

Matthews B (Barry)

From: Eila Macqueen (CSA) [e.macqueen@scottisharchaeology.org.uk]
Sent: 29 March 2007 21:00
To: Cultural Bill Consultation
Subject: Council for Scottish Archaeology response

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Please find attached out response to the draft culture bill

Eila Macqueen BSc, MPhil, ADMP, AMA
Director

Council for Scottish Archaeology | Causewayside House | 160 Causewayside |
Edinburgh | EH9 1PR | 0131 668 4189 | www.scottisharchaeology.org.uk
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**The CSA will be hosting the Scottish Archaeology Fair at Strathpeffer Pavilion on the 5th May 2007. Exhibitors from local and national groups and organisations will be making archaeology and heritage come to life through hands-on activities, interactive displays, re-enactments and walks and talks for all ages. To get involved contact us!
This event is FREE.**

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Barry Matthews
Scottish Executive
1-A North
Cultural Policy
Victoria Quay
Edinburgh
EH6 6QQ

29th March 2007

DRAFT CULTURE (SCOTLAND) BILL CONSULTATION

The Council for Scottish Archaeology¹ (CSA) welcome this consultation on the **Draft Culture (Scotland) Bill**, in particular the restructuring of the Royal Commission on the Ancient and Historical Monuments Record of Scotland (RCAHMS) and the introduction of legislation to make it an offence to deal with 'tainted' cultural objects. However, CSA feels that there are opportunities in this Bill to introduce additional legislation to strengthen cultural heritage protection in Scotland.

In particular, we would wish to see this Bill introduce -

- A statutory duty of care for the historic environment, applicable to all public bodies and for all projects, procedures and practice in receipt of public grant
- A statutory requirement on local authorities to maintain, use and make publicly available a Sites & Monuments Record.

The former is, in part, the primary recommendation of the Historic Environment Advisory Council (HEACS) report, "*Report and recommendations on the role of local authorities in conserving the historic environment*" submitted to the Minister for Tourism, Culture and Sport in July 2006. The latter is a cultural entitlement that should be available in all local authority areas and follows directly from several of the recommendations in the above HEACS Report. This does not require mapping but instead wholehearted endorsement by the Scottish Executive so that it is properly resourced and updated. This will require agreed standards and levels of service. The provision of adequate and appropriate archaeological and historic site and building information and advice should be a right for all citizens in Scotland.

We therefore suggest that the latter should either be added in **Part 1 LOCAL GOVERNMENT FUNCTIONS** in a new Paragraph:

¹ *The Council for Scottish Archaeology (CSA) is an independent voluntary body dedicated to the preservation, study and enjoyment of Scotland's archaeological heritage. The Council for Scottish Archaeology is a Scottish charity (No. SC 001723) and a Company registered in Scotland (No. 262056) and works with its members to give a greater voice to our past. CSA defines the archaeological resource in the widest sense to include the cultural heritage and historic environment of Scotland. This definition is inclusive of historic landscapes and places of memory as well as the more physical remains of Scotland's past. It speaks for the archaeological community, amateur and professional, and has the overriding aim of securing Scotland's past for the future. Its remit covers education, liaison between statutory, voluntary and other appropriate organisations, promotion of the identification and conservation of the archaeological resource, and the encouragement of policies to ensure adequate measures for the preservation, management and interpretation of this resource.*

Sites and Monuments Record Services

(1) Each local authority shall make adequate provision for a local Sites and Monuments Record Service for their area, pursuant to their exercise of their functions under the Act or a specific Part HISTORIC ENVIRONMENT.

Specific Questions within Consultation

LOCAL CULTURAL ENTITLEMENTS AND CULTURAL PLANNING

1. Do you think that developing local cultural entitlements will help to increase participation in cultural activities?

Yes

NATIONAL COLLECTIONS

8. Do you agree that the National Collections should remain as constitutionally separate centres of excellence?

Yes, CSA believe that the National Collections should remain as constitutionally separate centres of excellence.

9. Do you think the powers and functions proposed for the Collections in the draft Bill are right? If not, how would you improve them?

CSA has some concerns over the powers specified in para. 18 (2)

'.....a cultural body may in particular-

- (h) require payment for admission
- (i) make charges for the provision of other services (including the provision of advice or assistance) or for the provision of goods,'

While accepting that there may be occasions when it is necessary to charge for temporary exhibitions or specific specialist advice, CSA would not wish to see these proposals lead to any diminution of the right of free public access to the National Collections or the principle of free advice to the public.

10. Do you agree that the Faculty of Advocates should be able to contribute to the board of the National Library by having at least one representative?

Given that the Advocates Library Collection is accessible beyond the Faculty of Advocates through the National Library it may seem appropriate to reserve a seat or seats on the board of the National Library for the Faculty of Advocates. However this may be achieved without a specific legal requirement.

12. What do you think of the name 'National Record of Scotland'?

We would suggest reverting to '*National Monuments Record of Scotland*' as currently known and which, while not fully comprehensive in covering all the records held by the RCAMHS, better conveys the historical depth of the collection.

DEALING IN 'TAINTED' CULTURAL OBJECTS

13. Do you agree that an offence similar to that in the 2003 Act should be introduced in Scotland?

CSA is strongly in favour of the introduction of a criminal offence for trading or dealing in tainted cultural objects, similar to that adopted by the UK Government in the *Dealing in Cultural Objects (Offences) Act 2003*. This should be adopted as a matter of some urgency in Scotland.

CSA would wish to see this section expanded beyond the 'offence of dealing in tainted cultural objects' to clarification as to when an offence has been committed. CSA would therefore wish to see para. 24 (2) re-written to read

'A cultural object is tainted if a person removes a cultural object-

- (a) from a building or structure of historical, architectural or archaeological interest of which the object forms or has at any time formed part, or
- (b) from a monument, site or area of historical, architectural or archaeological interest.
- (c) Without recording its discovery and location to the appropriate authorities.'

Under the law of *bona vacantia* (see www.treasuretrovescotland.co.uk) an offence has been committed if an archaeological object is not reported to the Treasure Trove Secretariat.

Therefore any archaeological object not so reported, regardless of whether it comes from a known archaeological site or not, is 'tainted' and should come under this new offence. This is partly addressed under para. 24 (3) though we would suggest that the ambiguous qualifying clause 'after the commencement of that section' is removed so that this reads:

'A cultural object is also tainted if a person excavates the object and the excavation constitutes an offence. The offence includes the failure to report timeously the excavation or discovery of a cultural object to the appropriate authorities.'

Para. 25 (2) should therefore be re-written to read

'In subsection (1)-

"acquires" means buys, hires, borrows, accepts or otherwise gains possession of,'

POWERS OF LOCAL AUTHORITIES TO BROADCAST INFORMATION

14. Do you agree local authorities should have a general to broadcast information about these activities?

Not an issue with which CSA has major concerns, but in principle CSA would support this proposal.

For further information, please contact

Eila Macqueen

Director

Council for Scottish Archaeology

e.macqueen@scottisharchaeology.org.uk

Yours sincerely

Eila Macqueen

Director