allows the Ministers to delegate functions in relation to collections of objects which are in Ministers’ management and control to HES, or to any other person/body, and to set out the detailed arrangements in respect of how such functions are to be exercised.

23. The provisions are similar to the powers in section 3 above as to functions in relation to “properties in care”. Subsection (2) provides that the delegation of functions will operate, despite any prohibition or restriction that applies in an agreement which delegates the relevant functions. A delegation can be made in relation to a particular collection, a group of them, or all - or a particular object or group of objects in a collection.

24. The Ministers propose that HES should be able to exercise their management functions in relation to collections which are in the Ministers’ care - mainly those items associated with “properties in care”. They also wish to be able to delegate to another body in future, should this be considered more appropriate.

**Comments**

25. In particular, given the significance of the powers in section 3(1)(b) and 7(1)(b) which permit any other person/s which Ministers consider appropriate to be delegated with functions in relation to “properties in care” or collections, the Committee asked the Scottish Government whether it could be more appropriate for the determination of such persons to be made by an order that is subject to scrutiny by the Parliament.

26. The Scottish Government has responded that it will consider further the need for a higher degree of scrutiny, and may consult stakeholders on this.

27. The central objective of the Bill is the creation of HES as a non-departmental public body. The Committee considers therefore that these powers of written determination which further enable the Ministers to delegate the exercise of any of their functions in relation to the “properties in care” and the collections of objects to any other persons are potentially significant.

28. Further, where the function delegated relates to the making or receiving of charges, any revenue received is the revenue of the person to whom the function is delegated, unless provision to the contrary is made in the written delegation (sections 3(1)(b) and (5), and 7(1)(b) and (5)). The Scottish Government’s
response has confirmed the significance of the sums involved. (For 2012/13, just over £23M was generated through admissions to the 80 properties where admission charges are levied.)

29. The Committee therefore considers that it would be more appropriate for any other person (apart from HES) who may be delegated with the functions to be specified by an order which would be subject to scrutiny and approval by the Parliament. An order should therefore be subject to the affirmative procedure, unless there is good reason why scrutiny of the order by the negative procedure would be more appropriate.

30. The Committee also notes that the accountability provisions contained in paragraphs 13 and 14, schedule 1 to the Bill apply to HES, but do not appear to extend to any other persons to whom these functions may be delegated in future. Paragraph 13 requires HES to keep proper accounts, prepare an annual accounting statement and submit it to the Ministers and to the Auditor General for Scotland for auditing. Paragraph 14 requires HES to submit published annual reports to Ministers, with a copy to be laid before the Parliament.

31. The Scottish Government’s response also confirms that any written delegations of functions made under sections 3 and 7 would be published on its website. The Committee also considers that it would be a consistent approach, e.g. with the provisions for publication of directions and guidance to HES in section 12(6), that the Bill should provide for such publication.

32. The Committee also sought clarification as to which properties are included in the definition of “properties in care” in section 3(8), apart from the historic sites in the care of Historic Scotland. The response explains that the powers of delegation under section 3 are intended to relate to the 345 properties currently managed by Historic Scotland for conservation and public access. There are other buildings of historic significance, which are owned or managed by the Ministers and used for other purposes, and which could qualify as “properties in care”. However the Scottish Government has no present intention that such functions in relation to the “operational” properties should be delegated to HES (or to other persons).

33. So while it is the current policy intention of the Scottish Government that the powers of delegation should not be used for those other operational properties, the scope of the powers enables them to be extended to these properties, should this be determined by a future administration. The financial and other effects of any such extension do not appear to be made clear in the Government’s response to the Committee (nor precisely which other properties are involved.)

34. The Committee therefore considers that it would be more appropriate for any other person (apart from HES) who may be delegated with functions under sections 3 or 7 to be specified by an order which would be subject to scrutiny by the Parliament under the affirmative procedure, unless there is good reason why the negative procedure would be more appropriate for the scrutiny of the order. This is given the significance and width of the powers in sections 3(1)(b) and (5), and 7(1)(b) and 7(4) to delegate functions in connection with “properties in care” and collections to any other person.
apart from HES, and to provide for how revenue received is kept. An alternative approach would be for sections 3(1)(b) and 7(1)(b) to be drawn more narrowly, to define the other persons who could be delegated with these functions.

35. The Committee notes that the Scottish Government has undertaken to consider the need for a higher degree of scrutiny in advance of Stage 2 of the Bill, and may consult stakeholders. The Committee will therefore consider these powers (as amended) in light of that review after Stage 2.

36. The Committee draws to the attention of the lead committee, in relation to those powers in sections 3(1)(b) and (5), and 7(1)(b) and 7(4) that the accounting and annual reporting requirements which are set out in paragraphs 13 and 14 of schedule 1 only apply to HES. The need for accounting and reporting requirements, where any other person apart from HES may be delegated with functions in connection with “properties in care” and collections, should be considered as part of the Scottish Government’s undertaking to review these provisions.

37. The Bill should provide for the publication of any written delegation of functions (to HES) made under sections 3 and 7. The Scottish Government has confirmed that any delegations would be published on its website.

38. The Scottish Government has confirmed that, while the powers in section 3 are defined as relating to the “properties in care” as defined by section 3(8), it is not intended that the functions of the Ministers should be delegated in relation to “operational” properties of historic significance which are not one of the 345 properties currently managed by Historic Scotland.

39. The Committee considers that, in principle, section 3 should be amended to exclude those “operational properties” from the definition of the “properties in care”, so that the scope of the powers reflects the policy intentions - unless the Scottish Government can provide good reasons why it is appropriate nonetheless for these properties to be included.

40. The Scottish Government is also asked to clarify, in response to this report, which “operational” properties this relates to.
ANNEX

Correspondence with the Scottish Government—

On 25 March 2014, the Delegated Powers and Law Reform Committee wrote to the Scottish Government as follows:

1. The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 25 March and seeks an explanation of the following matters:

Section 2(8) – Functions of Historic Environment Scotland

Power conferred on: the Scottish Ministers
Power exercisable by: “any relevant policy or strategy published by the Scottish Ministers”
Parliamentary procedure: none

2. Section 2(8) provides that in exercising its functions, Historic Environment Scotland must have regard to any relevant policy or strategy published by the Scottish Ministers.

3. Ministers have other powers to direct or issue guidance to Historic Environment Scotland, about the exercise of its functions, in section 12. Specifically in section 12(4)(b), Historic Environment Scotland must have regard to guidance issued by the Ministers in relation to the exercise of its functions.

4. The Committee asks for explanation, in relation to the power in section 2(8) to issue any relevant policy or strategy which Historic Environment Scotland must have regard to in exercising its functions:

- What the purposes of this power are, and how it could be exercised, and
- Why this power is needed, beyond the powers of direction and guidance proposed to be conferred on the Ministers in section 12 (in particular the requirement for Historic Environment Scotland to have regard to any guidance issued in relation to the exercise of its functions)?

Section 3(1) – Delegation of functions in relation to properties in care

Power conferred on: the Scottish Ministers
Power exercisable by: written delegation
Parliamentary procedure: none

Section 7 (1) – Delegation of functions in relation to collections

Power conferred on: the Scottish Ministers
Power exercisable by: written delegation
Parliamentary procedure: none
5. Section 3(1) allows Ministers to delegate functions in relation to “properties in care” to Historic Environment Scotland (or to any other person considered appropriate), and to set out the detailed arrangements in respect of how such functions are to be exercised.

6. Section 3(5) provides that where the function relates to the making or receiving of charges of any kind, any revenue received as a result of the function is revenue of the person to whom the function is delegated, unless provision to the contrary is made in the delegation.

7. Section 3(8) defines “Property in care”, as any heritable property which is of historical, archaeological, architectural or cultural significance or interest, and which is owned or occupied by, under the guardianship of, or otherwise under the management and control, of the Scottish Ministers.

8. Section 7(1) allows the Ministers similarly to delegate functions in relation to collections of objects which are in Ministers’ management and control to Historic Environment Scotland, or to any other person, and to set out the detailed arrangements in respect of how such functions are to be exercised.

9. The Committee asks for explanation of these matters in relation to the powers of delegation in sections 3(1) and 7(1):

   - Why is it considered that the exercise of the specific powers in sections 3(5) and 7(4) (as to who would receive the revenue received as a result of the exercise of such a function which is delegated by the Scottish Ministers) should not be subject to the approval of, or another form of scrutiny by, the Parliament,

   - Could the possible financial effects of those powers in sections 3(5) and 7(4) be explained,

   - Given the significance of the powers in section 3(1)(b) and 7(1)(b) which permit any other person/s which Ministers consider appropriate to be delegated functions in relation to “properties in care” or collections, whether it would be more appropriate for the determination of such persons to be made by an order that is subject to scrutiny by Parliament. If so, what scrutiny procedure would be considered suitable for the exercise of the power,

   - Why is there no provision in the sections for the publication of any written delegation of functions, nor provision for a copy to be laid in the Parliament, and

   - Which properties are included currently in the definition of “properties in care” in section 3(8), apart from the historic sites in the care of Historic Scotland?
Section 8(7)(a) Power to set the period of HES’s first corporate plan

Power conferred on: the Scottish Ministers  
Power exercisable by: order  
Parliamentary procedure: negative procedure

10. Section 8(7)(a) allows the Scottish Ministers to set the period that Historic Environment Scotland’s first corporate plan will cover. The corporate plan will set out Historic Environment Scotland’s main objectives, the outcomes that would demonstrate achievement of these objectives and the activities Historic Environment Scotland expects to undertake.

11. As for the similar power in section 11(7)(a) of the Revenue Scotland and Tax Powers Bill in connection with the corporate plan of Revenue Scotland, the Committee would accept in relation to the power in section 8(7)(a) that a first planning period of 3 years is intended and that that period might need to be less. However it considers that the Scottish Government should provide a good reason why the power requires to be drawn to allow any period of more than 3 years to be specified, or otherwise the power should be limited to an appropriate maximum period.

12. The Committee therefore asks the Scottish Government for an explanation of this matter, and why the power is not more narrowly framed, given the stated policy intention?

Section 12 – Directions and guidance

Power conferred on: the Scottish Ministers  
Power exercisable by: Direction or guidance  
Parliamentary procedure: none (but published)

13. Section 12(1) provides that the Minister may give Historic Environment Scotland binding directions of a general or specific nature about the exercise of its functions. Directions cannot be given as to the exercise of functions in relation to any particular historic property (as defined in subsection (8)), collection or object, or the making of grants or loans under section 10. Directions could be given in relation to the exercise of functions which Historic Environment Scotland has by a delegation under sections 3 and 7.

14. Section 12(4) provides that Historic Environment Scotland must have regard to any guidance issued by the Ministers in relation to the exercise of its functions.

15. The Committee asks the Scottish Government in relation to the powers of direction and guidance about the exercise of Historic Environment Scotland’s functions in section 12:

- what the purposes of the powers are and how they could be used, and
- why the exclusions in subsections (2) and (3) are appropriate?
On 1 April 2014, the Scottish Government responded as follows:

16. The Scottish Government’s response is as follows.

Section 2(8) – Functions of Historic Environment Scotland

17. The Committee asked the Scottish Government:

- What the purposes of this power are, and how it could be exercised, and

- Why this power is needed, beyond the powers of direction and guidance proposed to be conferred on the Ministers in section 12 (in particular the requirement for Historic Environment Scotland to have regard to any guidance issued in relation to the exercise of its functions)?

18. The purpose of section 2(8) is to ensure that in the exercise of its functions Historic Environment Scotland (hereafter HES) delivers outcomes which are in support of any policy or strategy, published by Scottish Ministers, which may be in place for the historic environment or any other subject area.

19. Section 2(8) does not confer a power on the Scottish Ministers to issue policies and guidance. That is unnecessary. The Scottish Ministers already have a power at common law to publish policies and strategies on any subject they consider appropriate.

20. Section 2(8) imposes a duty on HES to have regard to any such policies or strategies that Scottish Ministers have published, for instance on reducing greenhouse gas emissions or on financial management for Non Departmental Public Bodies, if relevant to HES’s functions.

21. In particular, in relation to the historic environment, the creation of HES is occurring at the same time as the publication of Scotland’s first ever Historic Environment Strategy, *Our Place in Time*, which provides a set of strategic outcomes agreed across the sector and is a 10-15 year vision for the historic environment in Scotland. HES will be a key organisation in the delivery of this strategy, and its successors, and under section 2(8) will be required to have regard to this strategy amongst others.

22. Section 12, by contrast, provides for directions on the exercise of its functions to be issued by Scottish Ministers to HES, and requires it to comply with these. The section also requires HES to have regard to any guidance issued to it by Ministers. Directions and guidance issued under section 12 would be specific to HES, in contrast to the more general policies and strategies to which HES must have regard under section 2(8).

23. Section 12(4)(b) does not represent a power to issue guidance but, like section 2(8) is a duty on HES to have regard to any guidance.
Section 3(1) – Delegation of functions in relation to properties in care

Section 7(1) – Delegation of functions in relation to collections

24. The Committee asked the Scottish Government:

- Why is it considered that the exercise of the specific powers in sections 3(5) and 7(4) (as to who would receive the revenue received as a result of the exercise of such a function which is delegated by the Scottish Ministers) should not be subject to the approval of, or another form of scrutiny by, the Parliament,

- Could the possible financial effects of those powers in sections 3(5) and 7(4) be explained,

25. The Scottish Government is following normal practice whereby the delegation of functions is provided for administratively rather than by subordinate legislation. Recent examples include section 4 of the Revenue Scotland and Tax Powers Bill and sections 9, 10 and 11 of the Public Services Reform Act 2010. In general, this power to delegate functions may include non-statutory functions such as “common law” functions or functions the Scottish Ministers have through private agreements.

26. The Scottish Government considers that income received as a result of the exercise of a delegated function should normally accrue to HES, or to any other body managing properties on their behalf, so that this income can help to support the management of the properties. As such, it is considered that this ought to be provided for explicitly in the Bill. In addition, as a public body HES is accountable to Ministers and to Parliament and must publish its annual report. The Bill also specifies that a copy of the annual report must be laid before Parliament by Scottish Ministers.

27. In practice, this approach is equivalent to the current situation whereby Ministers currently exercise, through Historic Scotland, powers to charge for admission to properties in care and also to charge for related goods and services. Any income remains within the budgets of Historic Scotland. Commercial income generated from the properties in care is currently a key revenue stream for Historic Scotland coming primarily from admission charges, membership charges and trading income connected with the properties in care. In 2012/3 commercial income amounted to £32,272,000, which represents around 40% of total income. In the same period total income was £81,092,000 and included funding from Scottish Government of £47,346,000. Income from the properties is used to support the work of Historic Scotland including the management of the estate.

28. The main portion of this income (£23,003,000) is generated through admissions to the 80 properties where admissions charges are levied. A further 265 properties are free to enter and the Scottish Government does not expect this to change. A further £9,269,000 is generated through trading sales, functions and other activities.

29. Again, the Scottish Government expects these activities to continue on a similar basis to the current situation. The Government will make specific provisions
in the written delegation covering charges for properties in care to ensure that no significant changes are made to charging regimes without the agreement of Ministers.

30. In relation to these same provisions, the Committee also asked the Scottish Government:

- Given the significance of the powers in section 3(1)(b) and 7(1)(b) which permit any other person/s which Ministers consider appropriate to be delegated functions in relation to “properties in care” or collections, whether it would be more appropriate for the determination of such persons to be made by an order that is subject to scrutiny by Parliament. If so, what scrutiny procedure would be considered suitable for the exercise of the power, and

- Why is there no provision in the sections for the publication of any written delegation of functions, nor provision for a copy to be laid in the Parliament?

31. In the light of the committee’s comments, the Government will consider further the need for a higher degree of scrutiny in this area, and may consult stakeholders on this.

32. The Scottish Government intention is that the written delegation should be transparent. To achieve this, written delegations will be published on the Scottish Government website.

33. Finally, in relation to these same provisions, the Committee also asked the Scottish Government:

- Which properties are included currently in the definition of “properties in care” in section 3(8), apart from the historic sites in the care of Historic Scotland?

34. The powers of delegation under section 3 are intended to relate to the 345 properties currently managed by Historic Scotland for conservation and public access. There are other buildings of historic significance, however, which are owned or managed by Ministers and used for other purposes and which might qualify as “properties in care” by the definition used in the Bill, but there are no intentions that such function in relation to such “operational” properties should be delegated to HES under this provision.

Section 8(7)(a) Power to set the period of HES’s first corporate plan

35. The Committee asked the Scottish Government for an explanation of this matter, and why the power is not more narrowly framed, given the stated policy intention?

36. The primary intention here, as the Committee recognises, is to allow for a shorter period for the first Corporate Plan of HES, to allow for the intensive period of activity associated with setting up the new body and completing the transition of
functions. Adjusting the first period will also allow the HES planning cycle to be put into synchronisation with other cycles, such as that for the Public Spending Review.

37. It is not intended to extend the first planning period beyond 3 years. However, there might be a case for a slightly longer than 3-year first period if this is necessary to align the various cycles mentioned above, if the alternative would be to have an extremely short (less than 1-year) first planning period.

38. We would note that, by dealing with this matter by order as is proposed, any change would be subject to Parliamentary scrutiny.

Section 12 – Directions and guidance

39. The Committee asked the Scottish Government:

- what the purposes of the powers are and how they could be used, and
- why the exclusions in subsections (2) and (3) are appropriate?

40. As noted above, section 12 provides for directions on the exercise of functions to be issued by Scottish Ministers to HES, and requires it to comply with these. Directions issued under section 12 and any guidance referred to in section 12(4)(b) would be specific to Historic Environment Scotland, in contrast to the more general policies and strategies to which Historic Environment Scotland must have regard to under section 2(8). Directions may be of a general or specific nature.

41. These powers would cover a range of circumstances, including:

- the manner in which Historic Environment Scotland performs its duties (for example, to require the body to increase its efforts in regard to a particular function relative to other functions);
- providing the body with clear, formal information about important matters, for example that Ministers expect HES to help lead a particular sector-wide initiative.

42. In general, these matters would be pre-agreed in a variety of conversations, leading to annual funding letters, letters of guidance and by formal agreement to proposals sent to Ministers by HES. It is envisaged that formal direction, in the narrow sense of Ministers instructing HES to do something which it appeared reluctant to do, would be an extremely rare occurrence.

43. The exclusion at sub-section (2) is to ensure that HES is free to make judgements based on specialist criteria in relation to routine casework.

44. By providing what is often referred to as “curatorial independence” in this way, the intention of the Bill is unequivocally to remove both the temptation and the perception that Ministers will be able to influence decision-making in respect of, for example, which historic building in need of a grant receives it, or which
particular items are acquired for the collections of the body. There is widespread expectation, from stakeholders and from other national collections, that such areas are protected from Ministerial intervention in such areas.

45. Nonetheless, the power at 12(1) would allow Ministers to direct HES as to the overall collecting policies of HES. Section 10(3) requires that any grant issued by HES must be in accordance with any general Ministerial authorisation as to the making of grants.

46. The exclusion at sub-section (3) makes it clear that Ministers may, by contrast give directions in relation to what would be regarded as “curatorial” matters in relation to those properties in care and collections, the functions in respect of which have been delegated by Ministers to HES. This is a recognition that, in such cases, HES will be acting for Scottish Ministers.
Present: George Adam Clare Adamson
Jayne Baxter Colin Beattie
Neil Bibby (Deputy Convener) Stewart Maxwell (Convener)
Joan McAlpine Liam McArthur
Mary Scanlon

Historic Environment Scotland Bill: The Committee took evidence on the Bill at Stage 1 from—

Ian Walford, and Diana Murray, Joint Chief Executives of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS);

Andrew Fleming, Head of Unit, Noel Fojut, Bill Team Leader, and Jennie Marshall, Bill Manager, Historic Environment Policy Unit, Scottish Government.
Historic Environment Scotland

Bill: Stage 1

The Convener: Our next item is evidence on the Historic Environment Scotland Bill. I welcome the witnesses on our first panel. Ian Walford and Diana Murray are joint chief executives of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland. Thank you for attending today. You are both most welcome to the committee.

We are joined by two non-committee members, Liz Smith MSP and Patricia Ferguson MSP, who have an interest in the bill. You are both welcome as well.

I invite questions from members. I am more than happy for Liz Smith and Patricia Ferguson to ask questions. Please indicate when you want to ask them. It would be helpful if you could ask your questions when the issue that you are interested in is being discussed. I will take questions from committee members first, but I will bring you in as soon as I can.

The first question is from Joan McAlpine.

Joan McAlpine (South Scotland) (SNP): The main policy aim of the bill, as I understand it, is that historic environment Scotland will carry out all the functions of Historic Scotland and the RCAHMS, with the exception of the strategic policy function, which will move to ministers. Could you outline for us in layman’s terms what existing functions are being transferred to the new body?

Diana Murray (Royal Commission on the Ancient and Historical Monuments of Scotland): We are satisfied that all the functions that we carry out at the moment are accounted for in the bill as it stands. The commission’s main functions are to investigate and record the historic environment and, as a research body, to go out and find out as much as we can about the historic environment, which underpins the decisions that are made about heritage management. We also have a collection of 20 million items, which will be incorporated in the new body, and we have a responsibility for outreach and education, which will also be taken into the new body, particularly our work with communities around Scotland.

Ian Walford (Historic Scotland): The various functions under different pieces of legislation that are carried out at the moment by Historic Scotland on behalf of ministers include regulation and looking after the properties that are in the care of Scottish ministers, and those are in the bill. The Government has made it clear that it wants to
protect and enhance the functions of both organisations.

Some of the functions that Historic Scotland has carried out over the years that are not explicit in statute but are more discretionary, such as education work and some of the conservation advice that is given across the country, are also encompassed in the bill, so the new organisation will be able to carry those out. It is about creating a new body where the whole is greater than the sum of the parts and enhancing as well as protecting the functions of the two existing organisations.

Joan McAlpine: According to the policy memorandum, some of the functions will be simplified and adjusted. Can you illustrate how that will be done?

Ian Walford: One example is the heritage management functions, which are currently carried out by Historic Scotland on behalf of ministers. The new organisation will carry them out broadly as they are carried out at present, but there is an important distinction: because historic environment Scotland will be on the same footing as the Scottish Environment Protection Agency and Scottish Natural Heritage, there will be a separation between ministers setting the strategic direction and specialists carrying out the functions. The fact that local authorities will consult the new organisation on listed building consent applications, rather than notifying it of such applications, means that the process will be streamlined, with potentially 28 days taken out of it. That is an example of where there will be an element of streamlining of the heritage management functions.

Joan McAlpine: The strategic policy function will be transferred to the core Scottish Government. Do you anticipate any difficulties with that change?

Diana Murray: That will be a huge benefit, because Scotland—and the world, I suspect, as this will be a first—lacks a heritage strategy. Having the policy unit in the Scottish Government will mean that we can mainstream historic environment policy in line with general environmental policy, place-making policy and all the other policies that the Government has, which will mean that historic environment policy will take its proper place. Giving it its proper place was very difficult when that function lay with Historic Scotland, so I very much welcome the change. The arrangement will be much better.

Joan McAlpine: Thank you.

The Convener: Before I bring in Liam McArthur, I mention for the record that the committee made an informal visit to the RCAHMS offices and has had previous discussions to inform its scrutiny of the bill. I should have said that at the start of this item.

Liam McArthur: I thank RCAHMS for the visit, which was exceptionally useful.

On the streamlining of the process, a concern has been raised with me since that visit about the future of the finds panel for artefacts of archaeological value. There is a fear that it will somehow not be continued under the merged body and that the process will become internalised and more bureaucratic. Many people have found it beneficial to be able to approach the finds panel to have artefacts located for a period outwith Edinburgh or wherever. Can you say anything at this stage about the future of that specific aspect of the work?

Diana Murray: I think that there is every intention that the finds disposal panel will continue. One of the aims for the new organisation is that it will be much more transparent than the two bodies have perhaps been in the past, so I really do not expect what you mention to happen. I do not know whether Ian Walford has anything to add.

Ian Walford: I do not.

Liam McArthur: That will be a huge benefit, because Scotland—and the world, I suspect, as this will be a first—lacks a heritage strategy. Having the policy unit in the Scottish Government will mean that we can mainstream historic environment policy in line with general environmental policy, place-making policy and all the other policies that the Government has, which will mean that historic environment policy will take its proper place. Giving it its proper place was very difficult when that function lay with Historic Scotland, so I very much welcome the change. The arrangement will be much better.

Joan McAlpine: Thank you.

The Convener: Does Patricia Ferguson have a short supplementary question?

Patricia Ferguson: I thank RCAHMS for the visit, which was exceptionally useful.

On the streamlining of the process, a concern has been raised with me since that visit about the future of the finds panel for artefacts of archaeological value. There is a fear that it will somehow not be continued under the merged body and that the process will become internalised and more bureaucratic. Many people have found it beneficial to be able to approach the finds panel to have artefacts located for a period outwith Edinburgh or wherever. Can you say anything at this stage about the future of that specific aspect of the work?

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Ian Walford: I do not.

Patricia Ferguson: Mr Walford, you mentioned that, in future, local authorities will have a slightly different duty in relation to what they do about buildings and issues that they have in the historic environment. Will you explain what that will mean in practice?

Ian Walford: The role of local authorities will not particularly change as a result of the transfer of functions to historic environment Scotland. The new organisation’s separation from ministers is an element of streamlining that will put it on a par with equivalent regulatory bodies. However, with the new organisation, engagement with and the role of local government in the consents process will not particularly change. We have consulted local government interests closely over the past 18 months, and that will continue.

The Scottish Government is leading a group involving the Convention of Scottish Local Authorities, ourselves and a number of other stakeholders from across the historic environment. The group is looking very much beyond the bill—which will set up the new organisation, although it will not particularly change the functions of local government—at the longer-term possibilities and opportunities for reforming the system of care,
protection and regulation of the historic environment.

Patricia Ferguson: You said that local authorities would have a duty to consult but not to notify. Can you explain exactly what the differences are? Who, ultimately, will make the decision about a particular issue?

Ian Walford: On listed building consent, for example, let us suppose that an application is made to change a listed building. As happens now, the local authority would make the decision. It would consult historic environment Scotland, rather than notifying it at the end of its internal process, and if historic environment Scotland felt that the proposal was not in line with policy, it would have an opportunity to object to that point. The local authority would then take that into account.

Under the bill, what will not change is that the local authority will make the decision, taking the views of the new body into account. If the authority goes against the new organisation’s objection, ministers will have the opportunity, as they do now, to call in the case for determination within Government.

Liam McArthur: I listened with interest to that exchange with Patricia Ferguson. Concerns have been raised with me about the way in which local authorities deal with their designation and scheduling roles in relation to scheduled monuments. There is a fear of a potential conflict between those two roles, and of local authorities not necessarily being set up to manage that conflict. Have you had an opportunity to reflect on that issue? Is the body or group that works with COSLA to which you referred likely to consider the issue and to try and find a way through it?

Ian Walford: Let me be clear about this, in case it is misinterpreted. The bill will not change any powers, whether those are local government powers or the new organisation’s powers, in relation to the designation of listed buildings and scheduled monuments. Powers will not move from ministers to the new organisation. Historic environment Scotland will be the organisation that will decide whether to designate a building as listed or as a scheduled ancient monument. The relationship will be the same in that regard.

There will, however, be a slight change in relation to listed building consent. The role of local government was raised as an issue during the consultation on the bill and the strategy. People asked whether additional functions or burdens will pass to local government. We are clear that that will not happen.

With COSLA, work is being done to consider how the whole process could be streamlined in the longer term, so that we get better outcomes with less cost and fewer issues for developers, applicants and others. The bill will not itself make any change to that relationship.

Liam McArthur: That is helpful. There may be a perception issue that needs to be clarified.

Neil Bibby: In the witnesses’ opinion, why does the Scottish Government feel that ministers need more powers of direction?

Diana Murray: The Cabinet Secretary for Culture and External Affairs has been clear that she does not want more powers of direction. In fact, she would prefer the new organisation to be a non-departmental public body and there to be fewer ministerial powers of direction. The powers of direction under the bill are very similar to those under the National Library of Scotland Act 2012. Does that clarify the matter?

Neil Bibby: I have perhaps misunderstood the issue. Can you tell me what powers are being moved from the individual bodies to Scottish Government ministers?

11:00

Diana Murray: No powers are being moved from the Royal Commission on the Ancient and Historical Monuments of Scotland to become ministerial powers of direction. The royal commission is currently regarded as a non-departmental public body, and we are also a charitable body. Ministerial direction comes in the form of ministerial agreement of the corporate plan; in addition, just like any NDPB, we are obviously subject to ministers’ general policies. However, there is no direction on what exactly is done on the curatorial side, for example. There is an exemption for charitable status under the Charities and Trustee Investment (Scotland) Act 2005. Along with the other national collections of Scotland, we have an exemption.

The bill as introduced does not alter that relationship with ministers. The new organisation will have the same relationship as the royal commission enjoys at the moment. The effect will be for Historic Scotland’s functions—

Ian Walford: If I can just add that, under the bill, ministers will have a general power of direction. As Diana Murray said, they will be required to approve the corporate plan.

I should be clear about the discussions that we have been having on regulatory and curatorial decisions and what the new organisation will do with individual properties and items in our collections that it will look after. There will be no power of direction for ministers in that regard—that is one of the tenets of the bill. Ministers will set the organisation’s general strategy, but individual
decisions about regulation and curatorial matters will be taken by specialists within the organisation.

There is a safeguard. The new organisation will make the decisions about designations—if there is an application to list a building or to schedule a monument, the decision will be made by the new organisation. However, as you will have seen in the bill, such decisions will be subject to a new right of appeal. We are not expecting that right to be exercised very often but, if people wish to appeal to ministers, they will be able to do that.

Neil Bibby: If a local authority applied for funding, could the minister have a say in whether it got that funding?

Ian Walford: Historic Scotland puts out a significant amount of money for various grant schemes, which will carry on in the new organisation. Ministers will set the overall grants framework: they will approve schemes and, probably, the quantum of money to be passed from the new organisation to grant recipients. However, the decisions about individual grant applications will be taken by the new organisation, and the minister will not have a power of direction over that.

Neil Bibby: If the board and the minister disagree, it is still the minister who will determine the framework and the strategy.

Ian Walford: Yes, but if a particular applicant—whether it was a local authority or anyone else—applied for money from the new organisation, the decision on that application would be taken by the new organisation.

Neil Bibby: Who will appoint the board of historic environment Scotland?

Ian Walford: Ministers will appoint the chair and the board members.

Liz Smith (Mid Scotland and Fife) (Con): Mrs Murray, in answer to the first question you said that we need a heritage strategy, which I found very interesting. You pointed out that such strategies are needed not only in Scotland but around the world. Is that belief in the need for a heritage strategy one of the strongest reasons why we should support there being greater ministerial powers of direction and ministerial involvement in setting the strategy, which obviously involves public money through funding? After all, the overall idea is to have a more coherent strategy.

Diana Murray: The heritage sector feels that a heritage environment strategy for Scotland would provide a framework for the sector, not just for the Scottish Government, and the cabinet secretary has made it quite clear that the historic environment strategy belongs to Scotland, not just to the Scottish Government. The new organisation fits into that comfortably, because one of its tasks will be to lead and enable, which means that it will work with the heritage sector to deliver some of the strategy’s key aspects and to align what is a diverse sector in a direction that everybody agrees is better. As I said, I do not think that there is any increase in ministerial direction in relation to the new body in comparison with the body that I currently work for.

Liz Smith: That is helpful.

There was some discussion in the early stages as to whether there might be a move to take away some Government involvement. I am more interested in the additional added value that can be brought to a coherent, fully workable and comprehensive strategy by having Government oversight of that strategy than in any decision that would have removed it. That is the key question.

Diana Murray: Having that Government oversight mean that the strategy can work across all the other areas of Government and can be incorporated in place making policy, in environmental policy—the historic and natural environments interlock—and in health and wellbeing policy. There is a stronger possibility of the social and economic value of the historic environment being realised than existed when it was in a silo, as happened when that function sat with Historic Scotland.

Jayne Baxter: If I heard correctly, Mrs Murray said that the strategy does not belong to any one body but to everybody in the sector. It is good to hear that it is being done so inclusively and with so much participation. The Scottish Government’s website says that the strategy “is owned, not by Government, but by the people of Scotland.”

I am interested, therefore, to know who is ultimately responsible and accountable for successful delivery of the strategy.

Diana Murray: It is difficult to say, because we do not have the new body operating, but I imagine that the intention is that there will be a partnership between the new body, which will deliver the strategy and enable the partnerships, all the other people in the sector—there are many—and, of course, Government. We will work in collaboration.

Ian Walford: I add to that that the governance structure will bring together a number of players including the Government, public bodies and the
voluntary and private sectors. The new body is being deliberately set up as the lead public body in delivery of the strategy, and the chair and chief executive of the new organisation will be part of that governance structure.

It is also intended that, apart from that, there will be a number of groups that will look at specific particular issues and measure progress. It will be an inclusive process and the new organisation will be the lead player across the public sector, but it will be only one of a large number of organisations involved.

Jayne Baxter: You do not see responsibility for delivering the strategy for the people of Scotland sitting ultimately at the door of the Government, which is elected.

Ian Walford: The Government clearly has an important role in bringing all the players together—particularly across the public sector. Ultimately, the money comes from Parliament through the Government, so it will be crucial for the Government to be a key part of that and to facilitate it. In developing the strategy, we and the ministers have been clear that we want as many people as possible to be involved in development and delivery of the strategy, but the Government clearly has an important role to play.

Jayne Baxter: I am glad to hear it. Thank you.

Liz Smith: Mrs Murray, you said in answer to Mrs Baxter that you “imagine ... that it will be a partnership”. Are you not entirely clear? One of the difficulties that we had when we looked at Creative Scotland was that nobody seemed to be entirely sure about what was intended, which led, as you know, to problems.

Diana Murray: I am very clear. I am just conscious that my colleagues behind me will answer questions on the strategy in more detail and I do not want to pre-empt their responses.

Liz Smith: Thank you.

Liam McArthur: The policy memorandum states that “the historic environment has unrealised potential”, and during our visit there were a number of references to punching below our weight. Are there aspects of how RCAHMS and Historic Scotland were set up, or are there budget constraints that point to reasons why we have been punching below our weight in recent times?

Ian Walford: I will start on that. There is always potential to improve and to deliver more economic, cultural and other benefits from the historic environment. When we look at the contribution that it makes to the economy and the jobs that it creates, we can see that a lot has been achieved over recent years. Within Historic Scotland, our commercial income—which is all ploughed back into our estate and all that we do across the historic environment—has increased by some 40 per cent in the past six years. There are real success stories.

In the new organisation, the bill will create a powerful and sustainable new lead body for the historic environment. I will give a couple of examples of where the whole will be greater than the sum of the parts. The first is our education work. At present, the two organisations are involved in education in different ways, but by bringing them together under single governance, we will create powerful benefits for families and learners of all ages, including children.

Another example is the collections. Historic Scotland has 345 fantastic properties across the country, and the RCAHMS has a huge world-class collection of images and archives. It has not been impossible for them to operate together and there has been a lot of collaboration over a number of years, but bringing them together and integrating them will create a powerful entity in terms of both education and tourism benefits, and will enable us to move even further forward.

Liam McArthur: I mentioned the general perception that, on the historic environment, we punch below our weight. As we discussed during the visit, parts of the country can credibly lay claim to punching above their weight—I cite Orkney as an example. Can you offer any reassurance that, in trying to address the overall perception, we will not see a shift in focus, resource or attention away from areas that have been doing well, which also aspire to do better?

Diana Murray: It is really important that the new organisation is set up in a way that allows increased partnership and collaboration across the whole of Scotland, and I think that it will be incumbent on the new board to identify areas that need—shall we say?—more encouragement. However, that is not to take away from areas that are doing really well, which also need our support.

A key thing about the new body is that, because it will be a non-departmental public body if all goes well, it will be able to operate on a more flexible commercial model than Historic Scotland does at present. We hope that that will allow the new body, its partners and those who want to work with it to drive greater economic benefits for all parts of Scotland, as well as to increase social benefits.

Liam McArthur: On that point, an issue that has been raised in the discussions that I have been having over recent weeks is the idea of the newly merged body having a more regionalised structure. English Heritage operates something
like that model, and there appears to be support for a regionalised structure, particularly in places such as Orkney, even if people are based somewhere central but are responsible for distinct geographic areas. Has that been discussed? Is there any intention to go down that route?

Ian Walford: At the moment, Historic Scotland has staff the length and breadth of the country and people have a lot of autonomy because we have a regional structure for conservation, commercial and tourism activities. There will clearly be a new board and new management, who will make decisions about the structure of the new organisation. Among our drivers in the past few years have been the questions how we can develop in more fragile economic areas and how our properties and employment can bring cultural and economic benefit to those areas. I am sure that the new organisation will want to look carefully at that.

11:15

Liam McArthur: That would be helpful. The perception is that, although there are lots of people on the ground, the decisions are actually taken far closer to the centre. People are apprehensive about the idea that pulling together a body may achieve administrative simplicity and may make life easy in some respects, but in more rural parts it could become all the more difficult to get to the people who are making the decisions that matter. In particular, there is a perception that areas that have been punching below their weight will come into sharper focus, and I think that attention needs to be given to how the regional structure will work.

Ian Walford: I take that point; it is something for the new board to consider. The new organisation will have properties throughout the country and there will be grant-giving powers—as we mentioned—so money can go to all parts of the country. The new organisation will have an opportunity to look at the range of ways in which we invest in and support the historic environment throughout the country; doing so on a regional basis will, I am sure, be considered.

Patricia Ferguson: I was quite surprised to hear that the representatives of both existing bodies feel that there will be greater collaboration when you come together. I had expected that you would already be collaborating a great deal as separate organisations that are both working in the same field and toward the same purpose. Has mention been made of the commercial side of what the two organisations do? Do you know what the targets will be for the commercial side? Are you looking for more money from commercialisation? If so, how will you balance that with the educational side of the work?

Diana Murray: We have done quite a bit of work on that. At the moment, we are considering a business model that would be similar to the business model that is run by National Museums Scotland, National Galleries of Scotland, the National Library of Scotland and the Royal Botanic Garden Edinburgh, which have the status that the new body will have. The idea is to allow a proper commercial model to exist.

There is certainly scope for driving down core costs, which would allow more money to be used on the front line, and for driving more business through the organisations. There is a lot more that we could do without any detriment. For example, the commission makes an increasingly good income from sales of images, and there are plenty of Historic Scotland images that are not yet for sale, so we could expand that business in online sales. Because the new body will also have charitable purposes—education and historic environment conservation—that income would be used to reinvest in conservation, education and historic environment business activities, and not just on the tourism-facing side but more generally. I think that there is potential for that with the new body.

Mary Scanlon: I am also a member of the Public Audit Committee, which examined the Auditor General’s June 2012 report, “Learning the lessons of public body mergers—Review of recent mergers”, which looked at Skills Development Scotland, which lost 395 staff, the Care Inspectorate, Creative Scotland and Marine Scotland. I am interested in learning the lessons from those mergers, so I wonder whether you have read the document.

One of the key recommendations of that report was for newly merged organisations to “develop and adopt a corporate plan for the new organisation within 12 months of its start date” with a “focus on the purpose and benefits … and the further organisational change and development that is required to secure these benefits”.

Do you have your corporate plan?

Ian Walford: We have looked carefully at the Audit Scotland recommendations, and we are working together, pending the outcome of the bill process, to facilitate joint working and to bring the functions of the two organisations together. One of the tasks over the next 12 months is to work with staff and with stakeholders across the country on the functions in the strategy and the bill and to develop a draft corporate plan, so that when the new board is appointed and takes up its powers it has something to work with. Clearly, it will be the board’s decision whether to adopt that plan.
**Mary Scanlon:** You are talking to each other, but you do not have a corporate plan. When is the merger expected to take place?

**Diana Murray:** The chair and board will be appointed towards the end of this year, and the body will come into existence in April 2015—assuming that the parliamentary process goes smoothly. Operational activities and the staff will be transferred in October 2015, and from the time when the board starts work in April 2015 we will have a corporate plan and strategy for presentation to the board, which will discuss that plan and decide whether to adopt it. We cannot pre-empt a board decision on a strategy, neither can we expect the board to create a corporate plan from scratch at that point. That is the current timetable.

**Mary Scanlon:** I do not wish to digress, but the Audit Committee noted that one of the issues arising from the merger of eight police forces was the lack of a business plan. As a new member of the Education and Culture Committee, I would find it helpful if you would follow the key recommendation to produce

“a corporate plan for the new organisation within 12 months of its start date”.

If the start date is April next year, we should have a corporate plan now, or at least next month—within the next two weeks.

**Ian Walford:** I would have read that as meaning within 12 months after the start date, which is what we are working towards.

**The Convener:** I read that the same way—as meaning within 12 months after the start—so you would have 12 months from the beginning of the organisation to put the corporate plan in place.

**Mary Scanlon:** Right. Well, I hope that there will be some kind of business plan, because you will have to know what the savings, indicators and outcomes will be. Is there nothing to examine now? The Auditor General’s assessment was that there are

“no clear criteria against which to assess whether merged bodies were meeting ... aims”

and no

“clear approach to measure the effect of changes”,

and that

“The absence of specific objectives, clearly articulated benefits ... makes it difficult for the Scottish Government”

to measure success. When can we measure success? When will you have outcomes that we can look at, given that we are within 12 months of that date?

**Diana Murray:** We are going through the managing successful projects programme. An outline business case was created last year and we are currently updating it. It contains what Mary Scanlon described—the key outcomes and benefits of the process. We have also been doing a lot of work on the purpose, vision and values of the new organisation, which have contributed to the bill, and the bill itself sets out the functions and operations of the new organisation quite clearly, as do the explanatory notes. We have contributed to that, and it will be the core of the new organisation, so we have the purpose, vision and values.

Across the organisations, we have done a huge amount of work on functional mapping and setting out what the organisations currently do down to a quite detailed level. We are now building that up with staff so that they can match activities and really merge, rather than just be banged together.

We are going to build out of those functional activities the key elements of how the corporate plan will be taken forward so that there is a business plan underpinning the corporate plan. There will obviously have to be work—we have started it already—on the costings that will be associated with that and the key performance indicators. We hope that all of that will be in place by April next year and that the new board will have a good start.

I must say that I, too, read the passage in the report as meaning to 12 months after the start date.

**Mary Scanlon:** Okay—but you need a business plan prior to that.

**Diana Murray:** Indeed, we do.

**Mary Scanlon:** That was what was missing from the police forces merger.

The key performance indicators are being outlined as you go forward towards the merger. Will they be sufficient to measure success against national outcomes?

**Ian Walford:** Again, there are two strands to that.

**Mary Scanlon:** I ask because none of the previous mergers achieved that.

**Ian Walford:** Yes.

**Mary Scanlon:** You have come here and it all sounds good. However, the Audit Scotland report “Learning the lessons of public body mergers—Review of recent mergers” states:

“No merged body has assessed net savings.”

I am just looking to see whether lessons have been learned in order to move forward on this merger.
Ian Walford: In terms of measuring effectiveness, the strategy that has just been published sets out very clear strategic aims for the historic environment. One of the groups is doing work on how we measure. I appreciate that it is quite difficult to measure benefits and progress under the overarching strategy, the functions of the new organisation, and the work that Diana Murray has just described, all of which will take place over the next 12 months. It will be for the board to decide how to measure progress in delivering the functions in the bill.

Mary Scanlon: The measurements are not in place now, but will be put in place as the bill progresses.

Ian Walford: Yes. The two constituent organisations will continue up to the point that the new organisation takes on its powers; obviously, we have our corporate plans and our key performance targets and we will report on them.

Mary Scanlon: The measures will be cost savings and of benefit to the new organisation.

Diana Murray: Yes.

Ian Walford: Yes. The six-month period that is enshrined in the bill—from 1 April 2015 to 1 October 2015—is a result of direct learning from Audit Scotland’s recommendations in analyses of previous mergers. There must not be a cliff edge; the new board should exist and be able to make decisions during those six months while the two organisations continue, after which it will take on its functions and staff, and assets will be transferred.

Colin Beattie: I declare an interest in that I am a life member of Historic Scotland. In addition, my domestic residence has an A-listing from Historic Scotland.

Some of the terminology in the bill appears to be less than well defined. For example, there appears to be no definition of “historic environment” in the bill. The policy memorandum seems to be a bit abstract about what it means by that term. How comfortable are you with the definitions?

Ian Walford: The strategy provides a very clear definition of the historic environment. Again, that has been worked on, as we discussed earlier, with lots of people and a huge amount of consultation. The new organisation is being deliberately set up as the lead public body to deliver the strategy. In our view, the bill is very much there to set up the new organisation that will deliver the strategy. It is proving to be more appropriate that the definition to which you referred be in the strategy rather than in the bill.

Colin Beattie: I am also concerned about definitions of “collection” and “object”, which are very generic words. How are they going to be defined?

Diana Murray: The definitions in the bill are those that were used for the National Library of Scotland Act 2012, and they also apply to National Museums Scotland and National Galleries of Scotland. That was done quite deliberately to give the scope for collections to change. In the past 10 years we have seen a huge change from material collections—paper and photographs—and most collections that come in now are in digital form. The terminology in the bill allows for that range and, as I said, it matches the definitions in the National Library of Scotland Act 2012.

Colin Beattie: Are you saying that it is deliberate to have catch-all definitions?

Diana Murray: Yes.

Colin Beattie: Does that create any legal issues for the new body, if the bill does not define “object” or “collection”?

11:30

Diana Murray: I do not think so. What normally happens in national collections is that the national body has a collecting policy. We have spoken with the other national collections to ensure that our collecting policies are aligned, so that we are not overlapping on what we collect and so that we are operating to the standards of the archive, museum and heritage worlds.

Colin Beattie: Overlapping is an important issue. If you have general definitions, there is a danger of overlap with other collecting organisations. Are you satisfied that that will not happen?

Diana Murray: I am satisfied that it does not happen at the moment and that it will not happen in future.

Liam McArthur: The witnesses touched on the intention for the newly merged body to be established as a charity in due course. What are the advantages and disadvantages of such an approach?

Ian Walford: As we said, the policy memorandum sets out a clear charitable purpose for the organisation. The charitable purpose—the functions of looking after assets and collections on behalf of the nation in the long term, education and community heritage—was set out in May in the outline business case, on which the Government consulted. Questions were asked during the consultation, but broadly speaking people were satisfied that the charitable purpose is sound. Throughout the process, we have been talking to the Office of the Scottish Charity Regulator, which is comfortable that the
combination of functions that is set out for the new organisation would qualify for charitable status if the board decided to apply for such status.

On the benefits, charitable status would put the new organisation on the same sort of footing as the other national collections in Scotland and elsewhere in the UK. There is a clear precedent in that regard; organisations that have culture and heritage functions and a similar charitable purpose have charitable status. The new organisation will be a powerful player in the national collections field and will be able to collaborate on the same sort of footing when opportunities to work together are presented.

The new body will also be able to work with organisations across the historic environment, including, of course, the National Trust for Scotland. We have had close dialogue with the National Trust for Scotland about charitable purpose—NTS has asked some questions about that. Charitable status will provide opportunities to work with the national collections and other players in the voluntary sector to consider buildings, archives and collections more generally. Instead of areas being compartmentalised by organisation, there will be the opportunity to work more widely in the context of the national collection for Scotland of buildings and artefacts of the highest status.

Diana Murray: The royal commission is a charitable body, and the commissioners are trustees of the charity. The commission will be dissolved by the bill and its functions will be taken on by the new body. Commissioners and trustees would find it hard to transfer their responsibilities to an organisation that was not a charity, because they have a trustee relationship with the organisation’s collections and assets.

In addition, we run the Scottish cultural resources access network, which is the main provider of web cultural assets, in every school as well as most libraries in Scotland. In addition, people can subscribe to SCRAM for lifelong learning purposes. SCRAM is a charity, which operates in partnership with the royal commission as a subsidiary charity.

If the new body was not a charitable body, we would have to dislocate SCRAM from the new organisation, and it would have to set up in a different way. Ministers felt that having SCRAM alongside and involved with the new body would be advantageous. We benefit hugely from its activities, and there is a great deal of crossover in the work that we do. That is another reason why the new body—if it decided to apply for charitable status—would have a major advantage in having that charitable benefit.

Liam McArthur: Both those answers are helpful in setting out the justification and benefits of charitable status, but they were perhaps slightly less illuminating in relation to the potential disadvantages.

A number of bodies are clearly concerned about the implications of HES taking on charitable status, because of the potential displacement effect on funding applications. The National Trust for Scotland and university departments operate in a similar space. Is there not a danger that the newly merged body will move into an environment where it could crowd out the limited amounts of funding that are available for those partner organisations?

Is there not also a concern about funding from the Heritage Lottery Fund effectively coming in to replace what had previously been government grant funding? That would go against the grain of what lottery funding was intended to do.

Ian Walford: I will take your last point first. Both our organisations and the other national collections, which are NDPBs with charitable status, are able to apply to the Heritage Lottery Fund at the moment, and we have successfully applied for lottery funding.

On the more general point, the precedent is there: lots of different organisations in the culture and heritage field have charitable status. We want to work with them and other organisations including those in the voluntary sector to take the opportunity to grow the cake—this being a term that has been used in heritage tourism and also with regard to diversifying funding for the sector more generally.

Our feeling is that working collaboratively under the aegis of the strategy provides all sorts of opportunities for an organisation with charitable status coming into the field with a different kind of reach to work with others so as to grow the overall pot of income, and to grow cultural and economic value.

As I said, we work very closely with the National Trust for Scotland. Just in the past couple of weeks, we have opened the new Bannockburn heritage centre, on which Historic Scotland and NTS have worked extremely closely over the past three or four years.

We want to consider a national heritage collection that features buildings, archives, museums and galleries, and to work together—targeting or prioritising investment and working with the Heritage Lottery Fund, taking into account the rate at which applications come to it. There are real opportunities to do that. We cannot see particular downsides of charitable status.
Liam McArthur: Clearly, however, concerns are being expressed.

Ian Walford: Yes.

Liam McArthur: As regards the creation of a larger single entity, the concern is presumably that there would be such a dominant single player that the partnership is difficult to discern, other than in terms of the thought, “This is what we’re doing; you can come along with us if you want.” I am not sure how you get round that, but that perhaps goes some way to explain where the nervousness comes from and how people might perceive a risk of displacement of activity and available funding.

One other issue that has been raised—

The Convener: Before you move on, Diana Murray has something to say on the matter.

Diana Murray: It is helpful to unpick the point about competition and charities. One of the advantages of the body being a charitable body is that it puts the current competition on a level playing field.

At the moment, members of Historic Scotland get a better deal because it is not a charity than they would do if it was a charity. The National Trust for Scotland have always complained about that, because Historic Scotland members—I know that Colin Beattie is a Historic Scotland member—get a 20 per cent discount in the shops, which is a greater discount than their members get.

As a charity, the new organisation will have to abide by the rules on membership benefits that all charities abide by, including those on a magazine and car parking. In many ways that will be better, because it will mean that the competition will be level.

Apart from the charitable benefits that an organisation gains in tax and rate relief and so on, the other thing to bear in mind is that the main purpose of charities is raising revenue and philanthropic giving. Most of that usually involves a particular project, which is how things happen with the National Trust for Scotland, the board of which I was on for a time.

If the National Trust for Scotland has a big ask, such as its work on the Burns centre, it will ask its members for money for that particular exercise. National Museums Scotland, for example, might ask people to give philanthropically for its new building. People who give money like that might be interested in paintings rather than buildings—we are looking at a wide spread.

By working together we might be able to improve the way that we develop work of that kind. That would not be by having one development office for both organisations; I know that fundraisers and development officers work together and work out how they can work to best effect for the benefit of their organisations. It sounds as though it is a real problem, but once you start to look into the detail it becomes a much smaller issue.

Liam McArthur: I have one brief—

The Convener: Try to make it brief.

Liam McArthur: Yes. Concerns were raised in the consultation that historic environment Scotland “may be at an unfair advantage should it be able to access its own grants or apply different standards to” applications for “listed building or scheduled monument consents relating to the sites it directly manages.”

Can you provide any reassurance on that?

Diana Murray: It is wrong. We will not do that.

Liam McArthur: You will not. Okay.

The Convener: That was brief; thank you.

I will finish with Clare Adamson’s questions but, as I expected, we have not got through everything today. Members should be aware that we will write to the organisations, and we will start questions with the second panel where we are leaving things with this panel.

Clare Adamson: I will ask around the staffing of the proposed historic environment Scotland organisation and the implications that the dissolution of RCAHMS might have for RCAHMS staff. The policy memorandum says that the envisaged organisation will have 1,100 staff, but the two existing organisations have a combined staff of 1,170 including temporary staff at RCAHMS. Can you confirm that any loss of posts will take place in the context of a voluntary early exit scheme?

Given that there is a commitment in the financial memorandum that transfer of staff will take place at no detriment to their existing terms and conditions, how will the envisaged savings be made?

Ian Walford: The Government has made it clear that its no compulsory redundancy policy will apply, so there will be no compulsory redundancies throughout the merger. It is very clear, as you said, that staff will transfer to the new organisation with no detriment to their existing terms and conditions.

Regarding the financial memorandum and staff savings, both organisations and others across the public sector have been looking at how to reduce costs and increase income. Both organisations have had voluntary early severance schemes that will generate savings as we move forward.
We are looking at more efficient ways of running our business. In particular, the natural wastage over a number of years will enable us to ensure that functions are being carried out more efficiently.

That is the basis on which we have projected our staff savings for the 12-year period; it is clear that those savings will not be made through compulsory redundancies.

11:45

Diana Murray: The staff and assets will transfer to the new organisation. The RCAHMS staff are currently public servants and will remain so in the new body, with the same terms and conditions. We will harmonise terms and conditions, but they are very similar at present anyway. Historic Scotland staff are currently civil servants, and the big change for them is that they will become public servants. However, those two categories are very close and so those staff will not notice a huge difference. As Ian Walford said, their terms and conditions will stay the same.

Ian Walford: We have been working closely with the four constituent unions over the past 18 months on all the issues, and we are continuing to do so. The unions are comfortable with where we are at present.

We have made it clear that people will transfer to the new organisation without detriment under the Transfer of Undertakings (Protection of Employment) Regulations 2006. There is also a commitment to allow “common citizenship”—a term that applies across the Scottish Administration and to the various agencies and NDPBs—to continue for at least two years beyond the vesting day of the new organisation. If people feel for whatever reason that they do not want to transfer, the common citizenship will apply and anyone who wants to apply for a job anywhere in that family of organisations will be able to do so. We hope that the period will be extended beyond that time, but it will certainly be in place for two years.

We hope that there is no one who would not want to join the new organisation, and we will work closely with staff in that regard, but that assurance is in place.

The Convener: In keeping with my generous nature, I will allow a small supplementary from Patricia Ferguson.

Patricia Ferguson: Thank you, convener—as you know, I always say how generous you are when I have the opportunity. I thank you for your generosity this morning.

I am always slightly concerned when we talk about things such as natural wastage and hear that there will be no detriment to staff. Inevitably, you cannot choose which members of staff will decide to leave the organisation in question; I am conscious that Historic Scotland has not been without its troubles in recent times with regard to staffing.

How will you ensure that you are able to retain people who have the correct skill sets for the work that the organisation will want to do, and that the people you lose are not those who happen to have all the necessary experience and institutional knowledge?

Diana Murray: I go back to my earlier point about how we are engaging in corporate planning and looking at the functions across both organisations to identify activities on which people can work together.

We are doing our best to engage all members of staff in helping to build their future in their particular areas of activity. How often does an organisation get the opportunity to really look at what it is doing and think about how it will do things in the future? We are trying to get our staff involved in that work, which will help us to identify and—I hope—secure the skills that we need.

We achieved a 69 per cent staff engagement index in the recent staff survey that we undertook, which I believe is one of the highest results in the UK. Staff are engaged, and they want to be part of the merger and to get involved. We are trying to address the issue of morale to keep people on board.

Natural wastage is just one of those issues that we have to plan around. If we lose key skills—as we do when people retire—we will be engaging, as in fact we already are, in succession planning so that when people leave the organisation the same skills are vested in some of our younger members of staff. We are conscious of that issue, and we are just about to start our organisational development work in that respect. We hope to invest in our staff as we move forward.

The Convener: Thank you. As I said earlier, we have not managed to get through all our questions but, given the time, I want to move on to the second panel. If you do not mind, we will write to you with a substantial number of questions, and we will look forward to your response. I thank you for coming along this morning and giving evidence.

11:50

Meeting suspended.
The Convener: I welcome our second panel of witnesses, who are Scottish Government officials Andrew Fleming, Noel Fojut, David Fleetwood, Jennie Marshall and Emma Thomson. Thank you for coming along this morning. I invite Noel Fojut, who is the bill team leader, to make some brief opening remarks.

Noel Fojut (Scottish Government): I will just delegate the opening statement to my boss, Andrew Fleming.

The Convener: I apologise. My briefing note said that Noel would do it.

Andrew Fleming (Scottish Government): That is no problem at all. Thank you for the opportunity to give evidence today.

The cabinet secretary announced in July 2012 that RCAHMS and Historic Scotland would merge and that their combined functions would be delivered by a new lead body for the historic environment. That action will support the long-term sustainability of the functions of both organisations by creating a new body that is equipped to lead and support delivery of Scotland’s first historic environment strategy.

We argue that it is easy to take the historic environment for granted, although it needs careful management, active engagement and a clear sense of direction. Challenges such as climate change bring additional maintenance burdens, and the individuals and organisations who look after the historic environment face real financial pressures, especially at this time. There are also opportunities for the historic environment—for example, in technological advances. In addition, there are heightened public engagement and expectations because there are more people with leisure time who want to engage and participate in the historic environment in new and different ways. Those are great opportunities, but they also bring financial consequences.

Fundamentally, the historic environment is a precious asset that provides real benefits for Scotland’s people. However, there is a persistent belief—we heard about it in the earlier evidence today—that despite the great work that is done by Government, funded bodies, many third sector organisations and thousands of individuals, Scotland’s historic environment could deliver so much more.

We began two years ago work with key stakeholders to consider what changes to existing policies and ways of working might improve performance across the sector. The outcome of that work is “Our Place in Time—The Historic Environment Strategy for Scotland”, Scotland’s first historic environment strategy, which was published this month alongside the bill.

The strategy commits us to a genuinely shared approach to Scotland’s historic environment—on protection, management and promotion. It will provide clear direction for a long-term ambition to do more by way of securing economic, social and cultural benefits. It will bring the sector together within a governance structure, and through a series of working groups that will take forward that vision in partnership.

Now that we have sector-wide agreement on collaboration through the strategy, and consensus on the challenges and opportunities, the Government needs to set an example: we cannot exhort others to work together yet continue to support two separate bodies ourselves.

The creation of a new single body will build resilience and sustain existing functions, and it will maintain the expertise and knowledge base for the long term. It will simplify the landscape, as there will be only one national organisation to deal with when seeking information and advice. It will deliver greater efficiency via shared services and help to realise the opportunities that technological advances and public engagement offer. It will create new opportunities to collaborate and work in partnership across partner bodies and with our other national cultural bodies, and it will establish a lead delivery partner for the historic environment strategy.

Working hand in hand with the wider sector, historic environment Scotland will promote more effectively the potential of the historic environment to create a better sense of place, identity and physical and social wellbeing, and will thereby benefit the economy, civic participation, tourism and lifelong learning.

The new arrangements also address current concerns about transparency in relation to regulation, grant-giving and relationships with ministers. The bill will ensure that the new body operates on a level playing field, which we know is of importance to other bodies. The new body will function as another of Scotland’s national collections, alongside National Museums Scotland, National Galleries of Scotland and the National Library of Scotland, which will increase opportunities for collaboration and partnership working.

In brief, the bill will establish historic environment Scotland, which will be an NDPB that combines the functions, staff and assets of Historic Scotland and RCAHMS, and it sets out the functions of HES and how it will be governed. The bill also provides for delegation or transfer of ministerial powers and responsibilities; enables the transfer of property, staff and liabilities to HES;
provides for changes to other legislation, principally to ensure that HES is added to schedules for consultation or other purposes; and provides for the dissolution of RCAHMS. Finally, it will simplify current procedures in respect of heritage management in order to ensure that regulation of the historic environment is better aligned with the planning system, thereby delivering a more proportionate and efficient system of designation and consents.

As I have said, the bill sets out in one place the historic environment functions that the Government wants to see being sustained and developed. As well as defining the duties for historic environment Scotland of investigating, caring for and promoting our historic environment, it is also an affirmation of the Government’s support for that important task.

The Convener: Thank you. For members’ benefit, I intend to start where we left off, with the questions that we missed out with the first panel. I will come back to members who raised questions earlier after that. If members’ questions have been answered and you do not feel that it is necessary to repeat it, you can move on to other areas of questioning.

George Adam: In appointing the board of the new body, the bill states that ministers must appoint

“in a manner which encourages equal opportunities”.

How best will we encourage that?

Noel Fojut: The bill follows a very similar line to that of the Post-16 Education (Scotland) Act 2013 in respect of equalities. The issue is not so much that the bill will provide for equalities in how the board is selected, or for diversity in how the organisation operates, but that—Mr Adam is right—there is a difficulty in encouraging a sufficiently wide field of qualified candidates to come forward. Advertising will need to cast the net really wide to ensure that a good range of good-quality applicants come forward.

12:00

The historic environment sector is sometimes perceived to be a bit narrow in focus—the same sorts of people tend to come forward time and again—so we will get more equality simply by putting out the message that there is a new organisation that has a new mission and strategy. We hope that the vision of what it and the wider strategic approach can achieve will attract candidates from a very wide range of backgrounds so that we can get more equality. However, at the end of the day, one can appoint the board only from the candidates who put themselves forward.

The issue is not so much the policy in the bill, but how we get out the message that there is a big, important and exciting job to be done and that it does not require only the usual suspects who have come forward in the past, who have narrow specialist interests. It is about what the changes can do to improve matters. That is difficult. It is difficult to get a wide range of candidates to come forward for many public bodies. I am sure that the new body will not be alone in that.

George Adam: The bill also requires the new body to promote

“the diversity of persons accessing the historic environment”.

My wife and I have found that some of the places and buildings that the bill will cover are not the best place for a day out for someone in a wheelchair. How will you influence the ability of such people to access the historic environment?

Noel Fojut: In some cases, we will have to accept that it is simply physically impossible; there will always be some properties that are not physically accessible. George Adam will know far better than I do that there is an acceptance that only so much can be done on physical adaptation.

It might be possible to improve access using modern technology. For example, a proposal that has been talked about a lot is provision of access to sites that are, in effect, inaccessible to everyone by having video cameras on those sites. That relates to places such as St Kilda, which is difficult for anyone to access—even people who are fit and well, like us—and especially people who get seasick. Doing much more to provide high-quality virtual access will be important. Careful adaptation of properties can allow more access for people who have mobility problems.

There are also issues with how information is provided on sites, in that it is frequently not particularly friendly to people who are partially sighted or who do not have sight. More can probably be done using technology—for example, audio guiding, which is becoming much more efficient and is no longer as clunky as it used to be.

Those are directions in which Historic Scotland and RCAHMS are already moving. It is a matter of trying to bring that together and make it move in the right direction. It is about using existing best practice and applying it more widely.

George Adam: My wife and I have found that the Europeans seem to do a lot better than we do when we go to access their historic buildings; it always seems to be a lot easier for us to get about. Did you consider some of the things that have been done abroad when you put the bill together?
Noel Fojut: It is fair to say that the staff of both organisations are very much in favour of seeing what happens abroad. There are some good practices abroad, but there are also some in this country. However, it takes time and resource to spread improved facilities around the various properties. It is a key objective of both organisations to provide such access, but only so much can be done within a certain time within the budget, which has other calls on it.

There is also the question of conserving properties. There is not much point in providing access to them if they are falling down, so we need to strike a balance between what can be done to improve facilities and what has to be done simply to maintain the asset for present and future generations. Those issues are at the forefront of both organisations’ minds.

The Convener: I will pick up where George Adam left off. Everyone would accept that a person in a wheelchair will be unable to access some parts of a historic property no matter how much effort has been made. Would that person pay the same entrance fee as somebody who was fully able to get up the towers and to access other parts of the building or would they get a discount based on the fact that they could not access all of the property?

Andrew Fleming: I need to look into that and get back to you. My initial response is that I think that they would pay the same price, but I need to check that.

The Convener: I would have thought that there would be an equalities issue if people who are physically unable to access all of a property must pay the same price as people who can access the whole property. I would be grateful for an answer on that, when you have the information.

If we take a broad definition of equalities, what do you do about discounts for people who are unemployed and on benefits or who do not have a full wage and cannot afford to take their families to visit properties?

Andrew Fleming: Are you asking about current practice?

The Convener: Yes.

Andrew Fleming: Again, I need to check that. I think there is a discount scheme, but I will get back to you with a complete answer.

The bill will place on the new body a duty to promote better access. We will ask the new body to take on the challenge of considering equalities issues and seeing what it can do to address them.

The Convener: If you do not know what is happening now, it is difficult to know what improvements will be made. I would be grateful for a full answer subsequent to the meeting.

Colin Beattie: The Scottish ministers have about 345 properties in their care. I understand that the intention is to delegate responsibility for those properties to historic environment Scotland. Will that include all the properties? Will all responsibilities be delegated?

Andrew Fleming: The arrangement is that ownership or title of the properties will rest with the Scottish ministers and that, through a scheme of delegation, ministers will delegate the operation of all 345 sites to historic environment Scotland. Through that delegation, there will be specificity about conservation standards, and pricing and public access issues. Potentially, the equalities issues that Mr Maxwell raised could also be included in the scheme of delegation. The Scottish ministers will clearly set out their expectations of what the body will deliver and there will be a transparent process for assessing whether the body is meeting those requirements.

Colin Beattie: Will that be done on an individual property basis or will there be a generic scheme?

Andrew Fleming: There will be a generic scheme of delegation, but there will also be specific references where necessary.

Colin Beattie: I understand that any revenue streams from the properties will accrue to historic environment Scotland. Any change in that could affect the organisation’s viability, given that the revenue stream must be quite substantial. Has anything been put in place to guarantee that?

Andrew Fleming: Are you asking whether the Government is guaranteeing that the revenue stream will come into—

Colin Beattie: Is there a guarantee that the revenue stream will accrue to the organisation? Of course we cannot say what the level will be, because that will depend on numbers of visits and so on.

Andrew Fleming: The clear policy intention is that the revenue stream will go to the new body.

Colin Beattie: What proportion of the new body’s income will that revenue stream account for?

Andrew Fleming: I think that gross income is around £30 million, out of about £70 million.

Colin Beattie: That is quite significant.

Andrew Fleming: Yes.

Liam McArthur: There are plenty of properties that have no revenue stream—I can think of half a dozen in my constituency of Orkney. Will there be guarantees around requirements to maintain
properties for which there is not an incentive to look at ways of increasing revenue?

Andrew Fleming: The great opportunity in that regard is that through the scheme of delegation we will be able to be much more transparent about conservation of the whole estate—all 345 properties, and not just the ones that make a profit. The intention is for the scheme of delegation to specify conservation standards across the entire estate.

Liam McArthur: That is helpful, thank you.

Neil Bibby: What powers will transfer from the individual bodies to the Scottish ministers? Why do the Scottish ministers think that they need additional powers?

Andrew Fleming: I am sorry. Will you explain your question?

Neil Bibby: What powers will transfer from individual bodies to the Scottish ministers as a result of the bill?

Andrew Fleming: As things stand, all the powers lie with the Scottish ministers; we are transferring powers to the new body—historic environment Scotland—and retaining powers with the Scottish ministers. If you like, I can try to explain—

Neil Bibby: No, that is okay. You are saying that no additional powers are moving from individual bodies to the Scottish ministers.

Andrew Fleming: Yes.

The Convener: I would like to know what the split of powers is, if that is what you were about to explain.

Andrew Fleming: Perhaps my colleagues will help me with this, because there is quite an array of things to highlight.

As has already been discussed, the strategic policy function and responsibility for the whole of the historic environment, which previously sat with Historic Scotland, now sits with the Scottish Government and has done so since last year. That move came out of the historic environment strategy and the need for a more holistic approach to Government policy on the historic environment. The power to designate the historic environment in the heritage management area will transfer to the new body, and although ministers will retain powers over properties in care, they will delegate to the new body responsibility for their operation. The new body will also get powers over conservation and collections.

Noel Fojut will tell you what I have missed out.

Noel Fojut: The key point is that the new body will do the things that require decisions based on professional knowledge. Ministers will keep the overall power of guiding and directing the organisation, as is only appropriate for an organisation that, despite its earnings, receives rather a lot of public money, but they will not get involved what you might call day-to-day casework such as decisions on individual grant applications, decisions on conservation work on individual properties or management of collections, archives and so on that have been held by RCAHMS and Historic Scotland. In general, what might be called operational activities will move across to the new body, leaving ministers to look at the direction in which the great ship historic environment Scotland is sailing instead of interfering with the work of the ship’s officers and crew.

Neil Bibby: Obviously the board will be set certain outcomes to meet in order to deliver the strategy. What will happen if the board does not achieve the expected outcomes?

Andrew Fleming: Scottish ministers have two roles: first, they have responsibility for establishing the overall policy and strategic context for the historic environment as broadly defined and, secondly, they have responsibility for setting and accounting for the organisation’s role. In response to the specific question, ministers will hold the board of the new body accountable for delivery of its targets as specified in the corporate plan, which will be agreed in dialogue between the body and ministers and which, once set, will clearly establish the body’s requirements. Through their sponsorship role, ministers will, as with any public body, hold that body to account and report to Parliament on progress.

Neil Bibby: On a more general issue, how will the merger be different from or improve on previous organisational changes?

Andrew Fleming: As we have been discussing, both at this meeting and earlier, the merger has two elements. The first is the strategy for the historic environment, which has been broadly developed and shared with the sector and which sets the broad direction for activity around which the whole sector can promote better benefits for the historic environment and the people of Scotland.

The other element is the simple merging of two bodies. The benefit of creating a new body to deliver the strategy is that we will get much more partnership working and cohesive activity, which will have more impact on communities.

You might also want to ask me where those benefits actually come from. They will come not only from the educational functions that we have heard about but from place making. The historic environment is a key element of making good places for people to live and work in by providing
context and connecting them to their place. By protecting the historic environment and, indeed, enhancing it in line with the development of an area, you can create better townscapes, cityscapes and places to live. People will engage in all of that through civic participation and volunteering, and you will create a better sense of wellbeing in ordinary people.

There are other elements—[Interruption.] I am sorry, Mr McArthur. Did you want to say something?

Liam McArthur: I thought that I was being subtle.

Andrew Fleming: I could stop there, before I move on to other benefits.

The Convener: If you do not mind. It sounds fantastic—it sounds great. We have heard a lot about the strategy, but what has not been clear is who is ultimately responsible for its successful delivery.

12:15

Andrew Fleming: The strategy is essentially a partnership arrangement involving a range of different bodies that have their own reporting arrangements: the National Trust for Scotland; voluntary sector organisations; individuals, to an extent; and professional bodies and groups. In a sense, you are asking whether Government can control all those entities, and clearly it cannot. However, Government can, through the cabinet secretary chairing that board, attempt to bring the bodies together so that they move together to deliver good outcomes for the historic environment. Government can persuade, encourage and engage to try to achieve that outcome.

Ultimately, the cabinet secretary has taken the strategy on board. It was published by the Scottish Government, but we have made very clear that it is the product of collective endeavours around the sector. We are taking it forward through the governance structure and the various working groups that sit underneath it.

The Convener: I am not entirely convinced by that. Effectively, the Government publishes a strategy and delivery is a collective responsibility—I know that that sounds very touchy-feely—for the sector, but I am not getting a clear idea of responsibility and accountability from your answer.

Andrew Fleming: We might be challenged on whether the Government can tell the NTS what to do or not do, and clearly the answer is that it cannot, because the NTS is a private body. However, the NTS is a fundamental player in the delivery of the historic environment strategy, so we want to work with it, and the cabinet secretary has already had many discussions to agree to take forward collectively common projects and plans. That is the broad structure. Individual groups sit underneath that, and they seek to take forward individual endeavours in the areas of education volunteering, working with local government and heritage tourism. One of those groups is looking at how we measure success, so that the sector can agree what good outcomes are and can collectively endorse them.

Achieving such outcomes is similar to the process of taking forward early years intervention, in the sense that it involves bringing people and resources together, as happens in justice and in other policy areas where such endeavours are needed.

Liam McArthur: It is interesting that you point to early intervention. In relation to the Children and Young People (Scotland) Bill, which has just completed its passage, there was a concern that was similar to the one that the convener has alluded to: if everybody is responsible, there is a danger that nobody is responsible. In a sense, that was one of the underpinning arguments for the named person approach.

In your initial remarks, you seemed to suggest that the merger of RCAHMS and Historic Scotland is critical to the delivery of the strategy, and that without the merger of the bodies we could not have a strategy in anything like its current form. Is that your view?

Andrew Fleming: It would be much harder without the merger. The sector is quite diverse in nature and has a lot of players. The strategy also delivers a policy outcome that supports many others. It is more of a second division issue rather than a first division issue. It supports planning and place making, wellbeing, regeneration and other public policy areas. By bringing the sector together around a strategy with shared outcomes, you can have much more influence in other public policy agendas.

Liam McArthur: I can understand the rationale for bringing the bodies together and the benefits that you expect from that, but you could lose the distinctive characteristics of the two individual organisations. RCAHMS is very much an impartial organisation that provides advice and support and which operates and functions differently from the way in which Historic Scotland operates and functions—Historic Scotland, perhaps of necessity, has been more partial. It is difficult to see how, in bringing those two organisations together, you can retain the best elements of both. In order to function, an organisation must adopt a character, whatever that character may be. Is that something that we will lose?
Andrew Fleming: In creating an NDPB, one of things that we are doing is giving a proper place to the professionalism and professional decision-making that sits around all the decisions. Although I see how the royal commission could be typified as being more of an academic and objective institution, professionalism and objectivity also exist within Historic Scotland around decisions on consents, listing and so on. Academic rigour is part of—

Liam McArthur: I was in no way suggesting that there is a lack of professionalism or rigour within RCAHMS.

Andrew Fleming: I know.

Liam McArthur: I was talking about the way in which it engages with the sector and how that reflects the character of the organisation. I am struggling to understand how that can be retained. Presumably, the new body will have a character and approach that will be consistent across the organisation.

Andrew Fleming: Noel Fojut will speak to that.

Noel Fojut: I should probably declare an interest, in that I worked for Historic Scotland for 30 years before I transferred to the Scottish Government about six months ago. It is the case that the organisations have distinct characters, but within the organisations—particularly within Historic Scotland—there are also distinct sub-characters. When one deals with the architects about a matter of architectural conservation, one uses language that is different from the language that one uses when dealing with the commercial and tourism people about developing a tourist activity. I am sure that those sub-cultures will exist in the new organisation: different types of language will be used and different types of interaction will go on, depending on the purpose of the interaction.

On the question of there being a clear separation, people sometimes forget that it is not always useful to have impartial information. At the moment, a developer or someone who is thinking about buying a plot of land would go to RCAHMS and ask about the historic environment features of interest on that land, and it will give a helpful and responsible answer. Nowadays, people can probably do that for themselves online. However, the next question will probably be, “What does that mean for what I can and can’t do on that land?”, to which the answer is that they will have to speak to Historic Scotland about that. That aspect of the distinct cultures, which might be holding things back, will disappear under the bigger vision of working together.

There will be swings and roundabouts. There will still be distinct cultures within the organisation, and they will evolve and change over time. The Historic Scotland that I worked for until recently is nothing like the organisation that I joined 30 years ago. The key question is whether those changes in culture are driving the organisations towards more openness, more joining up of information and providing services that are better for users. That must be the key test, and I am sure that ministers will hold the new organisation firmly to account in that regard.

Liz Smith: I seek clarity from Mr Fleming on the question of strategic accountability. Before I ask my question, I declare an interest as a member of the National Trust.

Mr Fleming, you said that the strategy was a collaborative piece of work that put together a lot of people who decided the key strategic points. I think I am correct in saying that you said that the National Trust was part of that work, but that, obviously, the Government is not able to tell the NTS what to do.

What happens if the strategic interests are not quite agreed on a specific issue that relates to a body over which the Government does not have that power of direction? Who is accountable for any problems in the strategy?

Andrew Fleming: It is very difficult to put that into a specific context. The point is that we collectively agree that these are good outcomes. I imagine that there will be ways of working around any particular issue but, by bringing everyone together to agree the strategy, we have a moral agreement that it is a good thing and that we should all work together. Arrangements will always need to be made around who is best placed to take forward individual projects—who is available to do them and who can do them—but those arrangements will have to be negotiated on the ground in each individual circumstance.

The document is very much akin to George Reid’s team Scotland approach, which was about working together across the sector, sharing rather than competing and collaborating or finding ways to work together. Some of the principles of sharing information and working together are enshrined in that approach. In many ways, it could be described as a very simple approach: we all want to follow it, and we do so throughout most of our lives. The document is important for the sector. People who give evidence to the committee will be able to report their own view of it, but it will take the sector forward in agreeing a platform of activities.

Liz Smith: I understand that. I listened carefully to the answer that you gave to the convener and I totally accept and fully understand how the strategy has been developed. I am asking about a potential situation in which an issue arises because the strategy is not being delivered
particularly effectively. It is the accountability that I am interested in, given that the Scottish Government does not have terribly much say over some of the players or institutions that have developed the strategy.

Andrew Fleming: At the end of the day, as we have published the strategy, it will be for us to report, on a regular basis and, we hope, collectively with the sector, on how the sector is progressing. We will report transparently through that process, so any particular issues will be identifiable. I am not sure whether that answers your question.

Liz Smith: Like the convener, I am not sure that I am entirely persuaded.

Andrew Fleming: Okay—sorry.

The Convener: As we go through the process and take more evidence, we will return to these subjects.

Mary Scanlon: I have a brief question. We know that the corporate plan will be delivered 12 months after the start-up date. The financial memorandum gives significant details on cost—no doubt it achieved that following discussions with the two organisations. Is there sufficient baseline data? Have key performance indicators been agreed at this stage? Did you have absolutely clear information on the national outcome KPIs as well as on the cost savings in providing the information in the financial memorandum?

Andrew Fleming: We worked closely with the organisations to develop the best available information for the financial memorandum. As with all information, it has a particular currency and is of its moment, but we tried to respond to the uncertainties by identifying where there is greater or less certainty in the data and then using optimism bias. That optimism bias was applied in the calculations.

Mary Scanlon: You say that you worked with the organisations to develop the information, but I would have thought that the organisations would have done more to develop KPIs. You say that they are totally signed up to this and that the cost savings will be achieved.

Andrew Fleming: Yes.

Mary Scanlon: The baseline data is there.

Andrew Fleming: Yes, it is in the financial memorandum, and we believe that it is robust and accurate.

Mary Scanlon: On KPIs, I have been looking at the national outcomes and, as an economist, I believe that some of them are slightly difficult to measure. The one that is most relevant to the issues that we are discussing is national outcome 12, which is:

“We value and enjoy our built and natural environment and protect it and enhance it for future generations.”

What key performance indicators are being developed or are in place so that we can measure progress on that?

Andrew Fleming: From memory, the current indicator for that is buildings at risk, which is an indicator of list A buildings that are assessed as being at risk. By risk, we mean that they have an uncertain future. That indicator is measured through the Scotland performs website and within the national performance framework. It is monitored on a two yearly basis, I think, using data that is collected by the royal commission. That is a proxy measure for the condition of our historic environment.

Mary Scanlon: I can understand very well the point about buildings at risk, but how do you measure how much we “value and enjoy” the built environment?

Andrew Fleming: There are various measures of levels of participation in the historic environment, such as measures of visitor numbers, recorded access to records, recorded school visits and the number of members of the National Trust for Scotland and Historic Scotland. There are other measures around events such as doors open day, Scottish archaeology month and volunteers, which I mentioned.

Mary Scanlon: Do you expect all those measures to be enhanced as a result of the merger?

Andrew Fleming: Absolutely. Jumping back to the strategy, we are trying to share that measurement across the sector. Some of the measurements are similar to the ones that the NTS uses. If we bring them together and create a common framework for measurement, we will understand not just what individual organisations contribute to the historic environment but the broader collective benefit.

12:30

Colin Beattie: I have been looking at the issue of definitions. Some of the terminology in the bill seems to be capable of being interpreted quite widely. Also, there is no definition of the term “historic environment”, and the policy memorandum is a wee bit abstract on that. Is that a problem?

Andrew Fleming: We do not believe that it is. The historic environment is one of the issues that we addressed as part of the historic environment strategy, and it is defined in that document. The sector wrestles with exactly what the historic environment is, and we explored that issue when we started discussions around the strategy. The
definition that you see in the strategy is a product of the sector coming together to agree a common definition that seeks to be a focus, because in the past different organisations have identified it in different ways. In the strategy, we have a common definition that resonates for all the organisations that are involved.

Colin Beattie: There are other issues of terminology. For example, what is a collection and what is an object? Is there not a danger of overlapping with other organisations?

Jennie Marshall (Scottish Government): We certainly recognise—we refer explicitly to this in the policy memorandum—that many organisations hold collections that relate to the historic environment, and we value their place within the overall framework.

As you would expect, there are existing overlaps between the two bodies and other collections in terms of the broad definitions of what they may collect. However, there will be a collecting policy for historic environment Scotland that is much more about refining exactly what it will collect. As Diana Murray mentioned, there have already been discussions with, for example, the other national collections, and we are working closely with bodies such as National Records of Scotland in developing the policy to ensure that different collecting bodies have complementary, but not overlapping, roles. Ministers are dedicated to the success of all the collecting bodies in the portfolio, and to have unhelpful overlaps would be detrimental.

Colin Beattie: I note your intentions, but are there any legal issues here? Are you going to encounter legal problems because you do not have clear definitions of any terms?

Jennie Marshall: The Government’s view is that there are no legal issues with the definition. Many other terms in the bill are also not defined, and many of them are also found in other bills. For example, the word “education” would not necessarily have a specific definition in a particular bill. It is important that policy and practice over time are allowed to define how the terms are used.

The point that was made earlier about electronic formats of collections is important. We hope that the legislation will exist for a long time. Electronic formats could not have been envisaged, say, 50 or 100 years ago, and we do not want to unnecessarily restrict the body’s collecting practices in the future. As we cannot envisage the circumstances that it will face, we have to ensure that the bill is future proof so that the body can flex and change to meet the demands of the day.

The Convener: Can I take that a step further? I seek some reassurance from you on the definition of the term “historic environment”, which Mr Beattie started his questions with. If there is not a clear understanding by all bodies of exactly what the term means, is there not a danger that organisations could stray beyond their responsibility into areas in which other organisations work? To put a common phrase on it, is there any danger of a turf war between the new body and other bodies if there is not a clear definition of historic environment?

Noel Fojut: As Diana Murray and Jennie Marshall alluded to, the way in which the organisation works relative to other organisations will be the key.

The difficulty with a tight, clearly defined and specific definition of the term “historic environment” is that although there is agreement about what that is now, the understanding changes. For example, 20 years ago everyone was interested in battlefields. However, if the definition of historic environment had been taken to be what Historic Scotland did, that would not have included anything to do with battlefields. Having a loose or flexible definition, or not having a definition at all, allows certain aspects that might have been ignored previously to be recognised as heritage or historic environment; proposals can be worked up about how to integrate that with the generally accepted understanding of historic environment and move forward.

If rigid boundaries are put around what the body would do, in effect that would fossilise things. For example, in 50 years’ time, everyone could end up asking what has happened about the heritage of X area that is not regarded as historic environment. It is clearly understood where the organisation works relative to other organisations. To put a common phrase on it, is there any danger of a turf war between the new body and other bodies if there is not a clear definition of historic environment?

Noel Fojut: It is clearly understood where the boundaries are—the strategy sets out how they are defined. Nonetheless, the boundaries are quite
fuzzy. They include associations and what sites, monuments and buildings mean to people. Those meanings change, so around the core of the physical surviving remains of the past is a hugely important cloud of associated significances and meanings.

It is very difficult to legislate directly for significance, meanings and so forth so, in a sense, it is necessary to concentrate on the work that can be measured as the physical core of the historic environment. However, that is done in such a way as to not neglect the fact that that historic environment matters to people because of significances, which could be personal or historical associations and either very individual or general things. Consequently, the work centres on what survives from the past. Why people value and benefit from the historic environment is largely about what that means to them. It would be extremely difficult to capture that meaning in a definition that would sit happily in a piece of legislation.

The Convener: I am sure that we will receive evidence on the definition from other organisations, so we will be interested in how they view that particular point.

Liam McArthur: You will have heard the exchange with Ian Walford and Diana Murray about the calls in some sections for the merged body to have a more regionalised structure. As I understand it, that approach has been taken south of the border subsequent to merger. I suppose that that is an approach that is seen in SNH and other organisations north of the border. Has much thought been given to that? What can you say about what is envisaged in that regard?

Andrew Fleming: We would see those as operational matters for the board to consider. We would want the body to operate efficiently and effectively and to have geographic connections. To some extent, Historic Scotland has much of that structure in place through the conservation depots that exist across the country and its heritage management team has geographically specific people focusing on individual local authorities. Furthermore, Historic Scotland is engaging in and supporting community planning partnership structures in that process. The new body would need to take a look at that and agree how best to engage at a local level and to put in place that structure as appropriate.

Liam McArthur: That is helpful. I dare say that I will follow up on that issue. The apprehension with mergers is that what looks administratively efficient does not necessarily give the organisation the character or the reach into those places outwith the centre.

Ian Walford and Diana Murray gave a fairly thorough going over of the justification and the benefits to moving to charitable status. I am interested in your take on some of the concerns that have been raised about a crowding-out or displacement effect were historic environment Scotland to move into the area where the National Trust, university departments and so on currently seek vital funding for their operations, and whether what you have is less of a partnership than a dominant player around which everybody else is forced to operate on its terms.

Andrew Fleming: For me, that is the debate that sits in the strategy. It is about growing the cake, as Mr Walford said, and ensuring that ministers hold the body to account to support the delivery of the strategy. In terms of their role for the wider historic environment, ministers will not want the unintended consequence of bodies suffering as a result of an organisation that, through its scale, is more successful or displaces money. That is not what the approach is about.

We have spent a lot of time in encouraging a different approach and a different level of engagement to foster partnership engagements, working with organisations at community level and community groups. That is very much what we want the new body to do and that sits within the drafting of the responsibilities in the bill, regardless of whether the new body gets charitable status. It is for the board to decide on charitable status and for the Office of the Scottish Charity Regulator to approve it, once the board is established. We have said that the body will work in partnership with organisations, which is fundamental. We would not expect to engage disproportionately in that process.

Liam McArthur: That is an interesting perspective. Can you see a situation whereby the relative roles and the types and sources of funding are not necessarily set down in legislation, which would be inappropriate, or even in a more formalised sense but are presented in such a way that it is clear where the sources of funding are likely to come from, not just for the merged body but for the other players and partners in this sphere, in order to provide some reassurance that we are not simply seeing Peter being robbed to pay Paul?

Andrew Fleming: If you look at the financial memorandum, you will see that most of the benefits that we have identified from charitable status relate to gift aid and rates relief, primarily, with a small element of donations. There is no expectation that suddenly there would be a great opportunity to secure money at the expense of other organisations. As we have said, that would just destabilise the sector and not achieve a positive outcome; it would make it even harder for
the organisation to work with partner organisations if they become comparable. We do not see that becoming an outcome. Indeed, ministers can use their broader sponsorship powers—the powers of holding the body to account—to ensure that that behaviour does not happen.

**Liam McArthur:** Again, this is probably less for the bill and more for the strategy, but is there anything that provides a degree of comfort that we will not see lottery funding in particular simply being used to displace funding that has traditionally come from central Government?

**Andrew Fleming:** At the moment, Historic Scotland and the royal commission can apply for, and to some extent have benefited from, heritage lottery funds.

**Liam McArthur:** It is the additionality that has been key and has underpinned the rationale for lottery funding. As I said, this is probably more for the strategy than for the bill, but is there anything that would give some comfort that we will not see that additionality eroded?

**Andrew Fleming:** Primarily, we would not be seeking for the organisation to pursue those particular avenues through the sponsorship role. Where it is appropriate and where the organisation enters into partnership with other organisations and funding is possible, that is fine, but we would not be seeking to compete there. We would seek to hold the organisation to account through the sponsorship role as well as through the discussions in the strategy to ensure that people are working collaboratively. For example, the heritage tourism group involves NTS, the Historic Houses Association and Historic Scotland working together to grow the heritage tourism cake. That is their raison d’être and that is why they will work together.

It is not about gaining advantage at the expense of another player but about working together to grow the tourism cake and collaborate on it. The collaborations could be around issues such as ticketing and other elements that are appropriate for the bodies. We do not necessarily want to specify what they are, because the organisations have to decide that. However, those are the sorts of arrangement that we want to be achieved through the strategy discussion.

**Clare Adamson:** What are the technical reasons for the necessity of dissipating RCAHMS by primary legislation? Why has that approach been taken?

12:45

**Noel Fojut:** The royal commission was set up by royal warrant in 1908, so it is in itself part of our cultural heritage. The normal provision when such a body ceases to undertake its functions is that it simply ceases to exist. Once the new organisation has been set up, the board has had its six-month breaking-in period and everyone is convinced that it is the correct time to transfer the staff, assets and responsibilities across to the new organisation, RCAHMS would cease to have any purpose.

We have looked into this and, strangely enough, there is no requirement to do anything other than say that the body is finished with its work. There is no process whereby Her Majesty has to issue a dissolving warrant; it is sufficient to say, as we have provided in the bill, that at a particular date the provision will be commenced that the royal commission will be dissolved. We had some interesting discussions about the word “dissolved”, which seems a bit disrespectful. However, that is the word that is used in statute, so we had to stick with it. We were hoping, though, for something a bit more celebratory.

**Clare Adamson:** May I have a final question, convener?

**The Convener:** I just want to clarify a point first with Mr Fojut. My understanding is, as I think that you have just said, that there is no legal necessity to put the dissolution of RCAHMS in the bill and that it can just say that it is finished.

**Noel Fojut:** That is correct. We could simply have let the body disappear.

**The Convener:** So why did you provide for its dissolution in the bill?

**Noel Fojut:** We did so simply for the avoidance of doubt, otherwise people might have said in three, four or five years’ time that nobody had told them that RCAHMS had stopped functioning, or people might have wondered whether the body was still hiding out there undertaking some very small function that they were not aware of. We put the dissolution of RCAHMS in the bill so that it is clear that there will be a point at which it will be decided that everything is safe to go to a handover and that the commissioners can be stood down with, I hope, a degree of honour and celebration. However, you are right to suggest that it is a belt-and-braces approach; we could simply have decided to let the royal commission die once all its functions were gone, without any mention that that was the case. However, it seemed appropriate to mention it for the sake of clarity.

**The Convener:** Thank you. Ms Adamson, do you want to ask another question?

**Clare Adamson:** No. That is fine. Thank you.
know that you will come back to us on some issues that you mentioned earlier.

Our next evidence session on the bill is likely to be in May, but it will certainly be after the Easter recess because we want to wait until all the consultation evidence that we have asked for has come in. Once all the written evidence is in, we will pick up the bill again.

I hope that this evidence session has been useful for members. It was important that we got an early start to discuss the bill with the bill team and others. I thank you all again for your help.

Meeting closed at 12:47.
EDUCATION AND CULTURE COMMITTEE

EXTRACT FROM THE MINUTES

13th Meeting, 2014 (Session 4)

Tuesday 6 May 2014

Present: George Adam, Clare Adamson
Jayne Baxter, Colin Beattie
Neil Bibby (Deputy Convener), Stewart Maxwell (Convener)
Gordon MacDonald, Liam McArthur
Mary Scanlon

Also present: Liz Smith

Historic Environment Scotland Bill: The Committee took evidence on the Bill at Stage 1 from—

Dr Simon Gilmour, Vice-Chair, Built Environment Forum Scotland;
Councillor Harry McGuigan, Spokesperson for Community Well-being, COSLA;
Alexander Hay, Chairman, Historic Houses Association Scotland;
Kate Mavor, Chief Executive, National Trust for Scotland.
Scottish Parliament

Education and Culture Committee

Tuesday 6 May 2014

[The Convener opened the meeting at 10:06]

Historic Environment Scotland Bill: Stage 1

The Convener (Stewart Maxwell): Good morning, and welcome to the 13th meeting in 2014 of the Education and Culture Committee. I remind all those present that electronic devices should be switched off at all times because they interfere with the broadcasting system.

Our first item today is to continue taking oral evidence on the Historic Environment Scotland Bill. In March, we heard from Historic Scotland, the Royal Commission on the Ancient and Historical Monuments of Scotland and the Scottish Government bill team. Next week we will be in Orkney for a fact-finding visit and will meet a range of people involved in the management of the historic environment there.

Today, we will take evidence from a panel of four witnesses. I welcome Councillor Harry McGuigan, from the Convention of Scottish Local Authorities; Kate Mavor, from the National Trust for Scotland; Dr Simon Gilmour, from the Built Environment Forum Scotland; and Alexander Hay, from the Historic Houses Association Scotland. I thank all of you for your written submissions, which are very interesting.

We will go straight to questions from members. I ask members to indicate when they wish to come in.

I will start by asking the panel about the clarity of the role of the proposed historic environment Scotland body. In written evidence that we have received, a number of witnesses suggest that there seems to be a bit of confusion about exactly what the practical role of the proposed body would be. Do you share that sense of confusion? Do you believe that there is a shared understanding of what the term “lead body” means in practical terms?

We will start with Harry McGuigan.

Councillor Harry McGuigan (Convention of Scottish Local Authorities): I do not know about shared understanding—to be honest, I think that that is very much a subjective consideration—but I certainly feel that we are moving in the right direction and that there is a collaborative spirit behind the bill, which is a big step forward.

The devil is, and will be, in the detail. At the moment, very broad and general terms are being used, but good work is being done. We are certainly comfortable with it, but we are guarded to some extent. We will be vigilant in order to ensure that the collaborative working becomes a reality and that we start to see some mainstreaming, as opposed to us all sitting in our own wee trenches doing our own little bit.

I hope that that helps, convener.

The Convener: Thank you. I ask Kate Mavor to respond next.

Kate Mavor (National Trust for Scotland): Thank you, convener. The problem with clarity is to do with conflicts of interest between different roles in the proposed new organisation. I think that we are all clear that we want to give more emphasis to the importance of the historic environment. As Harry McGuigan said, we want to collaborate as a sector and we therefore welcome the advent of the strategy. However, unresolved conflicts of interest will be inherent in the structure of the new organisation, and we have been quite open about the reasons why we are worried about them.

The particular conflict of interest will be the role of the regulator. There are bodies throughout the sector—private, public and charitable—that can cover most of the activities that we would expect in the area. The one organisation that can certainly make the biggest difference is the current Historic Scotland, which can do so as a regulator.

If the body that is the regulator is also responsible for operating heritage visitor attractions and giving grants, and it is supposed to be responsible for maintaining properties, there is an inherent conflict of interest. If the body has a lot of properties to maintain and must bring in visitors and keep the business going to fundraise for itself, there is a danger that the regulator role will not get the attention that it needs, because it is a smaller part of the body’s responsibilities.

The Convener: Members have questions about conflict of interest, so we will go into that in detail later.

Kate Mavor: Okay. You asked about clarity, and there is a bit of a muddled perception about how all the functions will come together.

Dr Simon Gilmour (Built Environment Forum Scotland): There is a need for clarity, and BEFS highlighted the issue in its submission.

Of necessity, the bill lays out the new organisation’s functions in very general terms. There are many other organisations in the historic
environment world that do some of those things. For example, local authorities have a clear and important role in

“protecting and managing the historic environment”.

We would like clarity about the role of the new organisation relative to local authorities in that respect. Another of the functions that are set out in the bill is:

“learning about, and educating others about, the historic environment”.

Third-sector bodies such as Archaeology Scotland undertake such a role. We would not want the new body somehow to take over doing what other organisations are doing—and doing very well.

Before we came into the room, we were talking among ourselves about projects that encourage community involvement. One such project is adopt a monument, which Archaeology Scotland—a BEFS member—runs. We are keen for clarity in that regard, or at least for reassurance that the new body would not trespass into such areas. It should be very much an enabling body that allows things to happen and encourages others to take things forward, rather than one that tries to wrap them up in its own functions.

That is our issue with regard to clarity on functions. We accept that the bill must be worded in general terms, to enable the new organisation to go forward and do its best for the historic environment, but we would like reassurance—in the policy memorandum or elsewhere—that it will not trespass into other areas and stand on people’s toes.

Alexander Hay (Historic Houses Association Scotland): The HHA is reasonably happy about the purpose of the merged body. I very much back up what Kate Mavor said about how it will work in practice. That is all that I have to say on that.

The Convener: In written submissions to the committee, the question has come up of what the term “lead body” will mean in practice. None of you mentioned that. What are the practical implications of historic environment Scotland being the lead body, in relation to the body’s operation on the ground? Do you have a clear view of what that means? Dr Gilmour talked about the role of local authorities, and in written evidence we heard about the proportion of properties and the environment that Historic Scotland controls. Is there a practical purpose of historic environment Scotland being the lead body?

Dr Gilmour: BEFS accepts that there is a requirement for a champion or lead body that allows us all to come in and work through the strategy. A new organisation is being created to help to lead the strategy—and we need an organisation to take that forward. If we were not merging the Royal Commission on the Ancient and Historical Monuments of Scotland and Historic Scotland, we would expect one of those bodies—if not both of them, jointly—to help to take the work forward. There is no doubt that other major organisations that are out there, such as the National Trust, would also have lead roles in certain areas—Kate Mavor can speak about the National Trust much better than I can.

10:15

A lead body, which has general functions and can ensure that everyone can take forward the betterment of the historic environment, is a positive thing. However, confusion exists—even in the eyes of professionals—about the respective roles of RCAHMS and Historic Scotland. The merger of those two organisations would, I hope, remove that confusion and help us to focus on progressing the very good aspects in the strategy that are for the betterment of the historic environment.

I do know whether that answers your question.

The Convener: It helps.

Councillor Harry McGuigan: Leadership requires an understanding of those who you are leading. Therefore, it is important that we do not end up identifying a lead body that is authoritative and which directs and makes requirements of its followers or its members. We need to be careful about that because sometimes people interpret that leading role in almost a Stalinist way. That should not happen.

The Convener: I would hope that Stalinism would not be part of the principles underlining the new body.

Councillor Harry McGuigan: I was not directing that comment at you, convener.

The Convener: I appreciate that clarification, Councillor McGuigan. [Laughter.]

Kate Mavor: An important role of a lead body would be to invest in the research that allows us to understand better the historic environment, and it must have the resources to do that. It would also need to keep, as RCAHMS does, a central archive of what matters to the Scottish historic environment and to promote that, so that people could go to the body for information to help them understand their environment.

On its regulatory role, the body would need to keep a check on people putting things before the preservation of the historic environment and to ensure that a right of appeal exists if local people feel that matters are going against them with regard to the protection of what they care about in their historic environment. A lead body should be
where people turn when they need advice, information, perspective and a champion. Those are the valuable roles that a lead body would bring.

Alexander Hay: Both Simon Gilmour and Kate Mavor have used the very important word “champion”, which is what we would want the new body to be. On the whole, we have found that Historic Scotland has been very supportive of the private sector, and we would very much like that support to continue under the new body.

Liam McArthur (Orkney Islands) (LD): We have had evidence from a wide range of stakeholders, including the Association of Local Government Archaeological Officers. It picked up the point about the clarity of the lead role, particularly with regard to the advisory capacity that Historic Scotland and RCAHMS have had to date, and the question whether there is a risk that, in referring to a lead body, the advisory nature of the relationship may be misunderstood and local authorities may find themselves under more pressure simply to take the advice as beyond question and as a priority as regards the scheme of things. Is that something that should be clarified in more detail in the bill, or is there a level of understanding about how the approach operates currently that would give confidence that it is not a concern that should trouble us unduly?

Councillor McGuigan: Local authorities are working very hard to ensure that we get a sensible understanding across the working arrangements from the viewpoint of not only local authorities and historic environment Scotland but the voluntary, third and private sectors and so on. We must make sure that a coherent approach is adopted by the individual agencies involved. We are anxious to see such co-production becoming a reality. It has sometimes not been the case in the past when we have found ourselves pulling in opposite directions, which is unhelpful and unlikely to secure the protection and promotion of the historic environment that we all want to see.

Liam McArthur: That answer is helpful. It probably illustrates the point that, when there is agreement about the approach that should be taken, the advisory role that the new body will play will simply reinforce that approach, which is extremely helpful. However, what will happen when the expertise of archaeological officers within a local authority is at variance with the advice from the new body? Is there a risk that, by setting up one body as the lead body under the legislation while giving local authorities lead authority in that area, we will have a conflict that will be more difficult to manage than it is at the moment?

Councillor McGuigan: I do not think that such a conflict should necessarily arise. Indeed, I would be very concerned if it did, because that is what we are trying to avoid.

It is certainly important, from the local government point of view, that we understand how best to use the local resources and the local expertise of people who understand the locality, what the strengths and weaknesses are and what resources are there to do things. That does not mean that people with local expertise have a prerogative on wisdom, but they will have a significant input to make. We can speculate about the possibility of an adversarial approach, but I do not think that it will happen—I hope that it will not.

Liam McArthur: I am not suggesting that there will be an adversarial approach, but I imagine that there will be areas where there are differences of opinion—perhaps on the means of achieving a shared objective.

I am trying to establish whether the bill as it is set up may make managing that relationship more problematic. On the one hand, we have the local authority, which has responsibility and may have a more nuanced understanding of how a particular site or monument fits within the local environment. On the other hand, we will have historic environment Scotland, which may be giving the local authority advice on management issues that is slightly at variance with the approach of the local authority. How will such differences be settled when one body is a lead body under the legislation and the other body has the lead in managing a particular site or monument?

Dr Gilmour: I feel—I will alienate all my Historic Scotland friends now—that, right now, the situation is worse than the situation that we will have with the set-up of the new body.

Local authorities view advice from Historic Scotland, for example, as coming directly from the Scottish Government—from ministers—because Historic Scotland is a Government agency. The bill is setting up an independent non-departmental public body, so the advice, experience and knowledge will be coming from an independent source rather than from the Scottish Government itself. In my mind, it is likely that local authorities will not view the advice of the new body as having the same level of importance as advice from Historic Scotland, simply because of how the advice-giving body will be set up.

Having said that, we in BEFS certainly think that there is potential for the bill to be more explicit with regard to the relationship between the new body and local authorities. The bill should perhaps say that there is an advisory capacity for the new body to give advice and support local authorities in the crucial jobs that they do—be they archaeological or conservation officer jobs. There is potential to
explore that area a bit further in the wording of the bill.

As regards whether local authorities will take the advice to heart to a greater or lesser extent than they do currently, my own particular feeling is that local authorities will probably take the advice from the new body to heart to a lesser extent than the current advice from bodies such as Historic Scotland.

**The Convener:** That is interesting. We move to questions from Clare Adamson.

**Clare Adamson (Central Scotland) (SNP):** Thank you, convener.

Some local authorities still have direct control over the historic environment in terms of their responsibilities, but some local authorities have set up cultural trusts to look after the historic environment. Might that complicate things, or is there an opportunity for better communication? I want to gauge your opinion on that.

**Councillor McGuigan:** That is a good observation. I share the concern about ensuring that we understand clearly what arm’s-length organisations are doing and ensuring that they dovetail with the local government position in relation to the new body. I am determined not to allow a situation to develop in which a negative effect comes about because organisations are at arm’s length. That does not worry me at the moment, but we must be alert to the possibility.

**Dr Gilmour:** Various models for delivering expertise are out there already. Trusts are only one model; in some circumstances, commercial companies provide advice—particularly archaeological advice—to local authorities. However we describe the relationship between the new body and local authorities, we must find a wording that covers the way in which local authorities get advice. I know that that will be difficult, but I do not have to write the provisions, so that is fine.

**Liz Smith (Mid Scotland and Fife) (Con):** Good morning. I will ask about lines of accountability for the strategy. When we took evidence from Historic Scotland and RCAHMS, there was a little confusion about who exactly will be accountable for the new body’s strategy. Will you comment on that?

**Dr Gilmour:** I will throw in my tuppenceworth. The strategy is a co-production that was put together not just by the Government but by lots of organisations and individuals who collaborated to bring out the ideas. I do not know whether I see the ultimate responsibility in exactly the same way as everybody else does, but I think that we will have a three-tier system of governance that will bring everyone together to pull in the same direction. In doing so, each part of the governance board and the wider sector will, I hope, be trying desperately to deliver on the strategy. Each organisation will be responsible for its own part.

The Government will have its role to play through HES and the historic environment policy unit, which I presume will be monitored and taken to task through the corporate plan and so on for delivering on the strategy. The NTS will look to deliver the best benefits and will have a responsibility to do that through its trustees. The Society of Antiquaries of Scotland, for which I work, will also try to deliver aspects of the strategy. We will monitor our progress on that.

**Liz Smith:** That is helpful information about the individual responsibilities, but I am driving at the overall responsibility for the strategy. As you say, the Government and the new body’s trustees will have a role to play. How will all that come together? If a problem with the strategy arose, how would that be worked through? Whose final responsibility would it be to decide on the overall strategy?

**Dr Gilmour:** The governing board that will be pulled together, which the Cabinet Secretary for Culture and External Affairs will chair, will have ultimate responsibility. The board will incorporate other members of the sector and it will be given the task of ensuring that we deliver on the strategy.

I see nothing in the strategy so far that I could disagree with. It is not a disagreeable strategy, so all that we could end up with is disagreement about how to deliver aspects of the strategy. We deal with issues every day in the sector and, through the strategy process and a lot more collaboration in recent years, we have managed to help each other to work through those issues and get to a positive end point instead of getting stuck on the negative ones.

**Liz Smith:** Councillor McGuigan said that everybody is relatively comfortable and that a lot of things in the strategy look extremely good. In the past, when we have had to oversee the mergers of other bodies, the overall strategic direction has not been clear, which has caused difficulties. I would be more comforted if there was absolute clarity about who has the overall responsibility and decision-making power, particularly because the Government is involved on an arm’s-length basis. If that means that the Government sets the overall direction for culture policy, we need to be comfortable that the trustees and the groups that have been participating in putting the strategy together are singing from the same hymn sheet. Would you accept that?
Dr Gilmour: Absolutely. For the first time in a long time, we are all singing from the same hymn sheet and pulling together.

I find it difficult to think of how we can make co-production—if that is the new buzzword—a reality in the historic environment without the Government relinquishing some control. Either everyone contributes and takes things forward in an almost ground-up approach or we have a diktat coming down from the top that says what the Scottish Government wants and so on. It is difficult to strike a balance, but we are approaching it.

Liz Smith: That is correct when we are talking about the production of the strategy, in which a first-class job has been done by pulling the sets together. However, I am interested in the delivery of the strategy and how, if we encounter any difficulties, as we have when things have not worked out with other bodies, we will determine where the line of responsibility lies. That is a concern.

Councillor McGuigan: Single outcome agreements are an excellent example of how we ensure that a clearly understood agenda or strategy is being followed by the partners involved. That is the community planning partnership locally.

If that process starts to go awry, we should all be concerned, including local authorities and CPP members. One of the good things about some of the legislation that is coming out is that there will be a mandatory expectation on some of the CPP partners—it will not be just the local authority that is tied to it. That will provide the opportunity to review and challenge any failure on the part of any of the agencies that are involved in the working group that drew up the strategy and that will be responsible for monitoring progress and having oversight of that strategy.

We must have confidence in that process. Governance is about the Scottish Government, local government and the United Kingdom Government working in a concerted and sensible way. Sometimes, the process does not work as it should, but it should follow the spirit of the single outcome agreements and make sure that things happen. There will be situations in which difficulties arise and we get stubbornness on the part of certain agencies, but if the arguments are strong, persuasive and intelligent enough, that is the way to move forward.

Kate Mavor: It is difficult to say at this point who will be accountable because we do not have any outcomes under the strategy. As Simon Gilmour said, it is all motherhood and apple pie just now because we are all proud of the strategy and it says good things, but who is going to be on the board that will oversee deliverables, outcomes and timescales? That is who will be accountable—the board, whose members are yet to be determined.

If we are to set objectives and outcomes and expect people to be accountable for them, we need to make sure that the funds are available to enable the delivery of those outcomes. It is not yet clear where that money will come from or how it will be distributed. As has been said, we would all love to say that the strategy shows the world that we would like to deliver, but everything that needs to be delivered must be financed, and the money must be clearly available for particular things because our individual organisations all have their own priorities to deliver.

As the chief executive of the National Trust for Scotland, I am accountable to the trustees. We have our own strategy and plan, and I am to deliver that for the trustees and members. If the strategy aligns with that and I can deliver both, I will. However, if we get to a point at which the new board says, “We want the National Trust for Scotland to do this,” and that is not what our trustees have declared as their intent, there will be a potential conflict. It is not a conflict that I foresee, as our charitable objective is to conserve and promote heritage, so it is unlikely that the strategy will not be aligned. Nevertheless, Liz Smith asks a good question. If you are going to hold people accountable, you must give them the resources that they need to deliver.

Jayne Baxter (Mid Scotland and Fife) (Lab): Mr Hay, do you think that the strategy gives sufficient cognisance to the role of the private sector, given the number of properties in Scotland that are owned privately?

Alexander Hay: Our concern with the original document was that not enough stress was laid on the importance of the private owner in the historic environment. The majority of houses are still in private hands, and I stress the contribution that they make to their local economies.

I also stress the good value that the country gets from private ownership, because we maintain the houses at our own expense. Some of the houses are owned by charitable trusts and have access to outside funds, but otherwise very little money is available to the private owner. The Historic Scotland budget does not extend very far, and the provisos that are placed on owners who wish to apply for its funds are really quite severe.

I have said at various previous meetings that I do not believe that Historic Scotland is geared to the private owner any longer. I have a little trouble with HS, which disagrees with me in that regard, but it is very hard for a private owner to undertake to do the things that an application usually requires.
I am wandering a little from the point, but I stress what a great contribution the private houses make to their local areas. Conditions are tough all round, and most of the houses are now used for business, but the general public access is difficult to deliver in the current environment in Scotland. Certain centres attract visitors, but in my part of the world, the Scottish Borders, the season is very short and it is hard to attract sufficient general day visitors to justify the costs of opening.

Jayne Baxter: Are you hopeful that the situation might improve?

Alexander Hay: We accept that the situation is as it is, and I do not see that the bill will, in itself, make any difference to that. We feel that the way forward is for the houses to remain in private hands.

It is important to retain control of the settings of the houses. We are quite concerned about the moves on land reform—I know that that is nothing to do with this committee—and the way that it is heading. There is a lot of militating against private ownership of land, which extends to questioning whether private ownership is a good thing or not, but that is for another committee.

Jayne Baxter: That is for another meeting, convener.

The Convener: I would rather that we did not get into land reform in this committee.

Mr Hay, you said at the start of your first answer to Jayne Baxter that you had concerns about whether the original document recognised the important role of private owners. Have your concerns been in any way addressed?

Alexander Hay: The bill does not specifically mention private owners as much as we would like. As Simon Gilmour said, there is nothing in the document that we can object to—it says all the right things—but I wonder whether it can deliver in the face of conflicting political pressures.

The Convener: We should always have high ambitions, though, Mr Hay.

Alexander Hay: Yes.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I declare an interest as a member of both the National Trust for Scotland and Historic Scotland.

We have received a number of submissions from bodies that feel that the term “historic environment” should be defined in the bill. One is from the Institute of Conservation, which refers to the historic environment of Scotland as “the tangible and intangible culture”.

Another is from Scottish Environment LINK, which considers that “the natural and historic environment is, in large measure, one and the same thing”.

That seems to open up a huge remit. Do we have a problem, and do we need to define the terminology?

Councillor McGuigan: I hate definitions that run the risk of restricting rather than enhancing what we are able to do.

Dr Gilmour: We said in our consultation response that there should be a definition of “historic environment” in the bill and that it should be the definition that is in the strategy, which states:

“Scotland’s historic environment is the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand.”

That includes the intangible as well as the tangible, but it puts the emphasis clearly on “the physical evidence for human activity”, which helps us to start to draw boundaries that may not previously have existed. The overlap with the so-called natural environment and the cultural environment is certainly one of those aspects.

Kate Mavor: Scottish Natural Heritage also has a definition of the natural environment, which was produced when the body was set up. That situation is analogous to the current one in that, when a new body that was responsible for natural heritage was set up, the definition of natural heritage was written into the founding documents in the same way that we think, for clarity, it should be for HES.

Colin Beattie: I always think of Historic Scotland as being responsible more for the built environment, such as historic houses and so forth. I do not think about broadening its remit to cover more intangible culture. How can we draw a boundary around that? How can we provide a definition, whether in the bill or in the strategic document, that will ensure that there is no encroachment on other areas?

Kate Mavor: Historic Scotland already has inventories for battlefields, designed landscapes, historic gardens and so on, so there are already definitions and descriptions of things that are not buildings. In designed landscapes, for example, there is the physical evidence of the human hand. Battlefields are in some cases not really anything other than a field, but the stories around them and the significance for local people of knowing what happened there are enough to make a battlefield a historic environment with not a building to be seen.

Colin Beattie: Are there any negative implications of not having a definition in the bill but putting one in the strategy document instead?
Dr Gilmour: I would argue that the definition should be in the bill as well as in the strategy document, for various reasons. One reason is simply to explain the name of the bill: it is the Historic Environment Scotland Bill, so what does “historic environment” actually mean? It would be useful to have the definition in the bill to explain that. It would also help us in our advocacy role if we could point to something that said what the historic environment is and that it is very important.

We should not get too hung up on whether the definition encroaches on other areas. Real life is messy and so is the historic environment, which includes vast swathes of the so-called natural environment because the natural environment in Scotland is created by human hand. There are very few areas that are truly natural and have never been touched by human hand. We have to expect that there will be some messiness in that respect.

We would not want the new organisation to become a silo for dealing simply with one thing and to have blinkers on instead of looking around and seeing where it linked up with all the other areas—not just the natural environment, but health, education and so on.

10:45

Colin Beattie: Do you think that there is the potential for confusion about who is responsible for what?

Dr Gilmour: I think that there will be less confusion than there is currently about which of the two existing bodies is responsible for what. Going forward, how various organisations will be funded from the public purse to deal with certain areas and where the buck will stop will be defined by activity and collaboration, which is what we all want. We do not want all the different organisations to do different things in their own silos; we want them to collaborate much more and to move forward in that way. The emphasis on the physical evidence of human activity will help to pinpoint what the new organisation will try to do.

Colin Beattie: I am just trying to think of the logic here. You made the point that we live in a messy environment and that change is happening all the time. Would it be better if the definition of “historic environment” was in the strategy document, which can be updated and changed as time goes on, rather than embedded in the bill, which would mean that primary legislation would be required for every tweak and change?

Councillor McGuigan: If we attempt to define everything, that will get extremely messy and confusing. You refer to something that I discussed earlier with my colleagues here. We tend to think of the historic environment as buildings, but the historic environment is being managed sensibly by landowners and local authorities, which do a tremendous amount of work to maintain the scenic in our localities. For example, I went for a walk yesterday morning that I thoroughly enjoyed because I was looking at areas that I visited as a child, including a waterfall. Such scenic environments are very important for enriching our communities. As you said, attention needs to be paid in that regard, which is why we must be careful not to define the strategy too much. We could write chapter after chapter about what we expect the strategy to do, but it must be more broadly based than that. There must be co-production and collaborative working that is not too regimented in terms of the buildings aspect.

Kate Mavor: Strategic environmental planning systems are really important. There is no mention at the moment of how the historic environment strategy would mesh with the local planning and the strategic environmental planning. It would be helpful if, as part of the normal planning cycle, we had to take into account historic environmental features to give a more holistic view instead of looking through a narrow lens. We want to see joined-up planning in that respect rather than separate planning.

Colin Beattie: I realise that you are not lawyers—at least, I do not think that you are—but do you know whether there is any legal disadvantage in having the term “historic environment” defined in the strategy as opposed to its being in the bill?

Dr Gilmour: You are quite right that I am not a lawyer, so knowing whether there would be a legal disadvantage in that regard is outwith my purview. However, we think that there would be an advantage to the definition’s being in the bill as opposed to its being only in the strategy. The current definition came about through many hours of blood, sweat and tears in a collaborative venture and is sufficiently broad to stand the test of time. I cannot think that it would not do that. In addition, having the term in the bill would make it, in a legal sense, a useful and powerful tool for ensuring the legitimacy of the historic environment in other discussions. In discussions about cross-cutting policy, the management of the natural environment, education, health and wellbeing, and so on, it would be a much more powerful tool if we could point to it in legal documents to show that the definition existed and that we needed to deal with it.

Kate Mavor: It is a question of equality. If SNH has a definition of the natural environment and historic environment Scotland has no definition, there will be an unevenness in cross-cutting areas such as landscape policy. It is also a question of...
consistency. In drawing up landscape policy, you would want to look at the SNH definition and give equal weight to the two definitions, for clarity and demarcation.

**The Convener:** I will press you a little on that important area. Dr Gilmour talked about how broad and all-encompassing the definition that is in the strategy document is and said that he hoped that we could avoid any future changes that might be necessary if there were a tighter definition, but is that not the fundamental difficulty? In effect, a broad definition loses any legal authority. The ability to be legally binding requires a tight definition, and the fact is that the strategy has a broad definition. The definition is wide and woolly, for good reason, but putting it into primary legislation would not work.

**Dr Gilmour:** I have no legal expertise, so I cannot tell you whether the definition could legitimately be put into legalese. I wish that I could remember what the definition is in the SNH strategy document—Kate Mavor might know—because I am sure that it must also be broad and all-encompassing if it is to cover the entire natural environment of Scotland in legislation, so I see no particular difficulty with that.

**The Convener:** I do not have a copy of that in front of me either, but we can look it up to see whether such a definition is in the Natural Heritage (Scotland) Act 1991 or in some other place.

You said that we must ensure that the definition covers other functions such as education, but sections 2(1) to 2(5) of the bill list all the general and specific functions, which include conserving, educating, interpreting, understanding, identifying and recording. Are all the things that you mentioned not already listed in the bill?

**Dr Gilmour:** The general functions that the organisation will undertake are comprehensively listed in the bill, but how the organisation interacts with other publicly funded bodies such as SNH is not in the bill, except in the general terms that refer to “working with other persons (whether in partnership or otherwise)”.

The concept that we are working towards is that putting the definition in the bill will allow the body to say what areas it is interested in and to ask other bodies what they are doing with regard to the natural environment, for example. The body will need to ask how it can work with the National Trust, which has cultural heritage properties, archaeological sites and the natural environment to look after.

Putting the definition in the bill would give a much clearer definition of what each organisation is interested in and where it overlaps with what other bodies are doing; organisations could then move forward and collaborate on some of that work. Although “learning about, and educating others about, the historic environment” is listed as a function, the bill does not say what the historic environment is—it just is.

**The Convener:** We know where the definition is. It is in the strategy.

**Dr Gilmour:** It is in the strategy, but it is not in the legal document that people would cite in any legal case. Those involved in a legal case would have to look at a strategy, which is not a legal document at all. As Liz Smith pointed out, there are potential difficulties with delivery and attribution of where the buck stops, but there are no such complications in the bill, which makes clear where the buck stops.

**The Convener:** Any legally binding definition would have to be pretty tight, but what would happen if we changed our view of the historic environment? For example, our modern industrial heritage, such as mines, mills and factories, was not considered part of the historic environment—that used to be much more about landscapes, ancient monuments, castles, private houses and lots of other things—but we have since changed our view. If, instead of setting out a definition in the strategy and keeping the bill separate, we put a tight, legally binding definition in the bill, and if at some point down the line we changed our view of the historic environment, would we not—as Mr Beattie tried to suggest—have to come back and change the primary legislation to account for that?

**Dr Gilmour:** The simple answer is yes—Parliament might have to come back and look at the primary legislation again in due course, but when would that have to happen? It might be 50 or 100 years hence, when it might be time to look again at the legislation in any case, as other aspects of it would certainly be out of date.

What will the historic environment look like in the future? It might well include moon bases or the material remains of human activity on other planets or under the sea, which we already have provision to deal with. Those things were not considered when the Ancient Monuments and Archaeological Areas Act 1979 was initially proposed. I can assume only that Scotland’s historic environment will be, as the strategy sets out, the “physical evidence of human activity”, which sounds fairly broad to me. I can think of no reason why we would have to come back and rethink that.
Councillor McGuigan: As I said at the beginning, we have to be careful with definitions. They can be very exact things—for example, everyone agrees with the definition of velocity or mass—but, once we move into the social or community domain, things are not as easy to define, and aspects can end up being excluded rather than included. I would therefore be guarded in how we approach such matters. I know that Clare Adamson knows about definitions, because I taught her about velocity and mass at school.

As I said, we need to be careful about definitions, because some of them—especially those in the social domain—tie our hands and limit what we can get.

The Convener: Councillor McGuigan, it is not essential to declare that you used to teach members of the committee. I am not sure that that is particularly relevant—or, indeed, helpful to some members. [Laughter.]

Mary Scanlon (Highlands and Islands) (Con): Noting that the terms “Stalinism” and “diktat” have been used this morning, I should say that my questions are about historic environment Scotland’s charitable status, its impact on other bodies and the hope that we are moving to a more democratic, fairer and more inclusive system.

The submission from the Historic Houses Association for Scotland says that

“The bulk of Scotland’s built heritage is in independent ownership”

and that there is therefore

“little or no ... expense”

to the people of Scotland. However, it expresses concern about the

“potential for tension as Historic Environment Scotland will be an owner of significant heritage assets, a tourist operator, and a regulator”

and it suggests that

“close links with Scottish Government may create a perception of lack of equity”

and

“The independent sector could feel squeezed by a taxpayer backed charitable body.”

Moreover, the NTS has expressed concern that,

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

I felt that I had to read that out, because they are your words, not mine. Will the NTS and the Historic Houses Association for Scotland elaborate on those concerns?

Alexander Hay: I will let Kate Mavor respond first, because the NTS is more worried about the issue than we are.

11:00

Kate Mavor: All of us who work in the voluntary sector compete for funds; that is nothing new to us and we are comfortable with the concept. However, one striking point is that the cuts in Government funding to Historic Scotland and RCAHMS in the recent past amount to £15 million. We estimate that the overall pot for the charities working in the historic environment sector is about £26 million and, if another £15 million has to be found out of that for Historic Scotland and RCAHMS, that does not leave an awful lot for us. You will understand that those are back-of-an-envelope calculations, but the point is that there is a limited amount of money.

We accept that there is a squeeze on public finances and that more money has to be found, but what is challenging for us is the notion that we would be competing for funds with a body that was advantaged by being closely related to the Government and which would, as has been pointed out, have access to Government ministers and departments.

As for the notion of properties in care being owned by ministers, I simply point out that we all have a huge conservation backlog—for example, gutters that need to be cleared, roofs that need to be fixed and everything else in our care that needs constant maintenance—and that we have assessed that we need to spend £46 million on our own backlog over the next 10 years. We are working on that and we have 10 years to find an extra £46 million over and above what we already spend. Because we take seriously the need to look after the assets in our care, we will work hard to find that money and we will find it. However, we do not want to be up against an organisation that does not have to worry about such a backlog and which has only to keep the visitors coming in and to earn money to maintain what it has, while we have to catch up on a backlog of maintenance that stretches back years and years.

The equivalent amount of money that Historic Scotland has to find has not been quantified and, if the upkeep and maintenance of its buildings are to stay with the taxpayer, that must be made explicit and visible and must be addressed. How will that money be raised? Who will meet those obligations, particularly given that many of the properties in the care of the Scottish ministers belong not to them but to other people who have not been consulted on what we see as a change of contract? If those properties are to be managed by a new body, the people who own them ought to be consulted and made aware of who will maintain...
and conserve them, as is set out in the original contract for properties in guardianship.

Although we have been raising those issues for the past 18 months, we are still unclear about accountability for maintaining properties in the care of the Scottish ministers to the level that was committed to when they were passed into guardianship. It is just not clear who will pay that money. If the new body is not to pay any of it, that will create a very unlevel playing field and, as an organisation that has to raise most of its money on its own, we are not happy about that.

**Alexander Hay:** I support everything that Kate Mavor just said. Although the Westminster Government has done exactly the same with English Heritage, it has quantified the money for covering the backlog of repairs and has said that there will be no more money after that. The HHA in London does not believe that the sum is anywhere near enough to cover the backlog.

According to a recent HHA survey of its members, which we have publicised before, the backlog of urgent repairs—in other words, the things that need to be dealt with quickly—amounts to £57 million and growing for our members in Scotland. A lot of that has to be funded from private funds or from income that properties generate. We are concerned that, if Historic Scotland in its new guise is expected to break even and make money out of its properties—I believe that only four HS properties have a surplus, which means that the rest have a deficit—it will have to increase the footfall in those properties and, as a result, advertising and promotion will concentrate on them.

We have had discussions with Historic Scotland in the past and it has undertaken to try to grow the sector. We are involved in the heritage tourism group with Historic Scotland and the National Trust for Scotland, with a view to promoting such tourism. However, we are concerned that, if we cannot grow the sector, Historic Scotland will try to increase the footfall in its own properties. Many of our houses carry out weddings and a lot of Historic Scotland properties are going down that route; in fact, virtually every property now has the ability to carry out weddings. When we started doing that more than 20 years ago, hardly a soul was doing it and we almost had the market to ourselves, but it is now very competitive, even among our members, to get that business. A concern for the future is about where all our visitors will come from.

**Mary Scanlon:** It is a considerable concern that, between the HHAS and the NTS, there is a £103 million backlog of urgent and other repairs. I say to Kate Mavor that her back-of-an-envelope calculations are the same as the figures that I have in front of me, which indicate that Government support for Historic Scotland in the past five years has gone down from £51.7 million to £37.8 million and for RCAHMS has gone down from £5.8 million in 2006-07 to £4.5 million. Support for both has reduced.

**The Convener:** I clarify that those are the NTS’s figures. They do not come from anywhere else; they are reproduced from the NTS.

**Mary Scanlon:** So we are all looking at the same back-of-an-envelope figures.

**Kate Mavor:** The figures for the reductions in funds are ours, but we got them from public records, so they are not made up. The £26 million pot is more of a back-of-an-envelope calculation, but the other two figures are firm.

**Mary Scanlon:** So the reduction from £51 million to £37 million is an accurate figure.

**Kate Mavor:** I believe so.

**Mary Scanlon:** The backlog for the NTS is £46 million, while it is £57 million and growing for the HHAS, which is a total of £103 million.

We are at stage 1 of the bill. What reassurances do you seek from the Scottish Government to show that you will not be squeezed out of charitable funding? What reassurances do you seek that some assistance might come your way to deal with the backlog and ensure that Scotland has the historic heritage that it needs? Where do changes need to be made in the bill to ensure that the backlog and the historic environment that the NTS and the HHAS have mentioned are not squeezed out in the future?

**Kate Mavor:** We are looking for an explicit commitment in the bill to working collaboratively. One organisation could go hell for leather to soak up all the visitor attraction money that is available, or everybody could be committed to working collaboratively so that anything that is obviously predatory is not permitted under the legislation. Protections could be built into the legislation to ensure that there is a level playing field and that any tax advantages, for example, that might come from formerly being a Government body were taken away so that everyone competed on an even keel.

There is an HM Revenue and Customs rule whereby an NTS member is not allowed to get a discount in our cafes because they have already had a discount as a member under the Office of the Scottish Charity Regulator’s rules. However, the HMRC rule does not apply if someone is a member of Historic Scotland, so they can go to Historic Scotland and get an extra advantage. Once the body floats off, we would like to see that, if it applies for charitable status, no special dispensation is given to it.
That is only one example. We want a level playing field and we want protections to be written into the bill to ensure that a taxpayer-funded body has to work collaboratively. We want the protection of grant funding to be explicit so that, if the new body is a grant-giving body, a certain amount of its grant—or even all of its grant, in its grant-funding capacity—goes out with historic environment Scotland, because it gets its own grant and therefore should not be fishing in the grant pool.

Those are the sorts of protection that should be built in: ring fencing for grant funding and ring fencing for things such as consents. If historic environment Scotland is a fundraising body, there is a risk that funders might try to influence things unduly when it comes to consenting.

I do not know whether the committee wants to discuss conflicts of interest and other areas apart from fundraising.

**The Convener**: We will come to that.

**Kate Mavor**: I have described things that we think can be written into the bill to protect against predatory behaviour by an organisation that—we face it—will be strapped for cash, as all of us are. It will have a lot of liabilities, and it will have its own separate board, which will pressure the management to look after things and to raise money—to up the organisation’s income. Its management will be under a lot of pressure, and it will be difficult for the organisation not to want to compete. We are all fighting over a small pot.

I personally believe that competition can be a good thing, in the sense that it makes people up their game, it makes them efficient and it forces their hand on sharing back-office resources to keep costs down. It makes people express more articulately and clearly what they want the money for.

The Heritage Lottery Fund has required so much of all of us who are competing for funds. We must carefully think through what we are trying to achieve and what community benefits we are delivering. That sharpens up our focus on what we are doing, rather than just having some kind of wishy-washy protection of the historic environment. We have to consider what funds are for and who they are for.

Competition can be a good thing but, for us, having a level playing field is critical. Otherwise, an organisation such as ours, which is a community of interest for the benefit of everyone who lives in Scotland, becomes disadvantaged. That just seems plain wrong.

**Mary Scanlon**: I would be surprised if a commitment to work collaboratively was written into a bill. In my view, that is more of an assumption. I would also be surprised if a commitment to a level playing field was written into a bill. However, I hope that that, too, would be an assumption.

You seem to have considerable concerns around the two points that you raise. Let us say that, five or 10 years down the line, you felt that you were being squeezed out and that your £103 million of backlog maintenance—urgent or otherwise—was not being addressed. Do you see any provision in the bill whereby you could lodge an appeal against the new organisation in order to get a level playing field and fair, inclusive and democratic funding?

**Kate Mavor**: One of the things that people must have if they are to appeal against a decision is data. As I said earlier, it is difficult to proceed without understanding how historic environment Scotland will account for its repair and maintenance bill, what it will prioritise and how it will go about its business. We ask for transparency in all the organisation’s dealings, so that we can compare like with like.

Alex Hay mentioned that four Historic Scotland properties make money but the rest of them do not. That is still emerging information. The way in which those properties are accounted for is different from how we account for things. If historic environment Scotland turns into an NDPB, and certainly if it is a charity, such information will be clearer, because that is what charities have to declare.

On the right of appeal, we are hosting a conference next week about the very subject of how to prioritise the allocation of resources if there is not enough money to go round. We all operate as different organisations, but we all care about Scotland. What is the mechanism whereby we decide that it is more important to bolster Edinburgh castle than it is to assist with some small, ruinous abbey in the middle of nowhere? There needs to be some context for that. That is what we in the National Trust are working towards—getting definitions for what is significant and determining how to prioritise things in a small country such as Scotland, instead of different people deciding, in their respective silos, what is most important. We are trying to have that debate.

In answer to your question about how to put the provisions that have been described into the bill, I say that I have not seen a right of appeal written into the bill. That would be helpful.

We come back to the question of accountability for the historic environment strategy. If the strategy is explicit—as strategies should be—about the prioritisation of resources, the accountable body should be where people bring an appeal. They might point out that the strategy
specifies that something has to be prioritised that is not being prioritised. The right of appeal would be to the board overseeing the strategy.

11:15

Dr Gilmour: Section 8 covers corporate planning, which is how the organisation lays out how it will achieve its goals and aims. That is overseen by the Scottish ministers and, if Kate Mavor had an issue, she could say to her elected representatives in Parliament, “The corporate plan needs to include X, Y or Z.” That is a potential mechanism. I have written down next to section 8, “How do Scottish ministers deal with a rogue HES?” Exactly that sort of issue could be laid out more transparently and clearly in the corporate planning section of the bill.

Gordon MacDonald (Edinburgh Pentlands) (SNP): For the record, I declare that I am a member of the National Trust for Scotland.

I want to continue the discussion that we have had about the impact of HES on other bodies. In the opening remarks, there was a suggestion that there might be a conflict of interest between HES’s role as the regulator that provides grant aid and its role as an operator that competes with other organisations. According to Historic Scotland’s annual accounts for 2012-13, roughly £12 million of its total grant expenditure of £15 million goes to historic building repair grants. Is there any evidence of a conflict of interest between its current roles as an operator and as a provider of planning section of the bill?

The Convener: Kate Mavor might want to answer that question.

Mary Scanlon: Everyone is looking around for a buck to pass.

Kate Mavor: I am trying to think whether anecdotal evidence from some of the big building projects counts, but it probably does not.

I am probably not the right person to ask, as I have not been in the industry long and do not have a long track record. However, I can say that there are constantly challenges for us all in trying to develop a visitor experience and a visitor attraction. We want to have coaches arrive, and Alexander Hay told me before the meeting that the arch of one of his houses does not accommodate the new type of coach. If we want tens of thousands of people to visit a property, we must start thinking about amending and adapting things, and that gives rise to conflicts.

I do not know whether any consents have been allowed at any of Historic Scotland’s properties that the rest of us would not have been allowed, but that is the pressure that people will be under, and that is why it is important to have total transparency. If any consent is awarded to any property in the care of historic environment Scotland by historic environment Scotland, that must be transparent, so that if people feel that there has been some bending of the rules, we can challenge it. I do not know whether that has been a danger in the past, but it will certainly be a risk in the future.

We face such pressures the whole time as we try to develop our organisation to make it more self-sustaining. There are always judgment calls to be made and we have debates with Historic Scotland about our particular challenges. It would be difficult for an organisation to debate such things with itself.

Gordon MacDonald: Mr Hay, in your opening remarks you said that Historic Scotland is very supportive of the private sector—I hope that I have not taken your comment out of context. Does that not suggest that there has not been any conflict in the handing out of grants?

Alexander Hay: No one has told me that they have had problems with Historic Scotland. When I have meetings with Historic Scotland, it is very keen to incorporate the private sector's views. However, I am reliant on individual members to tell me of their experiences.

Historic Scotland used to have a reputation for being obstructive, shall we say, in not giving listed building planning consents. However, the previous chief executive said that she was keen for the organisation to become more enabling in helping people to do things. I have stood up at various meetings and said that if anyone has had any experience of things not having changed in their dealings with Historic Scotland, they should let me know. No one has done so, so I assume that Historic Scotland is being more helpful.

One area in which I know that we have had some difficulty—I mentioned it earlier—is the setting of historic houses, particularly when the land is not in the ownership of the house. When what the owners consider to be inappropriate development has been applied for in close proximity to a house, Historic Scotland has, on a number of occasions, been quite supportive of trying to get the decision overturned. Its role has been only advisory, however, and the local authority has not had to take account of it. Nevertheless, Historic Scotland has been supportive in that context.

Gordon MacDonald: It has been suggested that there has been £15 million-worth of cuts in the sector across RCAHMS and Historic Scotland. Is it not the case that both RCAHMS and Historic Scotland generated a surplus in two of the three years up to March 2015? In the year to March 2013, when they had a deficit, it was a deficit of
only £225,000. If RCAHMS and Historic Scotland are working within the financial envelope that they have to work in, why would they need to claw back £15 million?

**Kate Mavor:** As I said before, accounts work differently in the public sector. When I have a surplus, it is because I have covered all my repairs and maintenance and all the on-going stuff before I even start talking about what is left over. I do not know whether RCAHMS and Historic Scotland are accounting for that in the same way.

I do not know where those figures arose from; I am not familiar with them. Of the 129 properties in our care, only 12 of them wash their face. All the rest have a deficit every year, which we have to try to find the funding to cover—and that is before we start talking about the backlog. I would be very surprised if there is a healthy surplus in Historic Scotland’s estate if it is accounted for in the same way as we account for our estate.

Were historic environment Scotland to have charitable status, one of the advantages would be that one would be comparing apples with apples instead of pears.

**Gordon MacDonald:** I understand that it would be up to historic environment Scotland to decide whether or not to apply for charitable status, but are there financial benefits for an organisation in going down the charitable status route that would not impact on other bodies’ income?

**Kate Mavor:** There would be some. It would have more favourable business rates, which would not affect the rest of us, and it would be able to do certain things.

It would affect the rest of us if HES started to apply to charitable trusts, foundations and other sources of money that are not the public purse. A small amount of that goes on at the moment, but it is not a very important part of Historic Scotland’s funding. For us, that sort of funding is vital; for most of us in the sector, it is our main source of income. If someone else came to fish in the same pond, obviously we would feel nervous.

We would love the pond to be made bigger, so that everybody got their fair share—everybody would have that wish—but in the current climate that seems unlikely, because trusts, foundations and charitable sources of money are still contracting.

**Gordon MacDonald:** The financial memorandum suggests that between the gift aid scheme and charitable rates relief, over a period there could be a £20 million benefit to historic environment Scotland, which would not impact on any other organisation.

I understand that RCAHMS is a charity and gets most of its money from its charitable activities. If the new organisation did not become a charity, would the sector lose the income that RCAHMS currently gets from charitable income, or would it be picked up elsewhere?

**Kate Mavor:** Are you saying that if RCAHMS were not a charity anymore, things that were given to it—

**Gordon MacDonald:** It would not be able to get income generated from charitable activities, would it?

**Kate Mavor:** No, it would not.

**Gordon MacDonald:** In effect, that would represent a substantial loss to the sector. I understand that RCAHMS currently gets in the region of £5 million a year from charitable activities. If it did not have charitable status, it would lose £5 million, which would probably need to be made up from the public purse, which would mean that there would be less money for other organisations.

**Kate Mavor:** Possibly. That sounds feasible.

**Dr Gilmour:** Some of that comes through the Scran Trust, but it is a key issue with regard to whether the organisation becomes a charity and carries out its own charitable activities. The Scran Trust has its own board of trustees and it could choose to host ventures elsewhere, so I do not think that the sector would lose the money. The trust could go and work with the National Library of Scotland, for example. Therefore, the sector would retain the income that comes in through that charitable organisation; it just would not come through HES.

**The Convener:** Liam McArthur, do you have a brief supplementary?

**Liam McArthur:** Kate Mavor talked about the way in which decisions are made about funding in one area as opposed to another. Concerns have been raised about the likely implications for staffing with the creation of the new organisation, and a possible loss of expertise. A comparison was made with what has happened south of the border. I am not sure that there is anything we can do about that in the bill, but do you recognise that concern? What might be the implications of that?

**Kate Mavor:** My understanding is that, south of the border, that was recognised as being an unintended consequence, but the situation has been mitigated, so people will not have to worry about it. What the commission does and its valuable role have been written into the new organisation, so they will not be lost, and we are very pleased about that.

It is worth saying that there has been widespread and deep consultation on the bill, and it is the better for it because it means that we are
not going to make the same mistakes. However, comparisons can sometimes be a bit invidious because English Heritage, which is the equivalent organisation in the south, is so much smaller in relation to the whole historic environment sector in England and Wales compared with Historic Scotland, whose presence here in Scotland is huge. The organisations are not quite analogous. However, the supposed mistakes that were made with the royal commission in England have been mitigated in what is proposed in the bill. That is not something that concerns us.

The Convener: I have a small question to ask Kate Mavor before we move on to the final section. You mentioned concern about the possible conflicts of interest if an organisation receives money as well as giving grants and being involved in regulation and so on. What is your specific concern? Historic Scotland pretty much does those things already, so what will the difference be?

Kate Mavor: The main difference will be the pressure that the organisation is under to raise its own funds and make its own money. That skews things differently. If we consider the staffing of the new body and how many staff will be involved in managing tourism outlets and heritage tourism properties, we can see a disproportionate emphasis on that part of the business. That leaves only a small number to cover the regulatory function, even though, as I said at the beginning, the regulatory function is really the unique and most important thing that the body does, because no one else does it. So many people will be tied up in running the estate as a leading tourism operation—as the draft documentation for the bill originally described it—and there will be pressure to find the money to pay for staffing and for all the other things for which money was previously just given. That will be the big difference from the current situation.

That pressure might mean that there is a temptation to put less resource into proper scrutiny and regulation or to bend the rules a bit when it comes to the new organisation regulating itself. One example would be having to decide on consents in the background deciding whether or not to give their money.

All those things can be mitigated comfortably, as long as everything is transparent and as long as money for regulation is ring fenced, so that people are not tempted to use the money that they have to invest in their own estate rather than for regulation.

The Convener: That is quite a serious allegation to say that the body would in effect be tempted—I will not put it any stronger than that—to bend regulation, or break the law.

Kate Mavor: I would not describe it as an allegation. If you think it through, you see that the organisation will be under a lot of pressure. Therefore, it is important, in establishing it, to have a commitment to transparency to avoid that happening. There is no allegation intended. I am just trying to anticipate how difficult it will be to put time and effort into regulation when the organisation is under pressure to fix the roof, open the doors and cover health and safety and all the other compliance requirements that are necessary in opening to the public. There is a lot of pressure in that, and that is why transparency must be safeguarded.

11:30

The Convener: I do not think that anyone would have a different opinion on the need to ensure that everything is open and transparent and to safeguard everything that is legal and proper in the process. I am just slightly concerned that there is an over-emphasis on an imagined difference between what the bodies currently do and what they will do under the new set-up. Clearly, the Government has published policy aims. For example, on regulation, the policy memorandum says:

“The policy aim is for Historic Environment Scotland to undertake the functions previously delivered through Historic Scotland and RCAHMS in relation to the historic environment designation and regulation and the wider planning system.”

Therefore, in effect, we are talking about a transfer of existing powers to a new body.

We are not really talking about new powers or different powers. I genuinely do not see why there is a concern that the new body would be under such pressure that it would be tempted to play fast and loose with the rules.

Kate Mavor: I would just point out that England and Wales, which faced similar choices, both decided not to put the regulatory role in with the management of the properties. The reasons that were given for that concerned potential conflict down the line.

Neil Bibby (West Scotland) (Lab): Is your concern not that the new body would play fast and loose with the rules, but that it could?

Kate Mavor: Absolutely. Of course it would not do so. I do not know anyone who would think to do that deliberately. I am just saying that it could do that and that, therefore, some protection against that has to be included. Who knows what people will do when they are under pressure? Who knows who will be the chairman of its board, and who will be on the board, and what emphasis the board will put on what elements? An element of public protection needs to be written into the legislation.
Neil Bibby: I would like you to clarify what you said in your written submission about the issue of liability. As we know, the bill will transfer responsibility for 344 historic properties. In your submission, you say that

"the liability for the maintenance of these properties, both those owned and in guardianship, will remain with ministers."

However, later, you talk about

"the liability remaining with the owner and ministers".

Who will have the ultimate liability? I note that the Scottish Government owns only 74 of the 344 properties.

Kate Mavor: Our understanding is that the liability remains with the ministers. We have verified that with the policy unit. Our point is that the various owners who have given their properties into the guardianship of the Scottish ministers have, in so doing, entered into some kind of contractual arrangement with the Scottish ministers. Our contention is that if the Scottish ministers then outsource the management of those properties to someone else—the new body—the owners should be consulted, at the very least.

We are concerned about the fact that if Scottish ministers are not transferring at the same time the responsibility to maintain those properties to an acceptable level, in terms of conservation, and are, instead, keeping that responsibility to themselves, the original owners cannot be sure that someone will manage and conserve the properties as was originally intended, because there will no longer be a bill that is met by the taxpayer. As I said earlier, it is not clear who will meet that bill. Although we know that the new body will take over management of the properties, we do not know whether the standard to which they must be maintained has been written down anywhere or whether the consent of the original owner to the transfer has been sought. There is a disagreement between us and the policy unit about whether consent needs to be given.

The point that we are trying to make is that all the owners of the properties that are in the guardianship of the Scottish ministers should be consulted and it should be made clear who is responsible for the management to a certain level, and how that will be paid for. As I said, the cost of it all has not been quantified.

Neil Bibby: Will the liability for maintenance of the properties remain with ministers?

Kate Mavor: As I understand it, yes, because the ownership is not transferring.

Neil Bibby: Is the Scottish Government aware of your concerns about the maintenance backlog? Have you contacted it about that and has it given any commitments on it or are there any plans to undertake audits to ascertain the backlog of repairs?

Kate Mavor: Yes, the Government is aware. We have had good, open and regular conversations about the bill and we are grateful for that consultation. As I understand it, Historic Scotland has an exercise under way to quantify what the cost will be.

The Convener: I thank all the witnesses for coming along. It was an interesting evidence-taking session and helpful for our stage 1 deliberations on the bill.

I suspend the meeting briefly to allow the witnesses to leave.

11:35

Meeting suspended.
EDUCATION AND CULTURE COMMITTEE

EXTRACT FROM THE MINUTES

14th Meeting, 2014 (Session 4)

Tuesday 20 May 2014

Present: George Adam, Clare Adamson, Jayne Baxter, Neil Bibby (Deputy Convener), Gordon MacDonald, Stewart Maxwell (Convener), Liam McArthur, Mary Scanlon, Joan McAlpine (Committee Substitute)

Also present: Liz Smith

Apologies were received from Colin Beattie

**Historic Environment Scotland Bill:** The Committee took evidence on the Bill at Stage 1 from—

Fiona Hyslop, Cabinet Secretary for Culture and External Affairs, Noel Fojut, Bill Team Leader, David Fleetwood, Bill Team Manager, and Emma Thomson, Principal Legal Officer, Scottish Government.

**Historic Environment Scotland Bill (in private):** The Committee considered the evidence received.
Scottish Parliament

Education and Culture Committee

Tuesday 20 May 2014

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Stewart Maxwell): Good morning and welcome to the 14th meeting in 2014 of the Education and Culture Committee. I remind everyone that electronic devices should be switched off as they interfere with the broadcasting system.

Agenda item 1 is to decide whether to take item 4 in private and whether to consider our work programme, annual report and draft stage 1 report on the Historic Environment Scotland Bill in private at future meetings. Do members agree?

Members indicated agreement.

The Convener: Before I move on to agenda item 2, I welcome back Joan McAlpine. She is substituting for Colin Beattie, who is absent today. I also welcome Liz Smith, who is attending as a member of the Scottish Parliament interested in the Historic Environment Scotland Bill.

Historic Environment Scotland Bill: Stage 1

10:02

The Convener: Agenda item 2 is our final evidence session on the Historic Environment Scotland Bill. I welcome to the meeting the Cabinet Secretary for Culture and External Affairs, Fiona Hyslop, and her officials, and I invite the cabinet secretary to make some opening remarks.

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): Thank you very much, convener. As I know that the committee will have questions based on the written and oral evidence that it has received and its visit to Orkney—where I understand that members were blessed with fair weather and a warm welcome—I will make only a short statement.

In creating “Our Place in Time—The Historic Environment Strategy for Scotland”, we worked with the sector at its request to agree a shared vision for Scotland’s historic environment. That vision is based on three priorities: understanding what we have; caring for our shared heritage; and valuing our shared heritage for itself and for the benefits that it can bring to Scotland. By working together with the many bodies across the sector, we can care better for our heritage and deliver much more for Scotland—not just sustainable economic growth, but benefits that include skills, employment, education, enjoyment, a sense of place and identity.

I am excited that we are charting new ground. In order to move forward, we will need to pool information and effort and break away from the silo mentality for which the sector has been criticised in the past. I welcome the positive reception that the strategy has received in Scotland and beyond, which signals widespread recognition of the need for new ways of working.

The relationship between the strategy, the bill and the new body is important. Each complements the other. The sector asked for a strategic approach, and we were delighted to lead the process of collaborative production. To co-ordinate the strategy, I will have the help of a board that has been invited from key stakeholders, including the chair of historic environment Scotland once they have been selected, and I hope to announce very soon the names of those who have agreed to assist me with that task.

The vision is shared, but participants will remain responsible through their own lines of governance. The ministers and historic environment Scotland will do everything that they can to support the
strategy, but others have to step up to the mark, too.

The bill that the committee is considering will create historic environment Scotland, which is part of the ministers’ contribution to achieving the vision that is set out in the strategy. The bill sets out the functions that historic environment Scotland will be expected to deliver and against which its success will be judged. Like all public bodies, it will have its own appointed and regulated board, which will be responsible through ministers to Parliament. We will take forward the search for members as soon as parliamentary progress permits.

We have set out in the bill the functions of a body that will operate in a strategic framework with simpler processes, more transparency and a more collaborative ethos, and which will sustain the range of vital functions that Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland carry out.

I want to record my personal appreciation of the professionalism and enthusiasm of the staff of both bodies. I expect historic environment Scotland to offer leadership, and I am confident that it will earn that role because of the knowledge and commitment of the staff that it will inherit. I recognise the huge part that is played by many others, especially the many thousands of private owners of our heritage, but also our local authorities and independent bodies such as the National Trust for Scotland. That is why our new model is centred on wide, strategic partnerships, with historic environment Scotland positioned as a lead partner. Our intention is to support collective action towards the shared vision set out in “Our Place in Time”.

The new body and the changes in the bill will make it easier for everyone concerned to play their full part in tackling the challenges that Scotland’s heritage faces. Tackling those challenges will take time. Everyone recognises that understanding, protecting and valuing Scotland’s historic environment is a long-term task. That job can be done, but only if we pull together.

I am happy to answer the committee’s questions on the bill.

The Convener: Thank you very much, cabinet secretary. We want to ask a number of questions covering a variety of areas, and Clare Adamson will begin.

Clare Adamson (Central Scotland) (SNP): Good morning, cabinet secretary. The policy memorandum and the financial memorandum set out at various points some of the bill’s expected benefits, including the opportunity for collaboration in the culture portfolio, the ability to influence other policy areas, such as place making, regeneration

and health and wellbeing and the opportunity to feed into curriculum for excellence. Will you say a few words about those benefits? Why did you choose the merger option as the means of achieving them? Were there other reasons why a merger was considered the best way forward?

Fiona Hyslop: Very far back in the process, in 2011-12, we looked at all the different options, and those appraisals led us to decide that a merger was the correct option. I must emphasise that a key aspect of this work was to maintain and sustain the vital functions of both RCAHMS and Historic Scotland, and we responded to that need.

The idea of bringing the two bodies together is not new; indeed, it has been quite clear for some time now that such a move is needed, and the time was right to progress that proposal. You have heard from both the commissioners and Historic Scotland, and all agree that this is an appropriate way to proceed.

As for the practical benefits that you mentioned, there are a huge number of synergies between what RCAHMS and Historic Scotland do on education. Although both undertake exemplary education activity, it could be better if both worked together.

Place making is a big agenda for the Government, the Parliament and Scotland. As far as town centre regeneration is concerned, there are many historic buildings in town centres, and RCAHMS’s record-keeping and surveying work and Historic Scotland’s work through repair grants and town centre regeneration, as well as some of the grant funding that is co-ordinated with other parts of Government, form an important part of that agenda.

On strategic decision making, I must point out that the historic environment is not just something that we enjoy as a backdrop to our country; it is the lifeblood of our country, and people feel strongly passionate about it. With regard to our other agendas such as health and wellbeing, getting people outside and ensuring that people feel in control of their own places—which is another big agenda item—we want to ensure that historic environment Scotland can influence those different areas. Instead of historic buildings being dealt with separately and in isolation, our approach will allow the body to have influence across the agendas. We have moved the strategic policy aspects of Historic Scotland into central Government, and we see good synergies and opportunities to influence other Government agendas in a way that Historic Scotland was unable to do. That is part of the prelude to taking forward this matter.

There are many practical examples that I can highlight. I should also say that we have talented
people and that the merger will give them extra platforms to work on as well as career opportunities to pursue.

The committee is scrutinising a bill that is very much about the new body’s functions but, in my opening remarks, I set the context that the new body will work within the wider strategy, which means working with everybody else. Having one lead body will help us to do that. We are also taking the opportunity with the new body to ensure that transparency and efficiencies happen.

Clare Adamson: Two weeks ago, we took informative evidence, which included representations from the Convention of Scottish Local Authorities about working with local authorities. Will the single body improve working relationships and that partner relationship?

Fiona Hyslop: Yes. The development of the strategy and the bill has already helped with the relationship with local authorities, because it has all been done in collaboration. We have worked hard on planning and transparency; I have worked in particular with Councillor Hagan, who has a keen interest in and a lead responsibility for the subject. In putting the bill together, we consulted chief planning officers on some provisions.

Another issue is the sense of place. The idea behind the strategy and the new body is to get a better opportunity for the historic environment, which is place based. People visit Orkney or West Lothian, for example, to see what is in the area. Not all of that is managed by Historic Scotland; some of it involves other partners. Local authorities play a key promotion role in their areas, and the new body will help with that.

I know that local authorities are keen to have access to expertise and advice, and the bill makes it clear that we expect HES to work with local authorities and to continue to provide advice. However, we also see an opportunity to share talent, information and expertise. That is not an excuse for local authorities not to do things, but it provides a canvas that we have not had before in this area.

In my experience, the historic environment has never been high on local authorities’ agendas, but I am glad that it now is. We are approaching that in a shared way. Indeed, that has been my experience. For example, when we discussed the strategy, I shared platforms with Councillor Hagan, although I know that a different councillor spoke to the committee.

Liam McArthur (Orkney Islands) (LD): On the point about the relationship with local authorities, they will expect to continue to take the lead in a raft of areas. With regard to that collaboration, are you comfortable that the bill makes clear the areas in which local authorities will continue to take the lead? I am thinking in particular of issues involving developers, whose first point of contact will inevitably be the local authority, rather than HES. Does the bill make it clear that that relationship will be maintained and that developers should not expect to go through HES en route to getting a decision from a council?

Fiona Hyslop: There are different layers. As far as responsibilities are concerned, everything in the relationships will by and large be maintained, because a lot of that is underpinned by other legislation. That came through in the evidence to the committee on environmental assessments, which exist in other legislation. We will just need to replace the references to Historic Scotland in that legislation, including secondary legislation, and we will use secondary legislation to substitute “Historic Environment Scotland” where “Historic Scotland” used to appear.

The changes that will be made will simply streamline processes for applications from developers to councils. Councils will consult historic environment Scotland—that process will be the same and advice will still be provided. However, we will streamline the process to ensure that, if a listed building is to be affected, there will not necessarily be the 28-day delay that everybody is concerned about.

10:15

It is really important that people understand that decisions are made by local authorities and that Historic Scotland—or the new body—provides advice to them. There will be an opportunity for appeals in relation to listed buildings; that is set out in the bill. The only difference is that there is now an appeals mechanism and an opportunity to come to ministers in such cases.

By streamlining the position, we should provide a bit more clarity. By and large, the planning authorities will still make the decision. The only changes that the bill makes in that respect relate to the management of a listed building’s historic aspects or scheduled monument consent.

Would I say that we are making considerable changes to the relationship? No, I would not; if anything, we are making it simpler. Local authorities are very pleased about that, because we are potentially removing what people might see as a 28-day delay in some of the processes. We are simply streamlining the position, just as we are trying to do with other aspects through planning legislation, and what the bill does in that regard is quite limited.

Liam McArthur: That is helpful. The concern is that there is a risk of some interpreting the explanation of the benefits of the merger as
meaning that HES will become a one-stop shop for developers. However, that is quite explicitly not the case.

**Fiona Hyslop:** No, it is not. The current situation still stands. Planning legislation is dealt with separately. Indeed, there has been a big consultation on taking that forward separately.

**The Convener:** Liam McArthur has opened up the issue of HES's role, on which a number of organisations and individuals have contacted us seeking clarity. I am interested in exactly where the dividing line is. This is perhaps a difficult question to answer. My understanding is that the 345 properties in care will be delegated to HES, which will have direct responsibility for them. For what other areas or properties will it have direct responsibility, or will be only those 345?

**Fiona Hyslop:** It is really important to reinforce the point that ministers will still be responsible and will own the properties that they currently own. Where there is a guardianship agreement, for example, the relationship will be directly between ministers and the individuals who put the properties into care. We will then delegate functions. Section 3 in part 1 of the bill talks about delegation.

In reality, it will be the same people in the same places who will look after properties. Those people include the excellent and skilled Historic Scotland stewards whom, I am sure, you met when you were in Orkney. We will have a relationship with the new body in terms of formally setting out how it will manage the properties for us. Is that what you wanted to know?

**The Convener:** I am just trying to be clear about the direct responsibility that HES will have in terms of the historic environment. In effect, will its responsibility be for the 345 properties?

**Fiona Hyslop:** Yes.

**The Convener:** What will be its responsibilities beyond that?

**Fiona Hyslop:** Again, it is setting out the opportunities—

**The Convener:** I am sorry to interrupt, but it might be helpful if I set out some of the evidence that we got. We heard last week, and in some written evidence, the idea that HES will, in effect, be responsible for about 8 per cent, and other bodies will be responsible for the other 92 per cent. I am just trying to clarify exactly what HES’s role will be. It will be the lead body; you have made a lot of the fact that it will have the lead role in the historic environment.

**Fiona Hyslop:** The vast majority of historic buildings are not under public ownership and responsibility; they are under private ownership and responsibility. That does not mean that HES does not work with the owners. Yesterday, I was at the apprenticeship week launch; there is a great exhibition in St Andrew Square in Edinburgh of apprentices working with traditional skills. In Scotland, 20 per cent of our buildings are what you would call historic buildings from pre-1920. In Edinburgh and some other cities, the percentage is far greater.

The Government is, in different shapes and forms, responsible for the 345 properties that are in our care. Alongside them are properties that are in private ownership. Some of those owners are involved in the Historic Houses Association, from which the committee has heard. There are also pre-1920 properties that are owned by private individuals, and there are a number of charities that care for properties, of which the largest is the NTS. We have to act collaboratively because we work with a huge range of people.

Historic environment Scotland will be responsible for driving forward a lot of the important issues, such as improvements in conservation and tackling climate change. There are many issues around energy loss from old buildings, so I would expect Historic environment Scotland to drive forward much of the skills agenda in that regard; for example, yesterday I saw innovations in sash and case windows for ordinary houses. HES will have to take a lead in a range of areas, but it will also have to work with everybody else.

That brings me to the relationship between the bill and the strategy. I want skills to be a key driver, and I have set that out in my letter of guidance, which deals with what I want to see in the organisation's corporate plan. I want it to take a lead on traditional skills, in order to maintain buildings, and to deal with the conservation backlog and so on. However, it will have to work with other people. Ken Calman and I have had a number of meetings about the overall strategy and how we can pool our knowledge and experience so that we can tackle it. Some of that will concern big properties such as Edinburgh castle, Stirling castle and Culzean castle, which are the responsibility of the NTS. In terms of the historic environment, HES will have to help the Edinburgh World Heritage Trust and individual house owners with the historic buildings that they maintain.

The canvas that the body will work on will be broad, even without the tourism aspects, which we have also investigated. It is wrong to think about the historic environment simply in terms of managing the properties in care. Vital and important though that is, it is also important to ensure that historic environment Scotland helps in developing policy in other areas, such as the health check on buildings that we launched with
Construction Skills Scotland. The historic environment involves a huge number of partners.

This committee deals with education; the responsibilities of local government and central Government are quite clear in that area. However, as you know, in the culture and heritage sector, the processes around planning and so on are set out in statute, but a lot of what happens is done by people working together without necessarily having a directive from central Government. It is important to state that the lead responsibility that we are talking about relates not only to management of the buildings that will be in the care of historic environment Scotland, but to how it helps the sector to deliver what it needs to deliver.

The Convener: That is the nub of the issue that we are trying to clarify. How far will the duty of historic environment Scotland to offer and to promote leadership extend to non-public sector bodies? As you said, we heard from the Historic Houses Association; we know that people want clarity, so that they are sure about areas of responsibility.

As the Government has stated, historic environment Scotland’s role will be to investigate, and to "care for and protect the historic environment".

Does that mean all of the historic environment? I appreciate that it is difficult to define that term, but people seek an understanding of exactly the role of historic environment Scotland and how its overarching role will fit into the picture that includes private ownership, and ownership by other bodies and charitable organisations.

Fiona Hyslop: I will start with the strategy. I will be appointing a strategic board that will bring together historic environment interests. I am not in a position to tell you exactly who will be on that board, but it will involve key players from all the sectors, including local government, independent charities, private interests and so on. The idea is that that board will agree common goals that we need in order to deliver the strategy, which has had a warm welcome in terms of activity. Areas that it would not be unreasonable to expect it to cover include skills, energy conservation and other factors that affect all of us, whether we are in Government or local government, or are private homeowners or whatever.

A lot of the things that HES will do will be exactly what RCAHMS and Historic Scotland have been doing. One of the key things that they do is provide grants; the new body will continue to do that. Despite a reduction in my overall spending, I have made sure that we have maintained a level of grant, so HES will continue to give grants to different areas. The system might evolve over time but, by and large, that function will continue.

The statutory responsibilities will also be maintained. Some of them will be covered in other legislation. For example, a predecessor to this committee scrutinised the Historic Environment (Amendment) (Scotland) Act 2011, which I took through Parliament, which allowed for different things that Historic Scotland could do, such as intervening on buildings that are in a dangerous condition, and giving powers to local authorities to maintain such buildings. Those things will still happen, but we are providing a better platform by using one body.

The functions of that body will be set out. RCAHMS is very pleased that, for the first time, areas of responsibility will be set out in the bill. I therefore assure the committee that maintenance of, and the relationship with, the historic environment will continue, but the new body will provide a better platform to help all the different partners to collaborate. The body will be brand new, but a lot of its functions will be inherited and it will be in a better place to collaborate. We are also doing this in the context of a strategy, and this is the first time we have ever had that.

Liz Smith (Mid Scotland and Fife) (Con): Paragraph 88 in the policy memorandum says that the Scottish ministers will be able "to give directions to Historic Environment Scotland" on exercise of its functions, but "not ... on specific cases, objects or properties."

I presume that that is to ensure operational independence. However, section 12(3) of the bill says that that does not apply when the Scottish ministers have delegated functions in relation to the properties in care, such as the 345 properties that you mentioned earlier.

In a letter to the Delegated Powers and Law Reform Committee, the Scottish Government has confirmed that "sub-section (3) [i.e. section 12(3)] makes it clear that Ministers may, by contrast give directions in relation to what would be regarded as "curatorial" matters in relation to those properties in care and collections".

Can you make clear the powers that the Scottish Government will have to direct HES?

Fiona Hyslop: I have already referred to section 12(3) being about delegation of the management of functions. The matter is similar to the committee’s scrutiny of the National Library of Scotland Bill to ensure that there would be no curatorial interference with exhibitions or in how the National Library of Scotland manages its estate.

However, we have to ensure that we have checks and balances on that side because we still own the properties on behalf of the people of
Scotland. If we had concerns about how Stirling castle was being maintained, we would need a power to ask that those concerns be looked into. Most such matters will be dealt with by the letter of guidance, the corporate plans, and plans that are produced yearly. I do not think that people will accept a situation in which everything is transferred to HES and ministers abdicate their responsibilities for ensuring that the key and main properties are looked after properly.

**Liz Smith:** On the convener’s point about the dividing line, are you confident that it is clear when the Scottish ministers have responsibility?

**Fiona Hyslop:** Yes. Apart from anything else, if this committee and others thought that we were interfering, they would come down on us like a ton of bricks, as would the sector itself, but we have to balance that with not abdicating responsibility completely. The committee will want to hold me to account for the ownership and responsibility of key sites, but we have to make sure that I do not interfere and say, for example, “Stirling castle, you will hold an exhibition on X when I want you to do that.” People might interpret that as political interference. That is not acceptable. It was not acceptable in the National Library of Scotland Bill, and it is not acceptable in this bill.

That said, there has to be a relationship with regard not only to delegation of functions but to the provisions in section 12, which relate to directions and guidance. For example, any direction under that section must be given in writing, and we “must publish directions given or guidance issued”.

We will not be able to do anything quietly; the procedure will be open and up front. The bill will make the actions of both historic environment Scotland and the Scottish Government more transparent.

10:30

**Neil Bibby (West Scotland) (Lab):** With regard to the Scottish ministers’ intention to delegate management of properties to HES, and the powers that ministers will have, will HES manage any properties for which it might not be subject to ministerial direction on curatorial matters?

**Fiona Hyslop:** My officials will correct me if I am wrong, but I think that that might be the case with some properties in care that are not under the Scottish Government’s ownership. Is that right?

**Noel Fojut (Scottish Government):** For all the properties in care that have been delegated, the power of direction that would, as the cabinet secretary has made clear, be an ultimate resort if things went wrong would apply. In other words, it would apply whether or not the 345 properties in question were owned by the Scottish ministers or covered by a guardianship agreement, because the ultimate responsibility for that set of properties will still rest with ministers. This brings us back to the point about ministers ensuring that things are done properly in general terms, while not interfering in day-to-day operating decisions.

**Fiona Hyslop:** It is very unlikely that we would say anything about an individual property. Instead, in each year’s letter of guidance we would highlight certain issues in a general category and so on.

**Neil Bibby:** In your correspondence with the committee, you have said that, after stage 1, you are going to lay an order under section 3(3) of the Public Appointments and Public Bodies etc (Scotland) Act 2003, I think, to add historic environment Scotland to the list of public bodies. Why are you doing that after stage 1 rather than after stage 3, when Parliament will have gone through the whole process?

**Fiona Hyslop:** That is about being able to move swiftly and efficiently, and it is not dissimilar to what we have done previously. After all, the will of Parliament has to be respected; if, at stage 3, Parliament says, “We don’t want this bill”, we would have to stop in our tracks.

Having gone through a number of mergers in my six years as minister with responsibility in this area, I know, and I always make it clear that, when bodies change the pensions of staff have to be treated correctly, and other practicalities affecting staff have to be addressed. I am keen to move forward on that basis. References have been made to other legislation; because historic environment Scotland does not yet exist and is therefore not referred to in other legislation, we need to move quickly to insert it into the relevant legislation, whether for strategic environmental purposes or whatever. I am certainly very clear that we need to take this approach to deal with the pensions issue. Laying an order under section 3 of that act will allow us to get all our ducks in a row and ensure that we are ready when the body assumes formal powers and responsibility, which we think will happen in October 2015.

**George Adam (Paisley) (SNP):** Good morning, cabinet secretary. During the evidence sessions, there has been much talk about how we define the historic environment. The definition itself is set out not in the bill, but in the strategy. Do you think that the strategy is robust enough to ensure that everyone knows what we are talking about?

**Fiona Hyslop:** The strategy document is important because it brings together what everyone has signed up to and is supporting. The process of bringing everyone together in that collaboration was quite remarkable.
The issue was the subject of quite a lot of debate as we prepared the strategy, and it was also raised in the parliamentary debate on the matter. The key feedback from the sector, which we responded to, was that it wanted the definition to be set out in the strategy and that that definition should be fairly straightforward and simple rather than complex.

There are limitations caused by putting things in legislation. The Historic Environment Scotland Bill is for setting up the body but, as the convener said, there are responsibilities in respect of the wider historic environment, and it is the wider sector that has agreed the strategy and the content and definition in it.

There is a danger that things can change. During the Parliament debate, Rob Gibson raised the question of intangible culture; that is an area where we depart from the rest of the United Kingdom, because the Westminster Government does not want to sign up to the United Nations Educational, Scientific and Cultural Organization’s statements on intangible heritage. Intangible heritage is a big part of our heritage; it is not just the physical places but the stories, dance and music that go with them. We will probably see the issue evolve over time, so people expect the flexibility that we have in the strategy.

I was interested in the evidence about what Scottish Natural Heritage has done, but it does not set out the boundaries. All that it does is say what can be included, but loading things in does not help to define the boundaries of where else work is done. I want to reinforce that the bill and the strategy will allow us to work with local authorities and other bodies, and that the boundaries come from that collaboration. Public finances are pressured and there are big challenges from climate change and other things. We cannot tackle those challenges with one body alone; we have to work collectively. It is helpful not to be too prescriptive about that in the bill, because we would end up having to review it, so I am not convinced that we should have a definition that includes everything but does not exclude anything.

George Adam: One of the things that came up during our trip to Orkney was the fact that all the groups there work together, perhaps because of the geography of Orkney. We definitely need more groups in other parts of the country to do that.

On the tangible heritage, if I have got it correct, it seems to be the case that we do not have a definition because the situation is fluid and constantly changing. For example, when I would go on a run to Largs as a youngster, I would drive through Greenock and see hundreds of cranes, but the minute the yards were gone they were not considered to be part of the historic environment. In Glasgow, however, we still have the crane at Finnieston—the one crane that has been left as part of the environment of our industrial heritage. It was not regarded as part of our historic environment 30 years ago, but now it is. In my constituency, old mill buildings are also considered to be part of our industrial heritage. Is that an example of why you do not have a definition—because the situation is pretty fluid?

Fiona Hyslop: The answer is yes. It is an interesting area—I am keen to support our industrial heritage, but a lot of it is currently managed by museums. I have brought together the industrial museums, which have a federal model. I worked with Henry McLeish on setting that up. They now get funding direct from the Scottish Government.

We have invested hugely in the National Mining Museum Scotland, and if any of you are ever down in Irvine, you will know that the Scottish Maritime Museum now has a roof that does not let in water. Sam Galbraith, who is the chair of that museum, told me that he thought that he would never see the repairs done in the time that we did them in, which has allowed the museum to hold year-round exhibitions and events. If we were to include industrial heritage in the bill, the museums would have understandable concerns, so that is where the boundary lies. It is better to work in cooperation, so that we can look at Irvine, for example, and at all the different historic buildings in that locality, and collaborate with North Ayrshire Council to promote tourism. In that area, there are probably Historic Scotland sites and National Trust for Scotland sites, and other historical sites, as well as industrial heritage sites.

The point about fluidity is well made, but the important thing is that we just get on and do it. I am enthused about that and, as I said in my opening remarks, I am excited about what we can do. There is a real energy in the sector about that.

Liam McArthur: The strategy defines Scotland’s historic environment as “the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand.”

The definition is fairly broad and would encompass what George Adam talked about and my constituency’s wartime history, which is increasingly relevant and important. When SNH was established, there was a definition of natural heritage. It was broad and inclusive—it did not necessarily exclude—but that gave it a position. The evidence we heard gave a mixed picture, but people were of the view that if we do not adopt a similar approach to the historic environment, that will create an imbalance in the legal standing of the definitions of “historic environment” and “natural heritage”. I think that was the point that was being made to us.
From the explanation that you have given, I am struggling to see why you could not adopt an approach to defining the historic environment that is similar to that taken for SNH, without running into any problems, legally or whatever.

**Fiona Hyslop:** I have always taken the view that if one does not need to put something in legislation, one should not. One should not put something in just as window dressing. In the written evidence that the committee received and what the Government received from stakeholders, there was no big demand for the definition to be in the bill. We would have picked that up if we were doing consultation discussions on the bill, but it has not been a burning issue for people. People are more interested in taking forward the strategy.

Indeed, in some of the evidence that I have read and some of the feedback that we have, people think it is better to have the definition in the strategy, because you can work with that. If we put the definition in the bill, say at stage 2, at stage 3 everybody would say, “Why is my bit not in it?” We would end up with a large and extensive definition that would alienate people, who would be saying, “Hang on—my part of the definition isn’t there.”

We went through that when we developed the definition. We started off with something that was broader, more encompassing and more inclusive—a bit like the definition for SNH—but the feedback from the sector was that people did not want that.

**Liam McArthur:** In fairness, although the view was not shared across all those who gave evidence, a number of witnesses did feel quite strongly about it. Whether you put the definition on the face of the bill or find another mechanism for enshrining it, similar to the way in which the definition of natural environment was enshrined when SNH was established, is an open question, but the point is valid: if one compares the position of “natural heritage” and of “historic environment”, there seems to be an imbalance in the way that they are treated in law.

**Fiona Hyslop:** However, that does not stop people doing their jobs, which is the most important thing—getting on and doing the work. Would having the definition in the bill add anything? I am not sure what it would add. The bill is not legislation on the wider historic environment; it is just about setting up a new body and bringing together two organisations to set up historic environment Scotland.

The long title says that the bill’s purpose is “to make minor amendments to the law relating to the historic environment”.

The bill is not about defining the historic environment. Most of that is done in other pieces of legislation. The bill is about setting up an organisation.

I accept the views that we were given in the consultation. People did not want the definition in the bill. If they had wanted it in the bill, it would have been in from the start, but they did not, which is why it is in the strategy.

**Liam McArthur:** I will leave it there. There is a difference of opinion, which was expressed to us during our visit to Orkney as well. There is not a unanimous view on this—I accept that.

**Fiona Hyslop:** The balance is overwhelmingly on one side, but I agree that there are different ways of approaching the issue. We looked at what was done when SNH was established, but I do not think that including the definition in the bill would add to the function of the organisation to which the bill relates.

**Jayne Baxter (Mid Scotland and Fife) (Lab):** Good morning, cabinet secretary. NTS and the Historic Houses Association for Scotland have calculated that their combined repair backlog totals around £103 million. NTS has expressed concern about the Scottish Government’s intention to transfer management responsibility for the properties in care to HES and has said that it is not clear who will be responsible for any associated repairs.

Will you comment on that and say who will be responsible for carrying out repairs to the properties in care when HES assumes management responsibility for them? What is the estimated cost of the repair backlog?

10:45

**Fiona Hyslop:** Again, as referred to in previous answers, the Scottish ministers will be responsible for the properties but we will delegate the functions to historic environment Scotland. As you will realise, I will not personally be responsible for the repair and maintenance of all the properties, but responsibility for ensuring that we have adequate funds for that will remain with us. We will then provide in our letter of grant what will be provided to the bodies.

You make a very good point about the importance of our heritage environment and the conservation and maintenance that are required. A large amount is required, and we are in the process of putting that together. A lot will depend on the baselines and what we are expecting to do. We can do quick maintenance, or we can get into conservation and ensure that things stand for a longer period of time. We are trying to work out the baselines for that.

This is one of the areas that I am keen for the strategic board that I am putting together—which
will bring together NTS and others—to work on. I want the whole sector to look at what is required. We are looking to apply some of the methodology that NTS used in carrying out its audit and look at how we quantify the work. It is a big task and I would hope that the committee would support me in any budget discussions going forward. If we want a strong tourism sector, we need to ensure that our properties are open and can be visited. That means that capital investment in the historic environment is really important. That involves a commitment not just for one spending review; it is a long-term commitment.

So, the backlog is a big problem. I cannot give you a figure for dealing with it just now, and it would be wrong for me to try to do so. However, it will be a substantial amount.

This task was not done by the previous Labour-Liberal Democrat Administration, which never took the opportunity to look at the historic backlog—this task has never been done before. So, give me a period of grace to put it together. It is a big task, but we want to get it right. If we do not know what the issues are, how can we take matters forward?

We know the standing requirements for repair, maintenance, et cetera. What we and NTS are talking about is the long-term aspects. Members have been up to Orkney and I am sure were told about the extent of the expense involved in the sea wall and some of the properties up there, which amounts to millions. Even if we do that work, there will still be a real risk. On mitigation costs, I was at the Wemyss caves in Fife, for which mitigation work could be done. However, we know from what is happening to sea levels that such places are really vulnerable.

Therefore, trying to quantify the cash investment for the work that needs to be done is a real challenge. I am absolutely aware that a significant amount of money will be required, but the task of quantifying it has not been done yet, although I have tasked the strategic board with doing it. That is a good model of collaborative working with other organisations, which is what NTS has done recently.

Jayne Baxter: Is there a timescale for the work on the repair and maintenance backlog to be done? Is it a priority for the new organisation? How long will it take?

Fiona Hyslop: It is a work in progress. I have already seen early indications of the work that has been done, but I would rather that it was done correctly. All that would happen if we came up with a figure is that we would have to readjust it.

It is a significant task, but we have to tackle it. The fact that it is big and difficult is not a reason for not starting it, which is why we are trying to ensure that we understand what is involved so that we can prioritise investment in the future.

When the new body comes into being, it will need to know where it stands in that regard. Noel Fojut has just indicated that we are aiming for a deadline of 15 April 2015, so that the new body and board know what they are coming into. We will update the committee as we go along, because it is clearly an area of interest.

Jayne Baxter: What steps is the Scottish Government taking to ensure that the properties in care can legally be delegated to HES in the manner proposed? I know that that has been spoken about this morning, but will you take us through the steps and indicate whether you think that they are robust enough and able to withstand any challenge that might be made?

Fiona Hyslop: We have set out in primary legislation what the delegated functions will be. However, bearing in mind our responsibilities, we must remember the terms of the relationship with us as guardians—there will still be that relationship with Scottish ministers. Obviously, the ownership of properties that are the responsibility of Scottish ministers will be retained by Scottish ministers.

Mary Scanlon (Highlands and Islands) (Con): I have a brief question on an issue that came up quite a lot when we were in Orkney. The organisations that we met are concerned that the bill will actually lead to more central control, which will affect the current decision-making processes and good relationships that they have with the council. Can you understand that concern? Is it a real concern, or can you give those organisations some comfort that it should not be a concern?

Fiona Hyslop: It certainly should not be a concern and it is not a function of the bill to lead to more central control. In fact, many of Historic Scotland’s current operations are very much decentralised. It has different regions and there is no reason why that should not continue. Indeed, the bill puts a responsibility on HES to work in partnership, which can be done only by working on a locality basis. As I said in response to Clare Adamson’s question, the bill will actually strengthen the relationship with local authorities. I have used the example of Stirling before but it is a good example, because there is the Wallace monument, which is controlled by Stirling Council, Bannockburn, which is controlled by the NTS, and Stirling castle, for which Historic Scotland is responsible. The sensible thing—which is happening—is for those bodies to collaborate to ensure that they promote the place, even though the responsibilities and ownership are in different hands.

We should remember that the place-making and town centre regeneration agenda is important to
the Government and that we can make progress on that only with local decision making about the different areas. I think that the strategy will probably take that further forward, but that is an internal management issue for HES. I would like the issue to surface and be evident in the new body's corporate plan, to give the reassurance that Mary Scanlon is looking for.

Mary Scanlon: It is certainly a matter of concern. I apologise for throwing that one in.

The Convener: Sorry, Mary. I know that you want to move on, but Liam McArthur is interested in that issue. If you do not mind, I will allow him to ask a supplementary question before I come back to you.

Liam McArthur: Thank you, convener.

I listened with interest to the response. Mary Scanlon is absolutely right that concern about that issue came through strongly in Orkney. I understand why it might be difficult to frame the issue in the bill and that the corporate plan might be a more appropriate place to deal with it, but I think that what was suggested, to give effect to the collaborative approach and the importance of place, was that we need to ensure that the new organisation does not simply retreat to Edinburgh and that we get a more regionalised model. Examples have been pointed to in other public bodies, including non-departmental public bodies. Might there be a route to deal with that in the bill, at least by signalling what is expected in the corporate plan?

Fiona Hyslop: I am not sure that it would be appropriate to have that in the bill. HES's internal management will not be any different from that of Historic Scotland, and I do not think that there will be a major difference in its approach to its business in relation to place. We should remember that the 345 properties are dispersed across the country, which means that, if HES is to do its business, it will have to be in the different places. For example, Argyll and Bute has a considerable proportion of the properties compared with the rest of Scotland. RCAHMS and Historic Scotland have central functions in Edinburgh and those will probably remain in Edinburgh. That is to be expected as part of HES carrying out its functions and collaborations. Actually even many of the people who are in Edinburgh spend a considerable amount of time elsewhere visiting the places that they have to work with.

I think that the corporate plan and my ministerial letter of guidance to HES are the right places to deal with the matter. However, having a merged body and a new lead body should not affect the current approach.

Liam McArthur: Historic Scotland, probably more than many other organisations, has a presence in most parts of the country. That was certainly reflected in the evidence that we heard in Orkney. The fear is that, given the budgetary pressure, in putting together the organisation there might be pressure to retrench positions more centrally. People are looking for a degree of comfort on that. The issue is not so much about having people present in a location; it is about those people needing to have decision-making functions so that they do not always have to pass up the line decisions about what is done in a local area or region.

I appreciate that putting something in the bill could be problematic, but the organisations concerned are seeking a degree of reassurance in the course of the bill consideration process that that will not happen to decision making, and that your expectation, through the letter of guidance and the corporate plan, will be of something very different.

Fiona Hyslop: I very much appreciate the comments of both Mary Scanlon and Liam McArthur in this regard. I am sure that that will be reflected in what Mary Scanlon and Liam McArthur in this regard. I am sure that that will be reflected in the evidence that we heard in Orkney. The fear is that, given the budgetary pressure, in putting together the organisation there might be pressure to retrench positions more centrally. People are looking for a degree of comfort on that. The issue is not so much about having people present in a location; it is about those people needing to have decision-making functions so that they do not always have to pass up the line decisions about what is done in a local area or region.

Fiona Hyslop: I do understand those genuine points of concern. I have talked about them in the several discussions that I have had with Ken Calman, the chair of NTS, and we have highlighted areas of transparency in the policy memorandum. There is quite a lot to this important area. Is it okay, convener, if I work my way through it?

On scheduled monument consent, historic environment Scotland will be regulating as well as acting in its own position. The new body will not have Crown immunity, so it will be subject to the same scheduled monument consent process as applies elsewhere. People are probably not aware that there is already a process for scheduled monument consent in Historic Scotland, called scheduled monument clearance. That process is there now, even before the creation of the new
body. Internally, the organisation is regulated in terms of what it has to do in particular areas.

There are some very good recent examples. There was a request from the HS conservation directorate to make plans to put in a new reflection space at the Scottish national war memorial in Edinburgh castle. The request was considered internally by the regulatory arm and the response was, “No, that's not where we want you to put it.” Concerns were expressed and the space was relocated. Similarly, the internal process picked up exactly the same sort of issue in relation to the visitor centre at Stirling castle, where the scheduled monument process applied in exactly the same way as it applies to anybody else.

We have specifically addressed concerns that the new body somehow will not treat itself in the same way as it treats everybody else. The current body is doing that already, even though it does not have to—there is a voluntary process. However, in order to ensure that it is absolutely clear that the same regulatory function will apply to applications from another part of the body as will apply to applications from anybody external, we have made it clear that decisions will, for the first time, be made public. There will be transparency, so that people can see whether there is a difference in the decision making.

Grant making is an important area. Currently, we do not provide capital to Historic Scotland—although it might administer it; for example the £5 million that is going to Bannockburn went to the National Trust for Scotland but came via Historic Scotland. The funding that we provide is revenue funding and is provided via what we currently provide to Historic Scotland. That will continue. We have made it clear in the policy memorandum that historic environment Scotland will not be able to provide grants to itself. Its funding will come from the overall funding that we provide.

The corporate plan will make it quite clear where the funding is going and who it is going to. If, at some point in the future, the body decided to become a charity, the required level of transparency about spending would make its expenditure proposals even more transparent.

As regards sustainability, despite the really difficult period that we have gone through—given the situation with the Westminster block grant and the pressures on us—I have maintained the level of grant. I have said explicitly to Historic Scotland that the front level—the grants that go out to small businesses doing work in town centres and to other bodies—must be maintained, and we have managed to maintain that level.

With the new body—historic environment Scotland—I will be able to do that through my letter of guidance and what I expect in the corporate plan. I could make what I expected quite explicit. To go back to the point about not being able to direct it and say, “You will spend £500 million on Urquhart castle,” I could not tell it which buildings would be involved, but I could say that I expect the level of grant that goes out to other bodies to be maintained at a certain level. I could do that in the generality.

11:00

Mary Scanlon: I am almost more confused than I was at the start. Last week, we heard that Historic Scotland’s budget has gone down, from £51 million to £37 million. If I heard you correctly, you said that historic environment Scotland will not be responsible for allocating what is in its own portfolio. I do not think that I am the only one who is misunderstanding. The Historic Houses Association for Scotland has a repair backlog of £103 million, and that is not even looking at the needs of the National Trust and various others. I am sorry, but I do not quite understand. The budget has already fallen, so where is the money coming from?

Fiona Hyslop: Before Mary Scanlon joined the committee, it spent a lot of time looking at the budgets for Historic Scotland and others. The overall amount of money that Historic Scotland has been able to spend on itself has basically been maintained over the period, but the balance has shifted. As part of our reductions, we reduced the overall funding that went to Historic Scotland, and through a variety of efficiency programmes, it has managed to reduce its expense as an organisation without compulsory redundancies. However, one of the things that I asked it to do was to maintain the grants that went to third parties, and the third-party investment that went to NTS, for example. Last year, NTS received over £1 million from Historic Scotland and other Government bodies. We have managed to maintain the level of grants that go to other organisations, big and small, so that we are front facing.

The new body will do exactly the same as the current body does. Its own estate will be managed by whatever remains from the funding from central Government, but it can supplement that with income that it generates from visitor activities. Historic Scotland has done extremely well and has increased its funding from those sources by 40 per cent over the past period. That meant that, when I came to the committee to give evidence on the budget, although there was concern about the overall Government reduction for Historic Scotland, we knew that it could maintain its activity internally for its own properties and maintain what it gave to third parties, because its overall income was basically in a strong position over the period.
In 2013-14, for example, Historic Scotland's overall expenditure was higher than in the 2009-10 period, despite the fact that the amount that it received from the Government had varied. In 2009-10, its expenditure on grants to third parties—to Historic Houses Association for Scotland members and the NTS—and on town centre conservation area regeneration scheme funding was £15.5 million. In 2013-14, the figure was £15 million. Therefore, we have managed to maintain the level of funding for that.

That is an attempt to explain that I am currently protecting third-party investment to the Historic Houses Association for Scotland and NTS under the current arrangement. Under the new arrangement, I will do that through my letter of guidance on what I expect the overall grants to be spent on.

This is about sustainability. Will it tackle the overall conservation investment that we need? I would need to have significant increases in the funding for my portfolio to do that, but I am sure that, with the committee's support, we can make that case. It is not just about buildings; it is about places, tourism and economic sense. We cannot have that disrepair continuing, but it is a big challenge and addressing it is not easy. I am sure that, when the committee went to Orkney, it realised that some of the challenges are sometimes insurmountable, but we need to do what we can.

I am happy to take more questions from Mary Scanlon, because I know that this is a big concern.

Mary Scanlon: I will move on to my final question. We have talked about the previous budget reductions, and it is likely that historic environment Scotland will seek funding from sources other than the Scottish Government. Does that have potential to squeeze out other bodies? Is it feasible that historic environment Scotland could be offered a donation that might otherwise have gone to another body? Will it be expected to refuse such a donation given the wider interests? The potential conflicts have been raised with us.

Fiona Hyslop: Under the current arrangements, Historic Scotland receives donations from members and people who want to donate—

Mary Scanlon: Yes, but with a reduced budget, is the new body likely to encroach on territory that the National Trust for Scotland, the Historic Houses Association for Scotland and others currently get money from?

Fiona Hyslop: I have said that, over the period, Historic Scotland’s income level has been maintained. You said that there have been budget reductions, but that is not the case for its overall income levels. It has just had a fantastic Easter, for example, which will have helped to boost resources. As part of our stewardship, we have to work within the envelope that we have, and in terms of the income levels that Historic Scotland has, it has managed—for its overall expenditure—to maintain its position.

You are suggesting that, in the future, there will be continuing budget reductions. I am hopeful that the overall economic position will improve and that economically, in the next few years, Scotland will—

Mary Scanlon: I did mention previous reductions. I was talking about the reality.

Fiona Hyslop: Yes. You are assuming that that is going to continue—

Mary Scanlon: No, I did not say that.

Fiona Hyslop: Sorry—I thought that is what you were saying. In going forward, we are trying as much as possible to maintain the status quo in the body's overall facility to spend resources.

I think that the nub of your question is whether historic environment Scotland is going to be in competition in this territory. To an extent, the current bodies are already in competition for both income and visitors. However, to see the matter simply as an internal competition for limited resource is to look at it in the wrong way. The whole point of the strategy is that we need to grow the sector as a whole in terms of both tourism and income from other areas. Because historic environment Scotland will be charged as a lead body, it should not do anything that will cause anybody else any difficulty, because if it did so it would not be carrying out the function of being a lead body that works in collaboration.

I will give an example. Stirling castle received a significant amount of funding from the Heritage Lottery Fund. That was not a displacement, of course, because lottery funding should always be additional resources for additional projects. Stirling castle is doing very well and is growing its income. I would like to see growth in the income that comes to all properties in the historic environment from growth in visitors, in the economy and in tourism. That is where the income will come from.

On the idea of the new body being predatory, there is no expectation on my part that what we are doing will give it different and new opportunities to displace funding. The idea is to try to grow the funding rather than displace it from any particular source. It has been pointed out—I cannot remember whether it was by the Historic Houses Association for Scotland—that competition already exists for donations from people and for visitors. We want a healthy competitive situation with people working in collaboration to say that, if people are coming to Stirling or to Orkney, they should go and see everything, with cross-ticketing
or cross-promotion. That is the big prize in growing the sector.

To say that, somehow, historic environment Scotland will try to take other people’s donations is the wrong way to look at it, and it certainly does not reflect my expectations. Indeed, in my letter of guidance to the body, I will set out the importance of working in collaboration with others.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Before I ask my questions, I would like a bit of clarification. Can you confirm that, over the three years to March 2013, cumulatively, both Historic Scotland and RCAHMS operated at a surplus? Given your comments on the balance between more commercial revenue and Government funding, is it correct to say that they have been able to maintain their activities?

Fiona Hyslop: Yes—the bodies have been able to maintain their activities from the resources that we have provided and the overall income, as you set out.

Gordon MacDonald: I wanted to put it on the record that the bodies generated a surplus over those three years.

Mary Scanlon asked about the concern that funding will be displaced if the new body has charitable status. We have heard a range of views on that. The National Trust for Scotland is concerned about charitable donations, but the Association of Certificated Field Archaeologists says:

“the prospect of unpicking the charitable status that already applies to elements of the proposed organisation appears to us nonsensical”.

I know that it will be for historic environment Scotland to decide whether to apply for charitable status, but do you see any financial benefits for any new organisation in going down the charitable status route that would have no impact on other bodies’ income?

Fiona Hyslop: Yes. I think that Mary Scanlon was getting at whether charitable status would have an impact, which is different from asking about the impact of establishing the organisation.

The bill is drafted such that, if the new body wishes to apply for charitable status, it can do so. The archaeology body that you quoted provided important evidence. The opportunity for RCAHMS to have charitable status has been a big issue for it.

The financial memorandum shows and I have made it clear—I will reiterate it—that the new organisation will be able to carry out and sustain its duties and functions with the resources that it has, whether or not it applies for and receives charitable status. A charitable income would therefore be a bonus. Most of that would come, for example, from rates relief—the new body could apply for that in a way that it cannot currently—and that would have no implications for other organisations. Most such activity would have no impact on other organisations’ operations, and again that is set out in the financial memorandum.

The financial memorandum does not contain a large section that says that the new body will be able to operate only if it receives X amount in charitable donations. There are charitable donations under the current arrangements, and if donations come in under the proposed arrangements, it would be helpful to apply them to charitable purposes.

In relation to gift aid donations, the financial memorandum refers to a figure of £300,000, which would be £3 million over 10 years. I hardly think that that would threaten the NTS, given that Historic Scotland already receives charitable donations. That is shown in the financial memorandum.

Gordon MacDonald: Another concern of the NTS is about the number of staff who will be involved in fundraising and commercial activities. Are you in a position to clarify what proportion of the combined body’s staff will be involved in commercial activities and tourism? Did the outline business case suggest that the number of such staff would need to increase in the new body?

Fiona Hyslop: Unless my officials can find them now, I do not have to hand the figures on the current distribution of staff in different areas, but I can write to the convener with those figures. The business plan for the operation rolls forward Historic Scotland’s current situation. My answer about how Historic Scotland has coped with grant reductions from the Scottish Government is that the number of staff has been reduced, although that has been done while managing to maintain the public sector position of no compulsory redundancies.

Most of the changes had taken place before the bill was set out. The financial memorandum already incorporates the changes that have taken place to date, so there is no modelling that says, “In order to achieve financial stability and security going forward, we will automatically have to increase our income from visitors and events by X per cent.” That is not part of what is in the financial memorandum. If it was, it would be explicit.

Gordon MacDonald: Thank you.

11:15

Liam McArthur: I will follow up on the point that Gordon MacDonald raised. There has obviously been a period of change within both organisations.
leading up to the merger. The concern that was raised with us was that income generation—whether in terms of growing the cake overall through collaborative action or allowing HES to fund aspects that to date have been difficult to fund—is likely to be more of a priority even than it has been in the past.

Those who have raised the concern with us have highlighted the implications that that priority may have for the regulatory dimension that HES will continue to be responsible for, and they have questioned whether that is likely to apply pressure on its ability to carry out those functions efficiently.

Fiona Hyslop: As I said, in relation to the scheduled monument consent aspects, there is already a clearance process, but it will become more explicit and transparent and decisions will be published. There will be no compromise in relation to that; in fact, if anything, the decisions that are made will be more open to scrutiny.

Your question makes certain assumptions. You said that income generation will be more of a priority for the new body. That is not happening as a result of the bill. If it is more of a priority, that is because of the same pressures as are on NTS and the Historic Houses Association. We know that there will need to be constant investment in the sector. That is not a result of the bill; it is the realpolitik of what has to be dealt with.

Liam McArthur: I accept that, but the other bodies obviously do not have a regulatory function. If the income generation aspect of what HES is involved in grows and requires additional staffing to help promote it further, there may be a change in the proportion of those involved in that work and those involved in its regulatory functions. However, those proportions will not necessarily tell us whether there is an adequate resource to discharge the regulatory functions in the way that we would expect.

Fiona Hyslop: That brings us back to the point about ministerial responsibility and scrutiny. I would take a very keen and active interest in that area. Again, that will involve looking at the corporate plan, my letter of guidance and my relationship with HES. I am accountable to Parliament in relation to that, so if there was any movement and we were not satisfied with the way that the regulatory function was carried out, I would be very concerned about that as part of my ministerial responsibility. However, I do not anticipate that happening. The impetus for such movement does not come from the bill; it would reflect the same pressures as are on Historic Scotland now.

Even if we were not to go ahead with the bill, what you are asking about would still be a pressure on Historic Scotland. Although what you refer to is an important argument when it comes to the wider historic environment agenda, it is not affected by the proposals in the bill. The internal tension between the regulatory function and attracting tourists would still exist, even if we did not go ahead with the bill. In fact, I think that the bill will make the regulatory function and the decision-making process more explicit and that there will be more transparency than there is now.

The other area to consider is in relation to designation and regulation, which we have not touched on.

The Convener: We will. [Laughter.]

Fiona Hyslop: We are about to touch on it—okay.

The appeal mechanism to ministers is designed precisely to ensure that, if anything happens in that area, not only will we be transparent about it but it will provide an opportunity for us to be clear about what we expect.

Liz Smith: At the evidence session on 18 March, Jayne Baxter asked

"who is ultimately responsible and accountable for successful delivery of the strategy."

Diana Murray responded:

"It is difficult to say, because we do not have the new body operating, but I imagine that the intention is that there will be a partnership between the new body, which will deliver the strategy and enable the partnerships, all the other people in the sector—there are many—and, of course, Government. We will work in collaboration."—[Official Report, Education and Culture Committee, 18 March 2014; c3812.]

Pages 31-32 of the “Our Place in Time” strategy document say that a three-tiered delivery model will deliver the strategy. Where exactly does accountability lie for delivering the strategy?

Fiona Hyslop: This committee session is about the bill and your question is about the overall strategy. Ultimately, it is Government that will drive forward the strategy. As I have set out, we will establish a strategic board, whose membership will include not just the chair of historic environment Scotland—a body which would be established under the bill that you are scrutinising today—but many key people from the independent sector, including charities. Therefore, delivery will be a collective responsibility across the sector and the board for the strategy will be all-encompassing. Within that structure, the internal governance arrangements of members, such as NTS and other others, will continue to apply because they are independent organisations.

The bill, if agreed by Parliament, would see the establishment of a board for historic environment Scotland. That board will have a chair, and the chair and the board members will be appointed by
Government ministers. The board will drive forward historic environment Scotland. The bill sets out the new body’s role and functions. All that will contribute to the first ever Scotland-wide historic environment strategy.

Liz Smith: On the body’s functions, if the board were to have a difference of opinion on the strategy’s overall direction, given the directions set out in the bill, who would have the ultimate say in what that strategy would be?

Fiona Hyslop: Were there to be a difference of opinion, I am sure that we would have robust discussion with the all-Scotland strategy board. We have managed to achieve consensus on the way forward and the priorities, which has given us the blueprint to proceed. If there were any differences of opinion, I would have discussions with the chair and the board. However, I would expect them to be supportive of the Government strategy in their corporate plan.

If we consider other sectors, such as the natural environment or enterprise, we see that the normal relationships between an NDPB and the Government would pertain in relation to how concerns are resolved. If the concerns were genuine and had a big bearing on the strategy, we would try to influence members on whether they may want to change the strategy. However, given that the strategy has just been delivered on a consensual basis, I expect that, for the foreseeable future, the historic environment Scotland board would deliver our strategy.

Liz Smith: I am sure that, in the vast majority of cases, there probably would be agreement. However, in a circumstance in which there is a difference of opinion about the overall direction of the strategy, does the Scottish Government have the final say on what that direction should be?

Fiona Hyslop: Yes, it does.

Liz Smith: Are you comfortable that the charitable status of any of the bodies represented on the board would be absolutely clear in such a circumstance?

Fiona Hyslop: That takes us back to what we can do in relation to the charitable status and ministerial powers of direction. We are talking about the overall strategy, not the specifics. Ministerial directions cover specific matters, whether on collections or the management of the body’s activities, for example. The disapplication of the charities investment legislation will come into play if the new body wishes to apply for charitable status. I do not know whether the board would want to make an application—that would be for it to decide—but, if it did, it would be in a similar situation to other bodies to which the disapplication of the charities legislation applies.

We have had discussions with the Office of the Scottish Charity Regulator. It cannot make a judgment until such an application is submitted, but we are very conscious of the points that you are making in relation to making sure that what we do in the bill will not compromise the new body, should it make such an application. We cannot prejudge what OSCR will say or do, but we can have discussions with it and make sure that it is sighted on what we are doing. That is exactly what we have done; we have drafted the legislation in such a way that it should not be compromised by any decision that OSCR could take in the future. You raise a very good point.

Liz Smith: On the governing board, Kate Mavor of the National Trust for Scotland said:

“If we are to set objectives and outcomes and expect people to be accountable for them, we need to make sure that the funds are available to enable the delivery of those outcomes. It is not yet clear where that money will come from or how it will be distributed.” —[Official Report, Education and Culture Committee, 6 May 2014; c 4118.]

Will you comment on that?

Fiona Hyslop: We would expect the grant giving to continue rolling forward—and, as I have said, NTS has been a recipient of a significant number of grants over recent years.

On the big picture of skills, we are already investing a lot. I will do my pitch again: please go up to St Andrew Square and see the young apprentices there doing their work. We have already tried to marshal resources into skills with apprenticeships through Historic Scotland and the wider Scottish Government in this area. We are also investing in conservation skills in the Engine Shed in Stirling. Rather than it being something that Historic Scotland is doing itself, we would like to work with other bodies such as NTS to look at how we do this for the whole sector.

Is it clear where the resources will come from? A lot will have to come from what we are doing already. If we set out what we need to deliver the strategy in terms of skills and other elements, that will allow us to quantify what we need to do and then bid for resources to make it happen. I hope that some of the resources will be self-generated as a result of the increased tourist activity that we are seeing across the piece. However, the nation must understand that if it wants to have a built heritage that is accessible, which people can visit and which is there for future generations, there will need to be investment in the sector going forward. I am sure that we will come back to that issue.

NTS is quite right to say that there are big challenges. I absolutely agree with that, but, rather than have people tackle those in isolation, we are trying to bring everyone together. There are strengths across the sector. Everybody has to
work on this. We have managed to provide very good stewardship over the recent period with the limited resources that we have. However, we have to look at the big picture going forward. I want to share that leadership with other bodies, which is why I think NTS has a key role.

**Gordon MacDonald:** I want to continue the discussion about governance. The Society of Antiquaries of Scotland raised concerns regarding the current members of Historic Scotland. It states in its submission:

“members have previously had the opportunity to contribute to governance, planning and decision-making within Historic Scotland and to the scrutiny of these matters”.

Is there a role for the 131,000 members of Historic Scotland within the governance structure? If so, what is that role?

**Fiona Hyslop:** How do I say this tactfully? We have just been discussing the NTS. One of the issues that George Reid’s report looked at was the relationship between hundreds of thousands of members and the governance structure. Considerable changes were made to make sure that the new body could be run in a way that is more fit for purpose and more contemporary.

I suppose that it is more a question for Historic Scotland to decide how it relates to its members. It has very serious regard to the regular feedback that it gets about what members are interested in. It has a very active and interested membership. Those of you who receive the magazine regularly will see that. However, it is a public body—an NDPB—so it will have to be run in the way that we expect others to be run.

We will be setting up the new board. I want to put on record my thanks to the commissioners and the existing board of Historic Scotland for their work in taking us to where we are. We have a transitions board that is particularly looking after the interests of staff and other areas going forward.

It is important that we set up the new body with an experienced new board. I have read the evidence from the Society of Antiquaries of Scotland, which was mentioned. We do not want to designate that there will be somebody responsible for archaeology or for antiquities: the board will have to be drawn from people with experience and with interests across the piece, and we want to ensure that the board is balanced and has different perspectives, but we will not be designating reserved places for different people.

I am not sure whether that is what the evidence that was presented to the committee was addressing, but the valued members of Historic Scotland—of which I am one; I think that I was the first culture secretary who was already a member of Historic Scotland before being appointed to the post—give the organisation its lifeblood in terms of activity, visitors and numbers. What is interesting is that, although the sector has faced challenges, the membership increases of both NTS and Historic Scotland have been really healthy in recent times, and that is a good signal for the future. People value their heritage and want to visit and contribute to heritage sites.

It is a good question to ask the new body, which will set out in its corporate plan the relationship that it will have with its membership. Historic Scotland already does that, but how that continues will be of interest.

**The Convener:** Thank you for your evidence today, cabinet secretary. There are a number of areas that we could not cover today, so we will follow up in writing on a number of points arising from this morning’s discussion and from questions raised in written evidence—too many too deal with in an oral evidence session.

I invite you and your officials to wait for a moment while we deal with the next item.
Historic Environment Scotland Bill: Fact-finding visit to Orkney – May 2014

Introduction

1. The Committee visited Orkney on 12 May 2014 as part of its scrutiny of the Historic Environment Scotland Bill.

2. Members visited various archaeological and historical sites on the island in order to better understand the issues raised by the bill and the accompanying historic environment strategy. The Committee also held an informal meeting with local groups to understand their role in Orkney’s historic environment and to gauge their views on the Bill. A full list of participants is provided in the Annexe.

3. Participants discussed the importance of Orkney’s historic environment then focused on the broader points arising from the Bill and the strategy. The key points from the discussion are summarised below.

Discussion topics

4. There was very strong agreement about the importance of the historic environment to Orkney, in terms of tourism and economic development. The cultural value of the historic environment was also stressed.

5. There were some mixed views on the degree to which all the island’s relevant bodies with an interest in the historic environment worked well together. Some praised working relationships and said these reflected the strong community spirit across Orkney. Others considered that relationships could be improved. Some participants also cautioned that Orkney’s potential to develop the historic environment is not being fully realised as a result of infrastructure and resource constraints. There was also a question as to whether the island’s historical appeal is promoted as heavily as its historical archaeological attractions.

6. The main comments made about the Bill and strategy can be summarised as follows—

- **Establishing HES:** There was support for the Bill’s aim of merging Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland to form Historic Environment Scotland (HES). However, there were calls for clarity on exactly what partners could expect from HES; on the expected operational and staffing structure of the new organisation; and on the resources that would be available to support the strategy. There was also some concern about a perceived vagueness or lack of detail in the strategy. Participants considered it important that the merger should not distract HES from fulfilling its core functions;

- **Regionalised structure and distance from decision-making.** The importance of guarding against centralised decision making and ensuring instead that decision-making processes are set at the appropriate levels (for example by setting a regional agenda and strategy) was stressed. Some concerns were raised that the proposed merger may result in a move away from Historic
Scotland’s current regionalised structure. However, there was also recognition of the importance of applying a national perspective in establishing certain standards, and awareness that any new regional approach would have to avoid creating potentially damaging competition at local level;

- **Conflict of interests**: Some participants raised the possibility of potential clashes of interests arising from the merger, as the new body would be a regulator and in charge of raising revenue, while enjoying considerable political clout and prestige. It was also considered that a possible conflict of interest could arise in HES, for example, in it undertaking survey and excavation; overseeing and undertaking research; and should HES be able to access its own funding when seeking to make repairs. It was pointed out that Historic Scotland and RCAHMS had discounted this latter possibility in evidence to the committee;

- **Distancing HES from the Scottish Government**: Related to the above two points, it was suggested that a possible long-term consequence of the Bill and strategy could be HES being left more exposed to commercial pressures, thereby placing a greater reliance on commercial income or research funding. There was concern that the new body may attract funding that would otherwise be available to other bodies working in the historic environment; it was suggested that this could bring HES into potential conflict with NTS, universities, commercial units, trusts and community organisations that access funding for outreach and training;

- **Definition of ‘historic environment’**: There was a prevailing view that ‘historic environment’ did not necessarily have to be defined in the Bill. However, it was suggested that the term had to be properly defined and clarified somewhere, particularly to avoid possible legal confusion.

- **Responsibility for the marine environment**: The group was not clear about the extent to which responsibility for the marine environment would be included in the remit of HES and other public bodies. There was some concern that responsibility and decision-making about submerged archaeological sites appeared to sit with Marine Scotland rather than HES. The over-riding concern, however, was to ensure that responsibility for submerged sites did not fall somewhere between the remits of Marine Scotland and HES.
Annexe: List of participants

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<tr>
<th>Name</th>
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<tr>
<td>George Adam MSP</td>
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<td>Clare Adamson MSP</td>
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<td>Neil Bibby MSP, Deputy Convener</td>
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<td>Leslie Burgher, Orkney Heritage Society</td>
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<td>Nick Card, Senior Projects Manager, Orkney Research Centre for Archaeology (ORCA), Orkney College UHI</td>
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<td>Jo Constantine, Tomb of the Eagles</td>
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<td>Professor Jane Downes, Head of Archaeology, Orkney College UHI</td>
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<td>Barbara Foulkes, Islands Manager, Visit Scotland</td>
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<td>Julie Gibson, County Archaeologist, Orkney Islands Council</td>
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<td>Tom Hunter, Historic Environment Officer, Orkney Islands Council</td>
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<td>Kathleen Ireland, Stromness Museum</td>
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<td>Chris Jones, Commercial Business Manager – North Region, Historic Scotland</td>
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<td>Liam McArthur MSP</td>
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<td>Gordon MacDonal MSP</td>
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<td>Roddy Mackay, Head of Planning and Regulatory Services, Orkney Islands Council</td>
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<td>Jamie Macvie, Senior Planner – Development Management, Orkney Islands Council</td>
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<td>Kirsty Mainland, Director, Orkney Tourism Group</td>
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<td>Stewart Maxwell MSP, Convener</td>
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<td>Mary Scanlon MSP</td>
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<td>Paul Sharman, Senior Projects Manager, Orkney Research Centre for Archaeology (ORCA), Orkney College UHI</td>
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<td>Richard Strachan, Senior Archaeologist, Historic Scotland</td>
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<td>Lucy Vaughan, Head of Conservation North, Historic Scotland</td>
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<td>Caroline Wickham-Jones, Lecturer, Department of Archaeology, University of Aberdeen</td>
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Historic Environment Scotland Bill

Caroline Wickham-Jones, Archaeologist: Personal issues and concerns.

- **Partiality.** The HES Bill seeks to establish a new body through the merger of RCAHMS and Historic Scotland. In essence this merges an impartial body with responsibility for curating information and records relating to the built and archaeological environment with a body with responsibility for the good management of that environment through designation (thus with an opinion). RCAHMS has a strong reputation and the loss of the impartial advice that they offer would be a significant loss.

- **Core tasks.** As an archaeologist I would identify certain core tasks that I feel need to be safeguarded into the long term future:
  - Management of ancient monuments through **scheduling.** This, I feel, is best kept at a national level rather than regional in order to avoid issues of local resourcing, expertise, specialization and bias.
  - **Survey** work. The survey work undertaken by RCAHMS is vital to ensure a thorough knowledge of the resource that we are trying to manage and understand.
  - **Archive Storage** – the National Monuments Record and its search engines such as Canmore, Pastmap. This is an important resource, much used by professionals, students, related professions and the public.
  - **Finds disposal.** Care needs to be taken that the allocation of excavated material remains impartial and continues to favour the principal that material be housed as near to the original location as possible. This principal has been hard won – we do not want to lose it.
  - **Research.** Archaeology cannot be understood through developer funding alone. Historic Scotland have performed a vital task by funding research excavation and it is important to ensure that they continue to do this. This funding is of particular value where sites are threatened by natural processes or individuals (such as householders and farmers) who would not be able to finance intervention.
  - **Properties in Care** – management and access. Public access to heritage monuments is vital but cannot be driven by commercial considerations. A subtle shift towards an emphasis on commerce has taken place over the last three decades and this needs to be halted.
  - **Properties in Care** – research. Funding of excavation on Properties in Care is vital in order to understand and interpret sites.
  - **Dissemination.** This is vital and currently undertaken very successfully to both academics and the public.
  - **Liaison** with the Natural Heritage (SNH). The past population of Scotland lived in a close relationship with the natural world. In many ways it does not make sense to divide the curation of the natural resource from that of the cultural resource, though I accept that is how we do it in Britain (unlike for example our Danish neighbours).
Liaison between HS and SNH fluctuates and depends totally on the interests of individual staff. I would like to see attention given to permanent improvement of this matter.

- **World Heritage.** As archaeologists we have much to be proud of and this is the epitome. An active policy regarding World Heritage Sites is vital.

- **Resourcing.** The resources allocated to core areas of heritage protection and understanding have dwindled in recent decades. This needs to be addressed and resources restored to a realistic and significant level. Scotland will continue to punch underweight in the field of heritage unless we are prepared to support the work of the heritage professional. The new body will be toothless unless it has the resources to undertake its role.

- **Regional v Central.** It is essential that we maintain a body to provide a national overview of the Scottish Resource. At the same time, that body can only operate effectively if it maintains close contact with local professionals and community bodies. In the past two decades much of this contact and understanding has been cut and HS staff have been forced to operate as faceless bureaucrats. This needs to be addressed.

- **Innovation.** HS and RCAHMS lead the way in many significant aspects of the heritage profession. It is vital that the new body maintains the flexibility and resourcing to continue this role. In many ways we have begun to lag behind our richer neighbor, England, here. It is, for example notable that we know little about the submerged prehistoric landscape around Scotland, though better resourcing in English waters has led to discoveries like the Neanderthal Skulls off East Anglia, the footprints at Happisburgh and various finds of handaxes and other early tools from the English sector of the North Sea. Given the likely economic importance of the Scottish sector of the North Sea in the next decades this specific issue is of particular importance.

**Additional Replies to specific questions raised in the call for evidence:**

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

If the bill leads to streamlined and efficient management it will improve management and promotion, but only if current levels of resourcing are improved. The overall functions as set out in section 2 are good. It should be noted that promotion needs to apply internally to staff as much as to the public externally. At the moment many HS staff are ignorant about matters outside their specific role – Conservation and promotion staff at the recent research workshop showed a sad lack of awareness of the archaeological work undertaken by HS for example and were generally ignorant of the importance of submerged landscapes (another field with which HS are concerned).
2. Are the functions proposed for Historic Environment Scotland the correct ones or are there any omissions? Are the outcomes expected of the new body ambitious enough or could they be strengthened?

The functions are good. I am pleased to see dissemination and archiving included.

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

This is a diverse and tricky field, so the proof of the Bill will be in its enactment.

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

I wait to see. The deficiencies in management that relate to my work result from lack of funding and the bill does not address resourcing levels as such. See above.

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

My concerns are set out above.

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

It is important to respect the diverse nature of Scotland. The Gaelic heritage for example is relevant to only part of the nation. To establish Gaelic speaking schools or use Gaelic translations in Orkney would be as relevant as using French and less relevant than Norwegian. Care needs to be taken on this issue – note Orkney is provided only as an example; this issue affects many other parts of Scotland.

It is also important to recognise the significance of local heritage – the principal that locally found material cultural remains should be housed within the area where they were found is an important one.

Finally I would note that the past inhabitants of Scotland inhabited the natural world, it is impossible to separate them from that world, and full account of the past environment, including landscape and environmental change needs to be taken into account. This may be done through the relationship with SNH, through academic studies and departments and through other organisations.

7. The Scottish Government’s newly published historic environment strategy
also seeks to improve enjoyment and understanding of Scotland’s historic environment. The Committee does not wish to repeat the extensive consultation undertaken on the strategy, but would welcome your views on whether it and the Bill together:
- establish clearly who is responsible and accountable for delivering the strategy;
- will involve appropriately all those public and private bodies with a role in improving the historic environment;
- lead to demonstrably better access to, and enjoyment and management of, the historic environment.

Digital technology is important and currently the use of digital media is patchy. Too much focus has been spent on highly visual projects such as Scottish Ten which looks glitzy though the overall research impact may be questioned while lower ‘value’ projects of wider impact have been neglected – there is still, for example, no dedicated website for the Heart of Neolithic Orkney World Heritage Site and its associated archaeology despite its general high public profile and potential public interest.

The Committee expects to take oral evidence on the Bill in April and May, and to report to the Parliament in June. It would be helpful if your response could indicate whether you would like to provide oral evidence to the Committee. Please note, however, that there is no guarantee that such a request will be met by the Committee.

I would be happy to provide oral evidence to the Committee if there are questions that I can answer, though I have set out my own concerns here. I would, however, need financial help with my expenses if expected to travel south.

CR Wickham-Jones

Please note: though I am a lecturer in Archaeology at the University of Aberdeen, these comments represent my personal opinion not that of my employers.
Dear Committee,

Historic Environment Scotland Bill: evidence from the Scottish History Society

I am writing on behalf of the Scottish History Society, to give our views on the Historic Environment Scotland Bill as part of this new stage in the consultation process. The Society is one of the oldest learned societies in the country and we try as far as possible to represent the views of the academic community in Scotland. We have engaged with every step of the consultation processes around these reforms so far, and would like to make some comments on the Bill introduced on 3 March 2014.

As the Society understands it, the Bill sets up Historic Environment Scotland [hereafter HES] as a Non-Departmental Public Body – as distinct from Historic Scotland, which is an Executive Agency of the Scottish Government and which operates using powers conferred on Scottish Ministers. The significance of this is that HES will not be created to carry out ministerial orders or policy; instead it should be more or less self-determining and enjoy greater independence. This is, in the Society’s view, a positive change – but only if it equates to real freedom of action in principle and practice for HES and the Society would welcome a statement from Ministers that HES will have real freedom of action and will not be constrained by Ministerial directions. There are certain areas in the Bill that have caused us some concern in relation to this point of principle:

1. Section 2(8) requires HES to have regard to ‘any relevant policy or strategy published by the Scottish Ministers’. Note the word ‘any’. In paragraph 29 of the Explanatory Notes, ‘any’ relevant policy becomes ‘wider government policies and strategies’ and the examples given relate to energy efficiency and waste reduction. We think it is unlikely that section 2(8) should be read in such a limiting manner and, therefore, would worry about the interfering hand of Scottish Ministers.
2. Para 9(2) of Schedule 1 provides for any member of the Scottish Government or any person authorised by ministers to attend or take part in any meeting of...
HES. If it is the case that HES is to have freedom of action, what is the justification for this?

3. Section 12, provides for the Scottish Ministers to direct HES (both generally and specifically) in relation to the exercise of its functions’ and the Explanatory Notes explain, at paragraph 7, that ‘HES must comply with directions and must have regard to guidance issued by the Scottish Ministers’. If the stated intention of this Bill is to allow for greater independence for HES, perhaps this should be revised? Furthermore what is the distinction between specific directions to the Board of HES to which it must have regard, and directions on specific cases, objects or properties which we question whether it is proper for the Scottish Government to give? Some examples would be helpful.

On a more positive note, the references in sections 2 (2)(c), (3), (4)(b) and (5)(a) to education, study and research were helpful, especially when supported by section 2 (6) and (7) (as explained in paragraphs 14, 17, 19, 22, 26) which allow HES to support and assist, (including financially) ‘any other person exercising functions in relation to the historic environment of a similar nature to its functions.’ This appears to be an extension of the functions of Historic Scotland, and we note this with pleasure.

On section 5, which relates to the acquisition of objects, the principal may be sound, but we wonder about the terms under which the objects may be disposed of. The power of disposal includes destruction. Given the draconian nature of this power, we think HES should be statutorily obliged to mention, and justify, all disposals (but especially destructions) in their annual report. We wonder if the power is wide enough for Historic Scotland to acquire archives (given the width of the meaning of the words ‘objects’ and ‘collection’ in section 13)? If so, how might this fit in with the policies and powers of the principal keepers of archives in Scotland, the National Library of Scotland, the National Records of Scotland and the National Register of Archives of Scotland?

Lastly, the Financial Memorandum promises additional annual running costs from 2015 at a regular £1.6m, and annual savings at £1.4m. Paragraph 10 of the Memorandum further states that ‘whilst the intention of the bill is not to generate savings, there is the potential for net savings were the new body to achieve charitable status.’ But if OSCR does not deliver, will the financial assistance required from the government have to increase, or will the activities of HES have to be limited? We would like to see this point clarified: in short, how critical is OSCR's decision to the financial justification of the change?

We hope this is helpful, and are always willing to help further in the consultation process.

With best wishes,

Dr Annie Tindley
Consultations and communications officer for the Scottish History Society
10 April 2014

Stewart Maxwell MSP  
Convener  
Education & Culture Committee  
Room T3.40  
Scottish Parliament  
EDINBURGH  
EH99 1SP

by email to Stewart.Maxwell.msp@scottish.parliament.uk

Dear Mr Maxwell

**Historic Environment Scotland Bill**

Thank you for the opportunity to comment on the above Bill. This matter was considered at recent meetings of COSLA’s Executive Groups for Development, Economy & Sustainability and Community Well-Being.

COSLA welcomes the publication of the Historic Environment Bill and the simultaneous publication of the first Historic Environment Strategy for Scotland.

Local government planning practitioners have been in discussion with Scottish Government officials to ensure that the options being proposed in the Bill will deliver a streamlined system more closely aligned with other areas of planning policy and with the principles of better regulation and simplification.

We note that under the proposals planning authorities will have to consult the new body on receipt of an application for Listed Building Consent (LBC). The new body will review the application within a statutory time period and has power to register an objection to a proposal although the local authority will determine the application.

We also note that local authorities will become able to determine applications for LBC for works to properties in their own ownership consulting with the new body as appropriate. The current advice giving role (currently carried out by Historic Scotland) may diminish under the new arrangements provided by the new body. COSLA members noted that this may impact on local government planning and other services.

This highlights a general need to safeguard access to specialist expertise around the country. COSLA leaders have previously discussed access to a broad range of specialist services including the potential for creation of joint units as recently proposed in relation to opencast...
coal and energy consents. We therefore recognise the need for flexible approaches to be considered to maintain access to expertise across the spectrum of local government services but would stress that such joint arrangements need to be locally agreed.

COSLA welcomes the publication of the strategy, its overarching objective in demonstrating a commitment to the protection and promotion of the historic environment and its recognition of the contribution already made by local government alongside that of other stakeholders from the public, private and voluntary sectors.

COSLA acknowledges the importance of the historic environment in contributing to a sense of place, locally and nationally, as well as its role in supporting the wider economy in terms of tourism, construction, regeneration, education etc. and in fostering community well-being.

Given the resource pressures facing all sectors, COSLA agreed last year to work in partnership with Scottish Government and other stakeholders to agree principles and actions to ensure proportionate and appropriate approaches to managing the historic environment. In line with COSLA’s Vision for Local Government these may vary according to local authority priorities and will require negotiation at appropriate levels.

COSLA will continue to work with the Scottish Government through the joint Historic Environment Working Group, referred to in the Historic Environment Strategy which was set up following the publication of the consultation last year.

This joint working group has significant representation from local government practitioners across a range of services (e.g. archaeology, conservation, planning, sustainability, community planning, culture and leisure) working alongside their Scottish Government and Historic Scotland counterparts as our contribution to the ‘mainstreaming the historic environment’ agenda within a context of dwindling resources.

It is via this joint group with political oversight from COSLA members that we will work to ensure that matters in relation to service provision and access to expertise are addressed collaboratively given the challenging economic circumstances we face.

I also look forward to continuing to work with the Cabinet Secretary on matters relating to the historic environment and to COSLA’s involvement in the overarching governance arrangements to be set up by the Government in due course.

Yours sincerely

Cllr Stephen Hagan

COSLA Spokesperson
Development, Economy & Sustainability

Copy to:
Ms Fiona Hyslop, Cabinet Secretary for Culture & External Affairs
Mr Derek Mackay, Minister for Local Government & Planning
Clerk to Education & Culture Committee, Scottish Parliament
ARCHAEOLOGY SCOTLAND RESPONSE

Historic Environment Scotland Bill – Call for evidence

The future management of Scotland’s historic environment, and how it should be championed, is to be considered by the Scottish Parliament’s Education and Culture Committee. The Committee has issued a call for evidence as part of its scrutiny of the Historic Environment Scotland Bill. This is Archaeology Scotland’s written evidence in support of this process.

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

The creation of Historic Environment Scotland will not in itself improve the overall management and promotion of Scotland’s historic environment, but together with the creation of the Historic Environment Policy Unit in Government, the continued support for a vibrant public, private and voluntary sector and funding for appropriate services within local authorities to help deliver “Our Place in Time – The Historic Environment Strategy for Scotland”, this objective has the potential to be achieved.

It is unclear as to whether the new organisation will be focused on the wider historic environment rather than just Scheduled Monuments and Listed Buildings (and to a lesser extent Inventory sites) and Properties in Care. Scheduled Monuments represent only c8% of the archaeological monument record which means that the other c92% of archaeological assets fall under the remit of planning authorities. Local authority archaeology services are under increasing pressure due to the current economic climate and their non-statutory status makes them vulnerable to cuts. There is a difference between giving advice and enforcing the law and we are keen to ensure HES is able to fully represent the interests of the historic environment in the planning system and that the new set up recognises the importance of having local expert advice available.

The creation of a new lead public body for the sector cannot be de-coupled from the need for support for the other players and the need to find ways of implementing the Historic Environment Strategy and the forthcoming Archaeology Strategy. Whilst it is laudable that the new body should lead and enable, it should be recognised that there is much expertise and commitment out with the new body, both at community level and at organisational level (especially within local authorities and the voluntary sector). The success of the new body and delivery strategy will depend on real partnerships being developed through co-production approaches to delivery (See http://www.coproductionscotland.org.uk/about/what-is-co-production/) and a strong advocacy and regulatory role for HES coming through in its Corporate Plan. One of the major benefits to the public will be having one clearly defined organisation as an advisory and information resource as well as a repository of archives and the collections of SCRAM. This will greatly help our customers, clients and networks to understand, celebrate and enjoy the historic and cultural environment.
2. Are the functions proposed for Historic Environment Scotland the correct ones or are there any omissions? Are the outcomes expected of the new body ambitious enough or could they be strengthened?

Archaeology Scotland is concerned that promoting the historic environment is not seen as a particular function of HES (Para. 2.2) though it is identified as a general function (para. 1.2 and 2.5). Furthermore, in relation to Strategic Environmental Assessment, the Bill does not explicitly envisage HES taking on this role. As a statutory consultee at present, “Historic Scotland is well placed to help Scotland’s public bodies focus their assessments on the key environmental issues facing the country and to help them fully embrace today’s environmental challenges by finding new and innovative ways to address them in the plans and programmes they prepare”. (The Strategic Environmental Assessment Review http://www.scotland.gov.uk/Resource/Doc/921/0119892.pdf)

There is ambiguity in the policy roles of Historic Environment Scotland in relation to Historic Environment Policy Unit and while these may be teased out through time as HES and HEPU develop, a more ambitious and clearer statement is needed on how HES will promote the Historic Environment beyond its statutory duties. The policy objectives of the Bill are that HES will deliver on a range of National Outcomes and this is to be welcomed. The recent inaugural BEFS lecture by Sir Harry Burns on wellness and the links to the built environment is a good example of the relationships to national outcomes http://www.ads.org.uk/urbanism/features/sir-harry-burns-s-befs-lecture-on-wellness

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

It is to be welcomed that the Bill will place an obligation on Historic Environment Scotland to work collaboratively. The functions of the new body have the potential to make Scotland’s historic environment more attractive to communities, families and tourists but this will have greater impact if partnerships with local authorities, other public and private bodies and the voluntary sector are developed. Whilst Archaeology Scotland see this as an exciting opportunity, there are issues that remain unclear within the Historic Environment Scotland Bill such as how far will the proposed partnership arrangement go? Will partners be expected to deliver on KPI’s set by HES? If there are conflicts of interest, how will these be resolved? If Board members of HES are not partners, where do partners have a voice?

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

There have been accusations in the past about the Scottish historic environment sector being fragmented and cluttered. HEACS, in their “Report and Recommendations on the infrastructure of the historic environment”, were unconvinced that the voluntary sector is overcrowded and took the
view that the current number of bodies is a measure of the breadth of interest and considerable public commitment to the historic environment. Furthermore, HEACS urged that Historic Scotland should be more proactive at making links with wider policy objectives of the Scottish Government.

Archaeology Scotland with our focus on community engagement (e.g. Adopt-a-Monument and Dig It! 2015) and learning (e.g. Heritage Heroes and online resources) has an active role in promoting Scotland’s historic environment. Historic Scotland has been supportive of these initiatives and we would hope that HES would continue to see such support as central to its role. The Bill as currently proposed does not make this support for strengthening the sector explicit, nor does it identify the need for skills development as a priority. The lack of clarity regarding how HES will engage with the sector is a concern.

Having HES an NDPB will hopefully allow members of the new organisation to take informed positions on issues managing and promoting the historic environment without having the same constraints that exist for civil servants who report directly to Scottish Ministers. We note, however, that SNH, a similar NDPB, appears externally to be fairly constrained in its ability to champion issues of natural heritage concern.

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

In relation to the regulatory functions of the new body in managing change the text is generally weak and could be strengthened. In the Natural Heritage (Scotland) Act 1991, SNH may, and if so requested by the Secretary of State or any general, regional or district planning authority shall, advise the Secretary of State or, as the case may be, the authority in relation to any matter arising under the [1972 c. 52.] Town and Country Planning (Scotland) Act 1972 which affects the natural heritage of Scotland.

There could be more emphasis on mainstreaming the historic environment and engaging with the wider community.

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

This memorandum sets out the policy objectives in only the broadest terms and further clarity is needed on how the non-statutory functions of the new body will be promoted.

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

- establish clearly who is responsible and accountable for delivering the strategy;
The new HES Board and the Working Groups established with CoSLA, BEFS and others in the sector, including representation from Archaeology Scotland, will develop how the strategy will be delivered. We do have some concerns that the Strategy is for the whole of Scotland and the responsibility for its success lies collectively, therefore implementation is key. With reduced funding available, especially for local authority heritage services, Archaeology Scotland have concerns over the capacity for the strategy to be delivered effectively and that potential conflicts of interest may arise.

- will involve appropriately all those public and private bodies with a role in improving the historic environment;

The structure of the implementation is evolving and it is not clear that this strategy can set more than the broad parameters for this to be done. The voluntary sector too has an important role to play here.

- lead to demonstrably better access to, and enjoyment and management of, the historic environment.

This is the crucial outcome and it is perhaps too early to assess whether this will happen. Having a historic environment strategy and a historic policy unit based within central government are good first steps in ‘mainstreaming’ historic environment in all government policies. Setting out how success will be measured is a key element of current work stream activity within the sector.

Please also add any further comments that you consider would assist the Committee’s scrutiny of the Bill, including on more specific areas such as:

- the possible benefits and disadvantages of Historic Environment Scotland being granted charitable status;

The benefits are unclear at this point as the charitable objectives are not yet defined but one of the objectives should be to safeguard the collections including SCRAN. We do have some concerns about competition for funding from Trusts and Foundations that support the historic environment sector with the new NDPB being on a larger scale and on the face of it with greater in-house expertise. It has been stated that the new body will help to “grow the cake” and we would like to see more details of how this will be done.

The perceived reputation or ‘clout’ of a large NDPB might influence the decisions taken by boards of companies or trusts and outweigh any application made by a smaller organisation even though the smaller body meet the criteria and will deliver desirable outputs and outcomes.

A major source of funding for the sector, the Heritage Lottery Fund, is over-subscribed and continued grant aid for the voluntary sector through the new body is uncertain in the longer term, yet much is being and could be achieved with more long-term or core funding for voluntary sector organisations or for reciprocal membership arrangements with the new body.

- the implications for staff in Historic Scotland and RCAHMS of the creation of Historic Environment Scotland;
Whilst we are concerned about the potential loss of skills arising from the restructuring, this is a continuing problem for all organisations as people retire or seek other employment. The commitments for voluntary severance payments, to guarantee job positions for two years and to transfer personnel to other posts within the Scottish Government seems generous from the position of the voluntary and commercial sectors. We are more concerned that the new organisation will retain and attract the professional skills necessary to protect and promote Scotland’s historic environment.

- whether the Bill will improve existing policy and practice in relation to grants and loans; scheduled monuments; and listed buildings.

The Bill in itself will neither improve nor make the management any of these issues worse. It is the implementation of the new structure and the working relationship with other organisations such as local authorities and other partners that will decide the success or failure of these. This implementation will itself depend on how successful the new Board and the Working Groups are at instigating better practices and more joined up working. One of the main contributory factors to improving policy and practice in relation to scheduled monuments will be the relationship with local authorities and others and making accessible information on condition of these monuments and the expertise and knowledge of the staff assessing these sites within HS at present. Sharing of data and transparency of processes are fundamental to improving these areas.

Eila Macqueen
Director
Archaeology Scotland
10th April 2014
Evelix Cottage,
Dornoch
IV25 3RD
21st April 2014

To Lewis McNaughton,

Dear Sir,

North of Scotland Archaeological Society’s response to the Call for Evidence on The Historic Environment Scotland Bill.

Thank you for including our Society in your Call for Evidence. We responded to a similar call for comments on the Review of the Royal Commission for the Ancient and Historic Monuments of Scotland on 4th February 2012. Many of our comments remain the same with reference to the Bill.

1. We welcome the commitment to continue the involvement of the people of Scotland in their historical environment. There are several mentions of the need for outreach and community involvement. [14 sub section 2(c); 23 sub section 5 (b), 5 (c) Explanatory notes on HER Bill]. To date RCHAMS has been very successful with their outreach programme. Scotland’s Rural Past, for example, has been inspirational to many communities and engaged many people with their historic environment. As a community group we look forward to continuing our association with the members of the new body, Historic Environment Scotland.

2. We also welcome the retention of the control of the collections by the new body. It would be especially helpful if there was more emphasis on increasing the availability of the records on line. Increased accessibility to the general public would raise awareness of the historic environment and would be of great value to planners in avoiding accidental damage to irreplaceable archaeological remains

3. In line with 2 it is disappointing to note the language of 18 sub section 4(a) and 19 sub section 4(b). For over 10 years NOSAS has been in discussion with RCHAMS, Historic Scotland and Highland Council trying to achieve the compatibility of locally held monument records with nationally held records. There is an urgent need for the transfer of records between the various bodies for planning authorities among others. The need for this has been identified by 26 sub section 5(e) but we would hope that the word ‘might’ could be replaced ‘will’ in the final sentence.

4. Concern has been expressed by some members that there has been no strengthening of protection of archaeological sites which have not been accorded Scheduled status. The local authorities have some power of protection however given the huge number of unscheduled sites and low number of local authority archaeologists it is difficult to enforce. A number of structures do not require planning permission (agricultural buildings, forestry tracks). The potential for the damage of unique sites continues to be very high.
5. The period of ‘14 days notice’ before any member of the new body can visit a site could be seen as a loophole in the legislation allowing damage to occur during the interim. As far as I understand it is a change to the present situation and it is disappointing that access will only be allowed after a substantial period of notice.

6. Although not written into the Bill it is to be hoped that the new body will consult and involve the people who produce the ‘woodland expansion strategy’, wind farm expansion plans and local development plans, farm policy and other influential planning bodies when producing its own inaugural strategic plan.

We hope these comments are useful and would be happy to provide oral evidence if required.

Yours faithfully,

Anne Coombs

NOSAS Chair.
Historic Environment Scotland Bill – Call for Evidence

Preliminary Statement

New Lanark Trust welcomes the opportunity to provide written evidence to the Scottish Parliament’s Education and Culture Committee in relation to the Historic Environment Scotland Bill. The Trust is an independent charity which is the main custodian of the New Lanark World Heritage Site, and this being the case, we wish to reiterate our comments provided in response to the 2013 Consultation on the proposed merger of RCAHMS and Historic Scotland with specific reference to World Heritage Sites. Since it has recently prepared the nomination for a sixth site in Scotland for World Heritage status – the Forth Bridge – there can be little doubt that the Scottish Government values the international recognition and kudos that is conferred by inscription on the World Heritage List. It is also clear that World Heritage Sites, having been independently assessed as being of “Outstanding Universal Value” should be a high priority for the new body. Therefore it is imperative that the Historic Environment Scotland Bill sets out clearly and unambiguously the means by which the country’s World Heritage Sites will be will be protected, enhanced and managed for the benefit of the nation.

We offer the following responses to the specific questions posed by the Education and Culture Committee:

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

In terms of management of the historic environment, New Lanark Trust would wish to see Historic Environment Scotland’s responsibilities towards the protection, promotion and enhancement of
Scotland’s World Heritage Sites very specifically laid down in the Bill, for the reasons set out in the preliminary statement above. In relation to World Heritage matters, the UK Government is the State Party, i.e. the signatory to the UNESCO World Heritage Convention, and the body responsible for compliance with this convention. Under present arrangements, these responsibilities for World Heritage Sites in Scotland are devolved to the Scottish Government. Scottish Ministers identify and put forward sites for nomination to the department for Culture, Media and Sport. They are also responsible for ensuring compliance with the UNESCO convention. Focusing on cultural Sites, Historic Scotland carries out these roles on behalf of Scottish Ministers, as part of its wider responsibility towards the historic environment. There is a World Heritage Co-ordination unit located within Historic Scotland.

The Committee must consider whether these responsibilities could be satisfactorily delegated by Scottish Ministers to an NDPB with charitable status. The Historic Environment Policy Unit has been transferred from Historic Scotland to the Culture and Heritage Directorate within Scottish Government, and this may indicate that matters relating to World Heritage are to remain in core Government. If so, this needs to be clearly stated, and the future roles and responsibilities, including those of Local Authorities in relation to the management of World Heritage Sites, require to be clarified.

It is clear that HES will play a major role in the promotion of Scotland’s historic environment, given that it is expected to have direct responsibility for the management of close to 350 historic properties. Judging by the generally high standards achieved by Historic Scotland as operators of some of the country’s most important historic properties (such as Edinburgh Castle and Stirling Castle) the new body should be able to make a very significant contribution to the achievement of success against National Performance Indicators, including the improvement of the state of Scotland’s historic sites, an increase in cultural engagement, improvement of people’s perceptions of their neighbourhood, and improvement of Scotland’s reputation. The new body aspires to be the leading heritage tourism provider in 10 years’ time. This, however, begs the question – which existing heritage tourism providers will be pushed further down the league? It is hard to come to any conclusion other than that it will be the independent charities like New Lanark Trust, and voluntary organisations such as local museum trusts, who are passionate and committed, but lack the resources to fulfil their potential, and generally under-perform.

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

We have some concerns (shared with the National Trust for Scotland) in relation to the proposal that
Historic Environment Scotland should be both the regulator for all historic properties and the operator of a large number of Scotland’s heritage attractions. There is significant potential for conflict of interest, real or perceived. Consideration should be given to the separation of the regulatory function from the role of heritage charity and manager of the Properties in Care.

New Lanark Trust would wish to see specific provision in the Bill for the protection, management and promotion of Scotland’s World Heritage Sites. It is on the state of conservation and interpretation of these Sites, independently assessed as having Outstanding Universal Value, that Scotland may be judged by a discerning international audience, and potentially found wanting as a responsible custodian of some of the world’s most important historic properties.

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

The relationship between HES and the local authorities, in their role as development and planning regulators, must be very carefully defined. There are some useful comparisons to be made with the way in which legislation applying to the natural environment (via Scottish Natural Heritage) is framed, e.g. with regard to sustainable development, and the requirement to balance social, economic and environmental concerns. It is not clear whether Historic Environment Scotland would take on the consultative role of Scottish Ministers (currently carried out by Historic Scotland) in relation to Strategic Environmental Assessments. These are increasingly important for the protection of the historic environment when major planning and development applications are under consideration, and any weakening of the general regulatory arrangements would be potentially very detrimental.

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

New Lanark Trust welcomes the generally strong support for the historic environment expressed by the Scottish Government and the Scottish Parliament. However, we do have some reservations as to whether the presence of such a large and powerful single operator in the heritage field will be entirely beneficial to small independent organisations such as New Lanark Trust. The legislation must allow for smaller, non-governmental players in the heritage field to flourish and to fulfil their potential to assist in the delivery of the historic environment strategy for Scotland.
5. Are there any areas of the Bill that you consider could be strengthened or improved?
We reiterate our fundamental concern that there is a real potential for problems of conflict of interest presented by the proposed combination of roles within a single organisation. HES will become the regulator, grant-funder, heritage attractions operator and recipient of charitable donations.

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

The Committee should seriously consider the separation of the regulatory role from the heritage operator function. Alternative models are possible – c.f. the decision of DCMS that English Heritage, in its proposed new incarnation as a charitable body, will not carry out the regulatory function in relation to the historic environment.

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

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

The vision expressed in the Scottish Government’s Historic Environment Strategy is generally commendable, but as yet there is no clear identification of an action plan for delivery, or indeed to the provision of sufficient resources to enable its delivery. In particular, we would like to see the role and responsibilities of local authorities in relation to the delivery of the Strategy very clearly defined.

With specific reference to the improved accessibility, enjoyment and management of the country’s inscribed World Heritage Sites, we would welcome clarification on the way in which Historic Environment Scotland will achieve effective working partnerships with the heritage organisations and other stakeholders involved.
New Lanark Trust urges the Committee to examine very carefully the potential for the proposed new Historic Environment Scotland to impact adversely on the work of voluntary and charitable bodies in the heritage sector. These currently make a very significant contribution to achieving the desired outcomes for Scotland, and (though certainly unintended) it would be most regrettable if this were to be the consequence of the merger of HS and RCAHMS. A collaborative approach, whereby all organisations which contribute to the safe-guarding, promotion and appreciation of the historic environment of Scotland can be supported and encouraged to develop their full potential, would deliver very significant rewards.

Lorna Davidson  
Director  
New Lanark Trust  
New Lanark Mills  
Lanark ML11 9D
Response to Call for Written Evidence on the Historic Environment Scotland Bill

The National Heritage Science Forum (NHSF) has been set up to address the recommendations of the House of Lords Science and Technology Select Committee Inquiry on Science and Heritage and to implement the National Heritage Science Strategy (NHSS) objectives.

The Forum provides a platform to support the policy, research and professional needs of institutions engaged in heritage science. The NHSF brings together many disciplines under the wide-ranging, interdisciplinary heritage science umbrella. Through working together, Forum members address the research and practice needs of institutions interested in or engaged with heritage science.

We have fifteen members:

- National Galleries Scotland
- Historic Scotland
- English Heritage
- National Museums Wales
- National Trust
- British Library
- Birmingham Museums and Art Gallery
- Institute of Conservation
- The National Archives
- University College London
- The British Museum
- Historic Royal Palaces
- Natural History Museum
- Oxford University
- Tate

Our response is limited to issues that specifically affect heritage science. We feel that question 3 is the most appropriate question for the NHSF to answer. We have also included comments on the specific areas identified in the Call for Written Evidence.
**Question 3** – Does the Bill establish a clear and appropriate relationship between Historic Environment Scotland and all other public and private bodies with an interest in Scotland’s historic environment?

As the Bill stands it does not wholly clarify the relationship of this new body with other public and private bodies, in particular the relationship with National Trust for Scotland and what the relationship of HES is with respect to the preservation of movable heritage held in care by HES or other public or private bodies. With the current structure this ambiguity also exists and it would be useful if the Bill could go some way in providing resolution and providing clear direction.

**Comments on specific areas:**

• **The possible benefits and disadvantages of Historic Environment Scotland being granted charitable status;**

  The granting of charitable status aligns the new body with a number of other organisations relating to national heritage collections, and as such could increase the ease by which collaborations and cross working can happen – this is something that the NHSF would support. What remains of concern is the state of the funding package that would come with this change in status and if the already stretched funds available for the various charitable bodies will need to stretch even further.

• **The implications for staff in Historic Scotland and RCAHMS of the creation of Historic Environment Scotland;**

  With any merging of organisations there is always the concern that staff numbers reduce under the umbrella of efficiency savings without a detailed analysis of need. It has already been identified through the Select Committee that the numbers involved directly in Heritage Science across the nation is small and inadequate and in Scotland specifically key scientific posts have been lost in the last 5 years.

• **Whether the Bill will improve existing policy and practice in relation to grants and loans; scheduled monuments; and listed buildings.**

  This point is linked with the potential change to charitable status. It is not clear if the change to a charitable body was to take place how the grant giving function across the heritage sector would remain without there being a conflict of interest.
I have read the Historic Environment Bill paper and believe that if fully implemented this Bill could greatly benefit the people of Scotland across many cultural and historic areas and so I welcome the paper and its main proposals. I address the main issues through the Questions posed at the beginning of the paper.

Q1 The creation of HES will resolve an anomaly, long recognised outside the organisations, that HS and RCAHMS could manage the Historic Environment of Scotland more efficiently as a single organisation since work could flow more smoothly. There is apprehension in some areas, but the merger should improve all aspects of the organisation, from the core business of defining and protecting the historic past, to removal of duplication of work, improved job security and more openness.

A major task will be to ensure that all aspects of the historic environment are presented to the wider public in an open way, so that the population is given the opportunity to appreciate the range of monuments and their wider environment as well as to contribute to many aspects of work and enjoyment in the area.

Q2 The proposed functions as set out in paragraph 2(2 a-e) cover the main categories succinctly. The importance given to collections and objects is of concern, since there is no mention of collaboration with the National Museums of Scotland, where appropriate skills reside. However, the proposal to make collections more available will be of local benefit and will help local people to study, enjoy and appreciate the wide range of objects derived locally, their historic environment, skills, activities more easily.

There is a mix of legislative elements, working practices, detail and public benefit, which weakens the overall importance of several points.

Schedule 1 The Status of HES staff is strongly set out and it should be beneficial to working practices that they are not civil servants.

Membership. (p14) This is the first mention of management. It would help to refer to the Board of Management from the outset, since its composition will have a strong and lasting influence on how the HES develops and carries out its roles.

HES staff (p15) There is no mention of the size of the staff (until near the end of the document). Nor is there comment on the position of the present staff. The staff number, 1100, so proudly noted, should offer opportunities for streamlining, and changes, reduction in numbers naturally, but not by encouraged ‘early retirement’.

P16. Committees. The prominence of committee members not being allowed to vote seems misplaced, presenting appointed members as second class members. More emphasis should be placed on the purpose of the committees, how they will operate. The division promted in this statement does not auger well for serious collaboration.

P17. Charitable status. It is difficult to accept a government funded body as a charitable organisation. Charitable bodies normally have to secure their own funding and meet the OSCR rules. HES largely will be undertaking delegated work of Scottish Ministers. This ‘Judge and Jury’ element has been of concern to the public for a long time. This is a difficult area and should be clarified completely before the Bill is finalised. Already ‘at the top’, working on behalf of Scottish Ministers charitable status is neither a requirement nor desirable as a way to ensure success.

Q3 There is little reference to other public and private bodies. At national and local level there are numerous organisations that could assist HES, but it is not clear how this could be done, unless it is
specifically stated in the Bill and its appendices that all bodies, whatever their size should be included, as long as their aims and objects are relevant.

Q4 The more open structure of HES should make it easier to work with the new organisations and to develop partnerships, associations, etc, to undertake work jointly or in other ways. This already happens on a very small scale, but urgently requires development.

Q5 In the Policy Memorandum, P10 para 60 There is mention of Diversity and equal opportunities. This will not be easy to undertake. First the diversity will be needed among the Board and the staff of the organisation. There is more to diversity than appointing someone from another culture, colour, class. Their upbringing may include areas that are not fully understood (eg by HES). Interfaith Groups and other cultural groups are very friendly and willing, but do not always understand the perspective of Scotland or other ethnic groups. If we are to achieve any kind of integration it will be essential to develop open discussion, to make other groups feel they participate equally in seeking new ways to look at modern, multi-cultural Scotland through its Historic Environment.

Q6 Some of the Policy objectives may not be sufficiently detailed. In other cases Scottish legislation provides the details and HES should follow the national regulations, eg human rights, equal opportunities, health and safety, local government, but not devise their own ways of dealing with such matters. The size of the organisation should enable it readily to include people from other cultural backgrounds and at all levels, whether Scottish or other. More attention should be paid to other communities, to help them integrate. They feel strongly about their own heritage. HES must address ways to create opportunities for a ‘mixed’ heritage, to encourage ethnic groups to develop new ideas, not only to look back to the country of origin but also to look forward to their role in Scotland, to show how they contribute to Scotland now. For example, has an effort been made to identify the earliest mosque or other building of significance to other communities, built/used in Scotland and designate it as a Listed Building? That approach would be helpful to these communities and their ideas of self-worth and integration.

Q7.1 Yes, this will be very important. Proof will be genuine cultural integration among staff at all levels and a willingness to work with others outside their own ‘bubble’. The staff always consider themselves to be ‘right’ and therefore exclude small organisations from full participation.

.2 Yes, it will be essential to involve appropriately, but what is meant by appropriately - all the other organisations in the public and private sectors. Many of these are run impeccably and are extremely knowledgeable in their particular fields, but as members of the third sector (ie volunteers) are not highly regarded.

.3 Better access to, enjoyment and management of the historic environment will be important. An important aspect would be to remove entrance charges to monuments that have been developed with tax payers money. Many families find it hard to give their children visit opportunities, as the cost is too high. There must be a way to offer a family ticket to improve participation. However, it is necessary also to note that many skilled volunteers in the field of heritage do not feel valued. This is particularly true of third sector organisations, carrying out valuable work, including training less able or unemployed volunteers, but inadequately funded. HES will be well-advised to look at this area. Funding is urgently required by many groups of all kinds. However, increasingly charitable trusts are unwilling to support organisations not supported by HS (at present).

.4 As I have already indicated I personally feel that a government body, even at arm’s length, should not be given charitable status as they do not fit the charitable definitions. They are funded by tax payers. How can this fit in to the charitable legislation?
If they set up a Membership organisation, with privileged entry to sites or events, this would be unsatisfactory in relation to those who cannot afford to join. If, as a Membership organisation they ask people to support through Gift Aid when already funded by tax payers that would be inappropriate, obtaining two or more sets of tax funding for one role. HES should set up projects to gain recognition and remuneration efficiently through its own efforts.

5 The implications for the staff of the new organisation are little different from the recent, painful, changes in the third sector. Staff had to come together, but the Third Sector reorganisation is not working well. HES will have to work hard to ensure real integration and not focus on equality of salaries and titles. This will take time. Staff at all levels should be involved in discussions at all levels, with no discrimination. Every effort should be made to ensure acceptance of change in the organisation. The need to integrate people of other cultures and backgrounds must be addressed urgently, from the outset, to ensure the new organisation does not replicate old animosities or working cultures.

6 It will be essential for the new organisation to ensure that the new organisation looks at the present arrangements for funding the voluntary sector. Many organisations assist the present organisation through their expertise, projects and activities. At present too little funding is available across the board and too little reaches the smaller organisations, who are then criticised for not completing projects.

Legislation and the significance of Schedule d Monuments and listed buildings are poorly understood by the public in general, as they do not understand the system or the terminology and this needs to be opened up. Modernisation of terminology could be beneficial. Scheduled Monument Consent is a particularly difficult concept for many members of the public. Many do not know what the Schedule is. This is an example of the areas in which the HES should adopt a more modern phraseology, so people do learn what these matters are about.

Listed Buildings need a stronger steer from the new organisation. Too many high quality buildings are being neglected at the hand of local authorities and owners, who are not sufficiently accountable for failure of maintenance. This is particularly true of buildings in public sector, ie not private, ownership. We have to encourage an understanding of old buildings as part of the rich heritage of Scotland and encourage owners to retain the buildings meaningfully, retaining the spirit of each place.

Edwina Proudfoot
St Andrews,
21.04.2014
Historic Environment Scotland Bill
ACFA Response to request for Written Evidence
to the Education & Culture Committee

The Association of Certificated Field Archaeologists (ACFA) is a charitable, membership organisation, of 26 years standing. As qualified and experienced volunteers we are focussed on contributing to knowledge of Scottish archaeology, and in that context have published c. 120 papers (to date) based upon our own field research activities.

Earlier, we were pleased to assist in the consultation exercise on the HE strategy and the merger of RCAHMS and HS, that preceded the development of this draft Bill, and we are keen equally to respond positively to the request for written evidence about it. In this response, we focus primarily on your questions 5 – 7 (though there is implicit cross-reference to other questions), and trust that our comments, as fully engaged members of the sector, particularly as they come from within the volunteer segment, are valuable.

Comments re questions 5 and 6:-
5. Are there any areas of the Bill that you consider could be strengthened or improved?
6. Do you consider that the Bill’s Policy Memorandum adequately sets out: the Bill’s policy objectives; whether alternative ways of meeting the objectives were considered; the consultation undertaken on the objectives; the Bill’s effects on equal opportunities, human rights, island communities, local government and sustainable development?

Though we appreciate the difficulty of developing a definition of the “historic environment” that would be both meaningful yet sufficiently flexible to anticipate changes over time, we believe strongly that the absence of any such definition, allied to the imprecision of the proposed general functions, will lead to confusion and potential future conflict. The Bill would benefit greatly from such a definition.

Similarly, we are unclear if the objective of the Bill is to determine and shape the work of a “lead body” or, conversely, to facilitate the efforts of a consensual archaeological sector. The precise nature of the role will determine the governance structure adopted.

Both these concerns reinforce the necessity for the Bill stipulate a planning process, and define responsibilities more clearly. Who is ultimately responsible for securing positive outcomes from the new organisation? Who is involved in the development of a corporate plan? To whom is the plan to be submitted for approval? Are those individuals adequately equipped, experienced to assess it? Decisions should be published, and subject to scrutiny. We recognise that much of this is already under review but wish to assert formally our view of the absolute necessity of producing a comprehensive, comprehensible, fair and assessable structure which is embodied within the Bill.

Many members of our Association are also members of Historic Scotland. In the past, as members, we have had the opportunity to contribute to governance, planning and decision-making, and to the scrutiny of all of these matters. We are, therefore, perplexed by the absence of any meaningful reference to the membership, either in the Bill or the associated documentation. Taken in conjunction with our concerns expressed above this must be addressed head-on in the Bill.

The Bill would be strengthened by specific cross-reference and linkage to Local Authorities, who will prove instrumental in achieving successful outcomes for the new
organisation. We acknowledge that further statutory constraints upon the LAs would be problematic, but their low profile the Bill is, nevertheless, troubling.

Equally, while the Bill intends to secure increased cooperation within the sector which is largely achievable, we would also like to see greater engagement at Government level to secure cooperation across Ministerial responsibilities. Thus, while explicit mention of Education is made, there is a danger that the potential advantages of improved collaboration with the Health sector (inter alia) are not acknowledged and may, therefore, not be realised. “Our Place in Time” refers to Policy Mainstreaming in the Scottish Government, but we believe the Bill itself should be strengthened in this important area, lest later Governments choose not to persist with a Policy Unit at the heart of Government.

Largely missing from the Bill, and likely to bear importantly on the success of its intention, is any specific reference to skills development, training, and capacity building generally (apart from “traditional skills”). Education, correctly, is given high priority but building on the expertise within the former member organisations of the new HES, AND of the wider sector (especially the so-called third sector, will be vital in implementing the intention of making the whole greater than the sum of its parts. Perhaps that fits more comfortably within the Policy Memorandum, but reference there should be.

We wish next to respond more to the invitation to “add any further comments that you consider would assist the Committee’s scrutiny of the Bill”, specifically in relation to your detailed queries at point 7).

Do the Strategy and the Bill, together ...

a) establish clearly who is responsible and accountable for delivering the strategy?

We believe that they do not provide sufficient clarity in respect of who is responsible and, particularly, accountable for delivering the strategy (see also comments above);

b) + c) involve appropriately all those public and private bodies with a role in improving the historic environment; and lead to demonstrably better access to, and enjoyment and management of, the historic environment.

In our view, together, they have the potential to involve all relevant bodies in improving the historic environment, increasing access to, and enjoyment and management of it, but flaws and omissions from the Bill make that potential harder to realise (see also comments above). This problem is exacerbated by the absence of any clear and robust policies or strategies for assessment of (similarly unspecified) objectives. Quantitative assessment of improvement to access and management MAY be achieved straightforwardly (though not necessarily usefully), but qualitative assessment of such matters as enjoyment are notoriously difficult and rendered near-impossible without clearly stated goals;

d) the possible benefits and disadvantages of Historic Environment Scotland being granted charitable status.

We believe that the advantages of becoming a charitable organisation will outweigh any disadvantages. We would go further and suggest that, after the award of charitable status, the new organisation prepare a cost benefit analysis on seeking VAT relief (in common with other “national collections” inter alia), even at the cost of abandoning entrance charges (c/f VAT Refund Scheme). With or without this advantage, the prospect of unpicking the charitable status that already applies to elements of the proposed
organisation appears to us nonsensical;

e) the implications for staff in Historic Scotland and RCAHMS of the creation of Historic Environment Scotland;

It is our understanding that the employment position of staff of the two organisations is explicitly protected, under the “no redundancy” policy of this Government. In addition, we believe that individual career prospects can be significantly enhanced within a larger organisation, and that staff recruitment can be enhanced and turnover reduced. Indeed, we recommend that specific effort be invested to secure such outcomes;

f) whether the Bill will improve existing policy and practice in relation to grants and loans; scheduled monuments; and listed buildings.

We acknowledge that some concern has been expressed about the possibility of a larger organisation dominating and monopolising funding streams by displacing other potentially successful applications from within the sector … we are less concerned about that: firstly because the existing organisations already compete with others, and secondly because we believe that new opportunities, currently un-tapped, will emerge to the benefit of the sector as a whole.
HISTORIC ENVIRONMENT SCOTLAND BILL – CALL FOR WRITTEN EVIDENCE

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

The creation of Historic Environment Scotland (HES), along with ‘Our Place In Time’, the Scottish Government’s new Historic Environment Strategy for Scotland should make a significant contribution to managing and promoting the historic environment. It is this Council’s view that HES will take the lead role in driving the aims and objectives of the new Strategy over the next 10 years, which will help to promote the necessary long-term strategic approach to functions.

The merger of the two existing bodies, Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland, if executed properly, should result in a more focussed organisation, with the potential for overlap and duplication removed and resultant economies of scale.

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

In broad terms, the functions proposed for the new organisation are consistent with what we would expect them to be.

We note that one of the key aims will be to investigate and record our historic environment to continually develop our knowledge and understanding. An appreciation of what lies beneath the ground is essential to that.

Unfortunately, whilst East Ayrshire Council has put procedures in place to ensure that members of the public can access the archaeological record, it is our experience that not all local authorities have done so. We would recommend that the Joint Working Group should explore what arrangements Councils have in place for updating archaeological records and obtaining archaeological advice when required as part of the planning process.

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

This Council expressed a number of concerns during the consultation period. These related to those specific proposals that altered the balance of work that currently exists between Historic Scotland and planning authorities in relation to the procedures for determining planning applications for listed buildings.

Since the consultation closed, a number of discussions have taken place via the Joint Historic Environment Group to ensure that the interests of planning authorities are taken on board.
The explanatory notes that accompanies the Bill includes a section on ‘Costs to Local Authorities’. The Council does not anticipate any additional costs, a view which is generally accepted by other local authorities. However, there may be some minimal costs to the Planning Service to introduce the new arrangements.

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

East Ayrshire Council has delivered and continues to deliver a number of area-based conservation-led regeneration schemes, which are helping to drive the economic recovery of our communities. It is our expectation that the Bill will support such approaches and will recognise that the Historic Environment should not just be protected, but can in many instances, be enhanced and improved to contribute fully to the vibrancy of local communities.

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

The Explanatory Note to the Bill states that the new organisation ‘will be working with local authorities to manage transition to the new system and to build capacity within local authority partners’. As a Council which is currently reviewing its Planning staffing resources, we would anticipate opportunities for our Planning staff to participate in training, which will allow them to enhance their heritage design and conservation skills. As part of this review the Council would appreciate receiving guidance on the range of skills and competencies HES would expect staff dealing with applications for listed building consent or other heritage matters.

We would also suggest a strengthening of the links between regeneration/economic growth and the historic environment. The continued use and re-use of historic buildings can be an important element of successful regeneration schemes, helping to breathe new life into communities and maintain and expand a local sense of place and community.

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

From our review of the Policy Memorandum, it is clear that cognisance has been taken of the views of key stakeholders. This Council, along with many others, participated in the consultation process and has also engaged through its membership of COSLA. We look forward to continuing to work together as the new body becomes operational and as the Strategy is rolled out over the next decade.

7. **The Scottish Government’s newly published historic environment strategy also seeks to improve enjoyment and understanding of Scotland’s historic environment. The Committee does not wish to repeat the extensive consultation undertaken on the strategy, but would welcome your views on whether it and the Bill together:**
• establish clearly who is responsible and accountable for delivering the strategy;
• will involve appropriately all those public and private bodies with a role in improving the historic environment;
• lead to demonstrably better access to, and enjoyment and management of, the historic environment.

The potential establishment of collaborative working groups will have to be managed closely; any discussions on this should fully take on board any resource implications for local authorities, at a time when resources and budgets are under extreme pressure. It must be ensured that there is no further delegation of responsibilities to local authorities, unless there is confidence that the adequate resources are in place.

Please also add any further comments that you consider would assist the Committee’s scrutiny of the Bill, including on more specific areas such as:

• the possible benefits and disadvantages of Historic Environment Scotland being granted charitable status;
• the implications for staff in Historic Scotland and RCAHMS of the creation of Historic Environment Scotland;
• whether the Bill will improve existing policy and practice in relation to grants and loans; scheduled monuments; and listed buildings.
Consultation on the Historic Environment (Scotland) Bill: Education and Culture Committee

Response from the Scottish Charity Regulator 17 April 2014

1. Background

The Office of the Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 23,800 charities registered in Scotland.

2. Consultation response

The consultation asks a series of questions about the functions and objectives of the new body Historic Environment Scotland (HES), including the possible benefits of HES being granted charitable status.

The question of HES seeking charitable status is a matter for the new body to consider once it is constituted. As Regulator it would not be appropriate for OSCR to express a view on the possible advantages and disadvantages of charitable status in any particular case. However, we have been in dialogue with Scottish Government during the drafting of the Bill about the proposed new body and the possibility of HES seeking charitable status.

To have charitable status, bodies must pass the charity test set out in sections 7 and 8 of the 2005 Act. They must have only charitable purposes and provide public benefit in furtherance of those purposes.

OSCR has had sight of the Functions of Historic Environment Scotland in section 2 of the Bill (which we would view as the purposes of HES) and our view is that in principle these can be clearly linked to one or more of the charitable purposes set out in the 2005 Act, specifically the advancement of education the advancement of
the arts, heritage, culture or science. This would address the first part of the charity test under the 2005 Act.

The second part of the charity test requires a body to provide public benefit when advancing its charitable purposes. A full assessment of the (intended) public benefit would be required should HES decide to apply for charitable status. OSCR would look at the actual activities and set up of HES in the light of the requirements of section 8 of the 2005 Act, including any issues of disbenefit, private benefit or undue restriction.

More relevantly in this case, the charity test requires that a charity’s constitution does not allow Ministers to direct or control the activities of the charity, and that it does not allow its assets to be used for non-charitable purposes. We note that among other powers for Ministers, section 12 of the Bill as introduced gives Ministers the power to give directions to HES, with which HES must comply (though not in respect of all of its functions). While this is a power which would normally be likely to prevent HES from meeting the charity test, the 2005 Act allows Ministers to disapply the charity test requirements about Ministerial direction and use of assets by order in particular cases. Ministers did this in the case of RCAHMS along with other national collections under the Charity Test (Specified Bodies) (Scotland) Order 2006.

Even where these requirements are disapplied, there is still a duty for the charity trustees to ensure that they act in the charity’s best interests and deal appropriately with any conflict of interest regarding Ministers.

With its regulatory functions HES would (if charitable status were granted) be an unusual charity, but not unique. There are already bodies on the Scottish Charity Register which have statutory duties or powers to undertake regulatory functions, for example the General Teaching Council for Scotland and Scottish Society for the Prevention of Cruelty to Animals.

3. Conclusion

OSCR has welcomed the opportunity to respond to this consultation and looks forward to the development of the legislation. We are already in discussion with officials in the Scottish Government about the possibility of HES seeking charitable status and will continue to engage should the new body decide to apply to OSCR.

Should you wish to discuss any aspect of the response please contact: Caroline Monk, Engagement Manager: Policy and Guidance caroline.monk@oscr.org.uk

This response has been copied to the Finance Committee for information.
1. How will the creation of Historic Environment Scotland help to improve the overall management and promotion of Scotland’s historic environment? Will it help to make Scotland’s historic environment more attractive to communities, families and tourists?

A single body will, in principle, be a good thing for the ‘crown jewels’ of Scotland’s Historic Environment as it will allow a clear and sharp focus on meeting the ambitions and aims of the overarching strategy and plan.

The creation of a Non Departmental Public Body, separate from Ministers, would create a historic environment organisation on a more equal basis as other Key Agencies. This should be clearer for the wider public to understand the role of Historic Environment Scotland (HES).

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

The functions are thought to be correct, however, there is concern over the wording of the Bill which appears to imply that the new body will manage, protect and conserve all aspects of the Historic Environment, which it will not as its role excludes areas such as undesignated heritage, and possibly designated sites not of national importance.

Subsection 2(d) of the Bill gives Historic Environment Scotland the function of ‘protecting and managing the historic environment’. The detail of what they will actually be involved with in terms of protection and management is not clear, and much will be carried out by local authorities.

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

No. The Bill explicitly identifies HES as the ‘lead body’ for Scotland’s historic environment. The actual relationship it will have with local authorities is not clear. The Historic Environment covers a vast array of different types of monuments including buildings and archaeological sites, the majority of which are, and will be, largely dealt with by local authorities. This gives a misleading impression that HES will be the main contact and adviser for historic environment matters when it will often be the local authority.

The extent of undesignated heritage is far higher than designations: across Scotland, the Scotland Historic Environment Audit estimates that there are 295,784 such sites; increasing each year. While such remains are currently noted by the RCAHMS, they are not fully recorded or managed by them or Historic Scotland and this will also be the case for HES.

In addition, HS currently has no input into the designation and management of conservation areas, or the management of C-Listed buildings and is increasingly moving away from involvement in a range of applications relating to B listed buildings. This
increases the importance of the role of local authority officers involved in the historic environment, as well as those other professionals and bodies that give such advice.

When considering the historic environment holistically, the vast majority of management and advice is given by specialist officers in Councils, such as Archaeologists, Conservation Officers and Planning Officers. This is significant in terms of application of local knowledge and local accountability and democracy.

The Bill runs the risk of giving the impression that the new body will be a one-stop-shop for all issues regarding the Historic environment when in fact the vast majority of such advice is given by specialist staff in local Councils.

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

It is not thought that it will assist in the better management of undesignated or sites which are not nationally important. The bill implies that the new body will be a one-stop-shop for all matters pertaining to the Historic Environment, which it is not.

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

The bill could be more explicit in defining the scope of the Historic Environment that the body will be dealing with, and the role of both HES and other stakeholders including Local Authorities.

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

Yes

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

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

No comment.

Please also add any further comments that you consider would assist the Committee’s scrutiny of the Bill, including on more specific areas such as:
- the possible benefits and disadvantages of Historic Environment Scotland being granted charitable status;
- the implications for staff in Historic Scotland and RCAHMS of the creation of Historic Environment Scotland;
whether the Bill will improve existing policy and practice in relation to grants and loans; scheduled monuments; and listed buildings.

Stirling Council confirms that it does not wish to provide oral evidence to the Committee.
22 April 2014

Mr McNaughton
Education and Culture Committee
Room T3.40
Scottish Parliament
EDINBURGH
EH99 1SP

Dear Mr McNaughton

Historic Environment Scotland Bill – Call for evidence

Thank you for the invitation to submit written evidence in relation to the Historic Environment Scotland Bill. I am writing on behalf of Aberdeen City Council. My response has a particular focus on our areas of responsibility in Museums and Galleries and in providing information and advice on the historic environment to the planning authority, other colleagues and the public. I include responses to the questions within the framework of the call for evidence as well as general comments on behalf of colleagues in the planning authority.

General

Schedule 1, Status 1 (1-4) presents what Historic Environment Scotland is not. It would be beneficial to be explicit about what the status and remit of the organisation is intended to be. Similarly under Membership 2 (1-9), it would be beneficial to understand what the role of the members is and how that board will be constituted. Specifically it would be useful to know what range of skills members are expected to have, what the board will be expected to achieve, how it will be expected to operate and what relationship it will have with staff and other organisations, including local authorities.

Responses to Questions

1. There is certainly some confusion at present over the respective roles of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland. Creation of a single national body may indeed go some way to clarify roles and responsibilities within the public mind.

However, the Commission in particular has very long-standing status, authority and scholarship in matters relating to the historic environment of Scotland.
is to be hoped that those qualities will be transferred to and flourish within the new body.

2. As stated above, a single organisation can provide clarity of purpose. The functions proposed for Historic Environment Scotland appear to mirror those that currently exist and make sense. It would be beneficial to be clear on how these functions will be delivered, particularly in relation to diminishing resources in the public sector. The collective responsibility for the care of the historic environment is clear, but it would be useful to understand how specifically Historic Environment Scotland would propose to co-ordinate appropriate skills to ensure delivery of key objectives.

3. Care of the historic environment and of objects and archives from the past should be a partnership between both national and local bodies. It is not entirely clear from the Bill what is foreseen as the future relationship between, for example, the new body and local authority archaeology services and the expertise and historic and environment records which are so fundamental to management, interpretation and public interaction with Scotland’s past. The relationship between local authority historic environment records and RCAHMS has been carefully honed and cherished over many years. Every effort should be made to build on and foster that co-operation in the future to maximise the resources available to the public. It would be helpful to understand who the new body considers to be their direct partners and how it proposes to engage with them, given the limit to resources that may be available. It is important that Historic Environment Scotland is clear about the level of support it is able to provide to local authorities, applicants, agents and the general public with the prospective partners and how they will ensure efficient delivery.

4. The Bill would help our organisation better manage and promote Scotland’s historic environment by being explicit about roles and responsibilities Historic Environment Scotland will have in encouraging leadership, partnership and collaborative working and importantly how skills and capacity will be developed. Mainstreaming the historic environment is an admirable ambition, but this must be backed up with a demonstrable co-ordination of resources and clear understanding of deliverable outcomes. Defining specific outcomes expected as a result of the Bill would be helpful.

5. We welcome the emphasis that the Bill places upon public enjoyment of Scotland’s historic environment, and the promotion of the past across the generations. However, we are concerned that a greater balance of funding might be directed to those ends. In a climate of restricted resources, that might have a detrimental effect on the core knowledge-related functions of recording, discovering, storing, understanding and researching Scotland’s past, upon which the aspiration ‘to make Scotland’s historic environment more attractive to communities, families and tourists’ so fundamentally rests. More generally the strategy has stated many challenges and could be more explicit about how Historic Environment Scotland will expect to address those challenges.
6. It is recognised that the Bill allows for a degree of flexibility which will enable the board to prioritise and co-ordinate Historic Environment Scotland's resources within the scope of the published strategy.

7. In terms of roles and responsibilities, we note the paragraphs which relate to acquisition, deposit and disposal of objects (Part 1, Section 5), in particular the statement that 'Historic Environment Scotland may acquire any object which it considers it is desirable to add to its collections'. We could not see any qualification of that statement taking account of the parallel collecting interests of other organisations, both public and private, throughout Scotland. We would hope that that will be made clear, if not in the Bill itself, then in a forthcoming Acquisition Policy for the new body.

We wish the Committee well in securing passage of this important Bill and to working together with partners in the altered environment which it will create.

Yours Sincerely

Judith Stones
Lead Curator
EDUCATION AND CULTURE COMMITTEE: WRITTEN EVIDENCE
22 April 2014

Historic Environment Scotland Bill

The Society of Antiquaries of Scotland promotes the research, understanding and conservation of the archaeological and historic environment of Scotland for the benefit of all. It actively supports research in the field, advocates good practice and promotes the results of its research and that of others to the widest possible audience.

The Society welcomes the opportunity to provide written evidence at Stage 1 of the Historic Environment Scotland Bill, and supports the publication of Our Place in Time the national Historic Environment Strategy for Scotland. The Society considers it important that the Strategy is truly collaborative in its implementation to ensure its adoption by the heritage sector as a whole. The Society also recognises the potential opportunities to be derived from merging the RCAHMS and Historic Scotland into a semi-independent NDPB but is clear that in doing so there must be transparency in both the Bill procedure and the functions and practices that it enshrines in legislation. The Society responds below to those questions which relate to its remit.

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

While practical improvement in the overall management of the historic environment will generally be down to the implementation and management of the new Historic Environment Scotland (HES) rather than its creation per se, the merger will hopefully remove confusion between the respective roles of the current organisations, and enable the effective promotion of the historic environment by a single body. This increased clarity should lead to greater public engagement with the body and the services it offers, as well as greater engagement with the historic environment generally.

The Society is particularly supportive of Part 1 2(2)(a) and (b), the duty to make its collections accessible, and the requirement to undertake its functions with a view to promoting the diversity of persons accessing the historic environment and its collections.

Expressly setting out to sustain the functions of the current organisations, especially those of the RCAHMS which are not currently statutory, will by default help to improve the management and promotion of the historic environment. The Options Appraisal, and the consideration expressed by the Cabinet Secretary, indicated that the sustainability of the RCAHMS was in question, and to lose the functions of that organisation would have been extremely detrimental to the historic environment of Scotland. The Society notes and welcomes the fact that the functions of RCAHMS are embedded into the functions of HES – such as in Part 1, 2(2)(a) and (b) and 2(3) and 2(4).
While the sustainability of Historic Scotland was not called into question, the transfer and legitimisation in legislation of its functions (many but not all of which relate specifically to the enactment of various pieces of conservation and planning legislation) is also to be welcomed (such as at Part 1, 2(2)(d) and (e) and 2(4)). The Society is especially glad to see that Historic Environment Scotland will continue to offer financial support in the form of grants and loans (Part 1, 10), and pleased to hear the Cabinet Secretary’s assurances that the body will continue to be a key funder of archaeology in Scotland during her speech at the Institute for Archaeologists conference.

The Society plays its part, alongside many other organisations, in the overall management and promotion of Scotland’s environment and it is pleased to support the creation and implementation of the recently published *Our Place in Time*. It is very pleasing to see that Part 1, 2(8) of the Bill requires HES to have regard to ‘any relevant policy or strategy published by the Scottish Ministers’, which includes the current Strategy.

It is interesting to note the inclusion in the Bill of Part 6 relating to Further Modifications in Relation to the Historic Environment, and the provisions there-in which do not necessarily relate to the scope of the Bill in terms of setting up HES. The Society currently supports the provisions here, and is particularly interested to see the introduction of a local enquiry process. In a similar spirit, the Society advocates that this Bill should take the opportunity to include a provision in legislation to ensure that Local Authorities have access, and give due regard to, appropriate information and professional advice on the local historic environment in exercising their duties.

The Society has previously called, with partners such as Archaeology Scotland and BEFS, for a provision to ensure that all public bodies protect, enhance and have due regard to Scotland’s historic environment in exercising their duties. While it is recognised that this Bill is focussed on achieving the creation of a new body, there is Part 6, and the question asks about the overall management and promotion of Scotland’s historic environment and hence the Society welcomes the Committee’s further consideration of this idea, within the context of the Strategy. This should also include the concept of a duty of care for archives held by public bodies relating to the historic environment.

In this same vein, the definition of Collection should, in the Society’s opinion, explicitly include digital material, so as to be very clear as to the increasing importance of this particular medium.

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

The functions proposed within the Bill are broadly defined general functions applying to the ‘historic environment’ which seem to the Society to encapsulate the current functions of both bodies. As enabling legislation the language is appropriate since it will not constrain future operations of HES. However, the Society would welcome the introduction of some explicit reference to maintaining and developing historic environment skills (including “traditional skills”) and capacity building within the sector. The Policy Memorandum recognises workforce development at section 40 as one of the four pillars of public service reform and the Historic Environment Strategy identifies ‘developing skills and capacity’ as a cross-cutting priority, but there is currently no explicit reference in the Bill itself. The Society
considers such skills (where they apply to the historic environment) are recognisably different to the concept of “learning about, and educating others about, the historic environment” mentioned in Part 1, 2(2)(c), and are also not explicitly covered by Part 1, 2(2)(d) or (e), or indeed aspects of Part 1, 2(5).

There is also the potential for some confusion with regard to where HES’ functions end, and where activities undertaken by other bodies begin. For comparison, the text of the 1991 Act which created Scottish Natural Heritage (SNH) makes explicit reference to the relevant planning legislation in setting out SNH’s advisory role. While the Society would not advocate the constraining rather than the enabling wording of the SNH references, it does consider the current role Historic Scotland plays in planning and decision making, with regard to planning, very important, and this should be directly referenced in the Bill in addition to protecting and managing the historic environment.

The Society also considers that the relationships that HES will need to continue and develop with Local Authorities will be critical in achieving overall effective management of Scotland’s historic environment. To help address this, the Society would encourage an explicit recognition of the advisory and supportive relationship between HES and Local Authorities in Part 1, 11, which considers advice and directions in more detail. The Bill sets out at 11(1) and (2) the role of providing advice to Scottish Ministers. The Society advocates that similar, additional provisions are inserted here to recognise, explicitly in the main text of the Bill, the advisory and supportive relationship with Local Authorities, and in particular the decision-making around planning.

The importance of ‘targeted expert support’ is identified in the Policy Memorandum at paragraph 128, however, the Society believes that this advisory role needs to be recognised in the main text of the Bill, to complement the positive moves towards partnership working and shared services. This could take the form of an additional paragraph in Section 11 which reads something like: “Historic Environment Scotland may provide advice, information and assistance relating to the historic environment to planning authorities generally, a particular planning authority or a description of a planning authority.”

Finally, Historic Scotland’s role as a consultation authority (representing Scottish Ministers) in relation to Strategic Environmental Assessment (SEA) does not currently appear in the Bill text, and should be explicitly referred to. However, the Society understands that this function will transfer to HES, and indeed welcomes such a move as introducing further transparency and independence in the process, and looks forward to seeing the relevant provisions in the main text of the Bill.

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

The Society would reiterate its call for the Bill to include an explicit recognition of the advisory and mutually-supportive relationship between HES and Local Authorities as noted above. It is important to recognise that Local Authorities are a major partner with regulatory, consenting and advisory responsibilities.

The Society recognises the concerns voiced by Archaeology Scotland and the National Trust for Scotland (NTS) with regard to the potential risks involved in the creation of a new major
heritage body in the sector. The key will be the continuing and developing relationships from the current bodies into the new body, and the explicit recognition of a collaborative ethos in management (driven by the Strategy to which HES will be require to have regard to as per Part 1, 2(8)). However, the Society will also call for the Minister to explicitly direct HES not to engage in activity, and in particular fundraising, which could be detrimental to the smaller voluntary organisations, such as the Society of Antiquaries of Scotland, which look for similar funding streams.

The Policy Memorandum recognises the concerns raised by stakeholders during consultation over the impact of a major new charity (should HES seek and receive charitable status) on the rest of the voluntary historic environment sector. There will need to be detailed monitoring of the new body to ensure that HES undertakes its functions in a truly collaborative manner and the Strategy sets an expectation that this will be achieved in partnership with others, which is positive.

The Society is also concerned with the relationships within the new HES, especially the current members of Historic Scotland, and whether they have been appropriately apprised of the changes and what it might mean for their support and benefits. The Society is led to believe that members have previously had the opportunity to contribute to governance, planning and decision-making within Historic Scotland and to the scrutiny of these matters; the Society understands that some Historic Scotland members are therefore perplexed by the absence of any specific and meaningful reference to the membership, either in the Bill or the associated documentation.

The Society was interested in the consideration raised by the Education and Culture Committee regarding a more regional structure for the implementation of the functions of HES and supports further discussion of how this could help to ensure clear and appropriate relationships with local communities and private bodies as part of the creation of the Corporate Plan.

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

The Society of Antiquaries of Scotland’s role and remit is encapsulated as supporting and promoting research into and conservation of Scotland’s past, as such it is our expectation that the merging of the two public organisations with which we currently have excellent relationships will only improve. For example, we publish award winning and highly regarded books on Scotland’s past, often, but not always, grant aided by Historic Scotland and/or in collaboration with the RCAHMS. Bringing the various publishing aspects of both Historic Scotland and RCAHMS together should help to ensure that we can all work together to improve publications, develop new publication models and ensure that we align our strategies to maximise benefit to the public.

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

The Society advocates the inclusion of the *Our Place in Time* definition of historic environment into the Bill; while we recognise that definitions change over time, the current definition is, in the Society’s consideration, suitably flexible and collaboratively crafted and meaningful so as to stand the test of time. The inclusion of such a definition would help address the inevitable queries regarding the name of the organisation and the Bill itself, while
also providing a very useful and powerful tool for ensuring the legitimacy of historic environment concerns in broader collaborative and cross-cutting policy and management discussions. There is a precedent with the 1991 Natural Heritage (Scotland) Act and the Society considers this would help those advocating on behalf of the historic environment, including HES itself, as well as helping those using the Bill understand its scope. The absence of any such definition, allied to the broad nature of the proposed general functions, will render extremely difficult any assessment of outcomes, while also leading to confusion and potential future conflict over interpretation of commitments.

The Society would reiterate its call for the Bill to include an explicit recognition of the advisory relationship between HES and Local Authorities as noted above. It is important to recognise that Local Authorities are a major partner with regulatory, consenting and advisory responsibilities.

In addition, the Society reiterates its call to include digital media in the definition of Collection, beyond the term ‘document’. It also advises that this Bill should take the opportunity to include a provision in legislation to ensure that Local Authorities have access, and give due regard to, appropriate information and professional advice on the local historic environment in exercising their duties. With the publication of Scotland’s Historic Environment Data (SHED) strategy, the diversity of possible models of service provision already at play in Scotland and the closer connections between local and national government this would not be an added burden but simply a measure that supports and strengthens the management and protection of Scotland’s historic environment.

The Society of Antiquaries of Scotland is of the view that the merger of functions into HES will only be successful if it operates with improved transparency. The Policy Memorandum makes it clear that greater transparency is one of the key tenants of the Bill especially in the operation of consents for scheduled monuments where HES is the applicant, and also around the power to award grants. To that end, the Policy Memorandum indicates at paragraphs 123 (regarding scheduled monument consents) and 134 (regarding grants) the expectation that HES will publish all consent applications and decisions, and details of Ministerial authorisations and grant decisions. However, the Society considers that this is a vital aspect of a successful merged organisation and such an important area that this policy intention ought to be articulated in the main text of the Bill, perhaps as one of the requirements for the Corporate Plan in Part 1 8(2).

It would also be useful to have some form of commitment to publishing criteria for grant schemes and also demand for grants – to understand the level of demand for grant in relation to supply. These wider aspects could be published as part of regular reporting by HES.

Part 1, sections 3 and 7 address the delegation of functions and give the option to delegate functions not only to HES, but ‘any other person Ministers consider appropriate’. The terms of the delegation enabled by these sections will be critical and the Society expects that they will at least be published, or even consulted upon.

The Society is also concerned with regard to guardianship of the collection, as defined in the Bill, into the future should HES choose not to apply for charitable status, or does apply and fails to receive it, since it is likely that at least some items will have been gifted to RCAHMS for example, on the understanding that it is a charity. Indeed, the timetable for the creation of the body and its application for charitable status will likely leave such collections in the care...
of a non-charitable organisation. While Part 1, sections 5 and 6 allow for disposal and lending of collections and objects despite restrictions if appropriate steps have been taken to contact the person with the right to reinforce the restriction or prohibition, this doesn’t appear to cover the acquisition of objects with restrictions or prohibitions.

While not required in the Bill itself, the Society would like to know if there are similar published provisions and policies regarding acquisition, deposit, disposal, borrowing and lending of collections and objects currently and remaining in care of Scottish Ministers (since it is clearly stated that these powers will not be applicable to those collections)? The Society suggests that it would be good practice to publish such policies and guidance to be followed by Scottish Ministers in exercising their role as guardians of material for the public.

The Society reiterates its call for transparency in terms of publishing the applications and consents processes, and the grants and loans processes; the agreement to do so could be stipulated in the Bill as a requirement for the Corporate Plan. The Society would also welcome greater clarity on the process of Corporate Planning – if the Scottish Ministers do not approve the Corporate Plan, what recourse do they have? In addition, we assume that Scottish Government employees in the Historic Environment Policy Unit (HEPU) will be responsible for advising Ministers on whether the Corporate Plan is fit-for-purpose and on timescale for approval. If so, then it will be incumbent on Scottish Government to ensure they have the appropriate skills in the HEPU relating to the historic environment as well as good management.

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

The Society considers the Policy Memorandum to be very comprehensive, but would ask for a little more clarity where noted, as required in our responses above. In addition, there appears to be only consideration of changes to vehicle insurance in the financial part of the Memorandum, and the Society would request further clarity be provided on the situation with regard to building’s, employer’s and public liability insurance. Specifically whether this is already accounted for in the financial calculations?

The Society is of the view that the powers conferred with regard to accessing property, for example, are proportionate and necessary to ensure the positive outcomes for the historic environment that we all aspire to.

The Policy Memorandum might usefully bring together the impacts on Local Authorities on page 26, rather than simply referencing that there are some and that consultation was undertaken. As stated above, the Society is concerned that Local Authorities are recognised as significant partners in the delivery of many of HES’ outcomes, and that they are provided with the appropriate tools in this legislation. One such tool could be the requirement to ensure they have access to information and advice on the historic environment as stated above.

While having minimal or no detrimental impact on the environment, the Society highlights the lack of any provision in the Bill to ensure that HES is itself consulted in the SEA process, continuing the function currently undertaken by Historic Scotland.
7. The Scottish Government’s newly published historic environment strategy also seeks to improve enjoyment and understanding of Scotland’s historic environment. The Committee does not wish to repeat the extensive consultation undertaken on the strategy, but would welcome your views on whether it and the Bill together:

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

The Society is supportive of the Strategy and its Vision and aims; indeed it would be beneficial, as noted above, to place the definition of historic environment as published in the Strategy into the Bill. The Strategy lays out a useful governance structure to help deliver the sector’s aspirations, one that appears proportionate given that it will require additional resource allocation from those involved on a voluntary basis. Care will need to be taken in ensuring that the many organisations that don’t have the capacity to engage directly with this governance structure are adequately provided for in the important discussions and decision-making emanating from this structure. The Society notes that questions are already being raised with regard to accountability for delivering the Strategy and its Vision and aims. This will require clarity of purpose and process, preferably set out in written documents, which allows individual organisations, with their own governance and remits, to align themselves with the overall goals of the Strategy. While initially it appears that Scottish Government will service this governance structure, it may be that future hosting and support is provided cyclically by other organisations in the historic environment and wider sector, supported by grants where required.

The measurement of success is a critical aspect of the Strategy, and the Society is ready to support the current workgroup considering these aspects. However, we would advise that the adoption of a framework is not prescriptive, and it should allow flexibility for development and change as required, when it is clear that certain approaches may work better than others, and we get better at providing information and ideas.

The Strategy, which has been a collaborative co-production itself: it allows an organisation such as the Society to see its locus in the wider historic environment, and promotes potential action in areas that the Society may not have previously considered; it allows a more strategic approach to be adopted by all those operating in the sector. It will also allow the sector to collaborate more energetically towards delivering the agreed Vision.

Please also add any further comments that you consider would assist the Committee’s scrutiny of the Bill, including on more specific areas such as:

- the possible benefits and disadvantages of Historic Environment Scotland being granted charitable status;
- the implications for staff in Historic Scotland and RCAHMS of the creation of Historic Environment Scotland;
- whether the Bill will improve existing policy and practice in relation to grants and loans; scheduled monuments; and listed buildings.
The Strategy considers that the advantages of becoming a charitable organisation will outweigh any disadvantages. However, the Society is acutely aware, as an independent small third-sector ancient charitable body, of the potential impact of a sizeable, well-resourced, new charitable body in the sector with the general functions as defined in the Bill. The Society therefore requests that any Directions from Ministers include specific reference to this issue, and ensure a collaborative, not competitive ethos for the organisation, and one that can be measured in its Annual Reports on its Corporate Plan.

The Society understands that the employment position of staff of the two organisations is explicitly protected, under the commitment in the Outline Business Case, and that any transfer of staff will not be detrimental to their terms and conditions. In addition, it is possible that individual career prospects and continuing professional development, including crucial skills for the historic environment sector, can be significantly enhanced within a larger organisation.

The Society is very keen that this Bill and the Strategy do improve existing policy and practice in relation to grants and loans, scheduled monuments and listed buildings. It is for these reasons that the Society is asking for the Bill to include provisions that such processes and decisions are clearly published to allow effective transparency. In addition, the Strategy creates a collaborative framework for the sector to begin the longer term detailed consideration of historic environment policy and practice, and expects that all potential avenues are fully, adequately and transparently explored.

**Conclusion**

The Society of Antiquaries of Scotland welcomes both this Bill and the Historic Environment Strategy for Scotland and looks forward to actively and positively engaging with both processes in the best interests of Scotland’s unique and valuable historic environment.

If the Committee has any queries with regard to the evidence presented above, the Society is very pleased to provide further information.

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Historic Environment Scotland Bill
Call for Written Evidence
Response from Icon, the Institute of Conservation
22 April 2014

From: Alison Richmond, Chief Executive, Icon, 1.5 Lafone House, London SE1 3ER
arichmond@icon.org.uk

Icon
Icon is the leading voice for the conservation of moveable cultural heritage in the UK. Icon is a charity and also a professional body. It brings together over two thousand five hundred individuals and organisations. The Institute aims to advance knowledge and education in conservation and achieve the long-term preservation and conservation of cultural heritage. It does this by providing guidance, advocacy, and training and education opportunities, and by uniting the conservation profession and the wider heritage community. Icon has, amongst its special interest groups, a very active Scotland Group. The Icon Scotland Group contributed to Icon’s response to this consultation.

Icon as a UK body and with a strong membership in Scotland welcomes future opportunities to collaborate with HES.

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

The creation of the body corporate called HES will not in itself do any of the above. However, the Historic Environment Strategy for Scotland brings together and formalises the aspirations of many heritage bodies, communities and individuals in Scotland into a common vision that can make the idea of heritage more naturally understandable for everybody, and easier to engage in. HES should encourage collaboration and innovation within a recognisable framework. The challenge will be to clarify and maintain the formal responsibility and representation for discrete parts of the sector, where these exist and are desirable.

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

The outcomes in the Bill appear to be based on the assumption that the new body will add an overarching role as the formal representative for the sector, in addition to the existing remits of HS and RCAHMS, including the responsibilities delegated from the Scottish Ministers. This appears to contradict to the HES Strategy, which states
that the vision cannot be delivered by one body alone. The Bill assumes for HES (the body corporate) overarching responsibility for the historic environment of Scotland (the tangible and intangible culture). This is too ambitious a remit. HES needs to continue the current functions of listing, protecting and promoting the parts of the built, natural and designed environment that is the current remit of HS and RCAHMS, and to be an active participant and enabler in the bigger movement that is set out in the Historic Environment for Scotland Strategy.

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

No, this part of the Bill is not clear. The new arrangements appear to create the potential for confusion with the existing remits of other national bodies. Bodies such as National Galleries Scotland, National Records Scotland, National Library of Scotland, National Museums Scotland and Museums Galleries Scotland all have existing outreach remits - in line with their Scottish Government funding streams - for provision of advice and support to smaller organisations and users in the wider sector. In addition, these bodies have been in recent years directly tasked with leadership and development roles for ensuring provision of advice, promotion of standards and collaboration for their own segments of the HE sector. The entrance of HES into the field therefore needs to be carefully managed and negotiated to avoid duplication of effort as well as confusion for smaller museums, galleries, archives, libraries and historic houses which depend on the current sources of support.

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

The new Historic Environment Scotland could provide a more central platform for publicity and a focus for activities provided by various other parties. We hope that HES will continue to commission the research and activities it is not able to deliver itself, and that it will continue to support (financially and by other means) smaller initiatives throughout Scotland, by way of sharing resources.

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

The Bill is obviously drafted to be applicable for a long time, and is understandably open in its detail. More information is given about what it is not than what it is. This leaves it open to various interpretations regarding the legal status of the new body corporate, e.g. charitable status. If there is an intention that the HES is a charity, then some of its functions seem an uncomfortable fit. Part 1, section 7 (2) seems to directly nullify (1), and we would welcome clarification..
6. Do you consider that the Bill’s Policy Memorandum adequately sets out: The Bill’s policy objectives; whether alternative ways of meeting the objectives were considered; the consultation on the objectives; the Bill’s effects on equal opportunities, human rights, island communities, local government and sustainable development?

Yes.

7. The Scottish Government’s newly published historic environment strategy also seeks to improve enjoyment and understanding of Scotland’s historic environment. The Committee does not wish to repeat the extensive consultation undertaken on the strategy, but would welcome your views on whether it and the Bill together:
   • Establish clearly who is responsible and accountable for delivering the strategy?

It states that the responsibility is shared, but gives no detail beyond that. However, there is also a strong inference that the main responsibility will be with Historic Environment Scotland. This inference is strengthened by the choice of the same name for both strategy and the new body.

   • Will involve appropriately all those public and private bodies with a role in improving the historic environment.

No evidence for this as yet but HES will need to work with other heritage bodies, communities and individuals in Scotland to maximise its effectiveness. We would welcome this opportunity to work with HES.

   • Lead to demonstrably better access to, and enjoyment and management of, the historic environment.

This is difficult to assess in advance of the Bill.

Please also add any further comments that you consider would assist the Committee’s scrutiny of the Bill, including more specific areas such as:
   • The possible benefits and disadvantages of Historic Scotland being granted charitable status

This is likely to have unintended consequences that might outweigh the benefits – it will set up a large organisation in direct competition with smaller ones who depend exclusively on charitable giving for their operations. It would create confusion in the funding arrangements and jeopardise the logic with which HS currently distributes grants and commissions activities. It may sit awkwardly with the remit of listing buildings and other legislative activities.
The granting of charitable status leaves HES vulnerable to the unpredictability of external funding streams, with competition coming from other major players in the sector for funding, and brings into question the sustainability of the organization. In addition, it will compare unfavourably with the way other European nations manage and promote their collective national identity.

- The implications for staff in HS and RCAHMS of the creation of Historic Environment Scotland.

Icon urges that Historic Environment Scotland does not forget the wealth of in-house professional expertise in conservation that already exists in the two bodies, and that every effort is made to maximise and exploit the potential of the existing staff at the HS South Gyle conservation workshop and the RCAHMS conservation studio in promoting the understanding and enjoyment of Scotland’s historic environment. The conservators and other staff in these centres of excellence should play a central role in using material culture to tell stories, and to communicate values and identity and build support for the HES activities. They seem to be a mostly untapped resource in this respect.

- Whether the Bill will improve existing policy and practice in relation to grants and loans; scheduled monuments; and listed buildings.

There is as yet no evidence on which to judge this. It may bring improvements, or just be different.

Additional comment:
The choice of Historic Environment Scotland as the name for:
- a shared tangible and intangible national heritage
- a high-level strategic vision
- an organisation

is likely to result in considerable confusion, especially in spoken language. It also confers a certain status on the organisation and infers a remit, which in reality it will not be set up to deliver on its own, and which is in contradiction to the message of the Historic Environment Scotland Strategy.
Education and Culture Committee,
Room T3.40,
Scottish Parliament,
Edinburgh,
EH99 1SP

Historic Environment Scotland Bill: Call for Written Evidence

We welcome this opportunity to comment on the draft Bill. While we see progress in some areas, we also note several areas of great concern. These mainly relate to the following through of established services, upholding of national standards across the full spectrum of Scotland's built environment and ensuring that those to whom powers and responsibilities are delegated actually carry them out in accordance with the required protocols and legislation.

The Architectural Heritage Society of Scotland is committed to advancing the protection of the historic built environment. It does this through encouraging public understanding and appreciation of it and monitors changes to it at various levels, commenting and contributing as it sees appropriate. With the progression nationally towards greater delegation of roles in handling conservation issues and the parallel increasing emphasis on community participation, we see a greater role for organisations such as our Society. Our greatest concern is that local authorities in many instances are not meeting the targets now expected of them. The bill needs to recognise this and acknowledge the potential of using community groups such as the AHSS at the relevant levels of the processes.

Our formal response is attached.

Yours faithfully,

Emma Griffiths
Chair
COMMENT BY THE ARCHITECTURAL HERITAGE SOCIETY OF SCOTLAND
April 2014

The Bill is worded as a description of the new body formed through the merging of Historic Scotland and RCAHMS and in a form greatly streamlined compared to each of their former entities. In the past HS has played a more active role in ensuring policy is met across all levels of society through to and including local authorities. We have noted that such involvement has been less evident recently and see that while HES may formulate such policy in the future and be asked to comment on cases, there is no provision for it to actively monitor proposals to change our built environment to ensure compliance. That role in principle is being seen as met through delegation of powers to local authorities, but we see few being able to suitably meet those expectations. It is also Scottish Government policy to involve local community groups through more active roles.

The historic environment has not been immune to the financial challenges of the past years and many of the problems that have ensued have been due to drastic budget cuts. This notwithstanding, it remains extremely important to the country in terms of identity, quality of life and as an industry. Whenever funding is limited, alternative means of support need to be considered to meet the basic objectives.

Without evidence that such concerns are not being addressed in other ways, e.g. direct from government, we see Historic Environment Scotland as being the body to which such issues need to be referred. Our comments are therefore worded accordingly.

The creation of Historic Environment Scotland as a means of streamlining the administration and processes is seen by the AHSS as a positive step.

HES needs to be seen as playing the lead role in a vast spectrum of bodies and activities across Scotland active in the historic environment, and this informs the way it should be structured. Its creation provides great opportunities to address the challenges in a changing world and we trust these comments are seen as constructive.

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

The creation of Historic Environment Scotland will streamline the promotion of Scotland’s historic environment and make management of that aspect more efficient. Those features so promoted will become more consciously part of the experience of communities, families and tourists.

The Bill currently does not ensure proactive review of the built environment through its immediate agents such as local authorities.

Stronger relationships between HES, local authorities and, more specifically, their planning departments, need to be enshrined in the Bill. Local authorities need to answer to HES in
respect of the proactive review of built heritage within their mandates. HES needs to monitor them and other public bodies handling built heritage to ensure that policy is effectively implemented. The Bill covers listed buildings and conservation areas to some extent, but not the framework for answerability, access to resources or monitoring.

We are pleased to see within the Memorandum greater support for local authorities and encouragement for partnership working, but this is not specific, and needs to be detailed. The Bill must enshrine requirement and delivery mechanisms.

The Bill should ensure greater focus on category A and B listed buildings on the Buildings at Risk Register. This could be achieved through local authorities, but should be monitored and audited, e.g. through review of local development plan provisions. There is already suitable guidance on maintenance and new-use adaptation and there is policy regarding the obligations on property owners for suitable maintenance. What is missing is a mechanism for ensuring that local authorities play an active part in such protection.

The Bill does not cover the obligations of its agents to consult with communities.

We recognise that this legislation is geared to streamlining and increased efficiency, but we have grave concerns that there may be an underlying objective of cost savings to the detriment of the historic environment. We seek an increase of investment in our matchless cultural heritage, for the benefit of future generations. We feel it is our duty to pass on to future generations a designed environment that is in good condition, well maintained, and at the heart of a vibrant sustainable country. We seek reassurance that grants in all the existing categories, will remain, with no reduction in resources. We are concerned that there is no mention of the Dictionary of Scottish Architects, an invaluable and growing resource for researchers, practitioners, academics and individuals.

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

The functions set out in the Bill are broadly correct, but only cover those traditionally fulfilled by Historic Scotland and RCAHMS. The wording is fairly broad and, as such, provides for the development of wider roles.

The role of Historic Scotland used to include a greater degree of monitoring of changes to the historic environment; a role we have seen already reduced, if not in principle, at least in practice. The delegation of such powers and roles to local authorities is acceptable where such authorities have suitable and sufficient in-house resources, but this is rarely the case. HES therefore needs to at least audit the capacities of those to which it delegates such powers and ensure that they are met by increasing their resources, sharing or buying in services as the needs arise.

The draft Bill mentions delegation, but does not establish how the links would be maintained down to local level, how the standards would be met and how legislation could be monitored. This needs to be described in full in the Bill or a commitment made to secondary detailed legislation.

3. Does the Bill establish a clear and appropriate relationship between Historic

Historic Environment Scotland Bill: THE ARCHITECTURAL HERITAGE SOCIETY OF SCOTLAND
Environment Scotland and all other public and private bodies with an interest in Scotland’s historic environment?

No. The Bill is relatively clear on responsibilities being adopted from Historic Scotland. Other relationships are alluded to, but not described. As we note above, the most important relationship, with local authorities responsible for implementing delegated powers, is not fully defined.

We also note above how societies such as ours, the Architectural Heritage Society of Scotland, can take a more direct role in influencing and promoting policies, from community participation to conservation. As the Society’s role as an element in community participation takes on increasing weight, there is a need for such relationships to be better defined where formal and statutory issues are concerned. The Society actively and consistently participates in the review of planning applications, through our cases panels, and country-wide National Conservation Committee. We actively promote conservation through lectures, study days, publications and through the media. We have received financial support for this in the past from Historic Scotland and, with the increase in such roles in the future, would hope for similar support from the new body.

The relationship between such groups as this Society and HES should of course extend beyond the purely financial, and we would welcome further interaction and contact. BEFS’ expertise in arranging conferences and workshops for the sector is extremely valuable and could facilitate future positive relations.

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

The Bill does little to enable us as a Society to better manage Scotland’s historic environment, although there are great opportunities for our sector to play an increasing and more formal role. Our role in community participation and recognition of its formal place in the processes of change, e.g. planning applications and the promotion of conservation, must be defined.

As a society for the promotion of our built heritage, we endeavour to relate our comments and critiques of conservation-related policy and planning applications to established principles. It is essential that the Bill clarifies how HES communicates and monitors good conservation practice and policy to those actively implementing it.

The contribution of our society and similar bodies needs to be recognised in an evolving planning and conservation context. The Scottish Government already encourages greater community participation, and our society’s expertise continues to be recognised and supported.

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

We reiterate our concerns that there is poor definition of the relationship between the new HES body and local authorities, or of how local authorities and their delegated powers will be audited in terms of resources. Local authorities must be accountable for the powers
delegated to them and demonstrate appropriate resourcing of skills and expertise, and at least outline provisions and objectives need to be contained in this Bill.

Our built heritage at risk through inappropriate development and the widespread lack of resources in local authorities, particularly in heritage care and planning, needs to be addressed.


The Bill therefore needs to address how policy and good practice can be supported and monitored in this context. Conservation expertise has been contracting, and is expected to fall by a further 15% over the next two years. The Society hopes that HES will develop a strategy that addresses the reduction of services offered by local authorities.

Given ongoing contractions in conservation services, research is needed to specify how and when failing services threaten sustainable development and growth by undermining heritage investment, values and returns.

We reiterate our premise that established community bodies such as this society need to have roles recognised within the Bill. This detail may require separate documentation and description, but needs to be referred to within the document itself. This is in line with the Scottish Government’s policy of greater community participation in environmental affairs.

The Society is concerned with the historic designed environment in its widest sense. Our primary interest is in architectural heritage, which encompasses buildings, designed landscapes, historic townscapes and features of the rural environment. The Bill needs to clarify and define what is meant by a historic environment.

We would wish to see provision in the remit of Historic Environment Scotland for strategic examination of issues such as the ecclesiastical heritage, including ecclesiastical exemption.

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

The appreciation of RCAHMS’ current role is well articulated in the Memorandum, however we would seek commitment that HES will sustain its functions in future. RCAHMS is an independent respected research and archive institution. While the roles of Historic Scotland and RCAHMS overlap and are symbiotic, they are not actually the same. We
have been supportive of the merger, but remain insistent that the distinctive roles be protected within the single body.

Protection of the built environment, through listing buildings and identifying conservation areas, is critical for the sustainability of the historic built environment. Robust processes to ensure that Listed Buildings and those in Conservation Areas are properly maintained and safe from threat of demolition, fundamental to ensuring that Scotland's historic environment continues to be a source of pride for its citizens, and a worldwide tourist destination. This can only be achieved with a countrywide resource, of skilled, experienced professionals, backed up by statutory powers and functions.

This premise flags up other issues that the Bill needs to enshrine:

Listing status, conservation areas and Article 4 directives are reached through established democratic processes that become statutory. Human rights include the right to challenge them, but community rights need to take precedence. This is an area we see weakened through politics, insufficient skills or resources within planning departments and competition from larger investors that needs greater support from HES.

7. The Scottish Government's newly published historic environment strategy also seeks to improve enjoyment and understanding of Scotland's historic environment. The Committee does not wish to repeat the extensive consultation undertaken on the strategy, but would welcome your views on whether it and the Bill together:
   - Establish clearly who is responsible and accountable for delivering the strategy;
   - Will involve appropriately all those public and private bodies with a role in improving the historic environment;
   - Lead to demonstrably better access to, and enjoyment and management of, the historic environment.

The Bill does not establish clearly who is responsible and accountable for delivering the strategy beyond that currently effected through HS / RCAHMS. We have noted above that there is a lack of definition of the relationship between the new body and local authorities and of an appropriate level of definition of how policy is to be delegated or implemented.

We would like to see a more clearly defined relationship between HES, public and private bodies. There needs to be a strong connection with local planning departments and clarity on interaction with private bodies of different types, which are active in the historic environment, including the Architectural Heritage Society of Scotland.

Improved access to the historic environment includes access to information such as the technical resources currently provided by HS and research and archive material currently provided by RCAHMS. This includes advice and guidance on listed buildings, conservation areas, and practical guidance for householders. HES has responsibility for compiling or approving lists of buildings of special architectural or historic interest and those relating to conservation areas. We hope that these functions will be sustained and be proactive rather than reactive. Property owners, prospective developers of historic buildings and local authorities all need accessible guidance on the qualities of their built heritage. Suitable management of the historic environment includes review of the built environment. This can lead to identification of potential within local development plans such as for Townscape Heritage Initiative (THI) and Conservation Area Regeneration Schemes (CARS). Such
schemes have been proven to enhance local communities.

Targeted support for conservation services is needed to extend specialist skills and experience and to secure skills within local authority services in the longer term.

- The possible benefits and disadvantages of Historic Environment Scotland being granted charitable status

We have expressed concerns about implementation of legislation and policy across the various levels from private development to local authorities. Our concerns are based in part due to the expectation that HES will ensure implementation of policy on behalf of government. Charitable status would affect the ability to do that.

If HES is given charitable status it will be able to raise funds in different ways and from different sources. This, however, would bring it into direct competition with many smaller organisations already struggling to protect and enhance the built environment in Scotland, e.g. building preservation trusts.

- The implications for staff in Historic Scotland and RCAHMS of the creation of Historic Environment Scotland

The Bill needs to clarify and protect the valuable role that RCAHMS currently undertakes; while the lack of autonomy will affect the way it works, we see the literal proximity and links with HS operations as very positive.

- Whether the Bill will improve existing policy and practice

We see the Bill as it currently stands as weakening the links between authority at the highest level, Scottish Government, and at local authority level. The effectiveness of delegation of powers relating to our historic environment depends on many factors. We do not see provision articulated for financial and human resources or for a direct support structure.

We draw attention to the wording used in the text of the 1991 Act to create SNH:

SNH may, and if so requested by the Secretary of State or any general, regional or district planning authority, advise the Secretary of State or, as the case may be, the authority in relation to any matter arising under F1 The Town and Country Planning (Scotland) Act 1997, the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 and the planning (Hazardous Substances) (Scotland) Act 1997 which affects the natural heritage of Scotland.

We would have preferred to see statutory powers remain with Scottish Ministers. HS currently fulfils the role of Scottish Ministers in safeguarding cultural heritage that might be affected by development and we would expect the Bill to be amended to explicitly give the role of safeguarding cultural heritage to HES in the same way that SNH is named as the guardian of natural heritage.
Clerk to the Education and Culture Committee  
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EDUCATION AND CULTURE COMMITTEE: WRITTEN EVIDENCE

Historic Environment Scotland Bill

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

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

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

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

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

Conservation areas: A further issue has been that of the management of conservation areas – covered at schedule 3, part 3, which confers existing arrangements to HES. We would be interested
in seeing a strengthened connection with local planning, in particular in relation to monitoring and the preparation of conservation area appraisals.

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

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

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

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

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

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

Relationships with other players: At the consultation stage BEFS highlighted the need to better understand the relationship between HES and other parts of the historic environment sector. It is important to recognise that Local Authorities are a major player with consenting and advisory responsibilities. As well as this, Local Authorities and the voluntary sector undertake a broad range of activities, facilitating community engagement and managing often complex projects, to ensure
the appropriate protection and conservation of both designated and, far more extensively, undesignated assets. We do very much welcome the collaborative ethos of the Historic Environment Strategy - BEFS expects that any Directions from Ministers will enshrine this ethos.

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

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

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

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

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

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

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

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

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

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

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

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

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

22nd April 2014

This written evidence has been prepared on behalf of the BEFS Historic Environment Scotland Bill Taskforce.
Contact: Jo Robertson, Senior Policy Officer – historic environment jrobertson@befs.org.uk
Built Environment Forum Scotland, 9 Manor Place, Edinburgh, EH3 7DN, 0131 220 6241, info@befs.org.uk, www.befs.org.uk

BEFS is a charitable limited company: company number 250 970, charity number SC 034488
Thank you for the opportunity to provide evidence to this inquiry. Written evidence submitted on behalf of the Institute for Archaeologists is attached.

The Institute for Archaeologists (IfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

IfA has over 3,000 members and more than 70 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

IfA’s Scottish Group has over 200 members practising in the public, private and voluntary sector in Scotland. Furthermore, IfA is a member of the Built Environment Forum Scotland (BEFS), a network organisation that brings together non-governmental organisations and professional bodies that work with Scotland’s built environment. IfA has contributed to and endorses the evidence submitted on this matter by BEFS.

IfA has successfully petitioned for a Royal Charter of Incorporation, and following a Privy Council meeting on 11 February 2014 Her Majesty the Queen signed an Order of Grant.

Yours faithfully,

Tim Howard LLB, Dip Prof Arch
Policy Advisor
Historic Environment Scotland Bill

Evidence of the Institute for Archaeologists (IfA)

IfA has contributed to and endorses the evidence submitted on behalf of BEFS which is not repeated here. The following evidence supplements that submission, specifically from an IfA perspective.

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

(1) The role of local authorities and their historic environment and archaeology services is central to the management and promotion of Scotland’s historic environment. Although the provisions in this enabling Bill may be wide enough adequately to allow Historic Environment Scotland to provide all necessary support to local authorities, it would be helpful more specifically to identify its functions in relation to local authorities (for instance, by supplementing the provisions in clause 11(1) and (2) with similar sub-clauses expressly relating to local authorities, as suggested by BEFS).

(2) Furthermore, the management and promotion of Scotland’s historic environment would be significantly improved by the inclusion in the Bill of provision to secure the future of Historic Environment Records (HERs) / Sites and Monuments Records (SMRs). Although Scottish Planning Policy currently provides that ‘Planning authorities should ensure they have access to a Sites and Monuments Record and/or a Historic Environment Record that contains necessary information about known historic environment features and finds in their area’ (paragraph 124: http://www.scotland.gov.uk/Publications/2010/02/03132605/8), such records remain vulnerable to budgetary pressure. A statutory duty on local planning authorities to have access to an up-to-date HER or SMR supported and maintained by professional archaeologists would not impose a significant additional burden, given that the resource already substantially exists. Securing HER / SMR coverage conveys considerable benefits (through engaging communities and facilitating sustainable development) and avoids potential costs (if such development is delayed or frustrated or if historic assets are damaged or lost by an inability timeously to consider the impact of development upon the historic environment). Such benefits more than justify the imposition of such a duty.

7. The Scottish Government’s newly published historic environment strategy also seeks to improve enjoyment and understanding of Scotland’s historic environment. The Committee does not wish to repeat the extensive consultation undertaken on the strategy, but would welcome your views on whether it and the Bill together:
   o establish clearly who is responsible and accountable for delivering the strategy; 
   o will involve appropriately all those public and private bodies with a role in improving the historic environment; 
   o lead to demonstrably better access to, and enjoyment and management of, the historic environment.

(1) IfA fully supports the Historic Environment Strategy. One of its strengths is its collaborative nature, providing a shared vision for Scotland’s historic environment. With such inclusivity, however, comes the risk that ‘everyone is responsible and no-one is accountable’. IfA supports BEFS in its desire to work with Ministers and Scottish Government better to articulate issues of accountability in the Strategy.

22 April 2014
Submission from Perth and Kinross Council

I refer to the call for submissions in respect of the above and would request that the following comments be considered as the response for Perth and Kinross Council:

The Bill provides the ability to exclude aspects of a statutory address from the designation of a listed building and to specify exactly which elements of a building are not protected. Listing only parts of a building could set an extremely undesirable precedent and this should only be used, if at all, in exceptional cases.

The Bill allows Ministers to make regulations specifying the persons required to be notified by HES and the LPA of any list compiled (of buildings of special historic or architectural interest) and also allows Ministers to make provision as to the form, manner and time in relation to such notification. In the 1997 Act it states all owners, lessees and occupiers should be informed and there was no time limit imposed. If the number of “persons” to be notified increases substantially then this could have implications on staff time and resources. The notification procedure at present (which the LPA has to carry out in its entirety) is already relatively onerous.

Provision is now made for appeals against inclusion in the list of buildings of special historic or architectural interest. This new provision should not impact upon local planning authorities particularly.

Section 22 in Part 6 provides the power to specify circumstances in which the Scottish Ministers are required to be notified where a planning authority is minded to grant listed building consent. There is no detail given. The delegated powers memorandum suggests that this level of detail is more appropriately left to regulations or directions “to deal with changing circumstances over time” and “the power would allow Scottish Ministers to vary the circumstances in light of future changes, for example to the capabilities and capacity of local authorities”. This is an important issue so presumably there will be full consultation with LPA’s before any draft regulations are produced.

Scottish Parliament questions in the Call for Written Evidence:-

In overall terms the creation of HES should help the new body to improve the overall management and promotion of Scotland’s historic environment. There is no certainty at this stage that the Bill will help LPA’s to better manage and promote Scotland’s historic environment, although the intention is that the new arrangements are more transparent and the ethos of HES will be more as a partner rather than an arbiter.

The functions proposed for HES appear to cover all the essentials.

In principle the Bill establishes a sound relationship between HES and other public bodies. However, as mentioned above, there are aspects which require greater clarity before any regulations are finalised.

Regards

Nick Brian
Development Quality Manager
Planning & Regeneration
Perth & Kinross Council
Scottish Parliament Education and Culture Committee Call for Evidence

COMMENTS BY THE SCOTTISH PROPERTY FEDERATION ON THE HISTORIC ENVIRONMENT (SCOTLAND) BILL

Introduction

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members; property investors including major institutional investors, developers, landlords of commercial and residential property, and professional property consultants and advisers.

2. We welcome the opportunity to contribute to the call for evidence on the Historic Environment (Scotland) Bill. We are also happy for the Scottish Parliament to publish our comments and share our views with other public authorities.

General Comment

3. The SPF’s main interest is to assist in helping Historic Environment Scotland to remain in a position to support positive outcomes for the historic built environment. The private sector is the largest source of investment in the heritage sector and the property industry is willing to continue to work closely with experts within the new body in order to drive the potential of the sector for the purposes of heritage itself and its contribution towards sustainable economic growth.

Question 2

4. Our members agree with the functions set out for the new body. It will be important for the new body to continue to work with the private sector to improve knowledge standards and skills, in order to add value to the significant investment made by the private sector in the historic built environment. The operation of effective and efficient processes that align with the on-going simplification of the planning system should as suggested in the policy memorandum be a key consideration in deciding on the internal control and governance arrangements of the new NDPB. Time is money and investors will not be able to allow proposals to drag on with allocated funds being unable to achieve their required return. Our members agree with the proposal to exempt certain specified aspects of the organisation’s work from Ministerial direction. This would provide an appropriate balance between public accountability
and scrutiny - and the need to provide for independent professional decision making. **Members also welcome the provision at section 21 of the ability to specify exactly which elements of a building are and are not listed.**

**Question 3**

5. The SPF welcomes the positive steps taken to create a central historic environment policy unit. **Our members also welcome the merger of RCHAMs and HS as a new non-departmental public body.** Our members are strongly of the view that this should be supported further by an efficient listed building consent and planning application process that will support developers seeking to bring historic properties up-to-date or back into use. The SPF recognises that early engagement by the private sector with the new body and local authorities is also a key issue and one for the private sector to play its role in.

**Question 4**

6. The industry would welcome the support of the new body to address the growing complexity and legacy of managing historic assets where challenging economic conditions have tested viability considerations and their regenerative potential. **The SPF believes firmly that the best way to maintain historic policies is through their effective retention in use, which should be a key measure of success.** As stated under Question 3, this can be helped by an efficient listed building consent and planning application process that will support developers seeking to bring historic properties up-to-date or back into use. This process would be greatly aided by agreements on timescales which will benefit both parties through providing certainty of decision-making and thence of the timing of the outcome of property proposals. Our members support strongly the operation of effective and efficient systems that align with the on-going simplification of the planning system and are strongly of the view that this should be a key consideration in deciding on the internal control and governance arrangements of the new NDPB. The SPF continues to work with the Measuring Success Working Group facilitated by BEFS and set up to create a Performance Measurement Framework for the Historic Environment Strategy for Scotland.

**Question 7**

7. Our members agree that the Strategy should help the historic environment to remain in a position to deliver positive outcomes, harness available opportunities and address challenges. **The key tenet of the SPF’s policy on the historic environment is our belief that the best way to maintain historic properties is through their effective retention in use.** However, difficult decisions will occasionally need to be made regarding the continued use and in extremis even the existence of some buildings where this is not feasible for a variety of reasons (safety, cost to maintain, interest etc). The SPF is concerned that the proposals presented in the Strategy should not impact negatively on business, investment, the third sector or have any regulatory impact than is already the case.
Other Comments

8. In taking the Strategy forward it will be important for the policy function of the new body to have a strong input into the influence of wider government policies and their effect on the built environment. For example, the impending retrofit requirements for non-domestic buildings due this year under s63 of the Climate Change (Scotland) Act 2009, will benefit from the knowledge and expertise within the new body on how to improve energy efficiency within listed buildings.

9. Our members strongly support the operation of effective and efficient systems that align with the on-going simplification of the planning system. The new body should continue to seek to support the ongoing simplification of the planning/consents process where appropriate.

10. The SPF would be pleased to explain its comments in further detail at the Committee’s request.

Mandy Catterall
Policy Officer,
Scottish Property Federation
mcatterall@bpf.org.uk
0131 306 2222
Dear Sir/ Madam

WRITTEN EVIDENCE ON THE HISTORIC ENVIRONMENT SCOTLAND BILL

RTPI Scotland is grateful for the opportunity to provide written evidence to the Education and Culture Committee on the Historic Environment Scotland Bill.

The Royal Town Planning Institute (RTPI) is the champion of planning and the planning profession. We work to promote the art and science of planning for the public benefit. We have around 2,200 members in Scotland and a worldwide membership of nearly 23,000.

Planning is about creating great places for people. It does this through providing vision on how best to shape our communities over the short, medium and long term. Scottish Government is currently reforming the planning system and a key part of this is the move towards a plan-led system where development plans provide the direction on the future of places. RTPI Scotland commends the Scottish Government’s recognition of the important role that planning, planners and the planning system can play in helping to achieve its objectives and we welcome the demonstration of this commitment through the Historic Environment Scotland Bill.

RTPI Scotland recognises the important and valuable role that the historic environment plays in planning terms for Scotland, and acknowledges the integral relationship between people and the historic environment, and the role that the historic environment plays in supporting and building a sense of place, and generating economic activity, providing opportunities for the preservation and restoration of important assets, while also allowing for development opportunities, recognising the value and status of key historic buildings and places.
Consultation

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

RTPI Scotland welcomes the creation of Historic Environment Scotland as a key organisation working towards the management and promotion of Scotland’s historic environment. We recognise that there are also other organisations involved in the historic environment, and we encourage transparency and collaborative working together between organisations and across the sector to avoid duplication, and to efficiently manage and promote the historic environment.

The success of the Bill relies upon resourcing and expertise, and the culture of the new organisation, both working with the historic environment sector, and supporting the sector. We appreciate these are not necessarily matters for the Bill, but need to be at the centre of approaches to be taken in implementing the Bill’s provisions.

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

RTPI Scotland supports the overarching function of Historic Environment Scotland in “Investigating, caring for and promoting Scotland’s historic environment”, and also supports the particular functions set out within the Bill.

As part of the functions of Historic Environment Scotland, we suggest it would be beneficial to refer to the role of the body as part of the planning system in fulfilling its functions to protect, manage, conserve and enhance the historic environment.

We would like to see greater clarity for planning authorities on the role of Historic Environment Scotland, and similarly clarity for the new body on the roles and responsibilities of local planning authorities to ensure the overall effective management of Scotland’s historic environment. This may be delivered through guidance or advice.

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

RTPI Scotland considers that a greater link must be made between the historic environment and community planning and we are working with COSLA and Scottish Government, by leading a sub-group of the Historic Environment Group which is tasked with considering how we may better integrate Community Planning Partnerships and Single Outcome Agreements to deliver benefits locally for the historic environment and for local communities. We envisage this will examine the framework, roles and responsibilities, processes, understanding, resources and skills in terms of barriers and opportunities, and identifying actions.

RTPI Scotland is also currently supporting COSLA and Scottish Government to clarify roles and responsibilities in key delivery areas such as designation advice, regulation and related management regimes building on joint working agreements between Historic Scotland and local authorities.
In our initial response to the consultation on the draft Historic Environment Strategy for Scotland, RTPI Scotland sought details on how the new body would source funding without negatively impacting on the rest of the historic environment sector. We consider that there are a number of points that still require more detail, including the anticipated impact of Historic Environment Scotland having charitable status with regards to it competing for funds with other public and private bodies with an interest in Scotland’s historic environment. There is the potential for the new Historic Environment Scotland to have significant impact on the sector and the way in which bodies receive and apply for funding.

We believe that Historic Environment Scotland should be the champion of the historic environment, taking key messages beyond the historic environment sector and the usual key players, working towards mainstreaming, sharing value, articulating value and using the value of the organisation and the historic environment in the decision making process.

The Historic Environment Strategy must link with other key strategies and policies at the national level to ensure consistency, both influencing other strategies and policies published by Scottish Government, and also being influenced by these. These include the National Planning Framework, Scottish Planning Policy, Town Centres Action Plan, National Performance Framework, Infrastructure Investment Plan, National Marine Plan, Climate Change through the Report on Policies and Proposals (RPP), and Creating Places.

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

RTPI Scotland has had a strong working relationship with Historic Scotland, and wishes to continue to work closely with the new organisation Historic Environment Scotland. As stated earlier in this response, RTPI Scotland has around 2,200 members in Scotland and we are the champion of planning and the planning profession within Scotland. This includes the historic environment, and we support our many members who work within this sector, and aim to proactively engage with the sector to increase knowledge, share good practice and better manage and promote the historic environment.

RTPI Scotland supports the role that the new Historic Environment Policy Unit within Scottish Government will play in carrying out the Historic Environment Strategy policy functions, and would encourage a meaningful and consistent engagement and relationship between this Unit and Historic Environment Scotland. RTPI Scotland believes that there must be clarity between the roles of Historic Environment Scotland and the Historic Environment Policy Unit, particularly in terms of grant giving, grant management, and responsibilities for certain stakeholders, amongst other roles.

We also believe that Historic Environment Scotland and the Policy Unit within Scottish Government must maintain strong links in the future to ensure that expertise is not lost and that there is a clear and robust connection between policy and delivery, allowing the new Historic Environment Scotland the power to inform policy.

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

RTPI Scotland supports the Historic Environment Scotland Bill and the functions of the new Historic Environment Scotland body. We see this as a positive and strong starting point, and would encourage the development and publication of robust, ambitious and transparent guidance and secondary legislation to support this. It will also be important to encourage a positive culture within the historic environment sector and related sectors. RTPI Scotland
wishes to work with Historic Environment Scotland, and the Scottish Government to deliver the ambitions and functions set out within the Bill and the Historic Environment Strategy for Scotland.

We suggest that reference is made within the text of the Bill to a definition of historic environment. Referring to an agreed definition of the historic environment would give clarity and transparency in the term.

RTPI Scotland would like to see a reference within the text of the Bill to Historic Environment Scotland working to the principles of sustainable development. This has been recognised in national planning policy and other policies by the Scottish Government as a key aim of all policy to deliver on sustainable development principles.

We wonder whether the delegated functions of Historic Environment Scotland referred to within Section 10 of the Bill should be consulted on and published to allow greater transparency, clarity and agreement.

We note that the role of Historic Environment Scotland in relation to Strategic Environmental Assessment does not form part of the Bill. We would like to see greater clarity on this, as to whether the new body will have a function as Historic Scotland had as a consultation authority in relation to Strategic Environmental Assessment.

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

RTPI considers that the Scottish Parliament should have a monitoring role of the functions, actions and delivery of Historic Environment Scotland as a new organisation not yet established, so as to ensure a smooth transition from Historic Scotland and RCAHMS to the new body, and maintaining skills, expertise and functions to a high standard.

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

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

RTPI Scotland is supportive of current planning reform being led by Scottish Government, and that this planning reform should facilitate a plan-led system where planning decisions take place at the planning stage though effective development planning and development management procedures. As such, we support the Historic Environment Strategy for Scotland and welcome its measures which will be an integral part of this planning reform for the historic environment.
In the RTPI Scotland response to the draft Historic Environment Strategy for Scotland in 2013, we stated that the strategy must be robust, ambitious and clear to lead policy development on the historic environment. The full RTPI Scotland response from July 2013 can be seen on the RTPI website - [http://www.rtpi.org.uk/media/589526/historic_environment_strategy_-_letter_-_31_july_2013.pdf](http://www.rtpi.org.uk/media/589526/historic_environment_strategy_-_letter_-_31_july_2013.pdf)

RTPI Scotland suggests that there is greater clarity on how it is intended to measure successes of the Bill and new body. Any framework to measure success must consider qualitative as well as quantitative measures, be outcome focussed, measurable and holistic. There may be lessons to be learned from the Planning Performance Framework developed by Heads of Planning Scotland in partnership with the Scottish Government.

I trust that you will find these comments helpful. If you would like to discuss any aspect, or require clarification of any points raised, please contact me on 0131 229 9628 or by email to craig.mclaren@rtpi.org.uk.

Yours sincerely

Craig McLaren
Director of Scotland and Ireland
Scottish Parliament, Education and Culture Committee call for evidence

Historic Environment Scotland Bill

1. Introduction

The National Trust for Scotland was founded in 1931 to harness the energies of the people of Scotland in helping conserve our places of historic interest and natural beauty. Over the decades, the NTS has grown to be Scotland’s largest conservation movement and membership organisation, with more than 320,000 members. As an independent charity the Trust now owns and manages 129 visited properties on behalf of the nation, and manages a further 400 Conservation Agreements. Our staff, volunteers and members provide public benefit through conserving, providing access and supporting learning and enjoyment.

Our ambitions extend beyond our own estate: from the time of our foundation the NTS has taken an interest in how well Scotland as a whole manages to conserve and enjoy our common heritage, as well as exercising conservation agreements on places owned by others.

The Scottish Government’s proposal to merge the Royal Commission on the Ancient and Historical Monuments of Scotland with its executive agency Historic Scotland to create a non-departmental public body therefore interests us on a number of levels: on the impact it may have on our own efforts on behalf of the nation, on the changes it may bring to the wider heritage sector, and the effect on Scotland’s heritage.

2. Overview

The Scottish Government’s Historic Environment Scotland bill proposes to create a new non-departmental public body to advise on issues affecting the historic environment, to fund activities supporting its conservation, and to act as a regulator. In all these regards, what is being proposed for the historic environment is an analogue of what already exists for the natural environment in the form of Scottish Natural Heritage.

It is also proposed to transfer responsibility for the management of the Scottish Government’s Properties in Care to the new body. This would make HES both an operator and a regulator, creating potential conflicts of interest.

In creating the new body, the Royal Commission will be brought to a close and its staff and collections transferred. The Royal Commission has been an important centre of excellence in surveying and recording Scotland’s historic environment for over a century and holds an unparalleled archive of photographs, maps, drawings and documents related to Scotland’s historic environment.

These issues, of regulation, of the future of the Royal Commission, and of caring for properties in the guardianship of the state are present across the United Kingdom, and each country has sought its own resolution of these:
Scotland – merge state heritage body with Royal Commission, combine regulatory and operator roles, propose potential charitable status is sought.

England – merge state heritage body with Royal Commission, separate regulatory and operator roles, expect charitable status is sought.

Wales – retain Royal Commission as a centre of excellence, retain state heritage body in central government

The proposed resolution for Scotland is closest to the English model, though with no separation of regulator and operator.

In the remainder of this document we set out our thoughts on the current proposals. In Section 3 we set out our own thoughts on how the proposed bill may affect the sector, and in Section 4 we address the specific questions posed by the Education and Culture Committee in the call for evidence.

3. Main issues

This section discusses in more depth a number of issues raised by the form of the proposed merger, providing context for our answers to the Committee’s questions in Section 4. The issues covered are:

- Regulatory role
- The role of RCAHMS
- Properties in Care
- Charitable status
- Fundraising

Regulatory role

Of all the roles currently performed by Historic Scotland, including advice, education, skills development, and property management, the most important is its regulatory role. Other organisations, including charities, universities or private enterprises can fulfill all of these other functions, but cannot be the central resource for regulation of activities affecting the historic environment. It is therefore imperative that the creation of a new organisation sustains and, if possible, enhances, this role.

In this regard, the separation of the policy-making function (now carried forward by the Historic Environment Policy Unit) and the regulator function should also be considered.

Placing the regulatory role inside an organisation whose financial sustainability will depend on its performance in visitor management and, over time, on fundraising may not be the most sustainable option. As sponsor, the Scottish Government may need to ring-fence the regulatory role in its funding arrangements with the new body.

The combination of regulator and operator in the one organisation also has implications for any future fundraising from private donors, whether as a charity or simply as a government agency. In making policy for the built environment, and with the power to call in (or not) specific developments, the new body cannot be perceived to be influenced by seeking or accepting donations from vested interests. Even where no conflict of interest takes place, the perception of undue influence could be damaging.

It is notable that in pursuing its own ambition to establish English Heritage as a charitable body, better able to raise funds for its property operations, the Department for Culture, Media and Sport has determined that the regulatory role must be carried out by a separate organisation as:
“clearer separation from the other responsibilities of the Commission and greater independence from Government will make it easier for the charity to access sources of funding from third parties, helping to increase the financial resilience of the management of the Collection.”

“without charitable status and the freedoms associated with a separation from English Heritage’s heritage protection and planning responsibilities, fundraising for the capital programme would continue to be more challenging.”

“sponsorship can be sought from a wider range of companies once the management of the Collection is no longer part of a statutory body”

We would therefore recommend the Committee test whether the proposed model is the one best fitted to ensure effective and credible regulation for the historic environment, while continuing the important work of Historic Scotland and RCAHMS.

**Role of RCAHMS**

The Royal Commission has been a mainstay of historic conservation in Scotland for many decades, and its excellence in surveying and recording is recognised across the sector. In England, the Royal Commission on the Historical Monuments of England was merged with English Heritage in 1999. In retrospect, this merger was considered by many observers to have resulted in the loss over time of valuable experience. In separate communications with NTS, the Scottish Government has committed to learn from this experience. The creation of a new national strategy (“Our Place in Time”) the use of founding legislation to underpin the merger, and a comprehensive merger of teams and roles at an early date are argued to mitigate such losses in Scotland.

In Wales, the Welsh Government proposed merging the Royal Commission on Ancient and Historical Monuments of Wales with Cadw but, following consultation, it was decided to retain the two organisations as they were, for the time being. The Minister for Culture & Sport justified this decision on the basis that: “This avoids the financial costs, organisational risks and disruption to the sector at a time when public resources are scarce”

**Properties in Care – guardianship vs ownership**

Scottish Government ministers are currently responsible for 344 historic properties. Of these, the vast majority (263) are the property of private owners. These are managed under guardianship agreements between the owner and the state, with the state as guardian of last resort committing to maintain and repair the properties.

The remaining Properties in Care are a mix of those owned by the Scottish Government (74), leased (6) or held under a memorandum of understanding (1). The Scottish Government’s proposal is therefore not to transfer management responsibility of only those properties owned by the government, but also those where the contracting parties are ministers and the private owners. The proposed transfer may be to HES or to any other third party. In our view, and that of our legal advisors, the bill will override the contractual position to enable delegation to take place.

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1 Department for Culture, Media & Sport (2013) “English Heritage New Model consultation”, page 15
2 Ibid. page 10
3 Ibid. Page 13
4 Welsh Government (January 2014) Minister announces new strategic approach for Welsh heritage
5 These powers are set out in the Ancient Monuments and Archaeological Areas Act 1979
In transferring these responsibilities, the liability for the maintenance of these properties, both those owned and in guardianship, will remain with ministers. The cost of maintaining these properties, and any backlog in repairs, is not currently known by the Scottish Government. For comparison, the NTS with 129 visited properties (which includes areas of natural beauty as well as historic properties) has recently estimated that it needs to increase its spend on conservation care by £46 million over the next decade. In England, English Heritage is to spend £52 million clearing its highest priority conservation backlog, with the remaining outstanding conservation works to be carried out as part of a regular four-year cycle.

Quantifying the scale of the underspend within the Properties in Care, is an urgent task for Historic Scotland and its successor. Without it there are the risks that:

- Ministerial commitments to maintain the condition of these properties will not be recognised and met by the operator.
- The operator will prioritise short-term income generation and spend (e.g. on visitor experience) without addressing the conservation backlog.
- The arrangement will result in unfair competition with the new state-sponsored operator free to “sweat the assets”, the liability remaining with the owner and ministers, while managers of other historic properties have to make provision for the long-term maintenance of their own assets.

To date, there has been no consultation with the owners of properties in guardianship as to how the proposed delegation would work or whether it would be an acceptable implementation of the guardianship agreement that was entered into, and which did not allow for transfer to third parties. We would therefore recommend that a consultation period is built into the legislation prior to transfer of responsibilities.

Bundling the management of the Properties in Care with the regulatory, funding and advisory roles also poses a management challenge. The Properties in Care are the largest spending department with the largest numbers of staff, and also the greatest immediate liabilities in terms of public health and safety. They can therefore be expected to demand the greatest amount of management attention, potentially at the expense of the regulatory and advisory role.

**Charitable status**

The declared motive for seeking charitable status for the new organisation is to improve its financial position, including rate relief and increasing donor support. Historically, charities have been composed of private individuals banding together for the common good. The public has recognised their value by granting exemptions (and applying restrictions) to encourage and direct their work.

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

For example, the NTS, as with other charities is limited by HMRC rules on the amount of benefit it can give to a member. We would look to the Scottish Government to ensure that a state charity would also be bound by the same rules as the voluntary sector in the amount of benefit that can be given to members.

In England, the expectation is that English Heritage, following its move to becoming a charity, will over time become entirely self-supporting. While the current Scottish administration is not proposing such a move, the proposed framework would lend itself to a similar move in future. The relative size of these two organisations should also be borne in mind. Historic Scotland operates 344 properties, compared to only 384 for English
Heritage covering a much larger country and population. With more than 3 million visitors to its properties, anchored by more than 1.3 million to Edinburgh Castle alone, Historic Scotland is already Scotland’s largest historic heritage operator.

In proposing that HES may become a state charity, the parallel is made with the National Collections (e.g. National Library, National Galleries, etc.) but again the relative scale needs to be considered. The proposed new body would be more than twice as large as any of the National Collections, and in terms of expenditure is more readily comparable with its fellow regulators SNH and SEPA (which are not state charities).

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Estimated annual expenditure</th>
<th>Estimated staff complement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Royal Commission on the Ancient and Historical Monuments of Scotland (SC)</td>
<td>£6.5 million</td>
<td>110</td>
</tr>
<tr>
<td>National Galleries of Scotland (SC)</td>
<td>£23.5 million</td>
<td>256</td>
</tr>
<tr>
<td>National Library of Scotland (SC)</td>
<td>£19 million</td>
<td>340</td>
</tr>
<tr>
<td>National Records of Scotland (SC)</td>
<td>£20.2 million</td>
<td>407</td>
</tr>
<tr>
<td>National Museums Scotland (SC)</td>
<td>£31 million</td>
<td>430</td>
</tr>
<tr>
<td>Scottish Natural Heritage</td>
<td>£53.7 million</td>
<td>773</td>
</tr>
<tr>
<td><strong>Historic Scotland</strong></td>
<td><strong>£77.9 million</strong></td>
<td><strong>1,100</strong></td>
</tr>
<tr>
<td>Scottish Environment Protection Agency</td>
<td>£77.6 million</td>
<td>1,200</td>
</tr>
</tbody>
</table>

In discussions with the Scottish Government we have argued that there is a potential risk to the voluntary sector, and this has been recognised in part in the policy memorandum for the bill. We would ask the Committee to consider not just how the organisation will immediately affect the wider sector as a non-departmental public body, but also how the possible addition of charitable status to these legislative and organisational powers may affect the sector, and whether protections should be put in place in the legislation.

**Fundraising**

The historic environment, while contributing greatly to our identity, to and social and economic activities, can be expensive to maintain. Owners of historic properties, whether government, private individuals and companies, or community bodies must continually find funds to maintain their assets.

One of the motivations in creating a new body, and in preparing it to potentially acquire charitable status, is to improve the funding situation for central government activities. Both predecessor organisations have suffered budget falls in recent years, at more than the general level of decline in public spending. Drawing on Scottish Government projections, we estimate that RCAHMS has seen a 29% decline in government support (from £5.8 million in 2006-07 to £4.5 million in 2011-12) while Historic Scotland has experienced a 27% drop (from a high point of £51.7 million in 2008-09 to £37.8 million in 2013-14).

The potential impact on the voluntary sector of a new state body seeking to sustain itself, at least in part, through charitable fundraising has not been estimated by the Scottish Government. Fundraising could occur either as at present through a dedicated charitable vehicle such as the Historic Scotland Foundation, or, as envisaged by the policy memorandum, by the organisation applying to become a charity in its own right.

We estimate that the readily identifiable pool of charitable giving to the historic environment in Scotland is around £26 million a year (and most likely a little larger once smaller organisations are included). On this basis,
assuming it could be done, then reversing a £15.2 million reduction in government support would have an enormous impact on the wider sector.

4. **Education and Culture Committee questions**

In this section we provide answers to the Education and Culture Committee’s specific questions.

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

The historic environment in Scotland is extensive, some 8,000 scheduled monuments, 28 nationally important battlefields, 390 nationally significant gardens and designed landscapes, and 47,600 listed buildings (of which 3,800 are of the highest standard), and these are only the designated sites and properties. Historic Environment Scotland is expected to manage directly 344 of these properties. Its major impact on the historic environment will therefore need to come from its regulatory role, from providing advice, and from encouraging a culture that values our historic heritage across Government and society.

The test of the new organisation will be the extent to which it will be able to build on the regulatory and advisory functions of Historic Scotland, and the survey and recording functions of RCAHMS.

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

**Functions** - The functions proposed carry over the responsibilities of Historic Scotland and RCAHMS, and it is important for the sector that these be continued. There is a question as to whether all of these functions will sit comfortably within a single organisation. As discussed in Section 3, potential issues such as disproportionate attention to Properties in Care or the combination of regulatory and charitable fundraising roles, may mean a separation of functions would be a superior organisational design.

**Outcomes** - The bill and accompanying policy memorandum do not set out outcomes for the new organisation, and we would expect these to appear in the corporate plan for the new body. We would look for the new body to contribute to the outcomes set for the Historic Environment strategy – yet to be developed – and to the relevant National Performance Indicators, including: Improve the state of Scotland’s historic sites; Increase cultural engagement; Improve people’s perceptions of their neighbourhood; and Improve Scotland’s reputation.

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

In our view, no, not at present. Two specific issues present themselves.

Firstly, the role of the new body in relation to the Properties in Care and the responsibilities of ministers. This is discussed in more detail in Section 4 above, but briefly there are a number of potential conflicts created by the current proposals, and which will have to be mitigated through an appropriate scheme of delegation.

We would also recommend that those parties affected by the proposed changes, the owners of the properties in care, are consulted on these arrangements.

Secondly, as a regulatory authority, the relationship between HES and Scotland’s local authorities will be a critical one. As the new body will be providing for the historic environment what Scottish Natural Heritage already provides for the natural environment, we would recommend that the bill incorporate similar provisions.
4. In what ways will the Bill help you/ your organisation to better manage and promote Scotland’s historic environment?

The impact on our own organisation, and on the public benefits we seek to deliver, will depend on whether the new body operates on a level playing-field, or whether the combination of functions (regulator, operator, funder, charitable fundraiser etc.) creates a destabilising presence in the sector.

We are therefore looking to the Scottish Parliament to deliver legislation that meets the Scottish Government’s aspirations to create a combined body that can help deliver the historic environment strategy, and which does so in a way that is complementary to non-governmental efforts.

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

In its current form, we consider there are a number of areas that could be developed:

- **Definition** – one of the strengths of the Historic Environment Strategy is agreement on a common definition of what constitutes the historic environment. This should be incorporated into the bill in the same way as the definition of the natural environment is incorporated into the founding Act for Scottish Natural Heritage. This would provide equivalent weight to the value of the historic environment and make clear the demarcation between these bodies in areas where there is potential overlap, e.g. on landscape policy.

- **Role in relation to local authorities** – the main impact HES will have on the historic environment in Scotland will be through developing and overseeing the regulatory regime, and which will largely be executed by local authorities. By comparison with the legislation for SNH and SEPA, the proposed bill provides less detail on how this relationship is expected to work. By not defining roles and responsibilities at this stage, there is a risk that burdens will not be shared or properly addressed. The Institute for Historic Building Conservation has recently been conducting research on capacity and skills within local authorities, and this can be reviewed by the Committee.

  The regulatory role in general hinges largely on the line of text in Section 2 (2) (d) “protecting and managing the historic environment.” We would like to see this more fully developed. For example, there is no reference to HES taking on the role of Scottish ministers in protecting the historic environment in Strategic Environmental Assessments, as set out in Part 1, Section 2 of the Environmental Assessment (Scotland) Act 2005.

  Overall, we would recommend that the Committee assess how the proposed changes will work alongside the planning system.

- **Sustainable development** – the legislation for the partner regulators, SNH and SEPA, both contain requirements for the regulator to have regard to sustainable development in exercising its functions. This should be included in the legislation for HES to balance social, economic and environmental concerns.

- **Delegation** – the proposal to delegate Properties in Care (whether owned by the state or by private individuals) creates potential liabilities for the public, and may result in unfair competition for other operators in the sector. The bill should balance the power to delegate this function with an explicit requirement that the managing agent maintain the property in good condition and keep the guardian and owners informed of condition.

- **Operating principles** – the current proposal is to combine an operator, regulator, funder, and advisory role in a single organisation creating, in our view, the potential for conflicts of interest. The Scottish Government has sought to provide assurances of mitigation in the policy memorandum, and we would hope that these are carried over into the first corporate plan. Short of an organisational redesign, the strongest protection that can be provided for the sector would be to embed the principles of collaboration and transparency in the legislation. There is ample precedent in this in the founding legislation for both SNH and SEPA where these regulators are required to have due regard to their impact on other interests.
The Scottish Government is proposing to continue subsidising HES, which as the dominant historic heritage operator in Scotland, means it will be free to seek to maximise visitor income, while not needing to meet the same costs as other operators. Embedding the principle of collaboration into the new body’s direction is therefore essential.

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

Policy objectives – the policy memorandum sets out a comprehensive and useful overview of the objectives and how the new body is expected to operate. We would encourage the Committee to consider how some of these commitments could be better incorporated in the text of the bill.

Alternative ways of meeting the objectives – separation of the regulatory role from the operator role, the main source of potential conflict of interest, is not considered in the policy memorandum and was not specifically addressed in the consultations. The separation of the policy making function from Historic Scotland (now embodied in the Historic Environment Policy Unit in the Scottish Government) and the example of separating operator from regulator in England, shows that alternative approaches are possible, beyond combining all functions in a single organisation.

Consultation – a number of consultations have informed the current bill. We would observe that only RCAHMS was the subject of a review to evaluate its role and functions, and that the design of HES would have benefitted from a parallel review of Historic Scotland.

In 2012, the review of RCAHMS tested three options: status quo, a merger with Historic Scotland as an executive agency of the civil service, and RCAHMS to be reformed as a Non Departmental Public Body. The review gathered views via an online survey and found that of 38 respondents, 7 wanted no change, 25 wanted changes to RCAHMS operations, 4 wanted a merger with Historic Scotland, and 2 to divide RCAHMS’s functions.

Built Environment Forum Scotland held a workshop in parallel with this review, where delegates were asked to vote on options. At this workshop, out of 30 respondents, 7 voted for no change, 20 for RCAHMS to become a public body with a wider remit, and three “don’t knows.” The option to merge with Historic Scotland received no votes.

The second consultation came in July 2013. At this point the Scottish Government had already determined that their preferred course of action was: “to merge Historic Scotland and The Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) to establish a new Executive Non Departmental Public Body (NDPB) and that provisions should be made to allow the new body to apply to the Office of the Scottish Charities Regulator (OSCR) to become a registered charity.” The consultation therefore focused on the detail of how this would be implemented, rather than whether a merger between RCAHMS and HS was the best option, or whether other options should be considered.

In our view, it would have been preferable to have developed the sector strategy first, and then determined what institutional arrangements could best deliver national ambitions, rather than running these two exercises separately.

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7 Built Environment Forum Scotland (February 2012) BEFS Workshop Report: RCAHMS Options Appraisal
7. The Scottish Government’s newly published historic environment strategy also seeks to improve enjoyment and understanding of Scotland’s historic environment. The Committee does not wish to repeat the extensive consultation undertaken on the strategy, but would welcome your views on whether it and the Bill together:

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

Responsibility and accountability - The new strategy is a work in progress. It sets out a vision for the sector, but has not yet identified specific actions, who will be responsible for these or how they will be resourced. Developing the strategy to this level of detail will be a task for the sector as a whole, and work is already underway to do this. NTS is contributing to two of the current working groups.

We expect that a programme of priorities, actions and responsibilities will emerge from this joint work.

Involvement – the final membership of the strategy board has yet to be announced, but we anticipate it will have good representation on the public and voluntary side. The challenge for the sector as a whole is that most of the ownership of the historic environment is in private hands and, as a very large and diverse population, there are more difficulties in securing representation for these interests.

Performance – One of the current working groups is concerned with performance measurement and is assessing what would be useful to measure and how it can be measured. Combined with the strategy board developing targets for the strategy, we would expect a framework for demonstrating improvement to emerge over the next year.

5. Conclusion

At this stage, in considering the general principles behind the bill, we would ask the Committee members to satisfy themselves that:

- The needs of the historic environment in Scotland, its conservation, enhancement and enjoyment are best served by the proposed model, particularly the continuation of Historic Scotland’s regulatory role and the survey and recording functions of RCAHMS.
- The design of the new body is sound in principle – combining regulatory, funding and operating roles – and that any potential conflicts of interest can be strongly mitigated in the legislation.
- That for guardianship properties, a suitable scheme of delegation can be put in place through the legislation, that the owners of guardianship properties have been consulted on the proposed delegation and are satisfied that this will protect their interests.
- That the impacts of the new body on the voluntary, local government and private sectors, both in the form currently proposed and as a state charity, have been assessed and found to be desirable.

The National Trust for Scotland welcomes the Scottish Government’s and Scottish Parliament’s continuing support for Scotland’s heritage. The new sector strategy for the historic environment provides a platform for
improved coordination, and we look forward to working with the replacement organisation for Historic Scotland and the Royal Commission.

We would be happy to provide the Committee with further written or oral evidence as required.
22nd April 2013

Dear Sir,

Call for written evidence for the Historic Environment Scotland Bill

ALGAO:Scotland represents Local Authority and National Park archaeological services in Scotland and is part of the UK-wide organisation, ALGAO:UK. We welcome this opportunity to comment upon the Historic Environment Scotland Bill

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

The Bill primarily is focused on the merger of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). We are pleased to note that the functions of the Commission are embedded into the new body.

There are many organisations involved in the overall management and promotion of Scotland’s historic environment, key of which is the role undertaken by local authorities. The recently published document *Our Place in Time – the Historic Environment Strategy for Scotland* recognises that collaborative working practices across the historic environment sector will achieve better results. We welcome section 2 (8) of the Bill which requires HES to have regard to ‘relevant policy or strategy published by the Scottish Ministers’. With HES following this position within the Bill, and working in partnership with groups such as ALGAO:Scotland and the Local Authorities, the Bill will help with the overall management and promotion of Scotland’s historic environment.
The increased interest in the archaeology at a local level and the demand for development of its assets currently outstrips resources within Local Authorities, with only 24.6 Local Authority archaeologists working in Scotland. To achieve better management and greater economic benefit from our archaeological assets and therefore make Scotland even more attractive to communities, families and tourists there needs to be a greater investment in archaeology at a local level in order that the aims of the Historic Environment Strategy and Bill can be met.

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

On the face of it the Bill and the definition of the role of HES seems to cover the responsibilities of local authorities as well. It should be pointed out that HES will only have management responsibility still for the areas they currently cover as Historic Scotland, and not for the remaining c95% of the historic environment resource managed by Local Authorities (principally through the planning system). The preservation and conservation of sites and the historic landscape character relies on the interest and goodwill of landowners, developers, crofters/farmers and local communities, with support and advice from the individual Local Authority Archaeology Services. The advisory relationship between HES and Local Authorities should be more explicitly recognised.

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

As drafted the generic breadth of coverage of HES’ role and the functions applying to the historic environment means that there is confusion about where HES’ responsibilities end. There are a number of organisations involved in the management and promotion of Scotland’s historic environment and HES is not the only player. It is important to recognise that Local Authorities are a major player with consenting and advisory responsibilities. As well as this, Local Authorities undertake a broad range of activities, facilitating community engagement and managing often complex projects, to ensure the appropriate protection and conservation of both designated and, far more extensively, undesignated assets. We would like to see the intent recognised in SHEP within the ‘partners in the vision’ section 1.19 (a) that HES will continue to work in partnership with ‘local authorities, which are key agents in protecting the historic environment and in harnessing the potential of the historic environment to contribute to Scotland’s economic and social success’ translated into the Bill.

Currently we feel neither the strategy nor the Bill directly acknowledges those responsibilities that local authorities have in managing the historic environment, and a clearer relationship between HES and the local authorities
should be developed. We welcome the opportunity to work with the new body and others to develop further these new working relationships.

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

ALGAO:Scotland provides a forum for local authority archaeological services to address strategic issues of interest. As such the relationship between HES and the local authorities is relevant to all of ALGAO:Scotland members. The move of Historic Scotland’s policy unit into central Government has been significant, and we hope that the Historic Environment Policy Unit will continue to promote the historic environment as it has done over recent months. At the same time the Historic Environment Policy Unit should look to increasing its level of communication between central and local Government given that local authorities are such a key player in managing and promoting the historic environment. ALGAO:Scotland looks forward to its role of ensuring that local authorities can successfully implement large elements of the new Historic Environment Strategy while working in partnership with HES.

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

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

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

6. **Do you consider that the Bill’s Policy Memorandum adequately sets out: the Bill’s policy objectives; whether alternative ways of meeting the objectives were considered; the consultation undertaken on the objectives; the Bill’s effects on equal opportunities, human rights, island communities, local government and sustainable development?**
A theme within this written evidence is how HES’ roles and responsibilities relate to those of other bodies. This is recognised at paragraph 87 of the policy memorandum, where it is stated that the functions have been drafted to take account of concerns – to ensure that there is a clear link for all functions to the general functions of investigating, caring for and promoting the historic environment. However, since other organisations are also responsible for undertaking these types of activity, there is still a lack of clarity at this stage on the detail of roles and responsibilities, largely because the general functions are so broadly specified in the Bill.

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

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

ALGAO:Scotland has welcomed the publication of the Strategy Our Place in Time – the Historic Environment Strategy for Scotland. The Strategy provides, at the highest level, a focus for identifying and promoting, and indeed monitoring and assessing, overall impact right across the sector. The governance structure for the Strategy, and performance measurement framework, are currently being developed. Once in place, these should support practitioners by providing high-level, common strategic objectives and a means of assessing overall impact across the sector. However clear emphasis needs to be placed on who is responsible and accountable for delivering the strategy in order to ensure that the collaborative partnerships required for the sector as a whole are successful.

Yours sincerely

John A Lawson
Chair ALGAO:Scotland
1. The Scottish Castles Association welcomes the clear statement of the policy behind the Bill, namely “Understanding, Protecting and Valuing the Historic Environment’ and is generally supportive of the its specific provisions.

2. We welcome the Functions of HES in Part 1.2 including the recognition that it should ‘contribute as appropriate to the development and delivery of policies and strategies in relation to the historic environment’ Para 1.2.5(f).

3. However, we would like to see the inclusion of ‘a specific responsibility to use its expertise to promote the reuse of historic buildings so that their long term future may be assured’. While the primary aim of HES must be to maintain the historic environment, it cannot conceivably ensure its survival alone or in combination with other public bodies, for there are too many historical buildings for them to look after, particularly bearing in mind the destructive effects of nature. Alternative uses and sources of finance may therefore need to be sought to ensure the survival of many of these buildings and this may, for example, necessitate the incorporation of the historic structure within a substantially new building. This would challenge some of the orthodox approaches which have prevailed in Historic Scotland in the past and which led to much criticism e.g. in relation to Castle Tioram. We feel that HES should have a legal duty to facilitate reuse of a historic building in a suitable and sympathetic way if it cannot finance its preservation, rather than simply having the powers to obstruct its development, particularly if the proposal has a lot of local support.

4. We suggest that membership of the board of HES should be advertised in the same way as all other public appointments and that the specific criteria for selection should be made transparent by publishing them.

5. We welcome the continuation of the power to award grants but would like clarity over how an organisation with a budget of £80m and employing 1100 staff could find much slack to make more than a few awards each year. This concern is reflected in our support for alternative private funding in certain circumstances (see 3 above).

Submitted by Dr John Hunter OBE, Chairman, SCA
22nd April 2014

Chairman Dr John Hunter OBE
HISTORIC ENVIRONMENT – WRITTEN EVIDENCE TO EDUCATION AND CULTURE COMMITTEE

Scottish Land & Estates is a member organisation with many of our members owning, managing and indeed paying for heritage properties across Scotland. Our members have a deep concern for heritage and our historic environment in Scotland, which environment contributes strongly to Scotland economically and socially.

Scottish Land & Estates welcomes the principles of the Historic Environment Scotland Bill and this opportunity to provide written evidence at Stage 1. We also recognise that our historic environment cannot be protected by legislation alone and public buy-in or cultural support and proportionate enforcement is required as well as an acceptance of permitting change to adapt appropriately and not be frozen in time.

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

Merger may assist in removing any confusion which existed between the respective roles of the two bodies, Historic Scotland and RCHAMS. As with the establishment of any new body there should also be the opportunity to create a new working culture and to work in innovative ways. The staff will be critical to the success or otherwise of the new management and promotion of the historic environment. A protectionist approach, working in silos will not assist. We have a slight concern that the strategy document is in place prior to the establishment of Historic Environment Scotland, in that it will be that body which has a critical and major role to play in delivery.

The strategy document (page 31) notes that there is a three tiered model of delivery, with working groups, an Operational Board and an Overarching Historic Environment Board. There requires to be clarity in terms of the respective roles of Historic Environment Scotland and the Overarching Historic Environment Board. It is also unclear as to whether the Operational Board is distinct from the Board of Historic Environment Scotland.

As well as the working of the governance structures, the key will be the level of public “buy-in” in order to succeed and also the working relationship with the private, independent and voluntary sector. Progress on the Corporate Plan will also be important, measured against outcomes.

The new organisation will have a similar status to SEPA and Scottish Natural Heritage (SNH), both of whom have ownership of their processes and as such there may be greater clarity in that respect of its role in terms of planning. While the strategic policy functions remains with the Scottish Government through the Historic Environment Policy Unit, greater separation between the role of Ministers in setting regulations and the application of those regulations by skilled professionals is welcome, allowing the new body to exercise its judgement as appropriate. We understand that there were problems previously whereby Historic Scotland arguably exercised undue caution in making definitive comments on
sensitive or large scale proposals which affect heritage designations to avoid fettering the discretion of Ministers on decisions at appeal or on whether to call-in an application for their own determination. Greater certainty and clarity should be provided at an earlier stage to developers at pre application and planning application assessment stages by Historic Environment Scotland and local planning authorities.

Planning and fiscal arrangements are important facets in either promoting or hindering the historic environment of Scotland and the creation of the new body cannot be seen in isolation. Like COSLA we are seeking “a streamlined system more closely aligned with other areas of planning policy and with the principles of better regulation and simplification”.

Ultimately, there are other external factors such as the weather which can make heritage tourism vulnerable and even with a strategy in place, ensuring the practical experience of visiting is sought-after is vital to help “weatherproof” or “incident proof” the historic environment market and industry.

Overall it will be implementation of the strategy which is important as opposed to the establishment of the new body and in that context expressly setting out the functions of the new body is helpful. One of the keys will be engaging sections of communities which do not typically visit or involve themselves with the historic environment; ideally creating a new and wider audience.

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

The functions are appropriate, but need to be monitored to maintain them as fit for purpose. They need to be administered in a constructive and flexible manner. The function of conserving for instance is important, but finding an economically viable use for a historic building may be one way to do this and conservation requires to be considered in terms of the context or setting of the historic building. Change and development are possible and frequently necessary.

The encouragement of education and research in exercising the functions is also welcome and will assist with the wider stakeholder and public buy-in.

There may be an additional function which could be explicit in terms of non-financial support for the owners of heritage assets and communities in addressing incidents of heritage crime such as vandalism and metal theft e.g. give Historic Environment Scotland the function of playing an integral part in safeguarding the historic environment. This might be done through sharing expertise, providing guidance and working together with Police Scotland and other agencies. While this should happen without the requirement for legislation, such a “respecting” function would add to the safeguarding and stewardship type roles which Historic Environment Scotland has.

There is no apparent reference to the current role Historic Scotland has as a consultee in relation to Strategic Environment Assessments and if this function is to transfer to Historic Environment Scotland clarity is perhaps required.

As well as being ambitious, the functions need to be practical and it should be borne in mind that some functions will be more wide-ranging and need not be defined in detail.

3. Does the Bill establish a clear and appropriate relationship between Historic Environment Scotland and all other public and private bodies with an interest in Scotland’s historic environment?
While Historic Environment Scotland is designed to be a standalone body and not an agency of the Scottish Government, its funding is in the form of government grant and self-generated revenue and all of its Board members are appointed by Scottish Ministers and so it does bear the hallmarks of being a non-departmental public body. We note that the properties are to remain in the ownership of Scottish Ministers thus securing Government Indemnity and therefore Historic Environment Scotland will not have to bear the insurance costs which the private owner and heritage trusts have to meet, which would seem inequitable.

There is potential for tension as Historic Environment Scotland will be an owner of significant heritage assets, a tourist operator, and a regulator. This dual role of regulatory authority and private competitor intentionally or inadvertently runs the risk of creating an uneven playing field and may result in concerns from other bodies. Effectively the situation is established whereby Historic Environment Scotland will be responsible for awarding taxpayer funded grants for the sector and yet at the same time be in competition with the sector. The relationship between the new body and other bodies will be dependent upon how this apparent conflict is dealt with in reality. Support requires to be on an equal footing.

Further to our points about governance in response to question 1 we would also like clarity in terms of relationships within Historic Environment Scotland. There is an absence of reference to membership in the Bill or other documentation. In the interests of transparency and scrutiny, information on the role and particularly the powers of members of Historic Environment Scotland in terms of any involvement in decision-making would be beneficial.

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

The Bill will be of greater direct relevance to our members who have direct contact with Historic Environment Scotland. This may be through grant funding, advice or other collaborative programmes.

Schedule 3, Part 4 under which there is a right of appeal to Scottish Ministers against a decision of Historic Environment Scotland to list a building or amend an entry in a list relating to a building is welcomed by us. This will be an significant mechanism in determining disputes as to what is and is not listed under the new power of section 21 mentioned below. Listing a building can have monetary consequences and affect the ability to make alterations or undertake demolition, so having this appeal mechanism is an improvement on solely being able to seek judicial review, which is presently the case. Schedule 2, Part 5 is also useful in terms of providing a similar appeal against a decision of Historic Environment Scotland to “schedule” a monument or to amend an entry, which again has not been previously available as Ministers made such decisions.

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

There is a new power in section 21 whereby all entries for listed buildings can specify that an “object” or “structure” is not to be treated as part of the building, and also that any part of the building is not of special architectural or historic interest. Currently there is no such distinction, despite parts of a listed building being of questionable special interest. We welcome this provision in that it should mean developers engage more with the listings system and better, more precise targeting of those elements of the building which are of interest so a more modern extension to a historic property would be excluded from the remainder of the building as alluded to in the policy memorandum. However, we regret there
is no definition of “curtilage” in the Bill. This is of significance since any object or structure not fixed to the listed building but which forms part of the land and was present within the curtilage of a listed building before 1 July 1948 is listed. A clear definition as to “curtilage” within the Bill would assist in this complex area so the extent is established.

The provisions in the Bill to require local planning authorities to consult Historic Environment Scotland before granting or refusing an application for listed building consent should help to streamline the existing system and could potentially remove one month of process from many consent applications. There is also the power to set out circumstances in which a planning authority, which is minded to grant listed building consent, is required to notify the Scottish Ministers. However, the provision to allow for Ministers to vary consultation and notification requirements for different planning authorities does raise some concerns. If a local planning authority has limited heritage capability or capacity then the requirement to consult Historic Environment Scotland or to notify Ministers may be more probable and this lack of resource could add uncertainty and delay to the decision making.

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

We do not have any further comments to make.

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

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

The part or role of the private / independent /voluntary sector is not fully recognised in the strategy document. This is disappointing as the members of our organisation are eager to be wholly engaged in securing delivery of the strategy. While there are rightly many references in the strategy to the public sector, public bodies and communities, there is scant reference to private ownership. The strategy requires to reach all sectors as equal partners and cannot be solely rooted in government bodies and agencies since this would be at best unnecessarily limited and at worst potentially divisive and destructive. There requires to be explicit collaboration with independent owners.

Please also add any further comments that you consider would assist the Committee’s scrutiny of the Bill, including on more specific areas such as:

- the possible benefits and disadvantages of Historic Environment Scotland being granted charitable status;
- the implications for staff in Historic Scotland and RCAHMS of the creation of Historic Environment Scotland;
- whether the Bill will improve existing policy and practice in relation to grants and loans; scheduled monuments; and listed buildings.

We note the Bill opens the way for Historic Environment Scotland to apply to OSCR to become a charitable body. This would obviously allow Historic Environment Scotland to secure donations in addition to taxpayer funded support. That, in addition to the close links with Scottish Government may create a perception of lack of equity that would need to be dealt with. While we recognise it is not for the Bill to determine charitable status or not, the purposes for which donations could potentially be sought could be clarified. The Policy Memorandum makes reference to the concerns aired by stakeholders during consultation over the impact of a major new charity on the rest of the sector and the Strategy itself anticipates positive partnership working so any charitable function would require to be carefully monitored. However, we do appreciate that RCHAMS is a charitable body and the commissioners are trustees, so on dissolution there will presumably be concerns on their part if the new body is not a charity and there may also be an issue as to access to certain resources where the new body is not a charity.
Historic Environment Scotland Bill

The Law Society of Scotland’s response
April 2014
Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society Committees which are made up of solicitors and non-solicitors and ensure we benefit from the knowledge and expertise from both within and outwith the solicitor profession.

The Society welcomes the opportunity to respond to the Scottish Parliament’s Education and Culture Committee’s call for written evidence with regard to the Historic Environment Scotland Bill and should like to provide the following comments.

General Comments

The Society’s Planning Law Sub Committee has met with the Scottish Government’s Historic Environment Policy Unit to discuss the introduction of this Bill and the accompanying Strategy.

This provided us with an opportunity to consider certain aspects of the Bill in relation to the planning system.

The Society is grateful for having been afforded this opportunity by the Scottish Government’s Historic Environment Policy Unit and is keen to assist further in this regard.

We note that no specific provision is made to allow Historic Environment Scotland to apply for charitable status as this is not necessary. The Policy Memorandum makes clear that this ultimately will be a matter for the Board. However, it is noted in paragraph 56 of the Policy Memorandum that the intention is to dis-apply section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which we understand is intended to facilitate the process of such registration accompanying the Bill.
We are aware that other bodies working in the sector are concerned about this issue and the possible “competition” for charitable funds. We are also aware therefore that there are significant demands on charitable funds so understand why there might be such concerns (without specifically commenting on whether or not these concerns are justified).

We are however concerned about the different roles the new body will have and whether these will result in conflicts of interest or conflicts in functions. The Policy Memorandum properly and fairly acknowledges this as an issue but one to be addressed by appropriate processes.

However, Historic Environment Scotland (possibly with charitable status) is to carry out the functions of Historic Scotland and Scottish Ministers and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) (subject to certain exceptions) and be responsible for investigating and caring for the historic environment, and managing collections and in doing so has specific functions. In addition, it may support and assist others exercising functions in respect of the historic environment including providing financial support and assistance. Powers are given to enter onto land to inspect akin to powers available to planning authorities (and obstruction of the exercise of these powers will result in a criminal offence). The new body will also have powers in relation to statutory processes including scheduling and listing. As noted above it is intended to dis-apply section 7 of the Charities and Trustee Investment (Scotland) Act 2005 to permit the Scottish Government to exercise the indicated degree of control in respect the new organisation even if it has charitable status.

We accept that the decision about charitable status ultimately is one for the new board. Meantime, we question the extent to which it is appropriate for Historic Environment Scotland to fulfil functions which are essentially statutory as a charity.

Of more significance as far as we are concerned is the risk of conflict arising from the functions to be carried out by the new body. For example, listing of a building may be of significance in respect of the availability of grants and other financial issues. Issues may arise about the role of Historic Environment Scotland in that process if at the same time it is making grants or indeed potentially seeking grants as a charity. We are concerned about
the issues that may arise and whether it is sufficient to suggest these can be dealt with by appropriate processes.

With reference to the Scottish Parliament’s Education and Culture Committee’s call for written evidence, the Society’s Planning Law Sub Committee should like to respond to the questions contained therein.

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

We welcome the proposed establishment of Historic Environment Scotland under the non-departmental public body model as this enables functions previously exercised by Scottish Ministers and RCAHMS to be exercised by an independent body.

We note that Historic Environment Scotland will put into effect Scotland’s Historic Environment Strategy which we also welcome.

At this point, we consider it somewhat premature to comment on whether Historic Environment Scotland will improve the attractiveness of Scotland’s historic environment.

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

We note that in terms of Section 2(2) of the Bill which outlines the particular functions of Historic Environment Scotland that there is no function which promotes the maintenance of the historic environment. We therefore suggested that “promoting the maintenance of the historic environment” should be included as a particular function at Section 2(2) of the Bill.

While we note that it could be argued that “maintenance” may already be incorporated under Section 2(2)(d) of the Bill, “protecting and managing the historic environment”, we
consider that this particular function relates to the designation and regulatory function of Historic Environment Scotland.

We further note the particular function at Section 2(2)(e) of the Bill, “conserving and enhancing the Historic Environment”. This may of course include aspects of maintenance but given the importance of maintenance and the role of Historic Environment Scotland, we consider that there should be a separate and distinct particular function.

With further reference to Section 2(2)(e) of the Bill, we consider “conserving” and “enhancing”, to be potentially mutually exclusive and therefore suggest that the function should be “conserving or “enhancing” the Historic Environment.

We also raise concerns regarding the “vires” of Historic Environment Scotland where it may decide not to object to the demolition of a listed building in circumstances where that has become a measure of last resort and the policy tests contained in SHEP (para 3.44) have been met. Under the current arrangements Historic Scotland could decide not to object if the strict policy tests were met. That would not seem to apply to Historic Environment Scotland who may be bound in terms of its functions under Section 2(2) which all point to conservation and enhancement.

We also have wider concerns in regard to the extent that Historic Environment Scotland’s functions in terms of Section 2 of the Bill are qualified by the other functions and duties under the Bill (e.g in relation to Listed buildings and Conservation). This may point to future difficulties in Historic Environment Scotland having flexibility in its decision–making. The need for this flexibility and to have regard to other factors including those of a social or economic nature appear to have been recognised the Natural Heritage (Scotland) Act 1991 that established Scottish Natural Heritage (SNH) but not in this Bill. That Act also places a duty on SNH to have regard to sustainability.

We note that references are made to the “historic environment” and that this is an undefined term.
Also, this may cause difficulties in the listing of buildings where that power is exercised not because of the historic interest of the building, but because of its special architectural interest.

Separately, we support the right of appeal against listing at Schedule 2, Part 5 and Schedule 3, Part 4 of the Bill as referred to in Sections 14 and 15, but would observe that these appeals to Scottish Ministers are not available for existing listed buildings.

A right of appeal to Scottish Ministers is also not available in relation to a determination of an application by Historic Environment Scotland under Section 5A of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 in terms of a certificate that a building is not intended to be listed. In terms of consistency it would have been important to have included this.

The additional benefit that is conferred under section 21 of the Bill which enables an object or structure to be excluded from the definition of listed building is not available for existing listed buildings.

In circumstances where an object or structure fixed to a building or forming part of the land within the curtilage of a listed building since before 1 July 1948, the provisions at Section 21 will also not be available to existing listed buildings.

It would also be helpful to have defined the meaning of “curtilage” in the bill. This can be a particularly difficult area in terms of establishing the extent of the curtilage of a listed building. It is of course important because any object or structure not fixed to the listed building but which forms part of the land and was present within the “curtilage” of a listed building before 1 July 1948 is listed.

**Question 3: Does the Bill establish a clear and appropriate relationship between Historic Environment Scotland and all other public and private bodies with an interest in Scotland's historic environment?**
We refer to our comments above and welcome Historic Environment Scotland’s independence from Government.

We note, however, that Historic Environment Scotland, in terms of Section 2(8) of the Bill, must have regard to any relevant policy or strategy published by Scottish Ministers. It therefore remains unclear to us what the relationship between Historic Environment Scotland and Scottish Ministers will be in circumstances where Scottish Ministers exercise their function to call in a Listed Building Consent Application and/or a Planning Application for their own determination.

**Question 4:** In what ways will the Bill help you/your organisation to better manage and promote Scotland’s historic environment?

We have no comment. We believe that other organisations are better placed to comment.

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

We refer to our comments at 1 and 2 above.

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

We refer to our comments at 1 and 2 above and have no further comment.

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

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

The Scottish Government’s Historic Environment Strategy for Scotland has been published in advance of the Bill being passed by the Scottish Parliament.

That Strategy cannot therefore allocate particular responsibilities to Historic Environment Scotland.

While there is clearly merit in the publication of a high level overarching policy document, we believe that it would be helpful for this to be republished with specific reference to Historic Environment Scotland and the role of Historic Environment Scotland once the Bill has been passed by the Scottish Parliament.

It may of course be the case that Historic Environment Scotland would wish to comment on this policy for which it has a statutory obligation in the exercise of its functions in terms of Section 2(5)(f) of the Bill. We believe that that would be important as, in terms of Section 2(8) of the Bill, Historic Environment Scotland must have regard to any relevant policy or strategy published by Scottish Ministers.
HISTORIC ENVIRONMENT – WRITTEN EVIDENCE TO EDUCATION AND CULTURE COMMITTEE

The Historic Houses Association Scotland (HHAS) represents individually owned historic castles, houses and gardens throughout Scotland; many regularly open to the public. Collectively member properties make a major contribution towards employment in Scotland, both in terms of the rural and national economy. The bulk of Scotland’s built heritage is in independent ownership which means that its future stewardship is secured for the benefit of Scotland and the Scottish people at little or no public expense. We recognise the importance of preserving these assets and engage with Scottish Government and local communities across Scotland.

HHAS welcomes the principles of the Historic Environment Scotland Bill and this opportunity to provide written evidence at Stage 1. We also recognise that our historic environment cannot be protected by legislation alone. Public buy-in or cultural support and proportionate enforcement are required as well as an acceptance of permitting change to adapt appropriately and not be frozen in time.

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

At a basic level the merger may assist in removing any confusion which existed between the respective roles of the two bodies, Historic Scotland and RCHAMS. As with the establishment of any new organisation there should also be the opportunity to create a new working culture and to work in innovative ways. The staff will be critical to the success or otherwise of the new management and promotion of the historic environment. A protectionist approach, working in silos will not assist. We have a slight concern that the strategy document is in place prior to the establishment of Historic Environment Scotland, in that it will be that body which has a critical and major role to play in delivery.

However, we note from the strategy document (page 31) that there is a three tiered model of delivery, with working groups, an Operational Board and an Overarching Historic Environment Board. There requires to be clarity in terms of the respective roles of Historic Environment Scotland and the Overarching Historic Environment Board. It is also unclear as to whether the Operational Board is distinct from the Board of Historic Environment Scotland. Further clarity is required. Progress on the Corporate Plan will also be important and measuring it against outcomes set.

As well as the working of the governance structures, the key will be the level of public “buy-in” in order to succeed and also the working relationship with the private, independent and voluntary sector.
The new body will have a status akin to that of Scottish Natural Heritage (SNH) and SEPA, both of whom have ownership of their processes and as such there may be greater clarity in that respect of its role in terms of planning. While the strategic policy functions remains with the Scottish Government through the Historic Environment Policy Unit, greater separation between the role of Ministers in setting regulations and the application of those regulations by skilled professionals is welcome, allowing the new body to exercise its judgement as appropriate. We understand that there were problems previously whereby Historic Scotland arguably exercised undue caution in making definitive comments on sensitive or large scale proposals which affect heritage designations to avoid fettering the discretion of Ministers on decisions at appeal or on whether to call-in an application for their own determination. Greater certainty and clarity should be provided at an earlier stage to developers at pre application and planning application assessment stages by Historic Environment Scotland and local planning authorities.

Continuity of the quality and scope of the regulatory role of Historic Scotland will be important to HHAS members. Clarity is required regarding the ring-fencing of funding to ensure the necessary continuity of service.

The creation of the new body cannot be seen in isolation. Planning and fiscal arrangements are important facets in either promoting or hindering the historic environment of Scotland. Like COSLA we are seeking “a streamlined system more closely aligned with other areas of planning policy and with the principles of better regulation and simplification”.

Ultimately, there are other external factors such as the weather or security which can make heritage tourism vulnerable and it is vital that we “weatherproof” or “incident proof” the historic environment market and industry.

Overall it will be implementation of the strategy which is important as opposed to the establishment of the new body and in that context expressly setting out the functions of the new body is helpful. One of the keys will be engaging sections of communities which do not typically visit or involve themselves with the historic environment; ideally creating a new and wider audience.

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

The functions are appropriate, but need to be monitored to remain fit for purpose. They need to be administered in a constructive and flexible manner. The function of conserving for instance is important, but finding an economically viable use for a historic building may be one way to do this and conservation requires to be considered in terms of the context or setting of the historic building. Change and development are possible and frequently necessary.

The encouragement of education and research in exercising the functions is also welcome and will assist with the wider stakeholder and public buy-in.

There may be an additional function which could be explicit in terms of non-financial support for the owners of heritage assets and communities in addressing incidents of heritage crime such as vandalism and metal theft e.g. give Historic Environment Scotland the function of playing an integral part in safeguarding the historic environment. This might be done through sharing expertise, providing guidance and working together with Police Scotland and other agencies. While this should happen without the requirement for legislation, such a “respecting” function would add to the safeguarding and stewardship type roles which Historic Environment Scotland has.

We do not see reference to the current role of Historic Scotland as a consultee in relation to Strategic Environment Assessments and if this function is to transfer to Historic Environment Scotland clarity is perhaps required.
One important role that Historic Environment Scotland could play is in relation to skill sharing in areas such as retail, marketing and Information Technology.

As well as being ambitious, the functions need to be practical and it should be borne in mind that some functions will be more wide-ranging and need not be defined in detail in legislation.

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

While Historic Environment Scotland is designed to be a standalone body and not an agency of the Scottish Government, its funding is in the form of government grant and self-generated revenue and all of its Board members are appointed by Scottish Ministers and so it does bear the hallmarks of being a non-departmental public body. We note that the properties are to remain in the ownership of Scottish Ministers thus securing Government Indemnity and therefore Historic Environment Scotland will not have to bear the insurance costs which the private owner and heritage trusts have to meet, which would seem inequitable.

There is potential for tension as Historic Environment Scotland will be an owner of significant heritage assets, a tourist operator, and a regulator. This dual role of regulatory authority and private competitor intentionally or inadvertently runs the risk of creating an uneven playing field and may result in concerns from other bodies. Effectively the situation is established whereby Historic Environment Scotland will be responsible for awarding taxpayer funded grants for the sector and yet at the same time be in competition with the sector. The relationship between the new body and other bodies will be dependent upon how this apparent conflict is dealt with in reality. Support requires to be on an equal footing.

Further to our points about governance in response to question 1 we would also like clarity in terms of relationships within Historic Environment Scotland. There is an absence of reference to membership in the Bill or other documentation. In the interests of transparency and scrutiny, information on the role and particularly the powers of members of Historic Environment Scotland in terms of any involvement in decision-making would be beneficial.

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

The most significant aspect will be for our members who have direct contact with Historic Environment Scotland in terms of accessing technical advice, administering grants programmes and who are in receipt of any funding.

We welcome Schedule 3, Part 4 under which there is a right of appeal to Scottish Ministers against a decision of Historic Environment Scotland to list a building or amend an entry in a list relating to a building. This will be an important mechanism in determining disputes as to what is and is not listed under the new power of section 21 mentioned below. Listing a building can have monetary consequences and affect the ability to make alterations or undertake demolition, so having this appeal mechanism is an improvement on solely being able to seek judicial review, which is presently the case. Schedule 2, Part 5 is also useful in terms of providing a similar appeal against a decision of Historic Environment Scotland to “schedule” a monument or to amend an entry, which again has not been previously available as Ministers made such decisions.
5. Are there any areas of the Bill that you consider could be strengthened or improved?

There is a new power in section 21 whereby all entries for listed buildings can specify that an “object” or “structure” is not to be treated as part of the building, and also that any part of the building is not of special architectural or historic interest. At present there is no such distinction, despite parts of a listed building being of questionable special interest. We welcome this provision in that it should mean developers engage more with the listings system and better, more precise targeting of those elements of the building which are of interest so a more modern extension to a historic property would be excluded from the remainder of the building as alluded to in the policy memorandum. However, we regret there is no definition of “curtilage” in the Bill. This is of significance since any object or structure not fixed to the listed building but which forms part of the land and was present within the curtilage of a listed building before 1 July 1948 is listed. A clear definition as to “curtilage” within the Bill would assist in this complex area so the extent is established.

The provisions in the Bill to require local planning authorities to consult Historic Environment Scotland before granting or refusing an application for listed building consent should help to streamline the existing system and could potentially remove one month of process from many consent applications. There is also the power to set out circumstances in which a planning authority, which is minded to grant listed building consent, is required to notify the Scottish Ministers. However, the provision to allow for Ministers to vary consultation and notification requirements for different planning authorities does raise some concerns. If a local planning authority has limited heritage capability or capacity then the requirement to consult Historic Environment Scotland or to notify Ministers may be more probable and this lack of resource could add uncertainty and delay to the decision making.

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

We have no other comments to make, other than those noted elsewhere in this response.

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

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

We feel there is little recognition of the private / independent sector in the strategy document, despite the number of historic properties in independent ownership greatly exceeding those in public ownership. This is disappointing as our members and organisation are keen to be fully involved in securing delivery of the strategy. While
there are rightly many references in the strategy to the public sector, public bodies and communities, there is scant reference to private ownership. The strategy requires to reach all sectors as equal partners and cannot be solely rooted in government bodies and agencies since this would be at best unnecessarily limited and at worst potentially divisive and destructive. There requires to be explicit collaboration with independent owners.

As we made clear in our consultation response previously, the historic environment goes well beyond simply being the responsibility of the state. A programme of priorities and actions must emerge from the newly published historic environment strategy with good representation from the independent sector as well as the public sector in order to reflect the nature of the historic environment in Scotland.

Please also add any further comments that you consider would assist the Committee’s scrutiny of the Bill, including on more specific areas such as:

- the possible benefits and disadvantages of Historic Environment Scotland being granted charitable status;
- the implications for staff in Historic Scotland and RCAHMS of the creation of Historic Environment Scotland;
- whether the Bill will improve existing policy and practice in relation to grants and loans; scheduled monuments; and listed buildings.

We note the Bill opens the way for Historic Environment Scotland to apply to OSCR to become a charitable body. This would obviously allow Historic Environment Scotland to secure donations in addition to taxpayer funded support. That, in addition to the close links with Scottish Government may create a perception of lack of equity that would need to be dealt with including concerns about external fundraising. While we recognise it is not for the Bill to determine charitable status or not, the purposes for which donations could potentially be sought could be clarified. The Policy Memorandum makes reference to the concerns aired by stakeholders during consultation over the impact of a major new charity on the rest of the sector and the Strategy itself anticipates positive partnership working so any charitable function would require to be carefully monitored. The independent sector could feel squeezed by a taxpayer backed charitable body. Unlike English Heritage, there is currently no expectation that the new body will become self-supporting and this requires clarification.

However, we do appreciate that RCHAMS is a charitable body and the commissioners are trustees, so on dissolution there will presumably be concerns on their part if the new body is not a charity and there may also be an issue as to access to certain resources where the new body is not a charity.
LINK Written Evidence to the Education and Culture Committee on the Historic Environment (Scotland) Bill

22nd April, 2014

Summary
We support strongly any improvement in the effective, expert regulation and management of the historic environment for the benefit of Scotland, but have (a) general concerns as to whether this will be achieved effectively by the new Historic Environment Scotland (HES) as proposed and (b) specific concerns as to whether HES will be hindered by the breadth of functions it has to perform.

Introduction
Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 30 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, including the historic environment, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for this community in communications with decision-makers in Government and its agencies, Parliaments, the civic sector, the media and with the public. Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through Taskforces and groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits.

We welcome the opportunity to offer views on the Historic Environment (Scotland) Bill.

General Comments
Scotland’s historic environment is inextricably linked to its natural environment. Our landscape, and valued natural environments, reflect the human traces, artifacts, buildings, monuments and other aspects of our history and cannot be separated from our historic land use practices and maritime activities.

Education and Culture Committee questions
In this section we provide answers to the Education and Culture Committee’s specific questions.

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

There are over 8,000 scheduled monuments in Scotland, 28 nationally important battlefields, 390 nationally significant gardens and designed landscapes, and 47,600 listed buildings (of which 3,800 are of the highest standard), and these are only the designated sites and properties. CANMORE, the National Monuments Record for Scotland, lists over 300,000 archaeological, architectural, maritime and industrial sites throughout Scotland and this list is not exhaustive. LINK notes that HES will be expected to manage directly only 344 of these sites and properties. Others are controlled by the
state in the hands of various bodies and agencies. The vast majority of sites and our wider heritage landscapes are, however, in private or civic ownership.

To be a success the new body will be absolutely dependent on its regulatory, advisory, survey and recording duties. These will link HES to the huge majority of the sites of importance in the historic environment – not ownership. LINK is concerned that the emphasis in the Bill, the Strategy and the questions are too heavily weighted towards the 344 sites as “attractive to communities, families and tourists”. Our history is (and should be) a major contributor to our economy, but our view is that the management of sites to this end is not the central purpose of state involvement in this field.

As in our work with the natural environment, LINK believes that Government should never forget the intrinsic value of our history, and while its contribution to the economy of modern Scotland should be encouraged and regulated, it is the intrinsic value that is of the essence, not the provision of tourist or domestic ‘attractions’.

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

In our 2012 publication, *Governance Matters*, LINK argued that there are dangers when the regulatory, advisory and technical functions of government are mixed together with the management of services, within the same government departments or agencies – especially where they are not the only provider of such services. We fear, very much, that this may be the situation in the new body. It will be left, as proposed, regulating its own 344 sites and all the other sites defined as being of national importance. This creates a clear conflict of interests, and might damagingly mix government and non-government functions.

LINK suggests that the Committee should carefully consider whether the range of functions proposed for HES is too broad. We believe that there would be major advantages in separating the regulatory, etc. functions from the service provision functions – in separate bodies.


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

LINK has particular concerns over the relationships that might emerge between government bodies and non-government bodies under the structure proposed. Where there will be only one body with a regulatory function (HES) - but there will be many involved in the marketing and management of historic sites – with only one as the regulator and all the others in the private or civic sectors. We believe that this could be a recipe for mistrust between Government and the private and voluntary organisations concerned.

We are particularly concerned at suggestions that the new body might have charitable status. First, we question whether the new HES will be suitable free from Ministerial control to allow it to become a charity under existing charity law. Second, we have fears that it might end up in competition for grants and other benefits with the private and voluntary sector organisations in the field.

As the new body will be providing for the historic environment what Scottish Natural Heritage already provides for the natural environment, we would recommend that the bill incorporate similar provisions and that the two organisations work closely together. LINK is of the view that the natural and historic environment is, in large measure, one and the same thing.
Question 4. In what ways will the Bill help you/ your organisation to better manage and promote Scotland’s historic environment?

We can see several ways in which the Bill will affect our current work protecting and promoting the historic environment – and these are encapsulated within the various strands of this evidence.

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

LINK supports the submissions of the National Trust for Scotland, Archaeology Scotland and others in our membership with regard to sustainable development and operating principles.

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

LINK is not satisfied that sustainable development is adequately addressed in the Bill’s Policy Memorandum. At paragraph 155 it states that “The historic environment has potential to contribute to sustainable economic growth and the Strategy provides the overarching direction to unlock these potential benefits”. Sustainable economic growth is not the same as sustainable development – as has been explained many times by Scottish Government Ministers. This section of the Memorandum does not, therefore, discuss sustainable development.

If the Bill is to cover sustainable development the section must discuss the economic, social and environmental benefits we can achieve by the proper management of our historic environment.

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

- establish clearly who is responsible and accountable for delivering the strategy;

LINK believes this is clearly established.

- will involve appropriately all those public and private bodies with a role in improving the historic environment;

We have expressed above our concerns at how the proposed measures to mix regulatory and service management functions within one body might create conflicts of interest and areas of mistrust.

- lead to demonstrably better access to, and enjoyment and management of, the historic environment.

We have some fears that “access, enjoyment and management” to sites is too much at the centre of this legislation and policy, and that the intrinsic value of Scottish history is seriously underplayed.

Additional matters. Please also add any further comments that you consider would assist the Committee’s scrutiny of the Bill, including on more specific areas such as:

- the possible benefits and disadvantages of Historic Environment Scotland being granted charitable status;

We are particularly concerned at suggestions that the new body might have charitable status. As above, we question whether the new HES will be suitable free from Ministerial control to allow it to become a charity under existing charity law. In addition, we have fears that it might end up in
competition for grants and other benefits with the private and voluntary sector organisations in the field.

- the implications for staff in Historic Scotland and RCAHMS of the creation of Historic Environment Scotland;

We have no view on this issue.

- whether the Bill will improve existing policy and practice in relation to grants and loans; scheduled monuments; and listed buildings.

We repeat our fears that HES might be perceived to be favouring “star attractions” by the private and civic organisations that control the vast majority of Scotland’s historic environment.
Historic Environment Scotland Bill: Call for Evidence  
National Federation of Roofing Contractors Response  
April 2014

The National Federation of Roofing Contractors Limited (NFRC) is the UK’s largest roofing trade association with over 1000 trade contractors and 165 Associate Members (manufacturers, suppliers and service providers), NFRC represents over 70% of the roofing industry by value. Having operated for over 120 years, NFRC has established itself as the voice of the roofing industry, constantly adapting to change and innovation to ensure its members are at the forefront of the sector.

As of 2010, the NFRC has been authorised by the UK Government to run the first Competent Person Scheme for roofing, CompetentRoofer, which allows roofing contractors to self-certify on Building Regulations for roofing refurbishment work. The scheme aims to help to marginalise the less professional roofing companies that exist in all markets.

Introduction

Conservation of the UK’s heritage in the built environment is critical and needs to be strongly encouraged. With so many of our country’s finest estates controlled by Historic Scotland it is absolutely vital that the new Historic Environment Scotland body takes a lead in ensuring that our heritage buildings are correctly maintained and repaired. The long term sustainability of these buildings can be assured by correct workmanship.

As well as a need for this building stock to be maintained appropriately, there is a need to ensure that sufficient levels of training are made available and supported, and that relevant apprenticeships are in place. Without ensuring that those coming into the building profession are trained in the correct specialist skills to work on heritage buildings, the availability of these skills will become scarce, and our heritage buildings will suffer.

The Scottish Housing Condition Survey 2012 highlights the a large number of pre-1919 buildings in Scotland which require repair and maintenance work to be carried out on them. The NFRC believes that at present the Scottish Government and its agencies do not take a sufficiently strong enough lead on insisting that repairs and maintenance to its traditional buildings use correctly skilled workmen. The changes made by the Historic Environment Scotland Bill provide an excellent opportunity for this to be reversed.

Training

Without encouraging incentives for contractors to train in the skills needed for this sector, the skills will eventually die out and Scotland’s traditional buildings will be ruined by work completed incorrectly. For as long as Historic Environment Scotland does not make the commitment to only using appropriately skilled craftsmen in all disciplines, there will remain a reluctance from contractors to commit time and resources to training a workforce in these core skills.

NFRC therefore calls on the new Historic Environment Scotland body to set a deadline date, after which it will only use CSCS cardholders for building work. This will give all specialist trades time to ensure training is in place and that demand can be met. All publicly funded projects must contain a stipulation in the contract that only appropriately trained professionals will be used. This will assist Historic Scotland to fulfil its responsibility for
protecting and enhancing the historic environment across Scotland. Without this lead from organisations such as Historic Environment Scotland, these skills will become redundant.

The lack of appropriate traditional skills is reflected by *Preliminary Repair and Maintenance Skills: The Research Report* undertaken in 2003 (as referenced in *Traditional Building Skills*), which identified only 30% of those working as “tradesmen” were suitably qualified, for example with 33% of stonemasons qualified, 33% in training and the remainder having no training.

**CSCS Carded workforce**

For Historic Environment Scotland to make possession of the Heritage Skills CSCS Card a requirement for working on one of their properties, there must be a critical mass of cardholders. In working with the Lead Contractors Association and the National Heritage Training Group, English Heritage has demonstrated that this critical mass can be reached (approximately 75% of lead workers hold a CSCS card). The requirement for all specialist lead workers working on significant projects on the English Heritage estate to hold CSCS cards has begun and will run through to 2015.

With the guarantee from English Heritage to use CSCS carded workmen only for lead-work, the industry has also made the commitment to ensure there are sufficient numbers of correctly trained workmen. It is vital that under the new model, Historic Environment Scotland also adopts and expands this practice.

**Condition of Scotland’s Traditional Buildings**

*The Scottish House Conditions Survey 2012* states:

> Just over eighty percent (81%) of dwellings in Scotland have some disrepair. *Older dwellings are more likely to have some form of disrepair with 92% of those built before 1919 having some disrepair compared with 54% of dwellings built after 1982.*

*Pre 1919 – 27% have extensive disrepair
Post 1982 – 5% have extensive disrepair

**Possible Impacts of Deteriorating Scottish Built Heritage**

**Tourism**

The Scottish Government has stated that tourism is a key sector with estimates indicating that the historic environment contributes more than 41,000 FTE employees in Scotland and over £2.3 billion to Scotland’s economy each year (*ECOTEC 2009 – Economic Impact of the Historic Environment in Scotland*), it is logical to conclude that it is a worthwhile investment to ensure the correct upkeep of these properties.

Historic Scotland’s *Traditional Building Skills Audit* stated “There is a need for a greater focus on long term sustainable and better repair and maintenance of traditional buildings because these are the buildings we live and work in. As our building stock gets older it will require increasing levels of maintenance. Lack of maintenance, or repairs which are poorly executed, and increasingly matters for concern.”

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Energy Efficiency
The residential sector accounts for 33% of carbon emissions in Scotland. Of the existing domestic structures we have today, 85% will still be in use by 2050 Climate Change (Scotland) Act has specified an 80% reduction in carbon emissions.

The Confidential Reporting on Structural Safety for Scottish Buildings report\(^5\) stated “When damage does occur to the envelope of a building, the energy performance of the building may be reduced, but opportunities could be taken with repair and maintenance programmes to install energy improving measures.”

The Historic Scotland Traditional Building Skills Strategy\(^6\) stated “A well maintenance building is one which is more energy efficient” and “The adaptation of Scotland’s existing building stock and ongoing maintenance over wholesale replacement are critically important to achieving our low carbon objective” and “The focus of any action to reduce carbon emissions in Scotland therefore must focus heavily on the domestic stock.”

Historic Scotland’s Short Guide Fabric Improvements for Energy Efficiency in Traditional Buildings\(^7\) states: “It should be said that proper and regular maintenance is a prerequisite to undertaking energy efficiency improvements in a traditional building. If a building is not watertight there is little point in making energy efficiency upgrades”, such as the home insulation.

The Scottish Government issued Homes that don’t cost the earth - A consultation on Scotland’s Sustainable Housing Strategy\(^8\), in June 2012. Within this consultation it outlined a hierarchy of needs to look after properties.

\textit{Looking after your home - a hierarchy of needs}

\textit{Looking after your home: What is most important?}

1. Make sure that your home is wind and watertight and that it is structurally sound; make sure that it stays that way by carrying out regular maintenance.
2. Make sure that work is done properly because poor quality repairs may be ineffective and can cost more in the long run.
3. Consider retrofitting appropriate insulation.
4. Make sure that your home is properly ventilated because this is essential to keep it healthy.
5. Review your boiler to ensure that it is efficient.
6. Ensure that points 1-5 have been addressed before considering microrenewable technology.

The Scottish Government has acknowledged that “Improving Condition Homes can only become more energy efficient if they are in a good state of repair\(^9\)”.

Conclusion
Ensuing that there are sufficient numbers of correctly trained craftsmen to service the heritage properties under the remit of the new Historic Environment Scotland body is vital. Industry will take its lead from Historic Environment Scotland and, as it has been shown with the Lead Contractors Association in England, it will commit resources to ensuring there is training provision if there is a demand for those skills.

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\(^8\) Scottish Government, Homes that don’t cost the earth: a consultation on Scotland’s Sustainable Housing Strategy (June 2012) (available at: http://www.scotland.gov.uk/Resource/0039/00395756.pdf)

The proposed introduction of Historic Environment Scotland provides a perfect opportunity to promote the skills required to repair and maintain Scotland’s Built Heritage for future generations which will also have a positive impact on tourism and energy efficiency.

Additionally, the NFRC feels that the role that Historic Environment Scotland could have in giving advice to those seeking to undertake work on non-Historic Environment Scotland buildings could be ground-breaking. Whilst Historic Environment Scotland cannot insist that CSCS cardholders are used, they can strongly advise private property owners of a) the benefits of using correctly skilled craftsmen and b) the potential impact both financially and in terms of the overall upkeep of the property in not employing appropriately skilled workmen.

This could build on the very successful Historic Scotland Inform Guides which will assist property owners in determining work to undertake and how to identify a contractor with the appropriate skills to undertake this work.

The introduction of Historic Environment Scotland as the new lead body for Scotland’s historic environment will give the organisation considerably more freedom, and the NFRC hopes that this will be used to best effect.
Appendix - Further Statistics of Interest

**Scottish Small Towns Report (2007-2013)**
The Scottish Small Towns Report stated that “every town surveyed had instance of serious disrepair.” The survey results suggested that some towns had a higher incidence of disrepair where in excess of 80% of the properties surveyed required some form of maintenance. The towns surveyed which fared better still required between 50% and 75% requiring maintenance.

The report suggested that approximately 70% of the properties surveyed would benefit from or will be required to have works carried out to remove serious defects.

**Scottish Stone Liaison Group’s (SSLG) “Safeguarding Glasgow’s Stone-built Heritage” (the “Glasgow Project”)**
Traditionally constructed dwellings, generally classified as those dating to before 1919, make up approximately 20% (446,000 dwellings in all) of Scotland’s building stock.

“97% of stone buildings in Glasgow would require some repairs by 2020.”

**The Confidential Reporting on Structural Safety for Scottish Buildings (SCOSS)**
This report concerned work carried out between August 2005 and August 2007 in collecting information from Local Authorities in Scotland on materials and debris that fell from buildings, and concerns about materials or components that might fall.

Twenty five Local Authorities provided 1,275 reports and short descriptions of incidents were given in many of the reports. Some examples, such as falls of masonry were potentially serious, and illustrate the risks of personal injuries or deaths to passing members of the public.

The age of buildings was an important feature with over 80% being estimated as at around 100 years old (therefore deemed as traditional buildings).

There was a standard list of categories for materials concerned and 65% of incidents involved stone walls or roofs.

**Audit Scotland**
In September 2007, Audit Scotland stated that 45% of university buildings north of the border needed major repairs compared to a UK average of 36% and just 34% in England. The report estimated that around £700m would be needed to bring the higher education estate up to standard, with almost 70% of the backlog split between the universities of Strathclyde, Edinburgh, Glasgow, Heriot-Watt and Dundee.

“The condition of buildings in Scotland’s higher education (HE) sector is improving, with more money going into their development and upkeep. But institutions, the Scottish Funding Council and the Scottish Government need to tackle a growing maintenance backlog.”

“An Audit Scotland report published today (13/09/2007), Estate management in higher education, says there should be a sustained commitment to maintaining and developing the estate, which is worth almost £5 billion.”

An Audit Scotland report issued on 07/05/2009 stated:
“The report focuses on the 12,400 properties owned by Scotland’s councils. In some, over 90% of buildings are in good condition. But across Scotland, one in four council buildings are in poor or bad condition and 23% are unsuitable for the services being delivered from them. Over 1,550 buildings (14%) fail in both respects.”

“only half of councils have strategies for managing and maintaining property”.

“A property maintenance backlog totaling £1.4 billion was reported by councils, although the actual figure is likely to be higher as nine councils were unable to provide information on this. Of 28 councils able to report on changes to their property maintenance backlog, two-thirds said that it is increasing. Unless the backlog is tackled, there is a risk that buildings currently in satisfactory condition will deteriorate.”
2nd May 2014

Dear Ian

Historic Environment Scotland Bill - Call for Written Evidence

Following the introduction of the Historic Environment Scotland Bill, we note that the Education and Culture Committee is now leading the parliamentary process. The Royal Incorporation of Architects in Scotland and the RIAS Conservation Committee would be grateful if the following points could be considered.

With regard to the streamlining of planning permissions and listed building consent applications the RIAS Conservation Committee suggests it is imperative that local authorities have the necessary expertise. There was concern that local authorities are lacking in appropriately qualified and experienced conservation officers.

There was also a question on whether the Scottish Government would retain the right to counter decisions made by the new body and more clarity was sought on the appeals process.

The RIAS Conservation Committee would also like to offer its help in any review of the Buildings at Risk register. The Committee queried whether enough resources were being allocated to allow for adequate surveys. They also wanted to express their strong support for a hard copy of the register, in addition to the online version. A printed version has the benefit of providing a ‘snapshot’ of the situation at a given time around which action and media interest can be galvanised.

It is the Incorporation’s belief that the local authorities should have a duty of care to assist building owners in the repair of traditional buildings. This is something that we urge be adopted within the new Bill and strategy. We also believe that the legislation around sanctions against property owners who damage the historic built environment should be strengthened.

Yours sincerely,

Neil Baxter Hon FRIAS
Secretary and Treasurer
1. Ms McAlpine asked for information about which functions were transferring, and to where, and Mr Maxwell also asked about the split of responsibilities between Ministers and HES.
2. Mr MacArthur asked about the impact of the Bill and merger on the work of the Finds Disposal Panel.

The functions of the Finds Disposal Panel, which formerly dealt with the disposal of assemblages from archaeological excavations funded by Historic Scotland, were merged about 6 years ago with those of the Scottish Archaeological Finds Advisory Panel (SAFAP), which gives advice to the Crown Office in respect of Treasure Trove and related matters. SAFAP is supported by the Treasure Trove Unit, based in National Museums Scotland but resourced by Crown Office. There were discussions, again some years ago, about Historic Scotland taking over the Treasure Trove administrative function, but these were not pursued, it being felt that this function sat more naturally in the museums sector.

Historic Scotland gives some technical support and has one seat on SAFAP, normally occupied by their Head of Collections. It is envisaged that similar arrangements would continue once Historic Environment Scotland takes over from Historic Scotland: this would be for the board of HES to decide, but there is nothing in the Bill, or the status of HES as an NDPB, which would prevent it.

The system relies on museums which meet recognised standards expressing an interest in receiving assemblages. Typically, assemblages are allocated to the appropriate local authority sponsored museum, with only on rare occasions the National Museums Scotland also registering interest.

In conclusion, there is nothing in the present Bill or the merger which is likely to have any impact upon decisions made in respect of where archaeological assemblages are deposited. HES is likely to continue the present contributory role of Historic Scotland, and there are no proposals to transfer administration of SAFAP or Treasure Trove.
3. Ms Baxter, Mr Maxwell and Ms Smith all asked about the lines on governance structures of the Historic Environment Strategy.

**Collaborative Approach**

The strategy is already being delivered through a range of activities carried out across the sector, with the additional benefit delivered by the strategy of these actions being in support of a shared vision and agreed aims for Scotland’s historic environment.

The Strategy, developed and implemented using the co-production methodology\(^1\), provides a framework which enables collaborative effort and the co-production of outcomes across the sector to ensure the most efficient use of available resources. Through this collaborative, cross-sector approach, opportunities, overlaps and gaps in activities will be identified collectively and action focussed across the sector accordingly.

**Ensuring Delivery**

In order to ensure the delivery of the strategy there is a requirement for collective responsibility for outcomes to be developed, and for this to be supported by the measurement of outcomes delivered through the strategy for the benefit of the historic environment. A three tiered structure will provide transparency and accountability and provide for the establishment of common goals between different organisations within the sector. This is summarised in the diagram below, drawn directly from the strategy.

![Diagram of Historic Environment Strategy Governance]

**Accountability**

The ultimate accountability for the delivery of the strategy will be held collectively by the members of the Historic Environment Board, who will be responsible for the delivery of agreed outcomes by their organisation in collaboration with others. The delivery of these outcomes will then be managed and programmed by the operational board and working groups, operating within the authorising environment established by the overarching board.

Cabinet Secretary, as chair of this Board, will be responsible for ensuring that progress on delivering these outcomes is published.

\(^1\) [Link no longer active]
4. Mr Adam and Mr Maxwell (Convener) asked about the arrangements for access for those with disabilities to visitor sites run by Historic Scotland, and specifically whether discounts or free admittance was available to those with disabilities, or to the unemployed.

A concession admittance rate is available for those aged 60 years and over, students in full time education and unemployed persons in receipt of state benefits – including incapacity benefit. Documentary proof of entitlement is required.

In line with normal practice in the visitor attractions industry, and as advised by Capability Scotland, visitors with disabilities are treated on an equal basis with all other visitors and entry is charged at the appropriate category rate – adult, concession or child.

Free entry is offered to one carer accompanying any visitor with disabilities. There were 4100 free carer entries across the estate in 2013. Proof of entitlement is not required. Where possible, HS site staff will offer advice and will provide assistance to visitors with disabilities who are not visiting with a carer.

For Health and Safety reasons, site staff may need to limit access to certain parts of the site or to refuse admission for the visitor’s safety.

Conscious that visitors with disabilities need to plan ahead to get the best value out of visits, rather than turning up and discovering that large areas of a site are out of reach, Historic Scotland publishes a detailed access guide to its 80 pay-to-enter properties. (Link below – but please note length is 120 pages, so members may wish to review online rather than printing off.)

http://www.historic-scotland.gov.uk/access-guide.pdf

Access information about the 265 free-to-enter sites is available by telephone or on the main HS website. In general, such sites have more basic access provisions.

Independent reviews have been favourable about the disabled visitor experience at Edinburgh Castle, for example:

http://www.euansguide.com/reviews/scotland/edinburgh-(city-of)/edinburgh/edinburgh-castle/review-the-experience-exceeds-the-expectation-edinblue/
Dear Fiona,

Thank you for providing evidence to the Committee on the Historic Environment Scotland Bill. I indicated at the meeting that I would write to you with a number of more specific questions on the Bill and the strategy. The questions are informed in part by the written evidence received by the Committee and are set out in the attached annexe. You also committed at today’s meeting to provide further information on the existing staff distribution at Historic Scotland.

I would be extremely grateful for a response to all these points by 3 June, in order to inform our stage one report.

Thanks,

STEWART MAXWELL MSP
CONVENER

1. With reference to the submission from New Lanark Trust, please confirm why the Scottish Government considers there is no need for the Bill to mention specifically the way in which world heritage sites will be protected, enhanced and managed;
2. Concern was expressed in written evidence that the strategy does not give sufficient prominence to the private sector. Please confirm how, in implementing the strategy, the views of the private sector will be captured and how Historic Environment Scotland will help to support that part of the historic environment managed by the private sector;

3. Various submissions have called for clarity on the new body’s role in relation to strategic environmental assessments and I would therefore be grateful if this could be addressed;

4. The implementation of the strategy will be a matter for a number of bodies and the Scottish Government has sought to mainstream the historic environment by moving the policy function from Historic Scotland. Did the Scottish Government consider the merit of placing in the Bill a requirement on all relevant public authorities to have regard to the historic environment in undertaking their relevant duties?

5. The Society of Antiquaries has questioned whether the definition of ‘collections’ in the Bill extends to digital material and I would welcome clarification of this point.

6. Schedule 1, paragraph 12 sets out general powers for Historic Environment Scotland. The Explanatory Notes explain that, in essence, these are intended to assist the new body to undertake any activity currently underway or foreseen. Please explain whether any of these powers are not currently used by or available to the existing bodies and, where that is the case, the likely circumstances in which they could be used;

7. The strategy mentions climate change at two points, including as one of the issues under ‘facing the challenges’ on page 9: “Take a flexible approach to issues such as climate change, seeing the big picture”. This Committee, along with others, has a role in scrutinising climate change issues, and we would therefore welcome further detail on how relevant bodies will work together to mitigate the impacts of climate change on the historic environment;

8. Please address the following questions on the Financial Memorandum—
   - Some of the “one-off costs” relating to the Bill include ‘transition programme costs’ of £1.165M over three years. One element of this is further ‘staffing costs’ of £680k (paras 34 and 36). What exactly do these costs entail?
   - Should charitable status not be granted HES will incur some net costs, for example, £1.5m in 2015-16. These would be higher taking optimism bias into account. Even with charitable status, the new body will incur relatively modest costs from 2014-15 to 2015-16. Please explain the impact of these possible costs on the organisation’s service provision.
Dear Stewart,

Thank you for your letter of 20 May with additional questions on the Bill and the Strategy. The Annex to this letter offers responses to those questions. I am also taking this opportunity to provide the additional information I offered on 20th May and to amplify a few points which were discussed.

Staff deployment between functions (Official report: 4176)

I promised information on the current deployment of staff between various of the functions currently conducted by Historic Scotland, which will be taken over by the new body. Historic Scotland has supplied the figures in the table below, which are correct as at 22 May 2014.

<table>
<thead>
<tr>
<th>Directorate / Group</th>
<th>Full Time Equivalent Posts</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial &amp; Tourism</td>
<td>521.86</td>
<td>Includes 43.21 Visitor Experience, 293.8 Visitor Operations</td>
</tr>
<tr>
<td>Conservation</td>
<td>405.33</td>
<td></td>
</tr>
<tr>
<td>Heritage management</td>
<td>78.09</td>
<td></td>
</tr>
<tr>
<td>Finance</td>
<td>40.03</td>
<td>Includes 9.34 Investments Team</td>
</tr>
<tr>
<td>Human Resources</td>
<td>49.41</td>
<td></td>
</tr>
<tr>
<td>Communications</td>
<td>18.51</td>
<td></td>
</tr>
<tr>
<td>Chief Executive and office</td>
<td>8.41</td>
<td>Includes 2.60 Archaeology Team</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1121.64</strong></td>
<td></td>
</tr>
</tbody>
</table>

There are three “operational” directorates in Historic Scotland, plus central services. The operational directorates are as follows:
Heritage management (designations and regulation via consents and input to the broader planning system, pre-application and informal advice to owners)

Conservation (including a wide range of activities and also the production of technical advice and publications, skills and climate change work, plus technical input to grants cases)

Commercial and tourism (which as well as income-generating work includes the whole of the agency’s visitor facing activities, such as site staff who welcome visitors (“Visitor Operations” above), interpretation, education and outreach work (“Visitor Experience” above. This directorate also operates the Historic Scotland membership scheme.

Section 3(3) Order (Official Report: 4162)

I would like to clarify that there are two distinct areas where we will be bringing forward secondary legislation immediately after the end of Stage 1. This swift action is necessary to ensure that we put in place sound arrangements for governance and transfer of staff and responsibilities, conforming to Audit Scotland recommendations.¹

Action under Section 3(3) of the Public Appointments and Public Bodies (Scotland) Act 2003 will be taken to add the name of HES to the list of bodies regulated by the Commissioner for Ethical Standards in Public Life. This will allow us to access the advice and expertise of the Commissioner and staff in the process of seeking and appointing board members to HES. I am sure the Committee will share my wish that this task is carried out to highest standard.

I also referred to staff pensions. We have made the commitment that the staff of HES will continue as members of the Principal Civil Service Pension Scheme. That scheme is a reserved matter, so this will require action under Section 104 of the Scotland Act. I have written to UK Government (Scotland Office and Cabinet Office) to seek support in principle, and already have a positive response from the former.

Although I do not regard this as a controversial matter, it is an important matter for staff. It will also take a considerable period of time to progress such orders through the Westminster Parliamentary timetable, hence the need for prompt action.

Ministerial role in relation to governance of Historic Environment Scotland and of the Strategy (Official Report: 4179)

I wanted to follow up on my exchange with Liz Smith on the governance of Historic Environment Scotland and of the Strategy. This began with Liz’s question “On the body’s functions, if the board were to have a difference of opinion on the strategy’s overall direction...”

My subsequent answers were given in that context. I clearly could not direct members of the forum overseeing the all-Scotland Strategy, nor would I seek to do so. The point I was making was that, in the unlikely event that the appointed board of HES was not, in my view, playing a sufficiently strong role in addressing matters of concern to the wider sector, as captured through the medium of the Strategy, then I would if necessary direct the board of HES to consider their duty in the Bill to work in partnership and engage more effectively.

It is important to note that the Strategy will only work as a voluntary collaboration, and if there are points on which key players cannot find agreement or accommodation, then we will need to work around these or approach issues from fresh perspectives. Although I will chair

the Strategy’s top-level forum, my task there will be to promote and support consensus amongst the participants and to ensure that the Scottish Government and the new body play their full role in supporting the delivery of the Strategy. That group will report regularly on its progress, and I undertake to report to Parliament at suitable intervals, thereby ensuring appropriate transparency.

I expect to be able to announce the remit and members of the top-level forum which will steer the Strategy in the next few days, as soon as confirmation has been received from all whom I have invited to participate, and I will arrange for this information to be forwarded to the Committee as soon as it is finalised.

Finally, I will shortly be writing to the Delegated Powers and Law Reform Committee, to thank them for the helpful comments and recommendations made in their report of 29 April, which I will take under consideration. I will copy this letter to you when it issues.

I look forward to seeing the Committee’s Stage One report. If there are any other points on which clarification would help, please contact my officials direct and they will endeavour to assist as rapidly as possible.

FIONA HYSLOP
RESPONSE TO COMMITTEE’S LETTER

(Numbering as in Annex to Committee’s letter of 20 May)

1. Specific reference in the Bill to Scotland’s World Heritage sites?

Historic Scotland currently performs a very valuable role, supporting Ministers and protecting, enhancing and managing World Heritage Sites, both at its own hand and by supporting others who work for the good of these Sites. I will look to HES to continue that role, but I do not consider that it is necessary to name World Heritage Sites, important as they are, in the Bill.

World Heritage Sites receive their protection through existing designations and through the wider planning process, and the Bill already sets out how HES will participate in all relevant areas. HES will be expected to exercise its statutory and advisory functions in an appropriate and proportionate manner and in collaboration with all others who have legitimate interests.

In dealing with UNESCO, the role of state party is presently performed by UK Government. It will remain the task (not always an easy one) of Scottish Government Ministers and officials to work with UK Government to ensure that our national interests are taken fully into account, and we will look to the expertise of HES to support us in this.

2. Prominence of the private sector in the Strategy

The Strategy is for the whole historic environment, and explicitly acknowledges that the vast majority is in private ownership and is cared for outwith the public sector. It is thereby a powerful driver for economic growth and the Strategy both emphasises and seeks to further develop this. Repair and maintenance of existing buildings, for example, makes up roughly 40% of the entire construction sector’s activity. While this work does not all relate to listed buildings or even to buildings in conservation areas, the skills and methods used are of wider support to Scotland’s traditional built heritage.

In the discussions which led to the development of the Strategy, it became apparent that the commercial sector was not always fully represented and I am keen to ensure a holistic approach to the protection and management of the historic environment so have looked to ensure the different interests are well represented. To that end I have invited colleagues from the commercial sector, initially through a private developer and the Scottish Council for Development and Industry, to participate in the forum. I am establishing to oversee the Strategy. We are also ensuring that other professional interests, for example, the commercial archaeology sector or the architectural profession are likewise represented, both in the forum and more widely as the Strategy is implemented more widely.

3. Clarification of role of HES in Strategic Environmental Assessment

I am happy to offer clarification on this important matter. At present Historic Scotland plays a role in Strategic Environmental Assessment (SEA), but does so acting as Scottish Ministers. My intention is that HES will undertake this role in future, as it will carry the appropriate expertise.

Because HES, unlike Historic Scotland, will have a separate legal existence from Ministers, this will require HES to be added to the list of consultation authorities in section 3 of the
Environmental Assessment (Scotland) Act 2005. I confirm we will address this via secondary legislation.

4. Public authority duty to have regard to the historic environment

A very similar issue was raised and considered during the passage of the Historic Environment (Scotland)(Amendment) Act 2011. I am well aware of the long-standing desire of some stakeholders to see additional duties imposed on public authorities, and in particular local authorities.

The purpose of the Bill is to set up the new national lead body, to make the changes this requires to existing legislation and to offer a degree of simplification of process where this can be delivered simply and without controversy. I do not see the Bill as the place to impose new duties upon other bodies.

In any case, I am not convinced that imposition of a requirement of this nature is the best way of achieving more effective action. Rather, I would expect public authorities to participate in the collaborative approach of Our Place in Time, whose working groups already include one looking at the topic of how public authorities can most effectively address the needs, and develop the potential, of the historic environment assets under their stewardship.

5. Definition of “collections” to include digital material

I can confirm that digital material is indeed included. Moreover, the Bill is drafted broadly, to include future technologies or formats which we cannot as yet anticipate, but which might be termed “post-digital”.

As paragraph 75 of the Explanatory Notes which accompany the Bill states: “Object’ in the Bill means an object, document or other thing having historical, archaeological, architectural or cultural significance or interest relating to the historic environment generally or with particular reference to Scotland. The term ‘document’ used here takes its meaning from schedule 1 to the Interpretation and Legislative Reform Scotland Act 2010 and means ‘anything in which information is recorded in any form (and references to producing a document are to be read accordingly)’. ‘Document’ would cover information recorded in electronic form, for example, digital images, databases, spread sheets and 3-D and 2-D spatial data.”

6. General powers listed in schedule 1, paragraph 12

Because Historic Scotland at present shares the identity of Scottish Ministers, it already has access to all of these general powers, while RCAHMS also has access to the majority of the powers listed. I therefore confirm that there are no new powers here which are not already available to one or both of the current bodies.

7. How will relevant bodies work together to mitigate the impacts of climate change?

Historic Scotland already plays a leading role in respect of climate change mitigation and adaptation, working with other bodies in the conservation and construction sectors to research and develop solutions to issues such as how to improve the thermal efficiency of traditional buildings without unacceptable impacts on their historical and architectural significance.
The Scottish Government’s Energy Efficiency Action Plan 2010 and the Scottish Climate Change Adaptation Programme 2014 place specific responsibilities upon Historic Scotland, including undertaking research into energy efficiency measures in traditional buildings, developing a methodology for assessing the impact of climate change on the historic environment, and disseminating the results of research through publications and guidance. These responsibilities will transfer to Historic Environment Scotland.

In addition, as a public body, Historic Environment Scotland will undertake a range of actions across its own operations to conform to the Public Bodies Climate Change Duties (2011) stemming from the Climate Change (Scotland) Act 2009.

8. Questions related to the Financial Memorandum:

Clarification of “staffing costs” of £680k (paras 34 and 36)

The staff costs of £680k, associated with the Transition Programme, cover the requirement for temporary, specialist support for the Programme’s management and delivery. 47% of these staff costs relate to existing Historic Scotland and RCAHMS staff resource, with the remaining 53% consisting of secondments and fixed term appointments. These temporary posts will last until the end of 2015.

Impact of certain possible costs on HES’ service provision in the event of HES not having charitable status for a period.

The whole of the financial memorandum which accompanies this Bill has been developed on the basis of Historic Environment Scotland not having charitable status as a decision on any application will be for the incoming board of to make. On this basis the overall costs to the organisation remains affordable on the basis of the current budget allocations to Historic Scotland and RCAHMS, and any costs fall within the parameters agreed by the Scottish Cabinet and both organisations when the creation of HES was proposed.

The costs, outlined in the financial memorandum, which HES may incur in 2014/15 and 2015/16 are, as Committee notes, relatively modest as a percentage of overall budget and remain affordable within the context of the current budget allocation to Historic Scotland and RCAHMS. Work has been on-going in both organisations to further refine these costs and they have been factored into budget allocations for 2014/15, with service provision protected across the organisation through declining budget allocation being offset by growth in commercial income.
Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

The estimated costs and savings in the Financial Memorandum are based on information on current levels of costs from the two organisations. The Business case was developed with both organisations involved in the consideration of options and assumptions. Accountable Officers have reviewed the Financial Memorandum to ensure it is a reasonable representation of the financial implications.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

The estimated costs and savings in this financial memorandum are based on information on current levels of costs from the two organisations. The preparatory work being undertaken in both bodies in the period prior to the intended commencement date and the planned outcomes for the new organisation, while recognising that the Financial Memorandum is not a blueprint for the new organisation, are broadly reflected in the Financial Memorandum. The risk of underestimating costs has been mitigated by the use of optimism bias in accordance with the HM Treasury Green Book.

Did you have sufficient time to contribute to the consultation exercise?

The timetable was fixed around parliamentary requirements and assumptions were based on known information at that point.

Costs

If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

The costs of creating the new body are analysed using the framework of the Audit Scotland’s Good Practice Guide. The potential to achieve efficiencies is set out, with the assumption that any savings will be re-invested in the new organisation’s services and will off-set any costs related to the transition to the new organisation.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

Costs and savings presented in the Financial Memorandum are presented on the basis of total expected figures for one-off costs, alongside recurring costs and efficiencies over a ten year period. The Financial Memorandum provides ranges for cost figures where there is a margin of uncertainty in the best estimate.

Accountable Officers have reviewed the Financial Memorandum to ensure it is a reasonable representation of the financial implications for the organisations. Any assumptions are subject to appropriate levels of Scottish Government grant-in-aid funding and business model decisions in 2015.
If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Assumptions are based on the pre-commencement preparatory work already undertaken at that point in time and optimism bias has been used to address the margins of uncertainty. Any assumptions are subject to appropriate levels of Scottish Government grant-in-aid funding and business model decisions in 2015.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

The cost figures in the Financial Memorandum were adjusted for optimism bias in accordance with HM Treasury Green Book guidance. Optimism bias is the recommended method of mitigating the risk that major costs are underestimated, particularly in the early stages of development. The Financial Memorandum does not represent a blueprint for the finalised organisational structure and priorities, which will require decision-making by the incoming board.

Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

No Comment.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

No Comment.
Background
1. The Office of the Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 23,800 charities registered in Scotland.

Consultation response
2. The consultation asks a series of questions about the functions and objectives of the new body Historic Environment Scotland (HES), including the possible benefits of HES being granted charitable status.

3. The question of HES seeking charitable status is a matter for the new body to consider once it is constituted. As Regulator it would not be appropriate for OSCR to express a view on the possible advantages and disadvantages of charitable status in any particular case. However, we have been in dialogue with Scottish Government during the drafting of the Bill about the proposed new body and the possibility of HES seeking charitable status.

4. To have charitable status, bodies must pass the charity test set out in sections 7 and 8 of the 2005 Act. They must have only charitable purposes and provide public benefit in furtherance of those purposes.

5. OSCR has had sight of the Functions of Historic Environment Scotland in section 2 of the Bill (which we would view as the purposes of HES) and our view is that in principle these can be clearly linked to one or more of the charitable purposes set out in the 2005 Act, specifically the advancement of education the advancement of the arts, heritage, culture or science. This would address the first part of the charity test under the 2005 Act.

6. The second part of the charity test requires a body to provide public benefit when advancing its charitable purposes. A full assessment of the (intended) public benefit would be required should HES decide to apply for charitable status. OSCR would look at the actual activities and set up of HES in the light of the requirements of section 8 of the 2005 Act, including any issues of disbenefit, private benefit or undue restriction.
7. More relevantly in this case, the charity test requires that a charity’s constitution does not allow Ministers to direct or control the activities of the charity, and that it does not allow its assets to be used for non-charitable purposes. We note that among other powers for Ministers, section 12 of the Bill as introduced gives Ministers the power to give directions to HES, with which HES must comply (though not in respect of all of its functions). While this is a power which would normally be likely to prevent HES from meeting the charity test, the 2005 Act allows Ministers to disapply the charity test requirements about Ministerial direction and use of assets by order in particular cases. Ministers did this in the case of RCAHMS along with other national collections under the Charity Test (Specified Bodies) (Scotland) Order 2006.

8. Even where these requirements are disapplied, there is still a duty for the charity trustees to ensure that they act in the charity’s best interests and deal appropriately with any conflict of interest regarding Ministers.

9. With its regulatory functions HES would (if charitable status were granted) be an unusual charity, but not unique. There are already bodies on the Scottish Charity Register which have statutory duties or powers to undertake regulatory functions, for example the General Teaching Council for Scotland and Scottish Society for the Prevention of Cruelty to Animals.

Conclusion
10. OSCR has welcomed the opportunity to respond to this consultation and looks forward to the development of the legislation. We are already in discussion with officials in the Scottish Government about the possibility of HES seeking charitable status and will continue to engage should the new body decide to apply to OSCR.
Consultation
Did you take part in the consultation exercise which preceded the Bill and, if so, did you comment on the financial assumptions made?
RTPI Scotland was involved in a number of events and discussions before the publication of the Bill. We found these to be useful, informative and positive in responding to issues raised. The financial aspects of the Bill were not discussed in great depth at these events although there were general discussion about the implications of the Historic Environment Scotland having charitable status and the impact that it could have on the broader sector if it competed for charitable funds. There were also general discussions regarding the need to retain adequate levels of resource, and expertise within the new organisation.

We submitted a full response to the consultation. This can be read at http://www.rtpi.org.uk/media/589526/historic_environment_strategy_-_letter_-_31_july_2013.pdf

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
In our view the Financial Memorandum does a good job in setting out the key financial issues of the move towards setting up Historic Environment Scotland. However, there are a number of points that still require more detail including:

- The anticipated impact of HES having charitable status with regards to it competing for funds with other parts of the historic and built environment sector.
- The impact of the voluntary early exit scheme on staffing levels and the often detailed and specific expertise required in this field.

Did you have sufficient time to contribute to the consultation exercise? Yes.

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
Although RTPI Scotland works with Historic Scotland on planning issues it does not currently receive any direct funding from Historic Scotland or RCAHMS so will not be directly affected by the establishment of the new organisation in a financial sense. However, many of our members work in organisations that may be funded by, or which have close and regular working relationships with these organisations. We realise that the FM states that it is not expected that local authorities, businesses or individuals will incur any additional costs as a result of the Bill and welcome this. Indeed RTPI Scotland is currently supporting Scottish Government and COSLA to clarify key roles and responsibilities in key delivery areas such as designation.
advice, regulation and related management regimes building on joint working agreements between Historic Scotland and local authorities. However, it would be useful if there was greater clarity with regards to impacts for third sector historic and built environment organisations. As stated earlier, the FM is not clear on the implications of HES having charitable status. We appreciate that it is difficult to provide certainty on the new organisation’s grant giving regime however more detail would be welcomed on this if possible.

We would also like to have more detail on the impact that the voluntary early exit scheme will have on the levels of expertise available to the new organisation. HES will need to be able to provide and access specific expertise on the historic built environment to undertake its tasks effectively and efficiently.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
No comment. We do not feel properly qualified to answer this.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
Although RTPI Scotland works with Historic Scotland on planning issues it does not currently receive any direct funding from Historic Scotland or RCAHMS so will not be directly affected by the establishment of the new organisation in a financial sense.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?
No comment. We do not feel properly qualified to answer this.

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
There are currently a number of unknowns given that the new organisation has not been established yet and its Board and senior management have not been appointed. They will have an influence on how the organisation functions and operates within the context of the Bill. Given this, there may be some merit in the Committee maintaining an ongoing overview of the transition process in case issues arise in the future.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
See answer to question 8.
Consultation
SNH did not participate in any initial consultation exercise.

Costs and Wider Issues
SNH does not expect the Bill will have any financial impact on its finances and is unable to comment on any of the financial assumptions contained in the consultation documentation.
FINANCE COMMITTEE CALL FOR EVIDENCE
HISTORIC ENVIRONMENT SCOTLAND BILL: FINANCIAL MEMORANDUM
SUBMISSION FROM SOUTH AYRSHIRE COUNCIL

Consultation
Did you take part in the consultation exercise which preceded the Bill and, if so, did you comment on the financial assumptions made?
No.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
Not applicable.

Did you have sufficient time to contribute to the consultation exercise?
Not applicable.

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

Response 4 to 7: Whilst the practical arrangements are not yet explicit, South Ayrshire Council is not aware of any changes to working practice (at this time) that will impact financially on the Council as planning authority. However, whether there is likely to be a cost to the Council, will be identified once the joint officer working group (including representatives of Heads of Planning Scotland (HOPS) and COSLA together with the Bill Team and officials of Historic Scotland and Scottish Government), which has been established to consider the practical implications for councils, has concluded its deliberations.

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

Response 8 to 9: It is not anticipated that there will be a significant additional financial burden to the Council, in the management of built heritage, as a result of this Bill.
Consultation
Did you take part in the consultation exercise which preceded the Bill and, if so, did you comment on the financial assumptions made?
Submitted responses to the consultations on the Historic Environment Strategy for Scotland and on the merger of Historic Scotland and the Royal Commission on the Ancient and Historic Monuments of Scotland. Did not comment on the financial assumptions made.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

Did you have sufficient time to contribute to the consultation exercise?
Yes

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
The Financial Memorandum notes that ‘HES will be working with local authorities to manage the transition to the new system and to build capacity within local authority partners.’ The memorandum also notes that there will be ‘process changes required for local authorities to administer regulatory consents for designated items’. Building capacity within local authority Planning services, even with the assistance of HES, will have resource implications for Councils; subsequently maintaining and servicing the role that local authorities will be required to play, and dealing with the processes changes to be introduced will also have implications, potentially financial for Councils. Whilst the memorandum notes that these ‘processes changes are moving in line with those elsewhere in the planning system’ cumulatively these changes will have an impact on the work of Planning Authorities.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
No Comment on the figures provided in the document.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
The Council will be obliged to meet any costs in order to fulfil its statutory role in respect of the Historic Environment. However the fee regime for planning applications must be kept under review to ensure that it properly reflects the costs of providing the service.
Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?
No comment.

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
See above.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
Without knowing what future legislation may be forthcoming difficult to predict.
10 March 2014

Dear Kenneth,

It has come to our attention that there is a minor typographical error in the Financial Memorandum for the Historic Environment Scotland Bill, introduced to Parliament on 3 March, which I would like to take the opportunity to correct. The error concerned relates to the figures on the potential benefits of charitable status and does not have a substantive impact on the overall financial position outlined in the Financial Memorandum.

The Financial memorandum refers to a figure for the potential benefits of Charitable Status at Table 5, paragraph 98 and Annex C. The figure included is £26.363m. However, this should read £25.097m. This is because it represents the change, following the guidance of Audit Scotland, to commence Historic Environment Scotland in two stages, initially with a legal identity and Board from April 2015 and then coming into full operation from October 2015. As a consequence there will be an initial period of 6 months where any potential benefits of charitable status would not be available to Historic Environment Scotland.

Consequently the quoted figure of £26.363m will be reduced by £1.373 m and the revised figure of £25.097m will be the total potential benefit from charitable status and should be used at table 5, paragraph 98 and annex C. The calculations presented in the tables remain correct any any update will only be required to the column total.

I trust that this clarifies the position in relation to this error and I note that my officials have been in contact with the Finance Committee regarding this issue. If I can provide any additional information then I would be happy to do so.

FIONA HYSLOP

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 Historic Environment Scotland Bill: The Cabinet Secretary for Cultural and External Relations (Fiona Hyslop) moved S4M-10371—That the Parliament agrees to the general principles of the Historic Environment Scotland Bill.

After debate, the motion was agreed to (DT).

Historic Environment Scotland Bill: Financial Resolution: The Cabinet Secretary for Cultural and External Relations (Fiona Hyslop) moved S4M-09869—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Historic Environment Scotland Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and
(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

The motion was agreed to (DT)
Historic Environment Scotland Bill: Stage 1

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-10371, in the name of Fiona Hyslop, on stage 1 of the Historic Environment Scotland Bill.

15:41
The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): I welcome the Education and Culture Committee’s report, which has highlighted a number of areas in which it is important to clarify our intentions. I agree with the committee on the need for a clear and shared understanding. I will refer in my speech to the key topics that it considered, and I will write to the committee before recess to respond item by item to its thorough and encouraging report.

We last debated Scotland’s historic environment in September. That debate reminded us that heritage takes many forms, from our stunning castles, abbeys and prehistoric sites to the living heritage of song, poetry and traditions. I recently visited Urquhart castle on Loch Ness to see one of Scotland’s premier monuments. We have witnessed the response to the fire at Glasgow School of Art, admired the resilience of those who have been directly affected and been stunned by the flood of offers of help from around the world.

It strikes me that the historic environment is as much about people as about buildings. The historic environment is about what people want to pass on to their children and grandchildren, and where we come from, where we are today and where we are all going. Scotland’s historic environment is a vital resource in cultural, social and economic terms. It can and should deliver greater benefits for communities; I believe that we all agree on that. As the committee recognises in its report, the Historic Environment Scotland Bill is only one part of a wider strategy, which I will say more about in a few moments.

The bill’s central purpose is to create a single modern body with clearly defined functions. It is designed to sustain the strong base that we already possess and to prepare for the future. In that ambition, the bill is not revolutionary, although I was gratified to hear a delegate at a recent conference referring to it as “a triumph and long overdue”.

It surprised me, when I took on my present portfolio, to learn that, although the Royal Commission on the Ancient and Historical Monuments of Scotland has a royal warrant that sets out its terms of reference, an organisation as distinctive as Historic Scotland currently has no
statutory existence. Although it performs statutory functions, it does so as an administrative aspect of ministers. We do not believe that that is right, and we intend to create a non-departmental public body with its own board to provide strong and transparent governance. We firmly believe that the role of ministers is to steer activities at a strategic level and not interfere in the details of particular cases, where professional expertise should be the guide.

The bill sets out explicit functions for the new body, and the committee has considered those functions carefully. Beyond that, the bill sets out how those functions will be carried out. It will require historic environment Scotland to offer leadership, support and partnership working so that knowledge, skills and resources are mobilised to best effect throughout the sector. HES will be expected to help things to happen just as much as it will be expected to do things at its own hand.

The bill aligns designation and consents for monuments, listed buildings and conservation areas more closely with modern planning practice. It repositions historic environment Scotland largely as a consultation body alongside Scottish Natural Heritage and the Scottish Environment Protection Agency to create a simpler system for all who are involved in the vital business of developing Scotland's full potential.

These changes have been welcomed by local authorities, which are working with us on the details. To balance the greater freedom that the new body will have, the bill creates new rights of appeal.

The committee has commented on the arrangements in the bill for delegating the operation and management of the 345 properties in state care through ownership or guardianship agreements to HES. We share the committee's assessment of just how significant those iconic properties are. That is why ministers have decided to retain the ultimate responsibility for their conservation and for public access.

The committee has commented on the possibility of HES seeking charitable status. As I have stated on more than one occasion, that is something that I wish the new board to decide for itself. However, I can say now that I will work very closely with the incoming chair to emphasise how vital it is for HES to support other bodies that are already working in the sector. That will apply whether or not HES seeks or achieves charitable status.

Liam McArthur (Orkney Islands) (LD): I am grateful to the cabinet secretary for her comments on an issue that was raised at the committee. She may have seen that the Law Society of Scotland has raised concerns about a charitable body carrying out statutory functions. Can she make any observations on that point?

Fiona Hyslop: I think that the member was a member of the committee when it considered the National Library of Scotland Bill. The NLS has charitable functions and the national collections are charities, but they are non-departmental public bodies.

I expect the new body that will be created by the Historic Environment Scotland Bill to lead the sector in delivering shared goals but to do so in a supportive manner and in partnership. I also intend to start work on recruiting the board of HES as soon as Parliament agrees to the general principles of the bill.

The shared goals—what we expect from the new body, working with its different partners in the sector—will be founded on “Our Place In Time—The Historic Environment Strategy for Scotland”. The strategy sets out a clear vision for the historic environment to ensure that it is even better understood, protected and celebrated. I welcome the committee's strong interest in the collective work undertaken by the sector to develop a strategic vision and framework for the sector. This is the starting point of a long-term process, which will be very much a partnership.

I have been heartened by the engagement of the wider sector in the creation of the strategy and very much look forward to chairing the first meeting of its overarching forum this Monday. I recently wrote to the convener of the committee setting out the membership of the forum.

The strategy will interact with many other initiatives, such as the Community Empowerment (Scotland) Bill, which was introduced into Parliament on 11 June.

The Government firmly believes in communities and in collaborative action. We will take on board the committee’s message that the local dimension will be key both to the operations of HES and to its ability to support local communities in making local decisions that contribute to national outcomes. We are asking the whole historic environment community to work together in this enterprise.

What is the Scottish Government contributing? One of the issues raised at the committee was funding. Despite the economic situation, we have been able to maintain Historic Scotland’s budget for the grants that it makes on ministers' behalf to projects throughout Scotland that are related to historic buildings, conservation areas and archaeological investigations. We recognise that communities have vast enthusiasm and energy but that financial resources are harder to come by. That is why I have worked hard to protect Historic
Scotland’s external grants programme for this year.

I can today confirm that I have asked Historic Scotland to maintain its annual grant budget at approximately £14.5 million into 2015-16. I will look to its successor to continue to support others through grants and in as many ways as possible.

I am also pleased to announce grants totalling almost £2 million, which include support for the ambitious plans of Glasgow’s Citizens Theatre, which the Heritage Lottery Fund is also backing. The grants will support restoration work at seven historic sites across Scotland and take the amount that Historic Scotland has awarded in building repair grants to almost £28 million over the past five years. That underlines our commitment to protecting and preserving Scotland’s built heritage for future generations and to ensuring that the historic environment continues to play an important role in supporting local communities and the Scottish economy.

I commend the skills and passion of the staff of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland. I am unfailingly impressed by the professionalism that they bring to the unending task of caring for our heritage and by the variety of approaches that they bring to bear. This Government will support staff with their work as we go into the future, as they in turn work alongside our local authorities, conservation charities and many thousands of private owners, all of whom make invaluable contributions to the historic environment.

In conclusion, I reiterate why we believe that the bill deserves the support of Parliament. It brings together two successful bodies to create a single, modern body that is better equipped to meet future challenges. It sets out in one place, for the first time, the key historic environment functions that this Government believes should be supported. It sets out principles of partnership working and transparency within a broader strategic framework. It simplifies essential processes so that we can concentrate on getting the best for and from our historic environment. It reaffirms the Government’s commitment to a historic environment that is at the heart of a flourishing and sustainable Scotland.

For those reasons, I ask for members’ support for the motion.

I move,

That the Parliament agrees to the general principles of the Historic Environment Scotland Bill.

The Deputy Presiding Officer (Elaine Smith):
I call Stewart Maxwell to open on behalf of the Education and Culture Committee.

Stewart Maxwell (West Scotland) (SNP): As the convener of the Education and Culture Committee, I begin by thanking everyone who provided the committee with written and oral evidence on the Historic Environment Scotland Bill. We appreciated the detailed submissions that we received. I also want to thank all those who took the time to come along to talk to us during our visit to Orkney. Finally, I thank my committee colleagues, the clerks and the Scottish Parliament information centre for all their hard work and support during the stage 1 process.

The Historic Environment Scotland Bill is one of those bills that appear to be relatively straightforward—the legislation will basically create a new body to continue the functions of its predecessors, Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland. However, of course, stage 1 scrutiny is never that simple, and we addressed in our report a number of questions or concerns that were raised in evidence. We also considered ways of improving the bill and the wider strategy that was referred to by the cabinet secretary.

I will address some of those points in a minute, but I highlight at the outset that we welcomed the intended benefits of the merger and unanimously endorsed the bill’s general principles.

I also highlight that our report laid down something of a challenge to the other members who would be taking part in this debate. That challenge stems from the frank but welcome admission that some parts of Scotland are punching below their weight in realising the full benefits of the historic environment. Other parts of the country are, of course, doing very well.

Given that comment, which we received while taking evidence, we want other MSPs to consider how they can best help to promote Scotland’s historic environment to make sure that its value is fully realised. If, as parliamentarians, we endorse a bill and a strategy that advocate improvement, partnership working and better leadership, it might strengthen our position if we demonstrate those qualities ourselves.

In considering the bill’s merits, the committee was fortunate enough to visit an area of the country that is crammed full of architectural and cultural treasures. A sun-filled day in Orkney in May—Liam McArthur assures me that it is always like that—is notable for many reasons, not least the beauty of a landscape that can leave a profound impression on anyone who visits.

It is such impressions that help to confirm the value of our heritage in the broadest sense, not just in terms of increasing commercial exploitation
or tourism numbers, but in connecting us to our shared history, our landscape and our cultural heritage. It is a source of some pride that we could have visited virtually any other region of Scotland and been treated to a different but similar display of historic and cultural richness.

One of the findings that we took from Orkney, and one of the recurring themes of our report, is the need for better communication about some of the bill’s provisions. For example, there is some concern in the sector about the extent of the new body’s remit. Although historic environment Scotland is to “investigate, care for and protect the historic environment”, we questioned whether that meant all of the historic environment. For example, we noted that the vast majority of historic buildings are under private ownership and responsibility.

The cabinet secretary confirmed that the new organisation will be better placed to provide leadership and work collaboratively with the sector but that it will not have the direct responsibility for the historic environment that some stakeholders had thought that it would. To avoid any doubt about historic environment Scotland’s role, we have called on the Scottish Government to explain that as clearly as possible to all relevant bodies working in the sector.

We made a similar recommendation about the need to establish a shared understanding of what the term “historic environment” encompasses. One of our main discussions in taking evidence was whether the bill itself should define “historic environment”, while recognising that there is a full definition contained in the strategy. On balance, we were persuaded by the cabinet secretary’s arguments that the bill need not define the term. However, the crucial factor is that we must avoid any possible legal confusion about the division of responsibilities between historic environment Scotland and other relevant bodies. As there appears to be a general agreement that the definition in the strategy is sufficiently clear, we have called on the Government to ensure that all parties have a shared understanding of the definition when the bill and strategy are implemented.

I want to mention three further areas on which we have called on the Government to provide clarification to stakeholders to make sure that their concerns are addressed. First, we want the cabinet secretary to confirm who would be responsible for paying for the repair and maintenance bill for the “properties in care”—the 345 properties that are managed by ministers for the nation. There appears to be some uncertainty in some quarters on that point.

Secondly, some organisations expressed concern to us that the new body may be at risk of a conflict of interests. That concern was linked in part to the suggestion that historic environment Scotland could increasingly be focused on raising income and therefore less focused on undertaking its regulatory functions. Other committee members, I am sure, will mention those issues in their contributions. Although we were unconvinced about new conflicts of interest emerging, we recognised that organisations had some legitimate concerns. We have therefore called on the cabinet secretary to continue to speak to those groups that have made positive suggestions as to how their concerns could be addressed.

We noted in doing so that the successful implementation of the bill and the strategy will largely depend on effective partnership working and the goodwill of all parties involved. We called for further clarification from the Government on one other area. In essence, we want to be clear about the relationship between the board set up to drive the historic environment strategy and the separate historic environment Scotland board. Again, other members will no doubt discuss that issue, but we particularly want to understand how the two boards will work together should problems arise in implementing the strategy.

I wish to conclude by reiterating another theme from our report: ensuring that progress is made and that all parts of Scotland can punch above their weight. I began by suggesting that all members have a role to play in helping to promote our shared historic environment. We also have an interest in making sure that the anticipated benefits of the bill and strategy are actually delivered. The committee intends to play its part in that and we therefore intend to assess the progress made once the new organisation has been established and the strategy has been implemented. We make that recommendation at paragraph 19 of our report.

We have also made a related but more specific recommendation to the Government at paragraph 20. Historic environment Scotland is to regularly publish a corporate plan, setting out the outcomes to be delivered. We consider that the annual reports should not just be forward looking but should say which previous objectives have or have not been achieved. We consider that that will help to make such reports more balanced, and give a clearer picture of where success has or has not been delivered. I am sure that all members would find that useful.

In the time available I have not been able to mention or discuss in depth all the main points that are raised in our report. However, I know that other committee members will wish to raise issues such as how historic environment Scotland can
exercise its functions in a way that takes due account of local issues and local decision making processes; the exact role historic environment Scotland will play in relation to the marine environment; and the possible impact of the new body being granted charitable status.

I once again thank all those who engaged with the committee during our stage 1 examination of the bill and say that, although there are details that require attention and discussion as we go forward with the bill, the committee unanimously backs the principles of the Historic Environment (Scotland) Bill.

15:58

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I thank the Education and Culture Committee for its considered report, which raises a number of important issues that we do well to consider today. Like Stewart Maxwell, I may not be able to cover all the points I would wish to make in my opening speech, but as I have the opportunity to close, too, I certainly plan to return to them then.

I record my thanks to all the staff and the boards of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland, who have worked hard, are working hard, and will continue to work hard to ensure that the transition from two organisations to one goes as smoothly as such mergers ever can. I have had the privilege of working closely with both organisations over the years and I have been impressed by their knowledge and expertise, as well as their commitment to our historic environment.

The respect that I have for both organisations has perhaps coloured my assessment of the proposal to merge them and I have had real concerns, as I have expressed before, about its effect. However, having had discussions with the management of both organisations, I am persuaded perhaps not so much that the merger is the right decision, but that the people who lead the two organisations will make it work, and I look forward to seeing their draft corporate plan when it is published. As the committee’s report makes clear, it is only at a later date that we will be able to judge whether the improvements that have been promised are realised.

I very much welcome the “Our Place in Time” strategy. I recognise that it is perhaps the first strategy of its kind in Scotland, but I would not want the chamber or, indeed, the general public to think that we have not had concern for our historic environment over the years. I draw attention to the great amount of hard work that Historic Scotland and RCAHMS put in to produce the Scottish historic environment policy—SHEP—series when Labour was in power, which was continued when the Scottish National Party took over. Those documents are very good, and they have certainly set the pace up until now.

I turn to the substance of the committee’s report. The committee noted that the bill’s accompanying documents do not specify the outcomes that the new body is to deliver, although a corporate plan will be published regularly by the new organisation. I agree with the committee that it is important that that document should identify the objectives that have been achieved, but it should also look at those that have not been achieved. I hope that measurement of the objectives in that way could influence subsequent plans.

In its evidence to the committee, Archaeology Scotland made an important point about the functions of the new body and suggested that the bill was unclear in that area. It rightly identified that, at present, more than 90 per cent of Scotland’s archaeological assets fall within the remit of planning authorities and that the bill did not make it clear whether that would change. The clarification that the cabinet secretary provided to the committee in that regard is welcome, but it will be important that all stakeholders share that understanding of what the role of the new body will be.

It would also be helpful if clarification could be provided concerning the respective responsibilities of historic environment Scotland and Marine Scotland. As historic environment Scotland will not be expected to undertake historic designations in marine protected areas, albeit that it will have the role of an expert adviser, there is concern in some quarters that that important subject area may fall between the two organisations. Some additional clarity on that might be helpful.

Another issue that seems to have taxed some of the people who gave evidence was the need to avoid centralisation of decision making. That is extremely important, and I know that the cabinet secretary indicated to the committee that she did not expect centralisation to be a consequence of the proposed change. Perhaps the minister could indicate in her closing speech how that will be guaranteed without a provision to that effect being included in the bill, as I would prefer.

As I have identified, the role of local authorities is particularly important when we consider our historic environment. They have a range of responsibilities, but one issue that they often identify is their difficulty in recruiting enough staff with a sufficient level of expertise to assist them in carrying out their duties. That connects to the issue of skills, which has been raised with members by the Society of Antiquaries of Scotland. It feels that the bill should make specific reference to the need to maintain and develop
skills, which it argues is different from the need to educate others about the historic environment. Does the cabinet secretary feel that it might be helpful for the bill to include a reference to skills? I realise that ministers always seek flexibility with bills, and I understand perfectly why that might be the case on this occasion, but it might be helpful for the bill to include such a reference.

What the historic environment is has been the subject of some debate in the committee, and I see that the committee concluded that the most important point was that a definition was provided. In this case, that has been done in the strategy rather than the bill. Again, I imagine that the need for flexibility was key to that decision, but perhaps the definition could be reiterated in the corporate plan, to ensure that the relevant issues are robustly underpinned.

The issue of charitable status has also exercised people and affected the comments that they have made to the committee. Were charitable status to be obtained, that would make a considerable difference to the finances of historic environment Scotland. Will the cabinet secretary explain what benefits other than financial benefits might accrue from charitable status?

We know that some organisations are anxious that historic environment Scotland might seek funding from other sources. Indeed, it would, in a sense, be competing with organisations such as NTS in what is an already very crowded sector. We would want to avoid that.

Presiding Officer, I know that I must come to a close. I have so many other issues that I want to talk about, but I will do so later. Before I finish, though, it would be remiss not to comment on the fact that the bill sets out the functions of HES that must be underpinned by legislation—of course it does, as that is what the bill is about—which, of necessity, means that many of the functions referred to are those that are usually carried out by Historic Scotland: RCAHMS’s position perhaps gets much less focus in the bill, for what are, as I say, understandable reasons. Consequently, it would be worth while putting on record that the work that RCAHMS has done and the elements of that work that will carry forward are just as important.

16:06

Liz Smith (Mid Scotland and Fife) (Con): I apologise to the cabinet secretary for missing the first minute of her speech.

The Scottish Tories warmly welcome the publication of the stage 1 report, largely because the logic behind the bill is fundamentally sound. By merging Historic Scotland with RCAHMS, there will be an agency that is better equipped to conserve Scotland’s historic environment at what is a particularly challenging time, as the cabinet secretary set out. That is not to say that either body has failed in its duties; far from it. There have been warm words about the staff in both organisations and we would echo those words. Indeed, Scotland can be extremely proud of its heritage and how it has been managed, but there is clearly a consensus that a more strategic approach would further strengthen our historic environment sector.

Presiding Officer, I know that time is extremely tight, so I hope that you will forgive me if, despite those very warm words, I concentrate my remarks on some issues on which we need clarification. I want that to be the emphasis of my speech.

The first is accountability for the strategic direction of the new body. As was borne out in the evidence, some witnesses also believe that there is a lack of clarity. When giving evidence to the Education and Culture Committee on 20 May, the cabinet secretary indicated that, were the board to have a difference of opinion with the Scottish Government about strategic direction—that is perhaps unlikely, but it could happen—then the latter would have the final say on what the direction should be.

I remain slightly concerned by the cabinet secretary’s response, in particular about the possible ramifications for applications for charitable status. I note the text of a subsequent letter to the committee convener from the cabinet secretary clarifying her remarks and indicating that she would not direct members of the new body’s board. I welcome that but, to be absolutely specific, paragraph 88 of the policy memorandum says that Scottish ministers will be able to “give directions to Historic Environment Scotland” about the exercise of its functions, but not on specific cases, objects or properties thereby “ensuring operational independence.”

However, section 12(3) says that section 12(2)(a) does not apply where Scottish ministers have delegated functions in relation to properties in care. Furthermore, in oral evidence, Scottish Government officials confirmed that ministers intend to delegate the operation of all 345 properties in their care to historic environment Scotland. Those issues need a little bit of clarification. Perhaps they are semantic, but there is a quite clear recognition that, in some cases, HES will be working on behalf of Scottish ministers.

As the bill continues to progress, further clarity about the relationship between the operational
board and the overarching historic environment board would also be welcome. As it stands, the consensual language of the historic environment strategy document, which envisages “joint working” and “a shared vision,” is absolutely correct and we like to hear that, but that does not sit that easily with section 2(8), which states that the new body “must have regard to any relevant policy or strategy published by Scottish Ministers.”

There are some semantic details that could perhaps be tightened up.

**Fiona Hyslop:** I very much appreciate the member’s points and will address them either in my summing-up speech or certainly in my response to the committee. Energy efficiency and climate change, for example, are an area of Government policy that we would expect all public bodies to support. We frequently get asked by MSPs whether we are delivering in that regard. That is an example of where we would want to ensure that regard was had to Government policy—it is a good example to use.

**The Deputy Presiding Officer:** I will give you a few seconds of your time back, Ms Smith.

**Liz Smith:** Thank you, Presiding Officer.

I take the cabinet secretary’s point, which is very helpful. I do not doubt that there will be wide agreement on the overall direction. However, to be a little bit pedantic, there are issues around what would happen in circumstances in which bodies took a slightly different view from that of Government policy and around who would have the ultimate responsibility and accountability for the strategy. That is the general point.

One of the huge successes of Historic Scotland has been its decentralised approach. It would be extremely unfortunate, to say the least, if the bill unpicked that. As it stands, not only are there individual agreements between Historic Scotland and certain councils, but there is also a joint working agreement, which ensures a degree of consistency in how the historic environment is managed. I echo the concerns of some colleagues about that.

There are some issues around funding that I think my colleague Mary Scanlon will deal with. In particular, issues were raised regarding the awarding of grants. If I remember correctly, the Law Society of Scotland raised those concerns.

Even if there are several significant areas of concern, we thoroughly support the intentions behind the bill. There is universal recognition that a much more strategic focus will safeguard the long-term future of Scotland’s historic environment. I am sure that, in the course of stage 2 and stage 3, we can address those concerns so that we have a better agency.

**The Deputy Presiding Officer:** We now come to the open debate. We do not have a lot of time in hand, so I ask for speeches of four minutes.

16:11

**Clare Adamson (Central Scotland) (SNP):** It has been a pleasure to be part of the process in committee, with the bill reaching its stage 1 report. I echo the convener’s comments in thanking all those who have given evidence. I especially mention the warm welcome that the committee received on its visit to Orkney this year.

When speaking to stakeholders in Orkney, I was struck by how much co-operation and partnership working was evident and by how important that was when it came to the unique challenge of the islands, with their ancient historic landscape. There were also capacity issues and sometimes conflicting priorities regarding tourism and conservation.

The whole idea of partnership working and co-operation is key to the bill and to the strategy, no more so than on pages 10 and 11 of the strategy, which deal with the Government’s cross-cutting strategic priorities—its whole priorities for Scotland. The bill is central when it comes to the Scottish Government’s policy mainstreaming in this area.

I mention in particular the SNH rangers we met while we were in Orkney. Their praises were sung by everyone we met on the island, including those representing the RSPB, the local authority and Historic Scotland. The part-funding arrangement with SNH and Historic Scotland seems to work particularly well on the islands. I was especially interested in the tour that the rangers gave of the Ring of Brodgar; we also visited Skara Brae.

We have received many briefings for today’s debate, including from the Law Society of Scotland, the Society of Antiquaries of Scotland and the Built Environment Forum Scotland. We are thankful for those briefings, which have added to the whole debate and to the background to the committee’s stage 1 report.

I agree with the convener that although, on the face of it, it seems fairly straightforward to bring together the two organisations, the written and oral evidence that we received highlighted some concerns and some really important issues that we still need to discuss as the bill progresses.

I am confident that the bill can meet its objectives and general principles. Key to that is the collaboration at the centre of the bill, which is no more evident than in the historic environment strategy document, “Our Place in Time”. As the
cabinet secretary said, it is the first strategy for the historic environment in Scotland. In the foreword, the cabinet secretary states:

“The Strategy has been developed collaboratively by a wide range of organisations and specialists in the historic environment sector and beyond and sets out a shared vision for our historic environment which is owned by the people of Scotland - and that is critical. The Strategy does not belong to government or any particular sector - it is for everyone and we can all play a part in helping to ensure it delivers positive outcomes for our historic environment."

The strategy will be at the heart of what we do as we go forward. It is an extremely important document that sets the tone for the whole debate and how we will move forward with the bill, and the vision statement is particularly interesting. The aims that it sets out include

“Understanding ... investigating and recording our historic environment”,

“Protecting”

and

“caring for ... the historic environment”

and

“Valuing ... the richness and significance of our historic environment”.

The strategy is key to the way forward. I look forward to the bill’s continuing progress through the Parliament.

16:15

Neil Bibby (West Scotland) (Lab): I welcome the opportunity to contribute to the stage 1 debate on the Historic Environment Scotland Bill. It has appeared to me for some time, during the evidence sessions of the Education and Culture Committee—and, indeed, this afternoon—that there is no groundswell of objection to the proposed merger of Historic Scotland and RCAHMS. Some people will be more enthusiastic than others, but I have no doubt that Parliament will support the principles of the bill at decision time today.

Moving forward, the critical issue will be how the cabinet secretary and the Scottish Government respond to the concerns and issues that have been raised. A number of reassurances, points of clarification and amendments will be required.

I echo members' thanks to the committee clerks for their support and for arranging the opportunity to meet key stakeholders in Orkney. Orkney has a great many historical sites and experts, and our worthwhile and helpful visit raised a number of questions and issues. For example, we heard confusion from stakeholders about the exact division of responsibilities in the roles that historic environment Scotland, Marine Scotland and Scottish ministers will play in relation to the marine environment. As the committee report states, it appears that decision making on submerged archaeological sites sits with Marine Scotland rather than with historic environment Scotland, yet the historic environment strategy is to encompass sites under water. I am sure that we would all welcome clarity from the cabinet secretary on that.

During our Orkney visit, the issue of local decision making was also raised, as other members have said. Local groups highlighted the need to guard against centralised decision making on the historic environment. I acknowledge what the cabinet secretary has said about the importance of local partnerships, but as the bill progresses we need to consider how we can ensure that that is underpinned and guaranteed.

More generally, there has been considerable discussion among witnesses from across Scotland and the committee on funding—how charitable status could affect the new body and other funding implications. From a personal point of view, I have not seen enough evidence to conclude fully what the financial impact will be on the new body and other organisations. We need to avoid making grand assumptions about whether shortfalls will be created and whether they will be made up in this case, because we do not have the evidence at the moment. I note what the cabinet secretary said earlier about funding, but we need to look further at the financial implications.

Fiona Hyslop: In relation to the financial provisions for the bill, I reiterate that HES will not be reliant on charitable status. The assumptions that have been made have been very strict in terms of bias, but HES will not be reliant on additional charitable income.

Neil Bibby: I thank the cabinet secretary for that intervention. I am making the point that we need to look at the matter further, and to consider all the scenarios and possible implications.

I have another point to make on finance. The Scottish Government cannot currently give us an estimate for the repairs and maintenance that are needed for properties that are under its care. I believe that an urgent survey should be carried out to ascertain the backlog of repairs and liabilities for those properties. That should happen before the planned date of April 2015.

As other members have said, concerns have been raised about the potential conflict of interests that the new body could have. Witnesses have been right to raise that issue. Whether or not it is a new issue, it has been of continuing concern to a number of witnesses and we should take it on board.

The Deputy Presiding Officer: I am afraid that you need to close.
Neil Bibby: We need to consider that issue further as the bill progresses, and I hope that the Scottish Government will continue to respond to any such concerns from stakeholders.

As I said, I support the general principles of the bill and hope that the Scottish Government can now provide clear assurances and amendments to address the issues and concerns that have been raised by the stakeholders, experts and organisations who work hard to improve our historic environment.

The Deputy Presiding Officer: I reiterate that there is no extra time available and that interventions must be accommodated within the member’s four minutes.

16:20

Mike MacKenzie (Highlands and Islands) (SNP): I am not a member of the Education and Culture Committee, but I am pleased to speak in the debate because I spent much of my previous career renovating, repairing and maintaining old buildings. I live in a 250-year-old listed building and have worked with lime putty mortar, horsehair plaster, stone and slate. I am pleased that, over 35 years or more, I have helped to build new life into old buildings. Even now, I cannot pass by a forsaken and neglected old building—there are still far too many of those throughout Scotland—without feeling the urge to gather up my tools, collect together some skilled craftsmen and talk some money lender into financing its renovation.

Much as I love and value older buildings, and much as the poor state of our historic environment saddens me, I still think—perhaps because of all that—that people are more important. It is people who inhabit our buildings and breathe life into them, and in our old buildings it is their stories—the lives and times of the people who used the buildings—that echo in the walls. As the cabinet secretary said, it is also people who care for our buildings. That is why I welcome the bill, the formation of historic environment Scotland and the first ever historic environment strategy. Some new thinking and a new approach and culture are required.

We can list a building—we can perhaps even double and treble list it—but we cannot prevent apathy. We cannot easily prevent neglect and eventual ruin, and we cannot easily legislate to provide value. We need only look at the Scottish Civic Trust’s buildings at risk register to find compelling evidence of that. It is a sad and lengthy catalogue of neglected listed buildings, most of which are quietly decaying. We can schedule a monument, but that will not prevent its neglect. If anybody seeks evidence of that, they should visit Keil chapel in Duro, the last resting place of James of the Glen, who was wrongly hung for the Appin murder, which was the inspiration for Robert Louis Stevenson’s international bestseller “Kidnapped”. Anyone who visits Keil chapel will see that scheduling monuments in itself offers no protection whatever.

We can, however, facilitate, educate and advise effectively, both to conserve and to enhance. Queensberry house offers a good example of a building that has been both conserved and enhanced. I beg to disagree with the Law Society of Scotland, and suggest that we can do both—they are not mutually incompatible.

I am glad that the Education and Culture Committee chose to visit Orkney in pursuing its scrutiny of the bill. Few places have more effectively added value to their built heritage by making it a driver of the local economy and creating a virtuous circle. I hope that historic environment Scotland understands that successful and thriving communities such as Orkney are required to nurture and care for our older buildings and heritage, and I hope that it is able to spread that knowledge and understanding successfully right across Scotland.

16:24

Liam McArthur (Orkney Islands) (LD): Yesterday, thanks to the Prince’s Trust, I had the opportunity to try my hand at stonemasonry, although I assure everyone in the historic environment community that I will not be taking my skills out in the field. I, too, thank my colleagues on the Education and Culture Committee, the committee’s clerks and the witnesses who gave evidence to the committee. I am particularly grateful to my constituents in Orkney for hosting an excellent visit last month, and I give a special mention to the county archaeologist, Dr Julie Gibson. As well as arranging fine weather that showed off the islands at their best—prompting one or two colleagues to consider applying for political asylum—our hosts managed in the space of a day to give a real flavour of how the historic environment can shape the identity of a community and deliver significant value through tourism, academic research and providing the quality of life that encourages people to want to live and work in such a special place.

As the convener said, the principles of the bill were unanimously supported, but a number of issues were raised with the committee at stage 1 that we wish to see reflected in the bill, or in undertakings from the minister at stage 2. I will touch briefly on some of them.

On the definition of “historic environment”, the committee came to the conclusion that, on balance, there were more downsides than upsides
to including a definition in the bill, although I recognise that there is still strong support for inclusion. We need to ensure that there is legal certainty and that safeguarding and promoting the historic environment does not suffer in comparison with other Government priorities through a lack of specific reference in the bill that will establishes HES.

The Law Society of Scotland made useful comments on the functions of HES and drew attention to the fact that there is no function of promoting the maintenance of the historic environment. The society suggested that that function needs to be more explicitly stated in the bill. Greater clarity is also needed on HES’s involvement in submerged archaeology and work in the marine environment.

Fiona Hyslop: Will Liam McArthur give way on that point?

Liam McArthur: I am struggling for time. Perhaps the cabinet secretary could pick up the point in her concluding remarks.

The Law Society also raised the vexed issue of charitable status and pointed to potential conflicts of interest. Others bodies in the sector, notably the National Trust for Scotland, are anxious about possible diversion of charitable funding away from others in the sector. Although that will be a decision for the HES board, and the committee concluded that there are likely to be no new potential conflicts, I do not think that we are out of the woods on the issue yet, so it is likely to be the subject of amendments at stage 2.

A number of witnesses emphasised the need for good collaboration between all stakeholders, as we saw in Orkney. In particular, the critical relationship will be between HES and local authorities. Again, the bill might need to be strengthened in that respect at stage 2. A key message that came out of the visit to Orkney was on the division of responsibility between the local and the national. Rightly, my constituents were adamant that the merger to create HES should not and must not lead to a more centralised approach. Although national standards and consistent quality are vital, so too is the capacity for the organisation to respond to local circumstances and to take decisions that reflect them—as Patricia Ferguson, Liz Smith and others have said. Like Patricia Ferguson, I would prefer there to be safeguards on that in the bill, although I welcome the minister’s comments to the committee on the issue.

On resources and expertise, I fully appreciate that, across Scotland, we are yet to punch at our weight in relation to the historic environment. However, as colleagues witnessed at first hand, that charge cannot be laid against people in Orkney. In seeking to improve the situation in other parts of the country, I would not wish resources to be diverted away from meeting the needs of Orkney and providing opportunities there. That is, of course, important for my constituency, but it is also crucial for Scotland as a whole.

I record my gratitude to the staff in Historic Scotland and RCAHMS, notably the rangers, whom Clare Adamson mentioned. I am happy to confirm that we will support the general principles of the bill. I very much hope that it can achieve its objectives—not least that of ensuring that the value of our rich historic environment is properly recognised, enhanced and celebrated in the future.

16:28

Linda Fabiani (East Kilbride) (SNP): “Our Place in Time—The Historic Environment Strategy for Scotland”, which was published in March, led on from the Scottish historic environment policy notes from over the years. The strategy is welcomed by everyone in the relevant sectors and by many people beyond, and we are now moving, through legislation, towards a new lead body—historic environment Scotland.

I would like to say some words about the Royal Commission on the Ancient and Historical Monuments of Scotland, which will be merged with Historic Scotland to create the new body. The commission, which was established in 1908, has a proud history. Excellent work has been done over the years by the commissioners and, of course, all the staff who have worked with the commission.

I am glad that Mike MacKenzie mentioned Queensberry house. If it had not been for commissioner John Hume, from RCAHMS, Queensberry house would not look as it does, because John Hume was instrumental in advising on the history of the house and the building environment in Edinburgh at the time it was built, to ensure that we brought the house back to its original form, as far as possible. That is one of many things that RCAHMS has done as well as surveying and recording buildings and developing excellent community outreach and education work. I hope that that legacy will be cherished and sustained, as the bill progresses.

I chair the cross-party group on architecture and the built environment, which had an excellent meeting on Scotland’s historic environment. That is why I am able to say with confidence that the relevant sectoral organisations and many professionals welcome the strategy and related bill.

However, this is only stage 1, so it is right that problems and potential issues be flagged up. I am grateful to the Royal Town Planning Institute
Scotland and the Society of Antiquaries of Scotland, which raised very much the same points. RTPI Scotland recommended that the bill refer to the role of the body as part of the planning system in fulfilling its functions to protect, manage, conserve and enhance the historic environment”, and called for “greater clarity for planning authorities on the role of Historic Environment Scotland, and similar clarity for the new body on the roles and responsibilities of local planning authorities”. That relates to community planning, too.

The Society of Antiquaries of Scotland said:

“There should be an explicit recognition of the advisory and supportive relationship between HES and Local Authorities”, and recommended that the bill include provision to “ensure that Local Authorities have access to, and take due regard of, appropriate information and professional advice”.

That point leads me on to the development of skills in relation to the historic environment, including the traditional skills and crafts that Mike MacKenzie mentioned. Historic Scotland has always been good at working with Skills Development Scotland and apprentices to ensure that traditional skills and crafts are maintained.

The priorities that underpin the strategy—and the bill—include “Informed decision making”, “Skills & capacity”, and “Ensuring capacity”. Knowledge and expertise in the right place are essential.

There is so much more that I could say about the bill, but I know that I have to be quiet. I can bring up issues as we go through the bill process. It is good to have the strategy, but what will really make the difference is not having it but implementing it. That must underpin everything that we do.

16:32

Jayne Baxter (Mid Scotland and Fife) (Lab): I am pleased to be a member of the committee that has been considering the bill, although I was unable to join members on their fact-finding visit to Orkney. I add my thanks to all the organisations and individuals who contributed to the committee’s evidence sessions and provided such thoughtful submissions. I hope that they feel that their input has been recognised in our report.

It is a testament to Scotland’s heritage that members are able to reflect on so many areas of historic and cultural importance in their constituencies and regions. I am privileged to represent Mid Scotland and Fife, so I am spoilt for choice, given the wealth of sites on which I could focus, from ancient buildings and monuments across the region to more recent examples, such as the category B-listed fire station in Dunfermline. The building is soon to be reborn as a community arts centre, which will operate as a social enterprise with support from the council and other funders.

In previous debates I have talked about the Isle of May, with its 8,000 years of human habitation, and the more recent history of Lochore village, where the local landscape has seen changes from agriculture to coal mining and burning bings and is now home to the peaceful, secret gem that is Lochore Meadows country park.

Members’ pride in their areas points to a key issue, which was raised in the committee report: the importance of continuing the regional approach that Historic Scotland is currently pursuing and supporting sites of interest in local communities. The cabinet secretary provided an assurance that the establishment of the new body will not mean a move to a more centralised approach to decision making. However, I particularly support the committee’s recommendation that the bill underpin the regional approach in some way. Perhaps the cabinet secretary will consider the matter as the bill progresses.

As the cabinet secretary and her colleagues will know from recent questions that I have asked, I have a strong interest in community planning. I believe that community participation and ownership are fundamental to successfully delivering outcomes at a local level and that that should cut across all areas of Government.

Local people care about their local heritage and local environment. The energy, expertise and commitment from local communities cannot be replicated by Governments or other agencies, and we sometimes do not adequately acknowledge or value it. We cannot put a price on civic pride. That local drive and energy is often the thing that can bring communities together, helping to bring in the funding and ensuring that the historic environment continues to be relevant now and in the future. The importance of community planning partnerships in that context has been highlighted by the Royal Town Planning Institute, and I look forward to seeing its recommendations as part of the historic environment group.

The presence of the Convention of Scottish Local Authorities on the historic environment group demonstrates the recognition of the important role of local authorities in planning matters and the built environment. As the report highlights, evidence to the committee suggested that 92 per cent of archaeological assets fall within the remit of planning authorities as they are not explicitly labelled as scheduled monuments. The report highlights concerns about the remit of the
new body in overseeing the historic environment, and I would welcome further clarification from the minister on that.

We know that it is not just sites of archaeological interest that are covered by the proposed legislation; it also includes properties in care and listed buildings, reflecting the diversity of the historic environment across the country.

In supporting the general principles of the bill—and although some aspects are particularly process driven given the nature of the legislation—we must remember the most important outcome, which is to successfully protect and manage our diverse historic environment for future generations.

16:36

George Adam (Paisley) (SNP): I thank my colleagues and everyone who gave evidence to the committee, as well as the clerks for their work when we were going through stage 1.

It has been interesting and exciting. That might sound surprising because we are talking about how the Historic Environment Scotland Bill proposes the merger of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland to create historic environment Scotland. I could just sit down at this stage, and I know that a lot people might think that that would be a good idea, but there is so much more to it.

At the same time as the bill was published, "Our Place in Time—The Historic Environment Strategy for Scotland", Scotland’s first ever historic environment strategy, was launched. That is the important point; the strategy will show the way forward for us. As the cabinet secretary said in the foreword to the strategy document:

“Our heritage is hugely inspirational, helping to create a powerful sense of place and providing the backdrop to where we live, work and have fun. Our historic environment has a huge role to play in shaping a bright future for Scotland and it is up to us all to ensure that it is passed on with pride to benefit future generations.”

The strategy is the important part. Our convener has already said that some areas are punching well above their weight, and some of the evidence that the committee received shows that that is probably true, but the publication of the strategy gives us the opportunity to make sure that it works in all areas throughout Scotland.

I could see that the strategy is working well in Orkney, which has experience of the whole local authority and local groups working together to ensure that it does work well. Our day in Orkney was special because of the weather and because I saw a part of the country that I had never seen before. I even managed to photobomb an ancient monument when the convener Stewart Maxwell was taking a picture at the Ring of Brodgar; not many people can make that claim to fame.

While we were there, I was talking to Liam McArthur when we were walking down to Skara Brae. The centre shows the various time points as people walk towards the village, which was meant to have been started around 3100 BC. I was talking about how Paisley has an 850-year-old abbey but, when Liam McArthur showed me where 850 years ago is in the great scheme of things compared to Skara Brae, it did not look like a lot of time on the planet.

As Jayne Baxter mentioned, we all have historic things in our areas, and this is where it comes down to a definition of the historic environment. How do we define it? In my opinion, it is pretty fluid. What is part of the historic environment now might not have been 20 or 30 years ago.

In my town, there are former mill buildings that were just industrial buildings in their time but are now regarded as buildings of great beauty and architectural prowess. Such buildings have to be retained and used, because they are an integral part of who we are, what the town is and what makes us Paisley buddies. It is the same in every single community throughout Scotland.

That is the exciting part of the idea of the historic environment. Let us not contain it and box it in. Let us not just say, “That’s what it is and it doesn’t move from there.” The exciting part of the bill is that we can continue to move the historic environment on and find a way to ensure that we can save it for everyone in the future.

This bill is a good start for us all to work together. It is not just about merging two bodies; it is an exciting part of our future.

16:40

Mary Scanlon (Highlands and Islands) (Con): As my colleague Liz Smith stated earlier, we all support the rationale behind the bill. “Our Place in Time”, the new historic environment strategy, has been warmly received by the sector, at least in theory, and stakeholders have signalled that they are broadly content with the proposed merged body.

However, Linda Fabiani made a very good point when she emphasised that it was about the implementation of the strategy, rather than simply the words that it contains. As Councillor Harry McGuigan of COSLA told the committee,

"the devil is ... in the detail."—[Official Report, Education and Culture Committee, 6 May 2014; c 4110.]

There are various issues that still require to be addressed, many of which have been raised today. Perhaps the most significant of those
issues revolves around how we ensure that local decision making is preserved—a point raised by Liam McArthur and one that was put to us firmly by people across Orkney. Although there are good reasons for designating historic environment Scotland as the sector’s lead body, we must ensure that that new entity advises in a manner that preserves and, we hope, strengthens local decision making. That point, which relates to local government, was made very clear to us on our visit to Orkney.

Any shift towards greater centralisation would be to the detriment of the historic environment. Although I note the assurances that the cabinet secretary has given in this area, it would seem to be sensible to make those intentions more explicit, perhaps in accompanying guidance.

Then there is the relationship with the private sector. It is fair to say that, on the whole, Historic Scotland has enjoyed a very good working relationship with the private heritage sector, which we hope will continue. We should recognise that private owners have a huge stake in Scotland’s historic environment, especially as they meet restoration costs from their own pockets.

On the broader point about ministerial direction, although all non-departmental public bodies must have a working relationship with central Government, section 12 of the bill reads rather broadly. Particular concerns have been raised about curatorial independence. Liz Smith raised exactly that issue earlier and I associate myself with her remarks. Put simply, it would not be acceptable for the Scottish Government to exert a higher degree of control over historic environment Scotland, so further assurances about how any difference of opinion would be resolved would be very helpful as we take the bill forward.

Another area of contention relates to funding. I noted with interest the figures that the National Trust for Scotland and the Historic Houses Association for Scotland supplied to the committee about their property maintenance backlogs, which, when added together, amounted to more than £100 million. Unfortunately, comparable figures for historic environment Scotland will not be available until next April.

As Stewart Maxwell, the convener of the committee, said in his opening remarks, it is important that the Scottish Government confirms who will ultimately be responsible for meeting the property maintenance for the significant 345 properties in care. Whoever that may be and whatever the final total, it seems that the new body will have to raise significant levels of additional finance. There is some concern that that could clash with the broader regulatory role that historic environment Scotland must have at its core.

My final point relates to accountability. Although “Our Place in Time” commands the wide support of the sector, as things stand we have no indication of who will be tasked with ensuring that outcomes are met. I whole-heartedly agree that emphasis should be placed on collaboration—I think that we all do—but if those outcomes are to be realised, we need direct lines of accountability.

All those points can be resolved as the bill continues its progression, of course. Fundamentally, the rationale for the merger is sound, and the strategy is an important document that should go a long way to strengthening the sector.

For those reasons, we welcome the stage 1 report.

16:45

Patricia Ferguson: The debate has been very interesting, if short. It has been particularly interesting to hear the comments of colleagues who are on the committee, as they have obviously had the work of taking the bill forward and the interesting task of listening to the witnesses who have come forward and the evidence that has been submitted. I am particularly jealous that they were able to visit Orkney and have the experience that they had. Orkney is something to be seen. If any member has not been there, they should go very soon. I am sure that Mr McArthur would be happy to make the arrangements.

Mr Maxwell did well to challenge members to champion our local historic environment, because it is about our sense of place and the kind of communities that we represent. We have had contrasting experiences in my area. Maryhill burgh halls are a good example of a very successful regeneration of a historic building, which is now put to very good community use. On the other hand, Springburn public halls, which was a similar building that had lain derelict, as Maryhill burgh halls had, for a number of years, was suddenly demolished over the Christmas period a year and a half ago because it was in such a bad way.

Preserving and maintaining buildings of historic value can be a very difficult challenge, but we have to give more consideration to ways in which we can intervene at an earlier stage. I hope that the new body will be able to do that and to give good and strategic guidance to local authorities to help them to assist the owners of such properties.

Linda Fabiani was absolutely correct to reference the history of Queensberry house and particularly the involvement of John Hume in that project, as in many other projects of that kind across Scotland. His dedication to the issue is probably second to none. I very much remember having very long discussions and debates in the
corporate body in the early days of the Parliament about whether we should have slate on the roof of Queensberry house and whether it should be painted or limewashed. I definitely think that the limewash was the right idea, but I really do not have a clue about whether the slates were. However, the building is wonderful and an asset to the Parliament.

We have heard a little about ministerial direction, which is an interesting area. To be slightly flippank for a moment, I think that ministerial direction is one of those things that are opposed in opposition but adopted in government. I speak from some experience in that area. To be serious, however, the point is to get the balance right.

I was very interested in the point that the cabinet secretary made in response to a point that Liz Smith made about the Scottish Government’s environmental priorities and how they would perhaps have a bearing on the historic environment. That is a case in point. Adaptations to buildings that make them more environmentally friendly might conflict with or even compromise their heritage status. Those kinds of issues go to the heart of how ministerial direction could be used. Frankly, one would need the wisdom of Solomon in such cases, but I hope that, with the right advice and briefings from the experts, the right decision would be reached.

It has been said, of course, that the continued use of our historic buildings is in itself an environmentally friendly act and perhaps even one of the best forms of recycling that we have. I agree with that very much.

As the committee suggested, it is important that the bill’s implications for the body’s curatorial independence are explained in more detail. Perhaps those elements can be teased out.

The Society of Antiquaries of Scotland made an interesting point about the delegated powers. I am interested in the cabinet secretary’s views on the society’s concern that those powers might lead to ministers delegating more profitable aspects of HES’s work to other bodies. I do not imagine that the cabinet secretary means to do that but, if those with an interest have that concern, it would be useful to clarify the position.

The strategy “Our Place in Time” sets out the governance structure for implementing the strategy, which is welcome, and the document does that pretty well. However, historic environment Scotland—I am sorry; I find the new name quite difficult to get used to. I wonder whether we could call the body something more catchy, but perhaps that debate is gone. The strategy does not talk about how historic environment Scotland’s governance structure fits into the overarching strategy; in fact, the document makes scant mention of HES. Perhaps that could be clarified.

I very much look forward to the discussions that we will no doubt have on the bill. I am sure that there will be interesting debates about amendments at stages 2 and 3. For the moment, I simply welcome the work done by the Education and Culture Committee, which has taken the bill as seriously as it deserves to be taken. Scottish Labour will support the bill’s general principles this evening.

16:51

Fiona Hyslop: I welcome the debate’s positive tone. I will explore all the constructive suggestions that have been made this afternoon for improving the proposals and the recommendations from the lead committee and the Delegated Powers and Law Reform Committee. I plan to write to the Education and Culture Committee before the recess and, in my letter, I will include responses to the additional ideas that have been discussed this afternoon. However, I can say now that I expect to respond positively to the principles behind all the committee’s recommendations. I believe that the bill and the accompanying dialogue with stakeholders will be stronger as a result.

In my opening speech, I touched on the key themes of the committee’s report. The committee has accurately mapped the themes that matter, which include the relationship between the bill, the new body that it creates and the sector-wide strategy; the benefits that the bill will bring and how they will be monitored; the need for transparency; the importance of communities; and the role of ministers.

The strategy is collectively owned by all the participating independent bodies. As chair of the overarching strategic forum—I say for clarity that it is a forum rather than a board—my task will be to promote consensus. For it to work, the strategy will require voluntary agreement.

If we come to insuperable problems, we will need to work round them or approach them from a new angle. To state the obvious, consensus works only if it remains consensual.

Historic environment Scotland will be a public body and will be required to play a key role in delivering the Government’s contribution to the shared priorities that are agreed through the strategy. I can and will hold HES to account through its chair for how it delivers; that is how all non-departmental public bodies work and that is why we chose that model.

I will address the point that Liz Smith raised and which Patricia Ferguson reflected on in her closing
speech about the balance in ministerial direction. As a minister, I cannot direct the strategic forum, but I can direct HES on strategic matters. I can direct HES on properties in care, as they are ministers’ responsibility, but I cannot direct it on grant decisions, on listing and scheduling decisions or—this is important to a point that Patricia Ferguson made—on collecting decisions and curatorial matters.

Liam McArthur talked about functions and raised the Law Society’s point that the bill does not use the word “maintaining”. However, we talk about protecting, managing, conserving, enhancing and preserving the historic environment. The words “conserving” and “preserving” have a specific meaning in relation to heritage, so we are well covered.

The Government has a duty to involve and support local communities and communities of interest in defining priorities and taking action. That applies to the historic environment as it does more widely. That is why the bill requires our new lead body to work in partnership. However, I accept the committee’s view, which has been reinforced in members’ speeches today, that the bill does not give sufficient prominence to the role of local communities, and we will address that issue as we move forward.

Neil Bibby mentioned the marine environment, and I refer him to schedule 4. HES will act as an adviser to the Government and will continue its recording activities, and the Government, through Marine Scotland, will undertake designation and consent. That arrangement will maintain the unified marine regulation system that was recently introduced by the Marine (Scotland) Act 2010.

Patricia Ferguson touched on the very important role of local authorities, which play a fundamental part in looking after the historic environment in the form of designated and undesignated heritage. The bill does not change that fundamental role, but it will enable HES to support local authorities more effectively.

Liam McArthur raised the issue of charitable status. The committee received written evidence from the Office of the Scottish Charity Regulator, which confirmed that a charity with regulatory functions would be “unusual ... but not unique.” Other such bodies include the General Teaching Council for Scotland and the Scottish Society for the Prevention of Cruelty to Animals.

I have spoken about the support that is required on certain aspects such as grants advice, training and skills, and HES will continue to carry out that function. I will consider further Patricia Ferguson’s point about including a reference to skills in the bill.

There will be situations in which a strong lead is needed, whether that is in research or in project management. I particularly welcome the strong working relationship that exists with the National Trust for Scotland, which demonstrates the type of collaboration that we can achieve. For an example of that we need look no further than the new Bannockburn centre, which was delivered on time and within budget in co-operation with the NTS.

Shared projects that make the best use of talents regardless of how they are badged will be the best way forward in many regards. One important shared project has existed for a century, and will be redefined in the bill. Historic Scotland cares for and presents to the public the many properties in state care. In future, ownership and guardianship will remain with ministers but management and operation will be delegated to HES. We have chosen that arrangement not because of a lack of trust in the staff who already care for those properties so well. Rather, we recognise the direct commitment that our predecessors gave to those who passed the properties into state care. That special relationship will be reflected in the careful design of the scheme of delegation, which will be published before it comes into effect. Performance against that scheme will be monitored, and the results will be published. Of course, conservation is a never-ending task.

We have also provided in the bill for ministers to be able to delegate the management of historic properties to bodies other than HES. Although we have no immediate plans to do so, we believe that there may be situations in the future in which that might be appropriate.

With regard to the point that the Society of Antiquaries raised, we are happy to accept the DPLR committee’s recommendation for close scrutiny of any proposal that a body would require to take, and we plan to lodge an amendment at stage 2 that will require that any such body will be specified by order with affirmative parliamentary procedure so that the Parliament has an opportunity to respond.

I will respond to the Education and Culture Committee on the points that have been raised in the debate and in its report. We will have a better body to lead us into the future with regard to the management of the historic environment and leadership in this area.

I will close with a few points. Mike MacKenzie and George Adam gave passionate and well-informed contributions, and Stewart Maxwell rightly gave us all the challenge of asking ourselves how we, as MSPs, should help to lead the historic environment. I commend in particular Graeme Dey, who has personally taken responsibility for trying to galvanise the heritage
and local community in Arbroath around the abbey there.

Finally, I agree with the Labour Party, which we do not always do. Patricia Ferguson, who has made two fine and informed speeches this afternoon, instructed members that we should travel to Orkney as soon as possible. I am delighted to report to her that I will be on a flight to Orkney tomorrow morning to attend the St Magnus festival.

I follow in the footsteps of the Education and Culture committee members, who had such a wonderful visit to Orkney, where we can celebrate our heritage and see where partnership with the local community really works. Orkney demonstrates our wonderful heritage, not only the built environment but the intangible heritage that is expressed in the performances that I have seen there. I know that Patricia Ferguson would want to know if we have an extra seat so she can go with me, and I will see what I can do.
Historic Environment Scotland Bill: Financial Resolution

17:05

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-09869, in the name of John Swinney, on the financial resolution on the Historic Environment Scotland Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Historic Environment Scotland Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.—[Fiona Hyslop.]

Decision Time

17:05

The Presiding Officer (Tricia Marwick): The first question is, that motion S4M-10371, in the name of Fiona Hyslop, on the Historic Environment Scotland Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Historic Environment Scotland Bill.

The Presiding Officer: The next question is, that motion S4M-09869, in the name of John Swinney, on the financial resolution on the Historic Environment Scotland Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Historic Environment Scotland Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.
Dear Stewart,

This letter is the Scottish Government’s response to the Education and Culture Committee’s Stage 1 report on the Historic Environment Scotland Bill, as published on 12 June 2014. I have addressed each of the points you raise in detail in Annex A.

I also want to take this opportunity to thank the Committee for such a well-considered and thorough report.

I welcomed the opportunity for further discussion of the Bill in the Stage One Debate on 19 June and particularly the strong consensus shown across the chamber for the principles which are set out in the Bill and for the Historic Environment Strategy. I have referred in the response at Annex A to two key issues raised in the debate, but will of course take under consideration all of the points made in the debate.

Firstly, I confirm that I have noted a desire for additional clarity on the operation of HES in relation to other parts of the planning system and in particular to the role of Local Authorities. Many of the functions of HES in the planning system are described in other legislation, which will be amended by this Bill to streamline the system for designation and regulation of the historic environment. In order to bring additional clarity to this area in particular, I can confirm that we will provide to the Committee, in advance of Stage 2, “as amended” versions of the other relevant Acts, showing the changes which would be made in consequence of this Bill.

Secondly, I wanted to emphasise the comments I made in closing the debate in relation to my powers of direction over HES, a topic which was also raised in the Committee’s report. As a Minister, I cannot direct the Strategic Forum of the Historic Environment Strategy and will work towards consensus-based decision making. I can, however, direct HES on strategic matters and on properties in care, as they are a responsibility of Ministers delegated to HES. However, I cannot and would not direct on individual grant decisions, on listing and scheduling decisions or on acquisitions or disposals and curatorial matters, as these are responsibilities transferred to HES.
In the interests of completeness, I have included at Annex B the Scottish Government response to Delegated Powers and Law Reform Committee report, which covers some matters not directly raised in the lead Committee’s report.

I look forward to the opportunity to discuss the Bill further during Stage Two. If I, or my officials, can provide additional information in the meantime then please do not hesitate to contact me.

FIONA HYSLOP
Benefits: We welcome the intended benefits of the merger, but recognise questions have been raised by some witnesses. The extent to which the Bill and the strategy actually deliver all the anticipated benefits will only be demonstrated over time, and we intend to assess at a later date whether improvements have materialised.

I am very keen to ensure that the benefits which I believe this Bill will deliver for Scotland’s historic environment are fully realised and I will be monitoring the establishment and operation both of Historic Environment Scotland (HES) and the Strategy to ensure that they meet the high aspirations which have been outlined for them. In the case of the Strategy a group chaired by the Built Environment Forum Scotland has been set up which will concentrate on how to measure success at a sectoral level, and HES will develop a comprehensive monitoring regime for its own work. I welcome the Committee’s support in this important matter.

Corporate Plan: We recommend such plans should, after a suitable period of time has elapsed, also set out which objectives have or have not been achieved i.e. they should be both forward and backward looking.

I accept the principle that HES’s Corporate Plan should provide an analysis of the performance of HES against its key objectives. Whilst it will be for the Board of HES to decide the content of the Corporate Plan, the final plan will be agreed with Ministers who will also share the expectation that any plan will provide a robust appraisal of previous performance. Please also note that other forms of reporting will also exist in the form of annual reports and accounts as set out in schedule 1, paragraphs 13 and 14 of the Bill.

Role of HES: Given the concerns raised by various bodies, it is essential that all stakeholders have a shared understanding of Historic Environment Scotland’s role and how it is to interact with other relevant bodies. The Scottish Government should ensure this is explained as clearly as possible during the passage of the Bill and beyond.

As I stated during the debate, I entirely accept the principle expressed here and will ensure officials continue to work with stakeholders to promote mutual understanding and awareness. Throughout the process of the Bill to date, and more broadly in relation to the Strategy, we have welcomed the engagement of stakeholders from across Scotland, and their continued support for this process will be critical to achieving our shared aspirations for the historic environment.

Marine responsibilities: We call on the Scottish Government to clarify the role of Historic Environment Scotland in relation to the marine environment and how it will interact with Marine Scotland.

I am happy to offer the clarification requested. As set out in paragraphs 59 and 132 of the Policy Memorandum to the Bill, I have considered carefully how best to engage HES in relation to the protection and regulation of activities in the marine zone.
I have decided that the best course of action is to position HES consistently with Scottish Natural Heritage within the integrated system of designation and regulation operated by Marine Scotland under the Marine (Scotland) Act 2010, and the Bill provides for this.

We are conscious that, in this one area of its work around designation and regulation of the historic environment, HES will not undertake designations at its own hand, instead acting as an expert advisor. The advantage of maintaining an integrated system for all activities in the marine zone, has been assessed as outweighing the attractions of having a single body as designation authority for all historic assets on land and at sea. Therefore, marine designation and regulation will continue to be carried out by Ministers, with HES acting as expert advisor, seeking to enable and empower action in the most effective manner.

The criteria for designation of Historic Marine Protected Areas under the Marine (Scotland) Act 2010 are sufficiently broad to include submerged archaeological sites which were once on dry land, as well as the sites of shipwrecks and other marine remains, so I am confident that there are no gaps between the terrestrial and marine provisions.

HES will of course continue to be involved in investigating and recording activities, as HS and RCAHMS are at present.

Regional structure / local decision-making: We welcome the Cabinet Secretary’s assurance that the current regional approach should continue and that the Bill should not lead to a more centralised approach to decision making. However, we believe this assurance needs to be underpinned in some way, noting both the importance of the historic environment to local communities across Scotland, and the concerns raised in Orkney. We therefore suggest the Bill would be enhanced by requiring Historic Environment Scotland to exercise its functions in a way that takes due account of local issues and local decision making processes.

We note and understand these concerns, which we feel represent two rather different points: the way in which decisions are made within HS and in future HES, and secondly the need for HS/RCAHMS and in future HES to interact effectively with local authorities and communities on matters of local concern.

On the first of those points, I am sure that Committee will agree that there are functions which do need to be exercised with absolute consistency across the whole of Scotland – for example the criteria applied to listing buildings or scheduling monuments. I understand Committee’s concern to be about avoiding unnecessary and unhelpful over-centralisation of decision-making. While the internal structures and operational arrangements of HES will be for its board and Chief Executive, when appointed, I will ensure that the Committee’s comments are drawn to the attention of the board.

On the second point, as I said in the debate, this Government recognises the importance of the many local communities and communities of interest which make up the nation. I am happy to accept the point of principle here. We are considering adding HES to the list of bodies with an explicit responsibility to engage where appropriate in Community Planning Partnerships, and will consider other ways in which this aspect can be addressed as the Bill moves forward.

Definition: On balance, we agree the term ‘historic environment’ need not be defined in the Bill. The most important consideration is that the term has to be clearly defined somewhere, in order to avoid possible legal confusion about the division of responsibilities between Historic Environment Scotland and other relevant bodies. There appears to be general agreement that the definition in the strategy is
sufficiently clear, although the Scottish Government should continue to ensure all stakeholders have a shared understanding as the Bill and strategy are implemented.

We welcome this agreement with our own position, and as already noted above and mentioned in the debate, I confirm that we will endeavour to ensure that all partners in the Strategy continue to work to a shared understanding, and that HES (itself a partner in the delivery of the Strategy) uses that shared understanding as the basis for the discharge of its own functions as set out in the Bill.

It is also important that the definition which we will use, the development of which was itself a partnership exercise, is able to adapt to changes in conservation thinking, for example the recent increase in interest in the industrial heritage. This very point was made forcefully in the debate. Stakeholders were particularly keen that the definition could flex to meet these changes. I believe this means it is better placed therefore within Our Place in Time. The new forum for the Strategy will also keep an overview of this issue and act as a catalyst for ensuring sector-wide understanding is maintained and enhanced.

Wider impact on sector funding: We note the funding concerns expressed by some bodies in the historic environment sector but accept these may not materialise. We also note the suggestion that Historic Environment Scotland, as a result of previous reductions in Scottish Government funding to Historic Scotland, may have to make up this shortfall from the overall ‘pot’ of donations available to the sector. However, we do not consider there is evidence to suggest this will materialise. As the Cabinet Secretary set out, Historic Scotland has already responded to previous funding reductions by seeking to maximise income from other sources.

We welcome the Committee’s judgement on this matter, which accords with our own view. We are aware that this is likely to remain a matter of considerable sensitivity for stakeholders, and will keep it under close review.

Responsibility for repair of properties in state care: We appreciate the Scottish Government cannot currently quantify the extent of the repair and maintenance bill for ‘properties in care’, but welcome its commitment to doing so by April 2015. Given the strong concerns about this issue, the Scottish Government should clarify how such repairs are likely to be paid for – it is not clear to stakeholders whether the Scottish Government, Historic Environment Scotland or the property owners would be responsible.

I am happy to offer clarification as requested, setting out the very clear commitments I gave during the debate, and will take action to ensure this is communicated to stakeholders.

- There is no question of the owners of properties in care being responsible for repairs where responsibility for caring for sites has been taken on by Ministers under guardianship agreements.

- Ministers will remain responsible for repairs to sites which they own, sites which are subject to guardianship agreements (number) and any sites which have been taken on under other arrangements, for example by lease.

- Ministers will set out, in a scheme or schemes of delegation, the responsibilities to be undertaken by HES in respect to of these properties, and also the measures by which delivery of these responsibilities will be assessed.
• Ministers will agree with HES an overall financial settlement which includes a quantum in recognition of the needs arising from these delegated responsibilities and also a quantum in recognition of the income expected to be generated from the visitor and other operations at and associated with the properties.

Charitable status: **We acknowledge the Bill does not directly confer charitable status on Historic Environment Scotland but highlight that significant financial benefits could be realised should it be granted.**

I welcome this acknowledgement. Ministers have made it clear that it will be for the new body to decide if, when and in what configuration it seeks charitable status. Ministers do believe that the functions set out in the Bill for HES are capable of meeting the charitable tests, but acknowledge this is a matter for OSCR to determine. I noted OSCR’s helpful comments in its regard in its written evidence to the Committee.

The business model being developed for the new body does not depend for its viability upon charitable status being secured.

Conflict of interest: **We understand the concerns expressed by some stakeholders about a possible conflict of interest. However, we acknowledge that such risks are not new and note, for example, that Historic Environment Scotland will not be able to award grants to itself. We welcome that bodies such as NTS have made positive suggestions as to how their concerns could be addressed. The Cabinet Secretary should continue to consider such suggestions, as the successful implementation of the Bill and the strategy will depend to a considerable extent on partnership working and the goodwill of all parties involved.**

I understand the concerns expressed by some stakeholders, and welcome the Committee’s comments. I also welcome the very constructive role played by NTS and many other stakeholders, not just in shaping these proposals but in developing and delivering the sector-wide strategy, and will continue to work in partnership to address remaining concerns.

I would note that, during the Committee’s gathering of evidence and in the preceding public consultation, there was a lack of any substantive evidence for existing issues in respect of conflicts of interest, which confirms my assessment that internal separation of functions is currently effective but needs to continue to be effectively demonstrated. I am committed to continuing the existing high level of publication and transparency, and will indeed be increasing this in several ways, notably by publication of all applications and decisions on scheduled monument consent cases. I believe this will further serve to reassure those who still have concerns in this respect.

Curatorial independence: **Given the correspondence quoted at paragraph 68, we ask the Scottish Government to explain in more detail the Bill’s implications for the curatorial independence of Historic Environment Scotland.**

I offer clarification as requested, noting that what follows also has a relationship to the comments above in relation to the topic of conflicts of interest.

Section 12 of the Bill covers Directions and Guidance and gives Scottish Ministers the power to give ‘directions of a general or specific nature to Historic Environment Scotland about the exercise of its functions’.

There is an exclusion in Section 12(2)(a) which means that Ministers may not direct HES on the exercise of its functions ‘with regards to any particular historic property, collection or
object’. This means that Ministers could not direct, for example, on a decision to designate a building as a listed building, or direct HES to acquire a particular collection. This ensures that HES has the required curatorial independence, at an operational level, on how it carries out its own functions and manages its own collections.

Section 12(3) provides that 12(2)(a) ‘does not apply in relation to the exercise of functions which Historic Environment Scotland has by virtue of a delegation by the Scottish Ministers under section 3 or 7’. This means that Ministers may direct HES where they are exercising functions on behalf of Ministers in relation to the properties in care and associated collections. This is important as in this case HES would be carrying out Ministerial functions and therefore Ministers need to be able to direct on the exercise of those functions.

To illustrate the interaction of these provisions, some examples might assist. If, in relation to a particular property in care, Ministers wished to direct HES to remove that property from the schedule of monuments, that would not be an area on which Ministers could direct, as the function of maintaining the schedule is not a function delegated to HES but one which HES is given under Part 1 of schedule 2 to the Bill, so the section 12(2)(a) exclusion would apply. However, if Ministers felt that the standards set out in a scheme of delegation, covering how properties should be cared for, were not being met at a particular property, then Ministers could if required direct that HES should address this, in relation to that specific property, under section 12(3), as that would be a delegated function.

We will endeavour to ensure that stakeholders understand the detail here, because we believe it delivers exactly what has been sought. Stakeholders have expressed concern about what has been termed a “level-playing field”: securing a position whereby Ministers cannot, for example, direct HES to give scheduled monument consent for works to a property in care of a character which would not be permitted at a similar, privately-owned property not in Ministers’ care.

We believe that the provisions of the Bill achieve this “level playing field” while at the same time ensuring that Ministers retain sufficiently strong ability to intervene to ensure that conservation of, and public access to, the properties in Ministers’ care are maintained to an appropriate standard.

Delegation of properties in care and associated collections work: We would welcome confirmation from the Scottish Government that there is minimal risk of a legal challenge arising, and that it has consulted fully on these matters with the private owners in question.

Scottish Government has looked into this carefully and considers that it is clear that it is within the scope of the powers available under an Act of the Scottish Parliament to provide that functions exercisable by the Scottish Ministers in relation to properties in care may be delegated to another person such as Historic Environment Scotland. The Scottish Government considers that this is the case irrespective of whether the function to be delegated derives solely from legislation or from an agreement. An Act of the Scottish Parliament can override a contractual provision and section 3(3) and 7(2) make clear that where functions arise from an agreement they may be delegated despite any prohibition or restriction in that agreement.

We are also aware that analogous arrangements have been in place in England since 1983, under the terms of the National Heritage Act, and our advice from officials there is that delegation of Ministerial functions to another body has not been challenged. The number of properties in care is of the same order of magnitude in the two countries.
Interaction between Strategy and HES governance: The Scottish Government should clarify how the overarching historic environment board and the separate Historic Environment Scotland board are expected to work together, in particular where any problems are experienced in implementing the strategy. It should also clarify how Historic Environment Scotland’s corporate plan will take account of the priorities and outcomes established through the strategy, which will be reported on by the overarching historic environment board. In short, we want to be satisfied that the two boards will work effectively together without duplication of effort, and in a way that will be understandable to the sector.

The strategy was co-produced by many bodies in the sector and beyond, and informs the priorities of all organisations and individuals working with the historic environment.

A three-tiered governance structure involving a range of stakeholders will support the implementation of the Strategy:

- The Strategic Forum chaired by me will act as the champion for the Strategy and have oversight of strategic delivery;
- The Operational Group will co-ordinate and manage activities identified as key priorities for stakeholders; and
- Working groups will agree and enable delivery of detailed work plans as identified.

We have sought wide ranging representation of the many interests in the governance structure but stakeholders will also have their own organisational governance arrangements in place to which they will be ultimately accountable.

The structure will enable contributors at all levels to work collectively towards its delivery. A good example of this is the Heritage Tourism Group, which brings together key delivery partners with Visit Scotland and others to provide a meaningful forum to ensure we are all optimising the benefits of this important asset to Scotland’s tourism industry. We all face tough choices around resourcing and I believe this accountability model stresses the need for everyone to play their part.

The Strategic Forum will seek to agree how we take the work of the strategy forward collectively. This will include agreeing how accountability for the delivery for the various work streams will be shared.

The Operational Group will be charged with giving effect to the framework for delivery set out by the Overarching forum, to which it will report.

I will be responsible for ensuring the Strategic Forum reports publically at regular intervals on its progress, highlighting any issues. The exact form of how they will report has yet to be agreed and will be a matter for the Forum itself to decide.

While the governance of Historic Environment Scotland is separate from the Strategy, to ensure effective coordination the Chair of HES will sit on the Strategic Forum and the Chief Executive of HES will sit on the Operational Group.

Likewise, as a key partner in the Strategy, Ministers will expect Historic Environment Scotland to work alongside other bodies in the sector in discharging its functions and delivering the Strategy. To underline this, a requirement to contribute to the development and delivery of strategies in relation to the historic environment is built into HES functions in
the Bill. Given that requirement, it would be our expectation that all key documents would make explicit reference to the role of HES in delivering the wider Strategy.

Resolving disagreements at strategic level: **We seek an explanation from the Scottish Government of how relevant bodies are likely to work together on prioritisation, for example, in determining which parts of the historic environment most need to be repaired. We ask the Scottish Government to clarify where the ultimate decision-making power on this crucial issue lies.**

As I stated in my follow-up letter to the Committee after the session on 20 May at which I gave evidence, and as I re-stated during the debate, the Strategy will only work as a voluntary collaboration. If there are points on which key players cannot find agreement or accommodation, then we will need to work around these or approach issues from fresh perspectives.

Although I will chair the Strategy’s top-level Forum, my task there will be to promote and support consensus amongst the participants and to ensure that the Scottish Government and HES play their full role in supporting the delivery of the Strategy. I clearly could not direct members of the Strategic Forum, nor would I seek to do so.

In the unlikely event that the appointed board of HES was not, in my view, playing a sufficiently strong role in addressing matters of concern to the wider sector, as captured through the medium of the Strategy, then I would if necessary direct the board of HES to consider their duty in the Bill to work in partnership and engage more effectively.

For the other participants in the Strategy, their own governance arrangements will apply. In short, the “ultimate decision-making power” is distributed and consensual, and is so by design.
Response from the Scottish Government to the Stage 1 report of the Delegated Powers and Law Reform Committee, dated 10 June 2014

This letter offers a response from Scottish Government on the matters raised in the Committee’s report to the Education and Culture Committee, on the Historic Environment Scotland Bill, as published by the Scottish Parliament on 29 April 2014.

In the interests of conciseness, I have taken the liberty of summarising the Committee’s recommendations slightly and have also brought together similar matters addressed at several points, but trust I have not omitted or distorted any of the concerns raised by the Committee.

Committee recommendation: If any person (apart from HES) is to be delegated with functions under sections 3 or 7 [Properties in Care and Collections respectively], this person should be specified by an order which would be subject to scrutiny by the Parliament under the affirmative procedure. An alternative approach would be for sections 3(1)(b) and 7(1)(b) to be drawn more narrowly, to define the other persons who could be delegated with these functions.

Scottish Government response: We accept the Committee’s first recommendation in respect of resolving the concern regarding these two sections, and will bring forward an amendment requiring that any other persons (apart from HES) who may be delegated with functions under sections 3 or 7 should be specified by an order which would be subject to scrutiny by Parliament under the affirmative procedure.

We have preferred this approach to the Committee’s alternative suggestion, which we felt offered less flexibility about future arrangements with a range of bodies, potentially of varied character and constitution.

Committee recommendation: That the accounting and annual reporting requirements which are set out in paragraphs 13 and 14 of schedule 1 for HES also be considered for application to any other person apart from HES who may be delegated with functions in connection with “properties in care” and collections.

Scottish Government response: We entirely accept the point of principle here, and confirm the intention that any scheme of delegation would contain requirements in this respect. We would note that schemes of delegation will be in relation to specific properties or groups of properties, and that the reporting requirements which would suit, say, a single property being managed by a community trust might not suit a larger group of monuments managed by a larger body.

Ministers will use the powers in Bill sections 3(1) and 7(1), rather than Bill sections 13 and 14, to define HES responsibilities in respect of delegated functions. Bill sections 13 and 14 apply to the overall organisational reporting of HES about its functions.

Committee recommendation: The Bill should provide for the publication of any written delegation of functions (to HES) made under sections 3 and 7. (Noting that the Scottish Government has confirmed that any delegations would be published on its website.)
Scottish Government response: We accept the Committee’s recommendation and will bring forward an amendment to require Ministers to publish all schemes of delegation, whether to HES or to other persons. Taken in combination with agreement to amend so that “other persons” are identified by order, we believe this change will facilitate Parliamentary and public scrutiny of expectations and performance in relation to delegated functions.

Committee recommendation: Accepting that the Scottish Government has confirmed that the powers in section 3 relate to the “properties in care” as defined by section 3(8), and that it is not intended that the functions of the Ministers should be delegated in relation to “operational” properties of historic significance which are not one of the 345 properties currently managed by Historic Scotland, the Committee nonetheless consider that section 3 should be amended to exclude such “operational properties” from the definition of the “properties in care”, so that the scope of the powers reflects the policy intention, and also to clarify, in response to this report, which “operational” properties this relates to.

Government response: We understand the Committee’s concerns in these respects and agree to consider how these can most effectively be addressed, and will bring forward proposals for amendment at Stage 2.

I hope the Committee finds this letter helpful and will be glad to provide any further clarification which the Committee may require. This letter is copied to the Clerk to the Education and Culture Committee.
Historic Environment Scotland Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Section 1  Schedule 1
Sections 2 to 14  Schedule 2
Section 15  Schedule 3
Section 16  Schedule 4
Sections 17 and 18  Schedule 5
Sections 19 to 26  Schedule 6
Sections 27 to 30  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Schedule 1

Liam McArthur

6 In schedule 1, page 14, line 17, after <which> insert—

<( ) ensures geographical diversity, and
( )>

Liam McArthur

7 In schedule 1, page 16, line 31, after <employee> insert <,

(da) subject to sub-paragraph (1A), any other person Historic Environment Scotland considers appropriate>

Liam McArthur

8* In schedule 1, page 16, line 31, at end insert—

<(1A) Historic Environment Scotland may authorise a person under sub-paragraph (1)(da) to exercise such of its functions (and to such extent) as it may determine if—

(a) Historic Environment Scotland is satisfied that the person whom they are authorising to exercise the function has the knowledge, skills and experience necessary to exercise the function,

(b) sufficient guidance has been given to the person by Historic Environment Scotland to enable the person to exercise the function in accordance with (as the case may be)—

(i) the corporate plan published under section 8(4),
(ii) any policy or strategy published by Historic Environment Scotland.
(c) adequate arrangements have been put in place for regular reporting by the person to Historic Environment Scotland on the exercise of the function to ensure, in particular—

(i) that the performance of the function is in accordance with any standards set out in any policy, strategy or plan mentioned in paragraph (b),

(ii) that proper accounting practices are being adhered to in the exercise of the function.

Liz Smith

60 In schedule 1, page 18, line 16, at end insert—

<(  ) Information provided under sub-paragraph (1)(a) must include information about—

(a) the exercise by Historic Environment Scotland of its regulatory functions,

(b) the operation of any internal governance arrangements Historic Environment Scotland has put in place to ensure that it exercises its regulatory functions—

(i) separately from its other functions,

(ii) independently of any other person or interest.>

Section 2

Liam McArthur

1 In section 2, page 1, leave out line 23 and insert—

<(  ) conserving the historic environment,

(  ) enhancing the historic environment.>

Fiona Hyslop

9 In section 2, page 2, line 14, after <working> insert <in collaboration>

Liam McArthur

2 In section 2, page 2, line 14, after <persons> insert <, including local communities.>

Fiona Hyslop

10 In section 2, page 2, line 14, leave out <otherwise> and insert <in other ways>

Liz Smith

61 In section 2, page 2, line 17, after <person> insert <, including persons in ownership of private properties, collections or objects in relation to the historic environment, in—

(a) managing, protecting, preserving and conserving properties, collections and objects in relation to the historic environment,

(b)>
Fiona Hyslop

11 In section 2, page 2, line 22, after <Ministers> insert <, and
( ) as may be appropriate in the circumstances, to the interests of local communities>

Liam McArthur

3 In section 2, page 2, line 22, at end insert—
<( ) In exercising its functions, Historic Environment Scotland must have regard to local
issues and local decision-making processes.>

Section 3

Liam McArthur

12 In section 3, page 2, line 25, leave out second <such> and insert <subsection (5A) and such
other>

Fiona Hyslop

13 In section 3, page 2, line 29, leave out <other> and insert <prescribed>

Liam McArthur

14 In section 3, page 2, line 39, at end insert—
<(5A) The Scottish Ministers may delegate the exercise of any function to a person under
subsection (1)(b) if—
(a) Ministers are satisfied that the person to whom the function is delegated has the
knowledge, skills and experience necessary to exercise the function,
(b) sufficient directions have been given to the person by Ministers to enable the
person to exercise the function in accordance with any policy determined by
Ministers,
(c) adequate arrangements have been put in place for reporting to Ministers on the
exercise of the function by the person.>

Fiona Hyslop

15 In section 3, page 3, line 5, at end insert—
<( ) The Scottish Ministers must publish delegations under subsection (1).>

Fiona Hyslop

16 In section 3, page 3, line 9, at end insert—
<“prescribed”, in relation to a person to whom the Scottish Ministers may
delegate functions under subsection (1)(b), means prescribed by Ministers by
order,>
In section 3, page 3, line 10, leave out from <means> to end of line 14 and insert <has the meaning given by section (Properties in care).>  

After section 3  

After section 3, insert—  

<Properties in care>  

(1) The Scottish Ministers must compile and maintain a list of properties in care in relation to which they may delegate functions under section 3(1).  

(2) The Scottish Ministers may modify the list compiled and maintained under subsection (1) by—  
   (a) including a property in the list,  
   (b) removing a property from the list.  

(3) The Scottish Ministers must publish the list compiled and maintained under subsection (1).  

(4) In this section “property in care” means—  
   (a) any heritable property which is of historical, archaeological, architectural or cultural significance or interest, and  
   (b) which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers.>  

Section 7  

In section 7, page 5, line 15, leave out second <such> and insert <subsection (4A) and such other>  

In section 7, page 5, line 19, leave out <other> and insert <prescribed>  

In section 7, page 5, line 28, insert at end—  

<(4A) The Scottish Ministers may delegate the exercise of any function to a person under subsection (1)(b) if—  
   (a) Ministers are satisfied that the person to whom the function is delegated has the knowledge, skills and experience necessary to exercise the function,  
   (b) sufficient directions have been given to the person by Ministers to enable the person to exercise the function in accordance with any policy determined by Ministers,
(c) adequate arrangements have been put in place for reporting to Ministers on the exercise of the function by the person.

**Fiona Hyslop**

22 In section 7, page 5, line 34, at end insert—

<(< ) The Scottish Ministers must publish delegations under subsection (1).>

**Fiona Hyslop**

23 In section 7, page 6, line 1, after <agreement> insert <,

“prescribed”, in relation to a person to whom the Scottish Ministers may delegate functions under subsection (1)(b), means prescribed by Ministers by order>

**Section 11**

**Liam McArthur**

24 In section 11, page 7, line 13, at end insert—

<(< ) Historic Environment Scotland must provide local authorities with advice, information and assistance relating to the historic environment.>

**Liam McArthur**

25* In section 11, page 7, line 15, after <person> insert <, including local authorities>

**Section 12**

**Liz Smith**

4 In section 12, page 7, line 27, at beginning insert <subject to subsection (4A).>

**Liz Smith**

5 In section 12, page 7, line 29, at end insert—

<(<4A) Historic Environment Scotland need not comply with a direction given under subsection (1) if the effect of so doing would be inconsistent with—

(a) the corporate plan approved under section 8(3),
(b) any revised corporate plan approved under section 8(3).

(4B) If Historic Environment Scotland decides under subsection (4A) not to comply with a direction under subsection (1), it must inform the Scottish Ministers of its decision and the reasons for that decision.>

**Section 13**

**Fiona Hyslop**

26 In section 13, page 8, line 5, leave out <3(8)> and insert <(Properties in care)>
Schedule 2

Fiona Hyslop

27 In schedule 2, page 19, leave out lines 6 to 10 and insert—

<( ) for subsection (6) substitute—

“(6) Where Historic Environment Scotland—

(a) includes a monument in the Schedule under subsection (3),

(b) amends the entry in the Schedule relating to a monument, or

(c) excludes a monument from the Schedule,

it must notify such persons as may be prescribed in such form and manner, and
within such time, as may be prescribed of the action taken.”,>

Fiona Hyslop

28 In schedule 2, page 19, line 31, leave out <for “the Secretary of State” substitute “Historic> and insert <after “State” insert “or Historic”>

Fiona Hyslop

29 In schedule 2, page 19, leave out lines 33 and 34 and insert—

<( ) in subsection (3A) for paragraph (b) substitute—

“(b) consent for the retention of the works is granted by the Scottish Ministers or by
Historic Environment Scotland.”,>

Fiona Hyslop

30 In schedule 2, page 19, line 35, after <State”> insert <in each place>

Fiona Hyslop

31 In schedule 2, page 20, line 16, after <Scotland> insert <or, as the case may be, the Scottish Ministers>

Fiona Hyslop

32 In schedule 2, page 21, line 33, after <Scotland> insert <or, where the Scottish Ministers refused the scheduled monument consent or granted it subject to conditions, Ministers>

Fiona Hyslop

33 In schedule 2, page 21, line 35, after <Scotland’s> insert <or, as the case may be, the Scottish Ministers’>

Fiona Hyslop

34 In schedule 2, page 21, line 37, after <Scotland> insert <or, as the case may be, the Scottish Ministers>
Fiona Hyslop

35  In schedule 2, page 22, line 17, leave out from <for> to <has”> in line 18 and insert <— (  ) after “received,” insert “Historic Environment Scotland has or”,

 ( ) after “refused” insert “or the Scottish Ministers have dismissed an appeal against the refusal of, or an appeal under section 4B(3) in respect of,”>

36  In schedule 2, page 22, line 19, at end insert—

<(  ) after “refused” insert “or the appeal was dismissed”,>

37  In schedule 2, page 22, line 21, at end insert—

<(  ) After that paragraph insert—

“2C (1) If Historic Environment Scotland, on an application to it for scheduled monument consent, intends to grant that consent, it must, where sub-paragraph (2) applies, first notify the Scottish Ministers of the application.

(2) This sub-paragraph applies where—

(a) regulations, or

(b) directions given to Historic Environment Scotland by the Scottish Ministers,

provide that the application must be so notified.

(3) The Scottish Ministers may within the period of 28 days beginning with the date of the notification—

(a) direct the reference of the application to them under section 3B, or

(b) give notice to Historic Environment Scotland that they require further time in which to consider whether to require such a reference.

(4) Historic Environment Scotland must not grant scheduled monument consent until—

(a) the period mentioned in sub-paragraph (3) has expired without the Scottish Ministers directing the reference of the application to them or giving notice under paragraph (b) of that sub-paragraph, or

(b) the Scottish Ministers have notified Historic Environment Scotland that they do not intend to require the reference of the application.

2D The Scottish Ministers may give directions to Historic Environment Scotland requiring it, in such cases or classes of case as may be specified in the directions, to notify to Ministers and to such other persons as may be so specified—

(a) any applications made to it for scheduled monument consent, and

(b) the decisions taken on those applications.”.>
Fiona Hyslop

38 In schedule 2, page 22, line 23, leave out <for “The Secretary of State” substitute “Historic”> and insert <after “State” insert “or Historic”>

Fiona Hyslop

39 In schedule 2, page 22, line 30, leave out <for “The Secretary of State” substitute “Historic”> and insert <after “State” insert “or, as the case may be, Historic”>

Fiona Hyslop

40 In schedule 2, page 22, line 31, leave out <“its”> and insert <“the”>

Fiona Hyslop

41 In schedule 2, page 22, line 32, leave out <for “him” substitute “it”> and insert <“to him” is repealed>

Fiona Hyslop

42 In schedule 2, page 25, line 9, at end insert—

<In section 9C (appeal against scheduled monument enforcement notice)—

(a) in subsection (1) for “by summary application appeal to the sheriff” substitute “appeal to the Scottish Ministers”,

(b) in subsection (2)—

(i) before paragraph (a) insert—

“(za) that the monument is not of national importance,”,

(ii) after paragraph (c) insert—

“(ca) that scheduled monument consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted,”,

(iii) after paragraph (d) insert—

“(da) except in relation to such a requirement as is mentioned in section 9A(3)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the monument or land to its condition before the works were carried out,”,

(iv) after paragraph (e) insert—

“(f) that the steps required by the notice for the purpose of restoring the character of the monument or land to its former state would not serve that purpose,

(g) that the cessation of any works required by the notice exceeds what is necessary to remedy the contravention of section 2(1) or (6),

(h) that steps required to be taken by virtue of section 9A(3)(b) exceed what is necessary to alleviate the effect of the works executed to the monument or land,
(i) that steps required to be taken by virtue of section 9A(3)(c) exceed what may reasonably be required to bring the monument or land to the state in which it would have been if the scheduled monument consent had been complied with.”,

(c) after subsection (2) insert—

“(2A) An appeal under this section is to be made by giving written notice of the appeal to the Scottish Ministers before the date specified in the scheduled monument enforcement notice as the date on which it is to take effect.”,

(d) after subsection (3) insert—

“(3A) A person who gives notice of appeal under this section must submit to the Scottish Ministers, either when giving the notice or within such time as may be prescribed, a statement in writing—

(a) specifying the grounds on which the appeal is made,

(b) giving such further information as may be prescribed.”,

(e) subsections (4) and (5) are repealed.

After that section insert—

“9CA Determination of appeals under section 9C

(1) On determining an appeal under section 9C, the Scottish Ministers may give directions for giving effect to the determination, including where appropriate directions for quashing the scheduled monument enforcement notice.

(2) On such an appeal the Scottish Ministers may if they are satisfied that the correction or variation will not cause injustice to the appellant or to Historic Environment Scotland—

(a) correct any defect, error or misdescription in the scheduled monument enforcement notice, or

(b) vary the terms of the notice.

(3) In a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 9B(4) to be served with a copy of the notice was not served, the Scottish Ministers may disregard that fact if they are satisfied that the person has not been substantially prejudiced by the failure.

(4) The Scottish Ministers may—

(a) dismiss such an appeal if the appellant fails to comply with section 9C(3A) within the prescribed time,

(b) allow such an appeal or quash the scheduled monument enforcement notice if Historic Environment Scotland fails to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 9CB(1).

(5) On the determination of an appeal under section 9C the Scottish Ministers may—

(a) grant scheduled monument consent for the works to which the scheduled monument enforcement notice relates,
(b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or
(c) direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that determination.

(6) Any scheduled monument consent granted by the Scottish Ministers under subsection (5)(a) is to be treated as granted under section 2(3).

(7) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 9C is final.

9CB Procedure for appeals under section 9C

(1) The Scottish Ministers may by regulations make provision in connection with appeals under section 9C, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
   (a) the form, manner and time for making an appeal,
   (b) the notification of an appeal,
   (c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 9C.”.

Fiona Hyslop

43 In schedule 2, page 25, line 33, at end insert—

"After section 9F (effect of scheduled monument consent on scheduled monument enforcement notice) insert—

9FA Enforcement by the Scottish Ministers

(1) If it appears to the Scottish Ministers that it is expedient that a scheduled monument enforcement notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9A.

(2) A scheduled monument enforcement notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.

(3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland."
(4) The provisions of this Act relating to scheduled monument enforcement notices apply, so far as relevant, to a scheduled monument enforcement notice served by the Scottish Ministers as they apply to a scheduled monument enforcement notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.”.

Fiona Hyslop

44 In schedule 2, page 26, line 20, at end insert—

<After that section insert—

“9HA Power of the Scottish Ministers to serve stop notice

(1) If it appears to the Scottish Ministers that it is expedient that a stop notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9G.

(2) A stop notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.

(3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.

(4) The provisions of this Act relating to stop notices apply, so far as relevant, to a stop notice served by the Scottish Ministers as they apply to a stop notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.”.

Fiona Hyslop

45 In schedule 2, page 30, line 24, leave out <and 4D(6)> and insert <, 4D(6) and 9CB(4)>

Fiona Hyslop

46 In schedule 2, page 30, line 28, leave out <and 4B> and insert <, 4B and 9C>

Fiona Hyslop

47 In schedule 2, page 31, line 8, after <4C> insert <,

( ) in relation to an appeal under section 9C as the Scottish Ministers have under section 9CA>

Fiona Hyslop

48 In schedule 2, page 31, line 20, leave out <or 4B> and insert <, 4B or 9C>

Fiona Hyslop

49 In schedule 2, page 34, line 32, for <9O(1)> substitute <9O>

Fiona Hyslop

50 In schedule 2, page 34, line 32, after <monuments)> insert <—
( ) in subsection (1)>

Fiona Hyslop

51 In schedule 2, page 34, line 35, after <“it”> insert <,>

( ) after that subsection insert—

“(1A) Whether or not the Scottish Ministers have exercised or propose to exercise any of their powers under this Act, they may seek to restrain or prevent any actual or apprehended breach of any of the controls provided by or under this Act on the execution of works affecting scheduled monuments by means of an application for interdict.”,

( ) in subsection (2) for “subsection (1)” substitute “subsection (1) or (1A)”>

Schedule 3

Fiona Hyslop

52 In schedule 3, page 39, line 19, leave out <after subsection (4)> and insert <—

( ) in subsection (3)—

(i) the “and” after paragraph (b) is repealed,

(ii) after paragraph (c) insert “, and

“(d) the procedure to be followed by planning authorities or, as the case may be, the Scottish Ministers in considering and determining such applications.”,

( ) after subsection (5)>
<In section 14 (decision on application for listed building consent) after subsection (2) insert—

“(2A) A planning authority, if minded to grant listed building consent for any works—

(a) must consider imposing a condition specified in, or of a nature indicated in, directions given to them by the Scottish Ministers, and

(b) must not grant such consent without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or is not needed.”.

After section 22

Fiona Hyslop
58 After section 22, insert—

<Conservation areas

Control of demolition

(1) The 1997 Act is amended as follows.

(2) In section 66 (control of demolition in conservation areas) in subsection (2) for paragraphs (a) and (b) substitute—

“(a) the planning authority, or

(b) the Scottish Ministers”.

Neil Bibby
62 After section 22, insert—

<Local authorities

Local authority functions in relation to the historic environment

Local authorities must, in exercising their functions in relation to the historic environment, have regard to appropriate information and expert advice.

Section 24

Fiona Hyslop
59 In section 24, page 12, line 13, at end insert—

<( ) orders under section 3(8),

( ) orders under section 7(7),>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated at Stage 2, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Historic Environment Scotland: appointment of members
6

Delegation of functions by Historic Environment Scotland
7, 8

Historic Environment Scotland: report on regulatory functions
60

Historic Environment Scotland’s functions: conserving and enhancing the environment
1

Historic Environment Scotland’s functions: working together
9, 10

Historic Environment Scotland’s functions: having regard to local interests etc.
2, 11, 3

Historic Environment Scotland’s functions: working with private owners
61

Delegation of functions by the Scottish Ministers
12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 59

Properties in care
17, 18, 26

Historic Environment Scotland: advice, information and assistance to local authorities
24, 25
Historic Environment Scotland: extent of compliance with directions
4, 5

Notification in relation to schedule of monuments
27

Control of works affecting scheduled monuments
28, 29, 30, 31, 35, 36, 37, 38, 39, 40, 41

Compensation for refusal of scheduled monument consent
32, 33, 34

Appeals against scheduled monument enforcement notices
42, 45, 46, 47, 48

Enforcement powers of Scottish Ministers in relation to scheduled monuments
43, 44, 49, 50, 51

Listed buildings – listed building consent
52, 54, 55, 56, 57

Control of demolition in conservation areas
58

Local authorities: exercise of functions in relation to the historic environment
62
EDUCATION AND CULTURE COMMITTEE

EXTRACT FROM THE MINUTES

21st Meeting, 2014 (Session 4)

Tuesday 19 August 2014

Present:
George Adam
Jayne Baxter
Neil Bibby (Deputy Convener)
Stewart Maxwell (Convener)
Mary Scanlon

Clare Adamson
Colin Beattie
Gordon MacDonald
Liam McArthur

Historic Environment Scotland Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 9, 10, 11, 13, 15, 16, 17, 18, 20, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58 and 59.

The following amendment was disagreed to (by division)—
4 (For 4, Against 5, Abstentions 0)

The following amendments were moved and, no member having objected, withdrawn: 6, 7, 60, 1, 2, 61, 12, 24 and 62.

The following amendments were not moved: 8, 3, 14, 19, 21, 25 and 5.

The following provisions were agreed to without amendment: section 1, schedule 1, sections 4, 5, 6, 8, 9, 10, 11, 12, 14, 15 and 16, schedule 4, sections 17 and 18, schedule 5, sections 19, 20, 21, 23, 25 and 26, schedule 6, sections 27, 28, 29 and 30 and the long title.

The following provisions were agreed to as amended: sections 2, 3, 7 and 13, schedules 2 and 3 and sections 22 and 24.

The Committee completed Stage 2 consideration of the Bill.
The Convener: Our next item is consideration of the Historic Environment Scotland Bill at stage 2. I remind officials that they are not permitted to participate in this part of the proceedings.

I remind everybody that they should have with them copies of the bill as introduced, the marshalled list of amendments and the groupings of amendments. The groupings set out the amendments in the order in which they will be debated, and the marshalled list sets out the amendments in the order in which they will be disposed of.

I will briefly remind all those present of some of the main points of the procedure, so that we are clear.

There will be a debate on each group of amendments, and I will call members to speak in turn. Members who have not lodged amendments in a group but who wish to speak should indicate that by catching my eye or the clerk’s attention.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press or withdraw it. If they wish to press it, I will put the question on the amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek approval to do so. If any member who is present objects, the committee will immediately move to a vote on the amendment.

If any member does not want to move their amendment when they are called to do so, they should say, “Not moved.” However, any other member may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Voting in any division is by a show of hands. Only committee members are allowed to vote.

The committee is required to indicate formally that it has considered and agreed each section of the bill. I will therefore put a question on each section at the appropriate point.

Section 1 agreed to.

Schedule 1—Historic Environment Scotland

The Convener: Amendment 6, in the name of Liam McArthur, is in a group on its own.

Liam McArthur (Orkney Islands) (LD): I re-emphasise my support for the general principles of the bill. I also acknowledge the cabinet secretary’s willingness to engage constructively on the bill’s
provisions and thank colleagues on the committee for including a visit to Orkney in our evidence-gathering sessions. Probably few other parts of the country can lay as much of a claim to being directly impacted by the implications of the bill as the constituency that I represent.

Although we have heard no real opposition to the principles of the merger, it is fair to say that we have heard consistent anxiety about the need to ensure that the new body is equipped for and tasked with dealing with the wide range of needs of stakeholders throughout the country.

Invariably, if not inevitably, merging organisations can lead to a more centralised approach that looks good on paper and has the benefit of simplicity but that, in practice, fails to represent the interests of all those that the merger has been set up to serve and/or struggles to reflect the complexity of the issues and tasks for which it is responsible. A number of my amendments are born of a desire to ensure that historic environment Scotland does not fall into that category. To be fair to the cabinet secretary, I think that she recognises and accepts some of those risks. We will come to those amendments in due course.

We have already discussed the mechanics of putting in place the new board. The concern behind amendment 6 is to ensure that HES embodies the geographical diversity for which it is responsible. I accept that, in appointing a board, it is not straightforward to ensure that it has the necessary mix of skills and that it balances appropriate male and female representation and any other factors that might be relevant. Nevertheless, the integrity and legitimacy of HES could only be enhanced if its board were to be seen to be drawn from the talents of individuals from across the country rather than simply those who are already within easy striking distance of Edinburgh, however well qualified they may be.

I do not underestimate the challenges that the amendment might present, particularly if the numbers on any future board are to be kept manageable. However, some of the concerns that have been felt, particularly by people who live outside the central belt, about the consequences of the merger could be allayed by a move along those lines.

I look forward to hearing what Fiona Hyslop has to say, and I move amendment 6.

Clare Adamson (Central Scotland) (SNP): I echo Liam McArthur’s support for the bill and I, too, reference the beautiful, sunny trip to Orkney that we had. I appreciate the complexity of the situation in Orkney, but I feel that the nature of the process of getting the right candidate will mean that it will get people who understand the complex nature of Scotland’s historic environment. Including amendment 6 in the bill may limit choice and emphasise the selection of candidates in a way that might mean that we would not end up with the best people in position.

The Convener: I will make a small contribution to the debate. The principle behind amendment 6 is absolutely laudable. We all want to ensure that there is geographical diversity as well as any other diversity on any board that is appointed in the public’s name. However, my concern is that amending the bill as amendment 6 proposes would create unnecessary difficulties. What the amendment proposes should be an aim to be discussed for possible guidance, but I am unsure that we would want to see it on the face of the bill.

Fiona Hyslop: Liam McArthur proposes that “geographical diversity” should be a factor of which special account is taken when selecting board members for historic environment Scotland. I agree that an understanding of the circumstances and issues in all areas of Scotland will be important, but I am not convinced that it should be the overriding consideration in appointing the board, and that would be the case if the bill was amended as amendment 6 proposes.

Our intention is to ensure that there is a diverse mix of backgrounds, skills and experience on the board, which will best serve historic environment Scotland and the wider historic environment in Scotland. We will not get that diverse mix by restricting which candidates we can choose. Historic environment Scotland will have a broad range of responsibilities within the general function of investigating, caring for and promoting Scotland’s historic environment.

Despite the representations from some stakeholders, we chose not to specify particular fields of expertise—for example, archaeology—for board members, and the same argument applies for geographical and other factors. We need to get the widest possible field of candidates to get the best possible board, and that would not necessarily happen if potential candidates perceived that they were less likely to be chosen if they lived in, say, Glasgow rather than Orkney. Equally, if a specific number of board members had to come from, or have significant interests in, certain geographical locations, we could end up being unable to appoint the candidates who best met the other assessment criteria simply because they were based in the “wrong” parts of Scotland.

The committee has just considered the order that will allow HES to be regulated by the Commissioner for Ethical Standards in Public Life in Scotland. The appointment panel, which includes the commissioner’s independent assessor, has developed criteria that best meet the needs of the body. We need the right criteria
and we want good candidates from every part of Scotland and beyond to put themselves forward. I emphasise that those who are selected will receive support with travelling and other expenses so that they can play a full part in the board. Indeed, MSPs themselves have a role in encouraging applications from all parts of Scotland, including the islands and other areas from which we want to ensure that we have good representation.

For the reasons that I have set out, I firmly believe that we should trust the commissioner and the selection panel to identify the best possible board. I am very conscious of the fact that, for all board appointments, we must ensure that we have representation from across Scotland and that board members have the skills that have been identified by the selection panel. Taking all those relevant factors into account, I urge the committee to oppose amendment 6.

Liam McArthur: I thank the convener and Clare Adamson for their contributions to the debate. I fully accept the reservations that have been expressed about the potential straitjacket that amendment 6 could create in establishing the board, and I think that those who are responsible for the selection process will have heard what has been said about that.

It is inconceivable that the organisation would not have expertise in the area of archaeology, and it would only enhance and strengthen the board if it was seen to be drawing from the wide representation of that expertise throughout Scotland. Nevertheless, I am reassured by the provisions that ensure that those who come from areas that are furthest away will not be disadvantaged as a result.

We will come on to some other amendments that may be more appropriate for the context of the bill, but I seek to withdraw amendment 6.

Amendment 6, by agreement, withdrawn.

10:15

The Convener: Amendment 7, in the name of Liam McArthur, is grouped with amendment 8.

Liam McArthur: The two amendments touch on an issue that arose during the committee’s visit to a sun-kissed Orkney all those weeks ago, although it might be of less concern than other issues that we will discuss.

The purpose of amendments 7 and 8 is to maintain standards of accountability and quality when work is delegated or contracted out to, for example, local authorities. That would be achieved through the bill’s placing a general duty on HES. As colleagues who were on the Orkney trip might recall, Orkney Islands Council representatives highlighted the potential risk of technical processes that were undertaken objectively by HES becoming susceptible to politicking in a local authority environment. I suspect that the cabinet secretary might feel that the assurances that I am seeking are already covered in the context of the general operation and accountability of public bodies, but it would be useful to hear how that is expected to work in practice.

Likewise, I note that a later group of amendments proposes specific safeguards whereby a change to the system of delegation of properties in care would require bodies other than HES to be on a list of approved organisations. I understand that that would allow for quality, accountability and so on to be vetted before any body would be permitted to take responsibility for properties in care. Such a system seems sensible, and it might have mileage for application to other situations.

I look forward to what the cabinet secretary and others have to say, and I move amendment 7.

Fiona Hyslop: I was not quite sure where amendments 7 and 8 were coming from, and it was helpful to hear Liam McArthur’s explanation of what he is trying to achieve with them.

However, I believe that the amendments run directly contrary to how we intend historic environment Scotland to operate, particularly with regard to its duty of accountability, to which Liam McArthur referred. Given that this part of schedule 1 specifically deals with how historic environment Scotland will discharge its functions under the bill, we are talking about a quite separate matter from that which is dealt with in sections 3 and 7, which relate to the delegation of ministerial functions to HES.

HES’s central purpose is to be the expert lead body that will carry out the functions that, at the moment, are carried out by Historic Scotland on behalf of ministers as well as by the Royal Commission on the Ancient and Historical Monuments of Scotland, which the bill will transfer to HES. We do not believe that it is desirable for HES to delegate to other persons its functions under the bill, as that would involve an unacceptable loss of ministerial and parliamentary oversight, and it would risk obscuring lines of responsibility for delivery, reporting and accountability.

For that reason, paragraph 12 of schedule 1, which sets out HES’s general powers including a wide variety of ways in which it can deliver its functions, does not allow formal delegation of HES’s functions to others. There is a significant difference between working in partnership or entering into contracts and the formal delegation of functions to another person’s control and
responsibility. In order for the committee—and me—to have oversight of HES and to guarantee that it is carrying out its functions, it is important that the functions can be delegated only to HES and that it should not have the power to delegate its functions under the bill to anyone other than a HES board member or a HES employee.

In short, the functions that are being given to HES should remain with HES. Nevertheless, as we will discuss later, we want HES to exercise those functions collaboratively and we have set out what would be required in contracts that HES might have with other bodies. I think that such an approach is far simpler. It is clear that the accountability and oversight rest entirely with me, but HES will also have clear responsibility for the functions that will be given to it and I would not want HES to be able to delegate its functions under the bill to anyone else.

**Liam McArthur:** In the light of what the cabinet secretary has said, particularly about the importance of the line of accountability that is owed not only to ministers but to Parliament—those points were well made—I am happy to seek to withdraw amendment 7.

*Amendment 7, by agreement, withdrawn.*

**The Convener:** Amendment 60, in the name of Liz Smith, is in a group on its own.

**Liz Smith (Mid Scotland and Fife) (Con):** When we took evidence at earlier stages of the bill, the Law Society of Scotland in particular expressed concerns about the possible conflict of interest between HES’s regulatory functions, which would at times influence the giving of grants, and its ability to seek grants from other sources. The Law Society cited, for example, the fact that the

"listing of a building may be of significance in respect of the availability of grants and other financial issues."

It pointed out that issues could arise about HES’s role in securing that funding

"if at the same time it is making grants."

There are potential issues about a conflict in respect of HES, which will hopefully be awarded charitable status in the future. That is clearly something that might exercise the Office of the Scottish Charity Regulator.

Amendment 60 is designed to ensure that there are enhanced reporting requirements on HES to ensure that its functions are kept separate and are not influenced unduly by any person or interest.

I move amendment 60.

**Liam McArthur:** Liz Smith quite rightly identifies one of the key issues that was raised with us at stage 1 about that potential conflict of interest. Whether amendment 60 addresses that conflict or whether some revision of it is required, as things stand, the bill is in need of tightening up and clarifying in relation to that point.

**Fiona Hyslop:** Amendment 60 would impose duties on HES with regard to reporting on the exercise of its regulatory functions. I am very aware of the importance of the regulatory functions that HES will carry out and the need for them to continue to be undertaken in a professional and appropriate manner, as they are at present. However, that is equally true of all HES’s functions—it is not just true of the regulatory functions. As such, the bill requires HES to report annually on the exercise of all its functions. That would, of course, include all the heritage management functions, such as designation and regulation, that have been put forward in amendment 60.

I am conscious of the concerns that were expressed during the stage 1 evidence sessions that HES might be under pressure to grow its commercial income at the expense of its regulatory functions, for example. The bill does not create such a risk. HES has a duty to undertake and report on all its functions, including designation and regulation, and it is required to do so to a high standard.

At stage 1, I addressed concerns that HES might treat internal scheduled monument consent applications differently from external ones. I think that that is the point that Liz Smith is making. Historic Scotland already has in place a voluntary process that works well, as I set out during stage 1 evidence. Our commitment to fairness and transparency is demonstrated by the fact that the bill strengthens the existing protections, as HES will not enjoy Crown immunity and will have to apply for scheduled monument consent in the same way as anyone else.

In addition, I intend to set out regulations in due course requiring all scheduled monument consent decisions, including those for HES and its own properties, to be published. That reflects the transparency that the committee asked for in a number of areas. Transparency of the regulatory functions will be obvious.

On the point about grants, I also made it quite clear in my response to the committee’s report that HES will not be able to give itself grants. That is another part of the transparency of the process, so the compromise that Liz Smith identifies would not be available. In the Government’s letter of guidance to the body, I will make quite clear the amount of money that I want to be available for bodies other than HES, so the compromise that Liz Smith talked about should not exist in that regard.
As a public body, HES will be subject to the normal expectations of high standards in delivery and accountability. A formal complaints procedure will be applied if concerns are raised, and complaints could be raised with Historic Environment Scotland, ministers, the Scottish Public Services Ombudsman and, ultimately, the courts. This committee will also have oversight and HES will be subject to Parliament's scrutiny. Therefore, through the combination of the bill's reporting requirements, which cover all its functions, including the regulatory functions, and the normal expectations and strategy obligations of HES as a public body, there are sufficient safeguards to ensure that HES picks up where Historic Scotland leaves off and will carry out its regulatory functions appropriately and to high standards.

As I said, the requirements will be set out in regulations and we will also have to publish requirements for all scheduled monument consents. That will allow the scrutiny that people are seeking through amendment 60. Therefore, I suggest that the committee opposes the amendment, having listened to my argument.

The Convener: I call Liz Smith to wind up the debate and indicate whether she intends to press or withdraw amendment 60.

Liz Smith: Cabinet secretary, issues about a potential conflict of interest remain. I hear what you say about other aspects of the bill, which you say will clarify some of that. It would be helpful ahead of stage 3 to ensure that the Government regulations that you talked about are extremely clear. If I get that guarantee, I am prepared to withdraw the amendment. There are concerns about exactly what information HES must report on given that, as you rightly point out, it could have a commercial interest and, as I say, that could lead to a conflict of interest. The regulations will be extremely important in clarifying what the controls will be.

Amendment 60, by agreement, withdrawn.

Schedule 1 agreed to.

Section 2—Functions of Historic Environment Scotland

The Convener: Amendment 1, in the name of Liam McArthur, is in a group on its own.

Liam McArthur: Colleagues will recall that we deliberated over the cases for and against the inclusion of a definition of "historic environment" in the bill. We reached the conclusion that a case for its inclusion was not compellingly made, although that decision was met with disappointment in some quarters, not least by the Law Society of Scotland.

More persuasive is the Law Society's argument that "conserving and enhancing", as set out in section 2(2)(e) are, or at least could be, mutually exclusive. To address that issue and to draw a distinction between what could be incompatible functions, rather than simply replacing "and" with "or", it might be helpful and indeed clearer to separate out the two functions into stand-alone provisions. I hope that the cabinet secretary will agree to that relatively minor but important clarification.

I move amendment 1.

Fiona Hyslop: Liam McArthur mentioned the Law Society of Scotland. It did indeed, in discussion with the Government and in its stage 1 evidence, argue that conservation and enhancement are not at all the same or even necessarily complementary, and I agree.

You will recall that much of the debate is about how we can deliver the produced strategy. A lot of consideration and thought were given to what would be the vision and aims of the historic environment strategy for Scotland. The stakeholders involved and I accepted that conservation and enhancement are not interchangeable, that we must conserve before we seek to enhance and that we can enhance only when we do not undermine basic conservation. That was brought home to me just yesterday when I visited Hospitalfield house in Arbroath, as it wants to enhance what it has, but it is conscious that it must conserve what it has, too.

The debate on the strategy—I am not sure that the Law Society of Scotland was as involved in that as the thousands of people who took part were—made it clear that the tension is important. Indeed, one must be conscious of both conservation and enhancement in order to deliver both. Importantly, one of the strategy's aims is:

"Protecting—By caring for and protecting the historic environment, ensuring that we can both enjoy and benefit from it and conserve and enhance it for the enjoyment and benefit of future generations."

People may consider the terminology issue to be pedantic, but there is a genuine debate.

We both want to achieve the same thing. However, if we listed each term separately, would that mean that one would get more attention than the other? Deliberately having the two terms together ensures that they are considered together. In the strategy and in the bill, conservation and enhancement are placed together precisely because we all recognise that inherent tension and the fact that there can be difficult choices to be made. The pairing of the two serves as a reminder that, when we think about enhancement, we should always think about conservation, and vice versa.
Giving each of the terms its own line in the bill would not change the functions in any way but would reorder them. However, I feel that, in separating the two terms, we would miss the opportunity to send a real signal to historic environment Scotland that it should always keep in mind the important point that they should be seen in relation to each other.

For those reasons, I would prefer to keep the wording in the bill as it is, which is consistent with the wording in the strategy. Although it might seem pedantic, I would prefer the committee to oppose the amendment.

10:30

Liam McArthur: I think that stage 2 is made for pedantry, in many respects.

I hear what the cabinet secretary says and I understand it at one level, although I am not sure that having “conserve” and “enhance” in separate lines would create a hierarchy among the two. There is also the possibility that in certain circumstances, although conserving prior to enhancing is inevitable, we would be able to conserve only a portion in enhancing the overall building or whatever we were looking to preserve.

Although previous amendments have been withdrawn with no view to their being brought back at stage 3, I will reflect on what the cabinet secretary has said and will perhaps have discussions with her and her officials between now and stage 3 to see whether anything in the amendment could be salvaged and then enhanced. For now, I seek to withdraw amendment 1.

Amendment 1, by agreement, withdrawn.

The Convener: Amendment 9, in the name of the cabinet secretary, is grouped with amendment 10.

Fiona Hyslop: I have made clear my intention that historic environment Scotland will continue the existing functions of Historic Scotland and the Royal Commission on the Ancient and Historic Monuments of Scotland. Those functions are set out in the bill at section 2 and in the many changes that the bill makes to the main enactments relating to ancient monuments and listed buildings. I have also made it clear that HES will operate in an even more collaborative mode. In short, it will be more of a leader, partner and facilitator within and beyond the sector. HES will respect the hugely valuable roles that are played by others, be they the many private owners of Scotland’s heritage, local authorities or voluntary groups.

At stage 1, the committee deliberated on this area in particular and several suggestions were made for improving how that ambition for collaborative working is expressed in the bill. The amendments that the Government has lodged are based on suggestions from the Built Environment Forum Scotland and the National Trust for Scotland. HES will work with all parties in a wide range of relationships, some of which will be formal but many of which will be informal. We feel that it is, therefore, right for the word “partnership” to remain in the bill, as that will be an important mode of operation for HES.

We are happy to add the word “collaboration”, as BEFS and NTS have suggested, to emphasise the wide variety of formal and informal arrangements that are covered by section 2(5). That will also align with the agreed approach of the historic environment strategy, “Our Place in Time”. The amended wording for that subsection would read:

“working in collaboration with other persons (whether in partnership or in other ways)”.

I move amendment 9.

Liam McArthur: I very much welcome amendments 9 and 10. We were all struck by the collaborative approach that we witnessed in Orkney, which was taken across a range of partners. The fact that we are able to underscore that more explicitly in the bill is to be welcomed, and it sits nicely with some of the amendments in the next group.

Fiona Hyslop: I thank the committee. It is an example of stage 1 consideration having enhanced the bill.

Amendment 9 agreed to.

The Convener: Amendment 2, in the name of Liam McArthur, is grouped with amendments 11 and 3.

Liam McArthur: If there was a defining message from those whom we met during our visit to Orkney earlier this year, surely it was the need to ensure that the newly merged body takes proper account of the needs, aspirations and expertise of those on the ground in places such as Orkney. A centralised body with an HES-knows-best attitude would be the worst of all worlds, and I am pleased to say that that view is shared pretty much across the board.

In essence, I seek a regionalised structure for the operation of HES so that, from the outset, accessibility, accountability and responsiveness are built into the new organisation even when members of staff are not physically located in the areas for which they have responsibility.

Capturing that in the bill is not straightforward and provisions would almost certainly be insufficient. It will need to be fully reflected in the overarching strategy for the historic environment...
as well as in the corporate plan and budgeting of the newly formed HES. However, amendments 2 and 3 are an attempt to ensure that, as far as the bill is concerned, that expectation is met during the establishment of HES. They require HES to “have regard to local issues and local decision-making processes” and ensure the involvement of local communities.

I welcome the fact that the cabinet secretary has attempted to do something similar in amendment 11 and I will listen carefully to what she has to say in that regard.

I appreciate that capturing this sort of thing in legal language is not at all easy. It reflects a philosophy almost as much as a structure in an organisation. However, I am sure that, having seen at first hand the levels of expertise, collaboration and appetite to protect, enhance and make accessible Orkney’s truly world-class archaeology and built heritage, colleagues will agree that we should support that through the bill as much as we possibly can.

I move amendment 2.

Fiona Hyslop: These amendments all arise out of concerns that were expressed during stage 1 and in the committee’s stage 1 report that the bill may not sufficiently recognise the local dimension. What Liam McArthur is trying to do is similar to what the Government is trying to do in that regard, and the committee will need to assess what might be the best way to deliver that.

The concerns include the importance of communities and the need to take account of local issues and decision making by local authorities. As the committee will be aware, those matters are also at the heart of the historic environment strategy’s work. I undertook to consider them again before stage 2, and amendment 11 is my proposal to address them at this point in the bill.

I emphasise that there will already be a requirement on historic environment Scotland, as on all public bodies, to take account of all relevant factors in undertaking its functions. “All relevant factors”, of course, include local issues.

To signal how seriously we take the matter, the amendment that I have lodged places the interest of local communities alongside national policies and strategies. Therefore, amendment 11 changes section 2(8) to read:

“In exercising its functions, Historic Environment Scotland must have regard—

(a) to any relevant policy or strategy published by the Scottish Ministers,

and

(b) as may be appropriate in the circumstances, to the interests of local communities.”

At the same time, HES will be a body with a national remit. Local concerns cannot, and should not, always be the overriding consideration. Therefore, I have proposed an amendment that requires HES to consider the circumstances of each situation. Amendment 11 provides a legal mechanism to deliver that local dimension.

Amendment 2 does not work, because the bill at this point refers to HES working with persons—that is, natural or legal persons, such as local authorities, community trusts or similar. Local communities can be hard to define. They might be the occupiers of a small group of houses beside a monument, the inhabitants of an island or even people who do not live locally but feel a special bond to a particular place. Therefore, legal definition of “local communities” is difficult.

HES, like any other public body, will be expected to take account of all relevant factors in reaching its decisions. That is how public bodies are required to work as a matter of first principle. The local decision-making process is already covered in different areas, such as planning, environmental impact assessment and listed building legislation.

The bill clearly defines the way in which HES will be required to interact with local authorities in areas where they play formal roles in decision making. However, we are conscious that HES will be a national body and, although the local dimension is hugely important, we would not want to signal that it was always pre-eminent, although it often will be.

We have tried to pay some attention to how we can ensure that the principles that Liam McArthur is trying to identify can be part of the bill. Mr McArthur and I are in close accord about the principle that the local dimension matters. I suppose that the issue is how we put it into the bill in a meaningful way that has a legal content and bearing. I have responded to the requests from the committee at stage 1. I promised to come back at stage 2, and amendment 11 is the result.

Clare Adamson: Once again, I agree with Liam McArthur’s intention behind amendment 2. I had a query about what is meant by local communities, but the cabinet secretary has explained the complexities in defining the expression. I listened carefully to what she said and I intend to support amendment 11 rather than amendment 2.

The Convener: There does not seem to be any difference between Liam McArthur and the cabinet secretary on the principle behind their amendments. What I am concerned about—as is the cabinet secretary—is the place at which it is intended that amendment 2 be inserted. We are well used to the fact that a person is often legally defined in a bill, but putting local communities in
the same part of the bill may be a bit of a problem. I agree with Clare Adamson. It is safer, as well as more accurate, to amend line 22 on page 2 in section 2, which is what amendment 11 proposes.

Liam McArthur: I thank those who have contributed to the debate on amendment 2. I do not think that there is any disagreement. Although I used the example of Orkney to illustrate where the need and desire for the amendment arose from, I suspect that the situation is pretty much uniform in communities throughout the country. Amendments 2 and 3 were my stab at trying to reflect that. However, coming up with language that would suit the context of the bill was a little like trying to nail jelly to a wall. Amendment 11 does it more than adequately for my purposes, so I am happy to withdraw amendment 2 and support amendment 11.

Amendment 2, by agreement, withdrawn.

Amendment 10 moved—[Fiona Hyslop]—and agreed to.

The Convener: Amendment 61, in the name of Liz Smith, is in a group on its own. I call Liz Smith to move and speak to amendment 61.

Liz Smith: When the National Trust for Scotland and Historic Houses Association Scotland supplied their evidence to the Education and Culture Committee, they reported the extent of their property maintenance backlogs, which are significant in monetary terms, at a time when the whole historic environment budget is under huge pressure.

The cabinet secretary has said, correctly, that the whole of the historic environment matters and that ownership, whether public or private, is not really the main concern. Amendment 61 is a probing amendment, to make it explicit that HES’s powers are not limited when it comes to the objects in private ownership. I would be grateful for the cabinet secretary’s response.

Amendment 61 moved—[Liz Smith].

Mary Scanlon: As a bit of a latecomer to the bill, I seek some clarity. As Liz Smith said, there seem to be real concerns, for example from the National Trust for Scotland and indeed the owners of private historic houses. The maintenance backlog will cost the National Trust £46 million, while the backlog for Historic Houses Association Scotland is £57 million and growing.

I would add to that the properties in care. Of 345 properties, 76 are privately owned. Given the funding priorities in the bill, I seek clarity about whether houses in care that are privately owned will be treated on the basis of the priority for the historic environment. Will National Trust houses and houses that are privately owned be treated equally?

Finally, Historic Houses Association Scotland said in its submission:

“Historic Environment Scotland will be an owner of significant heritage assets, a tourist operator, and a regulator.”

The association went on to say:

“Historic Environment Scotland will be responsible for awarding taxpayer funded grants for the sector and yet at the same time be in competition with the sector.”

Given that those points were made, I seek assurance that everyone will be treated fairly.

10:45

I am sorry. I said that that was my final point, but I have another. In paragraph 134 of the policy memorandum it says:

“it is expected that details of Ministerial authorisations and of grant decisions will be published.”

Perhaps the cabinet secretary will confirm that ministerial authorisations and grant decisions will be published—I hope that that will happen annually.

Fiona Hyslop: I appreciate the points that Liz Smith and Mary Scanlon made. I said in the context of an amendment that we debated earlier that we will publish the letter of guidance from Government in relation to funding and what is available for non-HES properties. That will be public and open to scrutiny by this committee and other people. Mary Scanlon correctly identified the expectation that is set out in the policy memorandum; the letter of guidance is the mechanism in that regard.

There are no funding priorities in the bill, and it is important to put on record again that historic environment Scotland will not own properties in care but act on behalf of owners. The role of private owners in protecting and managing our heritage and making it accessible for others to enjoy is vital, and it is right that we acknowledge that. It is undoubtedly the case that private owners look after a large majority of our heritage—certainly far more properties than all our public and charitable national bodies look after.

That means that HES not only should but must support and work with private owners. If it does not do so, it simply will not be able to deliver its strategic functions. That is why we have given HES the power to support and assist “any other person”. We have just reflected on the legal definition of that term, which includes all private property owners as well as national bodies, charities and local authorities. I do not think that we need to expand the phrase “any other person”, which is all-inclusive.
There is a danger that the effect of amendment 61 might be to limit rather than promote HES's role in supporting private owners. Section 2(6) is comprehensive and enables HES to give support and advice in respect of any function “of a similar nature to its functions”, whereas amendment 61 focuses on protection and management and would not cover, for example, HES helping private owners to market their historic properties as visitor attractions, as part of Scotland's overall heritage offer. Amendment 61 is—probably inadvertently—quite narrow in focus.

We talked about collaboration. Historic environment Scotland and the National Trust for Scotland will be able to work alongside the Historic Houses Association, for example, to add value to what everyone does. Such work will bring in visitors, whose contributions swell the resources that are available to private owners, and they will help everyone to maintain their part of the shared heritage.

As I said, we will be open about investment through non-HES grants, so there will be more transparency in that regard. In addition, the bill makes it clear that we expect HES to support the private sector in relation to not just protection and management but all functions. I hope that it is clear that we have made a commitment in that regard and that HES will have responsibilities in those areas. I do not want us accidentally to restrict how HES can work with private owners, which I think that amendment 61 might do.

The bill gives HES the power that it needs if it is to work collaboratively and support and assist “any other person”, including private owners. The provisions are comprehensive, but by lodging amendment 61 Liz Smith has enabled the Government to clarify them. I hope that I have made it clear that we are conscious of the importance of private ownership. HES must support and work with private owners, but it would be preferable not to restrict HES's involvement to protection and management, as amendment 61 would do.

The Convener: I call Liz Smith to wind up and indicate whether she wishes to press or withdraw her amendment.

Liz Smith: I thank the cabinet secretary for her comments, which have helpfully provided some of the clarity that is required and which is already in the bill. On that basis, I will not move amendment 61—I did not move it at the start.

The Convener: You should have. [Laughter.]

Liz Smith: I didn’t.

The Convener: I think that it is taken that you moved it, given that it is the only amendment in the group and you have spoken to it.

Liz Smith: In that case, I will seek the committee's agreement to withdraw it.

Amendment 61, by agreement, withdrawn.

Amendment 11 moved—[Fiona Hyslop]—and agreed to.

Amendment 3 not moved.

Section 2, as amended, agreed to.

Section 3—Delegation of functions in relation to properties in care

The Convener: Amendment 12, in the name of Liam McArthur, is grouped with amendments 13 to 16, 19 to 23 and 59.

Liam McArthur: In speaking to and moving earlier amendments, I covered a number of general concerns about the delegation of functions and the need to maintain quality and accountability. My amendments in this group return to the same principle, although I should say that I am conscious of the cabinet secretary's comments in relation to those earlier amendments.

From speaking to local authorities, I understand that in certain cases ministers might deem it sensible or desirable to delegate, particularly in relation to properties in care or listing. Although I agree that such an approach would be sensible, the public would expect it to be taken where the necessary level of knowledge, skills and expertise existed. I note from the cabinet secretary's amendments in this group that she seems to concur with that principle. I am certainly happy to support those amendments, but I am interested to hear her observations on amendment 12.

It is with pleasure that I move amendment 12.

Fiona Hyslop: I want to set out the rationale behind the Government’s amendments in this group, all of which relate to properties in care and associated collections that ministers hold on behalf of the people of Scotland.

I should say that I believe that Mr McArthur's amendments 12, 14, 19 and 21 will not be necessary if the proposed Government amendments 13, 15, 16, 20, 22, 23 and 59 are agreed to. It looks like we will just have to navigate our way through all these amendments in the same area, convener.

The Convener: Yes, we will.

Fiona Hyslop: Through the bill, the properties in question will be preserved and made accessible now and in future because we will ensure that they are managed by those with the best skills and
expertise. We need to be able to respond to changing circumstances and to provide what is best for a property, for the estate and for the people of Scotland.

We are committed to openness and transparency in the management of the properties, and I have lodged my amendments to ensure appropriate scrutiny of and transparency around the delegation of functions in relation to properties in care. I am grateful to the Delegated Powers and Law Reform Committee for the recommendations in its stage 1 report, which have informed the thinking behind my amendments. Indeed, I indicated at stage 1 that I would respond directly to that committee’s request with regard to this area.

Amendments 13, 16 and 59 mean that, when ministers wish to delegate functions to persons other than historic environment Scotland, those persons should be prescribed by order, subject to the affirmative procedure. Amendments 20 and 23 will have the equivalent effect with regard to the Scottish ministers’ collections. That will allow parliamentary scrutiny of the suitability of any proposed candidate for delegation other than HES and give Parliament an opportunity to question HES about the body’s experience or capability. The approach is, therefore, as transparent as the Parliament will require and is, as I have said, a response to what the Delegated Powers and Law Reform Committee recommended in its report.

Amendments 15 and 22 seek to place ministers under a duty to publish any such delegations. As I confirmed when I wrote to the Delegated Powers and Law Reform Committee, it was always my intention to publish such delegations, and amending the bill to include those provisions underlines my commitment to transparency.

My amendments balance the need for future flexibility with the need for scrutiny and transparency, and I believe that they effectively address the issue of clarity that the Delegated Powers and Law Reform Committee raised in its stage 1 report. As a result, I believe that amendments 12, 14, 19 and 21 are not required, as their effect is achieved by the Government amendments in this group. I recommend, therefore, that the committee approve the Government’s amendments rather than Liam McArthur’s.

Liam McArthur: As has been said, the principle here is agreed, and some of the detail will come forward in secondary legislation. That is probably appropriate for the purposes of this group of amendments. The cabinet secretary’s amendments also go some way towards addressing the concerns that I was trying to express. I will reflect further on the matter ahead of stage 3, but for now I am happy to withdraw amendment 12 and not to move the others.

Amendment 12, by agreement, withdrawn.

Amendment 13 moved—[Fiona Hyslop]—and agreed to.

Amendment 14 not moved.

Amendments 15 and 16 moved—[Fiona Hyslop]—and agreed to.

The Convener: Amendment 17, in the name of the cabinet secretary, is grouped with amendments 18 and 26.

Fiona Hyslop: The Delegated Powers and Law Reform Committee raised a question about the clarity of which properties could and which properties could not be delegated under the bill. The committee recommended that the bill should have a clearer definition of properties in care.

As we studied that recommendation and how it might be brought into effect, it became clear that refining the definition or specifying exclusions would in themselves pose challenges. Our particular concern was that such changes might accidentally limit the type of properties that ministers might take into care. We must bear in mind that the bill and its provisions must be sufficiently flexible to take account of future priorities. Much of what we regard as heritage today was not regarded as heritage a generation ago: industrial archaeology is a good example of that.

At stage 1 we found that definitions can be challenging, and we looked to find an alternative approach that would meet the Delegated Powers and Law Reform Committee’s requirements. We believe that we have come up with a simpler solution with the added advantage of absolute clarity.

Our proposal is to publish a list of exactly which properties held by ministers are to be treated as properties in care and thus capable of delegation under the bill. Amendment 18 provides for that and amendments 17 and 26 cross-refer to that provision. Publishing the list is the simplest and most transparent way in which we can address the challenge.

I move amendment 17.

Amendment 17 agreed to.

Section 3, as amended, agreed to.

After section 3

Amendment 18 moved—[Fiona Hyslop]—and agreed to.

Sections 4 to 6 agreed to.
Section 7—Delegation of functions in relation to collections

Amendment 19 not moved.

Amendment 20 moved—[Fiona Hyslop]—and agreed to.

Amendment 21 not moved.

Amendments 22 and 23 moved—[Fiona Hyslop]—and agreed to.

Section 7, as amended, agreed to.

Sections 8 to 10 agreed to.

Section 11—Advice, information and assistance

11:00

The Convener: Amendment 24, in the name of Liam McArthur, is grouped with amendment 25.

Liam McArthur: Thank you, convener. You will be delighted to hear that these amendments are my last hurrah for the morning.

Amendments 24 and 25 seek to ensure that local and national bodies work effectively in collaboration, which is a point that the cabinet secretary picked up earlier. They also aim to enable decision-making processes in the often sensitive area of planning, for example, to make best use of all available relevant expertise. From speaking to local authorities and the Built Environment Forum Scotland, I know that there is a desire to see the informal advice and guidance that Historic Scotland provides councils with at present continue as a core function of the new body.

Colleagues may recall that, ahead of the stage 1 debate, BEFS highlighted threats to the front-line role that planning authority officers play in safeguarding the historic environment. In particular, BEFS identified big reductions over recent years in conservation services across local authorities and it even suggested that that trend is continuing and that there are three councils providing planning services with no specialist local conservation advice.

It is all the more important therefore that planning authorities have access to appropriate external expertise so that decision makers have the information and advice that they need to determine statutory consent applications relating to the historic environment. I understand that the Government may be concerned that, with HES being obliged under the bill to provide advice to the Scottish ministers, introducing a further obligation for HES to advise local authorities might lead to awkward situations in which local authorities are in dispute with the Scottish Government. However, although I see that as a potentially valid argument, I cannot imagine that such situations would arise other than very infrequently, and I would presume that for such occasions an exception or exemption clause could be inserted in the bill to provide the reassurances that ministers require.

As for the argument that putting the proposed requirement in the bill might lead to job losses in local authorities, the forum’s evidence suggests that that horse has bolted. As one council official working in this area put it to me recently,

“He argued that that must be reflected in the bill and that guarantees that the current provision of advice will be maintained are essential. I agree and I hope that the cabinet secretary will, too.

I move amendment 24.

The Convener: No members have indicated that they wish to contribute to the debate, so I call the cabinet secretary.

Fiona Hyslop: I agree that this is an important area to discuss and explore, but I have concerns. We already discussed the local dimension when considering amendments 2, 3 and 11, and the committee of course gave much thought to this area at stage 1. I believe that the major concern in relation to amendments 24 and 25 is that local authorities currently receive support from Historic Scotland that they value and respect and there is a desire that that level of support is maintained when HES comes into operation. I think that Liam McArthur made that point.

I have already confirmed that that support will continue, so there is no need for amendment 24 to make that happen. Some forms of historic environment knowledge and expertise are scarce. Historic Scotland and RCAHMS are sometimes the only sources, and in future that is likely to be the case with HES. Local authorities currently receive support from Historic Scotland that they value and respect and there is a desire that that level of support is maintained when HES comes into operation. I think that Liam McArthur made that point.

I have already confirmed that that support will continue, so there is no need for amendment 24 to make that happen. Some forms of historic environment knowledge and expertise are scarce. Historic Scotland and RCAHMS are sometimes the only sources, and in future that is likely to be the case with HES. Local authorities regularly consult the national experts, and they wish to be reassured that HES will similarly assist them as required. I am happy to give that assurance. HES will indeed continue to offer a national resource for local authorities and others, and the bill already provides for that.

Partnership working between local and national bodies is important; it includes the input of RCAHMS on sharing and using historic environment records. Again, that will be continued and it will be underpinned by strengthening the requirement for collaboration, which we have already debated in the bill, and by a very active working group within the historic environment strategy.
Amendment 24 seeks to place a strict duty on HES whose effect would be to require HES to be constantly providing advice to local authorities without any thought of the need to deliver its functions more widely. To provide such a service, either resources would need to be diverted from other functions that are being given to HES or HES would need to, for example, be able to charge local authorities for the service. One of the assurances that I have given local authorities is that we will not add any extra financial burdens on to them as a result of the bill. I do not think that either of the possibilities that I indicated is desirable, nor do I think that they are what Liam McArthur intends by amendment 24. I think that the bill as drafted enables HES to give advice and support, and that is correct.

The changes that are proposed by amendments 24 and 25 would also put local authorities on the same footing as ministers but place HES in a subordinate position to them. That simply will not work. There are various duties on local authorities to consult HES or to notify it of things. As a statutory consultee, HES has to be able to stand apart from an authority and act independently of it.

Finally, there is a real danger in the amendments for local authorities and local communities. Most local authorities follow the national planning policy and Scottish historic environment policy recommendations, and maintain access to local expertise and information, which allows them to deal with historic environment issues. However, a few, for their own reasons, do not. It is always open to the committee to scrutinise and discuss those issues and skills with local authorities; that can be done independently anyway. If HES is required to act as an on-demand supplier, as the amendments set out, that might tempt more local authorities to reduce or abandon their own historic environment capacity, and I do not think that any of us wants that to happen. That would work directly counter to the intention that we understand lies behind the amendments, which is obviously, as Liam McArthur said, to retain and strengthen capacity at local level.

We do not want to provide some kind of get-out that would allow local authorities to reduce their own expertise because they can always call on HES. The end result could be counterproductive. There could be a more centralised and less locally aware historic environment service, and I do not think that anybody would want that.

Amendment 25 is simply unnecessary, as local authorities are already covered by the term “any other person”, which is used at that point in the bill.

For those reasons, I do not believe that the amendments would add value to the bill. Indeed, I believe that amendment 24 poses risks for HES and local authorities. Therefore, I oppose the two amendments.

Liam McArthur: I am very encouraged by what the cabinet secretary said about the importance of the relationship and ensuring that the accessibility and expertise that are currently in RCAHMS and Historic Scotland remain going forward. I do not necessarily accept that local authorities are likely to be constantly in touch with HES, but I acknowledge the concerns about the relationship between the new body and local authorities.

We may need to return to the issue. If there is any diminution in local authorities’ access to that expertise, we will be into the territory that I referred to earlier of having a merged organisation that is seen to have retrenched to the centre rather than respecting its role in providing a service and responding to the needs of all parts of the country.

For the time being, in light of what the cabinet secretary said, I am happy to seek to withdraw amendment 24.

Amendment 24, by agreement, withdrawn.
Amendment 25 not moved.

Section 11 agreed to.

Section 12—Directions and guidance

The Convener: Amendment 4, in the name of Liz Smith, is grouped with amendment 5.

Liz Smith: Throughout the consideration of the bill, there have been issues about where accountability for strategic decision making lies. That was borne out by comments from witnesses who believed that there was a slight lack of clarity on that.

In giving evidence to the committee on 20 May, the cabinet secretary indicated that, if the board of the new body were to have a difference of opinion with the Scottish Government about strategic direction, the minister would have the final say on what that direction should be. The cabinet secretary has reaffirmed that in her comments this morning. The cabinet secretary added in a letter to the convener on 28 May that, if the Scottish ministers did not think that HES was “playing a sufficiently strong role in addressing matters of concern to the wider cultural sector, as captured in the strategy, they would “direct the board of Historic Environment Scotland ... to work in partnership and ... more effectively.”

Specifically, paragraph 88 of the policy memorandum says that the Scottish ministers will be able “to give directions to Historic Environment Scotland”
about the exercise of its functions, but not on objects or properties as referenced in section 12(2). Obviously, that is to ensure operational independence. Section 12(3) says that section 12(2)(a) does not apply when the Scottish ministers have delegated functions in relation to properties in care. I think that the cabinet secretary affirmed that in oral evidence. In its response to the Delegated Powers and Law Reform Committee, the Scottish Government said that the exclusion in section 12(3)

"makes it clear that Ministers may, by contrast give directions in relation to what would be regarded as ‘curatorial’ matters in relation to those properties in care and collections, the functions in respect of which have been delegated by Ministers to HES."

As a result, some questions remain about who ultimately will be responsible for overseeing the delivery of the strategy and how HES’s corporate plan will align with the “Our Place in Time” strategy, which has already been published. The consensual language of the historic environment strategy document, which clearly envisages joint working and a shared vision, does not entirely sit easily with the language in the bill that states that the new body

"must have regard to any relevant policy or strategy published by the Scottish Ministers".

Amendments 4 and 5 are designed to address the issue by clarifying the exact relationship between ministers and the HES board and limiting the scope of ministerial power. To ensure that we do not undermine the bill’s compatibility with other similar legislation governing Scottish Natural Heritage, Creative Scotland or the National Library of Scotland, I think it important that we do not remove section 12 altogether, which obviously would have been another option. However, there is a case for ensuring that HES need not implement directions under section 12(1) if their effect would not be in line with HES’s corporate plan. Obviously, the minister will be part of the body that agrees the corporate plan, but questions of accountability will certainly arise if ministers try to move away from that agreement.

I move amendment 4.

**Fiona Hyslop:** Liz Smith is quite right to recognise the corporate plan’s importance, and I completely share her assessment of it. That is why we have included in the bill a provision for HES to create a plan and for that plan to be approved by ministers.

The corporate plan is the linchpin of HES’s corporate performance framework, and because it will be approved by ministers, we will share ownership and accountability of it. Given that the plan is a public document and that the performance report for the organisation will be published, at least annually, failure to deliver will be transparent, as will the board’s explanations for failure, including the sort of unbalancing direction that Liz Smith appears to have in mind. Moreover, the committee will be able to scrutinise the plan, as it does the corporate plans of other bodies, and to call me as minister to account if members think that I have done something that is not consistent with the corporate plan.

It is not unusual for public bodies to receive ministerial direction, which is why the provision has been included in the bill. The power of direction exists for good reason; in fact, it could be used to support HES by, for example, clarifying procedural matters such as how routine sponsorship arrangements will work. Amendments 4 and 5 seem to assume that I will regularly issue directions to HES to do something that HES thinks is a bad idea. I can say here and now that I will not do so; in fact, I cannot recall ever issuing in my seven years as a minister a formal direction in opposition to the advice of a sponsored body. It would have to be a serious matter for any minister to do so; I am not saying that that will not happen, but if it were to happen, the seriousness of the situation would be quite obvious.

The chair and board of a non-departmental public body do not require specific provision to challenge any proposals that would significantly compromise delivery of agreed outcomes such as those in the corporate plan, and the nature of the sponsorship relationship between Government and NDPBs is such that these matters are explored and usually resolved long before any formal communication or direction takes place. In short, a formal direction, especially a formal direction against the advice of a body, is the end of a long process of discussion, not the starting point.

For those reasons, I believe that the amendments would serve only to introduce unnecessary complications into the clear and straightforward relationship that is based on the corporate plan. As a public document, the corporate plan can be scrutinised at any level, and I can be held to account if it is perceived that a ministerial direction that I have issued runs counter to it. Those are exactly the circumstances in which I would expect the committee to call the minister before it and ask for the rationale behind his or her decision, and those mechanisms already exist.

It is certainly important that we have the corporate plan to ensure consistency with other public bodies, but it would be wrong to think about ministerial direction as something that would happen frequently. The matter would have to be quite significant for such a direction to be issued, and there are already plenty of mechanisms for
making me and the body accountable that involve not only me but the Parliament and the committee.

11:15

The Convener: I call Liz Smith to wind up and to indicate whether she wishes to press amendment 4.

Liz Smith: I hear what the cabinet secretary says. I do not doubt that, in the vast majority of situations, there would be the collaboration that she mentioned. I am not in any way casting aspersions on her role in the process but, as she rightly pointed out, the potential exists for there to be a disagreement, and I think that there is still a lack of clarity about such situations. On that basis, I intend to press amendment 4.

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Scanlon, Mary (Highlands and Islands) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 4 disagreed to.

Amendment 5 not moved.

Section 12 agreed to.

Section 13—Interpretation of Part 1

Amendment 26 moved—[Fiona Hyslop]—and agreed to.

Section 13, as amended, agreed to.

Section 14 agreed to.

Schedule 2—Functions of Historic Environment Scotland in relation to scheduled monuments

The Convener: Amendment 27, in the name of the cabinet secretary, is in a group on its own.

Fiona Hyslop: Amendment 27 is an amendment to tidy up the drafting of schedule 2, as the present drafting allows two slightly different readings. It seeks to adjust the wording of the bill and the changes that it makes to the Ancient Monuments and Archaeological Areas Act 1979 to ensure that ministers can set out in regulations timescales for historic environment Scotland to notify all those who need to be told that a monument has been added to or removed from the schedule, or when an entry relating to a monument has been amended.

I move amendment 27

Amendment 27 agreed to.

The Convener: Amendment 28, in the name of the cabinet secretary, is grouped with amendments 29 to 31 and 35 to 41.

Fiona Hyslop: The call-in power in the bill for scheduled monument consent is a new power that results from the creation of HES as a separate legal entity from the Scottish ministers. The amendments in this group and two subsequent groups all stem from the fact that HES will not act as ministers, unlike what happens in the current situation, in which Historic Scotland can act as ministers. At stage 1, the committee asked for clarity on roles generally, and that is what the amendments in this group, and those in subsequent groups, seek to provide.

The existing ministerial powers would have allowed us to administer call-in, but we took the view that it would provide greater clarity to set matters out in the bill. The amendments set out the processes relating to the call-in of cases involving scheduled monument consent. They provide for ministers to determine a case that has been called in under the power in the bill.

Call-in is used when a case raises matters of sufficient importance for ministers to take the decision out of the hands of the usual authority, which in this case would be HES. The power is intended to be used very sparingly. The changes align with changes that have already been made in relation to listed building consent and as part of our approach to simplifying the role of the historic environment in the planning system.

I would like to explain in a little more detail the specific provisions in the amendments and the requirement for them. They make it clear how ministers will be informed that there is a case that might merit call-in, and they will ensure that HES does not reach a decision while such a case is being considered for call-in. They make it clear how ministers will go about reaching a decision on a called-in case and communicating that decision. They also set out the consequences that follow from ministers, rather than HES, having made a decision.

Amendment 37 inserts new paragraph 2C into schedule 1 of the Ancient Monuments and Archaeological Areas Act 1979 to ensure that HES is required to notify the Scottish ministers of certain specified applications for scheduled
monument consent. The specific criteria will be set out in regulations or directions—the amendment is in effect the trigger to do that.

Amendment 37 allows ministers to ensure that we do not see every case that HES deals with, as relatively few are likely to raise issues that might make call-in worth considering. It also provides the timeframe for notification by HES and the response from ministers. In essence, we will have 28 days to call in a case, to decide that we will not call it in or to seek more time to consider the matter.

The remaining amendments make technical adjustments to allow ministers to determine applications that have been called in and to take all the necessary actions for called-in cases that HES would have taken had a case not been called in.

The group contains a large package of amendments, but they are necessary to ensure that the call-in power for consent, which is already provided for, works effectively and that everyone involved understands exactly who is responsible for which actions at each stage of the process.

I move amendment 28.

Amendment 28 agreed to.

Amendments 29 to 31 moved—[Fiona Hyslop]—and agreed to.

The Convener: Amendment 32, in the name of the cabinet secretary, is grouped with amendments 33 and 34.

Fiona Hyslop: The amendments in the group are linked to those that we have just considered. They are relatively simply explained.

As we have discussed and agreed, when ministers choose to call in a case for determination, they should take responsibility for the immediate consequences. It would not be equitable to leave historic environment Scotland with responsibility for cases on which it had not taken the decision.

It can arise, though rarely, that the applicant may have a right to compensation as a result of being refused consent. The situations in which that can occur are limited and we can find no record of anyone ever successfully seeking compensation. However, if that unusual situation arose after ministers had determined a case on call in, it would be only equitable that any compensation liability was for ministers to deal with, rather than HES.

The amendments change the provisions in the bill that adjust the 1979 act so that that is indeed the case and HES is not left with a liability to pay compensation on a decision that it has not made.

I move amendment 32.

Amendment 32 agreed to.

Amendments 33 to 41 moved—[Fiona Hyslop]—and agreed to.

The Convener: Amendment 42, in the name of the cabinet secretary, is grouped with amendments 45 to 48.

Fiona Hyslop: The need for this group of amendments flows again from the provision for historic environment Scotland rather than ministers, as is currently the case, to issue scheduled monument enforcement notices.

Scheduled monument enforcement notices are rare. They can be issued to someone who has a scheduled monument consent but appears not to be complying with its terms or when someone has carried out works without consent. Notices are usually issued only after all other forms of resolution have been exhausted.

An immediate consequence of the change that will see HES issuing the notices is an opportunity to align processes. Until now, scheduled monument enforcement notices have been issued by Historic Scotland acting for ministers, so any appeal has been to sheriffs to ensure that there is a clear separation of decision-making and appeal functions. Given that HES will have an independent existence, our intention is that any appeal should be to ministers, as is the case for appeals against similar notices in respect of listed buildings.

The amendments in the group support the simplification agenda that is laid out in the policy memorandum for the bill, as they will help to harmonise different types of heritage management regulation and help them align more closely with the planning system. That in turn will help to ensure clarity and separation of roles between HES, local authorities and ministers, while retaining appropriate ministerial oversight.

The amendments are necessary and beneficial as they clarify roles, which the committee is keen on doing, and align processes.

I move amendment 42.

Amendment 42 agreed to.

The Convener: Amendment 43, in the name of the cabinet secretary, is grouped with amendments 44 and 49 to 51.

Fiona Hyslop: A few minutes ago, we looked at the arrangements for ministers to call in scheduled monument consent cases for determination, and we have just considered some of the arrangements around scheduled monument enforcement notices. The five amendments in this group bring those two matters together.
If the recipient of a scheduled monument consent fails to adhere to the conditions of that consent or has undertaken works without consent, it is only right that the responsibility for any enforcement action should fall to ministers in situations in which they made the decision, and to HES in situations in which it made the decision.

The amendments in this group change the provisions in the bill that adjust the 1979 act so that that will indeed be the case, and so that HES will not be burdened with the responsibility of issuing enforcement notices in respect of a decision that was taken by ministers on call-in.

I move amendment 43.

Amendment 43 agreed to.

Amendments 44 to 51 moved—[Fiona Hyslop]—and agreed to.

Schedule 2, as amended, agreed to.

Section 15 agreed to.

Schedule 3

The Convener: Amendment 52, in the name of the cabinet secretary, is grouped with amendments 53 to 57.

Fiona Hyslop: Amendments 52 to 56 are necessary to support our policy intention to include a mechanism to enable the Scottish ministers to set out which classes of listed building or conservation area application planning authorities need to consult HES on before they grant or refuse consent.

The need for the amendments became clear as we engaged with stakeholders on the design of the new system in secondary legislation. Stakeholder engagement suggested strong support for a filtering mechanism at the consultation stage in the process, to enable local decisions to be taken, with the national body being consulted only on the classes of application in which a national perspective would add value.

The application of such a filter is wholly consistent with the principles of planning reform, as it will help to streamline the system, aid transparency and ensure an appropriate balance of local and national Government—again, that issue has come up in the committee a number of times. Applying the filter at the consultation stage rather than waiting until the Scottish ministers are notified of applications will also ensure that the expertise that resides within HES is utilised to best effect.

Amendment 57 will align the handling of cases in which ministerial call-in is contemplated for listed building and conservation area consent so that it operates in the same way as the planning system. That will offer consistency across the wider sector.

Our intention is to call in cases only when there is no other way of resolving issues of national significance. At present, if an application involves an extensive package of works for a listed building all of which are good conservation practice except for one important item that is not, ministers’ only options are to call in the application for determination or to let it proceed unchallenged. With amendment 57, it will become possible for ministers to indicate to the planning authority that, if the one unacceptable aspect is addressed in conditions, the case will not be called in.

The measure will serve to reduce the number of listed building and conservation area consent cases that need to be called in. It will also offer absolute clarity for all parties on which issues are giving rise to concern and how they can be resolved.

I move amendment 52.

Amendment 52 agreed to.

Amendments 53 to 56 moved—[Fiona Hyslop]—and agreed to.

Schedule 3, as amended, agreed to.

Section 16 agreed to.

Schedule 4 agreed to.

Sections 17 and 18 agreed to.

Schedule 5 agreed to.

Sections 19 to 21 agreed to.

Section 22—Applications for listed building consent

Amendment 57 moved—[Fiona Hyslop]—and agreed to.

Section 22, as amended, agreed to.

After section 22

11:30

The Convener: Amendment 58, in the name of the cabinet secretary, is in a group on its own.

Fiona Hyslop: Amendment 58 is required to enable a local authority to determine applications for consent made by itself for the demolition of a building within a conversation area, rather than ministers’ doing that, as is currently provided for in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Our intention is to change the regulations so that local authorities can determine their own listed buildings consent applications. Amendment 58 brings the process for demolition in conservation areas into line with
what is envisaged for the listed buildings consent process, and thus with the wider planning system.

As I have just said, the process for local authorities determining their own applications—where they are the developer or the owner—is already established practice in the wider planning system. Checks and balances are in place to ensure that the process works smoothly, and we replicate those here.

Local authorities will be required to consult HES before they make a decision, and in certain circumstances that will be set out in regulations they will be required to notify ministers so that a case can be called in for ministerial determination. I am satisfied that those measures will provide adequate scrutiny of the system while allowing for an increase in responsible local decision making.

I move amendment 58.

Amendment 58 agreed to.

The Convener: Amendment 62, in the name of Neil Bibby, is in a group on its own.

Neil Bibby (West Scotland) (Lab): The objective of amendment 62 is to ensure that local authorities are able to handle the management of the historic environment, whether in house or through shared services. Scottish planning policy and the Scottish historic environment policy say that local authorities should have access to relevant expertise and information, but reports have shown that capacity is increasingly stretched and there is widespread concern in the sector that front-line conservation and archaeology services are increasingly vulnerable. One such report from December 2013 stated that Scottish conservation services are contracting, with 15 per cent reductions estimated over two years.

As we have already discussed this morning, expert knowledge of the historic environment is important if authorities are to deliver on national policy commitments, which is what my amendment seeks to ensure. The amendment would allow flexibility for expertise to be located in house or through shared or contracted services.

I appreciate that the amendment is similar in ethos to what Liam McArthur proposed in amendments 24 and 25, and I note what the cabinet secretary said about them. I would welcome her comments on amendment 62 and any reassurances that she can offer to allay concerns in this area.

I move amendment 62.

Fiona Hyslop: I remind the committee that the purpose of the bill is to establish historic environment Scotland and what it will do as an organisation. We have to be careful as to what other duties and responsibilities we use the bill to load local authorities with, which is the core of what amendment 62 does.

We have just discussed HES’s advice and support to local authorities. Amendment 62 looks at the same matter, but from the local authority’s perspective. Local authorities already play a full role in protecting, managing and promoting enjoyment of our historic environment. As Councillor Hagan of the Convention of Scottish Local Authorities said at the launch of the strategy:

“Local government has a crucial role in managing and promoting the historic environment, as a positive element for individuals and their local communities alike.”

There is already clear guidance in the Scottish planning policy. It states:

“planning authorities should have access to a Sites and Monuments Record (SMR) and/or a Historic Environment Record (HER) that contains necessary information about known historic environment features and finds in their area.”

The guidance in the “Scottish Historic Environment Policy” is even clearer. It says that planning authorities

“should also ensure that they have access to sufficient information and suitably qualified and experienced staff to meet their needs.”

We commissioned the Institute of Historic Building Conservation to undertake research into the capacity and operations across Scotland’s local authority conservation services. That confirmed that

“Scotland’s conservation services continue to cope despite ongoing financial pressures, thanks not least to the dedication of skilled conservation staff.”

My view is that the existing guidance sets out very clearly what responsible local authorities should do, and I do not believe that we should make this into a statutory duty. There is a serious point about what the Government and the Parliament do in relation to providing statutory duties to local authorities in a bill that is ostensibly about what historic environment Scotland’s responsibilities should be. I believe that it is far better to work together in partnership with local authorities through our shared strategy—which is why they are a key part of the forum that I have established to take the strategy forward—and the supporting working groups to look at and resolve any issues that arise.

A good example of what we can achieve in that way is already visible in the form of Scotland’s historic environment data strategy—SHED—which was launched on 9 April 2013. It is a collaboration between national and local Government experts to ensure that historic environment knowledge and skills are pooled to best effect. It has been widely welcomed in Scotland and beyond and is exactly the sort of innovative joint working that we need if
we are to deliver on the collective ambition for the historic environment that is a thread that has run through the strategy and the work on the bill.

If there are local authorities that are not following guidance for whatever reason, we should help them by working with them through shared projects such as SHED, rather than imposing a statutory duty on them.

We are not complacent on the issue. The roles of maintaining advice, expertise and skills across the historic environment are key issues for the strategy to address. Several groups that have been established as part of the strategy are considering the issue, including the local and national Government joint historic environment group. I believe that working collaboratively with our local authority partners is the best way of addressing issues such as those that we are discussing.

The amendment concerns a theme that we keep coming back to. It was raised in Liam McArthur’s amendments, too. The issue is whether the bill respects local authorities’ rights to determine their own resourcing or whether it is going to be used in a way that it was not intended to be used—the intention behind the bill is to establish HES—in order to place on local authorities a burden that they have not asked for. My view is that we should oppose amendment 62.

**Neil Bibby:** I thank the cabinet secretary for her comments and will reflect on the discussion. I seek leave to withdraw my amendment.

Amendment 62, by agreement, withdrawn.

Section 23 agreed to.

**Section 24—Subordinate legislation**

Amendment 59 moved—[Fiona Hyslop]—and agreed to.

Section 24, as amended, agreed to.

Sections 25 and 26 agreed to.

Schedule 6 agreed to.

Sections 27 to 30 agreed to.

Long title agreed to.

**The Convener:** That ends stage 2 consideration of the bill. I thank the cabinet secretary and her officials for attending.

As our next item will be in private, I close the meeting to the public.

11:39

Meeting continued in private until 11:50.
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Historic Environment Scotland Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to establish Historic Environment Scotland; to make minor amendments to the law relating to the historic environment; and for connected purposes.

PART 1
HISTORIC ENVIRONMENT SCOTLAND

Establishment

1 Historic Environment Scotland
(1) A body corporate to be known as Historic Environment Scotland (in Gaelic, Àrainneachd Eachdraidheil na h-Alba) is established.

(2) Historic Environment Scotland has the functions conferred on it by or under this Act and any other enactment.

(3) Schedule 1 makes further provision about the status, membership, procedures and powers of Historic Environment Scotland.

General functions

2 Functions of Historic Environment Scotland
(1) Historic Environment Scotland has the general function of investigating, caring for and promoting Scotland’s historic environment.

(2) In exercising its general function, Historic Environment Scotland has the following particular functions—
   (a) identifying and recording the historic environment,
   (b) understanding and interpreting the historic environment,
   (c) learning about, and educating others about, the historic environment,
   (d) protecting and managing the historic environment,
   (e) conserving and enhancing the historic environment.

(3) Historic Environment Scotland also has the function of managing its collections as a national resource for reference, study and research.
(4) In exercising that function, Historic Environment Scotland has the following particular functions—

(a) preserving, conserving and developing its collections,

(b) making the collections accessible to the public and to persons wishing to carry out study and research,

(c) exhibiting and interpreting objects in the collections.

(5) Historic Environment Scotland, in exercising its functions, is to do so with a view to—

(a) encouraging education and research,

(b) promoting and contributing to understanding and enjoyment of the historic environment and of its collections,

(c) promoting the diversity of persons accessing the historic environment and its collections,

(d) offering and promoting leadership in relation to the historic environment,

(e) working in collaboration with other persons (whether in partnership or in other ways),

(f) contributing, as appropriate, to the development and delivery of policies and strategies in relation to the historic environment.

(6) Historic Environment Scotland may support and assist any other person exercising functions in relation to the historic environment of a similar nature to its functions.

(7) Support and assistance under subsection (6) may take the form of financial support and assistance.

(8) In exercising its functions, Historic Environment Scotland must have regard—

(a) to any relevant policy or strategy published by the Scottish Ministers, and

(b) as may be appropriate in the circumstances, to the interests of local communities.

Functions in relation to property

3 Delegation of functions in relation to properties in care

(1) The Scottish Ministers may, to such extent and subject to such conditions as they consider appropriate, delegate the exercise of any of their functions in relation to properties in care to—

(a) Historic Environment Scotland,

(b) any prescribed person Ministers consider appropriate.

(2) Subsection (1) does not apply to any function of making, confirming or approving subordinate legislation.

(3) A function arising from an agreement may be delegated under subsection (1) despite any prohibition or restriction in the agreement on delegation of the function.

(4) A delegation under subsection (1) may be made in relation to a particular property in care, a group of properties in care or all properties in care.
(5) Where a function delegated under subsection (1) relates to the making or receiving of charges of any kind, any revenue received as a result of the exercise of that function is revenue of the person to whom the function is delegated unless provision to the contrary is made in the delegation.

(6) The delegation of a function under subsection (1) does not affect—

(a) the ability of the Scottish Ministers to exercise the function,

(b) their responsibility for that function.

(7) Delegations under subsection (1)—

(a) must be in writing,

(b) may be varied or revoked at any time.

(7A) The Scottish Ministers must publish delegations under subsection (1).

(8) In this section—

“functions” includes functions—

(a) conferred by or under this Act or any other enactment, or

(b) arising from any agreement,

“prescribed”, in relation to a person to whom the Scottish Ministers may delegate functions under subsection (1)(b), means prescribed by Ministers by order,

“property in care” has the meaning given by section 3A.

3A Properties in care

(1) The Scottish Ministers must compile and maintain a list of properties in care in relation to which they may delegate functions under section 3(1).

(2) The Scottish Ministers may modify the list compiled and maintained under subsection (1) by—

(a) including a property in the list,

(b) removing a property from the list.

(3) The Scottish Ministers must publish the list compiled and maintained under subsection (1).

(4) In this section “property in care” means—

(a) any heritable property which is of historical, archaeological, architectural or cultural significance or interest, and

(b) which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers.

4 Power of entry to investigate the historic environment

(1) A person authorised in writing by Historic Environment Scotland may at any reasonable time enter any land for the purpose of inspecting the land (including any building or other structure on the land) with a view to identifying and recording any matters of historical, archaeological, architectural or cultural significance or interest.

(2) But an authorised person may not enter—
(a) any land which is occupied unless at least 14 days’ notice of the intended entry has been given to the occupier,
(b) any building or part of a building occupied as a dwelling house without the consent of the occupier.

An authorised person may, on entering any land, take with the person—
(a) any other person the authorised person considers appropriate, and
(b) any equipment or materials required for any purpose for which the power of entry is being exercised.

A person seeking to enter any land in exercise of the power of entry under this section must, if so required by or on behalf of the owner or occupier of the land, produce evidence of the person’s authority before entering.

A person commits an offence if the person without reasonable excuse intentionally obstructs a person exercising the power of entry under this section.

A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Functions in relation to collections and objects**

**5 Acquisition, deposit and disposal of objects**

(1) Historic Environment Scotland may—
(a) acquire (by purchase, exchange or gift),
(b) accept on deposit,

any object which it considers it is desirable to add to its collections.

(2) The powers in subsection (1) are in addition to any other powers or means of acquisition or acceptance on deposit that Historic Environment Scotland has.

(3) Historic Environment Scotland may dispose of any object from its collections (including any object it has created) if—
(a) the object is a duplicate of, or similar to, another object in the collections,
(b) Historic Environment Scotland considers that the object is not required for the purposes of the collections,
(c) because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections,
(d) the object is hazardous,
(e) in any other case, the Scottish Ministers agree to the disposal.

(4) Disposal under subsection (3) may be by sale, exchange, gift, return or destruction.

(5) The power in subsection (3) is in addition to any other powers of disposal that Historic Environment Scotland has.

(6) Where an object is subject to a prohibition or restriction on disposal (including one imposed by virtue of paragraph 5(5) of schedule 5), Historic Environment Scotland may dispose of the object under subsection (3) in a manner inconsistent with the prohibition or restriction only—
(a) if the person having the right to enforce the prohibition or restriction consents,
(b) in the circumstances mentioned in subsection (3)(c), if Historic Environment Scotland is unable, despite taking all reasonable steps, to ascertain the name and contact details of any person having that right, or

c) in the circumstances mentioned in subsection (3)(d).

In this section and in section 6, references to Historic Environment Scotland’s collections are to collections which are owned by, in the custody of, or otherwise under the management and control of Historic Environment Scotland (but do not include collections in relation to which Historic Environment Scotland has functions by virtue of a delegation by the Scottish Ministers under section 7).

6 Borrowing and lending of objects

(1) Historic Environment Scotland may borrow or accept loans of objects for the purposes of exhibition, study or research or in connection with the exercise of any of its functions.

(2) Historic Environment Scotland may lend any object from its collections (including any object it has created).

(3) In deciding whether or not to lend an object (and in determining the period for which and the conditions on which the object is to be lent), Historic Environment Scotland is to have regard to—

(a) the interests of users of the collections,
(b) the suitability of the prospective borrower,
(c) the purpose of the loan,
(d) the physical condition and degree of rarity of the object,
(e) any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.

(4) The powers in subsections (1) and (2) are in addition to any other powers of borrowing, accepting loans or lending that Historic Environment Scotland has.

(5) Where an object is subject to a prohibition or restriction on lending (including one imposed by virtue of paragraph 5(5) of schedule 5), Historic Environment Scotland may lend the object under subsection (2) in a manner inconsistent with the prohibition or restriction only if—

(a) the person having the right to enforce the prohibition or restriction consents, or
(b) Historic Environment Scotland is unable, despite taking all reasonable steps, to ascertain the name and contact details of any person having that right.

7 Delegation of functions in relation to collections

(1) The Scottish Ministers may, to such extent and subject to such conditions as they consider appropriate, delegate the exercise of any of their functions in relation to their collections to—

(a) Historic Environment Scotland,
(b) any prescribed person Ministers consider appropriate.

(2) A function arising from an agreement may be delegated under subsection (1) despite any prohibition or restriction in the agreement on delegation of the function.
A delegation under subsection (1) may be made in relation to—

(a) a particular collection, a group of collections or all collections,
(b) a particular object in a collection or a group of objects.

Where a function delegated under subsection (1) relates to the making or receiving of charges of any kind, any revenue received as a result of the exercise of that function is revenue of the person to whom the function is delegated unless provision to the contrary is made in the delegation.

The delegation of a function under subsection (1) does not affect—

(a) the ability of the Scottish Ministers to exercise the function,
(b) their responsibility for that function.

Delegations under subsection (1)—

(a) must be in writing,
(b) may be varied or revoked at any time.

The Scottish Ministers must publish delegations under subsection (1).

In this section—

references to the Scottish Ministers’ collections are to collections which are owned by, in the custody of, or otherwise under the management and control of the Scottish Ministers,

“functions” includes functions—

(a) conferred by or under this Act or any other enactment, or
(b) arising from any agreement,

“prescribed”, in relation to a person to whom the Scottish Ministers may delegate functions under subsection (1)(b), means prescribed by Ministers by order.

Corporate plan

Historic Environment Scotland must, before the beginning of each planning period, prepare a corporate plan and submit it for approval to the Scottish Ministers.

The corporate plan must set out—

(a) Historic Environment Scotland’s main objectives for the planning period,
(b) the outcomes by reference to which the achievement of the main objectives may be measured, and
(c) the activities which Historic Environment Scotland expects to undertake during the planning period.

The Scottish Ministers may approve the corporate plan subject to such modifications as may be agreed between them and Historic Environment Scotland.

If the Scottish Ministers approve a corporate plan, Historic Environment Scotland must—

(a) publish the plan as it considers appropriate, and
(b) lay a copy of the plan before the Scottish Parliament.
During the planning period to which a corporate plan relates, Historic Environment Scotland may review the plan and submit a revised corporate plan to the Scottish Ministers for approval.

Subsections (2) to (4) apply to a revised corporate plan as they apply to a corporate plan.

In this section “planning period” means—

(a) a first period specified by the Scottish Ministers by order, and

(b) each subsequent period of 3 years.

The Scottish Ministers may by order substitute for the period for the time being specified in subsection (7)(b) such other period as they consider appropriate.

Grants to Historic Environment Scotland by the Scottish Ministers

The Scottish Ministers may make grants to Historic Environment Scotland.

In addition to any grants made under subsection (1), the Scottish Ministers may make grants to Historic Environment Scotland for particular purposes.

Grants under this section are subject to such terms and conditions (including as to repayment) as the Scottish Ministers may determine.

Grants and loans by Historic Environment Scotland

Historic Environment Scotland may make grants and loans to such persons as it considers appropriate—

(a) for the purposes of, or in connection with, the exercise of its functions,

(b) where it appears to be conducive to the exercise of its functions.

A grant or loan under subsection (1) is subject to such terms and conditions (including as to repayment) as Historic Environment Scotland may determine.

A grant or loan under subsection (1) must be in accordance with any general authorisation given by the Scottish Ministers to Historic Environment Scotland as to the making of such grants and loans.

Advice, information and assistance

Historic Environment Scotland must provide the Scottish Ministers with advice, information and assistance on any matter relating to its functions when, and in the manner, Ministers require.

Historic Environment Scotland may provide such advice, information and assistance at any other time.

Historic Environment Scotland may provide advice, information and assistance relating to the historic environment to any other person.
12 Directions and guidance

(1) The Scottish Ministers may give Historic Environment Scotland directions (of a general or specific nature) about the exercise of its functions.

(2) But the Scottish Ministers may not give Historic Environment Scotland directions as to the exercise of its functions in relation to—

(a) any particular historic property, collection or object,

(b) the making of grants or loans under section 10.

(3) Subsection (2)(a) does not apply in relation to the exercise of functions which Historic Environment Scotland has by virtue of a delegation by the Scottish Ministers under section 3 or 7.

(4) Historic Environment Scotland must—

(a) comply with any directions given to it by the Scottish Ministers under this section,

(b) have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.

(5) A direction under this section is to be given in writing.

(6) The Scottish Ministers must publish directions given or guidance issued under this section.

(7) The Scottish Ministers may vary or revoke any direction given under this section.

(8) In subsection (2)(a) “historic property” means a heritable property which is of historical, archaeological, architectural or cultural significance or interest.

Interpretation

13 Interpretation of Part 1

In this Part—

“collection” means a collection of objects,

“object” means an object, document or other thing having historical, archaeological, architectural or cultural significance or interest relating to the historic environment generally or with particular reference to Scotland, and

“property in care” has the meaning given by section 3A.

PART 2

FUNCTIONS IN RELATION TO SCHEDULED MONUMENTS

14 Historic Environment Scotland’s functions in relation to scheduled monuments

Schedule 2 makes provision for Historic Environment Scotland’s functions in relation to scheduled monuments (within the meaning of the 1979 Act) as well as making other modifications as follows—

Part 1 has the effect of conferring on Historic Environment Scotland the function of compiling and maintaining the schedule of monuments under the 1979 Act,

Part 2—
Historic Environment Scotland Bill

Part 3—Functions in relation to listing and conservation

(a) has the effect of conferring on Historic Environment Scotland functions in relation to the grant, modification and revocation of scheduled monument consents,

(b) modifies the functions of the Scottish Ministers in relation to modification and revocation of such consents, and

(c) makes other consequential modifications, including to the procedure for applications for the grant, modification and revocation of such consents,

Part 3 has the effect of conferring on Historic Environment Scotland functions in relation to scheduled monument enforcement notices,

Part 4 has the effect of conferring on Historic Environment Scotland functions in relation to stop notices and temporary stop notices,

Part 5 makes provision—

(a) for appeals from decisions of Historic Environment Scotland to the Scottish Ministers, and

(b) for the referral of applications for and related to scheduled monument consent from Historic Environment Scotland to the Scottish Ministers,

Part 6 has the effect of conferring on Historic Environment Scotland the function of compiling and maintaining the inventory of gardens and designed landscapes and the inventory of battlefields,

Part 7 makes other modifications of the 1979 Act in relation to Historic Environment Scotland’s functions under that Act.

PART 3

FUNCTIONS IN RELATION TO LISTING AND CONSERVATION

Historic Environment Scotland’s functions in relation to listed buildings

Schedule 3 makes provision for Historic Environment Scotland’s functions in relation to listed buildings and conservation areas (within the meaning of the 1997 Act) as well as making other modifications as follows—

Part 1 has the effect of conferring on Historic Environment Scotland the function of compiling or approving lists of buildings of special architectural or historic interest,

Part 2 has the effect of conferring on Historic Environment Scotland functions in relation to the grant, modification and revocation of listed building consent,

Part 3 has the effect of conferring on Historic Environment Scotland functions in relation to conservation areas,

Part 4 makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers,

Part 5 makes other modifications of the 1997 Act in relation to Historic Environment Scotland’s functions under that Act.
PART 4

FUNCTIONS IN RELATION TO THE MARINE ENVIRONMENT

16 Historic Environment Scotland’s functions in relation to the marine environment

Schedule 4 modifies the Marine (Scotland) Act 2010 (asp 5) to make provision for Historic Environment Scotland’s functions in relation to the marine environment.

PART 5

DISSOLUTION OF RCAHMS AND TRANSFER OF STAFF ETC. TO HISTORIC ENVIRONMENT SCOTLAND

17 Dissolution of RCAHMS

The Royal Commission on the Ancient and Historical Monuments of Scotland is dissolved.

18 Transfer of staff and property to Historic Environment Scotland

Schedule 5 contains provision about the transfer to Historic Environment Scotland of staff and property of the Royal Commission on the Ancient and Historical Monuments of Scotland and of the Executive Agency of the Scottish Ministers known as Historic Scotland.

PART 6

FURTHER MODIFICATIONS IN RELATION TO THE HISTORIC ENVIRONMENT

Grants and loans

19 Grants and loans by the Scottish Ministers

(1) The Historic Buildings and Ancient Monuments Act 1953 (c.49) is amended as follows.

(2) In section 4 (grants for preservation of historic buildings etc.)—

(a) in subsection (1) “outstanding” in each place is repealed,

(b) after that subsection insert—

“(1A) The power conferred by subsection (1) to make grants for the purposes mentioned includes power to make loans for those purposes.”,

(c) in subsection (3) after “grant” in both places insert “or loan”,

(d) after subsection (4) insert—

“(5) A grant or loan made under this section is to be made on such terms and conditions (including as to repayment and, in the case of a loan, payment of interest) as the Scottish Ministers may determine.”,

(e) the title to the section becomes “Grants and loans for preservation of historic buildings etc.”.

(3) In the 1979 Act, in section 45A (grants and loans for the development and understanding of matters of historic etc. interest) subsection (3) is repealed.
Scheduled monuments

20 Local inquiries in relation to scheduled monuments etc.

(1) The 1979 Act is amended as follows.

(2) After section 23 (annual reports of Ancient Monuments Boards) insert—

“Local inquiries

23A Local inquiries

(1) The Scottish Ministers may hold a local inquiry for the purposes of the exercise of any of their functions under this Part of this Act.

(2) The Scottish Ministers must appoint a person to hold the inquiry and to report on it to them.

(3) Subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held by virtue of subsection (1) as they apply to an inquiry held by virtue of subsection (1) of that section.

23B Local inquiries: further provision

(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed in connection with inquiries or hearings conducted under or by virtue of this Act.

(2) Regulations under subsection (1) may in particular make provision—

(a) about the notification of an inquiry or hearing,

(b) about the manner in which an inquiry or hearing is to be conducted,

(c) as to procedure in connection with matters preparatory to such inquiries or hearings and in connection with matters subsequent to them.”.

Listed buildings

21 Meaning of “listed building”

(1) The 1997 Act is amended as follows.

(2) In section 1 (listing of buildings of special architectural or historical interest)—

(a) in subsection (4) after “shall” insert “, subject to subsection (4A),”,

(b) after that subsection insert—

“(4A) In a list compiled or approved under this section, an entry for a building may provide—

(a) that an object or structure mentioned in subsection (4)(a) or (b) is not to be treated as part of the building for the purposes of this Act,

(b) that any part or feature of the building is not of special architectural or historic interest.”.

22 Applications for listed building consent

(1) The 1997 Act is amended as follows.

(2) In section 12 (duty to notify Scottish Ministers of applications)—
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Part 7—Final provisions

(a) in subsection (1) after “shall” insert “, where subsection (1A) applies,”,

(b) after that subsection insert—
“(1A) This subsection applies where—
(a) regulations, or
(b) directions given to planning authorities by the Scottish Ministers,
provide that the application must be so notified.

(1B) Directions under subsection (1A)(b) may be given to—
(a) planning authorities generally,
(b) a particular planning authority, or
(c) a description of planning authority.”.

(3) In section 13 (directions concerning notification of applications etc.)—
(a) subsections (1) and (2) are repealed,
(b) in subsection (4) “(1) or” is repealed.

(4) In section 14 (decision on application for listed building consent) after subsection (2) insert—
“(2A) A planning authority, if minded to grant listed building consent for any works—
(a) must consider imposing a condition specified in, or of a nature indicated in, directions given to them by the Scottish Ministers, and
(b) must not grant such consent without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or is not needed.”.

Conservation areas

22A Control of demolition

(1) The 1997 Act is amended as follows.

(2) In section 66 (control of demolition in conservation areas) in subsection (2) for paragraphs (a) and (b) substitute—
“(a) the planning authority, or
(b) the Scottish Ministers”.

PART 7
FINAL PROVISIONS

23 Interpretation

In this Act—
“1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979 (c.46),
“1997 Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).

Subordinate legislation

24 Subordinate legislation

5 (1) Orders under this Act are subject to the negative procedure.

(2) Subsection (1) does not apply to—

(za) orders under section 3(8),

(zb) orders under section 7(7),

(a) orders under section 25(1) for which provision is made in subsection (3),

(b) orders under section 29(2).

(3) An order under section 25(1) which adds to, replaces or omits the text of an Act is subject to the affirmative procedure.

Ancillary provision

25 Ancillary provision

15 (1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act or any provision of it.

(2) An order under subsection (1) may modify any enactment (including this Act).

Consequential modifications

26 Consequential modifications

Schedule 6 contains amendments and repeals consequential on the establishment of Historic Environment Scotland.

Crown application

27 Crown application: criminal offences

(1) No contravention by the Crown of section 4(5) makes the Crown criminally liable.

(2) But the Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), this Act applies to persons in the public service of the Crown as it applies to other persons.

28 Crown application: powers of entry

(1) A power of entry conferred by or under this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.

(2) The following table determines what is “Crown land” and who the “appropriate authority” is in relation to each kind of Crown land.
### Crown land

<table>
<thead>
<tr>
<th>Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown estate</th>
<th>The Crown Estate Commissioners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other land an interest in which belongs to Her Majesty in right of the Crown</td>
<td>The office-holder in the Scottish Administration or the Government department having the management of the land</td>
</tr>
<tr>
<td>Land an interest in which belongs to Her Majesty in right of Her private estates</td>
<td>The person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers</td>
</tr>
<tr>
<td>Land an interest in which belongs to an office-holder in the Scottish Administration</td>
<td>The relevant office-holder in the Scottish Administration</td>
</tr>
<tr>
<td>Land an interest in which belongs to a Government department</td>
<td>The relevant Government department</td>
</tr>
<tr>
<td>Land an interest in which is held in trust for Her Majesty for the purposes of the Scottish Administration</td>
<td>The relevant office-holder in the Scottish Administration</td>
</tr>
<tr>
<td>Land an interest in which is held in trust for Her Majesty for the purposes of a Government department</td>
<td>The relevant Government department</td>
</tr>
</tbody>
</table>

(3) “Government department” means a department of the Government of the United Kingdom”.

(4) References to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

### Commencement and short title

#### Commencement

1. This section and sections 23 to 25, 27, 28 and 30 come into force on the day after Royal Assent.

2. The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

3. An order under subsection (2) may include transitional, transitory or saving provision.

#### Short title

The short title of this Act is the Historic Environment Scotland Act 2014.
| 5  | (1) Historic Environment Scotland is not a servant or agent of the Crown. |
|    | (2) It does not enjoy any status, immunity or privilege of the Crown. |
|    | (3) Its property is not property of, or property held on behalf of, the Crown. |
|    | (4) Its members and staff are not to be regarded as civil servants. |

**Membership**

| 10 | (1) Historic Environment Scotland is to consist of no fewer than 10 and no more than 15 persons appointed by the Scottish Ministers as members. |
|    | (2) The Scottish Ministers are to appoint one of those members to chair Historic Environment Scotland. |
|    | (3) The Scottish Ministers must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of Historic Environment Scotland. |
|    | (4) The Scottish Ministers must, when making appointments under sub-paragraph (1), do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements. |
|    | (5) A member holds and vacates office in accordance with terms and conditions determined by the Scottish Ministers. |
|    | (6) A member may resign by written notice to the Scottish Ministers. |
|    | (7) The Scottish Ministers may reappoint as a member a person who is (or has been) a member. |
|    | (8) The Scottish Ministers may by order amend sub-paragraph (1) to substitute for the minimum or maximum number of members for the time being specified such other number or numbers of members. |
|    | (9) In sub-paragraph (4) “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part II of schedule 5 to the Scotland Act 1998 (c.46). |

**Persons disqualified from membership**

| 3  | The following persons may not be appointed as (and may not continue to be) members of Historic Environment Scotland— |
|    | (a) members of the House of Commons, |
|    | (b) members of the House of Lords, |
|    | (c) members of the Scottish Parliament, |
|    | (d) members of the European Parliament. |
Removal of members

4 (1) The Scottish Ministers may, by written notice, revoke the appointment of a person as a member of Historic Environment Scotland if—

(a) the person becomes insolvent,

(b) the person has been absent, without reasonable excuse, from 3 consecutive meetings of Historic Environment Scotland,

(c) the person is otherwise unfit to be a member or unable for any reason to discharge the person’s functions as member.

(2) A person becomes insolvent when—

(a) the person’s estate is sequestrated,

(b) the person grants a trust deed for creditors or makes a composition or arrangement with creditors,

(c) a voluntary arrangement proposed by the person is approved,

(d) the person’s application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17),

(e) the person is adjudged bankrupt, or

(f) the person becomes subject to any other kind of order or arrangement analogous to those described in paragraphs (a) to (e) anywhere in the world.

Remuneration, allowances and expenses of members

5 Historic Environment Scotland must pay each member such remuneration, allowances and expenses as the Scottish Ministers may determine.

Chief executive and staff

6 (1) Historic Environment Scotland is to employ a person as chief executive.

(2) The person employed as chief executive may not be a member of Historic Environment Scotland.

(3) The chief executive is to be appointed—

(a) by Historic Environment Scotland with the approval of the Scottish Ministers,

(b) on terms and conditions determined by it and approved by the Scottish Ministers.

(4) Historic Environment Scotland may employ any other staff necessary for the exercise of its functions.

(5) Staff of Historic Environment Scotland are to be employed on terms and conditions determined by it and approved by the Scottish Ministers.

Pensions, allowances and gratuities

7 (1) Historic Environment Scotland may, with the approval of the Scottish Ministers, make provision about such pensions, allowances or gratuities in respect of any person who is or has been an employee of Historic Environment Scotland as it may determine.

(2) That provision may take the form of—
(a) payment (or making arrangements for the payment) of,
(b) payments or contributions towards the provision of,
(c) providing and maintaining schemes (whether contributory or not) for the payment of,
such pensions, allowances or gratuities.

(3) Those pensions, allowances or gratuities may include pensions, allowances or gratuities by way of compensation for loss of office.

**Committees**

8 (1) Historic Environment Scotland may establish committees for any purpose relating to its functions.

(2) Historic Environment Scotland is to determine the composition of its committees.

(3) Historic Environment Scotland may appoint a person who is not a member of Historic Environment Scotland to be a member of a committee.

(4) But such a person is not entitled to vote at meetings of the committee.

(5) A committee must comply with any directions given to it by Historic Environment Scotland.

**Procedure and meetings**

9 (1) Historic Environment Scotland may determine its own procedures and those of its committees, including the quorum at any meeting of it or of a committee.

(2) The following persons may attend and take part in any meeting of Historic Environment Scotland or of a committee—

(a) members of the Scottish Government,

(b) persons authorised by the Scottish Ministers.

(3) The persons mentioned in sub-paragraph (2) are not entitled to vote at such meetings.

**Delegation of functions**

10 (1) Historic Environment Scotland may authorise any of the following to exercise such of its functions (and to such extent) as it may determine—

(a) a member,

(b) any of its committees,

(c) the chief executive,

(d) any other employee.

(2) But Historic Environment Scotland may not authorise the function of approving annual reports and accounts to be exercised by any other person.

(3) Nothing in sub-paragraph (1) affects the responsibility of Historic Environment Scotland for the exercise of its functions.
Validity of proceedings and actions

11  The validity of proceedings or actions of Historic Environment Scotland (or of a committee) is not affected by—

   (a) any vacancy in the membership of Historic Environment Scotland or of the committee,

   (b) any defect in the appointment of a member of Historic Environment Scotland or of the committee,

   (c) the disqualification of a person as such a member after appointment.

General powers

12  (1) Historic Environment Scotland may do anything which appears to it—

    (a) to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions,

    (b) to be conducive to the exercise of those functions.

   (2) In particular, Historic Environment Scotland may—

    (a) enter into contracts,

    (b) borrow money from the Scottish Ministers or, with the approval of the Scottish Ministers, from other persons,

    (c) enter into any business or undertaking,

    (d) form, promote or acquire (whether alone or with others) companies (within the meaning of the Companies Act 2006 (c.46)),

    (e) enter into joint ventures with others,

    (f) undertake or execute any charitable trust,

    (g) invest sums not immediately required in relation to the exercise of its functions,

    (h) accept gifts of money and other property,

    (i) obtain advice or assistance from any person who is, in Historic Environment Scotland’s opinion, qualified to give it,

    (j) carry out or commission research,

    (k) issue publications,

    (l) make charges in connection with the exercise of its functions (including charges for the provision of goods and services).

   (3) Historic Environment Scotland may not acquire and dispose of land without the consent of the Scottish Ministers.

   (4) In sub-paragraph (2)(f) a trust is a charitable trust if all its purposes are charitable purposes within the meaning of section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

   (5) In sub-paragraph (2)(l) the reference to Historic Environment Scotland’s functions does not include functions it has by virtue of a delegation by the Scottish Ministers under section 3 or 7.
Accounts

13 (1) Historic Environment Scotland must—
   (a) keep proper accounts and accounting records,
   (b) prepare in respect of each financial year a statement of accounts, and
   (c) send a copy of the statement to the Scottish Ministers.

(2) Historic Environment Scotland must comply with any directions which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1).

(3) Historic Environment Scotland must send the statement of accounts to the Auditor General for Scotland for auditing.

Reports

14 (1) As soon as practicable after the end of each financial year, Historic Environment Scotland must prepare a report—
   (a) providing information on the exercise of its functions during that year,
   (b) containing any other information that the Scottish Ministers require, and
   (c) including a copy of the statement of accounts for that year audited by the Auditor General for Scotland.

(2) Historic Environment Scotland must—
   (a) send a copy of the report to the Scottish Ministers, and
   (b) publish the report.

(3) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.

(4) Historic Environment Scotland may publish such other reports and information on matters relevant to its functions as it considers appropriate.

SCHEDULE 2
(introduced by section 14)

FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO SCHEDULED MONUMENTS

PART 1

SCHEDULE OF MONUMENTS

1  The 1979 Act is amended as follows.

2  In section 1 (Schedule of monuments)—

   (a) in subsection (1)—
       (i) for “The Secretary of State” substitute “Historic Environment Scotland”,
       (ii) for “he” substitute “it”,
   (b) in subsection (3)—
       (i) for first “the Secretary of State” substitute “Historic Environment Scotland”,

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(ii) for “him” substitute “it”,

(c) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”,

(d) in subsection (5) for “The Secretary of State” substitute “Historic Environment Scotland”,

(ea) for subsection (6) substitute—

“(6) Where Historic Environment Scotland—

(a) includes a monument in the Schedule under subsection (3),

(b) amends the entry in the Schedule relating to a monument, or

(c) excludes a monument from the Schedule,

it must notify such persons as may be prescribed in such form and manner, and within such time, as may be prescribed of the action taken.”,

(f) subsections (7) and (8) are repealed,

(g) in subsection (10)(b) for “the Secretary of State” substitute “Historic Environment Scotland”.

3 After section 1A (Commission’s functions as to informing and publishing) insert—

“1B Publication of the Schedule

(1) Historic Environment Scotland must—

(a) publish the Schedule compiled and maintained under section 1, and any amendments of the Schedule, and

(b) make the Schedule available for public inspection,

in such manner as may be prescribed.

(2) The Scottish Ministers may by regulations make further provision for—

(a) the publication of the Schedule,

(b) the making of the Schedule available for public inspection,

(c) the notification of the inclusion of a monument in, the amendment of an entry relating to a monument in or the exclusion of a monument from the Schedule.”.

PART 2

SCHEDULED MONUMENT CONSENT

4 The 1979 Act is further amended as follows.

5 In section 2 (control of works affecting scheduled monuments)—

(a) in subsection (3)(a) after “State” insert “or Historic Environment Scotland”,

(ba) in subsection (3A) for paragraph (b) substitute—

“(b) consent for the retention of the works is granted by the Scottish Ministers or by Historic Environment Scotland,”,
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(c) in subsection (5) in paragraph (b) and in the fullout for “the Secretary of State” in each place substitute “Historic Environment Scotland”,

(d) after that subsection insert—

“(5A) The conditions that may be attached to scheduled monument consent under subsection (4) include a condition reserving specified details of the works (whether or not set out in the application for consent) for subsequent approval by Historic Environment Scotland.”,

(e) in subsection (9) for “the Secretary of State” substitute “Historic Environment Scotland”.

6 After section 3 (grant of scheduled monument consent by order of the Scottish Ministers) insert—

“3A Application for variation or discharge of conditions

(1) Any person interested in a scheduled monument in relation to which scheduled monument consent has been granted subject to conditions may apply to Historic Environment Scotland for the variation or discharge of the conditions.

(2) The application must indicate what variation or discharge of conditions is applied for and Part 1 of schedule 1 applies to such an application as it applies to an application for scheduled monument consent.

(3) Historic Environment Scotland or, as the case may be, the Scottish Ministers may, on such an application—

(a) vary or discharge the conditions attached to the consent (whether or not the application relates to the condition varied or discharged),

(b) add new conditions consequential upon the variation or discharge.”.

In section 4 (duration, modification and revocation of scheduled monument consent)—

(a) for subsections (3) and (4) substitute—

“(3) If it appears to Historic Environment Scotland that it is expedient to modify or revoke a scheduled monument consent, it may by order under this section modify or revoke the consent to such extent as it considers expedient.

(4) The power conferred by subsection (3) to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.”,

(b) in subsection (5) for “directions” substitute “orders”.

8 After that section insert—

“4A Modification and revocation of scheduled monument consent by Scottish Ministers

(1) If it appears to the Scottish Ministers that it is expedient to modify or revoke a scheduled monument consent, they may by order under this section modify or revoke the consent to such extent as they consider expedient.

(2) The Scottish Ministers may not make an order under this section without consulting Historic Environment Scotland.
(3) Where the Scottish Ministers propose to make such an order, they must serve notice on—
   (a) the owner of the scheduled monument affected,
   (b) where the owner is not the occupier of the monument, the occupier, and
   (c) any other person who in their opinion will be affected by the order.

(4) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.

(5) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they make the order, give such an opportunity both to that person and to Historic Environment Scotland.

(6) The power conferred by this section to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.

(7) An order under this section has effect as if it had been made by Historic Environment Scotland under section 4 and confirmed by the Scottish Ministers under paragraph 10 of Part 2 of schedule 1.”.

9 In section 5(1) (execution of works for preservation of a scheduled monument in cases of urgency)—
   (a) for “the Secretary of State” substitute “Historic Environment Scotland”,
   (b) for “he” substitute “it”,
   (c) for “his” substitute “its”.

10 In section 6 (powers of entry for inspection of scheduled monuments)—
   (a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,
   (b) in subsection (2) after “State” in both places insert “or Historic Environment Scotland”,
   (c) in subsection (3) after “State” insert “or Historic Environment Scotland”,
   (d) in subsection (3A) after “Ministers” insert “or Historic Environment Scotland”,
   (e) in subsection (4) after “State” insert “or Historic Environment Scotland”,
   (f) in subsection (5) after “State” in both places insert “or Historic Environment Scotland”.

11 In section 7 (compensation for refusal of scheduled monument consent)—
   (a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland or, where the Scottish Ministers refused the scheduled monument consent or granted it subject to conditions, Ministers”,
   (b) in subsection (3) for “the Secretary of State’s” substitute “Historic Environment Scotland’s or, as the case may be, the Scottish Ministers”,
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(1) In subsection (6)(b) for “the Secretary of State” substitute “Historic Environment Scotland or, as the case may be, the Scottish Ministers”.

12 In section 8 (recovery of compensation under section 7 on subsequent grant of consent)—

(a) in subsection (1) after “State” in both places insert “or Historic Environment Scotland”,

(b) in subsection (2A)(b) after “State” insert “or Historic Environment Scotland”,

(c) in subsection (3)—

(i) after “State” in each place insert “or Historic Environment Scotland”,

(ii) after “his” in both places insert “or its”,

(d) in subsection (4) after “State” insert “or Historic Environment Scotland”.

13 In section 9(1) (compensation where works cease to be authorised) after “State” insert “or Historic Environment Scotland”.

14 (1) Part 1 of schedule 1 (applications for scheduled monument consent) is amended as follows.

(2) In paragraph 1(1) for “the Secretary of State” substitute “Historic Environment Scotland”.

(3) In paragraph 2(1) for “The Scottish Ministers” substitute “Historic Environment Scotland”.

(4) In paragraph 2B—

(a) in sub-paragraph (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in sub-paragraph (2)(a)—

(i) after “received,” insert “Historic Environment Scotland has or”,

(ii) after “refused” insert “or the Scottish Ministers have dismissed an appeal against the refusal of, or an appeal under section 4B(3) in respect of,”,

(c) in sub-paragraph (2)(b)—

(i) for “their” substitute “its”,

(ii) after “refused” insert “or the appeal was dismissed”,

(d) in sub-paragraph (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

(4A) After that paragraph insert—

“2C (1) If Historic Environment Scotland, on an application to it for scheduled monument consent, intends to grant that consent, it must, where sub-paragraph (2) applies, first notify the Scottish Ministers of the application.

(2) This sub-paragraph applies where—

(a) regulations, or

(b) directions given to Historic Environment Scotland by the Scottish Ministers,”
provide that the application must be so notified.

(3) The Scottish Ministers may within the period of 28 days beginning with the date of the notification—
   (a) direct the reference of the application to them under section 3B, or
   (b) give notice to Historic Environment Scotland that they require further time in which to consider whether to require such a reference.

(4) Historic Environment Scotland must not grant scheduled monument consent until—
   (a) the period mentioned in sub-paragraph (3) has expired without the Scottish Ministers directing the reference of the application to them or giving notice under paragraph (b) of that sub-paragraph, or
   (b) the Scottish Ministers have notified Historic Environment Scotland that they do not intend to require the reference of the application.

2D The Scottish Ministers may give directions to Historic Environment Scotland requiring it, in such cases or classes of case as may be specified in the directions, to notify to Ministers and to such other persons as may be so specified—
   (a) any applications made to it for scheduled monument consent, and
   (b) the decisions taken on those applications.”.

(5) In paragraph 3—
   (a) in sub-paragraph (1) after “State” insert “or Historic Environment Scotland”,
   (b) for sub-paragraphs (2) and (3) substitute—
     “(2) The Scottish Ministers may by regulations make provision for the procedure to be followed by Historic Environment Scotland in considering and determining applications for scheduled monument consent.”,
   (c) in sub-paragraph (4)—
     (i) after “State” insert “or, as the case may be, Historic Environment Scotland”,
     (ii) for “his” substitute “the”,
     (iii) “to him” is repealed.

(6) Paragraph 4 is repealed.

In Part 2 of schedule 1 (modification and revocation of scheduled monument consent)—
   (a) paragraphs 5 to 9 are repealed,
   (b) after paragraph 9 insert—
     “10(1) Except as provided for in paragraph 11, an order made by Historic Environment Scotland under section 4 modifying or revoking a scheduled monument consent does not take effect unless it is confirmed by the Scottish Ministers.

(2) Where Historic Environment Scotland submits an order to the Scottish Ministers for confirmation, it must serve notice on—
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(a) the owner of the scheduled monument affected,

(b) where the owner is not the occupier of the monument, the occupier, and

(c) any other person who in its opinion will be affected by the order.

(3) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.

(4) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they confirm the order, give such an opportunity both to that person and to Historic Environment Scotland.

(5) The Scottish Ministers may confirm any such order submitted to them either without modification or subject to such modifications as they consider expedient.

11(1) Where sub-paragraph (2) applies, Historic Environment Scotland—

(a) need not submit the order under section 4 modifying or revoking the scheduled monument consent to the Scottish Ministers for approval,

(b) must instead take the steps mentioned in sub-paragraph (3).

(2) This sub-paragraph applies where—

(a) the owner of the scheduled monument affected,

(b) where the owner is not the occupier of the monument, the occupier, and

(c) all other persons who in Historic Environment Scotland’s opinion will be affected by the order,

have notified Historic Environment Scotland in writing that they do not object to the order.

(3) The steps referred to in sub-paragraph (1)(b) are—

(a) advertising in the prescribed manner the fact that the order has been made,

(b) serving notice to the same effect on the persons mentioned in sub-paragraph (2), and

(c) sending a copy of any such advertisement to the Scottish Ministers not more than 3 days after its publication.

(4) The advertisement under sub-paragraph (3)(a) must specify—

(a) the period within which persons affected by the order may give notice to the Scottish Ministers that they require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose, and

(b) the period at the end of which, if no such notice is given to the Scottish Ministers, the order may take effect by virtue of this paragraph and without being confirmed by the Scottish Ministers.

(5) The period referred to in sub-paragraph (4)(a) must not be less than 28 days from the date on which the advertisement first appears.
(6) The period referred to in sub-paragraph (4)(b) must not be less than 14 days from the end of the period referred to in sub-paragraph (4)(a).

(7) The notice under sub-paragraph (3)(b) must include a statement to the effect that no compensation is payable under section 9 in respect of an order which takes effect by virtue of this paragraph.

(8) The order takes effect at the end of the period referred to in sub-paragraph (4)(b) without being confirmed by the Scottish Ministers if—

(a) no person claiming to be affected by the order has given notice to the Scottish Ministers as mentioned in sub-paragraph (4)(a) within the period referred to in that sub-paragraph, and

(b) the Scottish Ministers have not directed that the order be submitted to them for confirmation.”.

PART 3

SCHEDULED MONUMENT ENFORCEMENT NOTICES

The 1979 Act is further amended as follows.

In section 9A (power to issue scheduled monument enforcement notice)—

(a) in subsection (1)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) in paragraph (b) for “they may, if they consider” substitute “it may, if it considers”,

(b) in subsection (2)(a) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,

(c) in subsection (3)(b)—

(i) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(ii) for “they consider” substitute “it considers”,

(iii) for “them” substitute “it”,

(d) in subsection (4) for “the Scottish Ministers are” substitute “Historic Environment Scotland is”.

In section 9B (scheduled monument enforcement notices: further provision)—

(a) in subsection (4)(b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (5)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) in paragraph (a) for “their” substitute “its”,

(c) in subsection (6) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(d) in subsection (7) for “The Scottish Ministers” substitute “Historic Environment Scotland”.

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18A In section 9C (appeal against scheduled monument enforcement notice)—

(a) in subsection (1) for “by summary application appeal to the sheriff” substitute “appeal to the Scottish Ministers”,

(b) in subsection (2)—

(i) before paragraph (a) insert—

“(za) that the monument is not of national importance,”,

(ii) after paragraph (c) insert—

“(ca) that scheduled monument consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted,”,

(iii) after paragraph (d) insert—

“(da) except in relation to such a requirement as is mentioned in section 9A(3)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the monument or land to its condition before the works were carried out,”,

(iv) after paragraph (e) insert—

“(f) that the steps required by the notice for the purpose of restoring the character of the monument or land to its former state would not serve that purpose,

(g) that the cessation of any works required by the notice exceeds what is necessary to remedy the contravention of section 2(1) or (6),

(h) that steps required to be taken by virtue of section 9A(3)(b) exceed what is necessary to alleviate the effect of the works executed to the monument or land,

(i) that steps required to be taken by virtue of section 9A(3)(c) exceed what may reasonably be required to bring the monument or land to the state in which it would have been if the scheduled monument consent had been complied with.”,

(c) after subsection (2) insert—

“(2A) An appeal under this section is to be made by giving written notice of the appeal to the Scottish Ministers before the date specified in the scheduled monument enforcement notice as the date on which it is to take effect.”,

(d) after subsection (3) insert—

“(3A) A person who gives notice of appeal under this section must submit to the Scottish Ministers, either when giving the notice or within such time as may be prescribed, a statement in writing—

(a) specifying the grounds on which the appeal is made,

(b) giving such further information as may be prescribed.”,

(e) subsections (4) and (5) are repealed.

18B After that section insert—
“9CA Determination of appeals under section 9C

(1) On determining an appeal under section 9C, the Scottish Ministers may give directions for giving effect to the determination, including where appropriate directions for quashing the scheduled monument enforcement notice.

(2) On such an appeal the Scottish Ministers may if they are satisfied that the correction or variation will not cause injustice to the appellant or to Historic Environment Scotland—
   (a) correct any defect, error or misdescription in the scheduled monument enforcement notice, or
   (b) vary the terms of the notice.

(3) In a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 9B(4) to be served with a copy of the notice was not served, the Scottish Ministers may disregard that fact if they are satisfied that the person has not been substantially prejudiced by the failure.

(4) The Scottish Ministers may—
   (a) dismiss such an appeal if the appellant fails to comply with section 9C(3A) within the prescribed time,
   (b) allow such an appeal or quash the scheduled monument enforcement notice if Historic Environment Scotland fails to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 9CB(1).

(5) On the determination of an appeal under section 9C the Scottish Ministers may—
   (a) grant scheduled monument consent for the works to which the scheduled monument enforcement notice relates,
   (b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or
   (c) direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that determination.

(6) Any scheduled monument consent granted by the Scottish Ministers under subsection (5)(a) is to be treated as granted under section 2(3).

(7) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 9C is final.

9CB Procedure for appeals under section 9C

(1) The Scottish Ministers may by regulations make provision in connection with appeals under section 9C, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
   (a) the form, manner and time for making an appeal,
(b) the notification of an appeal,

(c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 9C.”.

19 In section 9D (execution of works required by scheduled monument enforcement notice)—

(a) in subsection (1)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) in paragraph (b) for “them” substitute “it”,

(b) in subsection (2)(b) for “the Scottish Ministers in taking steps required by it” substitute “Historic Environment Scotland in taking steps required by the notice”,

(c) in subsection (4)—

(i) for “the Scottish Ministers take” substitute “Historic Environment Scotland takes”,

(ii) for “they” substitute “it”,

(iii) for “them” substitute “it”,

(d) in subsection (5)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “them” substitute “it”,

(e) in subsection (6)—

(i) for “the Scottish Ministers seek” substitute “Historic Environment Scotland seeks”,

(ii) in paragraph (b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(f) in subsection (7)—

(i) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”,

(ii) for “they” substitute “it”.

19A After section 9F (effect of scheduled monument consent on scheduled monument enforcement notice) insert—
“9FA Enforcement by the Scottish Ministers

(1) If it appears to the Scottish Ministers that it is expedient that a scheduled monument enforcement notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9A.

(2) A scheduled monument enforcement notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.

(3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.

(4) The provisions of this Act relating to scheduled monument enforcement notices apply, so far as relevant, to a scheduled monument enforcement notice served by the Scottish Ministers as they apply to a scheduled monument enforcement notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.”.

PART 4

SCHEDULED MONUMENTS: STOP NOTICES

The 1979 Act is further amended as follows.

In section 9G (stop notices)—

(a) in subsection (1) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(b) in subsection (2)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “they serve” substitute “it serves”,

(c) in subsection (3) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,

(d) in subsection (5)(a) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(e) in subsection (6)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “them” substitute “it”,

(f) in subsection (7)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “their” substitute “its”.

In section 9H (stop notices: supplementary provisions)—

(a) in subsection (3) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

PART 4

SCHEDULED MONUMENTS: STOP NOTICES

The 1979 Act is further amended as follows.

In section 9G (stop notices)—

(a) in subsection (1) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(b) in subsection (2)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “they serve” substitute “it serves”,

(c) in subsection (3) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,

(d) in subsection (5)(a) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(e) in subsection (6)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “them” substitute “it”,

(f) in subsection (7)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “their” substitute “its”.

In section 9H (stop notices: supplementary provisions)—

(a) in subsection (3) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”.
22A After that section insert—

"9HA Power of the Scottish Ministers to serve stop notice

(1) If it appears to the Scottish Ministers that it is expedient that a stop notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9G.

(2) A stop notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.

(3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.

(4) The provisions of this Act relating to stop notices apply, so far as relevant, to a stop notice served by the Scottish Ministers as they apply to a stop notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.”.

23 In section 9I (compensation for loss due to stop notice)—

(a) in subsection (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (3)(c)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “them” substitute “it”,

(c) in subsection (5)(b) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

24 In section 9K (temporary stop notices)—

(a) in subsection (1)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “they may, if they consider” substitute “it may, if it considers”,

(b) in subsection (2)(c) for “the Scottish Ministers” substitute “Historic Environment Scotland’s”,

(c) in subsection (3) for “the Scottish Ministers” in both places substitute “Historic Environment Scotland”,

(d) in subsection (4) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(e) in subsection (8) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

25 In section 9L(1) (temporary stop notices: restrictions) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”.

26 In section 9N (temporary stop notices: compensation)—

(a) in subsection (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (2)(b) for “the Scottish Ministers withdraw” substitute “Historic Environment Scotland withdraws”. 
The 1979 Act is further amended as follows.

**Appeal against inclusion or amendment of entry in Schedule of monuments**

After section 1B (publication of the Schedule) (inserted by paragraph 3) insert—

**1C Appeal against inclusion etc. in Schedule of monuments**

(1) This section applies where Historic Environment Scotland makes a decision—

(a) to include a monument in the Schedule,

(b) to amend an entry in the Schedule relating to a monument.

(2) A person mentioned in subsection (3) may appeal the decision to the Scottish Ministers.

(3) The person is—

(a) the owner of the monument,

(b) the tenant of the monument,

(c) the occupier of the monument.

**1D Determination of appeals under section 1C**

(1) The Scottish Ministers may—

(a) dismiss an appeal under section 1C,

(b) allow such an appeal (in whole or in part).

(2) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.

(3) Where the Scottish Ministers vary the decision appealed against, they may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that decision.

(4) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 1C is final.

**1E Procedure for appeals under section 1C**

(1) The Scottish Ministers may by regulations make provision in connection with appeals under section 1C, including provision about—

(a) the grounds on which an appeal may be made,

(b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.
(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—

(a) the form, manner and time for making an appeal,
(b) the notification of an appeal,
(c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 1C.”.

Appeal in relation to scheduled monument consent

“4B Appeal in relation to scheduled monument consent

(1) This section applies where Historic Environment Scotland makes a decision—

(a) refusing an application for scheduled monument consent,
(b) granting such an application subject to conditions,
(c) refusing an application for variation or discharge of conditions to which a scheduled monument consent is subject,
(d) granting such an application subject to conditions,
(e) refusing an application for subsequent approval required by a condition to which a scheduled monument consent is subject.

(2) A person who made the application mentioned in subsection (1) may appeal the decision to the Scottish Ministers.

(3) A person may also appeal to the Scottish Ministers where Historic Environment Scotland has not given notice of its decision on an application mentioned in subsection (1)(a), (c) or (e) within the prescribed period or such other longer period as may be agreed between the applicant and Historic Environment Scotland.

(4) An appeal under this section may include the ground that—

(a) the monument should not be included in the Schedule,
(b) the entry in the Schedule relating to the monument should be amended.

4C Determination of appeals under section 4B

(1) The Scottish Ministers may—

(a) dismiss an appeal under section 4B,
(b) allow such an appeal (in whole or in part).
(2) In determining an appeal under section 4B, the Scottish Ministers may deal with the application to which the appeal relates as if it had been made to them in the first instance.

(3) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.

(4) Subsection (5) applies where—
   (a) the grounds of appeal include the ground—
      (i) that the monument should not be included in the Schedule, or
      (ii) that the entry in the Schedule relating to the monument should be amended, and
   (b) the Scottish Ministers uphold that ground.

(5) The Scottish Ministers may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that decision.

(6) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 4B is final.

4D Procedure for appeals under section 4B

(1) The Scottish Ministers may by regulations make provision in connection with appeals under section 4B, including provision about—
   (a) subject to section 4B(4), the grounds on which an appeal may be made,
   (b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
   (a) the form, manner and time for making an appeal,
   (b) the notification of an appeal,
   (c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Regulations under subsection (1) may also provide that an appeal in respect of an application—
   (a) for scheduled monument consent, or
   (b) for the variation or discharge of conditions to which such a consent is subject,
need not be entertained unless it is accompanied by a certificate in the prescribed form as to the interests in the monument to which the appeal relates.

(5) Sub-paragraphs (2) to (4) of paragraph 2 of schedule 1 apply to regulations imposing a requirement by virtue of subsection (4) as they apply to the requirement imposed by sub-paragraph (1) of that paragraph.

(6) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 4B.”.

**Determination of appeals by appointed person**

After schedule 1 insert—

“SCHEDULE 1A

(introduced by sections 1E(4), 4D(6) and 9CB(4))

DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY THE SCOTTISH MINISTERS

Determination of appeals by appointed person

1 (1) The Scottish Ministers may by regulations prescribe classes of appeals under sections 1C, 4B and 9C which are to be determined by a person appointed by the Scottish Ministers for the purpose.

(2) Those classes of appeals are to be so determined except in such classes of case—

(a) as may for the time being be prescribed, or

(b) as may be specified in directions given by the Scottish Ministers.

(3) Regulations under sub-paragraph (1) may provide for the giving of publicity to any directions given by the Scottish Ministers under this paragraph.

(4) This paragraph does not affect any provision made by or under this Act that an appeal is to lie to, or a notice of an appeal is to be served on, the Scottish Ministers.

(5) A person appointed under this paragraph is referred to in this schedule as an “appointed person”.

Powers and duties of appointed person

2 (1) An appointed person is to have the same powers and duties—

(a) in relation to an appeal under section 1C as the Scottish Ministers have under section 1D,

(b) in relation to an appeal under section 4B as the Scottish Ministers have under section 4C,

(c) in relation to an appeal under section 9C as the Scottish Ministers have under section 9CA.

(2) Where an appeal has been determined by an appointed person, the decision is to be treated as a decision of the Scottish Ministers.
(3) Except as provided for by section 55, the decision of an appointed person on any appeal is final.

**Determination of appeals by the Scottish Ministers**

3 (1) The Scottish Ministers may, if they think fit, direct that an appeal which would otherwise fall to be determined by an appointed person is instead to be determined by them.

(2) Such a direction must—

(a) state the reasons for which it is given, and

(b) be served on the appellant.

3 (3) Where an appeal under section 1C, 4B or 9C falls to be determined by the Scottish Ministers by virtue of a direction under this paragraph, the provisions of this Act which are relevant to the appeal are to apply, subject to subparagraph (4), as if this schedule had never applied to it.

(4) In determining the appeal, the Scottish Ministers may take into account any report made to them by any person previously appointed to determine the appeal.

4 (1) The Scottish Ministers may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.

(2) Such a further direction must—

(a) state the reasons for which it is given, and

(b) be served on—

(i) the person, if any, previously appointed to determine the appeal, and

(ii) the appellant.

4 (3) Where such a further direction has been given, the provisions of this schedule relevant to the appeal are to apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.

(4) Anything done by or on behalf of the Scottish Ministers in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) is, unless that person directs otherwise, to be treated as having been done by that person.

**Appointment of another person to determine appeal**

5 (1) At any time before the appointed person has determined the appeal the Scottish Ministers may—

(a) revoke the appointment, and

(b) appoint another person under paragraph 1 to determine the appeal instead.

(2) Where such a new appointment is made, the consideration of the appeal or any inquiry or other hearing in connection with it is to be begun afresh.
(3) Nothing in sub-paragraph (2) requires any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Local inquiries and hearings

6 (1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person—

(a) may hold a local inquiry in connection with the appeal, and

(b) must do so if the Scottish Ministers so direct.

(2) Where an appointed person—

(a) holds a hearing, or

(b) holds an inquiry by virtue of this paragraph,

an assessor may be appointed by the Scottish Ministers to sit with the appointed person at the hearing or inquiry to advise the appointed person on any matters arising.

(3) Subject to sub-paragraph (4), the expenses of any such hearing or inquiry are to be paid by the Scottish Ministers.

(4) Subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.

(5) The appointed person has the same power to make orders under subsection (9) of that section in relation to proceedings under this schedule which do not give rise to an inquiry as the person has in relation to such an inquiry.

(6) For the purposes of this paragraph, references to the Minister in subsections (9) and (12) of that section are to be read as references to the appointed person.

Supplementary provisions

7 The functions of determining an appeal and doing anything in connection with it conferred by this schedule on an appointed person who is a member of the staff of the Scottish Administration are to be treated for the purposes of the Scottish Public Services Ombudsman Act 2002 (asp 11) as functions conferred on the Scottish Ministers.”.

CHAPTER 2

REFERRAL OF CERTAIN APPLICATIONS

Referral of certain applications

31 After section 3A (inserted by paragraph 6) insert—

“3B Referral of certain applications to the Scottish Ministers

(1) The Scottish Ministers may give directions requiring applications for—

(a) scheduled monument consent,
(b) variation or discharge of conditions to which scheduled monument consent is subject,

c) subsequent approval required by a condition to which scheduled monument consent is subject,

to be referred to them instead of being dealt with by Historic Environment Scotland.

(2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.

(3) A direction under this section may be withdrawn or modified by a subsequent direction.

(4) An application in respect of which a direction under this section has effect is to be referred to the Scottish Ministers accordingly.

(5) In determining an application under this section, the Scottish Ministers may deal with the application as if it had been made to them in the first instance.

(6) Except as provided for by section 55, the decision of the Scottish Ministers on any application referred to them under this section is final.

(7) The reference in subsection (1)(c) to scheduled monument consent includes a reference to consent granted by order under section 3.

3C Procedure for referrals under section 3B

(1) The Scottish Ministers may by regulations make provision in connection with referrals under section 3B, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the referral.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—

(a) the notification of a referral,

(b) the manner in which a referral is to be conducted.

(3) Regulations made by virtue of subsection (2)(b) may also include provision that the manner in which a referral, or any stage of a referral, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).”.

PART 6

FUNCTIONS IN RELATION TO GARDENS, LANDSCAPES AND BATTLEFIELDS

32 Part 1A of the 1979 Act is amended as follows.

33 In section 32A (inventory of gardens and designed landscapes)—

(a) in subsection (1)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “they think” substitute “it thinks”,

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(iii) for “them” substitute “it”,

(b) in subsection (3) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(c) in subsection (4)—

(i) for “their” substitute “its”,

(ii) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(d) in subsection (5)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “they think” substitute “it thinks”.

In section 32B(1) (inventory of battlefields)—

(a) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(b) for “they think” substitute “it thinks”,

(c) for “them” substitute “it”.

PART 7

OTHER MATTERS IN RELATION TO SCHEDULED MONUMENTS

The 1979 Act is further amended as follows.

Interdict

In section 9O (interdicts restraining unauthorised works on scheduled monuments)—

(a) in subsection (1)—

(i) for “they have exercised or propose to exercise any of their” substitute “Historic Environment Scotland has exercised or proposes to exercise any of its”,

(ii) for “the Scottish Ministers” substitute “it”,

(b) after that subsection insert—

“(1A) Whether or not the Scottish Ministers have exercised or propose to exercise any of their powers under this Act, they may seek to restrain or prevent any actual or apprehended breach of any of the controls provided by or under this Act on the execution of works affecting scheduled monuments by means of an application for interdict.”,

(c) in subsection (2) for “subsection (1)” substitute “subsection (1) or (1A)”. Agreements concerning ancient monuments etc.

In section 17 (agreements concerning ancient monuments etc.)—

(a) after subsection (2) insert—

“(2A) Historic Environment Scotland may enter into an agreement under this section with the occupier of an ancient monument situated in Scotland or of any land so situated which adjoins or is in the vicinity of an ancient monument so situated.”,
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(b) in subsection (4)—
   (i) in paragraph (f), after “authority” insert “or Historic Environment Scotland”,
   (ii) in the full out, after “authority” insert “or Historic Environment Scotland”,

(c) after subsection (9) insert—
   “(9A) References to an ancient monument in subsection (2A), and in subsection (3) so far as it applies for the purposes of subsection (2A), are to be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to Historic Environment Scotland.”.

Advice and superintendence

38 In section 25 (advice and superintendence)—
   (a) in subsection (1) for “The Secretary of State” substitute “Historic Environment Scotland”,
   (b) in subsection (2)—
      (i) for “The Secretary of State” substitute “Historic Environment Scotland”,
      (ii) for “his” in both places substitute “its”,
   (c) in subsection (3)—
      (i) for “The Secretary of State” substitute “Historic Environment Scotland”,
      (ii) for “he” substitute “it”.

Power of entry: inspection and recording

39 In section 26 (power of entry on land believed to contain an ancient monument)—
   (a) in subsection (1) for “the Secretary of State” in both places substitute “Historic Environment Scotland”,
   (b) in subsection (4)(b)—
      (i) for “the Scottish Ministers know or have” substitute “Historic Environment Scotland knows or has”,
      (ii) for “they know or believe” substitute “it knows or believes”.

Power to accept voluntary contributions

40 In section 31 (voluntary contributions towards expenditure under Part 1 of the 1979 Act) after “State” insert “, Historic Environment Scotland”.

Metal detectors

41 In section 42 (restrictions on use of metal detectors)—
   (a) in subsection (1) after “consent” insert “of Historic Environment Scotland (in the case of a place situated in Scotland),”,
   (b) in subsection (2) in the definition of “protected place”, after “State” insert “, Historic Environment Scotland”,
   (c) in subsection (3) after “that” insert “of Historic Environment Scotland (where the place in question is situated in Scotland),”,
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(d) in subsection (4) after “by” insert “Historic Environment Scotland,”,
(e) in subsection (5)(a) after “by” insert “Historic Environment Scotland,”.

Power of entry: survey and valuation

In section 43(2) (power of entry for survey and valuation) after “State” insert “Historic Environment Scotland”.

Compensation

In section 46(1) (compensation for damage caused by exercise of certain powers) after “from” insert “Historic Environment Scotland”.

Application to Crown land

In section 50 (application of Act to Crown land) after subsection (1) insert—

“(1A) For the purposes of subsection (1)(b), anything done by Historic Environment Scotland on Crown land, in relation to which it has functions by virtue of a delegation by the Scottish Ministers under section 3 of the Historic Environment Scotland Act 2014 (asp 00), is not to be treated as done by or on behalf of the Crown.”.

Finds

In section 54(2) (treatment and preservation of finds) after “State” in both places insert “Historic Environment Scotland”.

Proceedings questioning certain orders

In section 55 (proceedings for questioning validity of certain orders)—

(a) in subsection (1)(b) after “State” insert “or Historic Environment Scotland”,
(b) in subsection (3)—

(i) after first “State” insert “or Historic Environment Scotland”,
(ii) for “either” substitute “any”,
(iii) for paragraph (a) substitute—

“(a) any decision of the Scottish Ministers on an application for scheduled monument consent referred to them under section 3B,

(aa) any decision of the Scottish Ministers on an appeal under this Act,”,
(iv) in paragraph (b) for “the giving by the Secretary of State of any direction under section 4” substitute “the making by Historic Environment Scotland of any order under section 4 or by the Scottish Ministers of any order under section 4A”,
(c) in subsection (4)(b) after “State” insert “or Historic Environment Scotland”,
(d) in subsection (7) after “State” insert “or Historic Environment Scotland”.

Power to require information

In section 57(1) (power to require information as to interests in land) after “State” in both places insert “or Historic Environment Scotland”.

—

—
Interpretation

48 In section 61(9) (meaning of site of monument) after “State” insert “or Historic Environment Scotland”.

SCHEDULE 3
(introduced by section 15)

FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO LISTING AND CONSERVATION

PART 1

LISTING OF SPECIAL BUILDINGS

1 The 1997 Act is amended as follows.

10 Compiling or approving lists of special buildings

2 In section 1 (listing of buildings of special architectural or historical interest)—

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”;

(b) in subsection (2) for “the Secretary of State” substitute “Historic Environment Scotland”;

(c) in subsection (3)—

(i) for “the Secretary of State” substitute “Historic Environment Scotland”;

(ii) for “him” substitute “it”;

(d) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”.

15 Publication of lists and notification of listing

After section 1 insert—

“1A Publication of lists and notification of listing etc.

(1) Historic Environment Scotland must—

(a) publish any list compiled or approved under section 1, and any amendments of such a list, and

(b) make such lists available for public inspection, in such manner as may be prescribed.

(2) Historic Environment Scotland must also—

(a) notify such persons as may be prescribed, and

(b) do so in such form and manner, and within such time, as may be prescribed,

of the inclusion of a building in, the amendment of an entry relating to a building in or the exclusion of a building from such a list.

(3) The Scottish Ministers may by regulations make further provision for—

(a) the publication of such lists,
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Part 2—Listed building consent

(b) the making of such lists available for public inspection,
(c) the notification of the inclusion of a building in, the amendment of an entry relating to a building in or the exclusion of a building from such a list.

(4) Regulations under subsection (3) may in particular provide for planning authorities in whose districts any buildings included in such lists are situated to take any of the steps mentioned in that subsection.”.

4 Section 2 (publication of lists) is repealed.

Temporary listing

5 In section 3 (temporary listing: building preservation notices)—

(a) in subsection (2) for “the Secretary of State” substitute “Historic Environment Scotland”,
(b) in subsection (4)—

(i) for “the Secretary of State” substitute “Historic Environment Scotland”,
(ii) in paragraph (b) for “he” substitute “it”,
(c) in subsection (6)—

(i) for “the Secretary of State” substitute “Historic Environment Scotland”,
(ii) for “he” substitute “it”,
(iii) in each of paragraphs (a) and (b) for “the Secretary of State’s” in both places substitute “Historic Environment Scotland’s”.

Certificate that no intention to list building

6 In section 5A (certificate that building not intended to be listed)—

(a) in subsection (1)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
(ii) for “they do” substitute “it does”,
(b) in subsection (2)—

(i) for “the Scottish Ministers issue” substitute “Historic Environment Scotland issues”,
(ii) in paragraph (a) for “they” and “them” substitute “it”,
(c) in subsection (3) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

PART 2

LISTED BUILDING CONSENT

7 The 1997 Act is further amended as follows.

8 In section 7 (authorisation of works: listed building consent)—

(a) in subsection (2)—
(i) in paragraph (b) for “the Royal Commission” substitute “Historic Environment Scotland”,

(ii) in paragraph (c)(i) for “members or officers of the Commission” substitute “Historic Environment Scotland”,

(iii) for paragraph (c)(ii) substitute—

“(ii) Historic Environment Scotland has stated in writing that it has completed its recording of that building or that it does not wish to record it,”

(b) subsection (4) is repealed,

(c) in subsection (5) for “the Royal Commission” substitute “Historic Environment Scotland”.

In section 9 (making of applications for listed building consent)—

(a) in subsection (3)—

(i) the “and” after paragraph (b) is repealed,

(ii) after paragraph (c) insert “, and

“(d) the procedure to be followed by planning authorities or, as the case may be, the Scottish Ministers in considering and determining such applications.”,”

(b) after subsection (5) insert—

“(6) The regulations must also require planning authorities, before granting or refusing applications for listed building consent in such cases or classes of case as may be prescribed, to consult—

(a) Historic Environment Scotland,

(b) such other persons as may be—

(i) prescribed, or

(ii) specified in directions given to planning authorities by the Scottish Ministers.

(7) Directions given by virtue of subsection (6)(b)(ii) for the purposes of regulations under this section may be given to—

(a) planning authorities generally,

(b) a particular planning authority, or

(c) a description of planning authority.”.

Revocation and modification of listed building consent

In section 22(2) (procedure for orders revoking or modifying listed building consent: opposed cases) after paragraph (c) insert—

“(ca) Historic Environment Scotland,

(cb) such other persons as may be prescribed,”.
In section 23(1)(b) (procedure for orders revoking or modifying listed building consent: unopposed cases) after “land” insert “, Historic Environment Scotland, such other persons as may be prescribed”.

PART 3

CONSERVATION AREAS

The 1997 Act is further amended as follows.

In section 61(2) (designation of conservation areas)—
(a) for “The Secretary of State” substitute “Historic Environment Scotland”;
(b) for “he so determines, he” substitute “Historic Environment Scotland so determines, it”.

In section 62 (designation of conservation areas: supplementary provisions)—
(a) in subsection (1), after “State” insert “and Historic Environment Scotland”;
(b) for subsection (2) substitute—
“(2) Historic Environment Scotland must—
(a) give notice to a planning authority of—
(i) the designation of any part of their district as a conservation area under section 61(2), and
(ii) any variation or cancellation of any such designation,
(b) give notice to the Scottish Ministers of the designation and of any such variation or cancellation.”,
(c) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”,
(d) in subsection (5) for “the Secretary of State” substitute “Historic Environment Scotland”.

In paragraph 2 of schedule 1 (buildings formerly subject to building preservation orders)—
(a) for sub-paragraph (1) substitute—
“(1) Historic Environment Scotland may at any time direct that paragraph 1 no longer applies to a particular building.

(1A) The Scottish Ministers may direct that paragraph 1 no longer applies to a particular building if the building is referred to in a notice of appeal under section 5B, 18 or 35 relating to the building (whether or not they are requested to do so).”,
(b) in sub-paragraph (2) for “such a direction” substitute “a direction under sub-paragraph (1) or (1A)”,
(c) after sub-paragraph (2) insert—
“(2A) Where a direction is given under sub-paragraph (1) or (1A), Historic Environment Scotland or (as the case may be) the Scottish Ministers must notify the other.”,
(d) in sub-paragraph (3)—
   (i) for “such a direction” substitute “a direction under sub-paragraph (1) or (1A)”;
   (ii) for “the Secretary of State” substitute “Historic Environment Scotland or (as the case may be) the Scottish Ministers”.

16 Paragraph 3 of schedule 1 is repealed.

**PART 4**

**APPEALS AGAINST LISTING**

17 The 1997 Act is further amended as follows.

18 After section 5A (certificate that building not intended to be listed) insert—

**“5B Appeal against listing of buildings**

(1) This section applies where Historic Environment Scotland makes a decision—
   (a) to include a building in the list compiled or approved under section 1,
   (b) to amend an entry in the list relating to a building (but not where the amendment excludes a building from the list).

(2) A person mentioned in subsection (3) may appeal the decision to the Scottish Ministers.

(3) The person is—
   (a) the owner of the building,
   (b) the tenant of the building,
   (c) the occupier of the building.

**5C Determination of appeals under section 5B**

(1) The Scottish Ministers may—
   (a) dismiss an appeal under section 5B,
   (b) allow such an appeal (in whole or in part).

(2) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.

(3) Where the Scottish Ministers vary the decision appealed against, they may direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to that decision.

(4) Except as provided for by sections 57 and 58, the decision of the Scottish Ministers on an appeal under section 5B is final.
5D Procedure for appeals under section 5B

(1) Regulations may make provision in connection with appeals under section 5B, including provision about—

(a) the grounds on which an appeal may be made,

(b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—

(a) the form, manner and time for making an appeal,

(b) the notification of an appeal,

(c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Schedule 3 (which makes provision about the determination of certain appeals by a person appointed by the Scottish Ministers) applies to an appeal under section 5B.”.

In section 19(3) (appeals: supplementary provisions) for “the Secretary of State” substitute “Historic Environment Scotland”.

In section 20(1) (determination of appeals) for paragraph (b) substitute—

“(b) where the Scottish Ministers vary the decision appealed against, they may direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to that decision.”.

In section 37(4) (determination of appeals under section 35) for paragraph (c) substitute—

“(c) direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to that determination.”.

In section 57(2) (validity of certain orders and decisions) before paragraph (a) insert—

“(za) any decision of the Scottish Ministers on an appeal under section 5B,”.

In schedule 3 (determination of certain appeals by person appointed by the Scottish Ministers)—

(a) in paragraph 1(1) after “sections” insert “5B,“,

(b) in paragraph 2(1) before paragraph (a) insert—

“(za) in relation to an appeal under section 5B as the Scottish Ministers have under section 5C and paragraph 2(1A) of schedule 1,”,

(c) in paragraph 3(3) after “section” insert “5B,”,
(d) in paragraph 5(3) paragraph (a) is repealed (together with the “or” immediately following it).

**PART 5**

**OTHER MATTERS IN RELATION TO LISTING**

24 The 1997 Act is further amended as follows.

Compensation

25 In section 26(1) (compensation for loss or damage caused by service of building preservation notice) for “the Secretary of State” substitute “Historic Environment Scotland”.

Application of 1997 Act to land and works of planning authorities

26 In section 73 (application of 1997 Act to land and works of planning authorities)—

(a) in subsection (1) for “sections 1(1) and (3) and 2” substitute “section 1(1) and (3)”,

(b) in subsection (4) “section 2(2) and” is repealed.

Powers of entry

27 In section 76 (rights of entry)—

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,

(b) in subsection (2) for “the Secretary of State” in both places substitute “Historic Environment Scotland”,

(c) in subsection (3) for “the Secretary of State” substitute “Historic Environment Scotland”.

Building preservation notices

28 In schedule 2 (lapse of building preservation notice) in paragraph 1(b) for “the Secretary of State” substitute “Historic Environment Scotland”.

SCHEDULE 4
(introduced by section 16)

**FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO THE MARINE ENVIRONMENT**

1 The Marine (Scotland) Act 2010 (asp 5) is amended as follows.

2 After section 80 (advice etc. by Scottish Natural Heritage) insert—

“80A Advice etc. by Historic Environment Scotland as regards Historic MPAs

(1) Historic Environment Scotland may give advice and guidance as to—

(a) the matters which are capable of damaging or otherwise affecting any marine historic asset in a Historic MPA,

(b) how any stated preservation objectives for a Historic MPA may be furthered, or how the achievement of any such objectives may be hindered, and
(c) the assessment by a public authority of the matters in section 83(4)(b)(i) and (ii) including what factors the authority should take into account.

(2) Advice or guidance as to any of the matters in paragraph (a) to (c) of subsection (1) may be given—

(a) in relation to—

(i) a particular Historic MPA,

(ii) all Historic MPAs generally,

(b) in relation to a particular public authority or public authorities generally.”.

In section 82 (duties of public authorities in relation to marine protected areas etc.)—

(a) in subsection (3) after “Heritage” insert “or Historic Environment Scotland”,

(b) in subsection (5) after “Heritage” insert “or Historic Environment Scotland”,

(c) in subsection (6) after sub-paragraph (i) insert—

“(ia) Historic Environment Scotland has given advice or guidance to the authority under section 80A,”,

(d) in subsection (7) after “Heritage” insert “or Historic Environment Scotland”,

(e) in subsection (10) after “Heritage” insert “or Historic Environment Scotland”,

(f) in subsection (12) after “80” insert “, by Historic Environment Scotland under section 80A”,

(g) in subsection (13)—

(i) the words from “it is appropriate” to “Research MPA” become paragraph (a) of that subsection, and

(ii) after that paragraph insert—

“(b) it is appropriate to inform Historic Environment Scotland where the exercise of the public authority’s functions or the act or omission in question relates to a Historic MPA.”.

In section 83 (duties of public authorities in relation to certain decisions)—

(a) in subsection (2) after “Heritage” insert “or Historic Environment Scotland”,

(b) in subsection (8) after “80” insert “, by Historic Environment Scotland under section 80A”,

(c) in subsection (9)—

(i) the words from “it is appropriate” to “Research MPA” become paragraph (a) of that subsection, and

(ii) after that paragraph insert—

“(b) it is appropriate to inform Historic Environment Scotland where the act relates to a Historic MPA.”.

In section 84 (failure to comply with duties) after subsection (3) insert—

“(3A) In relation to a Historic MPA if, in the opinion of Historic Environment Scotland, a public authority has failed—
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Schedule 5—Transfer of staff, property etc. to Historic Environment Scotland

(a) to act in accordance with advice or guidance given by Historic Environment Scotland under section 80A,
(b) to comply with any of its duties under section 82(2) or 83(3) or (4),

Historic Environment Scotland may request from the authority an explanation in writing for the failure.

(3B) Historic Environment Scotland must send a copy of a request by it under subsection (3A) to the Scottish Ministers.

(3C) On receiving a request under subsection (3A), the public authority must—
(a) provide Historic Environment Scotland with the requested explanation for the failure,
(b) send a copy of the explanation to the Scottish Ministers.”.

SCHEDULE 5
(introduced by section 18)

TRANSFER OF STAFF, PROPERTY ETC. TO HISTORIC ENVIRONMENT SCOTLAND

15 Staff transfer schemes

1 (1) The Scottish Ministers may make a staff transfer scheme.

(2) A staff transfer scheme is a scheme making provision for or in connection with the transfer to Historic Environment Scotland of persons who are—

(a) employed by the Royal Commission on the Ancient and Historical Monuments of Scotland,
(b) subject to sub-paragraph (3), members of the staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as Historic Scotland.

(3) Sub-paragraph (2)(b) does not apply to members of the staff of the Scottish Ministers on secondment or loan to Historic Scotland from another part of the Scottish Administration.

(4) A staff transfer scheme may in particular—

(a) prescribe rules by which the transfer of specified persons, or classes of specified person, can be determined,
(b) provide that specified persons, or classes of specified person, are to become employees of Historic Environment Scotland.

(5) A staff transfer scheme may make provision only in relation to persons whose employment relates to the carrying out of Historic Environment Scotland’s functions.

(6) In this paragraph, “specified” means specified in a staff transfer scheme.

Staff transfer schemes: general

2 (1) This paragraph applies in relation to a staff transfer scheme under paragraph 1.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.
(3) The scheme may—
(a) specify different dates for different purposes,
(b) make different provision in relation to different cases or classes of case.

Transfers under paragraph 1: effect on contract of employment

3 (1) This paragraph applies where—
(a) a person is to be transferred by virtue of a staff transfer scheme, and
(b) immediately before the transfer date the person has a contract of employment with—
   (i) the Royal Commission on the Ancient and Historical Monuments of Scotland, or
   (ii) the Scottish Ministers.

(3) The contract of employment has effect on and after the transfer date as if originally made between the person and Historic Environment Scotland.

(4) The rights, powers, duties and liabilities of the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers under or in connection with the contract of employment are by virtue of this paragraph transferred to Historic Environment Scotland on the transfer date.

(5) Anything done before the transfer date by or in relation to the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers in respect of the contract of employment or the person is to be treated on and after that date as having been done by or in relation to Historic Environment Scotland.

(6) If, before the transfer date, the person informs the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers that the person does not wish to become an employee of Historic Environment Scotland—
   (a) sub-paragraphs (2) to (4) do not apply in relation to the person, and
   (b) the person's contract of employment is terminated on the day before the transfer date.

(7) A person is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the person.

(8) Nothing in this paragraph affects any right of a person to terminate the person's contract of employment if a substantial detrimental change in the person's working conditions is made.

(9) No such right arises by reason only that, by virtue of this paragraph, the identity of the person's employer changes.

Property transfer schemes

4 (1) The Scottish Ministers may make a property transfer scheme.

(2) A property transfer scheme is a scheme making provision for or in connection with the transfer to Historic Environment Scotland of property, rights, liabilities and obligations of—
   (a) the Royal Commission on the Ancient and Historical Monuments of Scotland,
(b) the Scottish Ministers.

(3) A property transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights, liabilities and obligations relate to Historic Environment Scotland's functions.

(4) The Royal Commission on the Ancient and Historical Monuments of Scotland must provide the Scottish Ministers with such information or assistance as Ministers may reasonably require for the purposes of or in connection with the making of a property transfer scheme.

(5) On the transfer date—

(a) any property or rights to which a property transfer scheme applies transfer to and vest in Historic Environment Scotland,

(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of Historic Environment Scotland.

(6) A property transfer scheme may make provision for the payment by Historic Environment Scotland of compensation in respect of property and rights transferred by virtue of the scheme.

Property transfer schemes: general

5 (1) This paragraph applies in relation to a property transfer scheme under paragraph 4.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.

(3) The scheme may—

(a) specify different dates in relation to different property, rights, liabilities and obligations,

(b) make different provision in relation to different cases or classes of case.

(4) The scheme may make provision for the creation of rights, or the imposition of liabilities or obligations, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.

(5) The scheme may make provision requiring Historic Environment Scotland to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.

(6) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of a property transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.

(7) The scheme may make provision about the continuation of legal proceedings.

Transfer schemes: additional provision

6 A staff transfer scheme under paragraph 1 or a property transfer scheme under paragraph 4 may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.


Schedule 6—Consequential modifications

Ethical Standards in Public Life etc. (Scotland) Act 2000

1. In the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), in schedule 3 (devolved public bodies)—
   (a) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed,
   (b) at the appropriate place in alphabetical order insert—
       “Historic Environment Scotland”.

Scottish Public Services Ombudsman Act 2002

2. In the Scottish Public Services Ombudsman Act 2002 (asp 11), in Part 2 of schedule 2 (listed authorities: entries amendable by Order in Council), under the heading “Scottish public authorities”—
   (a) after paragraph 25 (the entry for Highlands and Islands Enterprise) insert—
       “25ZA Historic Environment Scotland.”,
   (b) paragraph 34 (the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland) is repealed.

Freedom of Information (Scotland) Act 2002

3. In the Freedom of Information (Scotland) Act 2002 (asp 13), in Part 7 of schedule 1 (Scottish public authorities: others)—
   (a) after paragraph 67 (the entry for Highlands and Islands Enterprise) insert—
       “67ZA Historic Environment Scotland.”,
   (b) paragraph 76 (the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland) is repealed.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

4. In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2 (the specified authorities), under the heading “Executive bodies”—
   (a) at the appropriate place in alphabetical order insert—
       “Historic Environment Scotland”,
   (b) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.

Public Services Reform (Scotland) Act 2010

5. In the Public Services Reform (Scotland) Act 2010 (asp 8)—
   (a) in schedule 5 (improvement of public functions: listed bodies), under the heading “Scottish public authorities with mixed functions or no reserved functions”—
       (i) at the appropriate place in alphabetical order insert—
       “Historic Environment Scotland”,

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(ii) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed,

(b) in schedule 8 (information on exercise of public functions: listed public bodies)—

(i) at the appropriate place in alphabetical order insert—

“Historic Environment Scotland”,

(ii) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.

**Public Records (Scotland) Act 2011**

In the Public Records (Scotland) Act 2011 (asp 12), in the schedule (authorities to which Part 1 applies), under the heading “Others”—

(a) at the appropriate place in alphabetical order insert—

“Historic Environment Scotland”,

(b) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.
Historic Environment Scotland Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to establish Historic Environment Scotland; to make minor amendments to the law relating to the historic environment; and for connected purposes.

Introduced by: Fiona Hyslop
Supported by: Humza Yousaf
On: 3 March 2014
Bill type: Government Bill
INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these Revised Explanatory Notes are published to accompany the Historic Environment Scotland Bill (introduced in the Scottish Parliament on 3 March 2014) as amended at stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

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 purpose of the Bill is to create a new lead body for Scotland’s historic environment – Historic Environment Scotland which will be a Non-Departmental Public Body and to equip that body with the necessary powers to be able to carry out the functions which are currently delivered by Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). The Bill provides for RCAHMS to be dissolved. The Bill also sets out the governance arrangements for the new body and provides for the delegation or transfer to Historic Environment Scotland of Ministerial powers and responsibilities under existing legislation as appropriate. The Bill enables the transfer of the property, staff and liabilities of both RCAHMS and Historic Scotland to Historic Environment Scotland (excluding properties and collections in the care of Scottish Ministers) and aligns certain functions in relation to designation and regulation of the historic environment with the rest of the planning system.
Status and functions of Historic Scotland and RCAHMS

5. Historic Scotland is an Executive Agency of the Scottish Government. This means that it has no powers of its own, but operates using powers conferred on Scottish Ministers.

6. The main functions which Historic Scotland carries out are:
   - Caring for and presenting to visitors the Properties in Care;
   - Designating places to be protected, by scheduling of monuments of national importance, by listing buildings of architectural or historic interest, by adding to the Inventory of Gardens and Designed Landscapes and the Inventory of Historic Battlefields and by designated Historic Marine Protected Areas;
   - Providing specialist advice and expert knowledge to the Scottish Government’s Historic Environment Policy Unit to inform the development of Scottish Ministers’ policies as they relate to the historic environment and other matters;
   - Providing financial assistance towards the conservation and enhancement of the historic environment; and
   - Providing guidance on the management of the historic environment.

7. RCAHMS was established by Royal Warrant in 1908. It is treated for administrative purposes as a Non-Departmental Public Body. It has been a registered charity since 1992, when the Royal Warrant was last updated. Its purpose is to:
   - identify, survey and analyse the historic and built environment of Scotland;
   - preserve, care for and add to the information and items in its collections; and
   - promote understanding, education and enjoyment through interpretation of the information it collects and items it looks after.

8. Many of Historic Scotland’s functions are set out in statute, mainly in the Acts listed below. The Bill amends the following Acts to ensure that Historic Environment Scotland can operate as intended:
   - the Historic Buildings and Ancient Monuments Act 1953 (“the 1953 Act”);
   - the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”);
   - the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the 1997 Act”); and
   - the Marine (Scotland) Act 2010 (“the 2010 Act”).

9. The Bill is in seven Parts:
   - Part 1 - Historic Environment Scotland;
   - Part 2 - Functions in relation to scheduled monuments;
   - Part 3 - Functions in relation to listing and conservation;
These documents relate to the Historic Environment Scotland Bill as amended at stage 2 (SP Bill 47A)

- Part 4 - Functions in relation to the marine environment;
- Part 5 - Dissolution of RCAHMS and transfer of staff etc. to Historic Environment Scotland;
- Part 6 - Further modifications in relation to the historic environment; and
- Part 7 – Final provisions.

10. The Bill also includes six schedules setting out the detailed arrangements in relation to a number of areas covered by the Bill and making minor and consequential amendments.

COMMENTARY ON SECTIONS

PART 1 – HISTORIC ENVIRONMENT SCOTLAND

Section 1 – Historic Environment Scotland

11. Section 1 provides for the creation of a new body to be known as Historic Environment Scotland, with the functions conferred on it by this Act and any other enactment. This section introduces schedule 1 to the Bill, which makes provision about the status, membership procedures and powers of Historic Environment Scotland. Further notes on schedule 1 are given below.

Section 2 – Functions of Historic Environment Scotland

12. Section 2 sets out the functions of the Historic Environment Scotland. Subsection (1) sets out that the new body has the general function to investigate, care for and promote Scotland’s historic environment. Subsection (2) expands on the general function.

13. Subsection (2)(a) gives Historic Environment Scotland the function of identifying and recording the historic environment. It might, for example, do this by undertaking field and aerial survey programmes to identify new sites or gather more information about existing sites, and creating records of discoveries.

14. Subsection (2)(b) gives Historic Environment Scotland the function of understanding and interpreting the historic environment. It might do this by undertaking research into historic buildings to determine their date and building sequence and presenting the results to a variety of audiences in various media.

15. Subsection (2)(c) gives Historic Environment Scotland the function of learning about, and educating others about, the historic environment. This might be done by participating in collaborative research programmes with individuals, academic institutions and other bodies, or by acquiring knowledge of traditional skills and techniques and helping to maintain these by training new craftspeople, or by using material in the collections to contribute to teaching materials for schools.

16. Subsection (2)(d) gives Historic Environment Scotland the function of protecting and managing the historic environment. It could do this by engaging with the development planning
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process to ensure that the historic environment is considered in strategic development proposals. Its work in designating scheduled monuments, listed buildings, gardens and designed landscapes and battlefields will provide the foundation for protection of these important assets.

17. Subsection (2)(e) gives Historic Environment Scotland the function of conserving and enhancing the historic environment. Its work in this respect might include undertaking or arranging hands-on maintenance and repair work at the visitor properties it manages, or supporting work to improve the general condition of a conservation area.

18. Subsection (3) gives Historic Environment Scotland the function of managing its collections as a national resource for reference, study and research. Subsection (4) expands on this function. Definitions of “collection” and “object” are given in section 13 of the Bill and explained under ‘Section 13 – Interpretation of Part 1’ in these notes.

19. Subsection (4)(a) sets out that in exercising its function Historic Environment Scotland must do so with a view to preserving, conserving and developing its collections. It might, for example, do this by engaging specialist conservators to maintain or bring objects in the collections to a good condition, by ensuring that the objects in its collections are stored and accessed in ways which seek to minimise deterioration, or by adding significant new material to its collections to ensure that their value and currency are maintained. Such activities might be undertaken within the framework of a collections strategy.

20. Subsection (4)(b) sets out that in exercising its function Historic Environment Scotland must do so with a view to making the collections accessible to the public and to persons wishing to carry out study and research. This could be achieved by making public search rooms available so that objects in the collections can be brought to persons wishing to consult them or by digitally copying objects and making them available online.

21. Subsection (4)(c) sets out that in exercising its function Historic Environment Scotland must do so with a view to exhibiting and interpreting objects in the collections. Ways of doing this might include organising the public display of objects on a particular theme or topic, and delivering audio, visual or audio-visual aids to assist those wishing to understand the context and cultural significance of the exhibits. It might collaborate to exhibit collections internationally to encourage tourism to Scotland, or seek the loan of another body’s collections to support particular exhibitions. This function will also be delivered online.

22. Subsection (5) sets out the manner in which Historic Environment Scotland is to exercise its functions.

23. Subsection (5)(a) sets out that in exercising its functions Historic Environment Scotland must do so with a view to encouraging education and research. This might include partnering with academic institutions and other bodies in research projects, or seeking to encourage school and university students to use its collections or visitor sites in connection with curricular studies.

24. Subsection (5)(b) sets out that in exercising its functions Historic Environment Scotland must do so with a view to promoting and contributing to understanding and enjoyment of the
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historic environment and of its collections. Activities such as organising public events and activities at the properties that it looks after, publishing accessible and useful information and running hands-on activities to engage the public in the process of discovery would be among the ways it could achieve this.

25. Subsection (5)(c) sets out that in exercising its functions Historic Environment Scotland must do so with a view to promoting the diversity of persons accessing the historic environment and its collections. It might, for example, invest in works to improve physical access to the monuments and historic buildings it presents to the public or deliver community engagement activities that are focused on increasing diversity and tailored to meet the needs of particular groups and individuals. Online access to its services might be particularly important here.

26. Subsection (5)(d) sets out that in exercising its functions Historic Environment Scotland must do so with a view to offering and promoting leadership in relation to the historic environment. This could include leading collaborative projects to develop standards in connection with the management, protection and conservation of the historic environment. It might also lead by example: demonstrating high standards of conservation work or producing attractive and informative publications.

27. Subsection (5)(e) sets out that in exercising its functions Historic Environment Scotland must do so with a view to working in collaboration with other persons (whether in partnership or in other ways). Ways of doing this might include providing training and support to groups wishing to identify and record their local historic environment, or supporting owners who wish to repair or maintain historic buildings in the most authentic manner. It might work with others to develop online solutions that fulfil specific user needs by providing integrated access to information and digitised collections held by several different collections.

28. Subsection (5)(f) sets out that in exercising its functions Historic Environment Scotland must do so with a view to contributing, as appropriate, to the development and delivery of policies and strategies in relation to the historic environment. This might involve active participation in and contributing expert knowledge to professional forums and committees. This strategic approach is currently represented by Scotland’s Historic Environment Strategy, in which Historic Environment Scotland will be a key partner.

29. Subsections (6) and (7) allow Historic Environment Scotland to support and assist (including financial support and assistance) any other person carrying out functions similar to its own functions.

30. Subsection (8)(a) requires Historic Environment Scotland, when exercising its functions, to have regard to wider relevant government policies and strategies. It might do this, for example, by ensuring that a modern building which acts as accommodation for its staff is compliant with government policies on energy efficiency and waste reduction, by ensuring that the management of visitor sites is in accord with biodiversity requirements or that it considers wider regeneration objectives when allocating grants and loans under its various programmes.
31. Subsection (8)(b) requires Historic Environment Scotland to have regard to the interests of local communities, as may be appropriate in the circumstances. It will be for HES to decide on what is appropriate in each case.

**Section 3 – Delegation of functions in relation to Properties in Care**

32. Section 3 allows the Scottish Ministers to delegate their functions (statutory and non-statutory) in relation to Properties in Care to Historic Environment Scotland or any prescribed person Ministers consider appropriate. This means that Ministers may only delegate functions under this section to persons who have been first prescribed by order.

33. Subsection (3) allows for delegation to take place despite the existence of prohibitions or restrictions on delegation in agreements.

34. Subsection (5) makes it clear that any revenue received as a result of the exercise of any delegated function is the revenue of the person to whom the function is delegated unless Ministers provide otherwise in the delegation. Thus, Historic Environment Scotland would retain money paid for admittance to visitor properties.

35. Subsection (6) makes it clear that delegating functions does not affect the ultimate responsibility of the Scottish Ministers for properties in care.

36. Subsection (7A) requires Ministers to publish delegations under subsection (1), in the interests of transparency.

37. The scheme(s) of delegation from the Scottish Ministers to Historic Environment Scotland or other bodies would specify expected standards of conservation and maintenance and degree of public access, and the measures by which achievement of these would be monitored. Schemes of delegation could also deal with matters such as charging for access and for additional services.

**Section 3A – Properties in Care**

38. Under section 3A, the Scottish Ministers are under a duty to maintain and publish a list of “properties in care”, functions relating to which can be delegated under section 3.

39. “Property in Care” means any heritable property which is of historical, archaeological, architectural or cultural significance or interest and which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers. Currently there are 345 such properties, consisting of a mixture of properties where Ministers hold title, properties where guardianship agreements have conferred management responsibilities on Ministers in perpetuity, and a small number of properties which are leased or held by other means. In all cases, these properties are held for the purpose of being conserved and made accessible for the public.
Section 4 – Power of entry to investigate the historic environment

40. Section 4 gives Historic Environment Scotland the power to enter land (including buildings or other structures on the land) to identify and record the historic environment, subject to certain provisions set out in the subsections.

41. Subsections (2) to (4) set out details of how this power may be exercised, including restrictions on the power, for example the exclusion of access to dwelling-places. Similar statutory powers of access, which already exist for Ministers and their employees, are only used as a last resort after every effort to contact the owner or occupier of a property has failed. These powers have been exercised very seldom – less than ten times in total over the past 30 years.

42. Subsection (5) makes it a criminal offence to (without reasonable excuse) intentionally obstruct a person exercising the powers of entry under subsection (1). The offence is punishable on summary conviction up to a maximum fine, set in subsection (6) of level 3 on the standard scale (currently £1000).

Section 5 – Acquisition, deposit and disposal of objects

43. Section 5 specifies Historic Environment Scotland’s powers in relation to the acquisition, acceptance on deposit of and disposal of objects. Historic Environment Scotland is empowered to acquire objects (either by purchase, exchange or gift) or accept objects on deposit to develop the collections. Deposit is an arrangement whereby a depositor charges a body (in this case Historic Environment Scotland) with the safe-keeping of an object or collection for a fixed or indefinite period of time, with ownership of the property resting with the depositor and subject to such conditions as are agreed between the body and the depositor. Deposit, which is common practice in a wide range of collections, creates additional requirements when objects are being disposed of, as set out below, in paragraphs 44-46.

44. Subsection (2) makes clear that these powers are in addition to any other powers of acquisition or acceptance on deposit that Historic Environment Scotland may have, as HES may in future be given additional statutory powers under other legislation, for example under the Museums and Galleries Act 1992.

45. Subsection (3) sets out the circumstances in which Historic Environment Scotland may dispose of any object from its collection.

46. The case for disposal in subsection (3)(a) is that an object is a duplicate of, or similar to, another object in the collections, for example where a collection of architectural drawings includes original drawings along with multiple un-annotated copies it may not be desirable to keep the copies.

47. The case for disposal in subsection (3)(b) is that Historic Environment Scotland considers that the object is not required for the purposes of the collections. This would allow Historic Environment Scotland to ensure that objects in the collection are relevant to the historic environment and consistent with its collecting policy.
48. The case for disposal in subsection (3)(c) is that because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections. This would allow disposals in cases where an object was damaged to such an extent that it had lost all information content and was therefore not worth conserving, for example a heavily water-damaged document.

49. The case for disposal in subsection (3)(d) is that the object is hazardous. This provision would allow disposal in cases where an object is hazardous, for example where a material such as a cellulose nitrate film has degraded to the point of posing a possible fire hazard. The key test here would be whether any benefits of retaining such objects were outweighed by the risks.

50. The case for disposal in subsection (3)(e) is that the Scottish Ministers agree to the disposal. This would allow disposal in a case where there was a moral claim on an object that would ordinarily not be eligible for disposal under subsection (3)(a)-(d).

51. Subsection (4) clarifies that such disposals may be made by sale, exchange, gift, return or destruction. It is implicit that disposal (other than return) of an object is only possible where Historic Environment Scotland holds the object as owner.

52. Subsection (5) makes clear that these powers are in addition to any other powers of disposal that Historic Environment Scotland may have, as HES may in future be given additional statutory powers of acquisition and disposal under other legislation, for example under the Museums and Galleries Act 1992.

53. Subsection (6) sets out that where an object is subject to a prohibition or restriction on disposal, as in the case of an object on deposit, Historic Environment Scotland cannot dispose of the object without the consent of the person having the right to enforce the prohibition or restriction. However where an object is damaged, has deteriorated or become infested and is no longer of use for the purposes of the collections, HES can dispose of that object without consent if they have taken all reasonable steps to contact the appropriate person. HES may also dispose of any object which is hazardous even without consent. It is implicit that an object on deposit or loan is, by its very nature, subject to a restriction or prohibition on disposal.

54. These provisions protect the interests of depositors and lenders and will serve as a reminder to Historic Environment Scotland to check for any such prohibitions or restrictions when considering any disposal under subsection (3).

55. Subsection (7) clarifies that in this section and in section 6, references to Historic Environment Scotland’s collections are references to collections of objects which are owned by, in the custody of, or otherwise under its management and control, excluding those collections they have been delegated the management of under section 7.
Section 6 - Borrowing and lending of objects

56. Section 6 empowers Historic Environment Scotland to borrow or accept loans of historic objects for exhibition, study or research while subsection (2) empowers Historic Environment Scotland to lend any historic object from its collections.

57. Subsection (3) specifies the factors that Historic Environment Scotland must have regard to when deciding whether or not to lend an object, and for Historic Environment Scotland to specify a period for which the object is to be lent and to place conditions on the loan.

58. The factors to which Historic Environment Scotland must have regard are: the interests of the users of the collections; the suitability of the prospective borrower; the purpose of the loan; the physical condition and degree of rarity of the object, and any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.

59. Subsection (4) makes clear that these powers are in addition to any other powers of borrowing, accepting loans or lending that Historic Environment Scotland may have, as Historic Environment Scotland may in future be given additional statutory powers under other legislation.

60. Subsection (5) protects prohibitions or restrictions on lending that donors have attached to objects in the collections and is intended to serve as a reminder to Historic Environment Scotland to check for any such conditions when considering lending objects under subsection (2). Prohibitions or restrictions on lending may only be overridden with the consent of the person having the right to enforce the condition or if the name and contact details of such a person cannot be ascertained despite Historic Environment Scotland taking all reasonable steps to ascertain them.

Section 7 – Delegation of functions in relation to collections

61. Section 7 enables the Scottish Ministers to delegate the management of their collections to Historic Environment Scotland or to any prescribed person Ministers consider appropriate. This means that Ministers may only delegate functions under this section to persons who have been first prescribed by order.

62. Subsection (2) allows for delegation to take place despite the existence of prohibitions or restrictions on delegation in agreements.

63. Subsection (3) clarifies that such delegations can apply to a particular collection, a group of collections or all collections. The same subsection also clarifies that such delegations can apply to a particular object in a collection, or a group of such objects.

64. Subsection (4) makes it clear that any revenue received as a result of the exercise of any delegated function is the revenue of the person to whom the function is delegated unless Ministers provide otherwise in the delegation. Thus, money paid by a publisher in return for the right to use images of objects in delegated collections would remain with Historic Environment Scotland.
65. Subsection (5) makes it clear that delegation of functions does not affect the ultimate responsibility of the Scottish Ministers.

66. Subsections (6) and (6A) require that the Scottish Ministers must make such delegations in writing, that they can be varied or revoked at any time and that they must be published.

67. Subsection (7) clarifies that references in this section to the Scottish Minister’s collections are to collections of objects which are owned by, in the custody of, or otherwise under the management and control of the Scottish Ministers – as distinct from the collections of Historic Environment Scotland itself by virtue of section 5 and any transfer of property scheme under paragraph 4 of schedule 5.

Section 8 - Corporate planning

68. Section 8 places a duty on Historic Environment Scotland to prepare a corporate plan at the beginning of each planning period which must be submitted to the Scottish Ministers for approval. Subsection (2) outlines what such a plan must describe, subsection (3) describes the method for its approval and subsection (4) requires the plan once approved to be published. Subsections (5) and (6) allow for modifications to the agreed plan. Subsection (7) sets the normal planning period as 3 years and allows for a different period for the initial plan (to be specified by Ministers), while subsection (8) allows for the normal planning period to be varied by order of Ministers – if for example experience shows that a longer or shorter period is better suited to the cycle of planning and resource allocation. Ministers will be also able to offer directions and guidance on the content and presentation of corporate plans under the provisions of section 12 (see below) if this is necessary.

Section 9 – Grants to Historic Environment Scotland by the Scottish Ministers

69. Section 9 allows the Scottish Ministers to make grants to Historic Environment Scotland. These may be for general or particular purposes – for example towards a named function or project. It also provides for such grants to be subject to such terms and conditions as the Scottish Ministers may determine. Examples might include additional funding to accelerate the delivery of a shared research project or to create a shared national resource, such as a building conservation skills training centre. Historic Environment Scotland’s funding will normally be dealt with in corporate plan and annual financial allocation discussions, with the power in this section being very much for use in exceptional circumstances, such as large projects with a high priority which emerge at short notice.

Section 10 – Grants and loans by Historic Environment Scotland

70. Section 10 provides a power for Historic Environment Scotland to make grants and loans to such persons as it considers appropriate in furtherance of its functions subject to such terms and conditions as it may determine.

71. At present, grant programmes operated by Historic Scotland on behalf of Ministers include grants for the repair of historic buildings, grants for the care and maintenance of ancient monuments, grants for archaeology projects, grants in support of conservation skills training and
grants to voluntary organisations. Total grant expenditure is in the order of £15 million per annum.

72. These grants are distributed under a variety of different powers held by Ministers, and there are a variety of terms and conditions associated with each power. The Bill gives Historic Environment Scotland a single power which will allow it to take over all existing grant-giving activities and will promote a more responsive grant programme that can adapt to current needs and a less complex approach to programme terms and conditions.

73. Subsection (3) clarifies that such grants or loans made by Historic Environment Scotland must be made in accordance with any general authorisation given by the Scottish Ministers to Historic Environment Scotland. Such an authorisation might, for example, set the broad terms and eligibility/ranking criteria of all grant programmes which Historic Environment Scotland was expected to operate over the planning period. However, an authorisation would not extend to allowing Ministers to give direction in relation to the outcome of particular grant or loan applications.

Section 11 - Advice, information and assistance

74. Section 11 places a duty on Historic Environment Scotland to provide the Scottish Ministers with advice, information and assistance on any matter relating to the organisation’s functions, and also allows Historic Environment Scotland to offer these to Scottish Ministers. It also allows Historic Environment Scotland to provide advice, information and assistance to any person. This last provision is particularly significant, since Historic Environment Scotland will employ staff who have a very varied body of expertise and skills and will frequently be asked for advice.

Section 12 - Directions and guidance

75. Section 12 provides for the Scottish Ministers to direct Historic Environment Scotland (both generally and specifically) in relation to the exercise of its functions.

76. Subsection (2) provides that the Scottish Ministers will not be able to direct in respect of particular historic properties, collections or objects or the making of grants and loans. This is to provide for curatorial independence, allowing for decision-making to be led solely by expert knowledge and judgement in these key areas. However, subsection 2(a) which prevents Ministers from directing on a particular historic property, object or collection, does not apply (by virtue of subsection (3)) in cases where Historic Environment Scotland is exercising functions delegated by Scottish Ministers under sections 3 or 7. This means that with regards to the properties in care and associated collections Ministers may give directions to Historic Environment Scotland, this is in recognition of the fact that these functions remain the responsibility of Scottish Ministers and are only delegated to Historic Environment Scotland.

77. Historic Environment Scotland must comply with directions and must have regard to guidance issued by the Scottish Ministers (subsection 4). Directions must be given in writing (subsection (5)) and the Scottish Ministers must publish directions and guidance (subsection (6)).
Section 13 – Interpretation of Part 1

78. Section 13 sets out how the terms “collection”, “object” and “property in care” are to be interpreted in the Bill.

79. “Collection” in the Bill means a collection of objects usually with some kind of shared characteristic, for example created by the same individual or referring to the same place. It is used in this Bill to refer specifically to collections of objects, rather than to collections of buildings or sites. The term can refer to the entire collection of material managed by Historic Environment Scotland or smaller groupings within the ‘parent collection’.

80. The collections that will be managed by Historic Environment Scotland include material of many different types and in many different formats. The term “object” has been used throughout the bill to refer to a ‘thing’ curated by Historic Environment Scotland. The definition provided in the Bill makes it clear that objects may be physical artefacts, documents or indeed anything, provided only that it is of relevance to the historic environment.

81. “Object” in the Bill means an object, document or other thing having historical, archaeological, architectural or cultural significance or interest relating to the historic environment generally or with particular reference to Scotland. The term “document” used here takes its meaning from schedule 1 to the Interpretation and Legislative Reform Scotland Act 2010 and means “anything in which information is recorded in any form (and references to producing a document are to be read accordingly)”. “Document” would cover information recorded in electronic form, for example, digital images, databases, spread sheets and 3-D and 2-D spatial data.

82. “Property in care” has the meaning given to it in section 3A.

PART 2 – FUNCTIONS IN RELATION TO SCHEDULED MONUMENTS

Section 14 – Historic Environment Scotland’s functions in relation to scheduled monuments

83. Section 14 introduces schedule 2 to the Bill, which makes provision for Historic Environment Scotland’s functions in relation to scheduled monuments as well as making other modifications, including those relating to consents and appeals. It confers on Historic Environment Scotland the function of compiling and maintaining the schedule of monuments under the 1979 Act. It also confers designation functions on Historic Environment Scotland in relation to the inventories of gardens and designed landscapes and of battlefields. All of these matters are provided for by changes to the 1979 Act. Further notes on schedule 2 are given below.

PART 3 – FUNCTIONS IN RELATION TO LISTING AND CONSERVATION

Section 15 – Historic Environment Scotland’s functions in relation to listed buildings

84. Section 15 introduces schedule 3 to the Bill which makes provision for Historic Environment Scotland’s functions in relation to listed buildings and conservation areas as well as making other modifications including those relating to consents and appeals. It confers on
Historic Environment Scotland the function of compiling lists of buildings of special architectural or historic interest. These matters are provided for by changes to the 1997 Act. Further notes on schedule 3 are given below.

PART 4 – FUNCTIONS IN RELATION TO THE MARINE ENVIRONMENT

Section 16 - Historic Environment Scotland’s functions in relation to the marine environment

85. Section 16 introduces schedule 4 to the Bill which makes provision for Historic Environment Scotland’s functions in relation to the marine environment by way of amendment to the Marine (Scotland) Act 2010. Further notes on schedule 4 are given below.

PART 5 – DISSOLUTION OF RCAHMS AND TRANSFER OF STAFF ETC. TO HISTORIC ENVIRONMENT SCOTLAND

Section 17 - Dissolution of RCAHMS

86. Section 17 provides for the dissolution of the Royal Commission on the Ancient and Historical Monuments of Scotland. The duties of serving Commissioners will cease at the commencement of this provision.

Section 18 - Transfer of staff and property etc. to Historic Environment Scotland

87. Section 18 introduces schedule 5 to the Bill which contains provisions about the transfer to Historic Environment Scotland of staff and property etc. of RCAHMS and of the Executive Agency of the Scottish Ministers known as Historic Scotland. Further notes on schedule 5 are given below.

PART 6 – FURTHER MODIFICATIONS IN RELATION TO THE HISTORIC ENVIRONMENT

Section 19 - Grants and loans by the Scottish Ministers

88. Section 19 amends the 1953 Act, which is the current basis for grant-giving in respect of the repair of historic buildings.

89. Subsection (2) removes from section 4 of the 1953 Act the requirement that buildings/land must be of “outstanding” historic or architectural interest to be eligible for grants by the Scottish Ministers under that section, as this provision is no longer of particular value. It dates from a period before Listed Buildings were assigned to categories and before grant programmes had detailed and agreed criteria. It also inserts a new section 1A which clarifies that the power to make grants under section 4 of the 1953 Act includes the power to make loans for the same purposes. This recognises the need to make wise use of public funds by allowing for approaches other than grant-giving. Subsection (2)(d) inserts a new subsection (5) in section 4 of the 1953 Act which clarifies that a grant or loan made under this section is to be made on such terms and conditions (including as to repayment) as Ministers may determine.
90. Subsection (3) repeals subsection (3) of section 45A of the 1979 Act, inserted by the Historic Environment (Amendment) (Scotland) 2011 Act, which placed an annual limit on grants and loans made by Ministers for the development and understanding of matters of historic, etc., interest. This power is currently used to give support for the work of a range of voluntary bodies whose objectives include cultivating the general conditions by which Scotland’s historic environment is valued and cared for. With the desired move to more collaborative action to deliver agreed strategic objectives, the work of such bodies is likely to become proportionately more significant in future and it is desired to retain flexibility to offer support in this way in situations where funding by Historic Environment Scotland might be perceived as not appropriate.

Section 20 - Local inquiries in relation to ancient monuments

91. Section 20 inserts new sections 23A and 23B into the 1979 Act to give the Scottish Ministers a power to hold inquiries in relation to functions under Part 1 of the 1979 Act including for example an appeal under new section 1C. The operation of these changes is discussed further below, under schedule 2.

Section 21 - Meaning of “listed building”

92. Section 21 amends section 1 of the 1997 Act which places a duty on the Scottish Ministers to compile and maintain a list of buildings of special architectural or historic interest by inserting a new subsection (4A). This new section allows for any such entry for a building in the list to specify that an object or structure is not to be treated as part of the building for the purposes of the 1997 Act and also that any part or feature of the building is not of special architectural historic interest. This new power will apply to future new entries and to the amendment, in the future, of existing entries. The intention is to ensure that protection is more precisely targeted upon those elements of a building which are of particular historical or architectural significance. For example, the new power would allow for a relatively modern extension to a historic building to be excluded from the protection – and restrictions – applied by listing to the remainder of the building.

Section 22 - Applications for listed building consent

93. Section 22(2) amends section 12 of the 1997 Act by inserting new subsections (1A) and (1B). This gives Ministers the power to set out in regulations or directions the circumstances in which a planning authority which is minded to grant listed building consent is required to notify the Scottish Ministers.

94. Section 22(3) amends section 13 of the 1997 Act to repeal the existing powers in subsections (1) and (2) for Ministers to set out in directions that specified types of listed building consent applications need not be notified to the Scottish Ministers.

95. Section 22(4) inserts subsection (2A) into section 14 of the 1997 Act, with the effect that where the planning authority is minded to grant listed building consent, Ministers may set out in directions conditions that should be imposed, and that the planning authority must consider imposing those conditions, and must not subsequently grant consent without satisfying the Scottish Ministers that such consideration has been given and that either such conditions have
been imposed, or are not required. An example of where this could be used, would be where Ministers were considering calling in an application where the proposals were generally acceptable, but they had certain specific concerns. With the imposition of certain conditions Ministers would be content for the consent to be granted, and therefore these directions could avoid the need for call in.

**Section 22A – Control of demolition**

96. Section 22A amends section 66 of the 1997 Act to enable local authorities to determine applications for consent made by a planning authority for the demolition of a building within a conservation area. The planning authority will apply to itself for consent, as is the case with local authority planning applications. They are required to consult HES before they do this, to ensure the appropriate checks and balances are in place.

**PART 7 – FINAL PROVISIONS**

**Section 23 - Interpretation**

97. Section 23 expands the short references used in the Bill, for economy of space, to give their full citations: “the 1979 Act” to the Ancient Monuments and Archaeological Areas Act 1979 and “the 1997 Act” to the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997.

**Section 24 – Subordinate legislation**

98. This section provides that orders made under this Act are subject to the negative procedure of the Scottish Parliament with the exception of commencement orders under section 29(2), orders under sections 3(8) and 7(7) and some orders under section 25(1). Orders under sections 3(8), 7(7) and 29(2) are subject to no procedure. Orders under section 25(1) which add to, replace or omit the text of an Act are subject to the affirmative procedure of the Scottish Parliament.

**Section 25 – Ancillary provision**

99. Subsection (1) confers powers on the Scottish Ministers enabling them to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purpose of giving full effect to this Act or any of its provisions.

100. Subsection (2) states that any order made under the powers of section 25(1) may modify any enactment (including this Act).

**Section 26 – Consequential modifications**

101. Section 26 introduces schedule 6 which makes amendments to other Acts required as a result of the establishment of Historic Environment Scotland and repeals provisions of certain Acts.
Section 27 – Crown application: criminal offences

102. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Bill applies to the Crown in Scotland. However, subsection (1) absolves the Crown of any criminal liability, should it be in contravention of the provision in section 4(5) of this Bill.

Section 28 – Crown application – powers of entry

103. Section 28 provides that the power in section 4 (power of entry to investigate the historic environment) is exercisable in relation to Crown land, but only if the appropriate authority gives its consent. Subsection (2) provides a table to clarify what is meant by “appropriate authority”.

Section 29 - Commencement

104. Section 29 sets out the arrangements for commencement of the provisions of the Bill. Section 23 to 25, 27, 28 and 30 come into force on the day after Royal Assent. All other provisions will come into force on such day as the Scottish Ministers may by order appoint. Subsection (3) provides that a commencement order may include transitional, transitory or saving provision.

Section 30 – Short title

105. This provides for the Act, if passed, to be referred to as the Historic Environment Scotland Act 2014.

SCHEDULES

SCHEDULE 1 – HISTORIC ENVIRONMENT SCOTLAND

106. This schedule makes provision about the status, membership procedures and powers relating to Historic Environment Scotland.

107. Paragraph 1 clarifies the status of Historic Environment Scotland: it is not a Crown body and therefore does not have any of the special privileges of the Crown. Crown bodies are not, for example, required to obtain formal scheduled monument consent for works to properties in their ownership or care.

108. Paragraph 2 deals with membership arrangements in relation to the Board of Historic Environment Scotland. Sub-paragraph (1) sets out maximum and minimum numbers (which Ministers have a power under sub-paragraph (8) to vary from the 10-15 specified here). All Board members are to be appointed by the Scottish Ministers and must have (sub paragraph (3)) skills and expertise relevant to the functions of the body. There is no specification of particular fields of expertise, with the expectation being that Ministers will select a balanced board whose members among them combine knowledge of the functional areas with skills and experience suitable for managing a large public body. Sub-paragraph (4) specifies that Ministers must encourage equal opportunities when making appointments to the board. The specific meaning of “equal opportunities” is clarified by sub-paragraph (9). More generally, it is intended to add Historic Environment Scotland to the list of bodies whose appointments are regulated by the...
Commissioner for Ethical Standard in Public Life in Scotland. In order that the first round of appointments can be regulated and conducted according to the Commissioner’s Code of Practice the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Historic Environment Scotland as Specified Authority) Order 2014 is already in force, meaning that Historic Environment Scotland can be treated as if it were a specified body listed in schedule 2 to the 2003 Act. Sub-paragraph (5) allows Ministers to set the terms and conditions of service of Board members, while sub-paragraph (6) sets out arrangements for members to resign. Sub-paragraph (7) allows for Ministers to reappoint members.

109. Paragraph 3 sets out that members of certain bodies are not eligible to be appointed as Board members, or must cease to be Board members if they attain a place in these bodies. The bodies specified are the House of Commons, the House of Lords, the Scottish Parliament and the European Parliament. The reason for these exclusions is to avoid any perception of conflicts of interest between the legislative role of these bodies and the decision-making role of Historic Environment Scotland.

110. Paragraph 4 sets out the arrangements for removal of members, including insolvency, repeated non-attendance or inability to discharge the duties required of members. These factors, if they pre-existed, would debar any person from being appointed in the first instance, so only provisions for removal are required in the Bill.

111. Paragraph 5 allows for payment of remuneration, allowances and expenses to Board members, with Ministers determining the rates.

112. Paragraph 6 sets out the arrangements for appointment and employment of a person as Chief Executive, with a requirement for Ministerial approval of the Board’s chosen candidate. This paragraph also covers arrangements for the employment of staff.

113. Paragraph 7 allows for the payment of pensions, allowances and gratuities by Historic Environment Scotland, with Ministers again determining the rates.

114. Paragraphs 8 and 9 set out the arrangements for the Board’s business, including committees, procedure and meetings. Ministers and officials are permitted to attend meetings, but may not vote.

115. Paragraph 10 allows the Board to delegate any of their functions to members, committees or employees, except that the Board cannot delegate the approval of annual reports and accounts.

116. Paragraph 11 allows for proceedings of Historic Environment Scotland to remain valid, even when conducted while the Board or a committee is temporarily short of the minimum specified number of members or if a member of the Board or committee subsequently proves to be ineligible for membership or is disqualified. The normal conduct of Board business would allow the Chair to require any business conducted in such circumstances to be brought back to the Board for review.
117. Paragraph 12 sets out the general powers available to Historic Environment Scotland. Sub-paragraph (1) is a power to do anything related to the exercise of its functions while sub-paragraph (2) sets out a list of particular powers. These powers are intended to give the body a sufficiently wide range of powers to undertake any activity currently in hand at RCAHMS or Historic Scotland or foreseen.

118. Paragraphs 13 and 14 set out requirements in respect of accounts and reports, including for their publication.

**SCHEDULE 2 – FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO SCHEDULED MONUMENTS**

119. Schedule 2 to the Historic Environment Scotland Bill makes provision for Historic Environment Scotland’s functions in relation to scheduled monuments (within the meaning of the 1979 Act) as well as making other modifications.

**Part 1 – Schedule of monuments**

120. Part 1 of the schedule confers on Historic Environment Scotland the function under section 1 of the 1979 Act of compiling and maintaining a schedule of monuments of national importance as currently carried out by Historic Scotland for Scottish Ministers. It also makes other modifications of section 1 of the 1979 Act. This includes replacing section 1(6) with a new version which makes clear that HES must notify prescribed persons of changes to the schedule of monuments in such form and manner and within such time as set out by Ministers in regulations.

121. The duty of Ministers to compile and publish a list of scheduled monuments is replaced by a duty on Historic Environment Scotland to compile and publish the schedule as prescribed by Ministers. The latter change will involve the replacement of a regularly published printed index to scheduled monuments by online access to digital versions of the scheduling documents (including maps) which relate to each and every scheduled monument. Online public access to this definitive material will be what the body is required to deliver, rather than a simple list, though such lists can still be generated if need arises.

**Part 2 – Scheduled Monument Consent**

122. Part 2 of the schedule confers on Historic Environment Scotland functions in relation to the grant, modification and revocation of scheduled monument consents; modifies the functions of the Scottish Ministers in relation to modification and revocation of such consents, and makes consequential modifications, including to the procedure for applications for the grant, modification and revocation of such consents. From the point of view of applicants for consent, the extant system is being altered to enable Historic Environment Scotland to undertake the functions above as well as Ministers, with the additional provision of an appeal to Ministers (see below for more detail on appeals).

123. Paragraph 5 confers the power to grant scheduled monument consent under section 2 of the 1979 Act on Scottish Ministers or Historic Environment Scotland. Sub-paragraph (d) inserts
subsection (5A) in section 2 of the 1979 Act. This allows for the granting of partial consent in relation to an application for scheduled monument consent.

124. Paragraph 6 inserts new section 3A in the 1979 Act. This allows any person interested in a scheduled monument which is subject to a scheduled monument consent granted subject to conditions to apply to Historic Environment Scotland for the variation or discharge of any such conditions. The section also sets out details of what an application must specify and what actions Historic Environment Scotland may take in response. It also recognises that Ministers may take decisions on such applications where they have used their call-in powers.

125. Paragraph 7 further amends the 1979 Act by substituting subsections (3) and (4) of section 4 with two new subsections which allow Historic Environment Scotland to revoke or modify a scheduled monument consent at any time before works have been completed. Subsection (4) also clarifies that any modification or revocation does not apply to works already carried out.

126. Paragraph 8 inserts a new section 4A into the 1979 Act which relates to the modification and revocation of scheduled monument consent by Scottish Ministers, including arrangements for notification and hearings. The effect of these changes is to recast the provisions of Part II of schedule 1 to the 1979 Act to harmonise procedure with that for modifications and revocations in respect of listed buildings under the 1997 Act. The intended effect of these changes is to make procedures around scheduled monument consent as similar as possible to procedures around listed building consent.

127. Paragraphs 9 to 13 make changes to sections 5 to 9 of the 1979 Act to give Historic Environment Scotland the necessary powers and liabilities in relation to its newly conferred functions under the 1979 Act.

128. Paragraph 14 amends Part 1 of schedule 1 (applications for scheduled monument consent) to the 1979 Act to require applications for scheduled monument consent to be made to and dealt with by Historic Environment Scotland rather than by the Scottish Ministers.

129. Sub-paragraph (4A) inserts new paragraph 2C into schedule 1 of the 1979 Act, to ensure that Historic Environment Scotland is required to notify Ministers of certain specified applications for scheduled monument consent. This means that Ministers can decide which cases or types of cases should be notified to them by Historic Environment Scotland where it intends to grant consent. This also provides that HES must not grant scheduled monument consent until the 28 day period (in which Ministers can decide to call in an application) has expired without Ministers calling in the application, or giving notice that more time is required, or until Ministers have notified HES that they do not intend to call in the application.

130. Sub-paragraph (5(b)) of paragraph 14 substitutes sub-paragraphs (2) and (3) of paragraph 3 with a new sub-paragraph (2) which allows the Scottish Ministers to prescribe (by way of regulations) the procedures to be followed by Historic Environment Scotland when determining applications for scheduled monument consent.
131. Paragraph 15 repeals 5 to 9 of schedule 1 of the 1979 Act in connection with amendments made by paragraph 7, and further amends Part 2 of schedule 1 of the same Act in this respect.

Part 3 – Scheduled monuments: enforcement notices

132. Part 3 of the schedule relates to scheduled monument enforcement notices.

133. Paragraphs 16-18 confer on Historic Environment Scotland functions in relation to scheduled monument enforcement notices currently conferred on the Scottish Ministers, by amending sections 9A, 9B and 9D of the 1979 Act to allow Historic Environment Scotland to serve a scheduled monument enforcement notice in respect of unauthorised works carried out to a scheduled monument.

134. Paragraphs 18A and 18B amend the 1979 Act with regards to appeals against scheduled monument enforcement notices.

135. Paragraph 18A amends section 9C of the 1979 Act to enable appeals against scheduled monument enforcement notices to be made to Ministers rather than the Sheriff as is the case at present. This Paragraph also amends section 9C to update the provisions as regards the grounds of appeal against scheduled monument enforcement notices to bring them in line with the grounds for appeals against listed building enforcement notices.

136. Paragraphs 18A(c) and (d) insert subsections 2A and 3A into section 9C, adding provisions that written notice of an appeal must be given to the Scottish Ministers before the date at which the enforcement notice should come into effect, and provisions that persons giving such notice must submit (within a prescribed timeframe) a statement specifying the grounds on which the appeal is made, and any other information as Ministers prescribe.

137. Paragraph 18B inserts sections 9CA and 9CB into the 1979 Act relating to the determination of and procedure for appeals. These two new sections align appeals against scheduled monument enforcement notices with equivalent provisions in the 1997 Act in respect of appeals against listed building consent enforcement notices.

138. New section 9CA gives Ministers a power to give directions to HES in order to give effect to the determination of an appeal against a scheduled monument enforcement notice. Such directions may include quashing the notice. The effect of the insertion of Section 9CB is to give Ministers the power to make provision in regulations in connection with appeals including the form, manner and time for making an appeal, the notification of an appeal and the manner in which the appeal is to be conducted. Section 9CB also specifies that new schedule 1A (as inserted by schedule 2, Paragraph 30) which makes provisions regarding the determination of certain appeals by a person other than Ministers, applies to appeals under section 9C.

139. Amendments to section 9D give Historic Environment Scotland power to enter 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.
140. Paragraph 19A inserts section 9FA into the 1979 Act with the effect that the Scottish Ministers may serve a scheduled monument enforcement notice under section 9A. Such a notice has the same effect as if the notice were served by Historic Environment Scotland. This allows Ministers to serve these notices in cases where they have called in an application for scheduled monument consent. Ministers must not serve a notice under this section without first consulting Historic Environment Scotland.

Part 4 – Scheduled monuments: stop notices

141. Part 4 of the schedule confers on Historic Environment Scotland functions in relation to stop notices and temporary stop notices currently conferred on Scottish Ministers by amending sections 9G, 9H, 9I, 9K, 9L and 9N of the 1979 Act. From the point of view of the person receiving such a notice, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland. Amendments to section 9G of the 1979 Act enable Historic Environment Scotland to serve a stop notice, where a scheduled monument enforcement notice has been served requiring works to cease, whilst amendments to section 9K enable Historic Environment Scotland to serve a temporary stop notice requiring works to stop immediately.

142. Paragraph 22A inserts 9HA into the 1979 Act with the effect that the Scottish Ministers may serve a stop notice under section 9G, and that this has the same effect as if the notice were served by Historic Environment Scotland. This allows Ministers to serve these notices in cases where they have called in an application for scheduled monument consent. Ministers must not serve a notice under this section without first consulting Historic Environment Scotland.

Part 5 – Appeals and referrals from Historic Environment Scotland

Chapter 1 – Appeals from Historic Environment Scotland

143. Chapter 1 of Part 5 of the schedule makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers and for the referral of applications for and related to scheduled monument consent from Historic Environment Scotland to the Scottish Ministers. This is a new provision, consequent on transfer of duties previously performed by Ministers through their officials. Historic Environment Scotland will have internal processes which it is intended will resolve most disagreements, so it is intended that appeal processes set out in the Bill will be required relatively infrequently.

144. Paragraph 28 inserts a new section 1C into the 1979 Act which gives owners, tenants and occupiers the right to appeal to the Scottish Ministers against a decision of Historic Environment Scotland to include a monument in the Schedule or to amend an entry relating to the monument in question in the Schedule. Inserted new section 1D allows for the Scottish Ministers to either dismiss or allow such an appeal while inserted new section 1E provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals.

145. Paragraph 29 inserts new section 4B into the 1979 Act which gives applicants for scheduled monument consent the right to appeal to the Scottish Ministers in the following circumstances – refusal of consent, the granting of consent subject to conditions, refusal of an application for variation or discharge of conditions attached to consent, granting of consent subject to conditions and refusal of an application for subsequent approval required by a
These documents relate to the Historic Environment Scotland Bill as amended at stage 2 (SP Bill 47A)

condition to which consent is subject. Paragraph 29 also inserts two further new sections: 4C which makes further provision relating to such appeals whilst 4D provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals under 4B.

146. Paragraph 30 inserts a new schedule 1A after schedule 1. This schedule makes provisions about the determination of certain appeals by a person other than the Scottish Ministers and applies to appeals under inserted sections 1C, 4B and 9C. This applies to appeals against inclusion of a monument in the schedule, appeals in relation to scheduled monument consent and appeals against scheduled monument enforcement notices. Paragraph 1 of schedule 1A allows for the Scottish Ministers to prescribe classes of appeals under sections 1C, 4B and 9C which can be determined by a person appointed by the Scottish Ministers.

147. Paragraph 2 clarifies the powers and duties of a person so appointed. Paragraph 3 allows for the Scottish Ministers to direct that an appeal which would be determined by an appointed person is instead to be determined by them, while paragraph 4 provides for the Scottish Ministers to revoke a direction made under the powers set out in paragraph 3 at any time.

Chapter 2 – Referral of certain applications

148. Chapter 2 of Part 1 of the schedule makes provision for the referral of applications for (and related to) scheduled monument consent from Historic Environment Scotland to the Scottish Ministers by inserting a new section 3B into the 1979 Act. This enables the Scottish Ministers to call in an application for decision by them instead of by Historic Environment Scotland, offering harmonisation with wider planning procedures.

Part 6 – Functions in relation to gardens and designed landscapes and battlefields

149. Part 6 of the schedule confers on Historic Environment Scotland the function currently conferred on Scottish Ministers of compiling and maintaining the inventory of gardens and designed landscapes and the inventory of battlefields and amends sections 32A and 32B of the 1979 Act.

Part 7 – Other matters in relation to Scheduled monuments

150. Part 7 of the schedule makes other modifications of the 1979 Act in relation to scheduled monuments to enable Historic Environment Scotland to undertake functions in relation to such monuments, including provision for powers of entry.

151. Paragraph 36 amends the 1979 Act to allow both Historic Environment Scotland and the Scottish Ministers, to seek to restrain or prevent any breach of controls provided under the 1979 Act by means of an application to the court for interdict.

SCHEDULE 3 – FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO LISTING AND CONSERVATION

152. Schedule 3 to the Bill makes provision for Historic Environment Scotland’s functions in relation to listed buildings and conservation areas (within the meaning of the 1997 Act) as well as other modifications.
Part 1 – Listing of special buildings

153. Paragraph 2 of Part 1 of the schedule confers on Historic Environment Scotland the function of compiling, or approving, lists of buildings of special architectural or historic interest under section 1 of the 1997 Act, currently conferred on Scottish Ministers. Paragraph 3 inserts a new section 1A into the 1997 Act which imposes a duty on Historic Environment Scotland to publish the list compiled under section 1 and to notify certain persons and gives the Scottish Ministers the power to set out in regulations the requirements of such publication and notification. From the point of view of the owner or occupier of a building, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

Part 2 – Listed Building Consent

154. Part 2 of the schedule confers on Historic Environment Scotland functions in relation to the grant, modification and revocation of listed building consent. From the point of view of the owner or occupier of a building, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

155. Paragraph 8 amends section 7 of the 1997 Act to confer the power (currently held by Scottish Ministers) on Historic Environment Scotland to grant listed building consent.

156. Paragraph 9 of schedule 3 amends new section 9 of the 1997 Act to enable the Scottish Ministers to include in regulations the procedure to be followed by planning authorities or the Scottish Ministers in considering and determining an application for listed building consent. Paragraph 9 also inserts section 9(6) which specifies that the regulations must include provisions that require planning authorities to consult with Historic Environment Scotland before granting listed building consent. Under new section 9(6) Ministers may also prescribe which listed building or conservation area applications local authorities must consult on prior to granting or refusing listed building consent or conservation area consent. This means that Historic Environment Scotland will not need to be consulted on all applications, ensuring that it is only involved where a national perspective will add value.

Part 3 – Conservation areas

157. Part 3 of the schedule confers on Historic Environment Scotland functions in relation to conservation areas currently conferred on Scottish Ministers, including functions in relation to building preservation orders. From the point of view of owners or occupiers within a Conservation Area, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

Part 4 – Appeals against listing

158. Part 4 of the schedule makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers. This is a new provision, consequent on transfer of duties previously performed by Ministers through their officials. Historic Environment Scotland will have internal processes which it is intended will resolve most disagreements, so it is intended that appeal processes set out in the Bill will be required relatively infrequently.
159. Paragraph 18 inserts sections 5B, 5C, and 5D into the 1997 Act. This allows any owner, occupier or tenant of a building to appeal to the Scottish Ministers against a decision of Historic Environment Scotland to designate a building as a listed building or to amend the list concerning the building in question (except where the amendment removes the building from the list). Inserted section 5C allows the Scottish Ministers to either dismiss or allow such an appeal and confirms that the determination by the Scottish Ministers of an appeal under this section is final, while inserted section 5D provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals.

Part 5: Other matters in relation to listing

160. Part 5 of the schedule makes other modifications under that Act to enable Historic Environment Scotland to undertake functions in relation to listing, including powers of entry.

SCHEDULE 4 – FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO THE MARINE ENVIRONMENT

161. Schedule 4 to the Bill makes provision conferring functions on Historic Environment Scotland in relation to the marine environment by amending the Marine (Scotland) Act 2010. However, Historic Environment Scotland is not given the power to designate historic Marine Protected Areas: this power remains solely with the Scottish Ministers.

162. Paragraph 2 inserts section 80A into the 2010 Act. This sets out the circumstances in which Historic Environment Scotland may give advice and guidance as regards Historic Marine Protected Areas (MPA) designated under that Act. Amendments are also made to section 82 to 84 of the 2010 Act to require a public authority to notify Historic Environment Scotland where the exercise of any of the authority’s functions or the making of determinations is capable of affecting a marine historic asset in a Historic MPA.

SCHEDULE 5 – TRANSFER OF STAFF, PROPERTY ETC. TO HISTORIC ENVIRONMENT SCOTLAND

163. Schedule 5 to the Bill makes provision for the transfer of staff and property etc. to Historic Environment Scotland.

164. Paragraphs 1 to 3 make provision in relation to staff transfers. Paragraph 1 empowers the Scottish Ministers to make a staff transfer scheme making provision for or in connection with the transfer of staff employed by RCAHMS and staff of the Scottish Ministers employed in Historic Scotland to Historic Environment Scotland. Such a scheme is not subject to Parliamentary procedure.

165. Under paragraph 2, the scheme must specify the date on which the transfer is to take place. The scheme may specify different dates for different purposes and make different provision in relation to different cases or classes of case.

166. Paragraph 3 makes provision in respect of the effect of the transfer on an employee’s contract. It provides that the contract of employment for the person who is transferring has effect
These documents relate to the Historic Environment Scotland Bill as amended at stage 2 (SP Bill 47A)

on or after the transfer date as if originally made between the employee and Historic Environment Scotland.

167. Paragraph 3(6) provides that employed staff may object in advance of their contract being transferred to Historic Environment Scotland, in which case their contract is terminated at the end of the day before the intended transfer. This termination will not be treated as dismissal of a person for the purposes of the legislation.

168. Paragraphs 4 and 5 cover property transfers. Paragraph 4(1) enables the Scottish Ministers to make a property transfer scheme making provision for the transfer to Historic Environment Scotland of property, rights, liabilities and obligations of Scottish Ministers or RCAHMS. This includes property rights and obligations under lease agreements and rights and liabilities under grant and loan agreements.

169. Paragraph 5(3) provides that a transfer scheme may make provision in relation to different cases or classes of case and may specify different dates in relation to different property, rights, liabilities and obligations.

SCHEDULE 6 – CONSEQUENTIAL MODIFICATIONS

170. Schedule 6 lists consequential modifications to other Acts which are not specific to the historic environment. Historic Environment Scotland, as with all newly created public bodies, requires to be added to the list of bodies covered in areas of regulation which apply across the public sector. Schedule 6 makes these changes in the following areas, each relative to the similarly named Act:

- Ethical standards
- Public services conduct
- Freedom of information
- Public appointments and public bodies
- Public services reform
- Public records

171. Finally, schedule 6 provides for RCAHMS, once it is dissolved, to be removed from the schedules accompanying these Acts.
HISTORIC ENVIRONMENT SCOTLAND BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Historic Environment Scotland Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

3. In this Memorandum –

   the “1979 Act” means the Ancient Monument and Archaeological Areas Act 1979;

   the “1997 Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; and

   “HES” means Historic Environment Scotland

Part 1 – establishment of Historic Environment Scotland

Section 3(1) - Power to delegate the exercise of any of Scottish Ministers’ functions in relation to properties in care to HES or any other person considered appropriate.

Power conferred on: the Scottish Ministers
Power exercisable by: written delegation
Revised or new power: amended
Parliamentary procedure: none

Provision

4. This provision allows Ministers to delegate functions in relation to properties in care to HES (or any other body specified as being considered appropriate) and to set out the detailed arrangements in respect of how such functions are to be exercised. The provision has been amended at Stage 2 by the insertion of subsection (7A) which places Scottish Ministers under a duty to publish delegations.
Reason for taking the power

5. As set out in the delegated powers memorandum at introduction, Ministers wish HES to be able to exercise Scottish Ministers’ management functions in relation to properties in care. They also wish to be able to delegate to another body in future, should this be considered more appropriate. The power was amended at Stage 2 to require Ministers to publish any such delegation. The Government is committed to transparency and scrutiny and had intended to publish any such delegations, and has agreed to the recommendation of the Committee that publication be made a statutory requirement. (30th Report of the Delegated Powers and Law Reform Committee of 2014, paragraph 37.)

6. The Committee will also wish to be aware that an additional section 3A has been inserted at Stage 2 which places a duty on Ministers to compile and maintain a list, which they must publish, of properties in care in relation to which they may delegate functions under this section. A definition of property in care is given in the new section. It is defined as meaning any heritable property which is of historical, archaeological, architectural or cultural significance or interest and which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers.

7. The amendment is a response to the recommendation of the Committee that there should be clarity concerning the properties in relation to which Ministers can and cannot delegate their functions. (30th Report of the Delegated Powers and Law Reform Committee of 2014 paragraph 38 onward.) The Committee recommended that this matter be addressed by adjusting the definition of “property in care” given in the Bill, but after consideration Ministers decided that any definition, however, detailed, would be open to interpretation, and for that reason absolute clarity could only be assured by creating and publishing a definitive list.

Choice of procedure

8. The Bill itself provides for HES to exercise such delegated functions. Giving effect to that is an administrative arrangement and it is not considered that parliamentary procedure is required. Ministers are now under a duty to publish delegations to ensure transparency of process.

Section 3 (8) - Power to prescribe persons Ministers consider appropriate to delegate functions to in relation to properties in care.

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>order</td>
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<tr>
<td>Revised or new power:</td>
<td>new</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative</td>
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</table>

Provision

9. Section 3(1)(b) of the Bill enables Ministers to delegate to HES their management functions in relation to properties in care. Ministers also wish to be able to delegate to another body in future, should this be considered more appropriate. As drafted at introduction, the power
This document relates to the Historic Environment Scotland Bill as amended at Stage 2 (SP Bill 47A)
in section 3(1)(b) allowed Ministers to delegate functions to any other person they considered appropriate.

10. At Stage 2, section 3(1)(b) was amended to provide that the persons to whom functions in relation to properties in care could be delegated are “prescribed persons” only. The power to prescribe those persons is contained in the definition of “prescribed” in section 3(8), which was inserted at Stage 2. If the Scottish Ministers wish to delegate functions to persons other than HES, they must prescribe by order the persons they consider appropriate.

Reason for taking the power

11. As stated in the Delegated Powers Memorandum provided at introduction, Ministers wish HES to be able to exercise Scottish Ministers’ management functions in relation to properties in care. They also wish to be able to delegate to another body in future, should this be more appropriate.

12. The requirement on Ministers to specify persons considered appropriate in an order subject to parliamentary scrutiny was introduced at Stage 2 following the recommendations of the Delegated Powers and Law Reform Committee. (30th Report of the Delegated Powers and Law Reform Committee of 2014, paragraph 34 onwards.)

Choice of procedure

13. A decision by Ministers to delegate to any other body would be a matter in which there is likely to be considerable public interest, and for that reason Ministers have accepted the recommendation of the Committee that an order with affirmative procedure is appropriate.

Section 7 - Power to delegate the exercise of any of Scottish Ministers’ functions in relation to collections to HES or any other person considered appropriate.

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>written delegation</td>
</tr>
<tr>
<td>Revised or new power:</td>
<td>amended</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>none</td>
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</tbody>
</table>

Provision

14. This provision allows Ministers to delegate functions in relation to their collections to HES (or any other body specified as being considered appropriate) and to set out the detailed arrangements in respect of how such functions are to be exercised. The provision has been amended at Stage 2 by the insertion of subsection (6A) which places Scottish Ministers under a duty to publish delegations.

Reason for taking the power

15. As set out in the Delegated Powers Memorandum at introduction, Ministers wish HES to be able to exercise the Scottish Ministers’ management functions in relation to collections which are in Ministers’ care (mainly those items associated with properties in care). They also wish to be able to delegate to another body in future, should this be considered more appropriate.
This document relates to the Historic Environment Scotland Bill as amended at Stage 2 (SP Bill 47A)

16. The power was amended at Stage 2 to require Ministers to publish any such delegation. The Government is committed to transparency and scrutiny and had intended to publish any such delegations, and has agreed to the recommendation of the Committee that publication be made a statutory requirement. (30th report of the Delegated Powers and Law Reform Committee of 2014, paragraph 37.)

Choice of procedure

17. The Bill itself provides for HES to exercise such delegated functions. Giving effect to that is an administrative arrangement and it is not considered that parliamentary procedure is required, Ministers are now under a duty to publish such delegations to ensure transparency of process.

Section 7(7) – Power to prescribe persons Ministers consider appropriate to delegate functions to in relation to collections.

Power conferred on: the Scottish Ministers
Power exercisable by: order
Revised or new power: new
Parliamentary procedure: affirmative

 Provision

18. Section 7(1)(b) of the Bill enables Ministers to delegate to HES their management functions in relation to their collections. Ministers also wish to be able to delegate to another body in future, should this be considered more appropriate. As drafted at introduction, the power in section 7(1)(b) allowed Ministers to delegate functions to any other person they considered appropriate.

19. At Stage 2, section 7(1)(b) was amended to provide that functions in relation to collections can be delegated to “prescribed persons” only, and a definition of “prescribed” was inserted into section 7(7). That definition provides for the specification by order of persons to whom functions can be delegated.

Reason for taking the power

20. As stated in the Delegated Powers Memorandum provided at introduction, Ministers wish HES to be able to exercise Scottish Ministers’ management functions in relation to collections. They also wish to be able to delegate to another body in future, should this be more appropriate. The requirement on Ministers to specify persons considered appropriate in an order subject to parliamentary scrutiny was introduced at Stage 2 following the recommendations of the Delegated Powers and Law Reform Committee (Report of 29 April 2014, paragraphs 34-35).

Choice of procedure

21. A decision by Ministers to delegate to any other body would be a matter in which there is likely to be considerable public interest, and for that reason Ministers have accepted the recommendation of the Committee that an order with affirmative procedure is appropriate.
Part 2 – Functions in relation to scheduled monuments

Part 1 of schedule 2 - paragraph 2(ea) - power to specify persons required to be notified in relation to excluding or including a monument in the Schedule or amending the entry in the Schedule relating to any monument under section 1 of the 1979 Act.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Revised or new power: amended
Parliamentary procedure: negative procedure

 Provision

22. Paragraph 2(ea) of Part 1 of schedule 2 amends section 1(6) of the 1979 Act allowing Ministers to make regulations specifying the persons required to be informed and the form and manner in which they are to be so informed and the time within which they are to be informed under section 1(6) where a monument has been included in or excluded from the Schedule or where an entry in the Schedule for a monument has been amended.

23. This provision replaces, with minor clarificatory drafting changes, the similar provision included in the Bill as introduced. It removes the requirement to notify “as soon as may be after” to clarify that HES must notify specified persons within such time as may be prescribed. The requirement to notify such persons as may be prescribed in such form and manner as may be prescribed remains unchanged.

Reason for taking the power

24. This provision enables Ministers to set out those persons who must be notified and the procedure for doing so including the time within which notification must be given. It is considered that this level of procedural detail is more appropriately left to regulations.

Choice of procedure

25. It is considered that the use of the regulation making power can be left to the level of Parliamentary scrutiny attached to the negative procedure, since it is considered that there is unlikely to be any significant concern about ensuring that the requirement which already exists to notify appropriate persons is supported by regulations which would allow Ministers to specify who should be notified, or to prescribe a given form and a timescale. It is not considered necessary or appropriate for directions to be subject to Parliamentary procedure.

Part 2 of schedule 2 – paragraph 14(4A) – inserting new paragraph 2C into Part 1 of Schedule 1 to the 1979 Act – Power to make regulations or directions to provide that specified applications for scheduled monument consent must, where HES intends to grant consent, be notified to the Scottish Ministers.

Powers conferred on: the Scottish Ministers
Power exercisable by: regulations or directions by the Scottish Ministers
Revised or new power: new
Parliamentary procedure: negative procedure for regulations, none in respect of directions
This document relates to the Historic Environment Scotland Bill as amended at Stage 2 (SP Bill 47A)

Provision

26. The Bill as introduced included provision giving Ministers the power to call-in applications for scheduled monument consent for their own determination rather than HES. An amendment has been made to the call-in power at Stage 2 to ensure it operates effectively. The amendment, adding sub-paragraph (4A) to paragraph 14 of schedule 2 to the Bill inserts a new paragraph 2C into Schedule 1 to the 1979 Act to ensure that HES, where it intends to grant consent, is required to notify Scottish Ministers of certain specified applications for scheduled monument consent as set out in regulations or directions.

Reason for taking the power

27. This provision enables Ministers to set out the circumstances in which Ministers are required to be notified where HES intends to grant consent to works to a scheduled monument. It is considered that this level of procedural detail is more appropriately left to regulations or directions to deal with changing circumstances over time. As an example, the power might be used to direct that, where an application for scheduled monument consent was linked to a concurrent application for planning consent, HES should be required to notify Ministers so that any call-in, whether under scheduled monument or planning legislation, could consider all relevant issues together. The power would enable Ministers to vary the circumstances in light of future changes. The power to give directions allows Ministers to give prompt and effective changes.

Choice of procedure

28. It is considered that the use of the regulation making power can be left to the level of Parliamentary scrutiny attached to the negative procedure, given that the principle of Ministerial call-in is contained within the Bill and that it would not be desirable or practicable for all cases handled by HES to be notified for possible call-in. It is not considered necessary or appropriate for directions to be subject to Parliamentary procedure.

Part 2 of schedule 2 – paragraph 14 (4A)– inserting new paragraph 2D into Part 1 of Schedule 1 to the 1979 Act – Power to give directions to HES to notify Scottish Ministers and any other specified persons in circumstances specified of any applications for scheduled monument consent and the decision taken on the applications.

Powers conferred on: the Scottish Ministers
Power exercisable by: directions by the Scottish Ministers
Revised or new power: new
Parliamentary procedure: none

Provision

29. Paragraph 14 of the Bill was amended at Stage 2. New inserted paragraph 14(4A) inserts new paragraph 2D into Part 1 of Schedule 1 to the 1979 Act. This power allows Ministers to give directions to HES requiring it, in specified circumstances, to notify Ministers and any other specified persons of any applications made to it for scheduled monument consent and the decisions taken in respect of those applications.
This document relates to the Historic Environment Scotland Bill as amended at Stage 2 (SP Bill 47A)

Reason for taking the power

30. This provision enables Ministers to set out the circumstances in which Ministers (and others) are required to be notified of any applications for scheduled monument consent and the decision taken on those applications. It might be, as an example, reasonable for Ministers to wish to be advised of all applications and decisions relating to consent for works at properties in care as defined in the Bill, to ensure that separation of duties within HES is operating effectively. It is considered that this level of procedural detail is more appropriately left to directions to deal promptly and effectively with changing circumstances over time. The power would enable Ministers to vary the circumstances in light of future changes and harmonises the provisions relating to applications for scheduled monument consent with those relating to listed building consent and wider planning legislation.

Choice of procedure

31. It is not considered necessary or appropriate for directions to be subject to Parliamentary procedure.

Part 3 - Scheduled Monument Enforcement Notices

Part 3 of schedule 2 - paragraph 18A(d) – inserting subsection 9C(3A) into the 1979 Act – Power to prescribe time within which statement in writing in connection with scheduled monument consent enforcement appeals must be made and to prescribe what further information is required.

Powers conferred on: the Scottish Ministers
Power exercisable by: regulations
Revised or new power: new
Parliamentary procedure: negative procedure

Provision

32. As introduced, the Bill provided for an appeal against a scheduled monument enforcement notice to be made by summary application to the sheriff. At Stage 2, an amendment replaced this appeal to the sheriff with an appeal to the Scottish Ministers since Historic Environment Scotland rather than Ministers will be able to issue scheduled monument enforcement notices in future. This aligns the appeal process for scheduled monument enforcement notices with that which already exists for listed building enforcement notices. Paragraph 18A(d) of the Bill, introduced at Stage 2, inserts new paragraph (3A) into section 9C of the 1979 Act requiring appellants to submit a written statement of the grounds of appeal when giving notice of appeal or within such time as may be prescribed by Ministers. Ministers are also given the power to specify what further information is required to be submitted.

Reason for taking the power

33. This power has been taken to provide the Scottish Ministers with some flexibility on specifying the time within which grounds of appeal must be submitted and the additional information required. This is to allow adjustments to time limits to be made if there are specific or generic issues with establishing the precise date at which potential appellants become aware of the decision which triggers their right of appeal. While the Bill establishes the right of appeal, it is considered that this level of procedural detail is more appropriately left to regulations to
This document relates to the Historic Environment Scotland Bill as amended at Stage 2 (SP Bill 47A)
allow for flexibility over time and to ensure harmonisation with the enforcement notice appeal process for listed buildings.

Choice of procedure
34. It is considered appropriate that this power is subject to negative procedure because it will be used to set details of appeal requirements and timescales.

Part 3 of schedule 2 - paragraph 18B – inserting new section 9CB into the 1979 Act – Power to make regulations to make provision in respect of scheduled monument enforcement notice appeals

Powers conferred on: the Scottish Ministers
Power exercisable by: regulations
Revised or new power: new
Parliamentary procedure: negative procedure

Provision
35. As stated in paragraph 25 above, an amendment at Stage 2 replaced the appeal against a scheduled monument enforcement notice to the sheriff with an appeal to the Scottish Ministers. Paragraph 18B of the Bill added at Stage 2 inserts new sections 9CB into the 1979 Act allowing Scottish Ministers, by way of regulations to make provision in connection with such appeals. Regulations may also make provision about the procedure to be followed, including the form, manner and time for making an appeal, notification of the appeal, and the manner in which an appeal is to be conducted. Regulations may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted is to be at the discretion of the Scottish Ministers (or person appointed by them).

Reason for taking the power
36. This provision enables Ministers to set out the procedures and time limits to be followed in relation to appeals against scheduled monument enforcement notices. This is to allow adjustments to time limits to be made if there are specific or generic issues with establishing the precise date at which potential appellants become aware of the decision which triggers their right of appeal. While the Bill establishes the right of appeal, it is considered that this level of procedural detail is more appropriately left to regulations to allow for flexibility over time and to ensure harmonisation with the enforcement notice appeal process for listed buildings.

Choice of procedure
37. It is considered appropriate that this power is subject to negative procedure because it will be used to set details of procedure and timescales. It is considered that the level of parliamentary scrutiny should be the same as that which already applies in respect of appeals against listed building enforcement notices.

Part 3 of schedule 2 - paragraph 18B – inserting new section 9CB(4) into the 1979 Act – applying new schedule 1A (as inserted by the Bill), and changes to paragraph 30 of schedule 2 - powers to prescribe classes of appeals which are to be determined by an appointed person and in relation to publication of directions and expenses.
This document relates to the Historic Environment Scotland Bill as amended at Stage 2 (SP Bill 47A)

Powers conferred on: the Scottish Ministers
Power exercisable by: regulations or directions given by Ministers
Revised or new power: amended
Parliamentary procedure: negative procedure in respect of regulations, none in respect of directions.

Provision

38. As introduced, paragraph 30 of schedule 2 inserts a new schedule 1A into the 1979 Act which makes provision in respect of the determination of certain appeals by persons appointed by the Scottish Ministers. The provisions apply to appeals relating to the designation of a monument as a scheduled monument and appeals in respect of decisions made by HES in relation to scheduled monument consent. At Stage 2, these provisions were amended so as to apply also to appeals against scheduled monument enforcement notices.

39. Paragraph 1(1) of new schedule 1A enables Ministers to set out in regulations the classes of such appeals which are to be determined by persons appointed by Ministers. Paragraph 1(2)(a) allows regulations to except, for the time being, classes of case from being so determined. Paragraph 1(2)(b) allows Ministers, by direction, to except classes of case from being determined by an appointed person. Paragraph 3(1) allows Ministers to direct that an appeal which falls to be determined by an appointed person to instead be determined by Ministers. Paragraph 6(1) of schedule 1A gives appointed persons the power to hold an inquiry in respect of an appeal and allows Scottish Ministers to direct that an inquiry must be held. Paragraph 6(4) applies subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997. Section 265 of that Act makes provision in connection with local inquiries. Section 265(11) gives Ministers the power to prescribe a standard daily amount of expenses. The amendment at Stage 2 extends all of these provisions also to apply to section 9C of the 1979 Act which deals with scheduled monument enforcement notices.

Reason for taking the power

40. The Bill was amended at Stage 2 to remove the right of appeal on summary application to the sheriff against the issue of a scheduled monument enforcement notices, replacing it with a new right of appeal to Scottish Ministers. This provision enables Ministers to specify classes of appeals which are to be determined by appointed persons instead of by Ministers. It allows classes of case to be excepted by regulations or directions by Ministers. The power to give directions gives Ministers greater flexibility and allows them to act quickly. It ensures harmonisation of process in respect of appeals under the 1979 Act.

41. It is considered that this level of procedural detail is more appropriately left to regulations or in the case of the exceptions, regulations or directions to allow for flexibility over time and to ensure the classes of appeals to be determined by appointed persons remains appropriate as circumstances change over time.

Choice of procedure

42. It is considered appropriate that this power is subject to negative procedure because it will be used to specify in detail the classes of appeals covered. It is considered that the power to except classes of cases by regulations subject to the negative procedure or direction is also
This document relates to the Historic Environment Scotland Bill as amended at Stage 2 (SP Bill 47A)

appropriate given the detailed nature of the provision. The power to provide for the publication of any directions given by Ministers ensures transparency. Directions will be published on the Directorate for Planning and Environmental Appeals website. The intention is that the normal course will be for appeals of all kinds to be determined by appointed persons, with exceptions being rare. This explains the decisions to propose regulations for the normal course but directions for the (likely to be extremely rare) exceptions.

Part 3 – Functions in relation to listing and conservation

Schedule 3, part 2, paragraph 9 – power to specify the cases or classes of case in respect of which planning authorities are under a requirement to consult certain bodies before granting or refusing applications for listed building consent.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Revised or new power: new
Parliamentary procedure: negative procedure

Provision

43. The Bill inserted new section 9(4A) into the 1997 Act requiring regulations made by Ministers to require planning authorities to consult HES and such other persons as may be prescribed or specified in Ministerial directions before granting or refusing listed building consent. This provision has been amended at Stage 2 with new section 9(4A) removed and replaced by a new section 9(6), which retains the requirement to consult HES and such other persons but allows the Scottish Ministers to specify in regulations the cases or classes of case where this requirement to consult is to apply.

44. The amendment is to ensure that not every case seen by a local authority leads to an automatic consultation with HES, but to limit such consultation to cases or classes of cases where such consultation is likely to add value to the local authority decision-making process. Without amendment, every single case seen by a local authority would have required referral to HES, which would have represented a substantial inefficiency.

Reason for taking the power

45. The amended provision addresses the need to ensure that not every application for listed building consent is referred to HES for comment before the planning authority makes a decision. The power to specify cases in regulations allows flexibility over time, as an understanding of what types of case it will be useful to consult upon becomes clearer as the process is operated in practice. It is considered that this level of procedural requirement is more appropriately left to regulations to deal with changing circumstances over time.

Choice of procedure

46. It is considered that the use of the regulation making power can be left to the level of Parliamentary scrutiny attached to the negative procedure, as the principle of regulating the volume of consultation is already established, and the regulations will serve to fine-tune this in response to practical experience and in relation to any changes in capacity at local authorities.
Delegated Powers and Law Reform Committee

60th Report, 2014 (Session 4)

Historic Environment Scotland Bill as amended at stage 2

Published by the Scottish Parliament on 29 October 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth Anderson

Support Manager
Daren Pratt
Delegated Powers and Law Reform Committee

60th Report, 2014 (Session 4)

Historic Environment Scotland Bill as amended at stage 2

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 28 October 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Historic Environment Scotland Bill as amended at Stage 2 (“the Bill”)¹. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Bill’s central objective is to create a new public body called Historic Environment Scotland. The Policy Note explains that it is intended that the new body will be a non-departmental public body (rather than a part of the Scottish Administration).

3. As a result of creating Historic Environment Scotland, the Royal Commission on the Ancient and Historical Monuments of Scotland (“RCAHMS”) would be abolished, and most of the assets, liabilities and staff of RCAHMS and Historic Scotland would be transferred to Historic Environment Scotland. Historic Scotland is an executive agency of the Scottish Government.

4. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”²).

5. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 30th report of 2014.


6. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

7. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended delegated powers provisions listed below and that it is content with the Parliamentary procedure to which they are subject:

- Sections 3(7A) and 3A – Delegation of functions in relation to properties in care
- Section 7(6A) - Delegation of functions in relation to collections
- Paragraph 2(ea) of Schedule 2 - power to specify persons required to be notified in relation to excluding or including a monument in the Schedule, or amending the entry in the Schedule relating to any monument under section 1 of the 1979 Act
- Paragraph 14(4A) of Schedule 2 - Power to make regulations or directions to provide that specified applications for scheduled monument consent must, where HES intends to grant consent, be notified to Scottish Ministers
- Paragraph 18A(d) of Schedule 2 - Power to prescribe time within which a statement in writing in connection with scheduled monument consent enforcement appeals must be made, and to prescribe what further information is required
- Paragraphs 18B and 30 of Schedule 2 – Power to make regulations to make provision in respect of scheduled monument enforcement notice appeals
- Paragraph 9 of Schedule 3 – power to specify the cases or classes of case in respect of which planning authorities are under a requirement to consult certain bodies, before granting or refusing applications for listed building consent

8. The Committee reports that it does not need to draw the attention of the Parliament to the remaining new or substantially amended delegated powers provisions listed below:

- Sections 3(1)(b) and (8) – Delegation of functions in relation to properties in care
- Section 7(1)(b) and (7) – Delegation of functions in relation to collections

9. However, the Committee notes the Scottish Government’s correspondence on these powers which is reproduced at the Annex. The correspondence advises that the Scottish Government will lodge amendments at stage 3 to rectify an
oversight at stage 2. The amendments will provide that the powers in sections 3(1)(b) and 7(1)(b) will be subject to the affirmative procedure.

10. The Committee welcomes the Scottish Government’s assurance that it will bring forward an amendment at Stage 3, to provide that the powers in sections 3(1)(b) and 7(1)(b) will be subject to the affirmative procedure. This will remedy an oversight at Stage 2.
Correspondence to the Committee from the Scottish Government

Dear Mr Donald

HISTORIC ENVIRONMENT SCOTLAND BILL

When you kindly offered initial comments on a draft of the Supplementary Delegated Powers Memorandum for the above Bill, you suggested that an official-to-official letter would be an appropriate way of dealing with a drafting issue which has recently come to our attention.

You will recall that, at Stage 1, the Committee recommended that, where any body other than Historic Environment Scotland is to be delegated Ministerial functions under sections 3 and 7 of the Bill, such a body should be specified by order with affirmative procedure, and not simply administratively, as the Bill provided at introduction.

This recommendation was accepted by Ministers and a commitment was given to amend.

Amendments were lodged and agreed at Stage 2 to make the necessary changes. Unfortunately, Parliamentary draftsmen have noted that the linked Stage 2 amendment to section 24 of the Bill did not correctly capture the policy intention. While Section 24(2) now correctly provides that orders in relation to these powers are not to be handled under the negative procedure, it does not, as it presently stands, provide for any procedure at all.

I confirm that amendment(s) to rectify this will be brought forward at Stage 3, specifying that the affirmative procedure is to apply in these circumstances.

I apologise for this oversight and trust that the Committee will accept this means of ensuring that the matter is corrected.

Yours sincerely
Noel Fojut
Bill Team Leader
Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 30
Schedules 1 to 6
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Liam McArthur

1* In section 2, page 1, line 21, at end insert—

<(  ) promoting the maintenance of the historic environment,>

Section 12

Liz Smith

2 In section 12, page 8, line 12, at beginning insert <subject to subsection (4A),>

Liz Smith

3 In section 12, page 8, line 14, at end insert—

<(4A) Historic Environment Scotland need not comply with a direction given under subsection (1) if the effect of so doing would be inconsistent with—
(a) the corporate plan approved under section 8(3),
(b) any revised corporate plan approved under section 8(3).
(4B) If Historic Environment Scotland decides under subsection (4A) not to comply with a direction under subsection (1), it must inform the Scottish Ministers of its decision and the reasons for that decision.>

Section 24

Fiona Hyslop

4 In section 24, page 13, line 7, leave out from <under> to <25(1)> in line 9

Fiona Hyslop

5 In section 24, page 13, line 11, leave out subsection (3) and insert—

<(3) Orders under—>
(a) section 3(8),
(b) section 7(7),
(c) section 25(1) which add to, replace or omit the text of an Act,
are subject to the affirmative procedure.

Schedule 2

Fiona Hyslop
6 In schedule 2, page 32, line 25, leave out <vary the decision appealed against> and insert <allow an appeal>

Fiona Hyslop
7 In schedule 2, page 32, line 27, leave out <that> and insert <their>

Schedule 3

Fiona Hyslop
8 In schedule 3, page 46, line 29, leave out <vary the decision appealed against> and insert <allow an appeal>

Fiona Hyslop
9 In schedule 3, page 46, line 31, leave out second <that> and insert <their>

Fiona Hyslop
10 In schedule 3, page 47, line 23, leave out <vary the decision appealed against> and insert <allow an appeal>

Fiona Hyslop
11 In schedule 3, page 47, line 26, leave out <that> and insert <their>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Historic Environment Scotland functions: promoting the maintenance of the historic environment**
1

**Group 2: Historic Environment Scotland: extent of compliance with directions**
2, 3

**Group 3: Subordinate legislation: affirmative procedure**
4, 5

**Group 4: Determination of appeals by the Scottish Ministers**
6, 7, 8, 9, 10, 11

**Debate to end no later than 30 minutes after proceedings begin**
Note: (DT) signifies a decision taken at Decision Time.

Business Motion: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-11400—That the Parliament agrees that, during stage 3 of the Historic Environment Scotland Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 4: 30 minutes.

The motion was agreed to.

Historic Environment Scotland Bill - Stage 3: The Bill was considered at Stage 3. The following amendments were agreed to (without division): 4, 5, 6, 7, 8, 9, 10 and 11.

The following amendments were disagreed to (by division)—
1 (For 45, Against 62, Abstentions 0)
2 (For 44, Against 65, Abstentions 0).

Amendment 3 was not moved.

Historic Environment Scotland Bill: The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop) moved S4M-11378—That the Parliament agrees that the Historic Environment Scotland Bill be passed.

After debate, the motion was agreed to (DT).
The Presiding Officer (Tricia Marwick): The next item of business is consideration of business motion S4M-11400, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, which sets out a timetable for the stage 3 consideration of the Historic Environment Scotland Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Historic Environment Scotland Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 4: 30 minutes.—[Joe FitzPatrick.]

Motion agreed to.
Historic Environment Scotland
Bill: Stage 3

14:19

The Presiding Officer (Tricia Marwick): The next item of business is stage 3 proceedings on the Historic Environment Scotland Bill.

In dealing with the amendments, members should have the bill as amended at stage 2, which is SP bill 47A, the marshalled list of amendments, which is SP bill 47A-ML, and the groupings of amendments, which is SP bill 47A-G.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate.

Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group.

Members should now refer to the marshalled list of amendments.

Section 2—Functions of Historic Environment Scotland

The Presiding Officer: Group 1 is on the functions of historic environment Scotland: promoting the maintenance of the historic environment. Amendment 1, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur (Orkney Islands) (LD): Committee colleagues will recall that, at stage 2, I lodged and moved various amendments reflecting a range of concerns that I had at that time. Many of those concerns were born of the experience of constituents in Orkney, whether they involved a desire to avoid historic environment Scotland taking an overcentralised approach, the need to ensure that it respects and involves local expertise or, working back the other way, a determination that local councils should be able to continue to access advice and guidance from HES to help them to fulfil their own statutory functions. In each instance, the undertakings and assurances that were offered by the cabinet secretary were adequate and helpful.

As for the risks associated with HES achieving charitable status and the potential for conflicts of interest and the concerns that staff and resources may be focused away from current functions towards revenue raising, only time will tell. However, I am not convinced that amending the bill would achieve the desired aim, although the
committee for the duration of the current session of Parliament—and, indeed, successor committees—will want to keep those matters under review.

I do, however, believe that the bill would still benefit from change in relation to the functions of HES. The issue was raised initially by the Law Society of Scotland, to which I am grateful. Subsequently, the Friends of Seafield House group in South Ayrshire has highlighted a specific example of why the issue needs to be revisited and, I hope, addressed in the bill.

Chic Brodie (South Scotland) (SNP): Subsections (d) and (e) of section 2 concern “protecting and managing the historic environment” and “conserving and enhancing the historic environment.” How would amendment 1 add to that?

Liam McArthur: I know that Chic Brodie has been in fairly regular contact with Friends of Seafield House and will be aware of its specific concern that “protecting” and “conserving” do not reflect the adequate needs in that particular case. I understand that the local health board has not been prepared to maintain the fabric of a building that Friends of Seafield House is seeking to take over in due course.

One of my amendments at stage 2 sought to separate the “conserving” and “enhancing” functions of HES, recognising that those could be incompatible in some circumstances. This time, in section 2, I am looking to add a requirement on HES for “promoting the maintenance of the historic environment”. The Law Society supports that; so does—as Chic Brodie will be aware—Rob Close, the chair of Friends of Seafield House, on the basis of that group’s experience of trying to save a building that is owned by the local health board.

In his letter to me, which was probably also sent to Chic Brodie, Mr Close explains:

“The word ‘maintenance’ has a much more practical meaning: it is a word that talks directly to owners who are not minded to ‘conserve’ or ‘preserve’.”

Mr Close goes on to quote from “Our Place in Time—The Historic Environment Strategy for Scotland”, which refers repeatedly to the need to maintain and to maintenance as well as to the benefits of “a well maintained environment”.

Mr Close argues that “having the word ‘maintaining’ in addition to ‘protecting’ and ‘conserving’ would cover situations where the public/private owner is not minded to protect or conserve but to bring about the demise of a building for economic reasons”.

He adds that giving HES that function would allow the fabric of a building to be maintained while its fate was being decided, thereby potentially helping local communities—which I know that the cabinet secretary, like me, is keen to see become more directly and actively involved in the historic environment—to save a much-valued building.

Other colleagues who, like Chic Brodie, represent that part of the country will be more familiar with the details of the Seafield house campaign, and I would not presume to judge the actions of either the local health board or the council, which I believe has refused to serve a repair notice. Nevertheless, I think that it offers a specific example of the sort of benefit that amendment 1 could help to deliver.

I know that the cabinet secretary was sceptical at stage 2, but I hope that having had time to reflect further and consider the specific example that I have given—there will undoubtedly be others in other parts of the country—she will support my amendment.

I move amendment 1.

Liz Smith (Mid Scotland and Fife) (Con): Mr McArthur makes a good point about an issue that has been debated consistently throughout the bill’s consideration—the need to ensure that the principle of streamlining the care of our historic environment in a single body does not override the importance of local decision making, community responsibility and individual responsibility, as they have an essential role to play in the care of the environment.

That has led to an interesting semantic debate about the meaning of the words “conserve”, “preserve” and “maintain”. On one level, that is a pedantic consideration, but it is hugely significant when it comes to the detail of the bill. Therefore, I support amendment 1.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I, too, support Liam McArthur’s amendment 1, which is eminently sensible in the circumstances that we face. I am sure that we all know of historic and important buildings in our areas that, through a lack of maintenance, it has been impossible to conserve. I think that it is entirely sensible for us to look to make the definitions as clear as we can and to understand what we are trying to do.

I repeat that, if buildings of a historic or important nature are not maintained, the opportunity to conserve them for the good of communities can well be lost. It is important that the word “maintenance” is included in the bill.

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): Amendment 1
seeks to give historic environment Scotland the particular function of “promoting the maintenance of the historic environment”.

From what members have said, I think that the emphasis is on the word “promoting” rather than on delivery of the maintenance.

There has been detailed consultation and deliberation on the functions of HES. There is widespread agreement among stakeholders that the functions should be defined at a high level. A great deal of deliberation delivered the functions that are listed in the bill, and amendment 1 would undermine the consensus that was achieved as the bill was developed on what the functions of the new organisation should be.

There is agreement that HES needs freedom within its operating remit to decide how best to deliver and that there needs to be space for its approach to develop over time. I believe that those positions are correct, and I do not wish to disrupt them. The bill should set out the overall task for HES in broad terms; it should not offer a detailed catalogue of the contents of the toolkit that it will deploy.

Promoting maintenance is already fully covered by HES’s general function of “investigating, caring for and promoting Scotland’s historic environment” and its particular functions of “managing” and “conserving” the historic environment.

Historic Scotland already does a broad range of work in this area. It is active in promoting maintenance, for example through the development of the traditional building skills strategy and the traditional building health check initiative. I launched the pilot for the health check scheme in Stirling two years ago. It aims to promote proactive building repair and maintenance and to stimulate demand for skilled tradespeople, and it is being led in collaboration with Stirling Council and the Construction Industry Training Board. HES will continue that work.

In short, I do not for a moment dispute that, as Patricia Ferguson said, maintenance is a crucial means of ensuring the long-term preservation of our historic environment. That fact is not in doubt anywhere in the sector. However, I believe that amendment 1 could pose problems for HES and more widely. Because it is so specific about promoting maintenance, it could unbalance HES’s functions, which have been deliberated on and which we have achieved consensus on. For example, it might lead to the impression that promoting maintenance is more important than demonstrating maintenance on the properties that HES will manage on ministers’ behalf or supporting maintenance through its grants programmes.

I note that local authorities already have strong powers to take action in respect of listed buildings that are being neglected by their owners. Those powers include the ability to issue repair notices, compulsory purchase, and the power to make repairs to unoccupied buildings and recover the costs. Giving HES a function of promoting maintenance would not strengthen those powers; worse, it might create confusion by implying that HES is in some way directly responsible for the maintenance of listed buildings in private ownership.

I do not believe that inserting the specific function for historic environment Scotland of “promoting the maintenance of the historic environment” would improve the bill. Therefore, I do not support amendment 1.

The Deputy Presiding Officer (John Scott): I call on Liam McArthur to wind up and to press or withdraw his amendment.

Liam McArthur: I thank Liz Smith for her support for my amendment. Indeed, at stage 2 she supported a similar amendment. I also thank Patricia Ferguson for her comments. I think that she was right to point to the fact that maintenance is an issue that will probably affect communities in instances across the country and that without maintenance the option of preserving is really rather difficult to achieve.

The cabinet secretary talked about the consultation deliberations—I do not doubt those for a second—but she also talked about the potential for creating confusion and undermining a consensus. I have not been contacted by anybody who has suggested to me that the amendment that I have lodged and moved risks unravelling a consensus. On the contrary, the Law Society of Scotland, for example, has been in touch with me to express its continued support for the amendment. In addition, Friends of Seafield House has provided a very helpful example of why this particular loophole in the functions of HES could and should be addressed at this stage.

Therefore, on the basis of what I have heard and the representations that I have received, I am convinced that amendment 1 is necessary to the bill, and I will therefore press it.

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
As this is the first division, there will be a five-minute suspension until we vote.

14:30

Meeting suspended.

14:35

On resuming—

The Deputy Presiding Officer: We will now proceed with the division on amendment 1.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Bob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Macdonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 45, Against 62, Abstentions 0.

Amendment 1 disagreed to.

Section 12—Directions and guidance

The Deputy Presiding Officer: We move on to group 2. Amendment 2, in the name of Liz Smith, is grouped with amendment 3.

Liz Smith: The cabinet secretary said in her opening comments at both stage 1 and stage 2
that the Scottish Government’s policy position from the start has been that the new body should be regulated, fully transparent and subject to the highest quality of external scrutiny that the Commissioner for Ethical Standards in Public Life in Scotland can provide.

The cabinet secretary has herself been fully transparent in her approach, and I think that we all commend her for that. However, there are some remaining issues, most especially those that relate to accountability and the possible conflict of interest between HES’s regulatory function and its ability to seek grants and carry out some of the work related to them.

The cabinet secretary will know that, between stages 2 and 3, the Law Society of Scotland reiterated its concerns about the possible conflicts of interest, specifically those that could arise if HES awards grants at the same time as seeking others in its role as a charity. The Law Society questions whether some aspects of the regulatory role can sit comfortably with charitable status.

At stage 2, the cabinet secretary seemed to intimate that the bill will not create such tensions, but I believe that a bit of an issue remains about the final accountability, and that is the reason for amendments 2 and 3. They are specific to the concerns about accountability in situations—albeit that they are likely to be rare—in which HES board members might express disquiet about some aspects of Scottish Government strategy in general terms. The issue has not gone away, and we could have had a little more engagement from the Government with stakeholders on the issue.

In the letter that the cabinet secretary sent to the convener of the Education and Culture Committee on 28 May, she was clear that, if the Scottish ministers did not think that HES was playing a sufficiently strong role in addressing matters of concern to the wider cultural sector as captured in that strategy, they would direct the board. That confirms that there is ministerial direction. As the cabinet secretary has said many times, that is quite separate from the operational independence of the body, but it naturally draws into question what could happen. The cabinet secretary was clear that there could be situations in which there might be a disagreement.

There are still some issues here and we could do with some extra safeguards. That is why I move amendment 2.

Fiona Hyslop: As I confirmed at stage 2, the corporate plan is a vital document and Liz Smith is right to recognise its primacy. I share her sentiment that the corporate plan must have the highest status and must offer certainty for HES in planning its work. That is precisely why the bill explicitly provides for HES to create such a plan and for its approval by ministers.

That explicit provision goes a step beyond the establishing legislation for analogous bodies such as the National Library of Scotland and Scottish Natural Heritage, in which we do not have that provision. The corporate plan is the foundation of the corporate performance framework for HES. Ministers will approve it, which means that we will share ownership and accountability for it with HES. The plan and any revisions will be public documents. The performance report for the organisation will be published at least annually. Any failure to deliver, therefore, will be transparent as will the reasons given for failure.

The ministerial power for direction is there for good reasons. It can be used in a positive way to support HES by, for example, clarifying procedural matters such as routine sponsorship arrangements and how they will work. As I remarked during stage 2 about a similar amendment, there seems to be an assumption that ministers will regularly issue directions to HES to do things that HES feels are not wise. I repeat that ministers in this Government will not act in that way. In seven years as a minister, I cannot recall ever issuing a direction in opposition to the advice of a sponsored body.

Such an action is rare across the whole of Government. A formal direction, especially one that goes against the advice of a sponsored body, is the end of a long process of discussion and never the starting point. In any case, the chair and the board of a non-departmental public body do not require a specific provision to raise a challenge to any proposals that would significantly compromise the delivery of agreed outcomes. Indeed, they could engage the Parliament, committees and MSPs if that was the case.

It is in the nature of the role of a sponsored body and the normal sponsorship relationship between Government and NDPBs that such matters are explored and resolved long before any formal communication or direction takes place. For those reasons, I believe that amendments 2 and 3 would simply introduce unnecessary complications and bring legislative micromanagement into the clear and straightforward relationship that is centred on the corporate plan.

I understand the sentiments behind Liz Smith’s amendments, but they are not necessary for good governance and to how good government works. I continue to oppose the amendments as I did at stage 2.

Liz Smith: I will press amendment 2. I hear what the cabinet secretary says and I began by complimenting her on her own transparency during this process, so I am very conscious of the
fact that this kind of problem has not arisen. However, I refer her back to the *Official Report* of stage 2, when she admitted that there could be a situation in which there was a disagreement.

While I am well aware that there is public scrutiny of the corporate plan and that the cabinet secretary could be brought before a parliamentary committee, such scrutiny would come after a problem was identified. I am trying to prevent the problem from happening in the first place, and we need that extra dimension of scrutiny.

**The Deputy Presiding Officer:** The question is, that amendment 2 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

**Against**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alan (North East Scotland) (SNP)
Allard, Christian (Midlothian North and Musselburgh) (SNP)
Beattie, Colin (Midslothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mackenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

*The Deputy Presiding Officer:* The result of the division is: For 44, Against 65, Abstentions 0.

**Amendment 2 disagreed to.**

**Amendment 3 not moved.**
Section 24—Subordinate legislation

The Deputy Presiding Officer: We move on to group 3. Amendment 4, in the name of Fiona Hyslop, is grouped with amendment 5.

14:45

Fiona Hyslop: These technical amendments relate to the prescribing, by order, of persons who can manage properties in care or collections on behalf of ministers.

The bill as introduced included powers to delegate the care and management of the properties in care and associated collections to HES and also to delegate those functions to other persons. That was to allow for future flexibility in arrangements to ensure the long-term preservation of the properties in care.

In its stage 1 report, the Delegated Powers and Law Reform Committee recommended that, when ministers are delegating their powers to persons other than HES, that should be subject to parliamentary scrutiny. The job of looking after these properties for the nation is a very important one, and I was happy to agree that any persons who would take it on should be subject to appropriate scrutiny.

At stage 2, I proposed amendments requiring that ministers prescribe, by order, any persons to whom functions could be delegated, in line with the committee’s recommendations. Amendments 4 and 5 are needed to complete that intention by ensuring that the affirmative procedure is required for such orders, as the committee and I are agreed that it should be.

I move amendment 4.

Amendment 4 agreed to.

Amendment 5 moved—[Fiona Hyslop]—and agreed to.

Schedule 2—Functions of Historic Environment Scotland in relation to scheduled monuments

The Deputy Presiding Officer: We move on to group 4. Amendment 6, in the name of Fiona Hyslop, is grouped with amendments 7 to 11.

Fiona Hyslop: This group of six amendments relates to the powers that are available to ministers to ensure that the outcome of a successful appeal is given effect to by HES.

Those appeals all enable a challenge to be made against inclusion on the schedule or on the list. The provisions in the bill as it stands do not enable ministers to direct HES to remove a property from the schedule or list following a successful appeal. The amendments ensure that that is the case and that the powers that are available to ministers following determination of appeals are consistent with the powers that are available in relation to other appeal procedures.

It is, of course, important that ministers have full powers to ensure that effect is given to a successful appeal. I should say that the power of direction is a safeguard, since HES will naturally be expected to do whatever is required after an appeal, without a direction from ministers.

I move amendment 6.

Amendment 6 agreed to.

Amendments 7 to 11 moved—[Fiona Hyslop]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.
Historic Environment Scotland Bill

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-11378, in the name of Fiona Hyslop, on the Historic Environment Scotland Bill.

14:49

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): For the purposes of rule 9.11 of the standing orders, I advise the Parliament that Her Majesty, having been informed of the purport of the Historic Environment Scotland Bill, has consented to place her prerogative and interests, so far as they are affected by the bill, at the disposal of the Parliament for the purposes of the bill.

As we begin the last stage in Parliament’s consideration of the bill to establish a new lead body for the historic environment, I thank the many people who have contributed to a very positive process.

We have seen constructive engagement from MSPs and from many stakeholders, who have all recognised the importance and potential of Scotland’s historic environment and the need to work together to protect it and to develop its potential.

I express my particular appreciation of the patience and professionalism of the staff of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland in dealing with the process of transition. I met their joint senior management team earlier today and was impressed by the commitment and expertise that both bodies are bringing in the process of preparing for their rebirth as historic environment Scotland. There is a rewarding future ahead for all staff, and I know that they are ready to get on with the job.

I also recognise the hard work and dedication of the Scottish Government officials who have been central to translating our ambitions into the bill that we are considering, and the Education and Culture Committee’s scrutiny.

The historic environment lies at the heart of our cultural identity. It plays a key role in defining who we are and our place in the world. It tells Scotland’s story and has intrinsic and instrumental value over and above any economic considerations. It merits our most careful stewardship for those reasons alone.

The heritage sector’s contribution to economic life is certainly important but, for me, that is a secondary benefit. Heritage already makes a major contribution. A cautious estimate has suggested that Scotland’s historic environment contributes well over £2 billion annually to our economy and supports more than 40,000 jobs in the tourism and building sectors. There is no reason why it cannot offer much more in respect of its social value as well as in monetary terms.

To deliver that potential requires all partners to work together in a collaborative way and within a strategic framework. I have spoken before about Scotland’s first-ever historic environment strategy, which was published as “Our Place in Time—The Historic Environment Strategy for Scotland”. That document provides a shared vision and a strategic framework for all parts of the historic environment sector to work collaboratively to achieve the sector’s full potential.

Collaboration is not new to the sector; what is new is an explicit and widely shared framework for the long term. That new way of working will drive more effective partnership working and deliver real and increasing benefits to the people of Scotland.

I can report that the strategy is moving forward well. The initial working groups have been established and have confirmed their remits. Several have already met. I can also report that all but one of the groups are led by senior stakeholders from beyond Historic Scotland and RCAHMS. A genuinely shared endeavour is being demonstrated.

The Scottish Government’s contribution to that shared enterprise will be taken forward by historic environment Scotland, which the bill will establish. We are bringing resources, skills and experience together into a new lead body, simplifying the processes by which our most important historic environment assets are protected and managed, and providing more transparency to legislation that can seem complex and confusing.

Both Historic Scotland and RCAHMS have been with us for many years and have driven forward many fantastic projects. If anyone doubts that, they should look in the RCAHMS archives at the before and after photographs of the great hall of Stirling castle and see how much Historic Scotland has done there. It should be remembered that RCAHMS has made those images accessible online far more widely than can be imagined, to anywhere in the world.

I particularly like the fact that, as the bodies protect and record our past, they are pioneering innovative uses of new technology in their everyday work. They do that in headline projects such as the Scottish ten, which continues to receive plaudits from around the world for its innovative approach. The Nagasaki giant cantilever crane will be the last of 10 iconic landmarks to be digitally scanned by the Scottish
ten team. The crane, which was designed and built in Scotland, is a major landmark in Nagasaki harbour and is still in use. The first pictures went online yesterday, if members want to have a look at them.

New technology is also central to the on-going work to address energy efficiency in traditional buildings, which is vital to ensuring that our historic environment contributes to our ambitious climate change commitments. That is exactly the kind of approach that we need to realise the determination that our historic environment must become part of the solution and not part of the problem across the widest possible range of policy areas.

The complementary nature of the two bodies has long been recognised. They both work well, and they often work well together. Formally bringing them together is the logical step, and I am delighted that members have agreed with me on that.

The Government’s vision is not just about merging staff and functions; it is about far more than that. The bill is part of a fundamental transformation across the whole sector. The new approach requires a single lead body that will work collaboratively with other bodies in the sector to ensure that the historic environment contributes more effectively to a range of other policy areas, including placemaking, tourism and regeneration, which all contribute to the wellbeing of our nation and our people.

HES will lead our efforts to achieve a step change in recognition of our historic environment and its potential. I am also very clear that the bill is to create a lead body, not a command body. There are areas in which it is right that a national body has lead responsibility—for example, in protecting our most important sites and buildings by statutory designation. Even here, HES will continue to work with local authorities to ensure that change is managed appropriately and sensitively. Likewise, it is right that HES will act as a consultation authority in planning and environmental regulation to ensure that our historic environment is not needlessly damaged by the pursuit of objectives.

The Scottish Government has already made real progress in mainstreaming the historic environment into wider policy development at a national level. HES has a larger task of taking the case for mainstreaming out into society. It will need to persuade and educate—perhaps even cajole or contest—but the mission of its staff will be to convince everyone that the historic environment matters and deserves respect and attention.

That mission, of course, is underpinned by wider principles that are set out in international charters and conventions and in Scotland’s historic environment policy. HES will proceed on the basis of agreed principles, such as recognising the value of maintenance and the desirability of the sustainable reuse of historic buildings where appropriate; seeking to understand the full cultural significance of heritage assets before we decide on their future care and use; and sharing knowledge.

The bill sets out HES’s functions in broad terms. We have chosen not to offer a detailed catalogue of the methods that HES will bring to bear, not least because new methods are constantly emerging. I will expect HES to play a role in developing new approaches, as Historic Scotland and RCAHMS have done successfully to date.

The bill places crystal-clear responsibilities on HES to exercise all of its functions, and to deploy all of its resources, to one end: to support our historic environment and to work with everyone who wants to contribute to that task.

Historic environment Scotland can and will lead and contribute in full measure to our national strategic vision. The bill puts in place appropriate functions and powers for HES, which will allow the new body to flourish, but retains proper oversight by ministers and Parliament. The staff who will go forward to form HES are ready and eager for the challenge, and the sector as a whole welcomes those changes.

Therefore, with confidence, I move,

That the Parliament agrees that the Historic Environment Scotland Bill be passed.

14:57

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I thank the Education and Culture Committee for its work on the bill, which is soon to become an act of Parliament, and for its thorough scrutiny of it. I am not a member of that committee, but I watched its deliberations with great interest. I also extend my thanks to the committee clerks, who have been professional in their support of the committee.

The cabinet secretary was correct to say that our historic environment tells Scotland’s story. However, it also tells the story of every community in every part of Scotland and is valuable to us for that and for the sense of place that that gives us. Its value is also that it is perhaps our most green resource, because it can be recycled over time, changing function or retaining a function over many decades or, perhaps, centuries. Therefore, its importance to us cannot be overestimated.

The cabinet secretary has responded constructively to many of the committee’s concerns about the bill, which is very welcome.
When we talk about local interest, we must remember that our local authorities have an important role to play. I hope that the new body will help to support them. Heritage and the historic environment are rarely at the top of the agenda. Perhaps that is understandable in this time of shrinking budgets, but local authorities need to be encouraged and supported in playing their vital part in this important jigsaw.

The bill would have benefited from Liam McArthur’s amendment 1. We often rush to conserve buildings that are already neglected but so important to us that we must not allow them to disappear, and we forget that they have been allowed to drop out of a maintenance cycle over five years, 10 years or decades and have suffered as a consequence. Our actions at the last minute, if they are successful, are often costly and, of course, there are occasions when a building might be too far gone to be saved. Fortunately, with the technology that we have nowadays and the resurgence of the traditional skills that are needed for such buildings, that will perhaps be less the case in future.

On ministerial direction, I am pleased that ministers have not taken the power of direction to mean that they can give direction regarding any particular historic property, collection or object, other than properties in care, of course, because doing so would have been a step too far.

If I have a problem with the bill, it concerns the future of the Historic Scotland Foundation and the SCran Trust. I am not clear how they are expected to operate beyond the point of merger. It seems to me that those organisations might be left in limbo, as I could find no specific reference to the future that the Scottish Government envisages for them. It would be helpful to have a little bit of information about that. It is perhaps not the most pressing matter in connection with the bill, but it needs to be tidied up.

Talking of tidying up, I am pleased that the Scottish Government has taken the opportunity to use the bill to tidy up some of the existing legislation. I mention, specifically, the provision that allows there to be an exclusion to the listing of a building. That will help us to focus on what is important about a building and on which elements of a structure are valuable to us and which ones are, for example, later additions that do not have to be considered in quite the same way or accorded quite the same level of protection. It will also help those who are tasked with managing those buildings to ensure that their efforts are directed where they are most needed and are not dissipated over too many issues. Of course, as I understand it, that provision will apply only to listings in the future and not to those buildings that were previously listed. However, there are understandable reasons for that.

I mentioned that our historic environment gives us a sense of place but it does more than that because, for many, our historic environment includes their home, their place of worship or a community facility that is of great importance to them. I very much hope—and sense—that this bill will help us to ensure that those structures are maintained, enhanced and conserved.

In closing, as I must only too quickly do, I pay particular tribute to Diana Murray of RCAHMS and Ian Walford of Historic Scotland. Mergers such as the one that we are discussing are never easy, but they have gone about their task with professionalism and in a way that has been successful in retaining the confidence of their staff and their boards through what could have been a difficult process.

Speaking of their boards, I want to mention Professor John Hume in particular, not just because of his professional reputation prior to joining RCAHMS, but because he has literally gone out and photographed and recorded places of interest over a long period of time. He has contributed hugely to the work of the organisation. Of course, the staff of the two organisations are also to be congratulated.

I wish the new organisation and all its stakeholders the best for their future.

15:03

Liz Smith (Mid Scotland and Fife) (Con): Like others, I thank the committee and the clerks, and reiterate Patricia Ferguson’s comments about the staff, particularly the senior staff, of the two organisations.

The Scottish Conservatives warmly welcome this bill because the logic behind it is fundamentally sound. Merging Historic Scotland and RCAHMS will create an agency that is better equipped to conserve, preserve, enhance and, hopefully, maintain—even if that is not formally in the legislation—Scotland’s historic environment at a time that is particularly challenging from not just a financial perspective but a curatorial one. That is not to say that either of the separate bodies has failed in its current duties—far from it. The cabinet secretary spoke eloquently about the remarkable job that they have done. Indeed, Scotland can be extremely proud of its heritage and how it is managed, but there is clearly a consensus that a more strategic and streamlined approach will further strengthen our historic environment sector.

This year of all years has exposed the extraordinary interest in Scotland’s rich cultural heritage, which we all perhaps take a bit too much
for granted at times. While it is a difficult time economically, it is a hugely rewarding time for the new cultural initiatives that the cabinet secretary spoke about.

That is not to say that there have not been some issues along the way, particularly relating to accountability and strategic direction. Patricia Ferguson raised an interesting point about how that direction relates to some of the other bodies, particularly when it comes to a national and local body interface. At times, there has been a little lack of clarity on each of those issues, and it has been helpful to go through a process, particularly when there is the important issue of charitable status to be considered in future.

There were questions about who will ultimately be responsible for the direction of the corporate plan. I totally accept what the cabinet secretary is saying about the way in which that has been delivered and debated so far. While I will not rehearse the arguments that we have just had about amendments 2 and 3, there remains a bit of an issue about that. I hope that the cabinet secretary will use her good offices to ensure that we do not enter any other difficulties from that.

As we know, several stakeholders have raised issues about charitable status, its application and how any future award of charitable status will exist at the same time as the regulatory role of HES and its need to raise funds. Obviously, this is happening at a time when, for other reasons, people are questioning whether the strict charity test is applied in all areas. That was agreed firmly by MSPs in 2005 but there are question marks about that.

No doubt, issues about funding will remain even if that is not the primary function of the bill. During committee evidence sessions, we heard a lot about finance, not just about raising sufficient funds but about the need for a coherent financial structure that would not disadvantage any one body. The National Trust for Scotland continues to raise the point that, in future, it will be competing for funds with an organisation that it believes will enjoy a close working relationship with the Scottish Government.

Given the maintenance backlog and other associated pressures, it is inevitable that historic environment Scotland will have financial issues. I hope that the new strategic direction will provide greater coherence to decision making when it comes to essential finance.

Despite significant areas of concern, the bill’s intentions have always been sound. On that basis, we are happy to support it.

The Deputy Presiding Officer: We move to the open debate. Speeches of up to four minutes, please.

15:07

Clare Adamson (Central Scotland) (SNP): It is 10,000 years since Scotland’s first encampment at Cramond. In 8,000 BC, a house at Barns Ness became our first built environment. I will endeavour to cover those 10,000 years in four minutes, which might be a difficult task.

As a member of the Education and Culture Committee, I have found it an absolute pleasure to participate in the passage of this bill. It has given me an opportunity to engage with some of the most knowledgeable, enthusiastic and passionate people and organisations that work in this fascinating sector. I pay tribute again to the stakeholders, Historic Scotland and RCAHMS, which showed us their work and their hopes for HES. I pay tribute also to our clerks, the Government officials, the convener and the other members of the committee for their deliberations on the bill.

I, too, highlight the very informative committee visit to Orkney, where participants from Historic Scotland and Scottish Natural Heritage, and local authority archaeologists, came together to help the committee to understand their working practices. It was an excellent visit and provided a great example of partnership and collaboration, which, as the cabinet secretary has mentioned, is the ambition for moving forward with HES.

Our environment is precious. Our historic environment and buildings are important to who we are as a nation and our journey to this point. A poignant and sad example of how precarious that heritage can be and how devastating it can be when we lose it arose during the committee’s deliberations on the bill, when Glasgow School of Art caught fire and we all mourned the loss of the Mackintosh library.

I believe that the bill and the supporting strategy are the way forward for us to protect and preserve our historical environment and buildings as best we can for future generations. Scotland’s historic environment is a vital cultural, social and economic resource. The bill proposes the merger of Historic Scotland and RCAHMS to allow that to continue. It should deliver great benefits for our communities.

There was a strong consensus among committee members during the committee process. I am glad to see that that continued today, albeit that some amendments were not passed today. I believe that the consensus that has been shown across the chamber is a great tribute to the committee’s deliberations.

The creation of a new national body for the historic environment will ensure long-term effectiveness in the face of current and future challenges. It will sustain the functions of both
Historic Scotland and RCAHMS, ensuring that both organisations can deliver maximum public benefit and be resilient for the future. It will provide clarity of governance, striking the right balance between professional, operational, independent and public accountability. It will improve and simplify the delivery of public services and capitalise on the strengths of both organisations and the synergies between them.

I have very little time, but I want to highlight how glad I was to hear the cabinet secretary talk about the skills required to maintain the future of our historic environment. I trust that HES will continue to run a modern apprenticeship programme in skills such as stonemasonry and joinery in these specialist areas.

HES will act as a key partner in the delivery of the new strategy, “Our Place in Time”. I would love to be able to talk about the key points of that, but I have run out of time.

Thank you very much for the opportunity to speak this afternoon, Presiding Officer. I look forward to voting for this important bill this evening.

15:11

Liam McArthur (Orkney Islands) (LD): Like others, I pay tribute to my committee colleagues, the witnesses who gave evidence, the cabinet secretary and her officials, and the staff of Historic Scotland and RCAHMS.

I am particularly grateful to my constituents in Orkney for hosting an excellent committee visit back in May. That visit demonstrated how the historic environment can shape the identity of a community and enrich the quality of life while also delivering real economic value, as the cabinet secretary suggested. It also demonstrated that a collaborative approach is the best way, and possibly the only effective way, to maintain, enhance and promote the historic environment.

The visit also illustrated why we must guard against centralisation and why the merger must not result in the entrenching of functions, people and decisions in the centre. People in communities across Scotland, whether in a professional or a voluntary capacity, are doing great things day and daily to protect, enhance and make accessible the historic environment in their area. They need to be supported to continue doing so in ways that are inclusive and are not seen as top down.

By the same token, HES will be home to experts in highly technical and specialised subject areas. Access to that expertise is also vital, particularly for local authorities, which are already under tremendous budgetary pressure and cannot replicate that expertise in house. The Built Environment Forum Scotland makes that point strongly in its briefing.

Although this point is not for this bill, the Parliament and ministers will need to guard against any moves to shift resources within HES away from core functions to ones aimed more at revenue raising, for example. Important though that is, it cannot come at the expense of some of the more technical and inevitably costly roles for which Historic Scotland and RCAHMS currently have responsibility.

Similarly, although I am supportive of efforts to ensure that all parts of the country begin to value their historic environment, I caution against any move by HES to retreat from areas such as Orkney, where excellent work already takes place but where many other opportunities go unexplored due to limited resources. Scotland will not, to coin the cabinet secretary’s expression, punch its weight in terms of the historic environment by hobbling those parts of the country that are currently already doing so.

It is regrettable that my amendment 1 was rejected, as HES will not have as a function “promoting the maintenance of the historic environment”.

I think that that regret may be shared by individuals and groups involved in campaigns across the country, as Patricia Ferguson said. Nevertheless, the process has been consensual, as Clare Adamson suggested.

Witnesses raised with us concerns about the potential impact, as well as possible conflicts of interest, should HES achieve charitable status. Some, notably the National Trust for Scotland, fear that charitable funding may be diverted away from others in the sector. Again, that is something that Parliament and ministers will need to keep a close eye on in the years ahead.

I conclude by thanking again those who helped the committee in our scrutinising role. I thank the staff of Historic Scotland and RCAHMS for the work that they do. I pay tribute to what they and others involved in the field achieve collectively in conserving, enhancing and promoting our wonderful historic environment, which delivers so much for communities across Scotland and our country as a whole. I look forward to voting on the bill, and I wish all those involved in the new body well in their future endeavours.

15:15

Liz Smith: The cabinet secretary quite rightly spoke about the fact that our cultural heritage tells Scotland’s story. Clare Adamson said in her speech just how much that means in an educational framework. Those of us who were
able to take part in some of the visits that Historic Scotland and RCAHMS organised were extremely impressed by not just their work but their outreach through educational activities.

One of the things that struck me most was just how much was happening with younger people. The cabinet secretary said some very wise words about the fact that there is a need to encourage responsibility about the future—we need to understand the responsibility that we all have, whether we are young or a little older, to preserve and enhance what cultural heritage means to all of us.

Liam McArthur made a very good point about how different cultural aspects can define the identity of a whole community. I was very sorry that the Orkney visit took place when I was changing places on the committee with Mary Scanlon, so she had the great benefit of visiting Orkney. However, I have been to Orkney before and I pay tribute to all that people there have been doing. Liam McArthur is absolutely right to say that such activity is happening day in, day out on so many different sites around Scotland. It is absolutely essential that we remember that. The overall strategic vision, which we all hope will be better than what was in place before, must acknowledge that. The point is a very good one.

Patricia Ferguson said that there is a need to ensure that the new body is able to deliberate with all the other elements of cultural interest. She made a good point when she said that we could do with a little clarity on that. I know that it is not something that must be put in legislation, but guidance will be required. Perhaps the cabinet secretary will refer to that in her closing remarks.

The cabinet secretary spoke about the fact that the national strategic vision is a comprehensive vision. Although collaborating is not new, the strategic vision gives a better perspective of how that collaboration will come together, which is hugely important. It is absolutely crucial that all stakeholders in that vision really buy into the overall direction. It is inevitable that there will be some constraints, many of which will be financial, when the bodies decide how to deliver what they are being asked to do. That is where ministerial oversight will be critical. I heard what the cabinet secretary said about the safeguards that are in place, but it would be helpful if we did not get to the stage at which they were needed in the first place. We do not want problems to arise—that has to be clear.

We should not underestimate the specialist skills that will be involved in taking cultural heritage forward. Some of the technology that was on display on some of our visits was phenomenal. We must accept that specialist training in those skills is required. When it comes to all the arts and crafts that go into the cultural environment, it is absolutely essential that we train the right individuals with the appropriate skills—skills that I am not sure that previous generations had or knew anything about. That is a big challenge to the new body.

Overall, the bill is good and sound, so we will be very happy to support it at decision time.

15:19

Jayne Baxter (Mid Scotland and Fife) (Lab): I need to be careful in how I frame this point, but I am pleased by the short nature of the debate. I balance that comment by saying that that goes some way to demonstrate the careful consideration that has been given by the committee and the cabinet secretary to the points raised at earlier stages of the bill process.

The committee received some detailed and thoughtful submissions in response to its call for evidence. Once again, I add my thanks to those organisations and individuals who took the time to engage so positively as the bill made its way through the Parliament.

I echo the tributes that have been paid across the chamber, during this and other debates, to the expertise and professionalism of the staff of both Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland. The cabinet secretary referred to that at stage 1—Clare Adamson repeated it today—as the “skills and passion” of those who are employed to protect and preserve our historic environment. It is to be hoped that neither the skills nor the passion will be lost by those working under the banner of the new organisation that is to be created.

When we gathered in the chamber to consider the bill at stage 1, the cabinet secretary indicated that she would respond in detail to the committee’s stage 1 report, and many of her responses were extremely helpful in clarifying the Scottish Government’s position. Given my previous comments on the role of communities in caring for their historic environment, I was delighted to see that the Scottish Government accepts in principle that responsibility and that it will consider how historic environment Scotland can engage in community planning partnerships.

Skills and passion for Scotland’s history, landscape and buildings run deep among professionals and amateur enthusiasts alike. It is vital not only that we are able to capture that enthusiasm and make good use of it through effective community planning, but that the rich cultural, industrial and environmental heritage that is preserved through our historic monuments and places remains open to everyone, no matter where they come from.
I grew up and still live in the city and royal burgh of Dunfermline—the fort by the crooked rivulet. People who know me refer often to what they call my tour guide mode, which kicks in whenever someone who does not know the town is unlucky enough to get a lift in my car. They get the whole potted history: coal mining, Saint Margaret, Robert the Bruce and Andrew Carnegie.

As with many towns, the history of Dunfermline is not just in its famous people, its public buildings or its historic monuments. I remember well that, when I studied history at Queen Anne high school, the teacher—whose name I do not remember—would take us out to discover the history of the town through its infrastructure, whether that was buildings, water courses or street names, such as Monastery Street, Foundry Street, East Port and Coal Road. That helped to give us a sense of where we lived and how it came to be that way.

Even all these years later, many of those buildings and features are still in evidence. What were formerly foundries and linen mills are being developed for housing, and the old fire station, which dates from 1936, is to be a community arts centre. The town is evolving and, with careful management by the council, the Carnegie Trust and a host of local organisations, it is possible to recognise echoes of the traditions on which it was built, while catering for the social, leisure and business needs of visitors and residents alike.

We must also preserve our historic environment for future generations, and it is important that the new body is fit for purpose if it is to meet the present challenges and those of the future. On the challenges, concerns remain in the sector about the proposals that are before us. I note that the Built Environment Forum Scotland briefing highlighted a concern about the budget challenges faced by local authorities and the impact that that will have on the services that are tasked with managing the historic environment.

The cabinet secretary was clear at stage 1 that the new body will be empowered to support local authorities more effectively in their role as guardians of our historic environment. I hope that that will be the case, and I would welcome some assurances from the cabinet secretary on that point.

I would be keen to see close monitoring of the new body in its early years, and to listen to stakeholders and the bodies that it will work in partnership with to make sure that it is fit for purpose. I hope that we can have a debate in future not just on the challenges facing historic environment Scotland, but on its successes and achievements.

15:24

Fiona Hyslop: Jayne Baxter referred to the shortness of stage 3 reflecting the thorough process that has taken place at all stages of the bill. There was investment up front in thinking through the issues and how to address them, at stage 1 and before, and the committee really got into its role.

We all recognise the importance of Scotland’s rich historic environment and the need to protect it and develop its potential. We are simply stewards in the story that is Scotland. Our stories about different parts of Scotland, whether they are stories from 8,000 BC or from our industrial heritage, are all part and parcel of that.

It is clear that we have all taken to heart the core message of “Our Place in Time—The Historic Environment Strategy for Scotland”, which is that making the most of what we have inherited must be a collective effort. There is huge ambition and enthusiasm across Scotland—I have heard it expressed in debates in the Parliament, whether the speaker has been Liam McArthur talking about Orkney or another member talking about somewhere else in Scotland. I expect historic environment Scotland to play a major role in unlocking and promoting that potential throughout Scotland, as it works within the strategy framework.

On Patricia Ferguson’s point, I am confident that the Historic Scotland Foundation can and will work alongside historic environment Scotland. The SCran Trust is committed to working with HES while it develops its new relationships, and we expect SCran to be part of HES. Of course it is ultimately for the trustees of both charities to decide the way forward. We were mindful of both organisations when we developed the bill and I am confident that they will have a strong future as they continue their great work.

Liz Smith talked about the importance of people working together. At the first meeting of the strategic historic environment forum, which brought all the different sectors round the table, people were pleasantly surprised by the refreshing approach.

Liz Smith also talked about the importance of learning and skills. I talked about continuing professional development of staff with the joint management team this morning. Jayne Baxter will be pleased to know that we also talked about community engagement, which will be a key focus.

At stage 1, Stewart Maxwell challenged all members to consider what they can do to champion the historic environment in their constituencies. Members are increasingly taking the opportunity to do that and to act as facilitators, bringing together agencies in their areas.
It is our individual links that matter, in the context of the ordinary as well as the outstanding. We have many iconic monuments, but we all love and are proud of our local heritage. There are many thousands of historic buildings in communities throughout the land, each one loved by someone who wants to see it cared for and used sustainably. Heritage derives life and value from the way in which we use it and pass it on to succeeding generations, enriching our own lives in the process.

Communities and individuals are ready and willing to play their part. Projects by RCAHMS, such as Scotland’s rural past, tap into a rich resource of knowledge and commitment. I am delighted that the approach is being reborn in the Scotland’s urban past project, with the support of the Heritage Lottery Fund and Historic Scotland. HES will take the project forward.

As several members emphasised during the bill’s progress, it is vital that local as well as national expertise is developed and maintained. There cannot be an either/or choice in that regard. National and local skills and knowledge are needed and must be deployed in harmony, rather than in opposition. That is why I have been pleased to hear members recognise the vital work that our local authorities carry out in protecting and valuing our historic environment. Such joint working will be critical in taking forward the town centre first principle, on which Derek Mackay will lead a debate later this afternoon.

Joint working in the context of the historic environment is the focus of the strategy working groups. The bill makes key improvements. Further improvement will be possible, but I want us to agree on what will work best before I consider more radical changes.

Liam McArthur: The cabinet secretary will recall our exchanges at stage 2 about councils gaining access to the expertise in the new body. At the time, perhaps for understandable reasons, she was reluctant to accept an amendment that would have placed a duty on HES in that regard. What reassurance can she give councils that, except in exceptional circumstances, access to guidance and expertise will continue?

Fiona Hyslop: I give the member that important reassurance. I have worked well with Councillor Hagan, who has responsibility for that area in the Convention of Scottish Local Authorities. Our relationship with COSLA is now on a far better footing with regard to how we share responsibility, but individual relationships in individual council areas will continue.

The bill proposes statutory changes to simplify protection and management, much of which is handled by local authorities. That is one example of the work that will continue. We must aim to use our limited resources of time, money and expertise to best effect. I want less time to be spent on bureaucracy by all parties, and more co-operation, whether that involves owners of listed buildings or monuments, applicants for consents, local authority conservation staff or other partners.

HES will work with major and minor charities throughout Scotland. I have had a very positive relationship with the National Trust for Scotland, which has been mentioned a number of times during the debate, on looking at the best way forward. We will also work with the smallest local charities.

It is important that organisations collaborate on winning additional resources, rather than just competing for existing ones. I have reassured the Education and Culture Committee on a number of occasions that I will be specific, given HES’s grant-making powers, about what the body itself will receive. It will not be able to grant itself funding: that will be a separate matter. That will address concerns that have been raised in that respect.

I emphasise that, despite reductions in overall funding, we have managed to maintain grants. The debate that we had about maintenance could not have happened if we were not maintaining the grant element. That has been a major achievement.

I recognise the role that is played by other organisations such as the HLF, which is funding community-led projects. We must all work together.

I said at the start of the process that this is not a cost-saving exercise—it is about ensuring that we deliver a strategic new body. We are on a journey in which we recognise the full potential of our historic environment. We will move from asking what the Government will do for our heritage to asking what we want to do for our heritage, and how Government can help us. That journey is part of the Government’s wider vision for communities and individuals, as heritage is very much part of all our lives.

The creation of HES will put in place one of the key foundations, along with the wider strategy, for a future in which our historic environment will flourish and—as we heard from a number of members—we will realise Scotland’s potential.

I thank members for supporting the bill.
Decision Time

17:15

The Presiding Officer (Tricia Marwick): There are five questions to be put as a result of today’s business.

The first question is, that motion S4M-11378, in the name of Fiona Hyslop, on the Historic Environment Scotland Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the Historic Environment Scotland Bill be passed.

The Presiding Officer: The motion is agreed to and the Historic Environment Scotland Bill is passed. [Applause.]
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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

**Historic Environment Scotland Bill**

[AS PASSED]

An Act of the Scottish Parliament to establish Historic Environment Scotland; to make minor amendments to the law relating to the historic environment; and for connected purposes.

**PART 1**

**HISTORIC ENVIRONMENT SCOTLAND**

*Establishment*

1 **Historic Environment Scotland**

(1) A body corporate to be known as Historic Environment Scotland (in Gaelic, Àrainneachd Eachdraidheil na h-Alba) is established.

(2) Historic Environment Scotland has the functions conferred on it by or under this Act and any other enactment.

(3) Schedule 1 makes further provision about the status, membership, procedures and powers of Historic Environment Scotland.

*General functions*

2 **Functions of Historic Environment Scotland**

(1) Historic Environment Scotland has the general function of investigating, caring for and promoting Scotland’s historic environment.

(2) In exercising its general function, Historic Environment Scotland has the following particular functions—

(a) identifying and recording the historic environment,

(b) understanding and interpreting the historic environment,

(c) learning about, and educating others about, the historic environment,

(d) protecting and managing the historic environment,

(e) conserving and enhancing the historic environment.

(3) Historic Environment Scotland also has the function of managing its collections as a national resource for reference, study and research.
(4) In exercising that function, Historic Environment Scotland has the following particular functions—
   (a) preserving, conserving and developing its collections,
   (b) making the collections accessible to the public and to persons wishing to carry out study and research,
   (c) exhibiting and interpreting objects in the collections.

(5) Historic Environment Scotland, in exercising its functions, is to do so with a view to—
   (a) encouraging education and research,
   (b) promoting and contributing to understanding and enjoyment of the historic environment and of its collections,
   (c) promoting the diversity of persons accessing the historic environment and its collections,
   (d) offering and promoting leadership in relation to the historic environment,
   (e) working in collaboration with other persons (whether in partnership or in other ways),
   (f) contributing, as appropriate, to the development and delivery of policies and strategies in relation to the historic environment.

(6) Historic Environment Scotland may support and assist any other person exercising functions in relation to the historic environment of a similar nature to its functions.

(7) Support and assistance under subsection (6) may take the form of financial support and assistance.

(8) In exercising its functions, Historic Environment Scotland must have regard—
   (a) to any relevant policy or strategy published by the Scottish Ministers, and
   (b) as may be appropriate in the circumstances, to the interests of local communities.

Functions in relation to property

3 Delegation of functions in relation to properties in care

(1) The Scottish Ministers may, to such extent and subject to such conditions as they consider appropriate, delegate the exercise of any of their functions in relation to properties in care to—
   (a) Historic Environment Scotland,
   (b) any prescribed person Ministers consider appropriate.

(2) Subsection (1) does not apply to any function of making, confirming or approving subordinate legislation.

(3) A function arising from an agreement may be delegated under subsection (1) despite any prohibition or restriction in the agreement on delegation of the function.

(4) A delegation under subsection (1) may be made in relation to a particular property in care, a group of properties in care or all properties in care.
(5) Where a function delegated under subsection (1) relates to the making or receiving of charges of any kind, any revenue received as a result of the exercise of that function is revenue of the person to whom the function is delegated unless provision to the contrary is made in the delegation.

(6) The delegation of a function under subsection (1) does not affect—
   (a) the ability of the Scottish Ministers to exercise the function,
   (b) their responsibility for that function.

(7) Delegations under subsection (1)—
   (a) must be in writing,
   (b) may be varied or revoked at any time.

(7A) The Scottish Ministers must publish delegations under subsection (1).

(8) In this section—
   “functions” includes functions—
   (a) conferred by or under this Act or any other enactment, or
   (b) arising from any agreement,
   “prescribed”, in relation to a person to whom the Scottish Ministers may delegate functions under subsection (1)(b), means prescribed by Ministers by order,
   “property in care” has the meaning given by section 3A.

### 3A Properties in care

(1) The Scottish Ministers must compile and maintain a list of properties in care in relation to which they may delegate functions under section 3(1).

(2) The Scottish Ministers may modify the list compiled and maintained under subsection (1) by—
   (a) including a property in the list,
   (b) removing a property from the list.

(3) The Scottish Ministers must publish the list compiled and maintained under subsection (1).

(4) In this section “property in care” means—
   (a) any heritable property which is of historical, archaeological, architectural or cultural significance or interest, and
   (b) which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers.

### 4 Power of entry to investigate the historic environment

(1) A person authorised in writing by Historic Environment Scotland may at any reasonable time enter any land for the purpose of inspecting the land (including any building or other structure on the land) with a view to identifying and recording any matters of historical, archaeological, architectural or cultural significance or interest.

(2) But an authorised person may not enter—
(a) any land which is occupied unless at least 14 days’ notice of the intended entry has been given to the occupier,
(b) any building or part of a building occupied as a dwelling house without the consent of the occupier.

(3) An authorised person may, on entering any land, take with the person—
(a) any other person the authorised person considers appropriate, and
(b) any equipment or materials required for any purpose for which the power of entry is being exercised.

(4) A person seeking to enter any land in exercise of the power of entry under this section must, if so required by or on behalf of the owner or occupier of the land, produce evidence of the person’s authority before entering.

(5) A person commits an offence if the person without reasonable excuse intentionally obstructs a person exercising the power of entry under this section.

(6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Functions in relation to collections and objects

5 Acquisition, deposit and disposal of objects

(1) Historic Environment Scotland may—
(a) acquire (by purchase, exchange or gift),
(b) accept on deposit,
any object which it considers it is desirable to add to its collections.

(2) The powers in subsection (1) are in addition to any other powers or means of acquisition or acceptance on deposit that Historic Environment Scotland has.

(3) Historic Environment Scotland may dispose of any object from its collections (including any object it has created) if—
(a) the object is a duplicate of, or similar to, another object in the collections,
(b) Historic Environment Scotland considers that the object is not required for the purposes of the collections,
(c) because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections,
(d) the object is hazardous,
(e) in any other case, the Scottish Ministers agree to the disposal.

(4) Disposal under subsection (3) may be by sale, exchange, gift, return or destruction.

(5) The power in subsection (3) is in addition to any other powers of disposal that Historic Environment Scotland has.

(6) Where an object is subject to a prohibition or restriction on disposal (including one imposed by virtue of paragraph 5(5) of schedule 5), Historic Environment Scotland may dispose of the object under subsection (3) in a manner inconsistent with the prohibition or restriction only—
(a) if the person having the right to enforce the prohibition or restriction consents,
(b) in the circumstances mentioned in subsection (3)(c), if Historic Environment Scotland is unable, despite taking all reasonable steps, to ascertain the name and contact details of any person having that right, or

(c) in the circumstances mentioned in subsection (3)(d).

(7) In this section and in section 6, references to Historic Environment Scotland’s collections are to collections which are owned by, in the custody of, or otherwise under the management and control of Historic Environment Scotland (but do not include collections in relation to which Historic Environment Scotland has functions by virtue of a delegation by the Scottish Ministers under section 7).

6 Borrowing and lending of objects

(1) Historic Environment Scotland may borrow or accept loans of objects for the purposes of exhibition, study or research or in connection with the exercise of any of its functions.

(2) Historic Environment Scotland may lend any object from its collections (including any object it has created).

(3) In deciding whether or not to lend an object (and in determining the period for which and the conditions on which the object is to be lent), Historic Environment Scotland is to have regard to—

(a) the interests of users of the collections,
(b) the suitability of the prospective borrower,
(c) the purpose of the loan,
(d) the physical condition and degree of rarity of the object,
(e) any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.

(4) The powers in subsections (1) and (2) are in addition to any other powers of borrowing, accepting loans or lending that Historic Environment Scotland has.

(5) Where an object is subject to a prohibition or restriction on lending (including one imposed by virtue of paragraph 5(5) of schedule 5), Historic Environment Scotland may lend the object under subsection (2) in a manner inconsistent with the prohibition or restriction only if—

(a) the person having the right to enforce the prohibition or restriction consents, or
(b) Historic Environment Scotland is unable, despite taking all reasonable steps, to ascertain the name and contact details of any person having that right.

7 Delegation of functions in relation to collections

(1) The Scottish Ministers may, to such extent and subject to such conditions as they consider appropriate, delegate the exercise of any of their functions in relation to their collections to—

(a) Historic Environment Scotland,
(b) any prescribed person Ministers consider appropriate.

(2) A function arising from an agreement may be delegated under subsection (1) despite any prohibition or restriction in the agreement on delegation of the function.
(3) A delegation under subsection (1) may be made in relation to—
   (a) a particular collection, a group of collections or all collections,
   (b) a particular object in a collection or a group of objects.

(4) Where a function delegated under subsection (1) relates to the making or receiving of charges of any kind, any revenue received as a result of the exercise of that function is revenue of the person to whom the function is delegated unless provision to the contrary is made in the delegation.

(5) The delegation of a function under subsection (1) does not affect—
   (a) the ability of the Scottish Ministers to exercise the function,
   (b) their responsibility for that function.

(6) Delegations under subsection (1)—
   (a) must be in writing,
   (b) may be varied or revoked at any time.

(6A) The Scottish Ministers must publish delegations under subsection (1).

(7) In this section—

   references to the Scottish Ministers’ collections are to collections which are owned by, in the custody of, or otherwise under the management and control of the Scottish Ministers,

   “functions” includes functions—
   (a) conferred by or under this Act or any other enactment, or
   (b) arising from any agreement,

   “prescribed”, in relation to a person to whom the Scottish Ministers may delegate functions under subsection (1)(b), means prescribed by Ministers by order.

*Corporate planning*

8

(1) Historic Environment Scotland must, before the beginning of each planning period, prepare a corporate plan and submit it for approval to the Scottish Ministers.

(2) The corporate plan must set out—
   (a) Historic Environment Scotland’s main objectives for the planning period,
   (b) the outcomes by reference to which the achievement of the main objectives may be measured, and
   (c) the activities which Historic Environment Scotland expects to undertake during the planning period.

(3) The Scottish Ministers may approve the corporate plan subject to such modifications as may be agreed between them and Historic Environment Scotland.

(4) If the Scottish Ministers approve a corporate plan, Historic Environment Scotland must—
   (a) publish the plan as it considers appropriate, and
   (b) lay a copy of the plan before the Scottish Parliament.
(5) During the planning period to which a corporate plan relates, Historic Environment Scotland may review the plan and submit a revised corporate plan to the Scottish Ministers for approval.

(6) Subsections (2) to (4) apply to a revised corporate plan as they apply to a corporate plan.

(7) In this section “planning period” means—
   (a) a first period specified by the Scottish Ministers by order, and
   (b) each subsequent period of 3 years.

(8) The Scottish Ministers may by order substitute for the period for the time being specified in subsection (7)(b) such other period as they consider appropriate.

Grants and loans

9 Grants to Historic Environment Scotland by the Scottish Ministers

(1) The Scottish Ministers may make grants to Historic Environment Scotland.

(2) In addition to any grants made under subsection (1), the Scottish Ministers may make grants to Historic Environment Scotland for particular purposes.

(3) Grants under this section are subject to such terms and conditions (including as to repayment) as the Scottish Ministers may determine.

10 Grants and loans by Historic Environment Scotland

(1) Historic Environment Scotland may make grants and loans to such persons as it considers appropriate—
   (a) for the purposes of, or in connection with, the exercise of its functions,
   (b) where it appears to be conducive to the exercise of its functions.

(2) A grant or loan under subsection (1) is subject to such terms and conditions (including as to repayment) as Historic Environment Scotland may determine.

(3) A grant or loan under subsection (1) must be in accordance with any general authorisation given by the Scottish Ministers to Historic Environment Scotland as to the making of such grants and loans.

Advice and directions

11 Advice, information and assistance

(1) Historic Environment Scotland must provide the Scottish Ministers with advice, information and assistance on any matter relating to its functions when, and in the manner, Ministers require.

(2) Historic Environment Scotland may provide such advice, information and assistance at any other time.

(3) Historic Environment Scotland may provide advice, information and assistance relating to the historic environment to any other person.
12 Directions and guidance

(1) The Scottish Ministers may give Historic Environment Scotland directions (of a general or specific nature) about the exercise of its functions.

(2) But the Scottish Ministers may not give Historic Environment Scotland directions as to the exercise of its functions in relation to—

(a) any particular historic property, collection or object,

(b) the making of grants or loans under section 10.

(3) Subsection (2)(a) does not apply in relation to the exercise of functions which Historic Environment Scotland has by virtue of a delegation by the Scottish Ministers under section 3 or 7.

(4) Historic Environment Scotland must—

(a) comply with any directions given to it by the Scottish Ministers under this section,

(b) have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.

(5) A direction under this section is to be given in writing.

(6) The Scottish Ministers must publish directions given or guidance issued under this section.

(7) The Scottish Ministers may vary or revoke any direction given under this section.

(8) In subsection (2)(a) “historic property” means a heritable property which is of historical, archaeological, architectural or cultural significance or interest.

Interpretation

13 Interpretation of Part 1

In this Part—

“collection” means a collection of objects,

“object” means an object, document or other thing having historical, archaeological, architectural or cultural significance or interest relating to the historic environment generally or with particular reference to Scotland, and

“property in care” has the meaning given by section 3A.

PART 2

FUNCTIONS IN RELATION TO SCHEDULED MONUMENTS

14 Historic Environment Scotland’s functions in relation to scheduled monuments

Schedule 2 makes provision for Historic Environment Scotland’s functions in relation to scheduled monuments (within the meaning of the 1979 Act) as well as making other modifications as follows—

Part 1 has the effect of conferring on Historic Environment Scotland the function of compiling and maintaining the schedule of monuments under the 1979 Act,

Part 2—
(a) has the effect of conferring on Historic Environment Scotland functions in relation to the grant, modification and revocation of scheduled monument consents,

(b) modifies the functions of the Scottish Ministers in relation to modification and revocation of such consents, and

(c) makes other consequential modifications, including to the procedure for applications for the grant, modification and revocation of such consents,

Part 3 has the effect of conferring on Historic Environment Scotland functions in relation to scheduled monument enforcement notices,

Part 4 has the effect of conferring on Historic Environment Scotland functions in relation to stop notices and temporary stop notices,

Part 5 makes provision—

(a) for appeals from decisions of Historic Environment Scotland to the Scottish Ministers, and

(b) for the referral of applications for and related to scheduled monument consent from Historic Environment Scotland to the Scottish Ministers,

Part 6 has the effect of conferring on Historic Environment Scotland the function of compiling and maintaining the inventory of gardens and designed landscapes and the inventory of battlefields,

Part 7 makes other modifications of the 1979 Act in relation to Historic Environment Scotland’s functions under that Act.

**PART 3**

**FUNCTIONS IN RELATION TO LISTING AND CONSERVATION**

15 Historic Environment Scotland’s functions in relation to listed buildings

Schedule 3 makes provision for Historic Environment Scotland’s functions in relation to listed buildings and conservation areas (within the meaning of the 1997 Act) as well as making other modifications as follows—

Part 1 has the effect of conferring on Historic Environment Scotland the function of compiling or approving lists of buildings of special architectural or historic interest,

Part 2 has the effect of conferring on Historic Environment Scotland functions in relation to the grant, modification and revocation of listed building consent,

Part 3 has the effect of conferring on Historic Environment Scotland functions in relation to conservation areas,

Part 4 makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers,

Part 5 makes other modifications of the 1997 Act in relation to Historic Environment Scotland’s functions under that Act.
PART 4

FUNCTIONS IN RELATION TO THE MARINE ENVIRONMENT

16 Historic Environment Scotland’s functions in relation to the marine environment

Schedule 4 modifies the Marine (Scotland) Act 2010 (asp 5) to make provision for Historic Environment Scotland’s functions in relation to the marine environment.

PART 5

DISSOLUTION OF RCAHMS AND TRANSFER OF STAFF ETC. TO HISTORIC ENVIRONMENT SCOTLAND

17 Dissolution of RCAHMS

The Royal Commission on the Ancient and Historical Monuments of Scotland is dissolved.

18 Transfer of staff and property to Historic Environment Scotland

Schedule 5 contains provision about the transfer to Historic Environment Scotland of staff and property of the Royal Commission on the Ancient and Historical Monuments of Scotland and of the Executive Agency of the Scottish Ministers known as Historic Scotland.

PART 6

FURTHER MODIFICATIONS IN RELATION TO THE HISTORIC ENVIRONMENT

Grants and loans

19 Grants and loans by the Scottish Ministers

(1) The Historic Buildings and Ancient Monuments Act 1953 (c.49) is amended as follows.

(2) In section 4 (grants for preservation of historic buildings etc.)—

(a) in subsection (1) “outstanding” in each place is repealed,

(b) after that subsection insert—

“(1A) The power conferred by subsection (1) to make grants for the purposes mentioned includes power to make loans for those purposes.”,

(c) in subsection (3) after “grant” in both places insert “or loan”,

(d) after subsection (4) insert—

“(5) A grant or loan made under this section is to be made on such terms and conditions (including as to repayment and, in the case of a loan, payment of interest) as the Scottish Ministers may determine.”,

(e) the title to the section becomes “Grants and loans for preservation of historic buildings etc.”.

(3) In the 1979 Act, in section 45A (grants and loans for the development and understanding of matters of historic etc. interest) subsection (3) is repealed.
Scheduled monuments

20 Local inquiries in relation to scheduled monuments etc.

(1) The 1979 Act is amended as follows.

(2) After section 23 (annual reports of Ancient Monuments Boards) insert—

“Local inquiries

23A Local inquiries

(1) The Scottish Ministers may hold a local inquiry for the purposes of the exercise of any of their functions under this Part of this Act.

(2) The Scottish Ministers must appoint a person to hold the inquiry and to report on it to them.

(3) Subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held by virtue of subsection (1) as they apply to an inquiry held by virtue of subsection (1) of that section.

23B Local inquiries: further provision

(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed in connection with inquiries or hearings conducted under or by virtue of this Act.

(2) Regulations under subsection (1) may in particular make provision—

(a) about the notification of an inquiry or hearing,

(b) about the manner in which an inquiry or hearing is to be conducted,

(c) as to procedure in connection with matters preparatory to such inquiries or hearings and in connection with matters subsequent to them.”.

Listed buildings

21 Meaning of “listed building”

(1) The 1997 Act is amended as follows.

(2) In section 1 (listing of buildings of special architectural or historical interest)—

(a) in subsection (4) after “shall” insert “, subject to subsection (4A),”;

(b) after that subsection insert—

“(4A) In a list compiled or approved under this section, an entry for a building may provide—

(a) that an object or structure mentioned in subsection (4)(a) or (b) is not to be treated as part of the building for the purposes of this Act,

(b) that any part or feature of the building is not of special architectural or historic interest.”.

35 Applications for listed building consent

(1) The 1997 Act is amended as follows.

(2) In section 12 (duty to notify Scottish Ministers of applications)—
(a) in subsection (1) after “shall” insert “, where subsection (1A) applies,”,

(b) after that subsection insert—

“(1A) This subsection applies where—

(a) regulations, or

(b) directions given to planning authorities by the Scottish Ministers,

provide that the application must be so notified.

(1B) Directions under subsection (1A)(b) may be given to—

(a) planning authorities generally,

(b) a particular planning authority, or

(c) a description of planning authority.”.

(3) In section 13 (directions concerning notification of applications etc.)—

(a) subsections (1) and (2) are repealed,

(b) in subsection (4) “(1) or” is repealed.

(4) In section 14 (decision on application for listed building consent) after subsection (2) insert—

“(2A) A planning authority, if minded to grant listed building consent for any works—

(a) must consider imposing a condition specified in, or of a nature indicated in, directions given to them by the Scottish Ministers, and

(b) must not grant such consent without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or is not needed.”.

**Conservation areas**

**22A Control of demolition**

(1) The 1997 Act is amended as follows.

(2) In section 66 (control of demolition in conservation areas) in subsection (2) for paragraphs (a) and (b) substitute—

“(a) the planning authority, or

(b) the Scottish Ministers”.

**PART 7**

**FINAL PROVISIONS**

**23 Interpretation**

In this Act—

“1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979 (c.46),
“1997 Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).

Subordinate legislation

24 Subordinate legislation

5 (1) Orders under this Act are subject to the negative procedure.

2 Subsection (1) does not apply to—

(a) orders for which provision is made in subsection (3),

(b) orders under section 29(2).

10 (2) Orders under—

(a) section 3(8),

(b) section 7(7),

(c) section 25(1) which add to, replace or omit the text of an Act,

are subject to the affirmative procedure.

Ancillary provision

25 Ancillary provision

15 (1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act or any provision of it.

20 (2) An order under subsection (1) may modify any enactment (including this Act).

Consequential modifications

26 Consequential modifications

Schedule 6 contains amendments and repeals consequential on the establishment of Historic Environment Scotland.

Crown application

27 Crown application: criminal offences

(1) No contravention by the Crown of section 4(5) makes the Crown criminally liable.

(2) But the Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

30 (3) Despite subsection (1), this Act applies to persons in the public service of the Crown as it applies to other persons.

28 Crown application: powers of entry

(1) A power of entry conferred by or under this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.
(2) The following table determines what is “Crown land” and who the “appropriate authority” is in relation to each kind of Crown land.

<table>
<thead>
<tr>
<th>Crown land</th>
<th>Appropriate authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown estate</td>
<td>The Crown Estate Commissioners</td>
</tr>
<tr>
<td>Other land an interest in which belongs to Her Majesty in right of the Crown</td>
<td>The office-holder in the Scottish Administration or the Government department having the management of the land</td>
</tr>
<tr>
<td>Land an interest in which belongs to Her Majesty in right of Her private estates</td>
<td>The person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers</td>
</tr>
<tr>
<td>Land an interest in which belongs to an office-holder in the Scottish Administration</td>
<td>The relevant office-holder in the Scottish Administration</td>
</tr>
<tr>
<td>Land an interest in which belongs to a Government department</td>
<td>The relevant Government department</td>
</tr>
<tr>
<td>Land an interest in which is held in trust for Her Majesty for the purposes of the Scottish Administration</td>
<td>The relevant office-holder in the Scottish Administration</td>
</tr>
<tr>
<td>Land an interest in which is held in trust for Her Majesty for the purposes of a Government department</td>
<td>The relevant Government department</td>
</tr>
</tbody>
</table>

(3) “Government department” means a department of the Government of the United Kingdom.

(4) References to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

Commencement and short title

29 Commencement

(1) This section and sections 23 to 25, 27, 28 and 30 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

30 Short title

The short title of this Act is the Historic Environment Scotland Act 2014.
SCHEDULE 1
(introduced by section 1(3))

HISTORIC ENVIRONMENT SCOTLAND

Status

1 (1) Historic Environment Scotland is not a servant or agent of the Crown.
(2) It does not enjoy any status, immunity or privilege of the Crown.
(3) Its property is not property of, or property held on behalf of, the Crown.
(4) Its members and staff are not to be regarded as civil servants.

Membership

2 (1) Historic Environment Scotland is to consist of no fewer than 10 and no more than 15 persons appointed by the Scottish Ministers as members.
(2) The Scottish Ministers are to appoint one of those members to chair Historic Environment Scotland.
(3) The Scottish Ministers must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of Historic Environment Scotland.
(4) The Scottish Ministers must, when making appointments under sub-paragraph (1), do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
(5) A member holds and vacates office in accordance with terms and conditions determined by the Scottish Ministers.
(6) A member may resign by written notice to the Scottish Ministers.
(7) The Scottish Ministers may reappoint as a member a person who is (or has been) a member.
(8) The Scottish Ministers may by order amend sub-paragraph (1) to substitute for the minimum or maximum number of members for the time being specified such other number or numbers of members.
(9) In sub-paragraph (4) “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part II of schedule 5 to the Scotland Act 1998 (c.46).

Persons disqualified from membership

3 The following persons may not be appointed as (and may not continue to be) members of Historic Environment Scotland—
   (a) members of the House of Commons,
   (b) members of the House of Lords,
   (c) members of the Scottish Parliament,
   (d) members of the European Parliament.
Removal of members

4 (1) The Scottish Ministers may, by written notice, revoke the appointment of a person as a member of Historic Environment Scotland if—
   (a) the person becomes insolvent,
   (b) the person has been absent, without reasonable excuse, from 3 consecutive meetings of Historic Environment Scotland,
   (c) the person is otherwise unfit to be a member or unable for any reason to discharge the person’s functions as member.

(2) A person becomes insolvent when—
   (a) the person’s estate is sequestrated,
   (b) the person grants a trust deed for creditors or makes a composition or arrangement with creditors,
   (c) a voluntary arrangement proposed by the person is approved,
   (d) the person’s application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17),
   (e) the person is adjudged bankrupt, or
   (f) the person becomes subject to any other kind of order or arrangement analogous to those described in paragraphs (a) to (e) anywhere in the world.

Remuneration, allowances and expenses of members

5 Historic Environment Scotland must pay each member such remuneration, allowances and expenses as the Scottish Ministers may determine.

Chief executive and staff

6 (1) Historic Environment Scotland is to employ a person as chief executive.

(2) The person employed as chief executive may not be a member of Historic Environment Scotland.

(3) The chief executive is to be appointed—
   (a) by Historic Environment Scotland with the approval of the Scottish Ministers,
   (b) on terms and conditions determined by it and approved by the Scottish Ministers.

(4) Historic Environment Scotland may employ any other staff necessary for the exercise of its functions.

(5) Staff of Historic Environment Scotland are to be employed on terms and conditions determined by it and approved by the Scottish Ministers.

Pensions, allowances and gratuities

7 (1) Historic Environment Scotland may, with the approval of the Scottish Ministers, make provision about such pensions, allowances or gratuities in respect of any person who is or has been an employee of Historic Environment Scotland as it may determine.

(2) That provision may take the form of—
(a) payment (or making arrangements for the payment) of,
(b) payments or contributions towards the provision of,
(c) providing and maintaining schemes (whether contributory or not) for the payment of,

such pensions, allowances or gratuities.

(3) Those pensions, allowances or gratuities may include pensions, allowances or gratuities by way of compensation for loss of office.

Committees

8 (1) Historic Environment Scotland may establish committees for any purpose relating to its functions.

(2) Historic Environment Scotland is to determine the composition of its committees.

(3) Historic Environment Scotland may appoint a person who is not a member of Historic Environment Scotland to be a member of a committee.

(4) But such a person is not entitled to vote at meetings of the committee.

(5) A committee must comply with any directions given to it by Historic Environment Scotland.

Procedure and meetings

9 (1) Historic Environment Scotland may determine its own procedures and those of its committees, including the quorum at any meeting of it or of a committee.

(2) The following persons may attend and take part in any meeting of Historic Environment Scotland or of a committee—

(a) members of the Scottish Government,
(b) persons authorised by the Scottish Ministers.

(3) The persons mentioned in sub-paragraph (2) are not entitled to vote at such meetings.

Delegation of functions

10 (1) Historic Environment Scotland may authorise any of the following to exercise such of its functions (and to such extent) as it may determine—

(a) a member,
(b) any of its committees,
(c) the chief executive,
(d) any other employee.

(2) But Historic Environment Scotland may not authorise the function of approving annual reports and accounts to be exercised by any other person.

(3) Nothing in sub-paragraph (1) affects the responsibility of Historic Environment Scotland for the exercise of its functions.
Validity of proceedings and actions

11 The validity of proceedings or actions of Historic Environment Scotland (or of a committee) is not affected by—

(a) any vacancy in the membership of Historic Environment Scotland or of the committee,

(b) any defect in the appointment of a member of Historic Environment Scotland or of the committee,

(c) the disqualification of a person as such a member after appointment.

General powers

12 (1) Historic Environment Scotland may do anything which appears to it—

(a) to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions,

(b) to be conducive to the exercise of those functions.

(2) In particular, Historic Environment Scotland may—

(a) enter into contracts,

(b) borrow money from the Scottish Ministers or, with the approval of the Scottish Ministers, from other persons,

(c) enter into any business or undertaking,

(d) form, promote or acquire (whether alone or with others) companies (within the meaning of the Companies Act 2006 (c.46)),

(e) enter into joint ventures with others,

(f) undertake or execute any charitable trust,

(g) invest sums not immediately required in relation to the exercise of its functions,

(h) accept gifts of money and other property,

(i) obtain advice or assistance from any person who is, in Historic Environment Scotland’s opinion, qualified to give it,

(j) carry out or commission research,

(k) issue publications,

(l) make charges in connection with the exercise of its functions (including charges for the provision of goods and services).

(3) Historic Environment Scotland may not acquire and dispose of land without the consent of the Scottish Ministers.

(4) In sub-paragraph (2)(f) a trust is a charitable trust if all its purposes are charitable purposes within the meaning of section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

(5) In sub-paragraph (2)(l) the reference to Historic Environment Scotland’s functions does not include functions it has by virtue of a delegation by the Scottish Ministers under section 3 or 7.
Accounts

13 (1) Historic Environment Scotland must—
   (a) keep proper accounts and accounting records,
   (b) prepare in respect of each financial year a statement of accounts, and
   (c) send a copy of the statement to the Scottish Ministers.

(2) Historic Environment Scotland must comply with any directions which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1).

(3) Historic Environment Scotland must send the statement of accounts to the Auditor General for Scotland for auditing.

Reports

14 (1) As soon as practicable after the end of each financial year, Historic Environment Scotland must prepare a report—
   (a) providing information on the exercise of its functions during that year,
   (b) containing any other information that the Scottish Ministers require, and
   (c) including a copy of the statement of accounts for that year audited by the Auditor General for Scotland.

(2) Historic Environment Scotland must—
   (a) send a copy of the report to the Scottish Ministers, and
   (b) publish the report.

(3) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.

(4) Historic Environment Scotland may publish such other reports and information on matters relevant to its functions as it considers appropriate.

SCHEDULE 2
(introduced by section 14)

FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO SCHEDULED MONUMENTS

PART 1

SCHEDULE OF MONUMENTS

1 The 1979 Act is amended as follows.

2 In section 1 (Schedule of monuments)—
   (a) in subsection (1)—
      (i) for “The Secretary of State” substitute “Historic Environment Scotland”,
      (ii) for “he” substitute “it”,
   (b) in subsection (3)—
      (i) for first “the Secretary of State” substitute “Historic Environment Scotland”,

(ii) for “him” substitute “it”,
(c) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”,
(d) in subsection (5) for “The Secretary of State” substitute “Historic Environment Scotland”,
(ea) for subsection (6) substitute—
“(6) Where Historic Environment Scotland—
(a) includes a monument in the Schedule under subsection (3),
(b) amends the entry in the Schedule relating to a monument, or
(c) excludes a monument from the Schedule,
10 it must notify such persons as may be prescribed in such form and manner, and within such time, as may be prescribed of the action taken.”,
(f) subsections (7) and (8) are repealed,
(g) in subsection (10)(b) for “the Secretary of State” substitute “Historic Environment Scotland”.
15 After section 1A (Commission’s functions as to informing and publishing) insert—

“1B Publication of the Schedule
(1) Historic Environment Scotland must—
(a) publish the Schedule compiled and maintained under section 1, and any amendments of the Schedule, and
(b) make the Schedule available for public inspection,
in such manner as may be prescribed.
(2) The Scottish Ministers may by regulations make further provision for—
(a) the publication of the Schedule,
(b) the making of the Schedule available for public inspection,
(c) the notification of the inclusion of a monument in, the amendment of an entry relating to a monument in or the exclusion of a monument from the Schedule.”.

PART 2
SCHEDULED MONUMENT CONSENT

The 1979 Act is further amended as follows.

In section 2 (control of works affecting scheduled monuments)—
(a) in subsection (3)(a) after “State” insert “or Historic Environment Scotland”,
(ba) in subsection (3A) for paragraph (b) substitute—
“(b) consent for the retention of the works is granted by the Scottish Ministers or by Historic Environment Scotland,”,
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(c) in subsection (5) in paragraph (b) and in the full title for “the Secretary of State” in each place substitute “Historic Environment Scotland”;

(d) after that subsection insert—

“(5A) The conditions that may be attached to scheduled monument consent under subsection (4) include a condition reserving specified details of the works (whether or not set out in the application for consent) for subsequent approval by Historic Environment Scotland.”,

(e) in subsection (9) for “the Secretary of State” substitute “Historic Environment Scotland”.

After section 3 (grant of scheduled monument consent by order of the Scottish Ministers) insert—

“3A Application for variation or discharge of conditions

(1) Any person interested in a scheduled monument in relation to which scheduled monument consent has been granted subject to conditions may apply to Historic Environment Scotland for the variation or discharge of the conditions.

(2) The application must indicate what variation or discharge of conditions is applied for and Part 1 of schedule 1 applies to such an application as it applies to an application for scheduled monument consent.

(3) Historic Environment Scotland or, as the case may be, the Scottish Ministers may, on such an application—

(a) vary or discharge the conditions attached to the consent (whether or not the application relates to the condition varied or discharged),

(b) add new conditions consequential upon the variation or discharge.”.

In section 4 (duration, modification and revocation of scheduled monument consent)—

(a) for subsections (3) and (4) substitute—

“(3) If it appears to Historic Environment Scotland that it is expedient to modify or revoke a scheduled monument consent, it may by order under this section modify or revoke the consent to such extent as it considers expedient.

(4) The power conferred by subsection (3) to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.”,

(b) in subsection (5) for “directions” substitute “orders”.

After that section insert—

“4A Modification and revocation of scheduled monument consent by Scottish Ministers

(1) If it appears to the Scottish Ministers that it is expedient to modify or revoke a scheduled monument consent, they may by order under this section modify or revoke the consent to such extent as they consider expedient.

(2) The Scottish Ministers may not make an order under this section without consulting Historic Environment Scotland.
(3) Where the Scottish Ministers propose to make such an order, they must serve notice on—

(a) the owner of the scheduled monument affected,
(b) where the owner is not the occupier of the monument, the occupier, and
(c) any other person who in their opinion will be affected by the order.

(4) The notice must specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.

(5) If within that period a person on whom the notice is served so requires, the Scottish Ministers must, before they make the order, give such an opportunity both to that person and to Historic Environment Scotland.

(6) The power conferred by this section to modify or revoke a scheduled monument consent in relation to any works may be exercised at any time before those works have been completed, but the modification or revocation does not affect so much of those works as has been previously carried out.

(7) An order under this section has effect as if it had been made by Historic Environment Scotland under section 4 and confirmed by the Scottish Ministers under paragraph 10 of Part 2 of schedule 1.”

In section 5(1) (execution of works for preservation of a scheduled monument in cases of urgency)—

(a) for “the Secretary of State” substitute “Historic Environment Scotland”,
(b) for “he” substitute “it”,
(c) for “his” substitute “its”.

In section 6 (powers of entry for inspection of scheduled monuments)—

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”,
(b) in subsection (2) after “State” in both places insert “or Historic Environment Scotland”,
(c) in subsection (3) after “State” insert “or Historic Environment Scotland”,
(d) in subsection (3A) after “Ministers” insert “or Historic Environment Scotland”,
(e) in subsection (4) after “State” insert “or Historic Environment Scotland”,
(f) in subsection (5) after “State” in both places insert “or Historic Environment Scotland”.

In section 7 (compensation for refusal of scheduled monument consent)—

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland or, where the Scottish Ministers refused the scheduled monument consent or granted it subject to conditions, Ministers”,
(b) in subsection (3) for “the Secretary of State’s” substitute “Historic Environment Scotland’s or, as the case may be, the Scottish Ministers”,
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(c) in subsection (6)(b) for “the Secretary of State” substitute “Historic Environment Scotland or, as the case may be, the Scottish Ministers”.

12 In section 8 (recovery of compensation under section 7 on subsequent grant of consent)—

(a) in subsection (1) after “State” in both places insert “or Historic Environment Scotland”,
(b) in subsection (2A)(b) after “State” insert “or Historic Environment Scotland”,
(c) in subsection (3)—

(i) after “State” in each place insert “or Historic Environment Scotland”,
(ii) after “his” in both places insert “or its”,
(d) in subsection (4) after “State” insert “or Historic Environment Scotland”.

13 In section 9(1) (compensation where works cease to be authorised) after “State” insert “or Historic Environment Scotland”.

14 (1) Part 1 of schedule 1 (applications for scheduled monument consent) is amended as follows.

(2) In paragraph 1(1) for “the Secretary of State” substitute “Historic Environment Scotland”.

(3) In paragraph 2(1) for “The Scottish Ministers” substitute “Historic Environment Scotland”.

(4) In paragraph 2B—

(a) in sub-paragraph (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
(b) in sub-paragraph (2)(a)—

(i) after “received,” insert “Historic Environment Scotland has or”,
(ii) after “refused” insert “or the Scottish Ministers have dismissed an appeal against the refusal of, or an appeal under section 4B(3) in respect of,”;
(c) in sub-paragraph (2)(b)—

(i) for “their” substitute “its”,
(ii) after “refused” insert “or the appeal was dismissed”,
(d) in sub-paragraph (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

(4A) After that paragraph insert—

“2C (1) If Historic Environment Scotland, on an application to it for scheduled monument consent, intends to grant that consent, it must, where sub-paragraph (2) applies, first notify the Scottish Ministers of the application.

(2) This sub-paragraph applies where—

(a) regulations, or

(b) directions given to Historic Environment Scotland by the Scottish Ministers,”
provide that the application must be so notified.

(3) The Scottish Ministers may within the period of 28 days beginning with the date of the notification—
   (a) direct the reference of the application to them under section 3B, or
   (b) give notice to Historic Environment Scotland that they require further time in which to consider whether to require such a reference.

(4) Historic Environment Scotland must not grant scheduled monument consent until—
   (a) the period mentioned in sub-paragraph (3) has expired without the Scottish Ministers directing the reference of the application to them or giving notice under paragraph (b) of that sub-paragraph, or
   (b) the Scottish Ministers have notified Historic Environment Scotland that they do not intend to require the reference of the application.

2D The Scottish Ministers may give directions to Historic Environment Scotland requiring it, in such cases or classes of case as may be specified in the directions, to notify to Ministers and to such other persons as may be so specified—
   (a) any applications made to it for scheduled monument consent, and
   (b) the decisions taken on those applications.”.

(5) In paragraph 3—
   (a) in sub-paragraph (1) after “State” insert “or Historic Environment Scotland”,
   (b) for sub-paragraphs (2) and (3) substitute—
   “(2) The Scottish Ministers may by regulations make provision for the procedure to be followed by Historic Environment Scotland in considering and determining applications for scheduled monument consent.”,
   (c) in sub-paragraph (4)—
      (i) after “State” insert “or, as the case may be, Historic Environment Scotland”,
      (ii) for “his” substitute “the”,
      (iii) “to him” is repealed.

(6) Paragraph 4 is repealed.

In Part 2 of schedule 1 (modification and revocation of scheduled monument consent)—
   (a) paragraphs 5 to 9 are repealed,
   (b) after paragraph 9 insert—
   “10(1) Except as provided for in paragraph 11, an order made by Historic Environment Scotland under section 4 modifying or revoking a scheduled monument consent does not take effect unless it is confirmed by the Scottish Ministers.
   (2) Where Historic Environment Scotland submits an order to the Scottish Ministers for confirmation, it must serve notice on—
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(a) the owner of the scheduled monument affected,
(b) where the owner is not the occupier of the monument, the occupier, and
(c) any other person who in its opinion will be affected by the order.

(3) The notice must specify the period (which must not be less than 28 days after
its service) within which any person on whom it is served may require an
opportunity of appearing before and being heard by a person appointed by the
Scottish Ministers for the purpose.

(4) If within that period a person on whom the notice is served so requires, the
Scottish Ministers must, before they confirm the order, give such an
opportunity both to that person and to Historic Environment Scotland.

(5) The Scottish Ministers may confirm any such order submitted to them either
without modification or subject to such modifications as they consider
expedient.

11(1) Where sub-paragraph (2) applies, Historic Environment Scotland—

(a) need not submit the order under section 4 modifying or revoking the
scheduled monument consent to the Scottish Ministers for approval,
(b) must instead take the steps mentioned in sub-paragraph (3).

(2) This sub-paragraph applies where—

(a) the owner of the scheduled monument affected,
(b) where the owner is not the occupier of the monument, the occupier, and
(c) all other persons who in Historic Environment Scotland’s opinion will be
affected by the order,

have notified Historic Environment Scotland in writing that they do not object
to the order.

(3) The steps referred to in sub-paragraph (1)(b) are—

(a) advertising in the prescribed manner the fact that the order has been
made,
(b) serving notice to the same effect on the persons mentioned in sub-
paragraph (2), and
(c) sending a copy of any such advertisement to the Scottish Ministers not
more than 3 days after its publication.

(4) The advertisement under sub-paragraph (3)(a) must specify—

(a) the period within which persons affected by the order may give notice to
the Scottish Ministers that they require an opportunity of appearing
before and being heard by a person appointed by the Scottish Ministers
for the purpose, and
(b) the period at the end of which, if no such notice is given to the Scottish
Ministers, the order may take effect by virtue of this paragraph and
without being confirmed by the Scottish Ministers.

(5) The period referred to in sub-paragraph (4)(a) must not be less than 28 days
from the date on which the advertisement first appears.
(6) The period referred to in sub-paragraph (4)(b) must not be less than 14 days from the end of the period referred to in sub-paragraph (4)(a).

(7) The notice under sub-paragraph (3)(b) must include a statement to the effect that no compensation is payable under section 9 in respect of an order which takes effect by virtue of this paragraph.

(8) The order takes effect at the end of the period referred to in sub-paragraph (4)(b) without being confirmed by the Scottish Ministers if—

(a) no person claiming to be affected by the order has given notice to the Scottish Ministers as mentioned in sub-paragraph (4)(a) within the period referred to in that sub-paragraph, and

(b) the Scottish Ministers have not directed that the order be submitted to them for confirmation.

**PART 3**

**SCHEDULED MONUMENT ENFORCEMENT NOTICES**

The 1979 Act is further amended as follows.

In section 9A (power to issue scheduled monument enforcement notice)—

(a) in subsection (1)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) in paragraph (b) for “they may, if they consider” substitute “it may, if it considers”,

(b) in subsection (2)(a) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,

(c) in subsection (3)(b)—

(i) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(ii) for “they consider” substitute “it considers”,

(iii) for “them” substitute “it”,

(d) in subsection (4) for “the Scottish Ministers are” substitute “Historic Environment Scotland is”.

In section 9B (scheduled monument enforcement notices: further provision)—

(a) in subsection (4)(b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (5)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) in paragraph (a) for “their” substitute “its”,

(c) in subsection (6) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(d) in subsection (7) for “The Scottish Ministers” substitute “Historic Environment Scotland”.
18A In section 9C (appeal against scheduled monument enforcement notice)—

(a) in subsection (1) for “by summary application appeal to the sheriff” substitute “appeal to the Scottish Ministers”,

(b) in subsection (2)—

(i) before paragraph (a) insert—

“(za) that the monument is not of national importance;”,

(ii) after paragraph (c) insert—

“(ca) that scheduled monument consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted,”,

(iii) after paragraph (d) insert—

“(da) except in relation to such a requirement as is mentioned in section 9A(3)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the monument or land to its condition before the works were carried out;”,

(iv) after paragraph (e) insert—

“(fa) that the steps required by the notice for the purpose of restoring the character of the monument or land to its former state would not serve that purpose,

(g) that the cessation of any works required by the notice exceeds what is necessary to remedy the contravention of section 2(1) or (6),

(h) that steps required to be taken by virtue of section 9A(3)(b) exceed what is necessary to alleviate the effect of the works executed to the monument or land,

(i) that steps required to be taken by virtue of section 9A(3)(c) exceed what may reasonably be required to bring the monument or land to the state in which it would have been if the scheduled monument consent had been complied with.”,

(c) after subsection (2) insert—

“(2A) An appeal under this section is to be made by giving written notice of the appeal to the Scottish Ministers before the date specified in the scheduled monument enforcement notice as the date on which it is to take effect.”,

(d) after subsection (3) insert—

“(3A) A person who gives notice of appeal under this section must submit to the Scottish Ministers, either when giving the notice or within such time as may be prescribed, a statement in writing—

(a) specifying the grounds on which the appeal is made,

(b) giving such further information as may be prescribed.”,

(e) subsections (4) and (5) are repealed.

18B After that section insert—
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"9CA

Determination of appeals under section 9C

(1) On determining an appeal under section 9C, the Scottish Ministers may give directions for giving effect to the determination, including where appropriate directions for quashing the scheduled monument enforcement notice.

(2) On such an appeal the Scottish Ministers may if they are satisfied that the correction or variation will not cause injustice to the appellant or to Historic Environment Scotland—

(a) correct any defect, error or misdescription in the scheduled monument enforcement notice, or

(b) vary the terms of the notice.

(3) In a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 9B(4) to be served with a copy of the notice was not served, the Scottish Ministers may disregard that fact if they are satisfied that the person has not been substantially prejudiced by the failure.

(4) The Scottish Ministers may—

(a) dismiss such an appeal if the appellant fails to comply with section 9C(3A) within the prescribed time,

(b) allow such an appeal or quash the scheduled monument enforcement notice if Historic Environment Scotland fails to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 9CB(1).

(5) On the determination of an appeal under section 9C the Scottish Ministers may—

(a) grant scheduled monument consent for the works to which the scheduled monument enforcement notice relates,

(b) discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous, or

(c) direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that determination.

(6) Any scheduled monument consent granted by the Scottish Ministers under subsection (5)(a) is to be treated as granted under section 2(3).

(7) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 9C is final.

9CB

Procedure for appeals under section 9C

(1) The Scottish Ministers may by regulations make provision in connection with appeals under section 9C, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—

(a) the form, manner and time for making an appeal,
(b) the notification of an appeal,
(c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 9C.”.

19A After section 9F (effect of scheduled monument consent on scheduled monument enforcement notice) insert—

(a) in subsection (1)—
(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
(ii) in paragraph (b) for “them” substitute “it”,

(b) in subsection (2)(b) for “the Scottish Ministers in taking steps required by it” substitute “Historic Environment Scotland in taking steps required by the notice”,

(c) in subsection (4)—
(i) for “the Scottish Ministers take” substitute “Historic Environment Scotland takes”,
(ii) for “they” substitute “it”,
(iii) for “them” substitute “it”,

(d) in subsection (5)—
(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
(ii) for “them” substitute “it”,

(e) in subsection (6)—
(i) for “the Scottish Ministers seek” substitute “Historic Environment Scotland seeks”,
(ii) in paragraph (b) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(f) in subsection (7)—
(i) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”,
(ii) for “they” substitute “it”. 
"9FA Enforcement by the Scottish Ministers

(1) If it appears to the Scottish Ministers that it is expedient that a scheduled monument enforcement notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9A.

(2) A scheduled monument enforcement notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.

(3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.

(4) The provisions of this Act relating to scheduled monument enforcement notices apply, so far as relevant, to a scheduled monument enforcement notice served by the Scottish Ministers as they apply to a scheduled monument enforcement notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.".

PART 4

SCHEDULED MONUMENTS: STOP NOTICES

The 1979 Act is further amended as follows.

In section 9G (stop notices)—

(a) in subsection (1) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(b) in subsection (2)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “they serve” substitute “it serves”,

(c) in subsection (3) for “the Scottish Ministers require” substitute “Historic Environment Scotland requires”,

(d) in subsection (5)(a) for “the Scottish Ministers consider” substitute “Historic Environment Scotland considers”,

(e) in subsection (6)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “them” substitute “it”,

(f) in subsection (7)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “their” substitute “its”. 

In section 9H (stop notices: supplementary provisions)—

(a) in subsection (3) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (4) for “the Scottish Ministers” substitute “Historic Environment Scotland”. 
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22A After that section insert—

“9HA Power of the Scottish Ministers to serve stop notice

(1) If it appears to the Scottish Ministers that it is expedient that a stop notice should be served in respect of any monument or land in, on or under which there is a scheduled monument, they may serve such a notice under section 9G.

(2) A stop notice served by the Scottish Ministers has the same effect as if it had been served by Historic Environment Scotland.

(3) The Scottish Ministers must not serve such a notice without consulting Historic Environment Scotland.

(4) The provisions of this Act relating to stop notices apply, so far as relevant, to a stop notice served by the Scottish Ministers as they apply to a stop notice served by Historic Environment Scotland, but with the substitution for any reference to Historic Environment Scotland of a reference to the Scottish Ministers, and any other necessary modifications.”.

23 In section 9I (compensation for loss due to stop notice)—

(a) in subsection (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (3)(c)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “them” substitute “it”,

(c) in subsection (5)(b) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

24 In section 9K (temporary stop notices)—

(a) in subsection (1)—

(i) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “they may, if they consider” substitute “it may, if it considers”,

(b) in subsection (2)(c) for “the Scottish Ministers” substitute “Historic Environment Scotland’s”,

(c) in subsection (3) for “the Scottish Ministers” in both places substitute “Historic Environment Scotland”,

(d) in subsection (4) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(e) in subsection (8) for “the Scottish Ministers” substitute “Historic Environment Scotland”.

25 In section 9L(1) (temporary stop notices: restrictions) for “the Scottish Ministers have” substitute “Historic Environment Scotland has”.

26 In section 9N (temporary stop notices: compensation)—

(a) in subsection (1) for “the Scottish Ministers” substitute “Historic Environment Scotland”,

(b) in subsection (2)(b) for “the Scottish Ministers withdraw” substitute “Historic Environment Scotland withdraws”.
The 1979 Act is further amended as follows.

Appeal against inclusion or amendment of entry in Schedule of monuments

After section 1B (publication of the Schedule) (inserted by paragraph 3) insert—

"1C  Appeal against inclusion etc. in Schedule of monuments

(1) This section applies where Historic Environment Scotland makes a decision—
(a) to include a monument in the Schedule,
(b) to amend an entry in the Schedule relating to a monument.

(2) A person mentioned in subsection (3) may appeal the decision to the Scottish Ministers.

(3) The person is—
(a) the owner of the monument,
(b) the tenant of the monument,
(c) the occupier of the monument.

1D  Determination of appeals under section 1C

(1) The Scottish Ministers may—
(a) dismiss an appeal under section 1C,
(b) allow such an appeal (in whole or in part).

(2) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.

(3) Where the Scottish Ministers allow an appeal, they may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to their decision.

(4) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 1C is final.

1E  Procedure for appeals under section 1C

(1) The Scottish Ministers may by regulations make provision in connection with appeals under section 1C, including provision about—
(a) the grounds on which an appeal may be made,
(b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.
(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
   (a) the form, manner and time for making an appeal,
   (b) the notification of an appeal,
   (c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Schedule 1A (which makes provision about the determination of certain appeals by a person other than the Scottish Ministers) applies to appeals under section 1C.”.

Appeal in relation to scheduled monument consent

After section 4A (inserted by paragraph 8) insert—

“4B Appeal in relation to scheduled monument consent

(1) This section applies where Historic Environment Scotland makes a decision—
   (a) refusing an application for scheduled monument consent,
   (b) granting such an application subject to conditions,
   (c) refusing an application for variation or discharge of conditions to which a scheduled monument consent is subject,
   (d) granting such an application subject to conditions,
   (e) refusing an application for subsequent approval required by a condition to which a scheduled monument consent is subject.

(2) A person who made the application mentioned in subsection (1) may appeal the decision to the Scottish Ministers.

(3) A person may also appeal to the Scottish Ministers where Historic Environment Scotland has not given notice of its decision on an application mentioned in subsection (1)(a), (c) or (e) within the prescribed period or such other longer period as may be agreed between the applicant and Historic Environment Scotland.

(4) An appeal under this section may include the ground that—
   (a) the monument should not be included in the Schedule,
   (b) the entry in the Schedule relating to the monument should be amended.

4C Determination of appeals under section 4B

(1) The Scottish Ministers may—
   (a) dismiss an appeal under section 4B,
   (b) allow such an appeal (in whole or in part).
(2) In determining an appeal under section 4B, the Scottish Ministers may deal with the application to which the appeal relates as if it had been made to them in the first instance.

(3) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.

(4) Subsection (5) applies where—

(a) the grounds of appeal include the ground—

(i) that the monument should not be included in the Schedule, or

(ii) that the entry in the Schedule relating to the monument should be amended, and

(b) the Scottish Ministers uphold that ground.

(5) The Scottish Ministers may direct Historic Environment Scotland to exercise its power under section 1(5) to modify the Schedule to give effect to that decision.

(6) Except as provided for by section 55, the decision of the Scottish Ministers on an appeal under section 4B is final.

4D Procedure for appeals under section 4B

(1) The Scottish Ministers may by regulations make provision in connection with appeals under section 4B, including provision about—

(a) subject to section 4B(4), the grounds on which an appeal may be made,

(b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—

(a) the form, manner and time for making an appeal,

(b) the notification of an appeal,

(c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Regulations under subsection (1) may also provide that an appeal in respect of an application—

(a) for scheduled monument consent, or

(b) for the variation or discharge of conditions to which such a consent is subject,
need not be entertained unless it is accompanied by a certificate in the
prescribed form as to the interests in the monument to which the appeal relates.

(5) Sub-paragraphs (2) to (4) of paragraph 2 of schedule 1 apply to regulations
imposing a requirement by virtue of subsection (4) as they apply to the
requirement imposed by sub-paragraph (1) of that paragraph.

(6) Schedule 1A (which makes provision about the determination of certain
appeals by a person other than the Scottish Ministers) applies to appeals under
section 4B.”.

Determination of appeals by appointed person

10 After schedule 1 insert—

“SCHEDULE 1A

(introduced by sections 1E(4), 4D(6) and 9CB(4))

DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY THE SCOTTISH MINISTERS

Determination of appeals by appointed person

1 (1) The Scottish Ministers may by regulations prescribe classes of appeals under
sections 1C, 4B and 9C which are to be determined by a person appointed by
the Scottish Ministers for the purpose.

(2) Those classes of appeals are to be so determined except in such classes of
case—

(a) as may for the time being be prescribed, or

(b) as may be specified in directions given by the Scottish Ministers.

(3) Regulations under sub-paragraph (1) may provide for the giving of publicity to
any directions given by the Scottish Ministers under this paragraph.

(4) This paragraph does not affect any provision made by or under this Act that an
appeal is to lie to, or a notice of an appeal is to be served on, the Scottish
Ministers.

(5) A person appointed under this paragraph is referred to in this schedule as an
“appointed person”.

Powers and duties of appointed person

2 (1) An appointed person is to have the same powers and duties—

(a) in relation to an appeal under section 1C as the Scottish Ministers have
under section 1D,

(b) in relation to an appeal under section 4B as the Scottish Ministers have
under section 4C,

(c) in relation to an appeal under section 9C as the Scottish Ministers have
under section 9CA.

(2) Where an appeal has been determined by an appointed person, the decision is
to be treated as a decision of the Scottish Ministers.
(3) Except as provided for by section 55, the decision of an appointed person on any appeal is final.

**Determination of appeals by the Scottish Ministers**

3 (1) The Scottish Ministers may, if they think fit, direct that an appeal which would otherwise fall to be determined by an appointed person is instead to be determined by them.

(2) Such a direction must—

(a) state the reasons for which it is given, and

(b) be served on the appellant.

(3) Where an appeal under section 1C, 4B or 9C falls to be determined by the Scottish Ministers by virtue of a direction under this paragraph, the provisions of this Act which are relevant to the appeal are to apply, subject to sub-paragraph (4), as if this schedule had never applied to it.

(4) In determining the appeal, the Scottish Ministers may take into account any report made to them by any person previously appointed to determine the appeal.

4 (1) The Scottish Ministers may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.

(2) Such a further direction must—

(a) state the reasons for which it is given, and

(b) be served on—

(i) the person, if any, previously appointed to determine the appeal, and

(ii) the appellant.

(3) Where such a further direction has been given, the provisions of this schedule relevant to the appeal are to apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.

(4) Anything done by or on behalf of the Scottish Ministers in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) is, unless that person directs otherwise, to be treated as having been done by that person.

**Appointment of another person to determine appeal**

5 (1) At any time before the appointed person has determined the appeal the Scottish Ministers may—

(a) revoke the appointment, and

(b) appoint another person under paragraph 1 to determine the appeal instead.

(2) Where such a new appointment is made, the consideration of the appeal or any inquiry or other hearing in connection with it is to be begun afresh.
(3) Nothing in sub-paragraph (2) requires any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Local inquiries and hearings

6 (1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person—
   (a) may hold a local inquiry in connection with the appeal, and
   (b) must do so if the Scottish Ministers so direct.

(2) Where an appointed person—
   (a) holds a hearing, or
   (b) holds an inquiry by virtue of this paragraph,
   an assessor may be appointed by the Scottish Ministers to sit with the appointed person at the hearing or inquiry to advise the appointed person on any matters arising.

(3) Subject to sub-paragraph (4), the expenses of any such hearing or inquiry are to be paid by the Scottish Ministers.

(4) Subsections (4) to (13) of section 265 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.

(5) The appointed person has the same power to make orders under subsection (9) of that section in relation to proceedings under this schedule which do not give rise to an inquiry as the person has in relation to such an inquiry.

(6) For the purposes of this paragraph, references to the Minister in subsections (9) and (12) of that section are to be read as references to the appointed person.

Supplementary provisions

7 The functions of determining an appeal and doing anything in connection with it conferred by this schedule on an appointed person who is a member of the staff of the Scottish Administration are to be treated for the purposes of the Scottish Public Services Ombudsman Act 2002 (asp 11) as functions conferred on the Scottish Ministers.”.

CHAPTER 2

REFERRAL OF CERTAIN APPLICATIONS

Referral of certain applications

31 After section 3A (inserted by paragraph 6) insert—

“3B Referral of certain applications to the Scottish Ministers

(1) The Scottish Ministers may give directions requiring applications for—
   (a) scheduled monument consent,
(b) variation or discharge of conditions to which scheduled monument consent is subject,

c) subsequent approval required by a condition to which scheduled monument consent is subject,

to be referred to them instead of being dealt with by Historic Environment Scotland.

(2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.

(3) A direction under this section may be withdrawn or modified by a subsequent direction.

(4) An application in respect of which a direction under this section has effect is to be referred to the Scottish Ministers accordingly.

(5) In determining an application under this section, the Scottish Ministers may deal with the application as if it had been made to them in the first instance.

(6) Except as provided for by section 55, the decision of the Scottish Ministers on any application referred to them under this section is final.

(7) The reference in subsection (1)(c) to scheduled monument consent includes a reference to consent granted by order under section 3.

3C Procedure for referrals under section 3B

(1) The Scottish Ministers may by regulations make provision in connection with referrals under section 3B, including provision about the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the referral.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—

(a) the notification of a referral,

(b) the manner in which a referral is to be conducted.

(3) Regulations made by virtue of subsection (2)(b) may also include provision that the manner in which a referral, or any stage of a referral, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).”.

PART 6

FUNCTIONS IN RELATION TO GARDENS, LANDSCAPES AND BATTLEFIELDS

32 Part 1A of the 1979 Act is amended as follows.

33 In section 32A (inventory of gardens and designed landscapes)—

(a) in subsection (1)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “they think” substitute “it thinks”,

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(iii) for “them” substitute “it”,
(b) in subsection (3) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
(c) in subsection (4)—
(i) for “their” substitute “its”,
(ii) for “the Scottish Ministers” substitute “Historic Environment Scotland”,
(d) in subsection (5)—
(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
(ii) for “they think” substitute “it thinks”.

In section 32B(1) (inventory of battlefields)—
(a) for “The Scottish Ministers” substitute “Historic Environment Scotland”,
(b) for “they think” substitute “it thinks”,
(c) for “them” substitute “it”.

**PART 7**

**OTHER MATTERS IN RELATION TO SCHEDULED MONUMENTS**

The 1979 Act is further amended as follows.

**Interdict**

In section 9O (interdicts restraining unauthorised works on scheduled monuments)—
(a) in subsection (1)—
(i) for “they have exercised or propose to exercise any of their” substitute “Historic Environment Scotland has exercised or proposes to exercise any of its”,
(ii) for “the Scottish Ministers” substitute “it”,
(b) after that subsection insert—

“(1A) Whether or not the Scottish Ministers have exercised or propose to exercise any of their powers under this Act, they may seek to restrain or prevent any actual or apprehended breach of any of the controls provided by or under this Act on the execution of works affecting scheduled monuments by means of an application for interdict.”,

(c) in subsection (2) for “subsection (1)” substitute “subsection (1) or (1A)”.

**Agreements concerning ancient monuments etc.**

In section 17 (agreements concerning ancient monuments etc.)—
(a) after subsection (2) insert—

“(2A) Historic Environment Scotland may enter into an agreement under this section with the occupier of an ancient monument situated in Scotland or of any land so situated which adjoins or is in the vicinity of an ancient monument so situated.”,
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(b) in subsection (4)—

(i) in paragraph (f), after “authority” insert “or Historic Environment Scotland”,

(ii) in the fullout, after “authority” insert “or Historic Environment Scotland”,

(c) after subsection (9) insert—

“(9A) References to an ancient monument in subsection (2A), and in subsection (3) so far as it applies for the purposes of subsection (2A), are to be construed as if the reference in section 61(12)(b) of this Act to the Secretary of State were to Historic Environment Scotland.”.

Advice and superintendence

In section 25 (advice and superintendence)—

(a) in subsection (1) for “The Secretary of State” substitute “Historic Environment Scotland”,

(b) in subsection (2)—

(i) for “The Secretary of State” substitute “Historic Environment Scotland”,

(ii) for “his” in both places substitute “its”,

(c) in subsection (3)—

(i) for “The Secretary of State” substitute “Historic Environment Scotland”,

(ii) for “he” substitute “it”.

Power of entry: inspection and recording

In section 26 (power of entry on land believed to contain an ancient monument)—

(a) in subsection (1) for “the Secretary of State” in both places substitute “Historic Environment Scotland”,

(b) in subsection (4)(b)—

(i) for “the Scottish Ministers know or have” substitute “Historic Environment Scotland knows or has”,

(ii) for “they know or believe” substitute “it knows or believes”.

Power to accept voluntary contributions

In section 31 (voluntary contributions towards expenditure under Part 1 of the 1979 Act) after “State” insert “, Historic Environment Scotland”.

Metal detectors

In section 42 (restrictions on use of metal detectors)—

(a) in subsection (1) after “consent” insert “of Historic Environment Scotland (in the case of a place situated in Scotland),”,

(b) in subsection (2) in the definition of “protected place”, after “State” insert “, Historic Environment Scotland”,

(c) in subsection (3) after “that” insert “of Historic Environment Scotland (where the place in question is situated in Scotland),”,
(d) in subsection (4) after “by” insert “Historic Environment Scotland,”;
(e) in subsection (5)(a) after “by” insert “Historic Environment Scotland,”.

**Power of entry: survey and valuation**

42 In section 43(2) (power of entry for survey and valuation) after “State” insert “, Historic Environment Scotland”.

**Compensation**

43 In section 46(1) (compensation for damage caused by exercise of certain powers) after “from” insert “Historic Environment Scotland,“.

**Application to Crown land**

44 In section 50 (application of Act to Crown land) after subsection (1) insert—

“(1A) For the purposes of subsection (1)(b), anything done by Historic Environment Scotland on Crown land, in relation to which it has functions by virtue of a delegation by the Scottish Ministers under section 3 of the Historic Environment Scotland Act 2014 (asp 00), is not to be treated as done by or on behalf of the Crown.”.

**Finds**

45 In section 54(2) (treatment and preservation of finds) after “State” in both places insert “, Historic Environment Scotland”.

**Proceedings questioning certain orders**

46 In section 55 (proceedings for questioning validity of certain orders)—

(a) in subsection (1)(b) after “State” insert “or Historic Environment Scotland”,
(b) in subsection (3)—

(i) after first “State” insert “ or Historic Environment Scotland”,
(ii) for “either” substitute “any”,
(iii) for paragraph (a) substitute—

“(a) any decision of the Scottish Ministers on an application for scheduled monument consent referred to them under section 3B,
(aa) any decision of the Scottish Ministers on an appeal under this Act,“,
(iv) in paragraph (b) for “the giving by the Secretary of State of any direction under section 4” substitute “the making by Historic Environment Scotland of any order under section 4 or by the Scottish Ministers of any order under section 4A”,
(c) in subsection (4)(b) after “State” insert “or Historic Environment Scotland”,
(d) in subsection (7) after “State” insert “or Historic Environment Scotland”.

**Power to require information**

47 In section 57(1) (power to require information as to interests in land) after “State” in both places insert “or Historic Environment Scotland”.
48 In section 61(9) (meaning of site of monument) after “State” insert “or Historic Environment Scotland”.

SCHEDULE 3
(introduced by section 15)

FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO LISTING AND CONSERVATION

PART 1

LISTING OF SPECIAL BUILDINGS

1 The 1997 Act is amended as follows.

Compiling or approving lists of special buildings

2 In section 1 (listing of buildings of special architectural or historical interest)—

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”;

(b) in subsection (2) for “the Secretary of State” substitute “Historic Environment Scotland”;

(c) in subsection (3)—

(i) for “the Secretary of State” substitute “Historic Environment Scotland”,

(ii) for “him” substitute “it”;

(d) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”.

Publication of lists and notification of listing etc.

3 After section 1 insert—

“1A Publication of lists and notification of listing etc.

(1) Historic Environment Scotland must—

(a) publish any list compiled or approved under section 1, and any amendments of such a list, and

(b) make such lists available for public inspection, in such manner as may be prescribed.

(2) Historic Environment Scotland must also—

(a) notify such persons as may be prescribed, and

(b) do so in such form and manner, and within such time, as may be prescribed,

of the inclusion of a building in, the amendment of an entry relating to a building in or the exclusion of a building from such a list.

(3) The Scottish Ministers may by regulations make further provision for—

(a) the publication of such lists,
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(b) the making of such lists available for public inspection,

(c) the notification of the inclusion of a building in, the amendment of an
entry relating to a building in or the exclusion of a building from such a
list.

(4) Regulations under subsection (3) may in particular provide for planning
authorities in whose districts any buildings included in such lists are situated to
take any of the steps mentioned in that subsection.”.

4 Section 2 (publication of lists) is repealed.

Temporary listing

5 In section 3 (temporary listing: building preservation notices)—

(a) in subsection (2) for “the Secretary of State” substitute “Historic Environment
Scotland”,

(b) in subsection (4)—

(i) for “the Secretary of State” substitute “Historic Environment Scotland”,

(ii) in paragraph (b) for “he” substitute “it”,

(c) in subsection (6)—

(i) for “the Secretary of State” substitute “Historic Environment Scotland”,

(ii) for “he” substitute “it”,

(iii) in each of paragraphs (a) and (b) for “the Secretary of State’s” in both
places substitute “Historic Environment Scotland’s”.

Certificate that no intention to list building

6 In section 5A (certificate that building not intended to be listed)—

(a) in subsection (1)—

(i) for “The Scottish Ministers” substitute “Historic Environment Scotland”,

(ii) for “they do” substitute “it does”,

(b) in subsection (2)—

(i) for “the Scottish Ministers issue” substitute “Historic Environment
Scotland issues”,

(ii) in paragraph (a) for “they” and “them” substitute “it”,

(c) in subsection (3) for “the Scottish Ministers” substitute “Historic Environment
Scotland”.

PART 2

LISTED BUILDING CONSENT

7 The 1997 Act is further amended as follows.

8 In section 7 (authorisation of works: listed building consent)—

(a) in subsection (2)—
(i) in paragraph (b) for “the Royal Commission” substitute “Historic Environment Scotland”,
(ii) in paragraph (c)(i) for “members or officers of the Commission” substitute “Historic Environment Scotland”,
(iii) for paragraph (c)(ii) substitute—
“(ii) Historic Environment Scotland has stated in writing that it has completed its recording of that building or that it does not wish to record it.”,
(b) subsection (4) is repealed,
(c) in subsection (5) for “the Royal Commission” substitute “Historic Environment Scotland”.

9 In section 9 (making of applications for listed building consent)—
(a) in subsection (3)—
(i) the “and” after paragraph (b) is repealed,
(ii) after paragraph (c) insert “, and
(d) the procedure to be followed by planning authorities or, as the case may be, the Scottish Ministers in considering and determining such applications.”,
(b) after subsection (5) insert—
“(6) The regulations must also require planning authorities, before granting or refusing applications for listed building consent in such cases or classes of case as may be prescribed, to consult—
(a) Historic Environment Scotland,
(b) such other persons as may be—
(i) prescribed, or
(ii) specified in directions given to planning authorities by the Scottish Ministers.
(7) Directions given by virtue of subsection (6)(b)(ii) for the purposes of regulations under this section may be given to—
(a) planning authorities generally,
(b) a particular planning authority, or
(c) a description of planning authority.”.

Revocation and modification of listed building consent

10 In section 22(2) (procedure for orders revoking or modifying listed building consent: opposed cases) after paragraph (c) insert—
“(ca) Historic Environment Scotland,
(eb) such other persons as may be prescribed,”.
In section 23(1)(b) (procedure for orders revoking or modifying listed building consent: unopposed cases) after “land” insert “, Historic Environment Scotland, such other persons as may be prescribed”.

**Part 3**

**Conservation Areas**

The 1997 Act is further amended as follows.

In section 61(2) (designation of conservation areas)—

(a) for “The Secretary of State” substitute “Historic Environment Scotland”,

(b) for “he so determines, he” substitute “Historic Environment Scotland so determines, it”.

In section 62 (designation of conservation areas: supplementary provisions)—

(a) in subsection (1), after “State” insert “and Historic Environment Scotland”,

(b) for subsection (2) substitute—

“(2) Historic Environment Scotland must—

(a) give notice to a planning authority of—

(i) the designation of any part of their district as a conservation area under section 61(2), and

(ii) any variation or cancellation of any such designation,

(b) give notice to the Scottish Ministers of the designation and of any such variation or cancellation.”,

(c) in subsection (4) for “the Secretary of State” substitute “Historic Environment Scotland”,

(d) in subsection (5) for “the Secretary of State” substitute “Historic Environment Scotland”.

In paragraph 2 of schedule 1 (buildings formerly subject to building preservation orders)—

(a) for sub-paragraph (1) substitute—

“(1) Historic Environment Scotland may at any time direct that paragraph 1 no longer applies to a particular building.

(1A) The Scottish Ministers may direct that paragraph 1 no longer applies to a particular building if the building is referred to in a notice of appeal under section 5B, 18 or 35 relating to the building (whether or not they are requested to do so).”,

(b) in sub-paragraph (2) for “such a direction” substitute “a direction under sub-paragraph (1) or (1A)”;

(c) after sub-paragraph (2) insert—

“(2A) Where a direction is given under sub-paragraph (1) or (1A), Historic Environment Scotland or (as the case may be) the Scottish Ministers must notify the other.”,
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(d) in sub-paragraph (3)—

(i) for “such a direction” substitute “a direction under sub-paragraph (1) or (1A)”,

(ii) for “the Secretary of State” substitute “Historic Environment Scotland or (as the case may be) the Scottish Ministers”.

Paragraph 3 of schedule 1 is repealed.

PART 4

APPEALS AGAINST LISTING

The 1997 Act is further amended as follows.

After section 5A (certificate that building not intended to be listed) insert—

“5B Appeal against listing of buildings

(1) This section applies where Historic Environment Scotland makes a decision—

(a) to include a building in the list compiled or approved under section 1,

(b) to amend an entry in the list relating to a building (but not where the amendment excludes a building from the list).

(2) A person mentioned in subsection (3) may appeal the decision to the Scottish Ministers.

(3) The person is—

(a) the owner of the building,

(b) the tenant of the building,

(c) the occupier of the building.

5C Determination of appeals under section 5B

(1) The Scottish Ministers may—

(a) dismiss an appeal under section 5B,

(b) allow such an appeal (in whole or in part).

(2) Where the Scottish Ministers allow an appeal, they may vary a part of the decision appealed against whether or not the appeal relates to that part of the decision.

(3) Where the Scottish Ministers allow an appeal, they may direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to their decision.

(4) Except as provided for by sections 57 and 58, the decision of the Scottish Ministers on an appeal under section 5B is final.
5D Procedure for appeals under section 5B

(1) Regulations may make provision in connection with appeals under section 5B, including provision about—
   (a) the grounds on which an appeal may be made,
   (b) the information that is to be provided to, or may be required by, the Scottish Ministers in connection with the appeal.

(2) Regulations under subsection (1) may also make provision about the procedure to be followed, including—
   (a) the form, manner and time for making an appeal,
   (b) the notification of an appeal,
   (c) the manner in which an appeal is to be conducted.

(3) Regulations made by virtue of subsection (2)(c) may also include provision that the manner in which an appeal, or any stage of an appeal, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under this Act).

(4) Schedule 3 (which makes provision about the determination of certain appeals by a person appointed by the Scottish Ministers) applies to an appeal under section 5B.”.

19 In section 19(3) (appeals: supplementary provisions) for “the Secretary of State” substitute “Historic Environment Scotland”.

20 In section 20(1) (determination of appeals) for paragraph (b) substitute—
   “(b) where the Scottish Ministers allow an appeal, they may direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to their decision.”.

21 In section 37(4) (determination of appeals under section 35) for paragraph (c) substitute—
   “(c) direct Historic Environment Scotland to exercise its power under section 1 to amend the list compiled or approved under that section to give effect to that determination.”.

22 In section 57(2) (validity of certain orders and decisions) before paragraph (a) insert—
   “(za) any decision of the Scottish Ministers on an appeal under section 5B,”.

23 In schedule 3 (determination of certain appeals by person appointed by the Scottish Ministers)—
   (a) in paragraph 1(1) after “sections” insert “5B,”,
   (b) in paragraph 2(1) before paragraph (a) insert—
      “(za) in relation to an appeal under section 5B as the Scottish Ministers have under section 5C and paragraph 2(1A) of schedule 1,”,
   (c) in paragraph 3(3) after “section” insert “5B,”,
(d) in paragraph 5(3) paragraph (a) is repealed (together with the “or” immediately following it).

PART 5

OTHER MATTERS IN RELATION TO LISTING

24 The 1997 Act is further amended as follows.

Compensation

25 In section 26(1) (compensation for loss or damage caused by service of building preservation notice) for “the Secretary of State” substitute “Historic Environment Scotland”.

Application of 1997 Act to land and works of planning authorities

26 In section 73 (application of 1997 Act to land and works of planning authorities)—

(a) in subsection (1) for “sections 1(1) and (3) and 2” substitute “section 1(1) and (3)”;

(b) in subsection (4) “section 2(2) and” is repealed.

Powers of entry

27 In section 76 (rights of entry)—

(a) in subsection (1) for “the Secretary of State” substitute “Historic Environment Scotland”;

(b) in subsection (2) for “the Secretary of State” in both places substitute “Historic Environment Scotland”;

(c) in subsection (3) for “the Secretary of State” substitute “Historic Environment Scotland”.

Building preservation notices

28 In schedule 2 (lapse of building preservation notice) in paragraph 1(b) for “the Secretary of State” substitute “Historic Environment Scotland”.

SCHEDULE 4

(introduced by section 16)

FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO THE MARINE ENVIRONMENT

1 The Marine (Scotland) Act 2010 (asp 5) is amended as follows.

2 After section 80 (advice etc. by Scottish Natural Heritage) insert—

“80A Advice etc. by Historic Environment Scotland as regards Historic MPAs

(1) Historic Environment Scotland may give advice and guidance as to—

(a) the matters which are capable of damaging or otherwise affecting any marine historic asset in a Historic MPA,

(b) how any stated preservation objectives for a Historic MPA may be furthered, or how the achievement of any such objectives may be hindered, and
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(c) the assessment by a public authority of the matters in section 83(4)(b)(i) and (ii) including what factors the authority should take into account.

(2) Advice or guidance as to any of the matters in paragraph (a) to (c) of subsection (1) may be given—

(a) in relation to—

(i) a particular Historic MPA,

(ii) all Historic MPAs generally,

(b) in relation to a particular public authority or public authorities generally.”.

In section 82 (duties of public authorities in relation to marine protected areas etc.)—

(a) in subsection (3) after “Heritage” insert “or Historic Environment Scotland”,

(b) in subsection (5) after “Heritage” insert “or Historic Environment Scotland”,

(c) in subsection (6) after sub-paragraph (i) insert—

“(ia) Historic Environment Scotland has given advice or guidance to the authority under section 80A,”,

(d) in subsection (7) after “Heritage” insert “or Historic Environment Scotland”,

(e) in subsection (10) after “Heritage” insert “or Historic Environment Scotland”,

(f) in subsection (12) after “80” insert “, by Historic Environment Scotland under section 80A”,

(g) in subsection (13)—

(i) the words from “it is appropriate” to “Research MPA” become paragraph (a) of that subsection, and

(ii) after that paragraph insert—

“(b) it is appropriate to inform Historic Environment Scotland where the exercise of the public authority’s functions or the act or omission in question relates to a Historic MPA.”.

In section 83 (duties of public authorities in relation to certain decisions)—

(a) in subsection (2) after “Heritage” insert “or Historic Environment Scotland”,

(b) in subsection (8) after “80” insert “, by Historic Environment Scotland under section 80A”,

(c) in subsection (9)—

(i) the words from “it is appropriate” to “Research MPA” become paragraph (a) of that subsection, and

(ii) after that paragraph insert—

“(b) it is appropriate to inform Historic Environment Scotland where the act relates to a Historic MPA.”.

In section 84 (failure to comply with duties) after subsection (3) insert—

“(3A) In relation to a Historic MPA if, in the opinion of Historic Environment Scotland, a public authority has failed—
(a) to act in accordance with advice or guidance given by Historic Environment Scotland under section 80A,
(b) to comply with any of its duties under section 82(2) or 83(3) or (4),
Historic Environment Scotland may request from the authority an explanation in writing for the failure.

(3B) Historic Environment Scotland must send a copy of a request by it under subsection (3A) to the Scottish Ministers.

(3C) On receiving a request under subsection (3A), the public authority must—
(a) provide Historic Environment Scotland with the requested explanation for the failure,
(b) send a copy of the explanation to the Scottish Ministers.”.

SCHEDULE 5
(introduced by section 18)

TRANSFER OF STAFF, PROPERTY ETC. TO HISTORIC ENVIRONMENT SCOTLAND

Staff transfer schemes

1 (1) The Scottish Ministers may make a staff transfer scheme.

(2) A staff transfer scheme is a scheme making provision for or in connection with the transfer to Historic Environment Scotland of persons who are—
(a) employed by the Royal Commission on the Ancient and Historical Monuments of Scotland,
(b) subject to sub-paragraph (3), members of the staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as Historic Scotland.

(3) Sub-paragraph (2)(b) does not apply to members of the staff of the Scottish Ministers on secondment or loan to Historic Scotland from another part of the Scottish Administration.

(4) A staff transfer scheme may in particular—
(a) prescribe rules by which the transfer of specified persons, or classes of specified person, can be determined,
(b) provide that specified persons, or classes of specified person, are to become employees of Historic Environment Scotland.

(5) A staff transfer scheme may make provision only in relation to persons whose employment relates to the carrying out of Historic Environment Scotland’s functions.

(6) In this paragraph, “specified” means specified in a staff transfer scheme.

Staff transfer schemes: general

2 (1) This paragraph applies in relation to a staff transfer scheme under paragraph 1.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.
(3) The scheme may—
   (a) specify different dates for different purposes,
   (b) make different provision in relation to different cases or classes of case.

Transfers under paragraph 1: effect on contract of employment

3 (1) This paragraph applies where—
   (a) a person is to be transferred by virtue of a staff transfer scheme, and
   (b) immediately before the transfer date the person has a contract of employment
       with—
       (i) the Royal Commission on the Ancient and Historical Monuments of
           Scotland, or
       (ii) the Scottish Ministers.

(2) The contract of employment has effect on and after the transfer date as if originally
     made between the person and Historic Environment Scotland.

(3) The rights, powers, duties and liabilities of the Royal Commission on the Ancient and
     Historical Monuments of Scotland or, as the case may be, the Scottish Ministers under
     or in connection with the contract of employment are by virtue of this paragraph
     transferred to Historic Environment Scotland on the transfer date.

(4) Anything done before the transfer date by or in relation to the Royal Commission on the
     Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish
     Ministers in respect of the contract of employment or the person is to be treated on and
     after that date as having been done by or in relation to Historic Environment Scotland.

(5) If, before the transfer date, the person informs the Royal Commission on the Ancient
     and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers that
     the person does not wish to become an employee of Historic Environment Scotland—
     (a) sub-paragraphs (2) to (4) do not apply in relation to the person, and
     (b) the person's contract of employment is terminated on the day before the transfer
         date.

(6) A person is not to be treated for any purpose as being dismissed by reason of the
     operation of any provision of this paragraph in relation to the person.

(7) Nothing in this paragraph affects any right of a person to terminate the person's contract
     of employment if a substantial detrimental change in the person's working conditions is
     made.

(8) No such right arises by reason only that, by virtue of this paragraph, the identity of the
     person's employer changes.

Property transfer schemes

4 (1) The Scottish Ministers may make a property transfer scheme.

(2) A property transfer scheme is a scheme making provision for or in connection with the
     transfer to Historic Environment Scotland of property, rights, liabilities and obligations
     of—
     (a) the Royal Commission on the Ancient and Historical Monuments of Scotland,
(b) the Scottish Ministers.

(3) A property transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights, liabilities and obligations relate to Historic Environment Scotland's functions.

(4) The Royal Commission on the Ancient and Historical Monuments of Scotland must provide the Scottish Ministers with such information or assistance as Ministers may reasonably require for the purposes of or in connection with the making of a property transfer scheme.

(5) On the transfer date—

(a) any property or rights to which a property transfer scheme applies transfer to and vest in Historic Environment Scotland,

(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of Historic Environment Scotland.

(6) A property transfer scheme may make provision for the payment by Historic Environment Scotland of compensation in respect of property and rights transferred by virtue of the scheme.

Property transfer schemes: general

(1) This paragraph applies in relation to a property transfer scheme under paragraph 4.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.

(3) The scheme may—

(a) specify different dates in relation to different property, rights, liabilities and obligations,

(b) make different provision in relation to different cases or classes of case.

(4) The scheme may make provision for the creation of rights, or the imposition of liabilities or obligations, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.

(5) The scheme may make provision requiring Historic Environment Scotland to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.

(6) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of a property transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.

(7) The scheme may make provision about the continuation of legal proceedings.

Transfer schemes: additional provision

A staff transfer scheme under paragraph 1 or a property transfer scheme under paragraph 4 may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
SCHEDULE 6
(introduced by section 26)

CONSEQUENTIAL MODIFICATIONS

Ethical Standards in Public Life etc. (Scotland) Act 2000

1 In the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), in schedule 3 (devolved public bodies)—
(a) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed,
(b) at the appropriate place in alphabetical order insert—
“Historic Environment Scotland”.

Scottish Public Services Ombudsman Act 2002

2 In the Scottish Public Services Ombudsman Act 2002 (asp 11), in Part 2 of schedule 2 (listed authorities: entries amendable by Order in Council), under the heading “Scottish public authorities”—
(a) after paragraph 25 (the entry for Highlands and Islands Enterprise) insert—
“25ZA Historic Environment Scotland.”;
(b) paragraph 34 (the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland) is repealed.

Freedom of Information (Scotland) Act 2002

3 In the Freedom of Information (Scotland) Act 2002 (asp 13), in Part 7 of schedule 1 (Scottish public authorities: others)—
(a) after paragraph 67 (the entry for Highlands and Islands Enterprise) insert—
“67ZA Historic Environment Scotland.”;
(b) paragraph 76 (the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland) is repealed.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

4 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2 (the specified authorities), under the heading “Executive bodies”—
(a) at the appropriate place in alphabetical order insert—
“Historic Environment Scotland”,
(b) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.

Public Services Reform (Scotland) Act 2010

5 In the Public Services Reform (Scotland) Act 2010 (asp 8)—
(a) in schedule 5 (improvement of public functions: listed bodies), under the heading “Scottish public authorities with mixed functions or no reserved functions”—
(i) at the appropriate place in alphabetical order insert—
“Historic Environment Scotland”,

(ii) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed,

(b) in schedule 8 (information on exercise of public functions: listed public bodies)—

(i) at the appropriate place in alphabetical order insert—

“Historic Environment Scotland”,

(ii) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.

Public Records (Scotland) Act 2011

6 In the Public Records (Scotland) Act 2011 (asp 12), in the schedule (authorities to which
Part 1 applies), under the heading “Others”—

(a) at the appropriate place in alphabetical order insert—

“Historic Environment Scotland”,

(b) the entry for the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed.
Historic Environment Scotland Bill
[AS PASSED]

An Act of the Scottish Parliament to establish Historic Environment Scotland; to make minor amendments to the law relating to the historic environment; and for connected purposes.

Introduced by: Fiona Hyslop
Supported by: Humza Yousaf
On: 3 March 2014
Bill type: Government Bill