

- 2.44. Once an area has been designated, it becomes the duty (see Note 2.23) of the planning authority and any other authority concerned, including Scottish Ministers, 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 and under Part I of the Historic Buildings and Ancient Monuments Act 1953.
- 2.45. Planning authorities can extend planning controls in conservation areas through the use of an Article 4 Direction. An Article 4 Direction normally requires the approval of Scottish Ministers but this is not the case where it relates to a listed building, to a building notified to the authority by Scottish Ministers as a building of special architectural or historic interest, or to development within the curtilage of a listed building.
- 2.46. A wide Direction restricting development over a whole conservation area, covering both listed and unlisted buildings, would, however, require Scottish Ministers' approval.

#### **SCOTTISH MINISTERS' POLICY ON THE DESIGNATION OF CONSERVATION AREAS**

- 2.47. Scottish Ministers expect local 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 they encourage 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.
- 2.48. Scottish Ministers consider it important that before designation all planning authorities should give the public ample opportunity to comment, either through responses to local plans or, where no local plans are in preparation, through another convenient consultation process (see Note 2.24).

#### ***Historic Marine Protected Areas***

##### **LEGAL AND ADMINISTRATIVE CONTEXT**

- 2.49. This section sets out Scottish Ministers' policy for designating Historic Marine Protected Areas (Historic MPAs) to protect marine historic assets of national importance in the seas around Scotland.
- 2.50. 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).

- 2.51. 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 or 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 1993 in Scotland. Responsibility for related functions such as administration of the Protection of Military Remains Act 1986 (Note 2.27) and the disposal of 'wreck' under the Merchant Shipping Act 1995 (Note 2.28) rests with the UK Government.
- 2.52. 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.
- 2.53. The Scottish Ministers can designate an area within the Scottish Marine protection area (Note 2.25) 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.
- 2.54. 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.
- 2.55. 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.
- 2.56. 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 2.29) 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.

## SCOTTISH MINISTERS' POLICY ON THE DESIGNATION OF HISTORIC MARINE PROTECTED AREAS

- 2.57. Scotland's coasts and seas comprise a rich marine natural and cultural heritage, Scottish Ministers consider it desirable to designate Historic MPAs in order to help 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.
- 2.58. The following principles, additional to those set out in paragraph 2.3 above, underpin the 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 policy will be subject to periodic review;
  - b. 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. decisions 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. 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.
- 2.59. Marine historic assets and the seabed that surrounds them can sometimes also be of value from the perspective of biodiversity and geodiversity. Scottish Ministers consider that such areas have the potential to contribute to biodiversity or geodiversity policy aims.
- 2.60. In administering marine planning and licensing powers Scottish Ministers will seek to recognise the protection and management needs of marine historic assets according to their significance, whether or not they are afforded statutory protection by heritage designation, while allowing for change to be managed intelligently and with understanding as set out in the UK Marine Policy Statement and marine plans.

## IMPLEMENTATION OF POLICY ON DESIGNATION OF HISTORIC MARINE PROTECTED AREAS

- 2.61. Historic Scotland plays the lead role on behalf of Scottish Ministers in implementing policy on Historic MPAs. In carrying out this work Historic 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. identify 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, operational strategy, and guidelines about the process for selecting, designating and promoting these;
  - d. 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.
- 2.62. Historic Scotland will also work with Marine Scotland, public authorities and marine planning partnerships in order to help advance due consideration for marine cultural heritage within the marine planning and licensing system for Scottish inshore waters and, where appropriate, for Scottish offshore waters.

### *Gardens & Designed Landscapes*

#### **LEGAL AND ADMINISTRATIVE CONTEXT**

- 2.63. This section sets out Scottish Ministers' policy for designating gardens and designed landscapes of national importance.
- 2.64. Section 32A(1) of the 1979 Act created a new statutory duty for Scottish Ministers to compile and maintain an inventory of gardens and designed landscapes as appear to Scottish Ministers to be of national importance. This change places the previous non-statutory designation on a statutory footing. The inventory currently includes 389 sites. Inclusion of a site on the inventory means that it receives recognition and a degree of protection through the planning system.
- 2.65. 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 2.30). 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.
- 2.66. Under the terms of Section 32A of the 1979 Act, Scottish Ministers 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.

This work will be undertaken by Historic Scotland acting for Scottish Ministers. All references to Scottish Ministers should be read in this way.

- 2.67. 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.

- 2.68. For more than 20 years government has recognised the need to identify the nation's most important gardens and designed landscapes. Such recognition resulted in the production of an inventory of sites: the Inventory of Gardens and Designed Landscapes in Scotland (the 'Inventory'), published in five volumes in 1987–88 and covering 275 sites. In 1993 a programme to extend the Inventory was begun and supplementary volumes were published for the Lothians, Highlands and Islands and Fife. In March 2007 further sites were added and the entire Inventory became available electronically via the Historic Scotland website.
- 2.69. There is no primary legislation that gives protection to gardens and designed landscapes. National 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. Thus at the strategic planning level development plans routinely include policies which identify the designed landscapes in their area and outline the policy criteria which will apply to their appropriate protection, conservation and management within the planning system in accordance with national policy.
- 2.70. Where relevant, such policies will inform planning authorities' consideration of individual planning applications within development management. Some additional statutory provisions also apply at this stage. Regulation 25 and paragraph 5(4)(a) of Schedule 5 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 requires planning authorities to consult Scottish Ministers on 'development which may affect a historic garden or designed landscape'. Historic Scotland's views on such applications will be a material consideration in the planning authority's determination of the case.
- 2.71. The new statutory duty on Scottish Ministers to compile an inventory of nationally important gardens and designed landscapes does not change the level of protection for sites included in the inventory.

#### **SCOTTISH MINISTERS' POLICY ON GARDENS AND DESIGNED LANDSCAPES**

- 2.72. 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.

- 2.73. Owners and occupiers of gardens and designed landscapes, and planning authorities, will be consulted on proposed additions to the Inventory other than in exceptional circumstances.
- 2.74. 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.

#### **IMPLEMENTATION OF POLICY ON DESIGNATING GARDENS AND DESIGNED LANDSCAPES**

- 2.75. Historic Scotland works closely with planning authorities on consent for development proposals affecting Inventory sites. In fulfilling that duty Scottish Ministers expect the agency to:
- a. make its decision-making process transparent;
  - b. provide advice and support in aid of the protection, management, and interpretation of gardens and designed landscapes, including the development of a grant scheme to support the planning and management of gardens and designed landscapes; and,
  - c. keep policy and process for gardens and designed landscapes under review.

#### ***Historic Battlefields***

#### **LEGAL AND ADMINISTRATIVE CONTEXT**

- 2.76. This section sets out Scottish Ministers' policy for designating historic battlefields.
- 2.77. Section 32B(1) of the 1979 Act created a new statutory duty for Scottish Ministers to compile and maintain an inventory of battlefields as appear to them to be of national importance. Under the new 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 2.30) A battle is an engagement involving wholly or largely military forces that had the aim of inflicting lethal force against an opposing army.
- 2.78. Under the terms of Section 32B of the 1979 Act, Scottish Ministers shall:
- 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.

This work will be undertaken by Historic Scotland acting for Scottish Ministers. All references to Scottish Ministers should be read in this way.

- 2.79. 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.

- 2.80. This policy provides specific measures for the protection through an inventory of battlefields, which 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.
- 2.81. Local development plans and, where appropriate, supplementary planning guidance, should set out policies and criteria that apply to the protection, conservation and management of historic battlefields. Such policies should inform planning authorities' consideration of individual planning applications within development management.
- 2.82. The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 will be amended in due course to define the requirements for planning authorities to consult with Scottish Ministers and take their views into account as a material consideration in the planning authority's determination of a case.

#### SCOTTISH MINISTERS' POLICY ON BATTLEFIELDS

- 2.83. 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.
- 2.84. 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 clear 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 should be considered 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.
- 2.85. Historic Scotland will normally consult planning authorities and other key stakeholders as appropriate on proposals for including sites on the Inventory and for subsequent amendments.
- 2.86. To be included in the Inventory, a site must be capable of definition on a modern map (see Annex 6).
- 2.87. 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.



**IMPLEMENTATION OF POLICY ON BATTLEFIELDS**

- 2.88. Historic Scotland will work closely with planning authorities on consent for development proposals affecting Inventory sites, and with other public bodies.
- 2.89. In fulfilling this duty Historic Scotland will:
- a. make its decision-making processes transparent;
  - b. provide advice and support in aid of the protection, management and interpretation of battlefields; and
  - c. keep policy and process for battlefields under review.

## CHAPTER 3: CONSENTS

### INTRODUCTION

- 3.1. This chapter sets out Scottish Ministers' policies on scheduled monument consent, listed building consent and conservation area consent, and the management of Historic MPAs. It provides guidance to planning authorities on the consideration of planning applications affecting sites on the Inventory of Gardens and Designed Landscapes and the Inventory of Battlefields. Historic Scotland, as an agency of the Scottish Government, acts for Scottish Ministers, and all references to the handling of casework by Historic Scotland should be interpreted as meaning Historic Scotland on behalf of Scottish Ministers.

### *Scheduled Monument Consent*

#### LEGAL AND ADMINISTRATIVE CONTEXT

- 3.2. This section sets out Scottish Ministers' policy for 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 SHEP and Notes 3.1 and 3.2). Works to a scheduled monument require the prior written consent of Scottish Ministers: this is known as scheduled monument consent; there were about 8000 scheduled monuments in 2008.
- 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).
- 3.8. Every application for scheduled monument consent is considered on its merits and attention is drawn to the fact that in the 15 years 1995–2010, out of 3,431 applications received, only 18 were refused. In 2010–11 no applications were refused from a total of 200.

#### THE SCHEDULED MONUMENT CONSENT PROCESS

- 3.9. Historic Scotland administers the scheduled monument consent process on behalf of Scottish Ministers. Applicants (who may be the owner, tenant or any other party) are encouraged to contact Historic Scotland as early as possible to discuss their proposals. Applications must be made on a form obtained from Scottish Ministers (in practice Historic Scotland). (See note 3.6). If further information is required, Historic Scotland will ask the applicant to submit this before reaching a view.
- 3.10. If Historic Scotland is minded to either grant consent with conditions or to refuse consent the Agency will issue a provisional view to the applicant and other interested parties. The applicant can either accept this provisional view within 28 days or make further representations to Scottish Ministers through Historic Scotland. If agreement cannot be reached, Scottish Ministers will decide the most suitable means of determining each application, through written submissions, a hearing or an inquiry, or any combination of these (see Note 3.7). The final decision on the Inquiry Reporter's recommendations is taken by Scottish Ministers. If Historic Scotland is minded to grant consent without conditions no provisional view will be issued.
- 3.11. Scheduled monument consent is separate from the statutory planning process (see Annex 7 and Note 3.8). 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' 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 3.9), 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.

### SCOTTISH MINISTERS' POLICY ON SCHEDULED MONUMENT CONSENT

- 3.14. Scottish Ministers include a monument 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 SHEP, 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 (see Note 3.10); 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.

#### IMPLEMENTATION OF POLICY ON SCHEDULED MONUMENT CONSENT

- 3.23. In carrying out this work for Scottish Ministers Historic 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. clearly communicate decisions and information on scheduled monuments and scheduled monument consents;
  - d. make information on scheduled monuments and on the application procedure for scheduled monument consent readily available;
  - 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.
- 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 the Heritage Management Directorate within Historic Scotland.

- 3.26. Most properties in the care of Scottish Ministers are also scheduled monuments. In the case of these properties Historic Scotland must go through the same clearance process as set out in 3.25.
- 3.27. Third-party applicants for works on Properties in Care of Scottish Ministers will require scheduled monument consent; the impact of works proposed in the application will be subject to the same scrutiny as for other scheduled monuments. Policies on considering works proposed by third parties at Properties in Care are set out in Chapter 4 of this SHEP.
- 3.28. Policies for the use of or the provision of activities at Properties in Care are set out in Chapter 4 of this SHEP.

### *Listed Building Consent*

#### LEGAL AND ADMINISTRATIVE CONTEXT

- 3.29. This section sets out Scottish Ministers' policy for the control of works affecting listed buildings.
- 3.30. 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 affect 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. 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.
- 3.31. 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.
- 3.32. 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.
- 3.33. 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.

- 3.34. Listed building consent is separate from the statutory planning process (see Annex 8) but there is a close relationship between them and this policy should therefore be read in conjunction with current Scottish Government planning policy for the historic environment (see Note 3.11). 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.
- 3.35. 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**

- 3.36. Local authorities administer the listed building consent process, except where the local authority is itself the applicant, in which case Scottish Ministers will determine the application. 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.
- 3.37. On receiving an application the local authority will undertake the appropriate consultation before reaching a view. Where the local authority is minded to grant listed building consent, they must notify Historic Scotland. Historic Scotland will consider the notification within 28 days and either clear it back to the local authority or request further time to consider the proposal. Exceptionally, where a proposal raises issues of national significance Scottish Ministers may require that the application be referred to them for a decision.
- 3.38. 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.

#### **SCOTTISH MINISTERS' POLICY ON LISTED BUILDING CONSENT**

- 3.39. 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.
- 3.40. 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.
- 3.41. 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***

- 3.42. 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.
- 3.43. 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.
- 3.44. 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.
- 3.45. Potential applicants are encouraged to have pre-application discussion with planning authorities and Scottish Ministers expect planning authorities to provide pre-application advice. 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 Scotland in the pre-application discussions.
- 3.46. Planning authorities should satisfy themselves, as soon as applications are received, that they include an appropriate level of supporting information.

***Determination of Applications***

- 3.47. 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.
- 3.48. 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.
- 3.49. 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 3.40 above.
- 3.50. In the case of applications for the demolition of listed buildings it is Scottish Ministers' policy 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.

#### IMPLEMENTATION OF POLICY ON LISTED BUILDING CONSENT

- 3.51. Historic Scotland, acting on behalf of Scottish Ministers and working closely with planning authorities, will:
- a. undertake listed building consent casework timeously and publish in its Corporate Plan the targets set for dealing with listed building consent casework;
  - b. keep listed building consent policies and process under review;
  - c. communicate information on Scottish Ministers' role in listed building consent in clear language;
  - d. make information on listed buildings readily available; and,
  - e. make its decision-making process transparent.
- 3.52. Ministers expect that the information provided with applications for listed building consent should be sufficient to enable planning authorities and 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. This requirement is in addition to those in place to notify Scottish Ministers of proposals involving the alteration or extension of listed buildings. The responsibility lies with the applicant to ensure that applications contain all the necessary information. Where significant change is considered necessary on economic grounds, Scottish Ministers expect applicants to provide supporting information to demonstrate this.

- 3.53. When considering a developer's proposals to integrate listed buildings into an overall development, Ministers 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. Planning authorities involved in discussions about work to Category A and B listed buildings that is novel, contentious or large scale should consult with Historic Scotland at an early stage.

### *Conservation Area Consent*

#### LEGAL AND ADMINISTRATIVE CONTEXT

- 3.54. 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 (see <http://www.scotland.gov.uk/Publications/2004/12/20450/49054>) and further guidance will be promulgated by Historic Scotland.
- 3.55. Scottish Ministers have directed that conservation area consent required for demolition of unlisted building in conservation area shall not apply to certain specified buildings and structures (see Annex IV of SDD Circular 17/87 dated 25.9.87): the term 'conservation area consent' is used for applications to demolish unlisted buildings in conservation areas. Anyone wishing to demolish a building within a conservation area must first apply for conservation area consent.
- 3.56. Planning authorities who are themselves seeking consent to demolish an unlisted building in a conservation area must, as for listed building consent, apply direct to Scottish Ministers.
- 3.57. 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 and to the notification of applications to Scottish Ministers and to the Royal Commission on the Ancient and Historical Monuments of Scotland apply (see Note 3.12).

#### SCOTTISH MINISTERS' POLICY ON CONSERVATION AREA CONSENT

- 3.58. 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.
- 3.59. 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.

- 3.60. Both Scottish Ministers and the planning authority 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.

### *Historic Marine Protected Areas*

#### LEGAL AND ADMINISTRATIVE CONTEXT

- 3.61. This section sets out Scottish Ministers' policy for the management of Historic Marine Protected Areas (Historic MPAs). Chapter 2 provides information on designation policies.
- 3.62. 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 Scottish Ministers on Historic MPAs under section 81 of the 2010 Act.
- 3.63. Under section 96 of the 2010 Act, it is an offence to intentionally or recklessly carrying 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.
- 3.64. 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.
- 3.65. 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.
- 3.66. 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

- 3.67. Acting on behalf of Scottish Ministers Historic 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 Scotland. The Agency has 28 days to respond.
- 3.68. 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 Scotland, acting on behalf of Scottish Ministers, if they believe that there is a risk of an act hindering preservation objectives for a Historic MPA. Historic 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.
- 3.69. 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.

### SCOTTISH MINISTERS' POLICY ON THE MANAGEMENT OF HISTORIC MARINE PROTECTED AREAS

- 3.70. 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 Scottish Ministers 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.
- 3.71. Scottish Ministers will issue guidelines for the management of Historic MPAs and advice to further the preservation objectives of 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.
- 3.72. The following principles underpin the making of an MCO for Historic MPAs:
- a. an MCO will be made on the basis of an evidence-based assessment and will be subject to periodic review;
  - b. the making of 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.
- 3.73. The rules laid out in the Annex to the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage (see Note 2.26) provide an accepted model of best practice for all activities regulated by statute devolved to Scottish Ministers and which are directed at marine historic assets within the Scottish inshore waters.
- 3.74. Where Scottish Ministers consider that the area of seabed comprising a Historic MPA contributes to biodiversity or geodiversity policy aims, consideration would be given to the impacts of activities directed at marine historic assets and whether it would be possible to mitigate any such impacts.

#### IMPLEMENTATION OF POLICY ON MANAGEMENT OF HISTORIC MARINE PROTECTED AREAS

- 3.75. In carrying out its work for Scottish Ministers on Historic MPAs, Historic 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 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. take the lead 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.
- 3.76. Historic Scotland will also 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*

#### SCOTTISH MINISTERS' POLICY ON THE TREATMENT OF GARDENS AND DESIGNED LANDSCAPES IN THE PLANNING PROCESS

- 3.77. The effect of proposed development on a garden or designed landscape is a material consideration in the determination of a planning application.
- 3.78. Scottish Ministers 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.
- 3.79. 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.
- 3.80. 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.
- 3.81. Informed change should be managed carefully with the aim of ensuring that the significant elements justifying designation are protected or enhanced.

### *Historic Battlefields*

- 3.82. The effect of proposed development on Inventory battlefields is a material consideration in the determination of a planning application.
- 3.83. Scottish Ministers 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.
- 3.84. 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.
- 3.85. 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.
- 3.86. 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 (see 2.87).
- 3.87. Other public bodies should ensure that nationally important battlefields are given consideration within relevant strategies, plans and programmes.



## CHAPTER 4: PROPERTIES IN THE CARE OF SCOTTISH MINISTERS

### INTRODUCTION

- 4.1. This chapter sets out Scottish Ministers' policy on the conservation of and access to the properties in their care that are looked after by Historic Scotland on their behalf.

### LEGAL AND ADMINISTRATIVE CONTEXT

- 4.2. The United Kingdom Government is party to the European Convention on the Protection of the Archaeological Heritage (the 'Valletta Convention') (see Note 2.1). Under this convention states recognise, in Article 2, that they must have a legal system for the protection of the archaeological heritage, on land and under water. Article 4 requires provision for 'the conservation and maintenance of the archaeological heritage preferably in situ'. Article 5 ensures that 'the opening of archaeological sites to the public... does not adversely affect the archaeological and scientific character of such sites and their surroundings'. Article 9 provides an obligation to develop public awareness.

#### *The Law*

- 4.3. The United Kingdom has had legislation in place to protect ancient monuments since 1882. One part of that protection was the power of the Commissioners of Works to acquire ancient monuments for their protection and maintenance, by gift, purchase or agreement. It also provided powers for owners to retain nominal ownership of a monument, while passing the control and maintenance to the state by means of a deed of guardianship. Obligations and duties under the ancient monuments legislation have been extended over time.
- 4.4. Scottish Ministers' powers relating to the estate of Properties in Care are enshrined in the Ancient Monuments and Archaeological Areas Act 1979 (see Note 4.1). The Act places a duty on Scottish Ministers to maintain the monuments in their care and provides the powers to do 'all such things as may be necessary for the maintenance of the monument and for the exercise by them of proper control and management with respect to the monument'. Up-to-date information on the properties in state care is available from Historic Scotland either by writing or by visiting <http://www.historic-scotland.gov.uk/>
- 4.5. Access to Properties in Care is regulated under section 19 of the 1979 Act and the same section empowers Scottish Ministers to control and regulate that access.
- 4.6. Artefacts associated with the Properties in Care are not normally specifically scheduled under the 1979 Act but are protected by property law (see Note 4.2).

- 4.7. Historic Scotland is required to take full account of the requirements of all current health and safety legislation. It will also implement its equalities duties in relation to race, gender, disability, sexual orientation, age and religion through an operational policy. It will shortly produce a Gaelic language plan for its operations.
- 4.8. Historic Scotland has statutory duties to promote biodiversity under section 1 of the Nature Conservation (Scotland) Act 2004. The Act sets out to develop an integrated and sustainable approach by the Scottish Government to the conservation and management of Scotland's diverse natural heritage. Historic Scotland will implement its statutory functions in accordance with its duties under the Act to ensure that the conservation of biological diversity is encouraged and advanced.

### *The Estate of Properties in Care*

- 4.9. Historic Scotland cares for 345 ancient monuments on behalf of Scottish Ministers. While no collection of properties can cover all aspects of the historic environment, the national portfolio of Properties in Care is representative of the sites and buildings that successive generations have seen as being worthy of the investment and special protection offered by state care. The estate covers a wide geographical and period spread, from Muness Castle in Shetland to New Abbey Corn Mill in Dumfries, and from Calanais Standing Stones in the west to Tantallon Castle in the east. It extends from early prehistory through to the industrial age. The properties cared for by Historic Scotland complement what is held by other bodies and individuals.
- 4.10. The purpose of the state taking properties into its care is for the long-term preservation, for the public benefit, of a collection of monuments which define significant aspects of Scotland's past. Much of that benefit lies in the properties being accessible to the people of Scotland and visitors to the country, now and for the future. In promoting these policies Ministers seek to ensure that the Properties in Care are a showcase for Scotland, demonstrating exemplary practice in conservation, enhancing their understanding and improving the provision of access and interpretation in a way which can stand comparison with the best in the world.
- 4.11. The Properties in Care have great cultural significance. They illustrate the history and development of Scotland and its people, and help to define its identity. They are a source of wonder, enjoyment and learning both for Scots and visitors, many of whom see Scotland's long history and rich culture as their principal reason for coming to this country. The properties and their associated collections of artefacts are unique and irreplaceable, which makes their preservation vital to our understanding of each monument's past and to its part in Scotland's history.
- 4.12. Properties in the care of Scottish Ministers are held either by guardianship (by far the majority), ownership (around a fifth of the estate), or a small number by leasehold. Most monuments are in guardianship, which means that each is held under an individual deed of guardianship. This requires Historic Scotland to comply with a range of obligations, rights and constraints arising principally from the legislation or from the terms of the specific deed of guardianship or leasehold. All have been taken into care for their preservation in perpetuity (see para 4.19 below).

- 4.13. The principles that underpin Historic Scotland's work at the properties have developed over time. Initially, the simple preservation of the monument was all that was expected of the state. The provision of public access was added as a responsibility in 1900: since then the public perception of access and the requirements of international conservation charters have continued to broaden. Historic Scotland has to meet these expectations by investing in the wider public benefits that come from understanding and interpreting monuments for a wide range of visitors.
- 4.14. The Properties in Care currently attract around three million visitors a year to the staffed monuments, where numbers are recorded, with many more visiting the non-staffed sites. This supports Scottish Ministers' important role in the promotion of tourism in Scotland. Entrance to more than 250 of these monuments is free. For properties where an entrance fee is charged, prices are set in line with similar properties operated by others in the sector. Visitors expect high standards of care, interpretation and visitor facilities that reflect the character of each property and do not detract from its qualities. They expect that so far as possible, the properties will be accessible to all. Many of the properties are on occasion used for private or public events, for international gatherings, or as film locations. These various demands can make the management of often fragile sites a considerable challenge and such activities can only be encouraged where they do not conflict with Ministers' principal duties of care in relation to the properties.
- 4.15. Works at Properties in Care undertaken by Historic Scotland are currently covered by Crown immunity. This means that Historic Scotland's works at properties which are scheduled monuments do not require scheduled monument consent (see Chapter 3 on Consents). Ministers, however, have put in place a parallel system of 'scheduled monument clearance' for works at Properties in Care. This will apply to all Properties in Care and applies the same standards and tests to works (see para 3.26). Works proposed by other parties, however, require formal scheduled monument consent. Depending on the terms under which the monument is held in care, such works could also require the permission of Historic Scotland as guardian, owner or leaseholder. Developments of visitor facilities at Properties in Care are not exempt from the requirement to obtain planning permission from the local authority.

## SCOTTISH MINISTERS' POLICY ON PROPERTIES IN THEIR CARE

### *Composition of the Estate*

- 4.16. Scottish Ministers will maintain an estate of properties with their associated collections in state care to preserve and make available a representative collection of the archaeological and architectural past, both for the enjoyment and understanding of the nation and visitors to Scotland, and to ensure that it is preserved for future generations.

- 4.17. The legislation envisages monuments and sites being taken into care in perpetuity. Proposals to add to the estate, therefore, must be very carefully considered. In addition to assessing their merit in terms of their cultural significance, the implications for the balance of the types of property within the estate, and present risks to the monument, Historic Scotland will also consider what alternative options for care there might be and assesses the public benefit that would flow from the new investment. The costs of caring for the existing estate have tended to rise in real terms, so that a realistic approach needs to be taken to targeting public funds where they will best achieve the primary aims of Scottish Ministers in relation to their Properties in Care. Few properties proposed for care are likely to meet these criteria.
- 4.18. Because of the importance of the Properties in Care as a collection, and because of the level of state investment involved, it is currently expected that monuments will be held in perpetuity by the state. Only in exceptional circumstances is a monument likely to go back out of care. In coming to a view on disposals, Scottish Ministers will also take account of the implications for the balance of the remainder of the estate and any possible loss of public access or understanding of the monument. Each case will require the approval of Scottish Ministers, who will consult as appropriate. This policy will not prevent Historic Scotland delegating by agreement to local bodies responsibilities for managing the visitor facilities at particular properties, as happens at present.

### *Conservation of Properties*

- 4.19. The primary purpose of monuments coming into care is for their long-term preservation. Scottish Ministers therefore see the long-term preservation of the monument as their principal consideration. Procedures are in place to support this aim.
- 4.20. Scottish Ministers ensure that all conservation decisions at Properties in Care are based on an evaluation of significance, informed by a thorough knowledge and understanding of their monuments. Scottish Ministers will ensure that an assessment of significance is provided for all Properties in Care, measured against internationally-recognised criteria and a broad understanding of Scotland's past. They will seek to promote conservation and an understanding of Scotland's past through appropriate evaluation, survey, research, investigation, study and interpretation of the Properties in Care.
- 4.21. In order to secure the maintenance of conservation standards Scottish Ministers will ensure that Historic Scotland, on their behalf, maintains an appropriate record of the buildings, sites and monuments in their care, and the work carried out upon them. It is recognised that improvements in knowledge, understanding, international conservation practice and techniques of analysis may lead to reassessment of conservation needs.

- 4.22. Scottish Ministers are committed to the proper management and implementation of conservation at their Properties in Care, each of which has its own particular requirements. They therefore expect Historic Scotland to run an effective programme of inspection, consolidation, maintenance and repair at Properties in Care, employing the best available techniques and the most suitable materials. Scottish Ministers also expect this work to be implemented by staff with the appropriate knowledge, expertise, craft skills, training and resources. The quality of conservation work at Properties in Care is reviewed by Historic Scotland regularly through property condition surveys to ensure it meets the best contemporary standards of conservation; Historic Scotland benchmarks its work against other operators.
- 4.23. Scottish Ministers recognise that Properties in Care are more than the sum of their constituent parts. They have important historical, cultural or emotional associations that give them a particular significance to the life of the nation, as well as to the local communities within which they are set. Many have outstanding landscape or picturesque values and settings. Scottish Ministers will conserve the Properties in Care in a way that preserves these qualities within an appropriate setting, and will work with others to protect and enhance their wider setting.

### *Managing Activity and Change*

- 4.24. Any proposals, whether by Historic Scotland or another party, to use, to provide activities at, or to undertake works at Properties in Care, require careful consideration. They may have implications either for the operation of the monument as a place opened to the public and interpreted for them, or for the preservation of the monument (see Note 4.3), or both. More detail on how such proposals will be assessed is provided in the following paragraphs.
- 4.25. Proposals by Historic Scotland to use or provide activities at Properties in Care which do not involve works are the subject of careful internal scrutiny, which considers their implications for the maintenance of the monument, public access to the monument and the proper control and management of the monument.
- 4.26. Proposals for works by Historic Scotland at Properties in Care will be subject to rigorous assessment by the Historic Scotland Heritage Management Directorate against Scottish Ministers' policies on scheduled monument consent (see Chapter 3 and particularly para 3.26).
- 4.27. Proposals by other parties to use or provide activities at Properties in Care which do not involve works will be the subject of careful scrutiny by Historic Scotland, which considers their implications for the maintenance of the monument, public access to the monument and the proper control and management of the monument.
- 4.28. Proposals for works by other parties at Properties in Care are likely to require scheduled monument consent. In that case they will be rigorously assessed by the Historic Scotland Heritage Management Directorate against Scottish Ministers' policies on scheduled monument consent.
- 4.29. Those proposing to use properties or to undertake works, or both, are encouraged to discuss their proposals with Historic Scotland at an early stage, and certainly before submitting a formal request or scheduled monument consent application. The Commercial and Tourism Group of Historic Scotland should be the first point of contact, and they will involve the Heritage Management Directorate where applicants need pre-application advice about scheduled monument consent.

- 4.30. A very few Properties in Care are not scheduled monuments, but are listed buildings. In such cases Historic Scotland will assess proposals to use properties or to undertake works using the same criteria as for scheduled Properties in Care. Separate applications for listed building consent and, where necessary, planning permission, would, however, have to be made to the planning authority.

### *Access to Properties*

- 4.31. The provision of access to Properties in Care is one of the principal responsibilities of Scottish Ministers undertaken by Historic Scotland. The control and management of sites requires the provision of visitor facilities and information to support this. Access, and the associated understanding and promotion of the sites, lies at the heart of the sustainable management of Properties in Care.
- 4.32. Subject to the overriding objective of conservation and to the careful consideration of the safety of visitors and staff, Scottish Ministers are committed to improving, enhancing and encouraging all forms of access and understanding at their properties and their collections, and to setting the highest standards.
- 4.33. The process of planning for access put in place by Scottish Ministers seeks to optimise access. It will not, however, always be possible to provide full physical and intellectual access to the same degree at all sites. Some of the properties were designed to be difficult to access, and providing full access to these, or to parts of others, would require interventions that would be physically damaging or visually intrusive to an extent which is inconsistent with the primary duty of Scottish Ministers to conserve the properties in their care. Where full access is not possible they expect Historic Scotland to make efforts to provide other forms of access, particularly at popular sites.
- 4.34. Scottish Ministers are committed to developing the highest standards of practice in the presentation and interpretation of the properties, both on and off site. Where local or national interest groups, including equality and disability groups, exist, Scottish Ministers expect Historic Scotland to involve user groups and local communities in planning and developing site facilities and in monitoring the effectiveness of the new provision.
- 4.35. A small number of Properties in Care is not currently accessible to the public on a regular basis, and occasionally parts of other properties may be closed for safety, security or other operational reasons. Scottish Ministers expect Historic Scotland to manage effectively such closures and to advertise changes to opening times. A clear explanation should be provided for the closure in each case.
- 4.36. Scottish Ministers are committed to promoting the use, understanding and enjoyment of Scotland's historic environment as a valuable resource for learning and teaching. They expect the properties to provide a focus to inspire, motivate and nurture learners of all ages and backgrounds across Scotland, through both formal education and lifelong learning. There is a commitment to continuing free educational access to Properties in Care.
- 4.37. The cost of caring effectively for the estate of Properties in Care is high. Scottish Ministers are conscious of the wider economic benefits which arise from visits to the properties and do not expect the estate to generate sufficient revenue to cover these costs. They do however consider that, as in most other countries, visitors should meet part of the costs of operating the estate. They expect Historic Scotland to set admission and other charges which are broadly comparable with those at attractions operated by others and to take into account the facilities provided at each site in setting these charges. For a range of reasons, well over 250 of the properties are likely to remain free for the foreseeable future.

## IMPLEMENTATION OF POLICY ON PROPERTIES IN CARE

- 4.38. Implementation of the principles laid out in this policy paper will be embedded in business planning, processes and procedures across Historic Scotland. Where there are particular requirements, operational policy or guidance will be put in place after appropriate consultation. These will include operational policy or guidance on conservation, equality duties, admissions charging, acquisitions and disposals, and the natural environment at Properties in Care. An early outcome will be the publication of an Access Guide to Properties in Care.
- 4.39. In order to improve knowledge, increase understanding and prioritise resources Historic Scotland will maintain a programme of research on different aspects of work on Properties in Care, and where appropriate publish or archive the results.
- 4.40. Historic Scotland will continue an active programme of conservation at Properties in Care. This is planned and documented in Historic Scotland's annual works programme.
- 4.41. Historic Scotland will continue an active programme of interpretation, education and lifelong learning through the Properties in Care.
- 4.42. Historic Scotland will implement its health and safety policy for Properties in Care.
- 4.43. Historic Scotland will include equality and disability awareness training in its training programmes.

## CHAPTER 5: THE CONSERVATION OF THE HISTORIC ENVIRONMENT BY GOVERNMENT BODIES IN SCOTLAND

### INTRODUCTION

- 5.1. It is a long-accepted principle that government departments (and other government-funded bodies) should each be responsible for the care of assets in their ownership or care, including historic assets on land and under the sea. Parts of government own or manage key elements of Scotland's patrimony and it is the duty and privilege of individual government bodies and their staff to ensure that these historic assets – buildings (both in use and ruined), archaeology and historic landscapes – are properly managed and are handed on to future generations in good condition.
- 5.2. Ministers wish the Scottish Government and its associated bodies to set a good example in the care of their historic estate. Individual departments, directorates, agencies and other bodies which are accountable to Scottish Ministers are expected to adopt and implement the policies set out in the SHEP and to build the protection, management, maintenance or repair of historic assets into their operational and budgetary plans. Scottish Ministers expect UK departments operating in Scotland to manage any historic assets under their control according to the principles set out in the SHEP (see paras 5.6 and 5.8).
- 5.3. The responsibilities exercised by government departments in developing and implementing Ministers' policies in their individual areas of responsibility are set out in Chapter 1 of the SHEP. The most important historic assets in government care are those in the care of Scottish Ministers, managed by Historic Scotland. Ministers' policies for the properties in their care are set out in Chapter 4.

### POLICY CONTEXT

- 5.4. Government has an extensive historic estate encompassing buildings (both in use and ruined), archaeology and historic landscapes. Some of these assets have statutory protection as listed buildings, scheduled monuments or because they lie within Conservation Areas. Others may be included on the Inventories of Gardens and Designed Landscapes or Battlefields, or are in World Heritage Sites, National Parks, National Nature Reserves and National Scenic Areas. Public bodies need to have a consistent and co-ordinated approach to protecting these historic assets in the course of their estate management, disposal and procurement activities.
- 5.5. Some assets are best maintained in whatever state they have come down to us (for example archaeological sites); others are best maintained in a viable and appropriate use.

- 5.6. This policy sets out what Scottish Ministers expect of:
- a. all Scottish Government Directorates, Executive Agencies and NDPBs;
  - b. National Health Service, Scotland;
  - c. UK Government Departments operating in Scotland (whose duties in this area have until now been set out in the 2003 DCMS 'Protocol' (para 5.8 below).
- 5.7. The policy applies to property owned, managed, rented or leased out (where the terms of the lease allow the organisation to have a direct responsibility or effect) by these organisations. Where responsibility for maintaining archaeological sites and monuments, buildings or land is permanently transferred to the private sector, the requirements of this policy may need to be incorporated in the terms of any contract.
- 5.8. This chapter of the SHEP supersedes for Scotland the 2003 Protocol published for the UK by the Department of Culture, Media and Sport. The 1993 document *The Care of Historic Buildings and Ancient Monuments by Government Departments in Scotland* is also superseded by subject-specific pieces of general guidance published by Historic Scotland. This revision significantly reduces the administrative burden placed on public organisations by the 2003 document, and makes more explicit some areas of work that would have been necessary to implement fully the previous versions. The Department of Culture, Media and Sport are content that UK Government departments operating in Scotland follow the principles and practices set out in this document, in place of those set out in the 2003 Protocol.
- 5.9. It is an important principle that the responsibilities set out in this document and in any guidance and advice issued by Historic Scotland are exercised **in a proportionate way** appropriate to the actual needs of, and what is practicable for, the assets being managed, and to any over-riding operational or legal requirements (such as the security of listed prison buildings or other installations).
- 5.10. Some historic assets will comprise or form part of sites designated also for their national or international biodiversity, natural environment or landscape interest. In such cases an appropriate balance will have to be found between any different management requirements.

## IMPLEMENTATION

The bodies set out in para 5.6 will:

### *Know what assets they have*

- 5.11. Organisations must be aware of the designated historic assets in their estate and should either establish and maintain an inventory of assets, or ensure that their existing property/asset management systems take account of historic aspects. Such assets might include: a building or group of buildings; part of a building (e.g. a retained façade); an individual archaeological site or monument or a group of them. Priority in all activities should be given to designated assets (scheduled monuments; listed buildings; conservation areas; gardens and designed landscapes or battlefields on non-statutory Inventories (see Chapter 2)). This record should where possible incorporate a statement of the asset's significance based on available information.

- 5.12. Historic assets that are not scheduled, listed or on the Inventories – particularly archaeological features – may be material considerations in the planning system or require mitigation in advance of development and bodies should normally also record the location and, if known, the extent of such assets. These basic data are available from RCAHMS and from local Historic Environment Records.

***Identify a responsible officer***

- 5.13. Someone within each organisation should take responsibility for ensuring that policies and procedures for the historic environment are in place. This person will ensure that a record of historic assets is maintained (see 5.1 above), including any **significant** interventions in the historic environment such as management, repair, maintenance and adaptations. The officer should ensure that individual property managers are aware of their responsibilities under the relevant heritage legislation and the SHEP and ensure that the body complies with the reporting requirements included in this document. Where a building is in shared occupation, one organisation should be identified as taking the lead. The officer should be a person at an appropriate level in the conservation or property management structure of the organisation. Where a body has significant holdings of historic assets a director or senior manager should have oversight of their conservation.

***Use consultants and contractors with appropriate qualifications and expertise***

- 5.14. It is strongly recommended that specialist conservation consultants and practitioners appropriate to the nature and significance of the asset and the scale of the works are used to prepare condition surveys and to advise on any works of alteration or repair. This also applies to works of research, evaluation and investigation.

***Commission condition surveys, inspections and research where appropriate***

- 5.15. A fundamental requirement of the SHEP is to maintain a system of regular condition surveys for designated assets (no more than 5 years apart), appropriate to the sort of historic asset – buildings will require a very different approach from, for instance, archaeological earthworks. Such a survey cycle should not replace any more intensive programme of inspection, for example for health and safety reasons such as to ensure that stonework is stable. These reports should identify and prioritise necessary repair and major maintenance requirements. For major infrastructure projects reports should set out the measures carried out to locate, assess significance, avoid, mitigate and record/investigate historic environment assets. If buildings in intensive use are the subject of continuous surveillance and maintenance periodic formal inspections may not be necessary.
- 5.16. Where there are existing monitoring or management arrangements (for example, Historic Scotland has management agreements with Forestry Commission Scotland and Historic Scotland's Heritage Management Field Officers record the state of scheduled monuments) practical arrangements will be made to avoid duplication.

***Develop site-specific management guidance***

- 5.17. Where appropriate, in addition to regular condition reports, further site-specific guidance can usefully be prepared such as conservation management plans and incident response plans. Such guidance, which should be based upon a thorough understanding of the significance of the asset, will enable sound judgements to be made about repairs, alterations, management, reuse or disposal.

- 5.18. In order to understand fully the building or site, it may be necessary to commission additional research, analysis, survey or investigation. This may be necessary in advance of carrying out works, or in the course of preparing conservation management plans, management guidelines or conservation manuals. A repair and maintenance programme on its own may be insufficient to address complex conservation problems and inherent defects.
- 5.19. Management provisions may include risk assessment, disaster planning (see Note 5.1), access guidance, preventive conservation and environmental assessment particularly where there are inherent defects, vulnerable interiors and any potential conflict between conservation and building use.

***Draw up and implement a prioritised maintenance schedule, and planned programme of repairs, maintenance and preventative conservation***

- 5.20. Where it is appropriate, planned maintenance registers and forward repair plans are recommended as a means of converting the information provided by the inspections and investigative work into prioritised and costed forward programmes of work. This can vary from cutting vegetation to previously planned maintenance on a major building.
- 5.21. Future repairs identified in the condition reports and surveys, with their estimated costs, and day-to-day maintenance requirements identified in the conservation manual should be included on the register, so that targets can be set for each historic asset over the years.

***Ensure a high standard of design in any new work and in the alteration of the historic environment***

- 5.22. New work, including alterations and extensions to historic buildings as well as new buildings in historic areas, should enhance its surroundings. Recent guidance relevant at both the planning and building control application stages has introduced the concept of Access Statements as a way of demonstrating that design, refurbishment and product selection decisions have, or will, address the obligations of reasonableness introduced by the Disability Discrimination Act 1995 (DDA). New work should also take into account the principles of sustainable development as set out in the SHEP and other Scottish Government policies.

***Ensure that appropriate materials and management regimes are used***

- 5.23. Particularly before 1919 most buildings were erected using locally-sourced materials by a labour force with traditional construction skills. Repairs to historic buildings are best carried out using similar materials and an appropriately skilled workforce.
- 5.24. The inappropriate use of modern materials, such as cement renders, can cause major damage to historic structures. Older buildings also need appropriate heating and ventilation. It is always better to work with rather than against the needs of an historic structure. Historic Scotland publishes advice on the maintenance of traditional buildings on its website.

***Protect buildings at risk***

- 5.25. The Buildings at Risk Register for Scotland is currently maintained by the Royal Commission on the Ancient and Historical Monuments of Scotland on behalf of Historic Scotland, and provides information on properties of architectural or historic merit throughout the country that are considered to be at risk. A Building at Risk is usually a listed building, or an unlisted building within a conservation area, that meets one or more of the following criteria:
- a. vacant with no identified new use (unless a suitable maintenance regime is in place);
  - b. suffering from neglect and/or poor maintenance;
  - c. suffering from structural problems;
  - d. fire damaged;
  - e. unsecured;
  - f. open to the elements;
  - g. threatened with demolition.

To be at risk, a building does not necessarily need to be in poor condition, it may simply be standing empty with no clear future use. Many buildings at risk are in this latter category. The buildings at risk register (BARR) is available online at [www.buildingsatrisk.org.uk](http://www.buildingsatrisk.org.uk)

- 5.26. The National Performance Framework (NPF) measure for the historic environment is currently based on the percentage of Category A listed buildings on the Buildings at Risk Register.

The NPF is available at [www.scotlandperforms.com](http://www.scotlandperforms.com)

Every endeavour should therefore be made by organisations reporting to Scottish Ministers and other agencies of government to ensure that their buildings should not be in such a state as to be on this Register. If buildings are on the Register organisations are urged to work with the statutory authorities to agree a strategy for resolving each case.

***Work to keep buildings in active use***

- 5.27. Wherever possible, bodies should work imaginatively with others in the private, public and charitable sectors to find new uses or identify appropriate management regimes for redundant buildings.
- 5.28. Departments and agencies should observe the government guidance on the disposal of historic buildings (see Note 5.2).

***Prepare quinquennial stewardship reports***

- 5.29. Bodies covered by the policy should prepare a report to Historic Scotland on their stewardship of all the historic assets in their care every five years. This is intended to be a high-level report describing, under the headings of this policy, the operational policies and arrangements that are in place and noting the main actions to achieve their aims. This replaces the requirement to make detailed biennial returns on individual assets, under the 2003 Protocol.

***Ensure that the historic environment is included in climate change actions plans and policies***

- 5.30. The historic environment should be included in all site-specific climate change action plans and policies. It is recommended that they include assessment of climate change impacts, measures to ensure that vulnerable sites can respond to changes in climate, monitoring, control and reduction of site carbon footprint and energy usage. All energy efficiency measures should be effective, appropriate and take into account any special historic or architectural features of buildings and landscapes.

**ROLE OF HISTORIC SCOTLAND**

- 5.31. Historic Scotland acts for and provides advice to Scottish Ministers on all matters relating to the historic environment. The agency has statutory functions, for example in relation to scheduled monuments and listed buildings, Historic MPAs, gardens and designed landscapes and battlefields, and welcomes preliminary discussion of proposals that will affect designated sites and buildings.
- 5.32. As noted above, bodies are expected to make the necessary internal arrangements for the management of public assets in their care. Historic Scotland can provide advice on policies and processes and, where necessary, on individual cases. Historic Scotland will assist in every practical way to ensure that the historic environment in the care of Ministers is treated with sympathy and properly cared for. Ministers' policy is, however, that public funds supplied to HS for grant-aid for building repair and management agreements will not be channelled to other parts of government.



## CONTACTS

Further information on Scheduling, Listing, Conservation Areas, Historic MPAs, the inclusion of Gardens & Designed Landscapes and Historic Battlefields on the Inventories and on the related consents processes can be found on Historic Scotland's website [www.historic-scotland.gov.uk](http://www.historic-scotland.gov.uk). Copies of the booklets *Scheduled Monuments: a guide for owners, occupiers and managers* and *Scotland's Listed Buildings* can be obtained from Historic Scotland at the address below. Historic Scotland is constantly improving the information available on the nature, location and, where appropriate, the extent of designated sites on its website. Specific queries on the contents of this paper should be directed, as appropriate, to the following Historic Scotland staff:

- *The SHEP document itself* – The Head of Policy and Legislation  
Tel: 0131 668 8650 [hs.policyandoutreach@scotland.gsi.gov.uk](mailto:hs.policyandoutreach@scotland.gsi.gov.uk)
- *Consents* – Historic Scotland's Heritage Management Directorate  
Tel: 0131 668 8889 [hs.heritagemanagement@scotland.gsi.gov.uk](mailto:hs.heritagemanagement@scotland.gsi.gov.uk)
- *Designations* – Historic Scotland's Policy and Outreach Directorate  
Tel: 0131 668 8728 [hs.policyandoutreach@scotland.gsi.gov.uk](mailto:hs.policyandoutreach@scotland.gsi.gov.uk)
- *Cultural Heritage* – The Head of Cultural Heritage  
Tel: 0131 668 8673 [hs.policyandoutreach@scotland.gsi.gov.uk](mailto:hs.policyandoutreach@scotland.gsi.gov.uk)

All are based at Historic Scotland's headquarters:

Historic Scotland  
Longmore House  
Salisbury Place  
Edinburgh  
EH9 1SH

Switchboard Tel: 0131 668 8600



## NOTES

### NOTES TO THE INTRODUCTION

Note 0.1 More information on Historic Scotland can be found on its website [www.historic-scotland.gov.uk](http://www.historic-scotland.gov.uk) The 2008 Framework Document can be accessed on Historic Scotland's website: [www.historic-scotland.gov.uk/framework-document.pdf](http://www.historic-scotland.gov.uk/framework-document.pdf)

Note 0.2 The UK Marine Policy Statement can be viewed at: <http://www.scotland.gov.uk/Resource/Doc/295194/0115242.pdf>

### NOTES TO CHAPTER 1

Note 1.1. Until 1919 most houses were built by craftsmen using traditional indigenous building materials.

Note 1.2. Information on World Heritage Sites generally can be found at: <http://whc.unesco.org/en/175/> and on the Scottish sites at: [www.historic-scotland.gov.uk/index/heritage/worldheritage.htm](http://www.historic-scotland.gov.uk/index/heritage/worldheritage.htm)

Note 1.3. The National Performance Framework can be accessed on the Scottish Government website: [www.scotlandperforms.com](http://www.scotlandperforms.com)

Note 1.4. The 32 local authorities have a major contribution to make through their role as planning authorities, as co-ordinators of the community planning process, as owners of historic buildings, ancient monuments and parks, and as education and cultural authorities, operating museums, galleries, libraries and archives. Local authorities, at their own hand or through shared services or associated heritage trusts, undertake a wide range of duties in relation to the historic environment. These can include (although not all local authority or other analogous services provide all of the services listed here):

- a. determining listed building consent applications (in partnership with Historic Scotland);
- b. determining conservation area consent applications (in partnership with Historic Scotland);
- c. maintaining a Sites and Monuments Record or Historic Environment Record;
- d. providing advice to applicants for environmental management funds supplied through the Scottish Government to land managers;
- e. undertaking work to identify and protect important archaeological sites that might be affected by forest and woodland planting and management proposals on both public and privately-owned land.

Note 1.5. RCAHMS is a non-departmental public body sponsored by Historic Scotland. It is a key partner of the Agency whose work in survey and record-keeping underpins a significant proportion of Historic Scotland's work of designation and aids the work of many organisations, businesses and individuals. More information on RCAHMS can be found on its website [www.rcahms.gov.uk](http://www.rcahms.gov.uk)

Note 1.6. Scotland's Historic Environment Audit was set up on the recommendation of the Historic Environment Advisory Council for Scotland: the Audit website is at: [www.heritageaudit.org.uk](http://www.heritageaudit.org.uk)

Note 1.7. PASTMAP is a web-based information resource on the historic environment providing a range of information, free of charge. The website represents a major joint initiative between Historic Scotland, the Royal Commission on the Ancient and Historical Monuments of Scotland and local government. The PASTMAP website ([www.pastmap.org.uk](http://www.pastmap.org.uk)) was launched in 2004 and has been a great and undoubted success.

Against a dynamic map base, users can display the locations and, where appropriate, the extent, of:

- a. all the sites, buildings and places recorded in the national database maintained by the Royal Commission on the Ancient and Historical Monuments of Scotland;
- b. all of Scotland's c. 47,000 listed buildings;
- c. Scotland's c. 8000 scheduled monuments;
- d. Gardens and designed landscapes (389);
- e. Historic Battlefields;
- f. Marine Protected Areas;
- g. (over a growing part of Scotland) sites, buildings, places and find spots recorded by local government historic environment services.

## 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 Scotland Technical Advice Note 8.

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

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 more comprehensive 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 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. The criteria in force between 1983 and 2005 were published in the Scottish Government's Planning Advice Note 42 Archaeology, the Planning Process and Scheduled Monument Consent Procedures (PAN 42). These were superseded by the publication in 2006 of the criteria and guidance now set here out in

Annex 1. PAN 42 has now been superseded by PAN 2/2011 *Planning and Archaeology* which can be found at:

<http://www.scotland.gov.uk/Publications/2011/08/04132003/0>

Note 2.8. Section 2 of the 1979 Act.

Note 2.9. The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 can be accessed at [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk)

Note 2.10. 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 the Scottish Ministers. 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;
- 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.

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

Note 2.12. 1997 Act, section 1(3).

Note 2.13. 1997 Act, section 2(2) and 2(2)(a), sets out this requirement. Up-to-date information on the lists can be obtained from the appropriate local planning authority or from Historic Scotland. Every planning authority is required by the Act to keep available for public inspection, free of charge, at reasonable hours and at a convenient place, copies of those lists and the amendments to them which relate to the buildings within its area. The Scottish Ministers are similarly required to keep a copy of the full List available and do so at the headquarters of Historic Scotland at Longmore House, Edinburgh (under the 1997 Act section 2(4) and 2(3) and through the agency's website, [www.historic-scotland.gov.uk](http://www.historic-scotland.gov.uk)). The lists are also available through the Royal Commission on the Ancient and Historical Monuments of Scotland, and through PASTMAP ([www.pastmap.org.uk](http://www.pastmap.org.uk)).

Note 2.14. 1997 Act, section 2(2)(a).

Note 2.15. 1997 Act, section 1(4)(b)

Note 2.16. 1997 Act, section 6.

Note 2.17. 1997 Act, section 9. Where a building is both listed and scheduled, the scheduling legislation takes precedence and the other legislation is disappplied.

Note 2.18. Historic Scotland (since January 2006) issues a welcome pack to the owner of any newly listed building, including the findings of consultation and providing supporting information on the designation. Historic Scotland provides advice on what listing means to owners and occupiers in the free publication *Scotland's Listed Buildings*, also available at:  
<http://www.historic-scotland.gov.uk/scotlands-listed-buildings.pdf>

Note 2.19. 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 and grant award. 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(S) 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 2.20. 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 2.21. Since this policy was first promulgated, Geographical Information Systems have become common. It is requested that Scottish Ministers also be provided with boundary information in an open GIS format.

Note 2.22. Notice of this must be published and Scottish Ministers 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 2.23. 1997 Act, section 64.

Note 2.24. It might, for example, be sufficient to publish in a local paper and in the Edinburgh Gazette a notice conveying the authority's intentions, informing the public of a convenient place at which maps and background documents can be viewed and inviting comments. A public meeting will often be a useful way both of conveying information and of allaying unfounded fears about the impact of conservation area status on local owners. Consultation with other statutory authorities in the area is also recommended.

Note 2.25. 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 2.26. 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 2.27. The Protection of Military Remains Act 1986 is administered by 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 2.28. 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.