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
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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

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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

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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 18(2).

It would also be useful to have some form of commitment to publishing criteria for grant schemes and also demand for grants – to understand the level of demand for grant in relation to supply. These wider aspects could be published as part of regular reporting by HES.

Part 1, sections 3 and 7 address the delegation of functions and give the option to delegate functions not only to HES, but ‘any other person Ministers consider appropriate’. The terms of the delegation enabled by these sections will be critical and the Society expects that they will at least be published, or even consulted upon.

The Society is also concerned with regard to guardianship of the collection, as defined in the Bill, into the future should HES choose not to apply for charitable status, or does apply and fails to receive it, since it is likely that at least some items will have been gifted to RCAHMS for example, on the understanding that it is a charity. Indeed, the timetable for the creation of the body and its application for charitable status will likely leave such collections in the care of other organisations.

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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.

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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.

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The Strategy considers that the advantages of becoming a charitable organisation will outweigh any disadvantages. However, the Society is acutely aware, as an independent small third-sector ancient charitable body, of the potential impact of a sizeable, well-resourced, new charitable body in the sector with the general functions as defined in the Bill. The Society therefore requests that any Directions from Ministers include specific reference to this issue, and ensure a collaborative, not competitive ethos for the organisation, and one that can be measured in its Annual Reports on its Corporate Plan.

The Society understands that the employment position of staff of the two organisations is explicitly protected, under the commitment in the Outline Business Case, and that any transfer of staff will not be detrimental to their terms and conditions. In addition, it is possible that individual career prospects and continuing professional development, including crucial skills for the historic environment sector, can be significantly enhanced within a larger organisation.

The Society is very keen that this Bill and the Strategy do improve existing policy and practice in relation to grants and loans, scheduled monuments and listed buildings. It is for these reasons that the Society is asking for the Bill to include provisions that such processes and decisions are clearly published to allow effective transparency. In addition, the Strategy creates a collaborative framework for the sector to begin the longer term detailed consideration of historic environment policy and practice, and expects that all potential avenues are fully, adequately and transparently explored.

**Conclusion**

The Society of Antiquaries of Scotland welcomes both this Bill and the Historic Environment Strategy for Scotland and looks forward to actively and positively engaging with both processes in the best interests of Scotland’s unique and valuable historic environment.

If the Committee has any queries with regard to the evidence presented above, the Society is very pleased to provide further information.

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