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

2 April 2014
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,

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Consultations and communications officer for the Scottish History Society