



HISTORIC ENVIRONMENT  
SCOTLAND  
POLICY STATEMENT  
JUNE 2016



HISTORIC  
ENVIRONMENT  
SCOTLAND

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IMPORTANT: This document should be read in conjunction with the joint Scottish Government Culture and Historic Environment Division and Historic Environment Scotland letter dated 1 June 2016. A copy of this letter can be found on the Historic Environment Scotland website

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# INTRODUCTION

1. This Policy Statement has been produced to take account of the changes resulting from the Historic Environment Scotland Act 2014 (“the 2014 Act”). The 2014 Act created Historic Environment Scotland (HES) and amended statutory processes relating to the historic environment. Scottish Ministers’ policies for planning and the historic environment are set out in Scottish Planning Policy (SPP) 2014 and are not replaced by this document. The Policy Statement sets out how Historic Environment Scotland fulfils its regulatory and advisory roles and how it expects others to interpret and implement Scottish Planning Policy. It is a material consideration in the Scottish planning system.
2. The care and management of the properties and associated collections in the care of Scottish Ministers is set out in the Schemes of Delegation under Section 3 of the Historic Environment Scotland Act 2014. These can be found on Historic Environment Scotland’s website.
3. The Scottish Ministers have delegated to Historic Environment Scotland the following functions: Their general functions of managing the properties in care including ensuring their conservation, articulating and safeguarding their cultural significance, providing public access for current and future generations, and managing the associated commercial operations; and the functions of the Scottish Ministers under sections 13, 15(3) to (4), 19 (other than subsections (3) and (4)) and 20 of the Ancient Monuments and Archaeological Areas Act 1979.
4. Scotland’s historic environment contributes to the Scottish Government’s strategic objectives and to the National Performance Framework. The documents that should be referenced for the management of the historic environment are Scottish Planning Policy, Our Place in Time: The Historic Environment Strategy for Scotland, Historic Environment Circular 1, the associated primary and secondary legislation and Historic Environment Scotland’s Managing Change series of guidance notes.
5. This policy statement sets out the principles under which Historic Environment Scotland (HES) operates and provides a framework that informs the day-to-day work of a range of organisations that have a role and interest in managing the historic environment, it is intended to be of particular use to those carrying out statutory functions which are affected by the changes resulting from the 2014 Act. The policy statement complements and should be read alongside the Scottish Planning Policy and other relevant Ministerial policy documents. The policy statement is a relevant document in the statutory planning, Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) processes.

6. The policy statement replaces the Scottish Historic Environment Policy (SHEP) for operational matters. The SHEP was a response to the review of Historic Scotland (Historic Environment Scotland's predecessor) in 2003–04 which recommended that an “Executive endorsed policy statement for the historic environment in Scotland should be developed in consultation with stakeholders...”. Historic Environment Scotland is a Non-Departmental Public Body (NDPB) and its Framework Document, which can be found on its website, sets out its roles and responsibilities.
7. The SHEP was originally developed as a series of individual free-standing documents. The single, combined SHEP was first published in October 2008 and revised in July 2009 and December 2011. This has now been superseded by arrangements put in place to create Historic Environment Scotland (including the Framework Document and Schemes of Delegation – which can be seen on Historic Environment Scotland's website) and this policy statement.
8. The 2014 Act (The Bill for which received Royal Assent on 9 December 2014) amended the following 2 principal Acts:
  - the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”); and
  - the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the 1997 Act”).
9. All references to the above principal Acts in this policy statement are to be read as having been amended by the Historic Environment Scotland Act 2014.
10. This policy statement, the Scottish Planning Policy, Historic Environment Circular 1 and Historic Environment Scotland's Managing Change in the Historic Environment guidance note series (as confirmed in Planning Circular 9 2009) are the documents to which planning authorities are directed in their consideration of applications for conservation area consent, listed building consent for buildings of all three categories (see Note 2.17), and their consideration of planning applications affecting the historic environment and the setting of individual elements of the historic environment. Planning authorities are also directed to these documents to assist them in development planning. Historic Environment Scotland will notify planning authorities in writing when new guidance notes in their Managing Change in the Historic Environment series are issued.
11. A UK Marine Policy Statement adopted by all the UK administrations provides a framework for considering the historic environment in the preparation of Marine Plans, which in turn guide decisions affecting the marine environment around Scotland (see Note 0.1).

# CHAPTER I: SCOTLAND'S HISTORIC ENVIRONMENT

Scotland's historic environment is the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand.

(Our Place in Time)

- 1.1 Interest in and efforts to conserve aspects of the historic environment were first given legal form in the UK in 1882. Now a web of international treaties and conventions underpins European and national law and regulation to ensure that Scotland's historic environment is protected, and that change in the historic environment is undertaken on the basis of sound evidence. Historic Environment Scotland is committed to ensuring that Scotland delivers on its international obligations and that we are seen as an international exemplar of how a small country can care for its historic environment.
- 1.2 Everything changes, matures and decays. Natural processes, such as climate change and erosion, and human interventions through land management, urban and rural development, transport and pollution, constantly erode or change our historic environment. The sustainable management of the historic environment is an integral part of the wider management of resources.
- 1.3 The historic environment has been adapted over time to meet changing needs. Our view of what is important develops and changes. New buildings, sites and environments are created, and over time, become historic. The challenge for sustainable management of the historic environment and how it contributes to the vitality of modern life, is to identify its key characteristics and to establish the boundaries within which change can continue so that it enhances rather than diminishes historic character.
- 1.4 The remains of the past can act as a powerful catalyst and a stimulus to high quality new design and development, leading to successful regeneration and community-building. We believe that the historic environment should be valued as an asset, rather than thought of as a barrier to development. It reinforces the identity of communities, and can add value, provided that value is recognised at the outset and it becomes an integral part of any development or regeneration project.
- 1.5 The protection of the historic environment is not about preventing change. Historic Environment Scotland believes that change in this dynamic environment should be managed intelligently and with understanding, to achieve the best outcome for the historic environment and for the people of Scotland. Such decisions often have to recognise economic realities.

- 1.6 The historic environment faces many challenges:
- a. poor understanding of the positive role it can play in the maintenance, development and regeneration of communities, their culture and their economy;
  - b. short-term visions for the development of places;
  - c. changing land-management practices and restructuring in the farming industry;
  - d. lack of knowledge and understanding of how older buildings were constructed and perform and their maintenance needs;
  - e. loss of sites to coastal and plough erosion;
  - f. inappropriate change that reduces the cultural significance, or detracts from the appearance or quality of conservation areas;
  - g. the needs of renewable energy generation;
  - h. achieving a good carbon footprint for older buildings while maintaining their cultural significance; and
  - i. the lack of traditional skills, suitably-qualified craftsmen and locally available materials for the maintenance and repair of the historic environment.

## VISION AND KEY PRINCIPLES

### VISION

- 1.7 This document should be read in conjunction with Our Place in Time: The Historic Environment Strategy for Scotland which sets out a common vision and ambition about how we will care collectively for Scotland's Historic Environment.

#### Our Place in Time Vision

Scotland's historic environment is understood and valued, cared for and protected, enjoyed and enhanced. It is at the heart of a flourishing and sustainable Scotland and will be passed on with pride to benefit future generations.

- 1.8 The protection and enhancement of the historic environment contributes to the Scottish Government's central purpose, which is 'to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth' (see Note 1.1). To support that, the Scottish Government has identified as a national outcome that 'We value and enjoy our built and natural environment and protect it and enhance it for future generations'. In particular, Scottish Ministers look to Historic Environment Scotland to practise sustainable management of the properties in their care, to promote green tourism, and to advise other bodies on the sustainable management of the historic environment. Sustainable management practices recognise that the protection and management of the historic environment is best carried out in balance with the surrounding environment, not in isolation from it. Scottish Planning Policy and the UK Marine Policy Statement set out how this will be managed in terrestrial and marine planning systems respectively.

## KEY PRINCIPLES

1.9 The principles that underpin what Historic Environment Scotland does are that:

- a. actions taken in respect of Scotland's historic environment should secure its conservation and management for the benefit and enjoyment of present and future generations;
- b. there should be a presumption in favour of preservation of individual historic assets and also the pattern of the wider historic environment; no historic asset should be lost or radically changed without adequate consideration of its significance and of all the means available to manage and conserve it;
- c. Scotland's historic environment should be managed in a sustainable way, recognising that it is a social, cultural, economic and environmental resource of great value;
- d. all of the people of Scotland should be able to enjoy, appreciate, learn from and understand Scotland's historic environment, and be assisted in that through access, research, knowledge, information and education and proactive conservation investment, without compromise to cultural significance.

1.10 The conservation of any part of Scotland's historic environment should:

- a. be based upon sound knowledge and understanding of the particular site, building, monument or landscape, and of its wider context;
- b. be founded on full awareness and consideration of its cultural significance and all phases of its development;
- c. be carried out in accordance with a conservation plan, which brings together all of the information and research necessary to guide the proposed action;
- d. ensure that what is to be conserved is properly recorded before and, if necessary, during and after work;
- e. make provision for recording where continued preservation is no longer possible or where loss is taking place through change or ongoing decay, and ensure that all records are retained in readily accessible archives;
- f. incur only the minimum degree of intervention considered appropriate by the relevant authority for the type of site, building, monument or landscape;
- g. use appropriate technical knowledge, materials, skills and methods of working;
- h. have regard to retaining, or where appropriate enhancing, the setting of the site, monument, building or landscape;
- i. ensure that, where change is proposed, it is appropriate, carefully considered, authoritatively based, properly planned and executed, and (if appropriate) reversible;
- j. include effective arrangements for monitoring the condition and safety of the historic asset and for delivery of routine maintenance and good housekeeping;
- k. take account of the rich biodiversity of many historic sites, buildings and landscapes.

1.11 The relevant bodies with responsibilities for any aspect of the historic environment should ensure, as appropriate, that:

- a. the regimes affording protection to the historic environment are fit for purpose;
- b. effective use is made of the statutory provisions available to protect the historic environment;

- c. the historic environment is afforded due respect in all their activities;
- d. the highest standards are set for, and applied to, the broad range of conservation practices;
- e. appropriate and effective systems are established for monitoring and recording the condition of the historic environment;
- f. suitable knowledge, skills, materials and technologies are available to enable conservation and management to be carried out in ways that safeguard the intrinsic archaeological, architectural, historical, physical and cultural significance of the heritage;
- g. support, advice, encouragement, and clear and comprehensive guidance are readily available to all whose activities have an impact upon the repair, maintenance, management, protection and conservation of the historic environment;
- h. training and education to enhance the quality of conservation practice and actions are widely available;
- i. they work in partnership where there are shared interests.

## IDENTIFICATION, DEFINITION AND DESIGNATION

- 1.12 Scotland, like all countries in the developed world, has in place legislation and systems to identify and record its historic environment, and legislation and regulation to protect important monuments, buildings, landscapes and areas and to control what happens to them.
- 1.13 It is vital that we understand the many different forms the historic environment can take and the historical and cultural significance of all its different elements. This will allow us to develop clear criteria for protecting Scotland's historic environment. The most significant historic assets are protected through national systems of designation; others are protected or managed through other mechanisms such as the planning system or the system of government payments to farmers.
- 1.14 Identifying and designating heritage assets is a continuous process as each generation assesses and re-evaluates the inheritance it wishes to pass on to succeeding generations. That process also takes account of improvements in our understanding of the historic environment, brought about by continuing academic research and by developments in technology, such as geographic information systems and new techniques for recording and investigation. Historic Environment Scotland is committed to continuing this process and will look to other key bodies to play complementary roles and to share knowledge and expertise.
- 1.15 The desire to protect and the identification of what to protect must flow from values that are shared across Scotland. Historic Environment Scotland is committed to ensuring, in part through this policy statement, that the principles and processes behind identification and designation are open and well-understood; that appropriate review mechanisms are in place and that owners and occupiers of assets proposed for designation have the opportunity to be consulted.

## PROTECTION AND MANAGEMENT OF THE HISTORIC ENVIRONMENT

- 1.16 Historic Environment Scotland is committed to supporting the protection and management of Scotland's rich and diverse historic environment in a sustainable way so that current and future generations can understand, appreciate and benefit from it.
- 1.17 Understanding the development of our environment through time helps inform decision-making about its management. It offers a longer-term perspective on important topics such as the nature and impact of past climate change and past management of the land, soil degradation, loss of woodland, building decay processes and the results of past economic and industrial development. Good stewardship of the historic environment can make a contribution towards addressing wider issues like energy conservation (maintaining and using existing resources and embodied energy) and reuse of buildings and building materials (including recycling). The use of local resources, traditional materials and skills can help reduce the impact of transportation.
- 1.18 Historic Environment Scotland wants to emphasise the contribution made to a sustainable Scotland by the repair, maintenance, preservation and reuse of our older buildings, particularly the half million traditionally-constructed domestic buildings built before 1919. Waste caused by unnecessary demolition and replacement, with consequent loss of embodied energy, the need for landfill and the sourcing and transport of new materials, should be avoided wherever possible. Historic Environment Scotland continues to develop guidance aimed at minimising the carbon footprint of older buildings on the basis of sound research that takes account of the characteristics and materials of traditional construction and respects the value of the diverse historic character of these buildings, and the contribution they make to the identity and quality of townscapes and rural landscapes.
- 1.19 The principles of good stewardship are set out immediately below. The philosophy underlying good stewardship is that it is essential to manage the historic environment carefully for both present and future generations. This clearly resonates with the concept of sustainability and the wise use of resources.
- 1.20 Maintaining quality is a key aim of good stewardship and involves the following considerations:
- a. proper repair and maintenance of the historic environment is generally the most sustainable course of action;
  - b. management, and any proposed alteration or change of use, should be appropriate and follow best conservation practice;
  - c. to retain historic character and future performance of older buildings it is important to use appropriate and compatible materials and construction techniques;
  - d. it is important that new developments are sensitive to historic character and attain high standards in design and construction, while recognising the portfolio of original building materials;
  - e. provisions for access should be appropriate to the character of the historic environment and should be adequately monitored.

- 1.21 It is recognised that some conflict can arise between the sustainable management of the historic environment and actions that are considered sustainable in other respects. It is also possible that the impact of proposed actions on the historic environment will be uncertain. In these cases the risk of potentially damaging actions should be minimised by following these key principles:
- a. ensure that existing and intended management or use is appropriate and based on best available knowledge;
  - b. ensure that any proposed change of use is necessary;
  - c. use appropriate assessment methodologies to determine the full impact of any proposed management, use or development;
  - d. avoid change wherever its effects cannot be adequately assessed;
  - e. where change is to proceed, adopt strategies to mitigate its impact and keep any interventions to a minimum;
  - f. ensure that management or alteration, including remedial work, is sympathetic to historic character, using compatible materials and construction techniques.
- 1.22 The protection and sustainable management of the historic environment also depends on understanding the techniques used in the original construction and on the availability of the appropriate indigenous traditional building skills and materials. Historic Environment Scotland is committed to establishing a proper understanding and awareness of what is needed.
- 1.23 There is a range of mechanisms in place to protect and manage the historic environment. For example, once an important monument, building or shipwreck has been identified and appropriately designated, specific consents may need to be sought or special consideration be given within the planning system. Where Historic Environment Scotland has a direct role to play in these processes we are committed to having clear processes and guidance in place that ensure consistency, transparency and fairness. Historic Environment Scotland will provide clear and consistent advice to promote good practice in considering and managing change to the historic environment.
- 1.24 Historic Environment Scotland looks to planning authorities to undertake their responsibilities for the historic environment in a pro-active and committed way. They should develop appropriate policy frameworks and procedures, and use all local mechanisms available to them for designation, management and control. They should also ensure that they have access to sufficient information and suitably qualified and experienced staff to meet their needs.
- 1.25 Historic Environment Scotland operates a number of grant schemes to assist with the repair and conservation of the historic environment. Details can be found on its website under “Grant Funding”.

## TECHNICAL, PROFESSIONAL AND ACADEMIC KNOWLEDGE

- 1.26 The historic environment cannot be managed or cared for without a basic understanding of its nature and how it is changing. Historic Environment Scotland is committed to increasing and sharing knowledge more widely about the historic environment. It will undertake and promote research:
- a. on individual sites, buildings and landscapes through survey of various kinds, excavation and documentary research;
  - b. into older buildings to inform policies and strategies for maintenance and the supply of skills and materials;
  - c. into the economic value and impact of the historic environment, including its vital role in Scotland's tourist industry.

# CHAPTER 2: DESIGNATION

## INTRODUCTION

2.1 This chapter sets out Historic Environment Scotland's approach to the designation of sites and structures which are particularly important features of the historic environment. It covers six statutory designations:

- Ancient monuments, which are designated through *scheduling*;
- Buildings and other structures which are designated through *listing*;
- Conservation areas
- Historic marine protected areas
- Gardens and designed landscapes
- Historic battlefields

2.2 Historic Environment Scotland is a Non-departmental Public Body. This chapter makes specific references to Historic Environment Scotland where it has operational responsibility or where, in particular circumstances, contact should be made directly with Historic Environment Scotland.

## HISTORIC ENVIRONMENT SCOTLAND'S GENERAL PRINCIPLES FOR DESIGNATION DECISION MAKING

2.3 There are some principles that apply to all forms of designation relating to decision making, transparency and communication. These are: that decisions on designation and removing a designation will be made on the basis of the best evidence available; that information on designated sites, structures and places and on the processes involved with designation will be made widely and easily available; and that all decisions relating to designation will be explained in clear language.

## SCHEDULING

### LEGAL AND ADMINISTRATIVE CONTEXT FOR SCHEDULING

2.4 This section sets out Historic Environment Scotland's approach to the identification and designation of nationally important ancient monuments. This process plays an important part in the conservation of evidence for Scotland's past.

- 2.5 Ancient monuments offer a tangible, physical link with the past. They are a finite and non-renewable resource containing unique information and have the potential to contribute to increasing our knowledge of our past. Such remains are part of Scotland's identity and are valuable both for their own sake and as a resource for research, education, regeneration, leisure and tourism. The remains are often very fragile and vulnerable to damage or destruction and care must be taken to ensure that they are not needlessly damaged or destroyed.
- 2.6 The United Kingdom government is party to the European Convention on the Protection of the Archaeological Heritage (the 'Valletta Convention'; see Note 2.1), which places an obligation on States, under Article 2, to institute a legal system for the protection of the archaeological heritage, on land and under water.
- 2.7 The United Kingdom has had legislation in place to protect ancient monuments since 1882. Currently, nationally important monuments in Scotland are protected under the provisions of the Ancient Monuments and Archaeological Areas Act 1979 (see Note 2.2). The 1979 Act places a requirement on Historic Environment Scotland to compile, maintain and publish a schedule (a list) of monuments. Once included in the schedule, monuments have legal protection. Up-to-date information on monuments contained in the schedule is available on Historic Environment Scotland's website.
- 2.8 'Monuments' are defined in the 1979 Act as (see Note 2.3):
- a. any building, structure or work, whether above or below the surface of the land, and any cave or excavation;
  - b. any site comprising the remains of any such building, structure or work or of any cave or excavation; and
  - c. any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure or part thereof which neither constitutes nor forms part of any work which is a monument as defined within paragraph (a) above.
  - d. Any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled.
  - e. any site (other than one falling within paragraph (b) or (c) above) comprising anything, or group of things, that evidences previous human activity [see Annex 10].
- 2.9 The definition of 'remains' includes any trace or sign of the previous existence of the thing in question (see Note 2.4).
- 2.10 To be scheduled, a monument must meet the 1979 Act's definition. A structure in use as a dwelling house cannot be scheduled as an ancient monument, nor can buildings in ecclesiastical use.
- 2.11 The process of scheduling under the terms of the 1979 Act is entirely separate from the process of listing under the terms of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (see Note 2.5).
- 2.12 The process of scheduling, amending a scheduling, 'descheduling' (removing a monument from the schedule) and scheduled monument consent (the control of works affecting scheduled monuments) is undertaken by Historic Environment Scotland.

- 2.13 The sole legal criterion in the 1979 Act for inclusion in the schedule is that a monument is of 'national importance' (see Note 2.6). The criteria for and guidance on the determination of 'national importance' for scheduling were developed after public consultation and are set out in Annex 1.
- 2.14 Historic Environment Scotland is required to inform the owner and the planning authority when it includes, amends or excludes a monument from the schedule. This will be done as soon as possible after the change takes effect.
- 2.15 The Historic Environment Scotland Act 2014 introduced a statutory right of appeal against any decision to schedule a monument or to amend an existing scheduling. This came into force on 1 October 2015. Designation decisions can be appealed by the owner, occupier or tenant of the monument within three months of the date of the notification letter sent by Historic Environment Scotland. Appeals must be submitted to the Planning and Environmental Appeals Division (DPEA). More information about appeals and the appeal process can be found on DPEA's website ([www.dpea.scotland.gov.uk](http://www.dpea.scotland.gov.uk)).

Once a monument is scheduled, it becomes an offence to carry out, without the prior written consent of Historic Environment Scotland (scheduled monument consent), any works which would have the effect of demolishing, destroying, damaging, removing, repairing, altering, adding to, flooding or covering up the monument (see Chapter 3 and Note 2.7).

- 2.16 The scheduling process and the need for scheduled monument consent run in parallel with the statutory planning process, where planning permission is also necessary for any planned work. The protection of scheduled monuments is a material consideration in the determination of planning applications (see Scottish Planning Policy paragraph 145).

## HISTORIC ENVIRONMENT SCOTLAND'S PRINCIPLES FOR SCHEDULING

- 2.17 The following principles, additional to those set out in paragraph 2.3 above, will underpin the scheduling process:
- a. the past of all parts of Scotland is worthy of study and should be considered for conservation;
  - b. no part of Scotland's past and no part of Scotland's land is inherently more or less likely to produce monuments of national importance than another;
  - c. scheduling will be based on an appreciation of the regional character of Scotland's past, as reflected in its ancient monuments, and on the basis of an up-to-date set of criteria and guidance;
  - d. scheduling will be applied to monuments across Scotland in a consistent way;
  - e. monuments that no longer meet the criteria for national importance will be removed from the schedule (descheduled);
  - f. owners and occupiers of land on which monuments lie, and the local authorities in which they are situated, will be consulted on proposals to add a monument to the schedule, other than in exceptional circumstances;
  - g. scheduling will be an ongoing process that recognises that every generation will have its own view of what comprises its heritage;

- h. scheduling is applied to secure the legal protection of monuments in the national interest. It is the intrinsic value of the monument to the nation's heritage that is the primary consideration in deciding whether or not a site shall be scheduled and in determining applications for scheduled monument consent.

## HOW HISTORIC ENVIRONMENT SCOTLAND UNDERTAKES SCHEDULING

### 2.18 Historic Environment Scotland will:

- a. maintain the schedule through a programme of review including, where necessary, updating scheduling documentation and maps;
- b. add monuments to the schedule in response to requests (an application form is available on its website) and as resources permit;
- c. ensure that information on scheduled monuments is made as widely available as possible; and
- d. keep the strategic and operational principles on scheduled monuments under review.

## LISTING

### LEGAL AND ADMINISTRATIVE CONTEXT FOR LISTING

- 2.19 This section sets out Historic Environment Scotland's approach to listing: the process that identifies, designates and provides statutory protection for buildings (see Note 2.9) of 'special architectural or historic interest' as set out in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- 2.20 Historic buildings and structures are a highly visible and accessible element of Scotland's rich heritage. They cover a wide range of uses and periods, which together chart a great part of the history of Scotland. They encompass all aspects of life, from education to recreation, to defence, industry, homes and worship. Much of Scotland's social and economic past and its present is expressed in these exceptional buildings. Listing recognises their historic importance.
- 2.21 This in turn helps ensure that their potential for the study of history and for wider issues such as sustainability, community identity, local distinctiveness, and social and economic regeneration are all fully explored.
- 2.22 The listing process under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 set out here is entirely separate from that for scheduling under the terms of the Ancient Monuments and Archaeological Areas Act 1979 (see above and Note 2.5).
- 2.23 Most European countries have systems to protect and to control change on important historic buildings. The system in Scotland operates under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (see Note 2.8). Listing ensures that a building's special character and interest are taken into account where changes are proposed (see Note 2.10). The list is compiled for the purposes of the 1997 Act and for the guidance of planning authorities in the performance of their duties set out in the

1997 Act. The 1997 Act places a duty on Historic Environment Scotland to compile or approve lists of buildings of special architectural or historic interest (see Note 2.10). Up-to-date information on buildings on the list is available on Historic Environment Scotland's website. Listing is the statutory process by which buildings are added to these lists. Once included on the lists the building – both exterior and interior – has statutory protection under the provisions of the 1997 Act. Listing is intended to maintain the character of Scotland's built heritage and to guard against unnecessary loss or damage.

- 2.24 Any building or man-made structure may be considered for listing. In order to be listed under Section 1 of the 1997 Act any such building or structure must be of special architectural or historic interest. Other factors, such as condition, implications for future use or financial issues are not relevant in considering whether a building should be listed.
- 2.25 Any individual or organisation can propose buildings to Historic Environment Scotland for listing. An application form to request a new listing, a review of an existing listing or a delisting is available on Historic Environment Scotland's website.
- 2.26 Historic Environment Scotland will normally consult owners and local authorities on a proposed listing (see Note 2.11).
- 2.27 Historic Environment Scotland is required to inform the owner and the planning authority when a building is listed. This will be done as soon as possible after listing takes effect (see Note 2.12).
- 2.28 Once Historic Environment Scotland has decided to list a building or buildings it sends a copy of the listed building record to the local planning authority (see Note 2.13).
- 2.29 A listing applies to any building within the curtilage of the subject of listing which was erected on or before 1 July 1948 (see Note 2.14). This could include many ancillary structures such as boundary walls, garages or estate buildings.
- 2.30 A change in the legislation introduced on 1 October 2015 (Historic Environment Scotland Act 2014, Part 6, section 22, which amended Section 1(4A) of the 1997 Act) allows Historic Environment Scotland to legally state that an object or structure fixed to the building and/or any object or structure within the curtilage of the building is not to be treated as listed and/or that any part or feature of a listed building is not of special architectural or historic interest and is therefore not listed. See Historic Environment Scotland's website for more information.
- 2.31 Any work which affects the character of a listed building or structure will require listed building consent (see Note 2.15). Applications for listed building consent are, in normal circumstances, dealt with by the planning authority (see Note 2.16). Any work carried out to a listed building without consent and which affects its character as a building of special architectural or historic interest, is an offence which can lead to a fine or imprisonment.
- 2.32 There is a statutory right of appeal for new listings and where a change has been made to the statutory address of an existing listed building. Appeals must be made to the Planning and Environmental Appeals Division (DPEA, at [www.dpea.scotland.gov.uk](http://www.dpea.scotland.gov.uk))

within three months of the date of the letter Historic Environment Scotland sent to the owner, tenant and occupier about the change. More information about this can be found on DPEA's website.

- 2.33 Historic Environment Scotland may also reconsider a listing even if it does not qualify for an appeal if the building has lost its special architectural or historic interest. An application form to request a review of an existing listing or a delisting is available on the Historic Environment Scotland website.

#### CERTIFICATES OF INTENTION NOT TO LIST

- 2.34 Historic Environment Scotland may, on the application of any person, issue a certificate stating that they do not intend to list a building for a period of 5 years from the date of the issue of the certificate. This is known as a 'Certificate of Intention Not to List'. When such a certificate has been issued a planning authority may not for that period serve a building preservation notice in relation to the building, or affix such a notice to the building. A person submitting an application to Historic Environment Scotland for a certificate must at the same time give notice of the application to the planning authority within whose district the building is situated. Additional information about this process can be found on Historic Environment Scotland's website.

#### HISTORIC ENVIRONMENT SCOTLAND'S PRINCIPLES FOR LISTING

- 2.35 Listing is applied to afford recognition, and protection where possible, to buildings of special architectural or historic interest for future generations. The list is compiled to give guidance to planning authorities in the course of their work by identifying buildings of special architectural or historic interest (see Note 2.17). The listings inform development, provide awareness of value and character and support the planning process.
- 2.36 Many buildings are of interest, architecturally or historically, but for the purposes of listing this interest must be 'special'. Listing is therefore assessed against a set of criteria which are set out in Annex 2.
- 2.37 The following principles, additional to those set out in section 2.3 above, underpin listing practice:
- a. the selection process is informed by a wide range of factors (see Annex 2) which help determine the level of special architectural or historic interest which the subject of listing may possess;
  - b. listing will follow the consistent application of criteria, as set out in Annex 2;
  - c. all aspects of Scotland's past are worthy of study and should be considered for listing;
  - d. listing will be based on an understanding of regional differences as expressed in Scotland's architectural and built heritage;
  - e. listing will be an ongoing process that recognises our changing level of knowledge and that every generation will have its own view of what comprises its heritage;
  - f. buildings less than 30 years old will normally only be considered for listing if found to be of outstanding merit and/or facing immediate threat.

- 2.38 Historic Environment Scotland will normally consult the relevant local authority about a listing proposal or a statutory amendment to the list. In addition, it will also normally consult with the owner, lessee and tenant of the property. In exceptional circumstances, it may list a building without consulting with its owner.
- 2.39 Where anyone is making or is aware of proposals that might make changes to or lead to the demolition of a building that is not listed but may be of special architectural or historic interest, they should contact Historic Environment Scotland as early in the process as possible. This is to enable an assessment of the special interest of a building to ensure that resources are not wasted on abortive schemes.

## HOW HISTORIC ENVIRONMENT SCOTLAND UNDERTAKES LISTING

- 2.40 Historic Environment Scotland will:
- a. add to, re-categorise or remove subjects from the list through ongoing work;
  - b. use a range of mechanisms to make relevant information available as widely as possible;
  - c. publish and regularly update guidance on listing, particularly for the owners and occupiers of listed property;
  - d. review operational programmes of work regularly in consultation with stakeholders;
  - e. make its decision-making process transparent; and
  - f. keep principles and process for listing under review.

## CONSERVATION AREAS

### LEGAL AND ADMINISTRATIVE CONTEXT FOR CONSERVATION AREAS

- 2.41 Conservation areas are defined as ‘areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance’. All planning authorities are required from time to time to determine which areas meet this definition and to designate them as conservation areas. Conservation areas embrace the urban and rural: from the historic cores of our cities to isolated rural settlements or landscapes there is a wide range of historic places which might be designated as a conservation area.
- 2.42 Once a planning authority has decided to designate a conservation area, notice of the designation must be published in the Edinburgh Gazette and at least one local newspaper (see Note 2.18).
- 2.43 Historic Environment Scotland has the power to determine, after consultation with the planning authority, that an area should be a conservation area and to designate accordingly. This is a power which will be used only exceptionally.
- 2.44 Scottish Ministers, and Historic Environment Scotland at the same time as the designation is advertised, must be notified formally of the designation of conservation areas and provided with a copy of the published notice, together with a copy of the designation map and a list of the street names (see Note 2.19).

- 2.45 Planning authorities may also vary or cancel conservation areas already designated (see Note 2.20).
- 2.46 Every planning authority is required to compile and keep available for public inspection a list containing appropriate information about any area in its district which has been designated as a conservation area.
- 2.47 Planning authorities have a duty to submit their proposals for the preservation and enhancement of conservation areas for consideration to a local public meeting and should, when preparing schemes of preservation and enhancement, seek the advice and views of local residents and amenity groups.
- 2.48 Once an area has been designated, it becomes the duty (see Note 2.21) of the planning authority and any other authority concerned, including Historic Environment Scotland, to pay special attention to the desirability of preserving or enhancing the character and appearance of the area when exercising their powers under the planning legislation.
- 2.49 Some types of development which would not otherwise require permission may require permission through the planning process, planning authorities provide guidance on when this is the case.

#### HISTORIC ENVIRONMENT GUIDANCE ON THE DESIGNATION OF CONSERVATION AREAS

- 2.50 Historic Environment Scotland expect planning authorities to designate only those areas which they consider to be of special architectural or historic interest as conservation areas. As part of this process it encourages them to undertake a thorough appraisal of any area before designation, to ensure that its character and appearance are properly understood. The criteria to be taken account of in designation are set out in Annex 3.

## HISTORIC MARINE PROTECTED AREAS

#### LEGAL AND ADMINISTRATIVE CONTEXT FOR HISTORIC MARINE PROTECTED AREAS

- 2.51 This section sets out the requirements of the Marine (Scotland) Act 2010 for designating historic marine protected areas (historic MPAs) to protect marine historic assets of national importance in the seas around Scotland.
- 2.52 State party commitments under Article 2 of the Valletta Convention (Note 2.1) include a legal system for the protection of the archaeological heritage, on land and under water. Scottish Ministers have devolved powers to help them discharge these and other commitments within the seaward limits of Scottish inshore waters (12 nautical miles or 22.2km).
- 2.53 Monuments on the foreshore and under water can be scheduled under the Ancient Monuments and Archaeological Areas Act 1979. The scope of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 stops at the low water mark but buildings such as harbours and lighthouses which are sometimes partly below the sea can be listed. Provisions under the Marine (Scotland) Act 2010 replace the use of

section 1 of the Protection of Wrecks Act 1973 in Scotland. Responsibility for related functions such as administration of the Protection of Military Remains Act 1986 (Note 2.24) and the disposal of 'wreck' under the Merchant Shipping Act 1995 (Note 2.25) rests with the UK Government.

- 2.54 Part 5 of the Marine (Scotland) Act 2010 allows Scottish Ministers to designate three types of marine protected area (MPA): nature conservation MPAs to deliver national priorities on biodiversity and geodiversity; demonstration and research MPAs to demonstrate or develop research into sustainable management approaches; and historic MPAs.
- 2.55 While the power to designate historic MPAs remains with Scottish Ministers, Historic Environment Scotland advise Ministers on the designation under its general power to advise on all matters relating to the historic environment (see Section 12 of the 2014 Act).
- 2.56 Under the terms of the Marine (Scotland) Act 2010 Scottish Ministers can designate an area within the Scottish marine protection area (Note 2.22) as a historic MPA if they consider it desirable to do so for the purpose of preserving a marine historic asset of national importance which is, or which they are satisfied may be, located in the area. A marine historic asset is defined as any of the following:
- a. a vessel, vehicle or aircraft (or part of a vessel, vehicle or aircraft);
  - b. the remains of a vessel, vehicle or aircraft (or a part of such remains);
  - c. an object contained in or formerly contained in, a vessel, vehicle or aircraft;
  - d. a building or other structure (or a part of a building or structure);
  - e. a cave or excavation; and
  - f. a deposit or artefact (whether or not formerly part of a cargo of a ship) or any other thing which evidences, or groups of things which evidence, previous human activity.
- 2.57 Except in cases where the Scottish Ministers consider there is an urgent need to protect a marine historic asset, prior notification and consultation is required. Urgent designations are time-limited and full consultation is required to make urgent designations permanent.
- 2.58 Historic MPA designation places duties on public authorities and introduces offences relating to marine historic assets, Scottish Ministers can also make Marine Conservation Orders (MCOs) to support stated preservation objectives for historic MPAs. Further information on management of MPAs is provided in Chapter 3.
- 2.59 Scottish Ministers also have powers to develop plans and issue marine licenses for certain works and activities in Scottish inshore waters and, by virtue of devolved functions arising from UK marine legislation, Scottish offshore waters (12-200 nautical miles adjacent to Scotland). Adoption of a UK Marine Policy Statement (Note 2.26) by all UK administrations provides a consistent policy framework for consideration of the historic environment in developing marine plans and taking decisions across the UK seas. The Scottish National Marine Plan sets out strategic policies for the sustainable development of Scotland's marine resources out to 200 nautical miles.

## HISTORIC ENVIRONMENT SCOTLAND'S PRINCIPLES FOR ADVISING ON THE DESIGNATION OF HISTORIC MARINE PROTECTED AREAS

- 2.60 Scotland's coasts and seas comprise a rich marine natural and cultural heritage. Designation of historic MPAs can help to preserve our most important marine historic assets and to celebrate and communicate their heritage value so that everyone can appreciate these assets and act responsibly.
- 2.61 The following principles, additional to those set out in paragraph 2.3 above, underpin Historic Environment Scotland's advice to the Scottish Government on designation of historic MPAs:
- a. marine historic assets from all parts of the Scottish marine protection area are equally worthy of study and consideration for statutory protection. Historic MPAs are normally the preferred mechanism for protection of marine historic assets under water, with scheduling and listing normally preferred for monuments and buildings at the foreshore and coast edge. This approach will be subject to periodic review;
  - b. advice on designation will be an ongoing process that recognises our changing state of knowledge and that every generation will have its own view of what comprises its heritage;
  - c. advice on designation and de-designation will be made according to the criterion of national importance, following consistent application of guidance set out in Annex 4; and
  - d. advice on designation of a historic MPA will involve consultation with owners and stakeholders with an interest in the marine historic asset or role in the adjacent marine area.
- 2.62 Marine historic assets and the seabed that surrounds them can sometimes also be of value from the perspective of biodiversity and geodiversity.

## HOW DESIGNATION OF HISTORIC MARINE PROTECTED AREAS IS UNDERTAKEN

- 2.63 Decisions on designating historic marine protected areas rest with Scottish Ministers. The role of Historic Environment Scotland is to advise Scottish Government. Historic Environment Scotland will:
- a. work collaboratively with Marine Scotland, Scottish Natural Heritage and other stakeholders towards the protection and where appropriate, the enhancement of the Scottish marine area;
  - b. advise Marine Scotland on which of Scotland's marine historic assets merit designation as a historic MPA and maintain a register of their condition;
  - c. make readily available information about historic MPAs and about the process for selecting, designating and promoting these.
  - d. Undertake consultation on proposed designations, amendments and removals, and notifications following statutory changes.
  - e. work with Marine Scotland and Scottish Natural Heritage where appropriate so that they can make a scientific assessment of the biodiversity or geodiversity value of the seabed comprising a historic MPA, including the extent to which these areas have the potential to contribute to the network.

- 2.64 Historic Environment Scotland will advise and work with Marine Scotland, public authorities and marine planning partnerships on marine planning and licensing matters in order to help advance the historic environment as set out in the Scottish National Marine Plan.

## GARDENS AND DESIGNED LANDSCAPES

### LEGAL AND ADMINISTRATIVE CONTEXT FOR GARDENS AND DESIGNED LANDSCAPES

- 2.65 This section sets out Historic Environment Scotland's principles for designating gardens and designed landscapes of national importance.
- 2.66 Section 32A(1) of the 1979 Act imposes a statutory duty for Historic Environment Scotland to compile and maintain an inventory of gardens and designed landscapes as appear to Historic Environment Scotland to be of national importance. Inclusion of a site on the inventory means that it receives recognition and a degree of protection through the planning system.
- 2.67 Section 32A(2) of the 1979 Act defines gardens and designed landscapes as grounds which have been laid out for artistic affect and, in appropriate cases, include references to any buildings, land, or water on, adjacent, or contiguous to such grounds (see Note 2.27). Gardens and designed landscapes are often the setting of important buildings and, in addition to parkland, woodland, water and formal garden elements, can often have significant archaeological and scientific interest.
- 2.68 Under the terms of Section 32A of the 1979 Act, Historic Environment Scotland shall:
- a. compile and maintain (in such form as they think fit) an inventory of such gardens and designed landscapes as appear to them to be of national importance;
  - b. notify owners, occupiers and any local authority, in whose area the grounds are situated, of the inclusion or modification of a garden and designed landscape in the inventory; and
  - c. publish, in such manner as they think fit, a list of all the gardens and designed landscapes included in the inventory.
- 2.69 Fashions in gardens and designed landscapes changed over time, through formal, informal, picturesque and modern styles, and many designed landscapes show these layers of change today. They are important tourist attractions, rich wildlife havens, major parts of the Scottish scenery, and are living examples of unique artistic talent. They are a living cultural record reflecting centuries of social and economic change and are widely enjoyed by people of all ages, backgrounds and cultures.
- 2.70 There is no primary legislation that gives protection to gardens and designed landscapes. Scottish Planning Policy, however, confirms that maintaining and enhancing the quality of the historic environment and preserving the country's heritage are important functions of the planning system. Designed landscapes are part of that heritage.

- 2.71 Local development plans and, where appropriate, statutory and non-statutory supplementary guidance, should set out policies and criteria that apply to the protection, conservation and management of designed landscapes (Scottish Planning Policy, paragraph 148). Where relevant, such policies should inform planning authorities' consideration of individual planning applications within development management.
- 2.72 Some additional statutory provisions also apply at this stage. Schedule 5 (17) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 requires planning authorities to consult Historic Environment Scotland on 'development which may affect a historic garden or designed landscape'. Historic Environment Scotland's views on such applications will be a material consideration in the planning authority's determination of the case.

#### HISTORIC ENVIRONMENT SCOTLAND'S PRINCIPLES FOR DESIGNATION OF GARDENS AND DESIGNED LANDSCAPES

- 2.73 The following principles, additional to those set out in section 2.3 above, underpin the process of including sites in the inventory:
- a. the selection process is informed by a wide range of factors (Annex 5). These help determine the level of interest which the site may possess;
  - b. selection will follow the consistent application of clear criteria, set out in Annex 4; other factors, such as implications for future use or financial issues are not relevant in considering whether a garden or designed landscape should be added to or removed from the inventory;
  - c. gardens and designed landscapes in all parts of Scotland are worthy of study and should be considered for inclusion in the inventory; and
  - d. adding sites to and removing sites from the inventory will be an ongoing process that recognises our changing level of knowledge and that every generation will have its own view on what comprises its heritage.
- 2.74 Owners and occupiers of gardens and designed landscapes, and planning authorities, will normally be consulted on proposed additions to the inventory other than in exceptional circumstances.
- 2.75 To be deemed as being of national importance, and therefore to be included in the inventory, a site will usually have to meet a majority of the criteria set out in Annex 5. In particular it would have to be demonstrated that it had sufficient integrity in its design to merit inclusion.

#### HISTORIC ENVIRONMENT SCOTLAND DESIGNATES GARDENS AND DESIGNED LANDSCAPES

- 2.76 Historic Environment Scotland will:
- a. add to or remove subjects from the inventory through ongoing work;
  - b. use a range of mechanisms to make relevant information available as widely as possible;
  - c. publish and regularly update guidance on the inventory;
  - d. review operational programmes of work regularly in consultation with stakeholders;

- e. make its decision-making process transparent; and
- f. keep principles and process for the inventory under review.

## HISTORIC BATTLEFIELDS

### LEGAL AND ADMINISTRATIVE CONTEXT FOR HISTORIC BATTLEFIELDS

2.77 This section sets out Historic Environment Scotland's approach to historic battlefields.

2.78 Section 32B (1) of the 1979 Act created a statutory duty for Historic Environment Scotland to compile and maintain an inventory of historic battlefields as appear to them to be of national importance. Under the legislation a battlefield is defined as an area of land over which a battle was fought; or an area of land on which any significant activities relating to a battle occurred (whether or not the battle was fought over that area). (See Note 2.27) A battle is an engagement involving wholly or largely military forces that had the aim of inflicting lethal force against an opposing army.

2.79 Under the terms of Section 32B of the 1979 Act, Historic Environment Scotland will:

- a. compile and maintain (in such form as they think fit) an inventory of such battlefields as appear to them to be of national importance;
- b. notify owners, occupiers and any local authority, in whose area the grounds are situated, of the inclusion or modification of a battlefields in the inventory; and
- c. publish, in such manner as they think fit, a list of all battlefields included in the inventory.

2.80 Battlefields are valued for a variety of reasons: marking the sites of significant events containing physical or archaeological remains associated with battles, or the remains of fallen combatants. Battles hold a significant place in our national consciousness and have a strong resonance in Scottish culture. The landscape of the battlefield may help to explain exactly why events unfolded as they did.

2.81 The inventory of battlefields identifies nationally important battlefields and provides information to aid their understanding, protection and sustainable management through the planning system, and in other relevant contexts, such as landscape and land-use management. Parts of some battlefields may have additional protection through other measures such as scheduling or listing of physical features, or designation as a conservation area or area of landscape value.

2.82 Local development plans and, where appropriate, statutory and nonstatutory supplementary guidance, should set out policies and criteria that apply to the protection, conservation and management of historic battlefields (Scottish Planning Policy, paragraph 149). Such policies should inform planning authorities' consideration of individual planning applications within development management.

2.83 Schedule 5 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 requires planning authorities to consult Historic Environment Scotland on 'development (other than householder development) which may affect a historic battlefield'. Historic Environment Scotland's views on such applications will be a material consideration in the planning authority's determination of the case.

#### HISTORIC ENVIRONMENT SCOTLAND'S PRINCIPLES FOR DESIGNATION OF BATTLEFIELDS

2.84 The inventory identifies nationally important battlefields and provides information on them as a basis for the sustainable management of change through the planning system and in other relevant policy contexts.

2.85 The following principles, additional to those set out in section 2.3 above, underpin the process of including sites in the inventory:

- a. selection will follow the consistent application of criteria (set out in Annex 6); other factors, such as implications for future use or financial issues, are not relevant in considering whether a battlefield should be added to or removed from the inventory;
- b. battlefields in all parts of Scotland are worthy of study and consideration for inclusion in the inventory; and
- c. adding sites to and removing them from the inventory will be an ongoing process that recognises our changing level of knowledge and that every generation will have its own view on what comprises its heritage.

2.86 Historic Environment Scotland will normally consult planning authorities and other key stakeholders as appropriate on proposals for including sites on the inventory and for any subsequent amendments.

2.87 To be included in the inventory, a site must be capable of definition on a modern map (see Annex 6).

2.88 Planning authorities are encouraged to identify battlefield sites in their areas that do not meet the inventory criteria, but which nevertheless may make an important contribution to the local historic environment, landscape character and sense of place, and to develop policies for their future management.

#### HOW HISTORIC ENVIRONMENT SCOTLAND DESIGNATES HISTORIC BATTLEFIELDS

2.89 Historic Environment Scotland will:

- a. add to or remove subjects from the inventory through ongoing work;
- b. use a range of mechanisms to make relevant information available as widely as possible;
- c. publish and regularly update guidance on the inventory;
- d. review operational programmes of work regularly in consultation with stakeholders;
- e. make its decision-making process transparent; and
- f. keep principles and process for the inventory under review.

# CHAPTER 3: CONSENTS AND ADVICE

## INTRODUCTION

- 3.1 This chapter sets out Historic Environment Scotland’s approach to scheduled monument consent, where Historic Environment Scotland is the consenting authority. It also sets out Historic Environment Scotland’s approach to the management of historic MPAs. It provides guidance to planning authorities on the consideration of listed building consent and conservation area consent, and planning applications affecting sites on the inventory of gardens and designed landscapes and the inventory of battlefields. The Historic Environment Circular 1 and Managing Change in the Historic Environment guidance note series provide further, more detailed, information and guidance on the process and consideration of the historic environment in the planning process, including the consideration of potential impacts on the setting of heritage assets.

## SCHEDULED MONUMENT CONSENT

### LEGAL AND ADMINISTRATIVE CONTEXT

- 3.2 This section sets out how Historic Environment Scotland manages the control of works affecting scheduled monuments of national importance that are legally protected under the Ancient Monuments and Archaeological Areas Act 1979. A scheduled monument is included in ‘the schedule’ compiled under the 1979 Act (see Chapter 2 of this policy statement and Notes 3.1 and 3.2). Works to a scheduled monument require the prior written consent of Historic Environment Scotland, this is known as scheduled monument consent.
- 3.3 Scheduled monuments range from 10,000-year-old sites created by the first settlers in Scotland to 20th-century military defences, and from abbeys and castles to the slight traces of prehistoric and medieval farms. They are a non-renewable resource, which provides us with valuable information about Scotland’s past. Scheduled monuments are part of Scotland’s identity and are important both for their own sake and as a resource for research, education, regeneration, leisure and tourism, as well as creating a sense of local identity and community. They are often very fragile and vulnerable to damage or destruction.
- 3.4 Scheduled monument consent is required for any works that would demolish, destroy, damage, remove, repair, alter or add to the monument or to carry out any flooding or tipping on the monument (see Note 3.2). A consent under section 42 of the 1979 Act is also required to use a metal detector within a scheduled monument (see Note 3.3). It is a criminal offence to carry out any of these works without consent.

- 3.5 Some types of works do not require scheduled monument consent as they are deemed to have consent, under the terms of the Ancient Monuments (Class Consents) (Scotland) Order 1996 ('the Class Consents Order') (see Note 3.4).
- 3.6 The 1979 Act and the scheduled monument consent process also provide for the proper evaluation and investigation of scheduled monuments if damage or destruction is unavoidable.
- 3.7 Some monuments are both scheduled and listed. Where this is the case only scheduled monument consent is required for any works and the relevant parts of the listed buildings legislation are disapplied (see Note 3.5).

## THE SCHEDULED MONUMENT CONSENT PROCESS

- 3.8 The Historic Environment Scotland Act 2014 amended the Ancient Monuments and Archaeological Areas Act 1979 to give Historic Environment Scotland the responsibility for determining applications for scheduled monument consent, unless Scottish Ministers direct that the application is called-in for their own determination. Applicants (who may be the owner, tenant or any other party) are encouraged to contact Historic Environment Scotland as early as possible to discuss their proposals. Applications must be made on a form obtained from Historic Environment Scotland (See note 3.6). If further information is required, Historic Environment Scotland will ask the applicant to submit this before reaching a view.
- 3.9 In determining a scheduled monument consent application, Historic Environment Scotland can decide to: grant; grant with conditions, part grant/part refuse; part grant/part refuse with conditions, or refuse an application for scheduled monument consent.
- 3.10 Scottish Ministers have directed that in certain cases Historic Environment Scotland must notify them before granting scheduled monument consent. This is set out in The Scheduled Monument Consent (Notification of Applications) Direction 2015.
- 3.11 Applicants have the right to appeal scheduled monument consent decisions, or failure to determine a scheduled monument consent application. Scheduled monument consent decisions can be appealed by the applicant within three months of the date on the decision letter sent by Historic Environment Scotland. Appeals must be submitted to the Planning and Environmental Appeals Division (DPEA, [www.dpea.scotland.gov.uk](http://www.dpea.scotland.gov.uk)). More information about appeals and the appeal process can be found on DPEA's website. Scheduled monument consent is separate from the statutory planning process (see Annex 7 and Note 3.7). It may run in parallel in cases where planning permission is also required, and such cases are normally dealt with most effectively if applications for planning permission and scheduled monument consent are prepared at the same time.
- 3.12 The protection of scheduled monuments is taken account of in policies and procedures across a wide range of Scottish Ministers', their agencies and associated bodies' responsibilities, for example in agriculture and forestry. Work on scheduled monuments also has to take account of other requirements, for example those covering health & safety, access and the general biodiversity duty under the Nature Conservation (Scotland) Act 2004. It is the responsibility of the applicant to satisfy these and any other legal requirements. In every case, except where covered by the Class Consents Order (see Note 3.8), scheduled monument consent must be obtained, no matter what

other consents have been granted or what other legal requirements are being followed (for more information about class consents see Note 3.4).

- 3.13 Development affecting the setting of a scheduled monument is dealt with under the planning system and does not require scheduled monument consent.

#### HISTORIC ENVIRONMENT SCOTLAND'S PRINCIPLES FOR SCHEDULED MONUMENT CONSENT

- 3.14 A monument is included in the schedule to secure the long-term legal protection of the monument in the national interest, in situ and as far as possible in the state it has come down to us. Scheduled monuments have an intrinsic value as monuments, not related to any concept of active use. It is the value of the monument to the nation's heritage, in terms set out in the section on Scheduling in Chapter 2 of this policy statement, that is the primary consideration in determining applications for scheduled monument consent.

- 3.15 Monuments are subject to decay and the threat of destruction, from natural and human causes. Conservation work is normally needed to prolong the life of a monument, but there is a risk that this can be so invasive that it irreversibly modifies the monument's character and affects the special interest or features that made the monument important in the first place.

- 3.16 Works on scheduled monuments should therefore normally be the minimum level of intervention that is consistent with conserving what is culturally significant in a monument. (Annex 1 sets out guidance as to how cultural significance and national importance should be determined.)

- 3.17 As each monument will require treatment specific to its individual nature, characteristics, significance and needs, any proposed change to it must be fully and explicitly justified.

- 3.18 Scheduled monument consent applications must be considered in terms of the cultural significance of the monument and the impact that the proposals would have upon this cultural significance. The more important particular features of the monument are to its cultural significance, the greater will be the case against interventions which modify these features.

- 3.19 Extensive intervention will only be allowed where it is clearly necessary to secure the longer-term preservation of the monument, or where it will clearly generate public benefits of national importance which outweigh the impact on the national cultural significance of the monument. Such public benefits could come from, for example, interventions which make public access to scheduled monuments easier, or assist public understanding, or will produce economic benefits once the works are completed.

- 3.20 Where change is proposed, it should be carefully considered, based on good authority, sensitively designed, properly planned and executed, and where appropriate in the context of an individual monument, reversible.

- 3.21 Where unavoidable circumstances, such as coastal erosion, threaten the survival of a scheduled monument, it should, where possible, be excavated and/or recorded in detail before its destruction.

3.22 Where consent for the range of works set out in paragraph 3.4 is granted, conditions are normally applied to ensure the works are undertaken in an appropriate manner. Common requirements are:

- a. the use of appropriate assessment methodologies to determine the full impact of any proposed management, use or development;
- b. the avoidance of irreversible change particularly wherever its effects cannot be adequately assessed;
- c. that where change is necessary, strategies should be adopted to mitigate its impact and limit intervention;
- d. that the management and execution of alteration, including remedial work, is sympathetic to the historic character;
- e. that appropriate skills and techniques, materials and construction techniques are specified where appropriate;
- f. that an appropriate level of record is made before, during and after any work and deposited in local and national archives, and, where appropriate, published;
- g. that it is possible, on close inspection, to differentiate new work from old particularly on masonry structures;
- h. that any archaeological excavation or other intrusive investigation should be based upon a detailed research strategy, with adequate resources, using appropriately skilled and experienced archaeologists with a satisfactory record of the completion and publication of projects; and
- i. that the design, planning and execution of works on scheduled monuments are undertaken by people with appropriate professional and craft qualifications, skills and experience.

#### HOW HISTORIC ENVIRONMENT SCOTLAND HANDLES SCHEDULED MONUMENT CONSENT

3.23 In carrying out this work Historic Environment Scotland will:

- a. undertake scheduled monument consent casework timeously and publish in its Corporate Plan the targets set for dealing with scheduled monument consent casework;
- b. keep scheduled monument consent policies and processes under review;
- c. make scheduled monument consent applications and the decisions made on those applications publically available for public inspection through their publication on the internet or at their principal office;
- d. make information on scheduled monuments and on the application procedure for scheduled monument consent readily available; and
- e. make its decision-making process transparent.

3.24 It is the responsibility of the applicant to ensure that applications for scheduled monument consent include all the necessary information to allow the proposals and their impact to be assessed fully. An application must contain the following information:

- a written description of the works to which it relates;
- the name or location of the scheduled monument to which the works relate or a description of the location of the land; and
- the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent.

The application must also be accompanied by:

- a plan or drawing, sufficient to identify the area of land to which the works relate;
- such other plans and drawings as are necessary to describe the works to which it related; and
- appropriate ownership certificates and notices.

3.25 For departments and agencies of the UK and Scottish Governments undertaking works to monuments in Scotland there is a parallel system known as scheduled monument clearance. This is governed by the same principles and procedures as the scheduled monument consent processes and in all cases proposals are assessed by Historic Environment Scotland.

3.26 Most properties in the care of Scottish Ministers are also scheduled monuments. In the case of these properties Historic Environment Scotland must apply for scheduled monument consent.

## LISTED BUILDING CONSENT

3.27 This section sets out Historic Environment Scotland guidance for the control of works affecting listed buildings.

### LEGAL AND ADMINISTRATIVE CONTEXT

3.28 Historic buildings and structures are a highly visible and accessible element of Scotland's rich heritage. They cover a wide range of uses and periods, which together chart a great part of the history of Scotland. They encompass all aspects of life, from education to recreation, to defence, industry, homes and worship. Much of Scotland's social and economic past and its present is expressed in these exceptional buildings. Listing recognises their importance

3.29 Listed buildings are protected under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. This establishes that any work which affects the character of a listed building will require listed building consent. It is a criminal offence to carry out such work without listed building consent. Annex 7 provides more information on what aspects of a listed building are covered by the listed building consent provisions, those works which are exempt from the requirement for listed building consent as well as the processes to be followed by applicants and by planning authorities in dealing with applications.

3.30 In assessing an application for listed building consent, the planning authority is required to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses (Scottish Planning Policy paragraph 141-142).

3.31 Works of like-for-like repair or other works which do not affect a building's character, would not normally require listed building consent. Such works could include repointing a wall or altering part of a building which does not contribute to the overall special interest.

- 3.32 Listed building consent is separate from the statutory planning process (see Annex 8) but there is a close relationship between them and this guidance should therefore be read in conjunction with current Scottish Government planning policy for the historic environment (see Note 3.9). The two systems may run in parallel in cases where planning permission is also required, and such cases are normally dealt with most effectively if applications for planning permission and listed building consent are submitted at the same time. It is not possible to seek or to be given outline listed building consent.
- 3.33 The majority of listed buildings are adaptable and have met the needs of successive generations while retaining their character. Change should therefore be managed to protect a building's special interest while enabling it to remain in active use. Each case must be judged on its own merits but in general terms listing rarely prevents adaptation to modern requirements but ensures that work is done in a sensitive and informed manner.

#### THE LISTED BUILDING CONSENT PROCESS

- 3.34 Local authorities administer the listed building consent process. Applications must be made on the appropriate form and should be supported by sufficient information to allow the proposed works and their impact upon the building's character to be understood. The amount of information required will depend on the nature of the building and the proposals.
- 3.35 On receiving an application the local authority will undertake the appropriate consultation before reaching a view, including consulting Historic Environment Scotland as required by regulations (Note 3.10). Where the local authority is minded to grant listed building consent and Historic Environment Scotland has objected, they must notify Scottish Ministers. Exceptionally, where a proposal raises issues of national significance Scottish Ministers may require that the application be referred to them for a decision.
- 3.36 Work to listed buildings has to take account of other requirements, for example those covering health & safety, equalities duties, access and the general biodiversity duty under the Nature Conservation (Scotland) Act 2004. It is the responsibility of the applicant to satisfy these and any other legal requirements.

#### HISTORIC ENVIRONMENT SCOTLAND GUIDANCE ON LISTED BUILDING CONSENT

- 3.37 In the context of listed buildings the sustainable use and management of the historic environment means recognising the advantages to be gained from retaining existing buildings and ensuring that their special interest is protected (see Chapter 2). How 'special interest' is established is set out in Annex 2.
- 3.38 Once lost listed buildings cannot be replaced. They can be robbed of their special interest either by inappropriate alteration or by demolition. There is, therefore, a presumption against demolition or other works that adversely affect the special interest of a listed building or its setting.

- 3.39 Listed buildings will however, like other buildings, require alteration and adaptation from time to time if they are to remain in beneficial use, and will be at risk if such alteration and adaptation is unduly constrained. In most cases such change, if approached carefully, can be managed without adversely affecting the special interest of the building.

## APPLICATIONS

- 3.40 Knowing what is important about a building is central to an understanding of how to protect its special interest. Applications should demonstrate that in arriving at a strategy for intervention, the importance of the building has been clearly understood and those features which contribute to its special interest have been identified.
- 3.41 In general the more extensive the intervention which is proposed, the more supporting information applications should provide. Where proposals involve significant intervention, evidence that less intrusive options have been considered should be provided. Where the application would have a significantly adverse effect on the building's special interest, but is believed to offer significant benefits to economic growth or the wider community, applicants should prepare a statement which justifies the intervention in relation to these benefits. This statement should demonstrate that the benefits could not be realised without the intervention proposed.
- 3.42 Where the application proposes the demolition of a listed building applicants will be expected to provide evidence to show that:
- a. the building is not of special interest; or
  - b. the building is incapable of repair; or
  - c. the demolition of the building is essential to delivering significant benefits to economic growth or the wider community; or
  - d. the repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period.
- 3.43 Potential applicants are encouraged to have pre-application discussion with planning authorities. A key aspect of that advice, to avoid delays at a later stage, should be to clarify what supporting information will be required when an application is submitted. Where proposals involve significant intervention to, or the demolition of a listed building the planning authority should involve Historic Environment Scotland in the pre-application discussions.
- 3.44 Planning authorities should satisfy themselves, as soon as applications are received, that they include an appropriate level of supporting information.

## DETERMINATION OF APPLICATIONS

- 3.45 Where a proposal protects or enhances the special interest of the building, for example through the like-for-like replacement of a window or door which is beyond repair or the reinstatement of important detailing, consent should normally be granted.
- 3.46 Where a proposal involves alteration or adaptation which will sustain or enhance the beneficial use of the building and does not adversely affect the special interest of the building, consent should normally be granted.
- 3.47 Where a proposal involves alteration or adaptation which will have an adverse or significantly adverse impact on the special interest of the building, planning authorities, in reaching decisions should consider carefully:
- a. the relative importance of the special interest of the building; and
  - b. the scale of the impact of the proposals on that special interest; and
  - c. whether there are other options which would ensure a continuing beneficial use for the building with less impact on its special interest; and
  - d. whether there are significant benefits for economic growth or the wider community which justify a departure from the presumption set out in paragraph 3.38 above.
- 3.48 In the case of applications for the demolition of listed buildings Scottish Planning Policy states (para 141) that “*Listed Buildings should be protected from demolition or other work that would adversely affect it or its setting*”. Historic Environment Scotland advises that no listed building should be demolished unless it can be clearly demonstrated that every effort has been made to retain it. Planning authorities should therefore only approve such applications where they are satisfied that:
- a. the building is not of special interest; or
  - b. the building is incapable of repair; or
  - c. the demolition of the building is essential to delivering significant benefits to economic growth or the wider community; or
  - d. the repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period.

## HISTORIC ENVIRONMENT SCOTLAND MANAGEMENT OF CONSULTATIONS ON LISTED BUILDING CONSENT

- 3.49 Historic Environment Scotland, working closely with planning authorities, will:
- a. respond to consultations for listed building consent timeously and publish in its Corporate Plan the targets set for dealing with listed building consent consultations;

- b. keep listed building consent processes and guidance under review;
- c. communicate information on the listed building consent process in clear language;
- d. make information on listed buildings readily available; and
- e. make its decision-making process transparent.

3.50 Historic Environment Scotland expects that the information provided with applications for listed building consent should be sufficient to enable planning authorities, Historic Environment Scotland and ultimately Scottish Ministers to form a judgement, not only on the intended development of the listed building itself, but also any associated development of which the listed building forms a part.

3.51 When considering a developer's proposals to integrate listed buildings into an overall development, Historic Environment Scotland expect planning authorities to take into account not only the desirability of preserving the building's historic fabric but the need to maintain it in an appropriate setting.

## CONSERVATION AREA CONSENT

### LEGAL AND ADMINISTRATIVE CONTEXT

3.52 Anyone wishing to demolish a building within a conservation area must first apply for conservation area consent.

3.53 Scottish Ministers have directed that conservation area consent required for demolition of unlisted buildings in conservation areas shall not apply to certain specified buildings and structures (see the Exemption from Demolition Control in Conservation Areas Direction 1987) the term 'conservation area consent' is used for applications to demolish unlisted buildings in conservation areas.

3.54 The demolition of unlisted buildings in conservation areas is brought under control by applying, with modifications, listed building controls. In particular, the provisions relating to the advertisement of applications, communication with Historic Environment Scotland and to the notification of applications.

3.55 Applications for conservation area consent are dealt with by planning authorities and policy is set out in Scottish Planning Policy. Advice on the management of conservation areas is contained in Planning Advice Note 71 and further guidance will be produced if appropriate by Historic Environment Scotland and/or Scottish Ministers.

### HISTORIC ENVIRONMENT SCOTLAND GUIDANCE ON CONSERVATION AREA CONSENT

3.56 The demolition of even a single building and the construction of a new building or buildings in its place could result in harm to the character or appearance of a conservation area, or part of it. In deciding whether conservation area consent should be granted, planning authorities should therefore take account of the importance of the building to the character or appearance of any part of the conservation area, and of proposals for the future of the cleared site. If the building is considered to be of any value, either in itself or as part of a group, a positive attempt should always be made by

the planning authority to achieve its retention, restoration and sympathetic conversion to some other compatible use before proposals to demolish are seriously investigated. In some cases, demolition may be thought appropriate, for example, if the building is of little townscape value, if its structural condition rules out its retention at reasonable cost, or if its form or location makes its re-use extremely difficult.

- 3.57 In instances where demolition is to be followed by re-development of the site, consent to demolish should in general be given only where there are acceptable proposals for the new building.
- 3.58 Decision makers are required to have regard to the desirability of preserving or enhancing the appearance of the conservation area in exercising their responsibilities under the planning legislation, and this statutory duty should always be borne in mind when considering demolition applications (Scottish Planning Policy, paragraph 143).

## HISTORIC MARINE PROTECTED AREAS

### LEGAL AND ADMINISTRATIVE CONTEXT

- 3.59 This section sets out Historic Environment Scotland's approach to the management of historic marine protected areas (historic MPAs). Chapter 2 provides information on designation policies.
- 3.60 Public authorities with functions that are capable of adversely affecting marine historic assets must carry out those functions in a way that best furthers or, where this is not possible, least hinders stated preservation objectives. Public authorities must have regard to the advice given by Historic Environment Scotland on historic MPAs under section 80A of the Marine Scotland Act 2010 ("the 2010 Act").
- 3.61 Under section 96 of the 2010 Act, it is an offence to intentionally or recklessly carry out a prohibited act that significantly hinders or may significantly hinder the achievement of the stated preservation objectives for a historic MPA. Prohibited acts are (a) works or activities which (or which are likely to) damage or interfere with a marine historic asset or have a significant impact on the protected area, (b) acts to remove, alter or disturb a marine historic asset. It is not an offence if the act was an incidental result of a lawful operation, and reasonable precautions were taken or the outcome could not reasonably have been foreseen.
- 3.62 In addition to the protection afforded by designation, Scottish Ministers can make Marine Conservation Orders (MCO) to further preservation objectives for historic MPAs. An MCO can include provision prohibiting, restricting or regulating certain activities within the boundaries of an historic MPA, or in some instances, a specified area outside. An MCO can provide for regulated activities to be authorised by a permit or direction. Except in urgent cases, the making of an MCO must be publicised in advance, but the longevity of urgent MCOs is time-limited. Contravening an MCO is an offence.

- 3.63 Exceptions to offences (both in relation to historic MPA designation and any MCOs in place) are if the act was authorised by a public authority or exercised by it in accordance with the duties on it; if the act was taken in emergency, or was necessary for reasons relating to the national interest. A sea fishing defence also exists if the effect of that act on the marine historic asset could not have reasonably been avoided.
- 3.64 Common enforcement powers exercised by Marine Enforcement Officers (MEOs) apply in relation to historic MPAs. The powers include boarding vessels and marine installations, entering and inspecting premises and vehicles, powers of search and seizure, forcing vessels to port, and requiring production of certain information.

#### THE MANAGEMENT PROCESS FOR HISTORIC MARINE PROTECTED AREAS

- 3.65 Historic Environment Scotland advises public authorities to ensure that the functions they exercise take account of historic MPAs. These functions might include preparing marine plans and strategies, administering regulatory or enforcement regimes, or more practical tasks such as maintaining coastal defences, harbour infrastructure or navigation channels. Where a public authority performs functions that it believes might hinder preservation objectives, it must notify Historic Environment Scotland. Historic Environment Scotland has 28 days to respond.
- 3.66 A wide range of works and activities in the marine environment require some form of authorisation, for example, planning permission (administered by local authorities) or marine licensing (administered by Marine Scotland). Public authorities responsible for issuing authorisations must notify Historic Environment Scotland, if they believe that there is a risk of an act hindering preservation objectives for a historic MPA. Historic Environment Scotland has 28 days to respond. In instances where the benefit to the public of proceeding with the act outweighs the risk of damage to a marine historic asset, the public authority must make it a condition of the authorisation that a detailed archaeological investigation is carried out.
- 3.67 Some activities capable of affecting marine historic assets do not require any form of authorisation. Where such activities do pose a threat, MCOs offer a useful management tool to support the preservation objectives of a historic MPA that can be applied on a case by case basis.

#### HISTORIC ENVIRONMENT SCOTLAND'S PRINCIPLES FOR ADVISING ON THE MANAGEMENT OF HISTORIC MARINE PROTECTED AREAS

- 3.68 Marine cultural heritage is a finite and often vulnerable resource subject to decay and the threat of destruction from natural and human causes. Through beneficial stewardship, where practicable Historic Environment Scotland will seek to preserve a marine historic asset *in situ* as the first option and to ensure that the national importance of the asset is not put at risk, either by inadvertent or deliberate damage or destruction, or by degradation or complete loss due to natural factors.

- 3.69 Marine planning and licensing provide important tools for managing impacts to historic MPAs. Beyond this, Marine Conservation Orders (MCOs) are considered likely to be necessary on historic MPAs in certain circumstances primarily to allow for the satisfactory management of activities directed at marine historic assets (e.g. survey, surface recovery of artefacts, and excavation). On occasion, for example following the discovery of a historic shipwreck that is considered particularly vulnerable, they may also need to be used to manage access.
- 3.70 The following principles underpin advice to Scottish Government on the making of an MCO for historic MPAs:
- a. Recommendations to make an MCO will be made on the basis of an evidence-based assessment and will be subject to periodic review;
  - b. Recommendations to make an MCO will normally be preceded by consultation with owners and stakeholders with an interest in the marine historic asset or role in the adjacent marine area; and
  - c. information on MCOs and on the processes involved will be made widely and easily available and explained in clear language.
- 3.71 The rules laid out in the Annex to the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage (see Note 2.23) provide an accepted model of best practice for all activities regulated by statute that are directed at marine historic assets within the Scottish inshore waters.

#### HOW HISTORIC ENVIRONMENT SCOTLAND ADVISES ON MANAGEMENT OF HISTORIC MARINE PROTECTED AREAS

- 3.72 Historic Environment Scotland takes the lead role in advising on management of historic MPAs, working closely with Scottish Government. In carrying out its work on historic MPAs, Historic Environment Scotland will:
- a. pursue beneficial stewardship for marine historic assets in-situ where practicable, including where these are threatened by degradation or complete loss. Where such assets cannot be saved, where at all possible Historic Environment Scotland will pursue schemes whereby data may be recovered to mitigate loss and the results of this work widely disseminated;
  - b. make widely available guidelines and advice on the management of historic MPAs so that preservation objectives of historic MPAs can be respected by all whose decisions and actions might significantly affect a marine historic asset;
  - c. advise Marine Scotland on the making and periodic review of MCOs;
  - d. issue permits or authorisations for MCOs where required, applying the principles set down in the Annex to the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage to ensure best practice is adhered to in respect of activities directed at marine historic assets;
  - e. where the area of seabed comprising a historic MPA contributes to Scottish Ministers' biodiversity or geodiversity policy aims, seek advice from Scottish Natural Heritage as to whether it would be possible to minimise impacts that may result from activities directed at marine historic assets; and
  - f. work collaboratively with Marine Scotland on compliance monitoring and enforcement and on reporting to the Scottish Parliament for matters relating to historic MPAs.

- 3.73 Historic Environment Scotland will work with Marine Scotland, public authorities and marine planning partnerships on marine planning or licensing matters as appropriate including in respect of developments and activities that might affect a historic MPA in accordance with the UK Marine Policy Statement and relevant marine plans.

## GARDENS AND DESIGNED LANDSCAPES

### HISTORIC ENVIRONMENT SCOTLAND GUIDANCE ON GARDENS AND DESIGNED LANDSCAPES IN THE PLANNING PROCESS

- 3.74 The effect of proposed development on a garden or designed landscape is a material consideration in the determination of a planning application (Scottish Planning Policy, paragraph 148).
- 3.75 Historic Environment Scotland works closely with planning authorities on consent for development proposals affecting inventory sites. In fulfilling that duty Historic Environment Scotland will provide advice and support in aid of the protection, management, and interpretation of gardens and designed landscapes.
- 3.76 Historic Environment Scotland expect planning authorities to have careful regard for the specific qualities, character and integrity of gardens and designed landscapes. Planning authorities should therefore continue to extend protection to designed landscapes through the inclusion of appropriate policies in their development plans.
- 3.77 The inventory identifies gardens and designed landscapes of national importance. There are however many sites across Scotland which do not meet the criteria set for national importance but nevertheless make an important contribution to the local historic environment and landscape character of the area. Planning authorities are therefore encouraged also to develop policies within their development plans for the identification and future management of such non-inventory sites in their areas.
- 3.78 Planning authorities should use appropriate conditions to protect and enhance sites on the inventory. Planning authorities are also encouraged to obtain management plans for gardens and designed landscapes from owners both to identify conservation needs and direct how change can be best accommodated.
- 3.79 Informed change should be managed carefully with the aim of ensuring that the significant elements justifying designation are protected or enhanced.

## HISTORIC BATTLEFIELDS

- 3.80 The effect of proposed development on inventory battlefields is a material consideration in the determination of a planning application (Scottish Planning Policy paragraph 149). Planning authorities must consult Historic Environment Scotland before determining a planning application for development (other than householder development) which may affect a historic battlefield. If Historic Environment Scotland

has objected to an application and the planning authority is minded to grant consent, Scottish Ministers have directed that the planning authority must notify them of its intention. Scottish Ministers will decide whether they wish to call the application in for their own determination.

- 3.81 Historic Environment Scotland will work closely with planning authorities on consent for development proposals affecting inventory sites, and with other public bodies. It will provide advice and support on the protection, management and interpretation of battlefields.
- 3.82 Historic Environment Scotland expect planning authorities to have careful regard for the landscape characteristics and specific qualities of battlefields. Planning authorities should therefore extend protection to battlefields through the inclusion of appropriate policies in their development plans. They should also consider battlefields within their strategies and policies for landscape and land-use.
- 3.83 Planning authorities should use appropriate conditions and agreements to protect and enhance sites on the inventory. Planning authorities are encouraged to promote the development of management plans for battlefields as a useful way of engaging stakeholders, particularly owners and local communities, and of identifying management needs and how change can be best accommodated.
- 3.84 Change should be managed carefully in an informed and sympathetic way that respects the value of battlefields and protects, conserves or enhances their key landscape characteristics and specific qualities.
- 3.85 Planning authorities are encouraged to develop appropriate policies and conditions for the protection and management of any non-inventory sites they identify of importance in their areas (Scottish Planning Policy paragraph 151).
- 3.86 Other public bodies should ensure that nationally important battlefields are given consideration within relevant strategies, plans and programmes.

# CONTACTS

Further information on scheduling, listing, conservation areas, historic MPAs, the inclusion of gardens and designed landscapes and historic battlefields on the inventories and on the related consents processes and relevant publications can be found on Historic Environment Scotland's website or from Historic Environment Scotland at the address below. Historic Environment Scotland is constantly improving the information available on the nature, location and, where appropriate, the extent of designated sites on its website.

Historic Environment Scotland  
Longmore House  
Salisbury Place  
Edinburgh  
EH9 1SH

Switchboard Tel: 0131 668 8600  
[www.historicenvironment.scot](http://www.historicenvironment.scot)

Historic Environment Scotland - Scottish Charity No. SC045925

# NOTES

## NOTES TO THE INTRODUCTION

Note 0.1 The UK Marine Policy Statement can be viewed at: <http://www.gov.scot/Resource/Doc/295194/0115242.pdf>

## NOTES TO CHAPTER 1

Note 1.1. The National Performance Framework can be accessed on the Scottish Government website: <http://www.gov.scot/About/Performance/scotPerforms>

## NOTES TO CHAPTER 2

Note 2.1. The Valletta Convention can be accessed at: <http://conventions.coe.int/Treaty/en/Treaties/Html/143.htm>. In addition, information on the development of international conservation charters is available in Historic Environment Scotland's Technical Advice Note 8.

Note 2.2. Part II of the 1979 Act, relating to archaeological areas, was not brought into effect in Scotland.

Note 2.3. Section 61(7) of the 1979 Act.

Note 2.4. Section 61(13) of the 1979 Act.

Note 2.5. As a selective ('nationally important') sample of the nation's archaeology, the schedule differs from the list of buildings of 'special architectural or historic interest' compiled under the terms of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, both in the subject matter and in the procedures which arise from inclusion. While Historic Environment Scotland undertakes casework on scheduled monuments, the first point of contact for listed building consent is the local authority.

Note 2.6. Section 1(3) of the 1979 Act.

Note 2.7. Section 2 of the 1979 Act.

Note 2.8. The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 can be accessed at <http://www.legislation.gov.uk/ukpga/1997/9>

Note 2.9. The term 'building' is defined in the 1997 Act as amplified below:

- a. a 'building' includes any structure or erection, and any part of a building in a list compiled or approved by Historic Environment Scotland. This can include street furniture, cranes, fountains, bridges, bandstands and earthen works such as ha-has;
- b. any object or structure which is fixed to a listed building, or which falls within the curtilage of such a building and, although not fixed to the building, has formed part of the land since before 1 July 1948, will be treated as part of the building.  
This includes ancillary structures and outbuildings such as stables, mews, garden walls, dovecots and gate lodges. The Historic Environment Scotland Act 2014, Part 6, section 22 allows Historic Environment Scotland to legally state that an object or structure fixed to the building and/or any object or structure within the curtilage of the building is not to be treated as listed and/or that any part or feature of a listed building is not of special architectural or historic interest and is therefore not listed.
- c. any plant or machinery within a building is excluded from the definition of 'building' but can be included within the scope of listing if physically attached to the main building and hence falling within the category of a fixed structure or object;
- d. listing covers the interior as well as the exterior of the building: the fact that the list contains no detailed interior description does not alter this rule. As 'any object or structure fixed to a building' is also treated as listed the definition extends to major interior fixtures such as plasterwork or painted ceilings, chimney-pieces and panelling, unless they are specifically excluded after 1 October 2015, see b. above.

Note 2.10. 1997 Act, section 1(1).

Note 2.11. 1997 Act, section 1(3).

Note 2.12. 1997 Act, section 1A and The Listed Buildings (Notification and Publication) (Scotland) Regulations 2015, set out this requirement. Up-to-date information on the lists can be obtained from Historic Environment Scotland's website. Historic Environment Scotland is also required to keep a copy of the list at its principal offices.

Note 2.13. The Listed Buildings (Notification and Publication) (Scotland) Regulations 2015. Historic Environment Scotland provides advice on what listing means to owners and occupiers in the free publication Scotland's Listed Buildings, which is also available on its website.

Note 2.14. 1997 Act, section 1(4)(b)

Note 2.15. 1997 Act, section 6.

Note 2.16. 1997 Act, section 9. Where a building is both listed and scheduled (dual designated), the scheduling legislation takes precedence and the other legislation is disapplied. Historic Environment Scotland is working to remove the overlap between listing and scheduling.

- Note 2.17. 1997 Act, section 1.  
Listed buildings are given categories of listing which distinguish their relative merit. These categories have no statutory weight but are advisory. They inform levels of designation. There are three categories, defined as follows:
- A buildings of national or international importance, either architectural or historic, or fine little-altered examples of some particular period style or building type;
  - B buildings of regional or more than local importance, or major examples of some particular period, style or building type;
  - C buildings of local importance; lesser examples of any period, style, or building type, as originally constructed or altered; and simple, traditional buildings which group well with others.
- In addition, a system of group categories exists to highlight the contextual relationship which an individual listed building may possess in relation to others. These are A and B Groups. They are in addition to the individual category and likewise have no statutory significance. They serve to flag considerations of setting, function, design, planning and historic combinations where the individual value is enhanced by its association with others.
- Note 2.18. 1997 Act, section 62. Such notices must also give particulars of the effect of designation, especially the controls on demolition. There is no prescribed form of notice, but published notices should describe the area as clearly as possible, such as by reference to street names, with maps available for inspection. The conservation area map should be on a scale of 1:2500 or, exceptionally such as in the case of a large rural area, 1:10,000 and should be accompanied, where appropriate, by a street index complete with house numbers.
- Note 2.19. 1997 Act, section 62. The relevant email addresses for Scottish Ministers and Historic Environment Scotland are:
- [Planning.Decisions@gov.scot](mailto:Planning.Decisions@gov.scot)
  - [HMConsultations@hes.scot](mailto:HMConsultations@hes.scot)
- Since this policy was first created, Geographical Information Systems have become common. It is requested that Historic Environment Scotland also be provided with boundary information in an open GIS format.
- Note 2.20. Notice of this must be published and Historic Environment Scotland informed in the same way as for new designations. When varying a conservation area, a planning authority should preferably cancel the existing boundaries and simultaneously redesignate the new area as a single whole, rather than adding small areas separately designated at the edge of the original area.
- Note 2.21. 1997 Act, section 64.
- Note 2.22. The Scottish marine protection area is the area of sea submerged at mean high water spring tide out to the seaward limit of the territorial sea of the United Kingdom adjacent to Scotland. It excludes any waters upstream of the fresh-water limit of estuarial waters.

- Note 2.23 The text of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage is available at: [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=34472&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=34472&URL_DO=DO_TOPIC&URL_SECTION=201.html).
- Note 2.24 The Protection of Military Remains Act 1986 is administered by the Ministry of Defence. 'Protected Places' are the remains of any aircraft which crashed in military service, or of any vessel designated (by name, not location) which sunk or stranded in military service after 4 August 1914. 'Controlled Sites' are designated areas comprising the remains of a military aircraft or a vessel sunk or stranded in military service less than 200 years ago. Unlicensed diving is prohibited on Controlled Sites but a licence to dive 'on a look but do not touch' basis is not required for Protected Places.
- Note 2.25 Under section 255 of the Merchant Shipping Act 1995, 'wreck' is defined as including 'jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water'. Under section 236, recoveries of 'wreck' must be reported to the Receiver of Wreck (Maritime and Coastguard Agency). Finders who report their finds to the Receiver of Wreck have salvage rights. The Receiver of Wreck acts to settle questions of ownership and salvage.
- Note 2.26 A copy of the UK Marine Policy Statement is available at: <http://www.scotland.gov.uk/Resource/Doc/295194/0115242.pdf>
- Note 2.27 Sections 32A and 32B in the 1979 Act set out the statutory duty for Historic Environment Scotland to compile and maintain an inventory of gardens and designed landscapes and an inventory of battlefields which are in their view of national importance. The section also provides that when including any grounds or battlefields in, or modifying, the inventories Historic Environment Scotland must inform the owner, and if the owner is not the occupier, the occupier of the grounds or battlefields in question and the local authority in whose area the grounds or battlefields are situated. The provision also provides that Historic Environment Scotland must send a copy of the inventory record to any person or local authority so informed. The provision also sets out that Historic Environment Scotland must from time to time, and in a manner they think fit, publish a list of the gardens and designed landscapes and a list of battlefields included in the inventories.

## Notes to Chapter 3

- Note 3.1. The text of the Act is available at [www.legislation.gov.uk/ukpga/1979/46](http://www.legislation.gov.uk/ukpga/1979/46)
- Note 3.2. Section 2 of the 1979 Act.
- Note 3.3. Historic Environment Scotland publishes a leaflet about metal detecting which can be found on the its website.
- Note 3.4. The classes of activity that are deemed to have consent are:
- Class I certain agricultural, horticultural or forestry works;
  - Class II works executed more than 10m below ground level by the Coal authority or their licensees;
  - Class III certain works by the British Waterways Board;
  - Class IV certain repair or maintenance works to machinery;
  - Class V certain works urgently necessary for health and safety;
  - Class VI certain works of archaeological evaluation;
  - Class VII certain works executed under Agreements under section 17 of the Act (management agreements);
  - Class VIII certain works grant-aided under section 24 of the Act.
- Note 3.5. Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 section 55
- Note 3.6. The application process is set out in the Scheduled Monument Consent Procedure (Scotland) Regulations 2015 [2015/229]. Application forms are available from Historic Environment Scotland and can be downloaded from its website.
- Note 3.7. Only around 13% of scheduled monument consent applications are associated with a planning application. The rest relate to processes not covered by the planning system.
- Note 3.8. Or where works are urgently necessary in the interests of health and safety (section 2(9) of the Ancient Monuments and Archaeological Areas Act 1979).
- Note 3.9. Currently, Scottish Planning Policy (as published on 23 June 2014) deals with listed buildings, conservation areas, World Heritage Sites, historic gardens, designed landscapes and their settings, and sets out the role of the planning system in protecting ancient monuments and archaeological sites and landscapes. <http://www.gov.scot/Topics/Built-Environment/planning/Policy>
- Note 3.10. Regulation 7 of The Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015

# ANNEX I:

## CRITERIA FOR AND GUIDANCE ON THE DETERMINATION OF 'NATIONAL IMPORTANCE' FOR SCHEDULING

1. The Ancient Monuments and Archaeological Areas Act 1979 provides for the scheduling of ancient monuments, the sole criterion being that they are of national importance. A definition and operational guidance on how to determine whether or not a monument is of national importance was approved by the (former) Ancient Monuments Board for Scotland in 1983. The criteria and guidance set out here are an updated version that takes account of the development of treaty, charter and practice in the UK and abroad and was also informed by a public consultation exercise carried out in 2004. While based on the 1983 text, it also reflects the principles originally published in the Stirling Charter (2000). These have been informed by, and build on, the body of international conservation charters already in being. One of the most influential of these is the Burra Charter (current edition 2013), which introduced the now widely accepted concept of 'cultural significance'. While taking into account national and international developments, this revised guidance has been prepared with the welfare of Scotland's archaeological and built heritage in mind. The primary aim of this document is to provide guidance in determining whether monuments are of national importance.

### ROLE OF HISTORIC ENVIRONMENT SCOTLAND

2. The process of scheduling is undertaken by Historic Environment Scotland. Historic Environment Scotland is a Non-departmental Public Body and is the lead body in Scotland for protecting Scotland's historic environment. The selection of monuments for scheduling and the scheduling process is undertaken by staff within Historic Environment Scotland.

### CULTURAL SIGNIFICANCE

3. The first step in considering whether a monument is of national importance is to identify and understand its cultural significance. The concept of 'cultural significance' will apply widely and to different degrees to all of Scotland's historic environment, and should not be confused with the establishment of 'national importance', which is a separate process. For a monument or a class of monuments to be considered as being of national importance it must, first, have a particular cultural significance – artistic; archaeological; architectural; historic; traditional (factors listed in the 1979 Act); aesthetic; scientific; social – for past, present or future generations. Such significance is inherent in the monument itself, its fabric, setting, use, associations, meanings, records, related monuments and related objects.
4. For most of Britain's and Scotland's past, there are no 'national' prehistories or histories, as reflected in the historic environment. Instead, there is an aggregation of related prehistories and histories of different regions, which may have wider national or international links. It is through these linked regional histories and prehistories that the history of Scotland and the UK can be understood.

5. Cultural significance of any monument, whether of national importance or more local significance, can be characterised by reference to one or more of the following; the characteristics are in three groups:

- Intrinsic – those inherent in the monument;
- Contextual – those relating to the monument’s place in the landscape or in the body of existing knowledge; and
- Associative – more subjective assessments of the associations of the monument, including with current or past aesthetic preferences.

#### INTRINSIC CHARACTERISTICS

- a. the condition in which the monument has survived. ‘Condition’ includes the potential survival of archaeological evidence above and below ground, and goes beyond the survival of marked field characteristics;
- b. the archaeological, scientific, technological or other interest or research potential of the monument or any part of it;
- c. the apparent developmental sequence of the monument. Monuments that show a sequence of development can provide insights of importance, as can places occupied for a short time;
- d. the original or subsequent functions of the monument and its parts.

#### CONTEXTUAL CHARACTERISTICS

- e. The present rarity or representativeness of all or any part of the monument, assessed against knowledge of the archaeology of Scotland and of the region in which the monument occurs;
- f. the relationship of the monument to other monuments of the same or related classes or period, or to features or monuments in the vicinity. This is particularly important where individual monuments, themselves perhaps of limited immediate significance, form an important part of a widespread but varied class. The diversity of the class should be a material consideration in making individual decisions;
- g. the relationship of the monument and its parts with its wider landscape and setting.

#### ASSOCIATIVE CHARACTERISTICS

- h. The historical, cultural and social influences that have affected the form and fabric of the monument, and vice versa;
- i. the aesthetic attributes of the monument;
- j. its significance in the national consciousness or to people who use or have used the monument, or descendants of such people; and
- k. the associations the monument has with historical, traditional or artistic characters or events.

6. Understanding of cultural significance may change as a result of the continuing history of the monument, or in the light of new information, or changing ideas and values.

## NATIONAL IMPORTANCE

7. The primary purpose of scheduling under the 1979 Act is the preservation of, and control of works on, monuments, the survival of which is in the national interest. The provisions of the 1979 Act are consistent with the principles of minimal intervention to ensure that the characteristics that make a monument of national importance are preserved as far as possible in the state in which it has come down to us, and is passed on to future generations in as unchanged a state as is practicable, in accord with the principles of sustainable development. In general, those principles will only be set aside in circumstances where wider considerations are deemed, on balance, to be of greater importance to the national interest, rather than to any sectoral or local interest; in individual cases such considerations may include the needs of research into Scotland's past.
8. It should be noted that no period of Scotland's past and no part of Scotland's land is inherently more or less likely to produce monuments of 'national importance' than another.
9. The purpose and implications of scheduling are issues that require to be taken into consideration when assessing monuments for scheduling. Scheduling may not be the only, or the most appropriate, mechanism to secure the future of all sites, even those that may otherwise meet the criteria.
10. The particular significance needed to define the monument as of 'national' importance may be established in terms of one or more of the following:
  - a. its inherent capability or potential to make a significant addition to the understanding or appreciation of the past;
  - b. its retention of the structural, decorative or field characteristics of its kind to a marked degree;
  - c. its contribution, or the contribution of its class, to today's landscape and/or the historic landscape;
  - d. the quality and extent of any documentation or association that adds to the understanding of the monument or its context;
  - e. the diminution of the potential of a particular class or classes of monument to contribute to an understanding of the past, should the monument be lost or damaged; and
  - f. its place in the national consciousness is a factor that may be considered in support of other factors.

## ANNEX 2:

### CRITERIA FOR DETERMINING WHETHER A BUILDING IS OF 'SPECIAL ARCHITECTURAL OR HISTORIC INTEREST' FOR LISTING

1. The criteria can only provide a framework within which professional judgement is exercised in reaching individual decisions.
2. To be listed, a building need not be functioning for the purpose originally intended. For example, a redundant railway viaduct may have continued its life as a walkway or cycle path, even a wildlife sanctuary.
3. The principles of selection for statutory listing are broadly:
  - a. age and rarity;
  - b. architectural or historic interest;
  - c. close historical associations.

#### AGE AND RARITY

4. The older a building is and the fewer of its type that survive the more likely it is to present a special interest. Age is a major factor in the evaluation process but its weight differs across the building types. Period definitions are given to facilitate the assessment but these are not intended to be watersheds or cut-off points.
5. All buildings erected before 1840 (pre-Victorian and the arrival of the railways) which are of notable quality and survive predominantly in their original form have a strong case. The year 1840 was selected because of the change which followed, in terms of the greater standardisation of materials and design, improved communications and the birth of the architectural press.
6. Buildings put up between 1840 and 1945 which are of special architectural or historic interest and of definite character either individually or as part of a group may be listed. As the survival rate increases after 1914, greater selectivity will be applied to take account of lesser rarity and relative age.
7. Those erected after 1945 may merit inclusion on the lists if their special architectural or historic interest is of definite architectural quality.
8. The listing of buildings less than 30 years old requires exceptional rigour because those making the judgement do not have the advantage of a long historical perspective. Threats to building types are often a trigger for advance consideration of buildings from this period.

#### ARCHITECTURAL OR HISTORIC INTEREST

9. Selection for architectural or historic interest is assessed under a range of broad headings, summarised below.

10. *Interior:* Interior design and fixed decorative schemes of houses or business premises in all their variation can add to the case for listing. Examples include skirting boards, plasterwork, dado rails, chimney-pieces, staircases, doors and over-door panels, ornate radiators, floor grilles, sanitary ware, the existence of box-beds, vaulted basement or wine cellar divisions, slate shelving, servant bell systems, shop or pub fittings and fixed internal machinery.
11. *Plan Form:* The internal planning of buildings is instructive and can be ingenious although it may not be evident on the exterior. For example, the original flatting arrangement in terraced houses and tenements may not be obvious from the street and the plan of a farm steading, hospital or prison may reflect the latest theories in the design of each of these structures and therefore give the property additional significance.
12. *Technological excellence or innovation, material or design quality:* Evidence of structural or material innovation adds weight to a decision. Exceptional structural form can be significant and is found across the wide variety of building types from a cruck-framed barn to an early iron-framed jute mill or steel-framed office block. Exceptional use of materials or use of fine material may be a factor. Style will be considered against relevant conventions particularly for its quality or exceptional interest.
13. *Setting:* The context in which a structure sits can be a critical factor in its evaluation. It invariably accounts for its form and should not be under-rated. A structure whose setting has changed adversely, removing the original contextual character, or which has been removed from its context, has one less factor in support of its case for designation.
14. *Regional Variations:* The best examples of local vernacular buildings will normally be listed because together they illustrate the importance of distinctive local and regional traditions. It is important to ascertain distinctive regional variations in type, material and form.

#### CLOSE HISTORICAL ASSOCIATION

15. Close associations with nationally important people, or events whose associations are well-documented, where the physical fabric of the building is also of some quality and interest, can be a significant factor. In consideration of such cases the association must be well authenticated and significant. The fabric should reflect the person or event and not merely be a witness to them. Local traditions are not always trustworthy. In most cases the building in question will have other qualities which combine to give it special interest, such as Walter Scott's house in Castle Street, Edinburgh, which forms part of a fine classical terrace. Where architectural interest is weak the case for listing on historical association must be strong. The building must be well preserved in a form and condition which directly illustrates its historical associations with the person or event in question. The transient association of short term guests, lodgers and tenants, however eminent, will not usually justify listing.

## WORKING WITH THE PRINCIPLES

16. In choosing buildings within the above broad principles:
  - a. particular attention is paid to the special value within building types, either for architectural or planning reasons, or as illustrating social and economic history;
  - b. a building may be listed for its contribution to an architecturally or historically interesting group, such as a planned burgh, town square or model village as well as its intrinsic merit considered in isolation;
  - c. the impact of vernacular buildings in particular is often made not only by individual buildings but by their grouping. At the other end of the spectrum, a major country house may well be enhanced by adjacent buildings such as stables, lodges, gatepiers and bridges in its curtilage, and vice versa;
  - d. authenticity, that is a building's closeness to the original fabric and therefore its ability to convey its significance, and levels of integrity, carries weight. It need not be the case that a building is as originally built, because changes made to it may have added to its significance. What is added or taken away will be considered for the overall benefit or detriment to its character.
  
17. It is important to stress that when buildings are being considered for listing, no factors other than architectural or historic interest as defined above can be taken into account. The condition of a property, for example, is not a factor in the evaluation unless it detracts significantly from the architectural or historic interest so that it can no longer be defined as special.

## ANNEX 3:

### CRITERIA FOR THE DESIGNATION OF A CONSERVATION AREA

1. It is the character or historic interest of an area created by individual buildings and open spaces and their relationship one with the other which the legislation covering conservation areas seeks to preserve.
2. The statutory definition is 'areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance' and conservation areas will inevitably be of many different kinds.
3. The principles of selection for designation as a conservation area are broadly as follows:
  - a. areas of significant architectural or historic interest in terms of specific listed buildings and/or ancient monuments;
  - b. areas of significant architectural or historic interest in terms of building groupings, which may or may not include listed buildings and/or ancient monuments, and open spaces which they abut;
  - c. areas with features of architectural or historic interest such as street pattern, planned towns and villages and historic gardens and designed landscapes;
  - d. other areas of distinctive architectural or historic character.
4. In designating a conservation area, thought should also be given to the reasons why it is felt that it should be protected. These may include:
  - a. its special architectural and historic importance;
  - b. its distinct character;
  - c. its value as a good example of local or regional style;
  - d. its value within the wider context of the village or town;
  - e. its present condition and the scope for significant improvement and enhancement.

## ANNEX 4:

### CRITERIA FOR AND GUIDANCE ON THE DETERMINATION OF 'NATIONAL IMPORTANCE' FOR THE DESIGNATION OF HISTORIC MARINE PROTECTED AREAS

1. These criteria are adapted from those for the scheduling of ancient monuments as being of 'national importance' under the terms of the Ancient Monuments and Archaeological Areas Act 1979. The intention is to keep the two sets of criteria as close together as possible.

#### CULTURAL SIGNIFICANCE

2. The first step in considering whether an asset is of national importance is to identify and understand its cultural significance. The concept of 'cultural significance' will apply widely and to different degrees to all of Scotland's historic environment, and should not be confused with the establishment of 'national importance', which is a separate process. For an asset to be considered as being of national importance it must, first, have a particular cultural significance – artistic; archaeological; architectural; historic; traditional; aesthetic; scientific; social – for past, present or future generations. Such significance is inherent in the asset itself, its nature, setting, use, associations, meanings, records, related assets and related objects.
3. Cultural significance of any asset, whether of international, national importance or more local significance, can be characterised by reference to one or more of the following; the characteristics are in three groups:

Intrinsic – those inherent in the asset;

Contextual – those relating to the asset's place in its wider physical environment or in the body of existing knowledge; and

Associative – more subjective assessments of the associations of the asset, including with current or past aesthetic preferences.

#### INTRINSIC CHARACTERISTICS

- a. The condition in which the asset has survived. 'Condition' includes potential survival of archaeological evidence, and goes beyond the survival of marked field characteristics;
- b. the archaeological, architectural, historic, scientific, technological or other interest or research potential of the asset or any part of it;
- c. the original or subsequent functions of the asset and its parts; and
- d. the apparent developmental sequence of the asset.

#### CONTEXTUAL CHARACTERISTICS

- e. The present rarity or representativeness of all or any part of the asset, assessed against knowledge of the history and archaeology of Scotland, its seas, and their place in the wider world;

- f. the relationship of the asset to others of the same or related classes or period, or to features or other assets in the vicinity. This is particularly important where individual assets, themselves perhaps of limited immediate significance, form an important part of a widespread but varied class. The diversity of the class should be a material consideration in making individual decisions;
- g. the relationship of the asset and its parts with its wider physical environment and setting.

#### ASSOCIATIVE CHARACTERISTICS

- h. The historical, architectural, cultural and social influences that have affected the form and fabric of the asset and vice versa;
  - i. the aesthetic attributes of the asset;
  - j. its significance in the national or international consciousness or to people who use or have used the asset, or descendants of such people; and
  - k. the associations that asset has with historical, traditional or artistic characters or events.
4. Understanding of cultural significance may change as a result of the continuing history of the asset, or in the light of new information, or changing ideas and values.

#### NATIONAL IMPORTANCE

5. The relationship of marine historic assets to the adjacent land can be complex and variable. Some elements may have been integral parts of adjacent landmasses, now inundated. In the case of wrecks or material associated with wrecks of vessels or aircraft, some have strong and far reaching connections; others may have a transitory association but little or no original link to the places in which they have come to rest. The determination of national importance is to encompass consideration for such assets which may be important beyond Scotland.
6. The primary objectives of historic MPA designation are to help preserve marine historic assets of national importance and to celebrate and communicate their heritage value so that everyone can appreciate these assets and act responsibly.
7. The purpose and implications of each designation are issues that require to be taken into consideration when assessing candidates for designation. Designation may not be the only, or the most appropriate, mechanism to secure the future of all assets, even those that may otherwise meet the criteria.
8. The particular significance needed to define the asset as of 'national' importance may be established in terms of one or more of the following:
- a. its inherent capability or potential to make a significant addition to the understanding or appreciation of the past;
  - b. its retention of the structural, technical, decorative or other characteristics of its kind to a marked degree;
  - c. its contribution, or the contribution of its class to the marine historic environment and/or the wider marine environment;

- d. the quality and extent of any documentation or association that adds to the understanding of the asset or its context;
- e. the diminution of the potential of a particular class or classes of asset to contribute to an understanding of the past, should it be lost or damaged; and
- f. its place in the national or international consciousness is a factor that may be considered in support of other factors.

## ANNEX 5:

### CRITERIA FOR DETERMINING WHETHER A GARDEN OR DESIGNED LANDSCAPE IS OF 'NATIONAL IMPORTANCE' FOR INCLUSION IN THE INVENTORY

1. Sites are assessed for their:
  - a. value as individual works of art in their own right;
  - b. historic value;
  - c. horticultural, arboricultural or silvicultural value;
  - d. architectural value;
  - e. scenic value;
  - f. nature conservation value; and
  - g. archaeological value.
2. Their current condition and integrity are also important considerations.
3. The relative importance of a site depends on the extent to which each value is expressed. A site may have outstanding value, high value, some value, little value or no value.
  - a. A site has outstanding value as a work of art if, in its present form:
    - i. it was considered to have such value in contemporary views etc. at one or more stages of its history or, if it became a significant trendsetter for later works;
    - ii. it is an important example of the work of a particular designer or designers. It might have rarity value if the designer executed few schemes or it might be particularly representative, intact or a key work.
  - b. A site has outstanding historic value if:
    - i. there is good contemporary documentary and physical evidence of its development;
    - ii. it is, as a whole, an outstanding representative of a particular period of the historic development of gardens and designed landscapes;
    - iii. it has one or more components which provide an outstanding example of a particular period or style;
    - iv. it was a trendsetting landscape at some stage in its history;
    - v. it has physical evidence of a particularly early form of designed landscape; and
    - vi. it has strong associations with an important historic personality.
  - c. A site has outstanding horticultural, arboricultural or silvicultural value if:
    - i. it has an outstanding collection of plants shrubs or trees with a wide range of species, unusual species or rarities, which are in good condition and being renewed;
    - ii. it has an outstanding scientific collection of plants, shrubs or trees which are in good condition, documented, propagated and made available to others;
    - iii. it has an important place in the history of horticulture or arboriculture; and
    - iv. it demonstrates important pioneering steps in silviculture.

- d. A site has outstanding architectural value if:
    - i. it provides the setting for a building or buildings of outstanding architectural or historic interest;
    - ii. it contains architectural features or ornamentation which, together, are of exceptional interest.
  - e. A site has outstanding scenic value if:
    - i. it makes a major contribution to the quality of the surrounding landscape by virtue of its size, location or nature or, because it is particularly prominent because of rarity and contrast with the surrounding landscape.
  - f. A site has outstanding nature conservation value if:
    - i. it contains habitats which are officially designated as, for example, Sites of Special Scientific Interest.
  - g. A site has outstanding archaeological value if:
    - i. it provides the setting for or contains scheduled monuments.
4. Evaluation and grading of sites can be a sensitive issue. Decisions on the relative importance of different sites must be based upon consideration of the ways in which the values noted above are expressed. Generally, the greater the number of outstanding or high values the more important the site. However, exceptionally, sites may be of such significance for one value that they too must be regarded as of national importance.
5. The condition of the site today and its overall integrity are important elements of the selection process. They become significant issues when the condition of site, and therefore its integrity, is such that its interest has become devalued to the degree that it cannot be regarded as of national importance in today's terms.

## ANNEX 6:

### CRITERIA FOR DETERMINING WHETHER A BATTLEFIELD IS OF 'NATIONAL IMPORTANCE' FOR INCLUSION IN THE INVENTORY

1. The criteria below provide a framework for identifying battlefield sites of national importance.
2. A battlefield is likely to be of national importance if it makes a contribution to the understanding of the archaeology and history of the nation as a whole, or have the potential to do so, or holds a particularly significant place in the national consciousness. In this context the concept of national includes the linked regional histories and pre-histories through which the development of Scotland as a nation can be understood. A site will be of more local significance where its contribution or potential lies in understanding the archaeology and history of a specific area.
3. In considering whether a site merits inclusion in the inventory, a battlefield must be considered of national importance in relation to one or more of the following factors:
  - a. association with historical events or figures of national significance;
  - b. significant physical remains and/or archaeological potential; and
  - c. battlefield landscape.

In addition, the following criterion must be met in every case:

- d. capable of definition on a modern map.

#### ASSOCIATION WITH HISTORICAL EVENTS OR FIGURES OF NATIONAL SIGNIFICANCE

4. The historical association of battlefields relates to the contribution of the battle to historical developments, including military history, of significance to the nation as a whole. Key considerations will be whether there were significant military innovations or occurrences associated with the battle, in terms of tactics or technology; and the association of the battle with a nationally significant historical figure, event or campaign. Consideration may also be given to the place of the battle in the national consciousness where this appears particularly significant.

#### SIGNIFICANT PHYSICAL REMAINS AND/OR ARCHAEOLOGICAL POTENTIAL

5. This relates to the specific qualities of a battlefield in the form of surviving physical remains associated with the battle and the archaeological potential of the battlefield. Archaeological evidence can amplify documentary records and provide details about events, weaponry and combatants that are not available through other sources. Evidence may include physical features that were present at the time of the battle, whether natural elements such as hills or ravines, or constructed elements such as field walls or buildings; elements resulting from the battle itself, including earthworks, graves and artefacts such as bullets, arrowheads and personal effects; other buried archaeological deposits, such as the remains of camps or entrenchments.

The quality of surviving documentary and historic map evidence relating to the battle may add to the importance of the site by enhancing its potential to contribute to our understanding of historical events.

6. The potential survival and quality of evidence may be affected by a range of factors, including the period within which the battle took place, the scale of the battle, numbers of fallen, the physical properties of any upstanding remains, artefact scatters or buried deposits, the soil conditions and post-battle land-use.

#### **BATTLEFIELD LANDSCAPE**

7. The landscape context of the battlefield is important in view of the fact that battles were seldom fought in small clearly-defined areas, but were more often events ranging across a wider landscape. It is important for understanding military tactics, strategic planning and the importance of key features such as vantage points and lines of sight, and for explaining why events unfolded as they did. The battlefield landscape includes the area where the armies deployed and fought initially; the wider landscape where significant associated events occurred, including secondary skirmishes, associated earthworks, camps and burials, and lines of advance and retreat; and additional elements such as memorials that may be detached from the main areas of the battle.
8. The association of a landscape with a battle can be very strong and a battlefield can contribute fundamentally to our sense of place even when no physical evidence is present or visible or the character of the landscape context has been affected by post-battle changes.

#### **DEFINITION ON A MODERN MAP**

9. To merit inclusion it is essential to identify the location of the site and map indicative boundaries based on informed interpretation of available knowledge. Sites that cannot be defined in this way will not be included in the inventory. However, they may be considered for inclusion when sufficient evidence for their accurate location becomes available.
10. The inventory includes a description and indicative map of the battlefield landscape. This is the overall area of interest within which events of the battle occurred, and include both the main focus of fighting and the wider area within which additional events are likely to have occurred. The initial focus of fighting is the area where the armies initially arrayed and is usually where the most concentrated fighting took place. However, it is not always possible to identify this area accurately, and in some cases there are alternative options which are equally valid on the basis of current knowledge. The wider area includes zones of secondary fighting or skirmishes, lines of advance and retreat, associated earthworks and camps, burials and memorials. In some cases, battle memorials or other features associated with the battle which lie outside the defined battlefield landscape may be highlighted in the inventory for their relevance to the battlefield and its subsequent history.

## ANNEX 7:

### RELATIONSHIP OF SCHEDULED MONUMENT CONSENT TO PLANNING CONSENT

1. Scheduled monument consent and planning permission are two quite separate statutory requirements, governed by different laws which serve different purposes. What is material to one decision will not necessarily be material to the other. Both are required where 'works' defined in section 2(2) of the Ancient Monuments and Archaeological Areas Act 1979 are also 'development' defined in section 26 of the Town and Country Planning (Scotland) Act 1997. Consent granted under one regime is without prejudice to the other. Where both are required, the applicant must obtain both consents before work can commence.
2. The purpose and objectives of the planning system are set out in Scottish Planning Policy (SPP) 2014. Paragraph 145-146 of SPP on scheduled monuments and designated wrecks confirms that the preservation of scheduled monuments, *in situ* and within an appropriate setting, is a material consideration in both the development planning and the development control processes.
3. Scheduled monument consent and planning permission are both required where works/development would have a direct impact on the legally protected area of the monument, as defined in the scheduling documents. However, the provisions of the Ancient Monuments and Archaeological Areas Act 1979 do not extend beyond that. In the case of impact on the setting of the monument, securing the preservation of the monument 'within an appropriate setting' as required by national policy is solely a matter for the planning system. Whether any particular development will have an adverse impact on the setting of a scheduled monument is a matter of professional judgement. It will depend upon such variables as the nature, extent, design of the development proposed, the characteristics of the monument in question, its relationship to other monuments in the vicinity, its current landscape setting and its contribution to our understanding and appreciation of the monument. More detail about how to assess setting is provided in Historic Environment Scotland's guidance note Managing Change in the Historic Environment: Setting.
4. The role of the planning system in the protection of both the site and the setting of scheduled monuments is reflected in the statutory consultation requirements set out in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, and in the notification requirements of the Town and Country Planning (Notifications of Applications) (Scotland) Direction 2007.

## ANNEX 8:

### LISTED BUILDING CONSENT PROCESSES

#### WHEN IS LISTED BUILDING CONSENT REQUIRED?

1. Where a planning authority considers that proposed works would not affect a listed building's character, it may indicate to an applicant that listed building consent is not required. If a planning authority judges that listed building consent is needed, the applicant must prepare drawings and any other related documents as required. The scope of the information required will vary considerably depending on the circumstances of the case.
2. Listed building consent is also not required in the following circumstances:
  - a. for works to objects or structures erected within the curtilage of a listed building since 1 July 1948 and not physically attached to the building;
  - b. for works of alteration or extension to ecclesiastical buildings in use as such. A voluntary arrangement is in place whereby some denominations apply for listed building consent for external works. For more information see Historic Environment Scotland's website;
  - c. for works to buildings which are scheduled as monuments and protected by the Ancient Monuments legislation, although consent under the terms of that legislation will almost certainly be required (Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, section 55); and
  - d. for erection of a free-standing building in the curtilage of a listed building. Exceptionally, however, a proposal to build a substantial new structure extremely close to the listed building, but not physically attached, which the planning authority considers would be clearly out of character with the building or its setting could be regarded as constituting an alteration or extension to the listed building. Therefore it may be subject to listed building control. However, when considering a planning application for development within the curtilage of a listed building a planning authority must take into account the impact on its setting. It must also take account of alterations to any buildings within its curtilage (see Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, section 59).
3. The majority of applications for listed building consent are determined by the planning authority. Where an application is appealed or called in by Scottish Ministers, this process will be managed by Planning and Environmental Appeals Division (DPEA).
4. Under section 14(2) of the 1997 Act, in the determination of an application for listed building consent, the planning authority is required to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.

5. Planning authorities are required to consult Historic Environment Scotland on the following types of application:
  - applications for listed building consent by a planning authority;
  - applications for listed building consent for works to category A and B listed buildings;
  - applications for listing building consent for demolition of a listed building; and
  - applications for conservation area consent (demolition of unlisted buildings in conservation areas)
6. In some cases, Historic Environment Scotland may consider that an application raises such concerns that it should object. If a planning authority is minded to grant consent where Historic Environment Scotland has objected, the application needs to be notified to Scottish Ministers.

## SETTING

7. Under section 59(1) of the 1997 Act the planning authority, in determining any application for planning permission for development that affects a listed building or its setting, is required to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.
8. Planning authorities must consult Historic Environment Scotland in respect of planning applications affecting an A-listed building or its setting (Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).

## DEMOLITION

9. Listed building consent is required for the demolition of a listed building. Demolition means the destruction, or substantial destruction, of the whole building. Less significant doughtakings are regarded as works or alteration and potentially require listed building consent. The question of whether a proposal falls into the category of demolition or alteration is ultimately one of fact and degree, and requires careful consideration by the planning authority.

## EXEMPTIONS

10. Under the terms of section 54 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 any ecclesiastical building which is for the time being used for ecclesiastical purposes in Scotland is exempt from the need to apply for listed building consent. The exemption for ecclesiastical buildings does not cover the demolition of a listed ecclesiastical building, since by definition ecclesiastical use must cease before demolition is carried out. Neither does it apply to any works to a former ecclesiastical building which has passed into secular use or which is disused. Exemption does not apply to a building used or available for use by a minister of religion as a residence. Similarly, listed churchyards taken over by local authorities as graveyards are not exempt from the requirement to obtain listed building consent for works to those graveyards.

11. Notwithstanding the exemption, the following denominations have agreed to a voluntary scheme whereby they are subject to listed building control for external works only:

- Associated Presbyterian Churches
- Baptist Union of Scotland
- Church of Scotland
- Free Church of Scotland
- Free Presbyterian Church
- Methodist Church in Scotland
- Roman Catholic Church in Scotland
- Scottish Episcopal Church
- United Free Church of Scotland
- United Reformed Church Scotland Synod  
(formerly Scottish Congregational Church)

#### MISCELLANEOUS

12. Certain permitted development rights do not apply within the curtilage of listed buildings. This means that planning permission may be required for minor forms of development such as erecting fences, walls, gates or small sheds. Advice on the need for listed building consent should always be sought from the local planning authority.

13. A small number of buildings or structures are both scheduled monuments and listed. In such cases anyone wanting to undertake works which affect or cover the monument need apply only for scheduled monument consent. The application is made to Historic Environment Scotland, and the relevant parts of the listed buildings legislation do not apply. Where planning permission for development work is sought in respect of a building which is both scheduled and listed the planning authority must still consider whether it will affect the listed building's setting. If it thinks it would, it must advertise the application. The relationship between scheduled monument consent and the planning system is set out in Annex 6.

## ANNEX 9:

### LISTED BUILDING CONSENT AND PLANNING PERMISSION

1. Listed building consent and planning permission are two quite separate statutory requirements governed by different laws which serve different purposes. Both are required where development defined in section 26 of the Town and Country Planning (Scotland) Act 1997 is to be undertaken. Consent granted under one regime is without prejudice to the other. Where both are required the applicant must obtain both before work can commence.
2. The purpose and objectives of the planning system are set out in Scottish Planning Policy. Following from that, paragraph 141 of Scottish Planning Policy confirms that the preservation of listed buildings and their setting is a material consideration in both the development planning and development management processes.

# ANNEX 10:

## MEANING OF 'MONUMENT' UNDER THE 1979 ACT

1. Section 61(7)(d) of the 1979 Act extends the range of monuments that can be designated under the 1979 Act to “any site comprising anything, or group of things, that evidences previous human activity”.
2. This provision allows for the protection of nationally important archaeological remains which could not be described as a ‘building’, ‘structure’ or ‘work’ and which were therefore not eligible for scheduling under the 1979 Act prior to its amendment by the 2011 Act.
3. In particular this provision will allow for the scheduling of coherent groups of artefacts of national importance, commonly termed ‘artefact scatters’. The amendment is important because such artefact scatters are almost the sole surviving evidence for activity during the first 7,500 or so years of human occupation in Scotland.
4. It is anticipated that an extremely small number of nationally important sites will come under section 61(7)(d) of the 1979 Act. Provisional estimates on the basis of existing archaeological information suggest there may be around 10 nationally important sites, which are currently afforded no protection under the 1979 Act, that could be scheduled as a result of this provision.
5. Examples of the possible types of artefact scatter which could be considered for scheduling as a result of the amendment are:
  - scatters of stone and flint tools and the debris from their manufacture, which mark the sites of some of the earliest evidence for human occupation in Scotland;
  - nationally important archaeological deposits not associated with other physical remains of a settlement or structures. An example would be midden material rich in artefactual and palaeoenvironmental evidence, especially shell middens, which again are often the only remains of some of the earliest evidence for human occupation in Scotland;
  - debris from metal working indicative of a significant industrial site of early or later medieval date; or
  - later medieval pottery indicative of a kiln or other significant pottery production site.

It is important to stress that the remains must form a coherent entity or group to be of national importance.

6. This would exclude, for example:

- an area which had produced a range of chronologically and functionally diverse artefacts as a result of ploughing or metal detecting, which inhibits characterisation or definition of the importance of the site; or
- palaeoenvironmental deposits within a waterlogged area or peat bog, which may contain information relating to human impact on the landscape but are primarily of natural formation.

## ANNEX II:

### THE 'CERTIFICATE OF INTENTION NOT TO LIST' PROCESS

1. Section 5A of the 1997 Act allows Historic Environment Scotland to issue a certificate stating that they do not intend to list a building.
2. A certificate of intention not to list is a certificate which will guarantee that a building will not be listed during the five years from the date of the issue of the certificate. Anyone can apply for a certificate and there is no fee.
3. If a certificate is issued a planning authority cannot serve a Building Preservation Notice on the property during the five year period from the date of issue of the certificate.
4. Where consideration of a case leads to the conclusion that a building should be listed, a new listing will normally take place and a certificate will not be issued. There are, however, certain circumstances where Historic Environment Scotland may not list a building when it is found to meet the criteria for listing. More information about this can be found on our website.

#### THE APPLICATION AND ASSESSMENT PROCESS

5. The certificate of intention not to list process will be processed the same way as an application for listing. Applicants must complete an application form (available from Historic Environment Scotland's website) and all applications for a certificate will be assessed against the listing criteria set out in Annex 2 of this policy statement (criteria for determining whether a building is of special or historic interest for listing).
6. If a building is found to support a case for listing, Historic Environment Scotland will normally consult the relevant local authority about a listing proposal or an amendment to the list. In addition, they will normally consult with the owner of the property. However, Historic Environment Scotland will not normally seek comments on applications for a certificate of intention not to list unless the building in question meets the listing criteria and Historic Environment Scotland is minded to list the property.
7. Local authorities and owners (if not the applicant) shall be notified at the same time a certificate is issued.

#### TIMESCALES

8. Historic Environment Scotland will seek to reach a decision on applications for a certificate of intention not to list within 8 weeks. Decisions to grant a certificate will be made as quickly as possible where the building concerned clearly does not meet the criteria for listing.

9. Likewise, where it looks likely that a building might well meet the listing criteria the aim is to issue a rejection of an application for a certificate within the same 8 week period. Thereafter, as the process for a building to be entered on the statutory list involves more detailed preparation and consultation, an actual listed building record will take longer to materialise. But the applicant will have been provided with the certainty which is sought.
10. This timescale is an indicator of best practice rather than a requirement due to the possible constraints of a site, notably:
  - the complexity of the site/subject;
  - time needed to get *sufficient* access to the site if more than one owner; and
  - the time taken to get access to specialist material, advice or opinion, as required.

#### ADDITIONAL INFORMATION

11. Historic Environment Scotland shall maintain a publicly researchable register of buildings that have been granted a certificate of intention not to list.
12. Historic Environment Scotland will apply the test of reasonableness to any request. Any unduly sizeable request will result in a careful discussion with the owner and will be completed in stages if appropriate.
13. Historic Environment Scotland will not issue expiry notifications for certificates of intention not to list. This provision aims to harmonise with planning legislation in which planning authorities do not issue expiry notifications for planning permission or listed building consent.
14. Certificates do not secure immunity from the designation of a conservation area. Even if a certificate is granted, consent will still be required for the demolition of a building if it is in a conservation area (see Section 66 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997).
15. For sites comprising of more than one building, some buildings may be listed and others granted a certificate.
16. Where a certificate has already been issued it will be possible to apply for another certificate before the five years of the original certificate has expired. Any such application will be subject to the same assessment procedure as new applications. It cannot be assumed that a certificate will be issued automatically in such cases since the circumstances may have changed since the issue of the original certificate particularly if there is new evidence about the building.



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