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 vv 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 SCran. 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 SCRAM. 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.
“What ideas individuals may attach to the term ‘Millennium’ I know not; but I know that society may be formed so as to exist without crime, without poverty, with health greatly improved, with little if any misery, and with intelligence and happiness increased a hundredfold”.

Robert Owen’s Address to the Inhabitants of New Lanark, New Year’s Day 1816

File ref: 2c.22.14
22 April 2014

For the attention of
Lewis McNaughton
Assistant Clerk, Education and Culture Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

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 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 promoted 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 Scheduled 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 straight-forwardly (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.
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 Response

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. It
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
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
The Society of Antiquaries of Scotland is a charity registered in Scotland No SC010440.

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

The Society of Antiquaries of Scotland is a charity registered in Scotland No SC010440
The Society of Antiquaries of Scotland is a charity registered in Scotland No SC010440 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

The Society of Antiquaries of Scotland is a charity registered in Scotland No SC010440
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

The Society of Antiquaries of Scotland is a charity registered in Scotland No SC010440
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.

The Society of Antiquaries of Scotland is a charity registered in Scotland No SC010440
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 Society of Antiquaries of Scotland is a charity registered in Scotland No SC010440
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.

Dr Simon Gilmour  
Director  
Society of Antiquaries of Scotland  
director@soantscot.org  
0131 247 4115  
www.socantscot.org
Historic Environment Scotland Bill
Call for Written Evidence
Response from Icon, the Institute of Conservation
22 April 2014

From: Alison Richmond, Chief Executive, Icon, 15 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
Historic Environment Scotland Bill: Call for Written Evidence

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
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 Institute of Historic Building Conservators (IHBC) has produced two informative surveys in recent years that evidence shortfalls in resources across various councils. Their scoping report of 2010 indicates how resources are deployed.


IHBC's more recent survey, Scotland's Local Authority Conservation Services: 2013: First scoping report: 2013 – SUMMARY

http://www.ihbc.org.uk/news/docs/Scotland's%20Local%20Authority%20Conservation%20Services%20-%20First%20'Scoping%20Report%202013%20IHB%20SUMMARY.pdf indicates the vast range of capacities across local authorities. While delegation of powers may work well in some, resources and expertise may be almost non-existent in others.

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  
ec.committee@scottish.parliament.uk

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?

*Breath 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:

- 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?

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
Education and Culture Committee
Room T3.40
Scottish Parliament
Edinburgh
EH99 1SP

ec.committee@scottish.parliament.uk

22 April, 2014

Dear Sir / Madam,

**Historic Environment Scotland Bill**

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 endorsed 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
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:

- 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.

(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.”¹
• “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.”²
• “sponsorship can be sought from a wider range of companies once the management of the Collection is no longer part of a statutory body.”³

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”⁴

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 agreements⁵ 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.

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>Table: Comparison of state charities (SC) and regulators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisation</td>
</tr>
<tr>
<td>Royal Commission on the Ancient and Historical Monuments of Scotland (SC)</td>
</tr>
<tr>
<td>National Galleries of Scotland (SC)</td>
</tr>
<tr>
<td>National Library of Scotland (SC)</td>
</tr>
<tr>
<td>National Records of Scotland (SC)</td>
</tr>
<tr>
<td>National Museums Scotland (SC)</td>
</tr>
<tr>
<td>Scottish Natural Heritage</td>
</tr>
<tr>
<td><strong>Historic Scotland</strong></td>
</tr>
<tr>
<td>Scottish Environment Protection Agency</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
everseous 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.

---


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.
22\textsuperscript{nd} 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
Response by The Scottish Castles Association to The Historic Environment Scotland Bill (SP Bill 47)

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
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.
For further information and alternative formats, please contact:

The Law Society of Scotland
26 Drumsheugh Gardens
Edinburgh
EH3 7YR
www.lawscot.org.uk
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.

Chairman: Alexander Hay of Duns
Coordinator: Lois Bayne-Jardine
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.
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 Historic 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\(^1\)), 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\(^2\) 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)\(^3\), 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\(^4\) 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.”

---


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.

Looking after your home - a hierarchy of needs

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

Ensuring 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.

---


\(^8\) 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

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