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.

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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 tax-payer 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.