

# **REVIEW OF THE STRUCTURE AND FUNCTIONS OF HISTORIC SCOTLAND**

## **Summary of Recommendations**

The main findings of this report are that:

1. All of the functions currently delivered by Historic Scotland should be delivered by a single organisation. Separation of the properties in care functions from Historic Scotland's regulatory and policy functions would not result in increased protection for the sites. (pages 23 and 31-32)
2. Historic Scotland should remain as an Executive Agency. This does not imply maintenance of the status quo as there is a clear need for significant cultural change. (pages 35-36)
3. Tourism, Culture and Sport is the most appropriate current portfolio for Historic Scotland which should continue to be part of the Education Department. (page 35)
4. It would reinforce the independence of HEACS if the secretariat for the organisation was independent within Historic Scotland. (page 36)
5. An Executive endorsed policy statement for the historic environment in Scotland should be developed in consultation with stakeholders, building on the First Minister's St Andrew's Day speech and the National Cultural Strategy. (page 10 and 18)
6. Historic Scotland should engage with stakeholders in a debate about the organisation's practices. Following this process Historic Scotland should ask Ministers formally to endorse their practices. (page 19)
7. There is a role for Historic Scotland or a successor organisation in emphasising the important role of the historic environment. There are three main elements to this role:
  - Supporting Ministers to allow them to advocate at a political level for the historic environment;
  - Providing advice to organisations and individuals on how best to support and protect the historic environment; and
  - A capacity building role to enable non-governmental organisations to highlight issues of importance to the sector. (pages 19-20)
8. The Chief Executive should consider how best to deliver cultural change to:
  - Improve communications with a greater focus on transparency and openness;
  - Maintain the focus on delivery including the importance of delivering services to those in remote locations;
  - Increase flexibility and innovation to ensure that the organisation is responsive to change;
  - Focus on building partnerships with stakeholders and customers and being open to ideas from outwith the organisation. (pages 33-34)
9. It would be helpful if external challenge and support could be introduced to the Management Board through the appointment of external members. (page 34)

10. The Scottish Executive Planning Divisions should provide advice to Ministers on the outcome of Public Local inquiries in relation to listed buildings and scheduled monument consent applications. (pages 13-16)
11. We recommend that the Concordat between Historic Scotland and the Scottish Executive Planning Divisions should be updated to take account of any changes arising from this review and that the Concordat should be published. (page 15)
12. Clear and concise information and guidance on the listed building and scheduled monument consent processes and their relationship to the planning process should be provided to all those with an interest in proceedings including planning authorities, applicants and local community organisations and heritage bodies. (pages 15-16)
13. Historic Scotland should seek to provide information and advice in an accessible format to owners and occupiers of listed buildings, and owners of scheduled ancient monuments focusing on the benefits of owning a listed building or ancient monument. (page 16)
14. There would be benefits in local authorities working together to develop shared expertise in conservation advice and listed building consent cases. (page 16)
15. Historic Scotland should work with COSLA and individual planning authorities to prepare concordats or service charters setting out the role and responsibilities of different organisations in relation to the historic environment. (page 15-16)
16. Historic Scotland should be encouraged to explore the scope for partnership working with organisations which share their ethos and objectives where there are mutual benefits. (page 35)
17. It is important that Historic Scotland's review of the grants process addresses the concerns identified by stakeholders. (page 17)
18. The fact that Historic Scotland is the guardian of last resort should not allow other agencies to ignore their responsibilities in this area. (page 24)
19. The Chief Executive of Historic Scotland and the Head of the Scottish Executive Education Department should be charged with developing a set of hard targets and soft indicators which reflect the full range of Historic Scotland's activities. One possible option would be to split Historic Scotland's performance targets into two groups:
  - A set of hard targets, which are quantitative and can be easily measured; and
  - A set of indices which relate to the quality of Historic Scotland's work but where it is more difficult to establish measurable qualitative targets. A set of indicators could be identified which, while not presenting a complete picture, would signify the type of behaviour an organisation would be expected to exhibit if it was delivering high quality provision. (page 27)
20. Historic Scotland's Framework Document was last updated in 2001 and should be revised to reflect further changes, including the establishment of HEACS, and to update the delegated financial limits. (page 36)

## **INTRODUCTION**

1. In December 2002 Mike Watson, the then Minister for Tourism, Culture and Sport announced a review of the structure and functions of Historic Scotland and made a commitment that the results of the review and Ministers' conclusions in the light of that review would be made available to Parliament.

2. Executive Agencies are currently subject to reviews of their status and functions by the Scottish Executive at 5 yearly intervals (Quinquennial Reviews). A Review of Historic Scotland was conducted in 1993-1994; a further review planned for 1999 was held over, along with a number of others, because of the wider changes flowing from devolution.

### **Terms of Reference**

3. The terms of reference of the review were:

- (a) to consider the range of functions currently discharged by Historic Scotland on behalf of Scottish Ministers;
- (b) to consider whether the most appropriate vehicle for the accountable delivery of those functions deemed necessary or desirable is an Executive Agency, an NDPB, a Departmental body, a privatised entity, a voluntary organisation or some combination of these options; and
- (c) to make recommendations to Ministers that take cognisance of the financial and practical implications of the various options considered.

### **Process**

4. The review was undertaken by Mike Ewart, the Head of the Scottish Executive Education Department. The process was guided by a Steering Group chaired by Mike Ewart while the detailed review work was undertaken by Rachel Sunderland from the Scottish Executive Education Department. The Steering Group comprised Tim Barraclough, Head of the Public Bodies Unit in the Scottish Executive; Kathleen Dalyell, Chairman of the Royal Commission on the Ancient and Historical Monuments of Scotland; Margaret Ford, Chief Executive of Good Practice Ltd and Chairman of English Partnerships; David Reid, Scottish Executive Finance and Central Services Department and Andrew Wright, Chartered Architect and Heritage Consultant. Graeme Munro, the Chief Executive of Historic Scotland attended Steering Group meetings. While this Report to Ministers is from the Head of the Scottish Executive Education Department the recommendations have been endorsed by the Steering Group.

5. The Steering Group held five full meetings, including a meeting with representatives of the Historic Environment Advisory Council for Scotland (HEACS). In addition the Group met with George Street Research, Audit Scotland and representatives of the Scottish Executive Planning Departments. Copies of all of the papers considered by the Steering Group at their meetings (apart from drafts of the final report) were placed on the Scottish Executive website. The website also included a short summary of each meeting.

6. The first part of the review process was to establish the views of stakeholders. On 25 June 2003, a discussion document was issued to a wide range of organisations and individuals working in areas relevant to the historic environment in Scotland. Almost 300 copies of the discussion paper were issued and a copy was placed on the Scottish Executive website. Information about the review and a link to the discussion paper were also placed on the Historic Scotland website. A copy of the discussion paper is attached at **Annex A**.

7. Responses were requested by 17 September 2003 and a total of 131 responses were received. An independent analysis of the consultation responses was undertaken by George Street Research and has been published by the Scottish Executive. A summary report of that analysis is attached at **Annex B**.

8. In addition meetings were held between Rachel Sunderland and a number of stakeholder bodies and Historic Scotland staff as well as officials in English Heritage, the Department for Culture, Media and Sport (DCMS), Cadw and the Department of the Environment, Heritage and Local Government in Ireland. The recent Quinquennial Reviews of English Heritage and Cadw and the changes to the administrative arrangements for dealing with heritage policy in Ireland were noted.

9. The Auditor General for Scotland has undertaken a routine performance management review of Historic Scotland to examine the Agency's approach to measuring and managing performance. The two review processes are complementary and have proceeded to similar time scales. The review teams have worked to minimise overlap and to share information on the key emerging messages.

## BACKGROUND

1. Historic Scotland is required to discharge Scottish Ministers' functions in relation to the built heritage – that is, ancient monuments and archaeological sites and landscapes, historic buildings, historic parks and gardens; and designed landscapes. These functions are set out in legislation and outlined in further detail in pages 8-10 of this report but focus on safeguarding ancient monuments and buildings of special architectural and historical interest. This involves the delivery of certain statutory functions and also non-statutory activities. The organisation's mission statement is:

*To safeguard the Nation's built heritage and to promote its understanding and enjoyment*

Within this mission statement the organisation has identified four principal objectives:

- To protect and conserve Scotland's built heritage;
- To encourage public appreciation and enjoyment of Scotland's built heritage;
- To play an active role in the development and success of Scottish Ministers' social, economic and environmental policies; and
- To be effective and efficient in their work.

2. The organisation was established as an Executive Agency in April 1991. Executive Agencies were introduced across UK Departments from 1988 as a consequence of the Next Steps Initiative aimed at improving the delivery of public sector services. Executive Agencies are usually established where a set of functions can be carried out discretely within a clear policy framework set by Ministers. They are normally set up within a Government Department and Agency staff are civil servants. As an Agency Historic Scotland is therefore directly accountable to Scottish Ministers who are, in turn, directly accountable to the Scottish Parliament for its performance.

3. The accountable officer from the parent Department is accountable for the annual budget from which the Agency's administrative and other costs are allocated. The Chief Executive of the Agency is designated as the Agency's accountable officer. He is accountable for the propriety and regularity of expenditure and for achieving best value. Both the Agency Chief Executive and the accountable officer from the parent Department may be required to appear before the Scottish Parliament's Audit Committee. Historic Scotland's parent Department is the Scottish Executive Education Department and the relevant Minister is the Minister for Tourism, Culture and Sport.

4. Historic Scotland's Framework Document sets out the key elements of the policy and resources framework for the Agency and the relationship between, and respective responsibilities of, the Chief Executive, the Minister and the Department. Historic Scotland's Framework Document was originally prepared in 1991 and amended following the Review in 1993-94 and again following the establishment of the Scottish Parliament. The current Framework Document issued in 2001.

5. The organisation employs approximately 900 (full time equivalents) members of staff in a wide range of disciplines and skills including archaeologists, architectural historians, conservators, craftsmen/women, stewards, keykeepers, building professionals and specialised support staff and administrators.

6. The Scottish Budget 2002 allocated resources to Historic Scotland for the financial years 2003-04, 2004-05 and 2005-06. The budget allocations over this period are set out below. The Executive's spending plans are set out in the Draft Budget. The Draft Budget for 2004-5 sets out the total level of Executive spend and the level of spend within each portfolio. Details are included below.

	2002-03 (£m)	2003-04 (£m)	2004-05 (£m)	2005-06 (£m)
Historic Scotland	37	37.5	40.0	42.2
Tourism, Culture & Sport		206.06	232.98	265.38
Scottish Executive		22,763.83	24,003.42	25,653.43

In addition Historic Scotland raises income principally from admissions to its properties in care, retail, tourism and corporate events. In 2002-2003 this totalled £21.4m. The expected income for 2003-04 is £22.7m.

### Associated Organisations

7. The Historic Environment Advisory Council for Scotland (HEACS) was established by Scottish Ministers as an advisory Non Departmental Public Body to provide informed and independent advice to Ministers on issues affecting the historic environment, including the functions of Scottish Ministers in relation to the historic environment. HEACS' role was set out in the *Public Appointments and Public Bodies (Scotland) Act 2003* and the organisation came into being on 1 June 2003. Historic Scotland currently provides the secretariat and support functions for HEACS.

8. The Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) was established by Royal Warrant in 1908. It records and interprets sites, monuments and buildings of Scotland's past and maintains the National Monuments Record of Scotland (NMRS). The Historic Scotland Foundation was established in 2002 as an independent registered charity to support the work of Historic Scotland.

9. In England the main heritage body is English Heritage, a Non Departmental Public Body (NDPB) established under the *National Heritage Act 1983* and sponsored by the Department of Culture, Media and Sport. English Heritage has a similar but narrower, range of functions compared to Historic Scotland.

- In England the Royal Households and the Royal Parks Agency run the occupied Royal Palaces and Parks respectively;
- Historic Royal Palaces (a Royal Charter Body with charitable status) runs the unoccupied Royal Palaces in England (Tower of London, Hampton Court Palace, Kensington Palace State Apartments, the Banqueting House and Kew Palace);
- English Heritage provides advice on listing and scheduling but final decisions are taken by the Secretary of State for Culture, Media and Sport.

10. Responsibility for the built heritage in Wales is managed by Cadw, an Executive Agency of the National Assembly for Wales. Cadw's functions and organisation are broadly

comparable with those of Historic Scotland. Cadw is co-located with the core Assembly Departments and shares many of their support functions. Historic Scotland has its own personnel and finance units.

## **Context**

11. This review and the issues arising from it are not taking place in a static environment. For example Frank McAveety MSP, the Minister for Tourism, Culture and Sport has asked HEACS to consider five issues affecting the historic environment:

- Whether there is a need to review heritage protection legislation in Scotland;
- If there is a need for a “heritage audit” in Scotland and if so how to take it forward;
- How we ensure the availability of adequate and appropriate traditional materials and professional and craft skills to meet the needs of the built heritage;
- The role of local authorities in conserving the historic environment; and
- The criteria that should be applied for taking historic properties into the care of Scottish Ministers.

The conclusion of these considerations could change the context within which Historic Scotland works. HEACS’ considerations are still at an early stage and the organisation’s first meeting was only in October 2003.

12. The Executive has already indicated its intention to modernise the planning system to improve transparency, accountability and public participation. The Department for Culture, Media and Sport and the Welsh Assembly are currently consulting on proposals to change the system for protecting the historic environment and have commissioned research into the possible unification of consent regimes embracing planning permission, listed building consent, scheduled monument consent and building regulations. While these proposed changes only apply to England and Wales they are evidence of the changing context for our deliberations.

13. We could clearly not seek to prejudge the outcome of these processes and therefore our considerations were based upon the current situation within which Historic Scotland operates. However, given the potential for change it is important that Historic Scotland, or any successor organisation is capable of embracing change.

## FUNCTIONAL EFFECTIVENESS

### Context

1. Not all of the functions discharged by Historic Scotland are defined in legislation. In considering the range of functions discharged by Historic Scotland we therefore initially considered international agreements, the legal framework setting out the functions which must be undertaken and Ministerial policies and priorities in relation to the historic environment. We then considered whether the functions currently undertaken by Historic Scotland reflect those priorities.

### International Conventions and Obligations

2. The UK Government is a signatory to a number of international conventions which place duties upon the state in relation to the built heritage. These include the:

- European Cultural Convention
- Convention for the Protection of the Architectural Heritage of Europe
- European Convention on the Protection of the Archaeological Heritage (Revised)
- Convention Concerning the Protection of the World Cultural and Natural Heritage

3. These Conventions include provisions:

- directing State Parties to take appropriate measures to safeguard and encourage the development of its national contribution to the common cultural heritage of Europe;
- outlining the need to take statutory measures to protect the architectural heritage, to make provision for the protection of monuments, groups of buildings and sites and to prevent the disfigurement, dilapidation or demolition of protected properties;
- recognising the value of public access to protected properties, although in such a way as to ensure that this does not adversely affect the architectural and historic character of such properties;
- directing State Parties to establish a legal system for the protection of the archaeological heritage including taking actions to preserve the archaeological heritage and the scientific significance of archaeological research work;
- recognising the duty of the state to ensure the identification, protection, conservation, presentation and transmission to future generations of cultural and natural heritage and directing State Parties not to undertake any deliberate measures which might damage this heritage.

### Legislation

4. The principal powers and duties carried out by Historic Scotland (on behalf of Scottish Ministers) are set out in statute. These include the *Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997* and the *Ancient Monuments and Archaeological Areas Act 1979*.

5. The *Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997* requires Ministers to compile lists of buildings of special architectural or historic interest. The compilation of the list is a statutory requirement, however, what is included in the list is a matter of discretion for Ministers. Listed building consent is required for the demolition of a listed building or its alteration or extension in any manner which would affect its character as

a building of special architectural or historic interest. The planning authorities handle listed building consent applications and are required to refer to Historic Scotland their provisional decisions in cases involving category A or B buildings and all proposed demolitions. Some 2,800 cases are referred each year of which less than 0.5% are called in for Ministers' decision. Conservation Area Consent is required for the demolition of a building in a conservation area.

6. The Act also empowers Ministers to provide grants or loans to protect buildings and conservation areas of outstanding architectural or historic interest and for Ministers and local authorities to establish town schemes allowing money to be set aside for the repair and maintenance of buildings within a certain area. If it appears to the Minister that reasonable steps are not being taken to preserve a listed building properly he may either himself compulsorily acquire, or authorise a planning authority to compulsorily acquire, the building and any relevant land. If Ministers do acquire any buildings or land then they may make such arrangements as they consider fit for the custody, management or use of the land and buildings.

7. The *Ancient Monuments and Archaeological Areas Act 1979* directs Ministers to compile and maintain a schedule of ancient monuments. Scottish Ministers may include in the Schedule any monument which appears to them to be of "national importance". The Act defines a monument as:

(a) any building, structure or work, whether above or below the surface of the land, and any cave or excavation;

(b) any site comprising the remains of any such building, structure or work or of any cave or excavation; and

(c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure or part thereof which neither constitutes nor forms part of any work which is a monument as defined within paragraph (a) above; and any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled.

8. Any works affecting a scheduled monument require the prior written consent of Scottish Ministers. Unlike listed building consent, there is no direct role for planning authorities in scheduled monument consent cases, all of which are handled by Historic Scotland on behalf of Scottish Ministers. Around 1,000 cases have been dealt with in the last 5 years with only 2 cases going to Public Local Inquiry.<sup>1</sup>

9. Ministers may also provide grants to owners of scheduled monuments. The *Ancient Monuments and Archaeological Areas Act 1979* allows Ministers to acquire compulsorily any

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<sup>1</sup> A Public Local Inquiry (PLI) will often provide the most suitable means of examining any contentious issues in relation to a listed building consent case or a scheduled monument consent case in an open, structured manner. In these circumstances the case will be passed to the Scottish Executive Inquiry Reporters Unit and the Chief Reporter will appoint an independent Reporter to deal with the case. Applicants are generally offered the choice of a written statement or a formal hearing. It is important that the Reporter gains all the material necessary to allow him/her to make an informed and reasoned recommendation. To do this, they hear evidence from the parties and may also seek such other information as they consider appropriate.

ancient monument for the purpose of securing its preservation. Local authorities and Ministers may acquire by agreement, or accept a gift of, an ancient monument. Ministers may also become the guardian of an ancient monument while ownership remains elsewhere. Guardianship allows Ministers to maintain and protect the monument including by regulating public access.

## Policy Context

10. The international conventions and legislation define the parameters of the work which needs to be undertaken by the Executive to protect and preserve the historic environment. Historic Scotland's activities impact on a broad range of Executive policies and priorities. Some of these priorities are central to Historic Scotland's core activities while others, may at first glance, appear more peripheral. These include policies on conservation; architecture and design; tourism; regeneration; planning; sustainable development; skills development and culture. There has, however, been no attempt to pull all of these issues together into a single overarching document setting out the Executive's vision for the historic environment in Scotland.

11. The First Minister used his St Andrew's Day speech in 2003 to set out his aspirations for culture in Scotland. He recognised the importance and the impact of cultural activity and development stressing the connections between the kind of Scotland we want and developing the confidence, the identity and the spirit of the Scottish people. The historic environment is a physical reminder of the events and the way of life that have shaped our identity and is central to any consideration of our culture.

12. We have already referred to the fact that there is currently no overarching comprehensive Executive vision for the historic environment in Scotland. **We believe that a full policy statement setting out the Executive's vision and priorities for the historic environment should be prepared.** We have not attempted to pre-empt this process but believe that the First Minister's speech and the National Cultural Strategy represent appropriate starting points. Such a statement should address the role of the historic environment in shaping our national identity, its role in people's lives and its contribution to the present and future cultural and economic well-being of the nation. Historic Scotland has commissioned independent research to investigate how key partners and stakeholders view Scotland's heritage and to ascertain their opinions regarding the work of Historic Scotland. This research is to be welcomed and the results should feed into the development of this policy statement.

13. The focus of the existing legislation and conventions is on identifying and safeguarding the historic environment and, to a lesser extent, on recognising the merits of public access for current and future generations. These priorities are reflected in Historic Scotland's mission statement: *To safeguard the Nation's built heritage and to promote its understanding and enjoyment*, and in two of its four principal objectives:

- To protect and conserve Scotland's built heritage; and
- To encourage public appreciation and enjoyment of Scotland's built heritage.

The focus of the wider political context is in stressing the contribution which the historic environment can make to a wide range of policies. It is clear that Ministers do not see the

historic environment in isolation. This would seem to be reflected in the organisation's third principal objective:

- To play an active role in the development and success of Scottish Ministers' social, economic and environmental policies.

Historic Scotland's fourth objective relates to the need for the organisation to be effective and efficient in its work.

14. Historic Scotland's objectives therefore appear broadly to reflect international agreements, the statutory framework and Ministerial policies and priorities. We therefore considered the functions carried out by the organisation within these objectives. These functions seem to break down into four broad groupings:

- Protection and conservation
- Policy
- Properties in Care; and
- Education.

15. We have considered each of these areas in turn.

## **PROTECTION AND CONSERVATION**

1. International Conventions and statute place specific responsibilities upon Scottish Ministers to protect and conserve the built heritage. The functions necessary for the discharge of these responsibilities are delegated to Historic Scotland. The main levers the organisation uses to protect and conserve the historic environment are: scheduling of monuments; listing of buildings of architectural or historic interest; consent casework; conservation and maintenance; financial assistance through the grants schemes; funding archaeology; conserving and presenting properties in care; commissioning research; publishing guidance and providing advice.

### **Is this work required?**

2. It could be argued that there would be financial benefits in stepping back from the work of conserving the historic environment either to focus on a handful of high profile sites or for the Executive to stop undertaking any such work. There is a small minority who argue that historic buildings and ancient monument are no longer relevant to a modern multi-cultural nation and that conserving old buildings prevents regeneration, stifling creativity and change, that many buildings were intended to be ephemeral and it is not appropriate to seek to maintain them indefinitely. It has been suggested that if the Executive were to step back from such a role then private or voluntary sector organisations would step forward to safeguard and promote the most important sites and buildings.

3. However, stepping back from such work would be in breach of International Conventions, domestic legislation and at variance with Ministerial policy priorities. On a practical level there would be health and safety implications with many sites requiring regular maintenance in order to ensure their structural safety. It would therefore be difficult for the Executive to step back from such commitments completely. Without ongoing financial and practical support and protection from the Executive many buildings would not survive or would be altered beyond recognition. Yet the presence of historical buildings provides a sense of local distinctiveness in our communities. They are a key part of our cultural identity and an important educational tool. Such buildings represent a past investment of physical, natural and intellectual resources and the maintenance and preservation of such sites is in line with the Executive's commitment to sustainability.

4. On an economic level the built heritage is an important part of Scotland's tourist industry. Historic Scotland is the largest operator of paid visitor attractions in Scotland and Edinburgh Castle is Scotland's most popular paid visitor attraction. The potential financial savings of stopping the work of conserving and protecting the built heritage must be balanced against the overall economic impact of change. Historic Scotland has identified £3m for this work in 2003-04 and tourism contributes approximately £4 billion per year to the Scottish economy.

### **Consultation Response/Views**

5. There was widespread concern amongst respondents at any suggestion that the Executive should stop carrying out work to protect and conserve the historic environment. There was general consensus that this function was required although a number of specific issues did emerge about the way in which this function was delivered. These concentrated on

Historic Scotland's involvement in the planning process, and the allocation of grants. We have considered these issues in turn.

## **Planning**

### Background

6. Land use planning systems govern the future development and use of land in cities, towns and rural areas. The aim is to ensure that development and changes in land use occur in suitable locations and are sustainable, providing protection from inappropriate development. The main responsibility for planning rests with planning authorities (mainly local authorities but also National Parks); individuals or organisations seeking planning permission must apply to the relevant planning authority in the first instance. Planning authorities are also the decision making authority in the majority of cases. The historic built environment is subject to the planning system and to other control mechanisms such as listed building consent, scheduled monument consent and conservation consent.

7. The role of Historic Scotland in both the planning system and in the other consent regimes is set out fully in **Annex C**. In summary:

- Planning system:

Historic Scotland is a statutory consultee in respect of planning applications where a proposed development would affect a scheduled ancient monument, a category A listed building or their settings, or a historic garden/designed landscape contained in the Inventory of Historic Gardens and Designed Landscapes. Where a planning authority is minded to grant permission and Historic Scotland has registered objections, the application must be notified to Scottish Ministers (Scottish Executive Development Department Planning Divisions) to allow them to determine whether to call it in for their own decision. Such a decision would be made following a Public Local Inquiry (PLI). A PLI will be dealt with by an independent Reporter appointed by the Inquiry Reporters Unit. The reporter will provide a recommendation which Minister's are free to accept or reject. Where a planning authority has refused permission and the applicant has appealed then the case may go to a PLI. In either case, Historic Scotland staff may be called as witnesses at a PLI. Following the PLI, Historic Scotland plays no further part and is not involved in giving advice to the Minister for Communities on the Report of the Inquiry.

- Listed Building Consent:

Anyone wishing to alter a listed building must apply for consent to the planning authority. Where the planning authority is minded to grant consent in respect of any property listed at category A or B, or if the consent is in respect of the demolition of any listed building, they are required to notify the application to Scottish Ministers (Historic Scotland) to see if they wish to call in the application for their own determination after a PLI. Such call-ins happen in less than 1% of cases. Following the PLI, Historic Scotland advise the Minister for Tourism, Culture and Sport on the recommendation made by the Reporter, which the Minister is free to accept or reject.

- Conservation Area Consent:

This consent system operates on the same basis as listed building consent but deals only with proposals to demolish unlisted buildings in conservation areas.

- Scheduled Monument Consent:

Any works affecting a scheduled monument require the prior written consent of Scottish Ministers. Applications are submitted to Historic Scotland and applicants are advised of the provisional view of the Scottish Ministers. The applicant is offered the opportunity to have the case considered at a PLI before a decision is taken. Advice to Scottish Ministers on the recommendation made by the Reporter is provided by Historic Scotland. The Minister is free to accept or reject the Reporter's recommendation.

### Discussion

8. Historic Scotland deal with a large number of consent cases each year (on average 220 scheduled monument consent cases and 2,500 listed building/conservation area consents). Only a very small number go to a PLI. The table below shows the figures for each of the last 2 years.

	2001-02	2002-03
Scheduled Monument Consent	1 out of 218 applications	1 out of 220 applications
Listed Building/ Conservation Area Consent	4 out of 2,539 applications	1 out of 2,600 applications

It is perhaps the nature of the process that there will be those who are disappointed in the outcome. However, there is a perception that Historic Scotland acts as judge and jury in its own court. While we did not accept that this was the case in practice it is clear that these cases have a hugely disproportionate impact on public perception of Historic Scotland.

9. In considering the current process, and any potential changes to it, the focus of this review was on establishing a system which would ensure protection for historic buildings while being publicly accountable and fair. A range of options were considered including:

- Retention of the current system pending the outcome of considerations to modernise the planning process;
- Making the decisions of the Inquiry Reporter binding;
- Passing responsibility for providing advice to Ministers on the outcome of Public Local Inquiries in relation to listed buildings and scheduled monuments to the Scottish Executive Planning Divisions;
- Making structural changes to Historic Scotland to separate the advisory and representative functions.

10. The Executive is taking forward work to modernise the planning system, including measures to improve transparency, accountability and public participation. This will include consulting on issues and options relating to widening the rights of appeal against planning

decisions, and changes to the development planning process. Subject to other legislative pressures, a Planning Bill should be introduced later in the current Parliamentary session. It is important that Historic Scotland's role in the planning processes is considered as part of this wider exercise. However, it does not seem appropriate to postpone making changes to the process until completion of this wider consideration of the planning system if there are adjustments which could be made now that could bring immediate benefits.

11. There were attractions in the proposal to make the decisions of the Inquiry Reporter binding; however, there is also value in retaining some element of the democratic accountability which currently applies to listed buildings and scheduled monument consent applications as it does to a number of other consent regimes.

12. The Steering Group's discussions were also influenced by the possibility of structural change. If the conclusion of the review was that Historic Scotland should become a Non Departmental Public Body (NDPB) this would result in changes to the process for considering planning cases. The NDPB would focus on advocacy while the final decision would rest with Ministers, acting on the advice of Scottish Executive policy officials. This would therefore appear to address many of the concerns expressed by correspondents. However, a change to NDPB status would have wider implications and therefore there would need to be strong additional arguments to support such a change. These issues have been addressed in the second part of this Report.

13. It would, however, be possible to change the system for considering listed building and scheduled monument consent cases without changing the status of Historic Scotland. One option would be for the Reporter's recommendations to go to the Scottish Executive Planning Divisions, rather than back to the relevant policy officials in Historic Scotland, to provide advice to Ministers. This would ensure that there was a clear separation of responsibilities between advising Ministers on whether a case should be called in and advising them on how to respond to the Reporter's recommendation. Such an option would provide assurance for the applicant while ensuring that the final decision rested with Ministers. **On balance therefore we favoured transferring responsibility for providing advice on the outcome of the PLI to the Scottish Executive's Planning Divisions.**

14. In October 2003 Historic Scotland and the Planning Divisions of the Scottish Executive agreed a *Concordat on Working Arrangements*. This concordat commits Historic Scotland and the Planning Divisions to work together on policy formulation and, where appropriate, decision making; to inform each other of developments in policy and practice and to encourage contact between staff. If our recommendation is accepted this would necessitate changes to the Concordat to set out the working arrangements when dealing with listed building and scheduled monument cases called in for determination by Scottish Ministers. The Concordat already provides that, where there has been an objector, Historic Scotland has no input into planning cases after making its case at a PLI or to the Reporter in the written representations. **We recommend that the Concordat should be updated to take account of any changes arising from this review and that the Concordat should be published.**

15. Historic Scotland is only one organisation within the listed building consent process, albeit a key one. The role of planning authorities is clearly fundamental. They are the first point of contact for most applicants and make the decisions in the majority of cases. The remit of this review was to consider the functions and structure of Historic Scotland,

however, this is intrinsically linked to the role of partner organisations. Many of the respondents to the consultation process commented upon the roles and respective responsibilities of individual planning authorities and Historic Scotland.

16. In relation to listed building consent cases, it is clear that there is a degree of uncertainty about the roles and responsibilities of the various organisations. For example while planning authorities generally welcomed the informal advice provided by Historic Scotland's Historic Buildings Inspectors there was some confusion about the precise status of such comments. Anecdotal evidence suggests that the level and quality of conservation expertise in planning authorities is mixed and therefore there may be greater reliance, in certain areas, upon Historic Scotland. Some local authorities would appear to welcome greater contact with, and advice from, Historic Scotland while others are seeking greater autonomy. There is therefore a range of expectations as to the level of involvement Historic Scotland should have in individual local cases.

17. HEACS have been tasked by Ministers with looking at the role of local authorities in conserving the historic environment and the need for a "heritage audit" in Scotland and have established Working Groups to consider these issues. The Steering Group did not attempt to pre-empt the work being undertaken by HEACS, who are to complete their considerations and then advise Ministers accordingly, but did recognise the difficulties outlined by respondents. **We concluded that:**

- **clear and concise information and guidance should be provided to all those with an interest in the statutory consent processes for listed buildings and scheduled monuments including planning authorities, applicants and local community organisations and heritage bodies. We recognised that some very detailed guidance was already in place but there was a need for Historic Scotland to look to simplify and clarify this guidance; and**
- **once HEACS has completed its considerations on the role of local authorities, Historic Scotland should work with COSLA or individual planning authorities to prepare a concordat or service charter outlining the role and responsibilities of each organisation in relation to the historic environment.**

18. We understand that a number of local authorities currently work together to share expertise on a number of historic environment issues, notably in relation to archaeology. This would appear to be a useful model and **we thought that local authorities should consider wider opportunities for working together to develop shared expertise in conservation advice and listed building consent cases.**

19. We had evidence that there is a significant number of owners who would welcome advice, support and guidance about how best to maintain their listed property. **Historic Scotland should also consider the potential for providing information and advice on the benefits of owning a listed building or an ancient monument as well as advice, in an accessible format, on how to maintain or restore the historic features of a property.** There would appear to be scope for utilising the organisation's website to promote good practice. Consideration could also be given to: hosting seminars for interested owners; providing more leaflets or accessible written information for owners of properties; or seeking to encourage more feature articles in property supplements or publications.

## **Grants Scheme**

19. Historic Scotland operates 3 different grants schemes: the Historic Buildings Repair Grants; grants to owners of scheduled monuments and grants for archaeology projects. A number of concerns about the grant schemes were raised by stakeholders. These included:

- the split of funding between the 3 different schemes;
- the level of funding;
- the amount of information required from applicants and the potential for duplication between the role carried out by an applicant's professional advisers and the scrutiny carried out by Historic Scotland.

20. The provision of grants is an important part of Historic Scotland's functions. There are many buildings at risk (as demonstrated by the Scottish Civic Trust's Buildings at Risk Register, funded by Historic Scotland). There are other organisations, notably the Heritage Lottery Fund, who provide grant funding for the built heritage. Any decline in the level of funding available to the Heritage Lottery Fund could lead to increased pressure upon Historic Scotland's grant scheme. There is therefore a continuing need for a grants programme and inevitably there are issues about the level of resources available as opposed to the level of demand. There is no evidence that this level of demand is likely to decrease. Within any grants programme there is a balance between minimising the burden upon stakeholders, in terms of application processes and scrutiny arrangements, and meeting audit requirements to ensure that public money has been spent appropriately. Historic Scotland is conducting an internal review of their grant processes to ensure that they have achieved this balance and this is to be welcomed. **It is important that Historic Scotland's review of the grants process addresses the concerns identified by stakeholders.**

## **Conclusion**

21. Historic Scotland's work in preserving and conserving the built heritage is in line with Ministerial priorities as set out in statute and policy documents. This work is being taken forward within a changing context, notably the work of HEACS and the Executive's plans to modernise the planning system.

22. However, in advance of such changes, and subject to considerations about the status of Historic Scotland, the Scottish Executive Planning Divisions should deal with PLI cases concerning listed building consent or scheduled monument consent cases. Historic Scotland, or any successor organisation, should seek to provide clear information on the planning process to applicants and partner organisations and explore imaginative ways of providing advice and guidance to owners of listed buildings and scheduled ancient monuments. Local authorities may wish to consider the benefits of working together to develop shared expertise in conservation advice and consent cases. Following the conclusions of HEACS' work, Historic Scotland should develop concordats with COSLA and with individual planning authorities setting out the roles and responsibilities of each organisation. The Concordat on Working Arrangements between Historic Scotland the Planning Divisions of the Scottish Executive, which will need to be updated to take account of the changes proposed to the handling of listed building and scheduled monument consent cases, is a helpful model for such arrangements.

## **POLICY**

1. Historic Scotland is an Executive Agency within the Scottish Executive Education Department and is directly accountable to the Minister for Tourism, Culture and Sport. The organisation has a responsibility to provide policy advice and support to Ministers and to play an active role in the development and success of the Executive's wider priorities. Historic Scotland is unusual amongst Executive Agencies in that it exercises a policy function in addition to its operational role. This policy advisory role is closely linked to Historic Scotland's regulatory, education and property management functions but also reflects the fact that Historic Scotland is part of the Executive and as such is expected to contribute to wider Executive policies and priorities. It also reflects the wide-reaching impact of the historic environment upon our daily lives.

2. Historic Scotland has identified 5 strands of work that contribute towards their policy work:

- Promoting the built heritage as an integral part of the Scottish cultural experience;
- Operating a range of high quality tourist attractions and working with other tourist organisations to attract visitors from home and abroad;
- Contributing to social inclusion;
- Providing jobs; and
- Contributing to policy on architecture for Scotland.

3. There is a wide range of policy areas where the historic environment has an important role to play in the delivery of priorities ranging from tourism, architecture and culture to planning, skills development and regeneration. Historic Scotland must therefore work with policy interests across the Executive and external stakeholders to ensure that the role of the historic environment is considered during the development and implementation of policy proposals.

### **Consultation Response/Views**

4. Some respondents have argued that policy work distracts Historic Scotland from what they see as the organisation's primary operational functions. Others have argued that there is a need for an increased focus on policy work. A number of respondents identified specific Executive initiatives or policy statements which they considered did not adequately reflect the role of the historic environment.

5. One of the challenges which Historic Scotland faces is in ensuring that there is a wider understanding of the potential value of the historic environment. There is a perception in certain areas that support for the historic environment is in direct conflict with job creation and regeneration. Yet there are examples of significant conservation-led regeneration such as Stanley Mills and the Luma Lamp Factory in Glasgow. Historic Scotland is already undertaking a substantial amount of work which contributes to wider priorities, for example regeneration, tourism and the retention of traditional skills. However, in isolation the impact of such schemes may not be clearly articulated. We have already suggested that consideration should be given to developing an Executive endorsed overarching policy statement for the historic environment. Such a policy statement could help to demonstrate the links between the historic environment and other policy areas and emphasise the potential contribution of the historic environment.

## Policy Advice

6. One of the options we considered was whether there would be benefits in separating the policy development and advisory functions from the rest of Historic Scotland's work and creating a historic environment policy unit within a core Executive Department. Such a policy unit would be necessary if Historic Scotland became a Non Departmental Public Body. It was also suggested that the existence of such a unit within a core Department might be helpful, even without structural change, in raising the profile of the historic environment and building links with related Executive policy priorities. While Historic Scotland has been very effective in stressing the contribution of the historic environment to a range of policy areas and has devoted considerable effort to building and maintaining links across the Executive, there were inevitably areas where the organisation was not as fully involved as they might have been.

7. We recognised that a new policy unit might help to facilitate links. But we had concerns about the potential for duplication of functions with Historic Scotland. More significantly, we thought there would be very serious disadvantages in separating policy development functions from the extensive professional practical expertise and experience in Historic Scotland. The development of an Executive endorsed policy statement on the historic environment, outlining the value of the built heritage and its potential contribution on a range of policy areas, will help to raise awareness and facilitate the process of building links between policy areas.

8. In addition to providing policy advice, Historic Scotland's role is to uphold and implement Ministerial policy, in line with legislative requirements, for the historic environment. The organisation's practices are set out in detail in publications, notably the *Memorandum of Guidance on Listed Buildings and Conservation Areas*. Much of this is based upon accumulated precedent. While precedent is an important element in determining decisions there also needs to be a mechanism to reflect external developments and context. There would be benefits in opening up these processes and engaging in an open debate with stakeholders. Such an approach would help to build awareness and engender debate and discussion in a spirit of partnership. **Historic Scotland should also ask Ministers formally to endorse their practices following the conclusion of such a process.**

## Leadership of the Sector

9. One of the strongest messages to emerge from the consultation process was the desire amongst many stakeholders for Historic Scotland to adopt a leadership role within the sector and to champion the cause of the historic environment with a stronger, more pro-active approach. Respondents referred to the need for the organisation to adopt a higher public profile, to take a more proactive stance on cultural heritage policy and tourism.

10. The term championship was used by a number of respondents, however, there did not appear to be a common understanding of what such championship might involve. There appeared to be 3 main roles:

- Political advocacy for the historic environment;

- A proselytising role at an organisational level providing advice on how best to support and protect the historic environment; and
- A lobbying role pressurising the Executive and Parliament over issues of importance to the sector and seeking to make the arguments in public for the conservation sector.

11. The role of political advocacy clearly falls principally to Ministers and it is a role which they are taking forward. The First Minister's St Andrew's Day speech outlined his aspirations for culture in Scotland. This speech and an Executive endorsed policy statement for the historic environment would set the context for Ministerial engagement with the heritage sector emphasising the importance which the Executive places upon the historic environment and the impact which the heritage has upon people's lives.

12. If Ministers are setting the headline context about the importance of the historic environment then there is a supporting role in outlining how to deliver those policy priorities; providing technical advice on supporting the built heritage; providing advice to owners of buildings and monuments; and liaising with organisations in the sector. This task of promoting the historic environment and educating individuals and organisations would fall to Historic Scotland, or any successor organisation. Historic Scotland's technical publications were widely praised by respondents to the consultation process; however, there was a perception that the organisation needed to spend more time promoting this work especially to a non-specialist audience.

13. Any organisation's capacity to champion a cause is influenced by the relative strengths of partner organisations. There is a significant number of heritage organisations and professional groups working within the built heritage sector some of which are very small. The relative fragility and fragmentation of this sector does increase the pressure for a central organisation to adopt a more proactive role. Historic Scotland's relationship with other organisations is considered in greater detail on pages 34-35. There is value in an organisation, or collection of organisations acting as critical friends to the Executive and Historic Scotland but it would plainly not be appropriate for an organisation which is directly answerable to Ministers to fulfil such a role. The Steering Group noted the recent establishment of the Built Environment Forum Scotland (BEFS), an umbrella organisation representing national professional and non-governmental bodies working within the built environment sector. BEFS, which is already receiving core funding from Historic Scotland, is well-placed to undertake the type of lobbying role described and has developed a close relationship with the Cross-party Group on Architecture and the Built Environment in the Scottish Parliament.

## **Conclusion**

14. It is important that the historic environment is not viewed in isolation. The historic environment is all around us. It is not just somewhere we visit but is also where we live and, for many of us, where we work and enjoy our leisure. It forms the backdrop to our lives and as such it has an impact across a range of Executive policies. Given the breadth of these links it is important that Historic Scotland, or its successor organisation is not excluded from the development of wider Executive policies.

## **PROPERTIES IN CARE**

1. Historic Scotland is responsible for the upkeep of more than 300 historic properties across Scotland. These range from major national monuments like Edinburgh Castle, Stirling Castle, Urquhart Castle, Jedburgh Abbey and Iona Abbey to smaller un-staffed sites.
2. The property portfolio comprises 3 broad categories:
  - Properties which are owned by private individuals but which are cared for by the state under guardianship agreements. These form the majority of sites cared for by Historic Scotland. Just over 240 sites are cared for under guardianship agreements including St Clement's Church at Rodel on Harris or the Fowlis Wester Sculptured Stone;
  - Sites owned by Ministers. There are almost 80 sites which are owned by Ministers including Edinburgh Castle and the Ring of Brogar Stone Circle and Henge.
  - Historic Scotland also conserves the Palace of Holyroodhouse and manages the Royal Parks at Holyrood and Linlithgow.

Historic Scotland acts as the guardian of last resort and properties will be taken on when the site is judged to be of sufficient importance to warrant action and when no alternative provision can be made.

3. The majority of these sites are managed and operated by Historic Scotland. However, a small number of sites are managed under different arrangements. Broughty Castle in Dundee for example is cared for by Historic Scotland but houses the Broughty Castle Museum which is run by Dundee City Council. Almost all of the historic properties are open to the public. In 2002-03 almost 2.7 million people visited Historic Scotland's staffed and open access sites making them the largest operator of paid visitor attractions in Scotland. In 2003-2004 Historic Scotland raised £21.4m principally from admissions to its properties in care, retail, tourism and corporate events.

### **Is there a need to maintain and present the properties in care portfolio?**

4. The main impact of any withdrawal of the work in encouraging visitors to the properties, promoting and publicising the properties and providing facilities, information and entertainments for visitors on site would inevitably be upon the general public who currently visit sites. While people would still be able to visit a number of un-staffed sites others would need to be closed to visitors. In some cases this might be because of the risk of damage to the site if there was open access with no staff presence; in other instances, there might be issues about the safety of visitors. Public safety and access would also be a very real and growing problem if maintenance were to cease or be significantly reduced.

5. There would be a reduction in advertising to inform potential visitors of a site's location and in the provision of information, associated activities and events to visitors at sites. There are clearly issues about the level of such activities and how best to inform visitors. While stopping such activities would not stop people from visiting the site, it would have an impact on the enjoyment of their visit. Such a change would have an impact upon the local tourist industry and on the wider appeal of Scotland as a holiday destination. A significant proportion of overseas visitors come to Scotland because of the heritage and 83%

of those visitors visit a castle, church or monument during their stay<sup>2</sup>. It would be more difficult to justify continued expenditure on maintaining and conserving historic sites if people are unable to access these sites for any reason.

6. While there are a number of negatives associated with any cessation of this work there are also a number of potential positive outcomes which flow from this work. There are the economic benefits to Scotland as a whole but also to local businesses and communities. These sites are the physical evidence of our cultural heritage. They help to educate and inform people, raising interest amongst visitors. People also like to visit historic sites, either on holiday or on a day-trip or outing.

### **Consultation Response**

7. The consultation exercise indicated widespread support for the continuation of these functions. Some respondents expressed reservations about the effectiveness with which these functions were currently delivered by Historic Scotland and whether Historic Scotland was the most appropriate organisation to manage and operate the properties in care. There were also suggestions that the management and administration of the properties was incompatible with Historic Scotland's regulatory functions.

### **Effectiveness**

8. In light of these comments the Steering Group considered whether Historic Scotland was operating its properties in care effectively. We looked at qualitative information, from the Historic Scotland Visitor Survey 2002, conducted by independent consultants, and school visit feedback forms to try to establish whether visitors to Historic Scotland properties enjoyed their visit. Key findings from the survey and the school visit forms included:

- 98% of visitors were satisfied with their visit with 82% very satisfied
- 86% of visitors to the surveyed properties (76% at Edinburgh Castle) thought their visit represented good value for money;
- 55% of visitors to surveyed properties (46% at Edinburgh Castle) through their visit had exceeded their expectations;
- two-thirds of visitors were unable to suggest any improvement to the site facilities;
- 100% of respondents to the school visit feedback forms noted that the children/students had enjoyed their visit;
- 98% of respondents to the school visit feedback forms would recommend a visit to other teachers; and
- 81% of respondents to the school visit feedback forms considered that, from an educational point of view their visit had been "exceptional".

9. We also looked at the number of visitors to Historic Scotland properties over the last 5 years, which showed sustained interest despite the general impacts on tourism of the foot and mouth outbreak and 11 September 2001.

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<sup>2</sup> Tourism in Scotland report 2002

Year	Visitor Numbers (millions)
2002-2003	2.7
2001-2002	2.7
2000-2001	2.8
1999-2000	2.9
1998-1999	2.9

### Specific Issues

10. One of the issues which has emerged from the consultation process is the suggestion that there is a conflict between Historic Scotland's role as a regulator of the sector and the management and presentation of the sites. It has been suggested that:

- The focus upon the presentation and management of the sites is distorting Historic Scotland's priorities and management focus;
- Historic Scotland's desire to maximise income from the sites can compromise its duty to protect the sites;
- This function could be delivered more effectively outwith Government by a private or voluntary sector organisation.

11. The Steering Group did not consider that there was a conflict of interest. There are clear benefits in having a single organisation with responsibility for both protecting and presenting the historic environment to the public. The fact that Inspectors are in the same organisation as properties-in-care staff allows them to provide advice to those managing the properties, while the opportunity to highlight good practice within the conservation of Historic Scotland's own properties can enhance the regulatory role. **Separating the regulatory functions from the management and presentation of the sites would not result in increased protection for those sites.** Historic Scotland's primary aim must be to maintain and preserve the sites but within this they must do all that they can to inform and educate the public about those sites and that means opening them to the public. The challenge is in balancing these different functions and ensuring that they complement each other effectively.

12. The scope for greater involvement of private or voluntary sector organisations in the management and presentation of these sites is considered on page 32.

13. Historic Scotland's role in relation to the properties in care is not simply to manage and present the sites but also to provide care and maintenance. Properties are taken into care when they are judged to be of sufficient importance to warrant action and when no alternative provision can be made. It is therefore important that having deemed these sites of sufficient importance to warrant action that Historic Scotland maintains and conserves these sites appropriately. The organisation has laid great stress upon the retention of in-house expertise and the promotion of traditional skills through the Monument Conservation Unit.

15. Historic Scotland acts as a guardian of last resort in relation to properties which are of significant architectural and historical interest. However, it is important to note that Historic

Scotland is not alone in having a responsibility in respect of the historic environment. A number of agencies, including local authorities, owners and occupiers have a responsibility to maintain and preserve properties. **The fact that Historic Scotland is the guardian of last resort should not allow other agencies to ignore their responsibilities in this area.**

## **Conclusion**

16. In general the Steering Group was impressed by the quality of Historic Scotland's work in relation to their properties in care and the quality of their technical publications. Historic Scotland's primary role must be to safeguard properties and clearly the desire to optimise the number of visitors must not be at the cost of the integrity of the monuments. However, this is a balance which can be achieved within a single organisation and separating the regulatory functions from the management and presentation of the sites would not result in increased protection for those sites.

## **EDUCATION AND OUTREACH**

1. Encouraging visitors to properties in care and ensuring that they enjoy their visit is one of the levers which Historic Scotland uses to deliver its second objective of encouraging public appreciation and enjoyment of Scotland's built heritage. The other levers are:

- Developing knowledge, access and appreciation of the built environment across a wide audience; and
- Educative initiatives.

2. A narrow definition of Historic Scotland's education functions might focus on the organisation's work with schools, such as school visits, teaching resources; information; and special activities. However, while such work is clearly important the organisation's education functions extend more widely with a focus on informing, albeit in an entertaining way, all of the visitors to their sites and indeed all those with an interest in or link to the historic environment. This may be achieved through the provision of technical advice publications often aimed at a specialist audience or through more general advice and awareness raising. Historic Scotland, like English Heritage and the National Trust, also operates a membership scheme through the Friends of Historic Scotland providing free entry to many properties, a quarterly magazine and free entry to English Heritage, Cadw and Manx heritage sites from the second year of membership.

### **Is there a need for this education and outreach role?**

3. International conventions direct the state to ensure the identification, conservation, presentation and transmission to future generations of the cultural and natural heritage. While the focus must be on maintaining the physical fabric of a site for onward transmission we also need to educate and inform future generations about the importance of the historic environment as this responsibility will pass to them in time. We have already identified the importance of providing information and guidance to those with an interest in the planning process (page 16); to the general public on the benefits and responsibilities in relation to the ownership of listed buildings and scheduled monuments (page 16) and more generally in providing advice to individuals and organisation on how best to support and protect the historic environment (page 20). This is clearly a fundamental role and one which permeates all of the organisation's other functions.

### **Consultation Response**

21. Historic Scotland's technical publications were widely praised by respondents to the consultation exercise. Responses to the Historic Scotland Visitor Survey 2002 and the school visit feedback forms suggested that the organisation was very successful in providing a positive learning experience for visitors to the individual sites. Criticism of the organisation tended to focus on communication with the general public when they were not visiting sites. These concerns are addressed on pages 16, 19 and 20 of this report and also in our considerations about the culture of Historic Scotland.

## FUNCTIONS: CONCLUSION

- There is an on-going need for the functions currently undertaken by Historic Scotland;
- Historic Scotland's role in operating and presenting the properties in care as paid visitor attractions is compatible with its role in protecting and conserving the built heritage;
- Changes should be made to the process for dealing with the consideration of listed building consent and scheduled monument consent cases;
- It would be helpful if a clear statement of Ministerial policy in relation to the historic environment was developed and issued;
- There is scope for the organisation to develop an enhanced public profile within the context of a three strand approach stressing the leadership role of the Minister; the role of Historic Scotland in providing advice and support and the lobbying role of non-governmental organisations.

2. The functions Historic Scotland or any successor organisation should be expected to fulfil are:

- the development and provision of policy advice to Ministers in relation to the historic environment and the links between the historic environment and other policy priorities. Specifically we would see a role for this organisation in supporting the development of a policy statement for the historic environment in Scotland;
- dealing with casework on listed building consent and scheduled monument consent applications;
- dealing with casework in relation to the scheduling of monuments, the listing of buildings of historic or architectural importance and the Inventory of Designed Landscapes and Garden;
- the administration of the Historic Buildings Repair Grant Scheme, the Grants to Owners of Ancient Monuments and grants to archaeological projects.;
- supporting excavations;
- the commissioning of research;
- the provision of guidance and advice on the protection and conservation of listed buildings and ancient monuments;
- the conservation, management and presentation of the properties in care portfolio;
- providing support to tourism in Scotland through the marketing of sites in its own care and the provision of high quality interpretation, facilities, events and venues;
- the development and management of education initiatives;
- providing support to Ministers to enable them to provide leadership to the sector;
- providing advice on how best to support and protect the historic environment; and
- helping to build capacity within non-governmental organisations to allow them to argue the case for the historic environment.

3. These can be broken down into 5 main groups: a set of regulatory functions including casework; policy functions; a set of functions relating to the properties in care portfolio; education and outreach function which includes the identification and dissemination of knowledge, and the school based activities; and finally an awareness raising role.

## Targets

4. As part of the process of looking at the functions to be fulfilled by this organisation the Steering Group also considered the key performance targets which have been set for Historic Scotland. Scottish Ministers have set 9 key performance targets for Historic Scotland:

- Number of monuments scheduled
- Weighted number of listed building resurvey units
- Number of weeks in which 80% of Scheduled Monument Consent cases are resolved
- Percentage of Listed Building Consent cases resolved within 28 days
- Number of conservation plans for properties in care
- Historic Scotland market share compared to other paid visitor attractions in Scotland
- Performance rating from the Mystery-Visit programme
- Average retail spend per visitor
- Percentage efficiency gains/savings on non-grant expenditure

5. Historic Scotland's performance against these targets has been strong. However, questions were raised in the consultation about whether these are the best targets for such an organisation. Respondents to the consultation exercise expressed a number of concerns about the selection of targets (but not about Historic Scotland's performance in meeting those targets). There were concerns that targets tend to distort priorities if not set carefully. The Steering Group was satisfied that, while the targets may reflect the measurable work which the organisation undertakes, its focus is much wider. It may be helpful if Historic Scotland included a statement in its next annual report confirming this fact.

6. Targets should aid accountability and allow Ministers, the parent Department, Parliament, stakeholders and the general public to judge how well an agency is performing. The difficulty with targets, which Historic Scotland acknowledges and has been recognised before, is in framing meaningful qualitative targets as well as quantitative targets and in measuring long-term impacts. Despite this the Steering Group thought that the performance targets could be separated into two groups:

- A set of hard targets, which are quantitative and can be easily measured; and
- A set of softer indicators which relate to the quality of Historic Scotland's core work. Such a set of indicators, while not presenting a complete picture, could signify the type of behaviour the organisation would be expected to exhibit if it was delivering high quality provision.

7. One possible option for looking at the qualitative level of Historic Scotland's work might be to focus on different aspects of the organisation's work in each reporting year. This would allow the organisation to provide a greater level of detail about the work it is undertaking, and include information on stakeholder feedback and peer assessment.

**8. The Chief Executive of Historic Scotland and the Head of the Scottish Executive Education Department should be charged with developing a set of quantitative targets and a set of indices on qualitative aspects of performance. This work should be informed by the Performance Management Review of Historic Scotland undertaken by Audit Scotland.**

## STRUCTURE

1. The first part of the Review remit referred to the range of functions currently discharged by Historic Scotland. The second part of the remit is to “*consider whether the most appropriate vehicle for the accountable delivery of those functions deemed necessary or desirable is an Executive Agency, a Non Departmental Public Body, a Departmental Body, a privatised entity, a voluntary organisation or some combination of these options*”.

### Background

2. Historic Scotland is currently an Executive Agency within the Scottish Executive Education Department. Historic Scotland staff are civil servants. The organisation is divided into six main areas of operation: the Chief Executive’s Group; Properties in Care; Heritage Policy (including the Inspectors of Historic Buildings and the Inspectors of Ancient Monuments); Technical Conservation, Research and Education, Finance and Personnel. **A diagram is attached.**

### Options

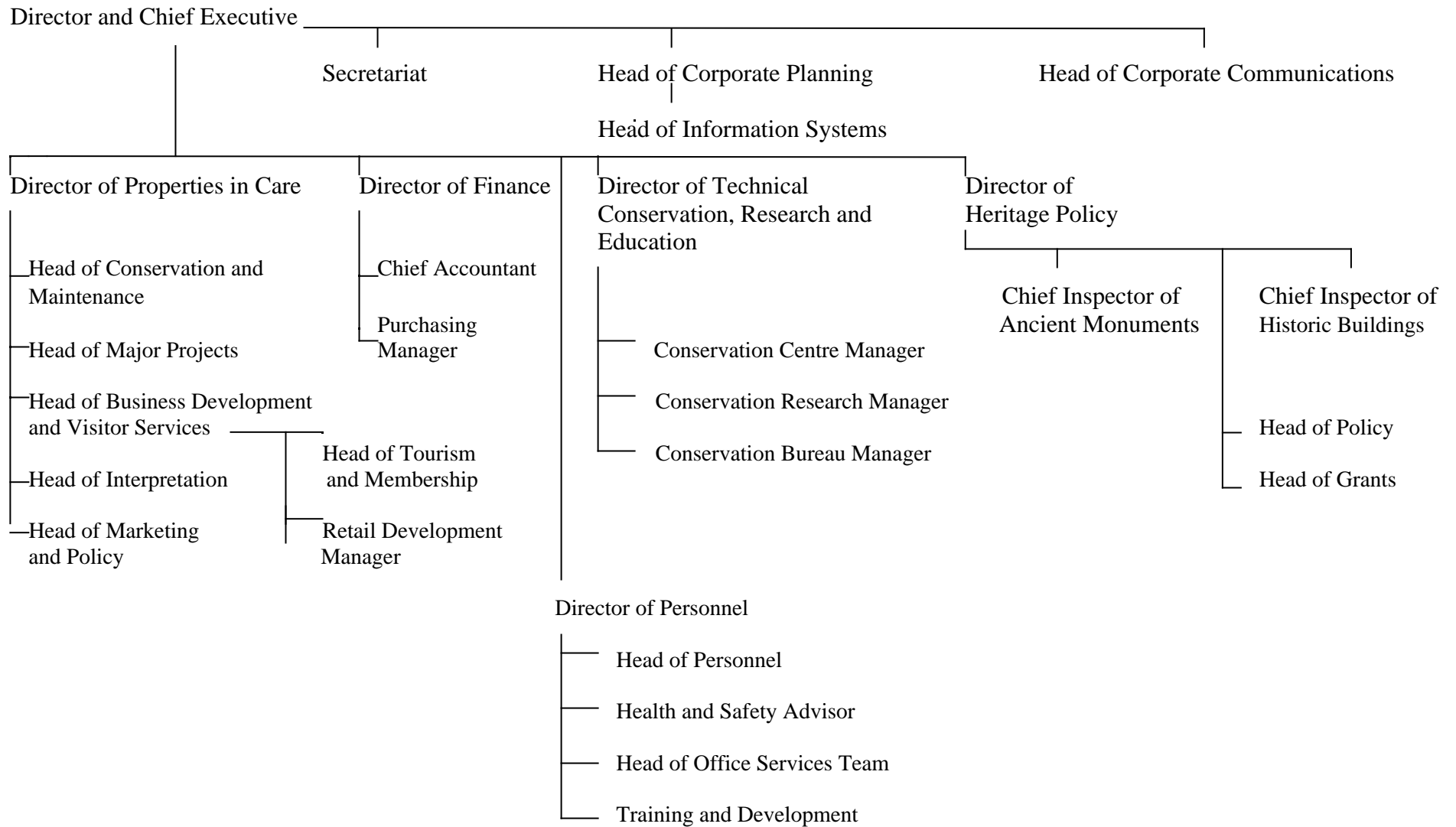
3. There were 5 main structural options to be considered: Executive Agency status; a Non Departmental Public Body; Departmental Body; privatisation; or voluntary sector.

#### Executive Agency

4. Executive Agencies were first established in 1988. There is no set blueprint for an Executive Agency and there are a number of different models. However, Executive Agencies are generally established where a set of executive functions can be carried out discretely within a clear policy framework set by Ministers. Executive Agencies of the Scottish Executive are constituent parts of the core departments and have a strong focus on the operational delivery of service outputs. All of the functions performed by the Agency are carried out on behalf of Scottish Ministers. While Ministers would not normally get involved in the day-to-day operations of agencies, Executive Agency status means that the organisation is accountable to Ministers and, through them, to Parliament. Other examples of Executive Agencies include Communities Scotland, the Scottish Prison Service and the Scottish Court Service. Cadw, which has responsibility for the built heritage in Wales, is an Executive Agency of the National Assembly for Wales.

#### Non Departmental Public Body

6. Executive Non-Departmental Public Bodies (NDPBs) carry out administrative, commercial, executive or regulatory functions on behalf of Ministers. NDPBs are generally responsible for managing their day-to-day affairs but Ministers remain ultimately accountable to the Scottish Parliament for the activities of the body and therefore have responsibility for approving the NDPBs’ policy and performance framework, determining the level of funding and making appointments to the Board. While NDPBs operate at arms length from Ministers they are still part of the machinery of government. Scottish Enterprise, Highlands and Islands Enterprise, Scottish Environment Protection Agency and Scottish Natural Heritage are all examples of Executive NDPBs in Scotland. The main built heritage body in England, English Heritage is an NDPB.



## Departmental Body

7. The functions currently delivered by Historic Scotland could be transferred to a core Scottish Executive Department, such as the Development or Education Departments. The functions could be located within a single unit within a Department, as was the case immediately prior to the establishment of Historic Scotland as an agency in 1991, or split between a number of different Departments. Scottish Executive Departments are not normally involved directly in the delivery of services to the public.

## Privatisation/Voluntary Sector

8. Privatisation and voluntary sector involvement could relate to some of Historic Scotland's functions.

## **Review of Public Bodies**

9. In 2001 the Scottish Executive undertook a review of public bodies in Scotland. The purpose of the review was:

- To secure a set of principles that should underpin the organisation and delivery of devolved central government services in the new Scotland. To explore the relationship between the Executive and the bodies it sponsors and between them and other interests – for example, local government, the Parliament and civic Scotland;
- To test all public bodies, and the single person Commissioners appointed by Ministers, and any future proposals to establish public bodies, against these principles. To abolish those bodies whose existence is not justified by reference to them – either by ceasing the function if it is no longer needed, or by moving it to another organisation, or bringing the function into, or closer to, the Executive;
- To ensure that those public bodies that remain operate effectively and are appropriately accountable to Ministers and Parliament and have legitimacy in the eyes of the public, most particularly by further modernising the appointments process; and
- To secure maximum value for money with a rolling review of the remaining public bodies in the context of wider scrutiny of the functions they carry out.

10. The outcome of the review process was outlined in *Public Bodies: Proposals for Change* which was published in June 2001. This included a set of principles adopted by the Executive to underpin the organisation and delivery of devolved central government services in Scotland. The set of principles that the Executive has adopted is as follows:

- Scottish Ministers must be, and must be seen to be, directly accountable to the Scottish Parliament for the overall policy and strategic framework within which all devolved functions are carried out;
- Arms length public bodies have an important role to play in the governance of devolved Scotland – for example by bringing expertise to bear in the delivery of certain functions, giving specialist advice to Ministers, and where quasi-judicial decisions need to be made;
- Where there is a strong argument for Ministers remaining directly accountable to Parliament for the execution of a function the presumption should be that it must be carried out within the Executive (either within the core or by an Executive Agency).

In these circumstances interposing an unnecessary barrier between Ministers and those carrying out the function conflicts with the principle of direct accountability;

- If it is clear that Ministers should be distanced from a function for some reason they should not necessarily be held responsible for the manner of its execution, provided that they have given clear strategic direction to those expected to carry it out;
- The mechanisms for carrying out Executive functions on behalf of Ministers or for providing advice to them must be fit for purpose relative to the scale, complexity and significance of the function, and as flexible and transparent as circumstances allow;
- A public body should only be established or remain in existence if it has a distinct role to play and distinct functions to perform;
- Every public body must be clearly and appropriately accountable to Ministers and the people whom they serve for the functions they perform. There must be clarity about what the body itself is responsible for doing;
- Every public body must be able to work in a joined up way with other organisations and be able to draw new people into the processes of government in its widest sense; and
- Every public body must be properly run, efficient and effective, and deliver value for money.

11. We were mindful of these principles in considering the most appropriate structure for the delivery of the functions we had identified as being required. Specifically we considered whether Ministers needed to be directly accountable to Parliament for the execution of Historic Scotland's functions. Accountability was one of the key issues identified by respondents to the consultation process, although there were differing views on who Historic Scotland should be accountable to. However, given the importance of this issue there would appear to be a presumption in favour of maintaining direct accountability through Ministers to Parliament.

### **Consultation Response/Views**

12. The issue of Historic Scotland's organisational structure drew more comments from respondents to the consultation process than any other issue. However, there was no consensus on the most appropriate structure. The two most popular options were either retention of Executive Agency status or change to NDPB status. One of the features of the process was that there was a level of confusion and misunderstanding as to the implications of the different options. Respondents did identify a number of key issues which they deemed important in considering the most appropriate structural option. These included accountability and transparency to Ministers, Parliament and external stakeholders; independence; the cost and uncertainty of any change; the need to ensure that the organisation has the authority to allow it to carry out its role; flexibility; the need to maintain contact with Ministers and to be involved in the development of policy; the impact upon staff and providing a structure which allowed the organisation to take a more high profile stance on issues.

### **Analysis**

13. The first issue to be considered was whether all of the functions identified as necessary should be delivered by a single organisation or be split. There were two clear options for splitting the functions:

- Separating Historic Scotland's properties in care functions and establishing a separate organisation with responsibility for managing the properties;
- Separating Historic Scotland's policy development functions and establishing a separate policy unit within the core Executive Department.

14. Some respondents to the consultation exercise had suggested that there was a conflict of interest between Historic Scotland's role as a regulator of the sector and the organisation's management and presentation of the properties in care. A smaller number of respondents had identified policy areas where they considered that Historic Scotland had not been as fully involved as they could have been and suggested that the establishment of a Departmental policy unit would help to build links across a range of policy areas.

15. There was no presumption during the review that all of the functions needed to be delivered by a single organisation. However, any separation of functions would need to be on the basis that such an option would result in better protection for the historic environment and an improved service for the public. As outlined on pages 19 and 23 the Steering Group considered this issue very carefully. However, they did not consider that there was a conflict of interest between Historic Scotland's regulatory and management roles and did not consider that separating the roles would result in increased protection for the properties in care. Indeed there appeared to be clear benefits in having a single organisation with responsibility for both protecting and presenting the historic environment to the public. The creation of a new policy unit might help to facilitate links across the Executive but the Steering Group were concerned at the potential for duplication and the negative impact of separating the policy development function from practical expertise. There appeared to be benefits in linking the policy and delivery functions within a single organisation. **Our conclusion was that all of the functions currently delivered by Historic Scotland should be delivered by a single organisation.**

16. A private sector or a voluntary organisation would not appear to be able to deliver all of the functions currently delivered by Historic Scotland, notably the policy and regulatory functions. Any such change would not increase the accountability, the transparency, or the authority of Historic Scotland and would diminish the degree of involvement in policy development. It has been suggested that private or voluntary sector organisations could take on a greater role in the management of the properties in care. There does appear to be scope to improve the degree of partnership and joint working with stakeholder bodies, including voluntary sector agencies where there are mutual benefits. However, given the status of many of the sites; the fact that the vast majority of sites are not self-financing and the terms of the guardianship agreements under which Historic Scotland manages those sites not owned by the state, transferring responsibility for such sites out of the public sector does not seem to be a feasible option. Transferring these functions to a core Scottish Executive Department would result in a diminished profile for the historic environment and would not be an appropriate option.

17. The key decision therefore lay between continuation of Executive Agency status or change to NDPB status. The views of stakeholders, including the view from HEACS, were clearly important factors in considering the most appropriate structure. The responses to the consultation document were split on this issue, and HEACS initially reserved its position. However, following further consideration HEACS came to the view that "in strategic terms a change from Executive Agency status at this time would be a move into unknown territory with potential inherent and unforeseen dangers, and that the capacity of Historic Scotland to

carry out its role could meantime be adversely affected”. The Steering Group recognised the force of the HEACS argument and also noted that there would be a need for legislation with a lengthy period of uncertainty. A change would also be costly. They therefore concluded that a change in status should only be contemplated if there was clear evidence that NDPB status would result in improved delivery and accountability.

18. In reaching its decision on status the key factors for the Steering Group were:

- The need for Ministers to be directly accountable to Parliament for the execution of Historic Scotland’s functions;
- The importance of close involvement in the policy development and resource allocation process; and
- The importance of close contact with Ministers;

17. The Steering Group felt that the Executive Agency model, which provides direct links between the organisation and Ministers, was best suited to delivering its functions effectively, given the considerations above. Historic Scotland’s functions fall squarely within the classic Agency categorisation. This was still true, even taking into account the argument, given in favour of NDPB status, that there should be an organisation independent enough to champion the historic environment.

18. As outlined on pages 19 to 20 the need for a champion for the built heritage was a clear message from the consultation process and there appeared to be 3 separate roles in championing the historic environment. Only one of these roles would fall to Historic Scotland or any successor organisation although they might need to play a role in supporting Ministers and in facilitating the involvement of the voluntary sector. Within that context it was clear that an NDPB would not be better placed than an Executive Agency to carry out the role of champion.

19. **The Steering Group therefore concluded that Historic Scotland should remain as an Executive Agency.** The Group did, however, consider that there were changes which could usefully be made to the way in which the Agency works and in its relationships with other organisations and the public, as set out elsewhere in this report.

## **Culture**

20. While we believe that Historic Scotland should remain as an Executive Agency this does not mean that there should be no change. Many of the respondents to the consultation process praised the organisation’s performance and the overall impression was of a very successful organisation. However, within that context there were a number of messages about changes which stakeholders wished to see to the culture of the organisation:

- Improved communications with a greater focus on openness and transparency and on communicating more clearly with the general public. While Historic Scotland’s specialist publications were widely praised there was a concern amongst respondents to the consultation process that the organisation was not so successful at communicating with the general public;
- Maintaining the focus on delivery including the importance of delivering services to those in remote locations. While respondents recognised that much of Historic Scotland’s regulatory role is process driven, concerns were expressed about delays

within those processes and the importance of moving through the process as urgently as possible;

- Increased flexibility and innovation to ensure that the organisation is responsive to change; and
- A focus on building partnerships with stakeholders by engaging them in the development of policies at an earlier stage and being open to ideas from outwith the agency.

A number of respondents to the consultation exercise cited transparency and increased openness as arguments in favour of structural change. However, these are essentially cultural rather than structural issues and need to be addressed by changing the internal culture of the organisation.

21. It was notable that many of these messages chimed with the work that the Executive is undertaking through the *Changing to Deliver* programme. *Changing to Deliver* is the Executive's organisational change programme and the responses of stakeholders suggested that a similar organisational change programme was required within Historic Scotland. The Steering Group were clear about the type of cultural changes which were required, however, they did not prescribe how these changes should be delivered. It is for the Chief Executive of Historic Scotland to consider how best to take these messages on board and how to deliver the necessary cultural changes.

22. The Management Board of Historic Scotland will have an important role in communicating and delivering these cultural changes. The organisation does not currently have any external members on its Management Board, although the Audit Committee has two non-Executive members, one of whom is the Chairman. The Steering Group considered that, given the important role of the Management Board in a change programme, **it would be particularly helpful if external challenge and support could be introduced to the Management Board through the appointment of external independent members.** These individuals should not be appointed to represent the views of specific stakeholder interests. The Steering Group recognised the strong desire amongst some stakeholders for greater involvement and this has been reflected in our recommendations about communication and building partnerships with stakeholders.

23. The majority of respondents to the consultation exercise reported positive views on their relationship with Historic Scotland. However, there were still lots of suggestions as to how such relationships could be further strengthened. Some stakeholders suggested that consideration could be given to the use of secondments in raising awareness and the Chief Executive of Historic Scotland may wish to give further consideration to this option.

#### Local Authorities

24. Historic Scotland has links with local authorities in respect of its planning functions, its education functions and in terms of the economic impact on the local tourist industry of individual sites. The relationship between Historic Scotland and individual local authorities is therefore very important. It is highly desirable that there is a clear understanding between local authorities and Historic Scotland as to the role of each organisation and as outlined on page 16 of this report consideration should be given to the development of concordats with local authorities. Historic Scotland may also wish to consider whether there are other local

forums with which they could usefully become involved which would help to develop their profile and understanding of local priorities.

### Voluntary Sector and Professional Bodies

25. Voluntary sector organisations, local amenity groups and professional bodies have an important role to play in protecting the historic environment. Historic Scotland directly provides some £0.5m each year to support the work of the voluntary sector but it is clear that a number of organisations were concerned that the disparity in size between individual organisations and Historic Scotland and the funding relationship meant that it was difficult to establish a true partnership. This is an issue Historic Scotland will wish to be mindful of in working with partner organisations. The establishment of BEFS is potentially an important step forward in this area.

26. Historic Scotland has already established a close working relationship with the voluntary sector in respect of the management of a small number of individual sites. Such relationships can be very positive. A number of respondents identified scope for further joint working specifically with the National Trust for Scotland. **Historic Scotland should be encouraged to explore the scope for partnership working with organisations which share their ethos and objectives where there are mutual benefits.**

### HEACS

27. HEACS has a very important role to play as the advisory NDPB providing independent advice to Ministers on issues affecting the historic environment. Historic Scotland currently provides the secretariat and support functions for HEACS. While HEACS has not been established to monitor Historic Scotland there may be occasions where there may be a difference of opinion between the two organisations. **It would reinforce the independence of HEACS if the secretariat for the organisation was independent of Historic Scotland.**

### **Accountability**

28. Accountability was identified by respondents to the consultation process as an important issue. However, analysis of the responses suggested that there were a number of different definitions of accountability including accountability to Ministers; to Parliament and to stakeholders. It is clear that there is some uncertainty amongst some stakeholders about the implications of Executive Agency or NDPB status. Executive Agencies are directly accountable to Ministers, who are in turn accountable to Parliament.

29. Agencies operate within the Executive structure and as such are located within a parent Department. Historic Scotland's parent Department is the Education Department. Some respondents to the consultation exercise suggested that it would be more appropriate to allocate another core Department, such as the Development Department or Environment and Rural Affairs as Historic Scotland's parent Department. We recognise that the title of the Education Department does not reflect the range of policy areas included within the Department and this may be an issue which would merit further consideration. However, **Tourism, Culture and Sport is the most appropriate current Ministerial portfolio for Historic Scotland and as such it is sensible that it should continue to be placed within**

**the Education Department to reflect the important links with the culture, architecture and tourism areas.** It is also important to note that Historic Scotland does not just have links with its parent Department but also across a range of Executive policy areas.

30. The Executive Agency model is very flexible and there is no set structure. However, a mechanism is generally set up to provide the Minister with an independent source of advice as to the Agency's performance. This can be achieved in a number of ways:

- A senior figure within the parent Department who has the trust of both the Minister and the Chief Executive provides advice on the performance of the Agency. This is the model operated by Historic Scotland;
- A Ministerial Advisory Board (MAB) may be appointed comprising senior Departmental officials, the chief Executive and a number of external members;
- A number of external independent members may be appointed to the Agency's Management Board either to provide particular business or technical expertise or to represent major stakeholders.

The Steering Group noted these different options. We did not see a role for a Ministerial Advisory Board, given the recent establishment of HEACS. However, as outlined on page 34 we recommend that external independent members should be appointed to the Management Board, although not in a representative capacity.

30. Executive Agencies operate within the context of their Framework Document which sets out the key elements of the policy and resources framework for the Agency and the relationship and respective responsibilities of the Chief Executive, the Minister and the Department. **Historic Scotland's Framework Document was last updated in 2001 and should be revised to reflect further changes, including the establishment of HEACS, and to update the delegated financial limits.**

# ANNEX A

## **REVIEW OF HISTORIC SCOTLAND**

### **Introduction**

1. Scottish Ministers have announced that a review of the functions and structure of Historic Scotland will take place and the results of the review and Ministers' conclusions in the light of that review will be made available to Parliament.

The terms of reference of this review are:

- (a) to consider the range of functions currently discharged by Historic Scotland on behalf of Scottish Ministers;
- (b) to consider whether the most appropriate vehicle for the accountable deliver of those functions deemed necessary or desirable is an Executive Agency, an NDPB, a Departmental body, a privatised entity, a voluntary organisation or some combination of these options; and
- (c) to make recommendations to Ministers that take cognisance of the financial and practical implications of the various options considered.

### **Background**

2. Historic Scotland's mission is "to safeguard the Nation's built heritage and promote its understanding and enjoyment".

3. Historic Scotland is responsible for the upkeep of more than 300 historic properties across Scotland. The organisation provides statutory protection for buildings of historic or architectural importance and monuments of national importance by listing and scheduling, which are done under separate legal arrangements. In 2001-02 200 monuments were scheduled and 65 listed building units were surveyed. Some 2700 listed building consent cases and 200 scheduled monument consent cases were handled. In 2001-02 the organisation spent £49.2m protecting, presenting and promoting Scotland's built heritage and generated income of £18m.

4. The work of the organisation is guided by the following objectives:

- To protect and conserve Scotland's built heritage;
- To encourage public appreciation and enjoyment of Scotland's built heritage;
- To play an active role in the development and success of social, economic and environmental policies; and
- To be effective and efficient in its work.

Historic Scotland does this by

- Providing statutory protection through:
  - Scheduling monuments of national importance;
  - Listing buildings of special architectural or historical importance;
  - Dealing with casework on scheduled monument and listing building consents;

- Carrying out and facilitating conservation of historic buildings and monuments of national importance through:
  - Conservation and maintenance of properties in care;
  - Advice and grants to assist with conservation and management of ancient monuments;
  - Encouraging archaeological surveys and excavation at those sites threatened by natural forces or development where preservation is not possible;
  - Taking properties into State care;
- Researching and developing issues and skills related to the built heritage and raising the standard of conservation practice;
- Encouraging visitors to properties in Historic Scotland's care and ensuring that they enjoy and benefit from their visits;
- Developing knowledge, appreciation and access to the built heritage across a wide audience;
- Promoting the built heritage as an integral part of the Scottish cultural experience;
- Operating a range of high quality tourist attractions and working with other tourist organisations to attract visitors from home and abroad;
- Contributing to sustainability;
- Contributing to social inclusion;
- Providing jobs;
- Contributing to policy on architecture for Scotland;
- Valuing and developing the organisation's staff;
- Ensuring continuous improvement in operational policy, processes and procedures;
- Maximising the potential of information and communication technology;
- Generating income to support core activities;
- Making the best use of external funding sources.

5. Further background information on Historic Scotland can be found at [www.historic-scotland.gov.uk](http://www.historic-scotland.gov.uk)

### **Some questions about role and strategy**

Are the functions undertaken by Historic Scotland necessary? Should any of the functions not be undertaken?

What would be the impact if any, or all, of Historic Scotland's functions were discontinued?

Are there functions carried out by Historic Scotland that might advantageously be carried out by other bodies working in the field of archaeology, preservation, conservation, presentation, recreation, access (such as local authorities, voluntary organisations, private sector organisations, the Scottish Executive)? Which functions and why?

Are there any functions carried out by such bodies – or perhaps not being carried out at all – that could be carried out by Historic Scotland. Which functions and why? Are there functions which Historic Scotland are currently not undertaking which you consider they should be taking on?

Is there scope to rationalise the functions of Historic Scotland with those of other bodies? Which functions? And how might they be organised?

To what extent do Historic Scotland's objectives link with the guiding themes and values of the Scottish Executive and the Scottish Parliament – for example in tackling social disadvantage, promoting Scotland's identity, improving public services and safeguarding our environment?

## **Historic Scotland Planning and Structure**

6. Historic Scotland is an Executive Agency within the Scottish Executive Education Department. Executive Agencies were established in 1988 as a consequence of the UK Government's 'Next Steps Initiative' aimed at improving the delivery of public sector services. Executive Agencies are usually established where a set of functions can be carried out discretely within a clear policy framework set by Ministers. Executive Agencies of the Scottish Executive are constituent parts of the core departments and have a strong focus on the operational delivery of service outputs. All of the functions performed by the Agency are carried out on behalf of Scottish Ministers.

7. Ministers are responsible for setting the policy and resources framework within which Historic Scotland operates. While Ministers do not normally intervene in the day-to-day management of the organisation they do approve Historic Scotland's Corporate Plan, set targets and monitor performance and approve the Framework Document which sets out roles and responsibilities. Ministers also, usually following an open competition, approve the appointment of the Chief Executive. The Chief Executive is responsible to Scottish Ministers for the organisation's management, performance and future development.

8. As an Agency Historic Scotland is directly accountable to Scottish Ministers who are, in turn, directly accountable to the Scottish Parliament for its performance.

9. Historic Scotland employs approximately 844 (full time equivalents) members of staff in a wide range of disciplines and skills including archaeologists, art historians, conservators, craftsman, custodians, keykeepers, building professionals and specialised support staff and administrators. The organisation's head office is in Edinburgh but responsibility for the care and presentation of properties is devolved to teams in Edinburgh, Stirling and Fort George.

### **Planning**

10. The different Groups within Historic Scotland (Heritage Policy, Properties in Care, Technical, Conservation, Research and Education, Chief Executive's Group and Finance and Procurement and Personnel) each produce a one year Operational Plan. This Plan sets out the planned activity of that Group for the coming year along with information on training needs and changes in information technology. The organisation as a whole then produces a Corporate Plan. Previously these Plans covered a single year but from 2003-04 Historic Scotland has decided to produce a 3-year Corporate Plan. The Corporate Plan draws together information available from the Operational Plans and then outlines how the organisation will deliver against key objectives and targets.

11. Historic Scotland is in the process of developing a ten-year vision for the Agency. The organisation anticipate that the ten-year vision will:

- Clarify the organisation's role
- Create direction, identify long term goals and set an agenda; and
- Promote the work of Historic Scotland, increase recognition and reach out to stakeholders.

Historic Scotland are conducting independent research to investigate how key partners and stakeholders view Scotland's built heritage and to ascertain their opinions regarding the work of Historic Scotland. This exercise will feed into the development of the ten-year vision.

**Some questions relating to Historic Scotland's planning and structure:**

Is the current organisational structure of Historic Scotland appropriate to the delivery of the organisation's objectives? Would a different organisational structure improve the delivery of Historic Scotland's objectives? Some possible alternatives might include a Non-Departmental Public Body, a core Scottish Executive Department, a private sector organisation or a voluntary sector body.

Does Historic Scotland need different freedoms and flexibilities to improve the delivery of its functions and objectives? If so how might this be achieved without weakening its overall accountability?

How effective is the corporate planning of Historic Scotland in developing clear strategic direction, setting targets and priorities and delivering key targets and outcomes?

## Historic Scotland's Performance

12. Scottish Ministers have set the following key performance targets for Historic Scotland to meet during 2002-2003.

	Target
<b>Protecting Scotland's Built Heritage</b>	
Number of monuments scheduled	275
Weighted number of listed building resurvey units	125
Number of weeks in which 80% of scheduled monument consent cases resolved	9
Percentage of listed building consent cases resolved within 28 days	97%
Number of condition surveys for properties in care	65
<b>Promoting and Presenting the Built Heritage</b>	
Historic Scotland market share compared to other paid visitor attractions in Scotland	56%
Performance rating from the Mystery Visit programme (using three-year rolling average)	86%
Average spend per visitor	£2.10
<b>Agency Management</b>	
Percentage efficiency gains/savings on non-grant expenditure	1%

The organisation reports on their achievements against their performance targets in their annual report.

13. Historic Scotland's Annual Report for 2001-2002 issued in August 2002. The Report showed that Historic Scotland had been successful in meeting all but one of their targets for 2001-02.

	Target	2001-02 Outturn
<b>Protecting Scotland's Built Heritage</b>		
Number of monuments scheduled	200	200
Weighted number of listed building resurvey units	150	65
Number of weeks in which 80% of scheduled monument consent cases resolved	9	9
Percentage of listed building consent cases resolved within 28 days	97%	97%
Number of condition surveys for properties in care	65	67
<b>Promoting and Presenting the Built Heritage</b>		
Historic Scotland market share compared to other paid visitor attractions in Scotland	54.5%	56%
Percentage of satisfied visitors (based on independent survey)	96%	98%
Average retail spend per visitor	£2.05	£2.10
<b>Agency Management</b>		
Percentage efficiency gains/savings on non-grant expenditure	1.25%	1.28%

**Some questions relating to Historic Scotland's Performance?**

How significant are these or other achievements? Is there more that could be done? If so, what?

Are Historic Scotland's targets suitably stretching/demanding?

How does Historic Scotland's performance compare with that of other comparable bodies?

## **Partnerships and Stakeholders**

14. Historic Scotland could not achieve its objectives without the support and activity of its partners and stakeholders. The breadth of the organisation's remit means that there are a wide-range of organisations with a direct interest in the work of Historic Scotland. These include local authorities, archaeological trusts, historical societies, planners, architects, builders, conservation and restoration experts, tourist boards and tour operators, landowners and property owners, members of staff and the large numbers of people who visit Historic Scotland properties. In 2001-2002 there were 2.7 million visitors to Historic Scotland's properties where an admission fee is charged and during the annual free weekend there were 48,569 visitors to properties administered by the organisation.

### **Some questions about Partnerships and Stakeholders**

Is there an effective understanding between Historic Scotland and your organisation about the role of Historic Scotland?

Does Historic Scotland have a productive relationships with your organisations in terms of policy, planning and implementation?

How might these relationships be strengthened?

Is there a need to build closer links between Historic Scotland and other bodies? Is so which ones and on which issues?

How accessible or responsive has Historic Scotland been to your organisation and to the wider public?

Has Historic Scotland promoted its purposes and services effectively?

Does Historic Scotland have your confidence as a body with which your organisation can do business? Are you broadly confident about the effectiveness of the delivery of its functions?

# **ANNEX B**

## **Analysis of Responses to “Review of Historic Scotland”**

Linda Nicholson, George Street Research Limited

A Scottish Executive Education Department consultation on the “Review of Historic Scotland” took place between 25 June 2003 and the end of September 2003. A consultation paper was issued to which 131 responses were received from a wide range of organisations and individuals with a personal or professional interest in the historic environment in Scotland. This is a summary of the analysis of the responses to the consultation. The findings will contribute to the overall review of the functions and structure of Historic Scotland.

### **Main Findings**

- An overarching view was that the consultation was timely and sensible. The responses were wide-ranging, based on personal or professional experience and provided a depth of comment of much value to feed into the wider review of Historic Scotland currently being undertaken
- Criticism tended to be constructive with responses containing much in the way of praise for aspects of current performance
- An overriding message was the need for a central body to undertake functions relating to the built heritage, but there was some doubt over whether Historic Scotland as currently organised and operating was the appropriate body
- Qualities required of such a central body emerged as “independent”, “neutral”, able to champion the cause of the built heritage, with adequate funding to underpin its functions
- There was a call for such a body to have a much broader remit than Historic Scotland has at present, and to be responsible for the entire historic environment
- There was much debate on the merits and disadvantages of Historic Scotland remaining as an Executive Agency or changing in organisational structure, perhaps to a NDPB. No clear cut recommendation emerged from the responses with strong arguments presented for both the status quo and NDPB status
- Some respondents perceived a conflict of interest between Historic Scotland’s current advisory and planning roles and also in its promotion of its own properties whilst supporting other bodies with theirs. Possible ways of addressing these perceived conflicts were presented
- Other criticisms included a concern about Historic Scotland’s apparent lack of accountability and transparency. Further investigation of such comments are recommended in order to understand and address them appropriately
- Calls were made for Historic Scotland to be more open in operation with stakeholders and to improve its communication with the public
- Many respondents perceived the need for some decentralisation of aspects of Historic Scotland’s functions in order to promote better communication and understanding of its more geographically dispersed stakeholders

## **Introduction**

Established in 1991, Historic Scotland is an Executive Agency within the Scottish Executive Education Department. Executive Agencies are subject to regular reviews of their status and functions. The planned review of Historic Scotland in 1999 was postponed because of devolution and in 2003 Scottish Ministers announced that the review should now proceed. The review is being carried out independently of Historic Scotland.

The views of stakeholders are important to the review and have been sought through a written consultation process, the results of which are reported in summary here. Individual responses to the consultation have also been made publicly available.

The consultation document raised a series of questions around each of 4 broad topic areas:

- Role and Strategy
- Planning and Structure
- Performance
- Partnerships and Stakeholders

The consultation period ran from 25 June 2003 until 17 September 2003 before being extended to the end of September to accommodate late submissions. Around 260 copies of the document were distributed with the document also placed on the Scottish Executive website, with hyperlinks to review papers. A link to the consultation paper was also available on the Historic Scotland website.

By the end of September 131 responses to the consultation had been received by the Review Team. The analysis was based on the comments contained in these.

## **Aims and Objectives**

The aim of the research was to analyse the comments contained in written responses to the consultation on the “Review of Historic Scotland”, to present the findings of the analysis and to identify any gaps in respondent sector.

## **Methodology**

Responses to the consultation were sent to the Review Team either in hard copy or via e-mail. The Review Team sent copies of each response to the research team at George Street Research.

An electronic ACCESS database was used to store and assist analysis of the responses. The main challenge for the analysis was the relatively large quantity of detailed free text material submitted by professional stakeholders.

The ACCESS fields used to record the material were based largely on the questions set out in the consultation document. Once responses had been examined, a small number of additional fields were added to accommodate any further themes which arose.

A small team of researchers worked through all responses using a well established set of ground-rules which served to promote consistency in handling and recording of the comments contained in the responses. Comments on the topics raised in the consultation were extracted from the responses and entered into the ACCESS database under the appropriate fields.

The analysis of comments was then undertaken based on the extracts contained in the database and reference to the original submissions as required. Most of the analysis was qualitative in nature although where scope for quantitative analysis existed, this was exploited.

The views presented were not vetted in any way for factual accuracy but represent what respondents perceived to be accurate from their perspective, but which others may interpret differently.

## Role and Strategy

There was general agreement on the advantages of housing responsibility for a variety of built heritage functions under one roof, particularly in terms of enhancing leadership and raising the profile of the built heritage. There were mixed views, however, on whether Historic Scotland, as currently constituted, is the appropriate body to undertake these functions. A general agreement emerged on the need to review Historic Scotland's functions with a view to rationalisation, outsourcing certain functions, reducing opportunity for conflicts of interest and identifying priorities.

A wide range of negative consequences of discontinuing with the functions were envisaged. Key amongst these was a perceived increased risk of the gradual deterioration of the built heritage condition and stock. Two possible candidates for possible off-loading of functions to other bodies were perceived to be the upkeep and promotion of the Properties in Care, and Historic Scotland's statutory and legislative casework.

Some respondents considered that there would be benefits in Historic Scotland taking on certain statutory functions currently undertaken by local authorities, and suggested a larger role for Historic Scotland in monitoring results of actions and decisions relating to the built heritage. An increased role for Historic Scotland in area conservation was also identified.

There was pressure for Historic Scotland to concentrate on strengthening and clarifying its existing functions and providing more support for others to take forward built heritage work. Calls were made for Historic Scotland to adopt more of a champion's mantle with a stronger, more pro-active approach.

Views were very mixed on whether there was scope for the rationalisation of the functions of Historic Scotland with those of other bodies. The most common view was in favour of rationalisation of functions with RCAHMS. Another common view was in favour of rationalisation of the tourism related functions of Historic Scotland, NTS and VisitScotland.

Several respondents perceived a strong link between Historic Scotland's objectives and the guiding themes and values of the Scottish Executive, and the Scottish Parliament. However, for a significant number of others, the links lacked clarity, or were partial and could be developed further.

There was a general agreement on Historic Scotland's alignment with the promotion of a Scottish cultural identity and its promotion of equal opportunities through improving access to buildings for those with disabilities and families with children.

## Planning and Structure

The issue of Historic Scotland's organisational structure drew more comment than any other consultation issue. However, any change to structure was not viewed as clear cut, with advantages and drawbacks associated with all options under consideration. Consultees cautioned about making changes which could be detrimental to the currently perceived good work of Historic Scotland.

Overall, most responses fell between those advocating the status quo and those wishing to see Historic Scotland's status change to that of an NDPB. The main advantage of the status quo option was its provision of some independence yet the retention of a closeness to government. The main advantages of the NDPB option were seen to be the greater facility for Historic Scotland to act as a champion of its cause, and the reduction of the perceived conflicts between particular functions of Historic Scotland.

An argument was made for a re-structuring of Historic Scotland within its current organisational framework with possible de-centralisation of some functions and the opening up of its management board to non-executive members.

Comments were made regarding creating more freedoms for Historic Scotland. A common view was that a move to NDPB status would create more freedom and flexibility particularly by the disengagement of Historic Scotland from its current close relationship with the Scottish Executive. Other ideas for

increased freedom were the loosening of current structural and contextual restraints; better partnership and liaison arrangements; more funding; greater synchronisation of budget cycles with stakeholders and permission to carry forward funding over financial years.

A common viewpoint was that the current corporate planning system was generally effective. A move to a longer term planning cycle was welcomed.

A recurring theme was the need for more consultation to feed into corporate planning with many suggestions made for changes to corporate planning content. A call was made for a broader, top-down, more creative leadership steer to corporate planning.

## Performance

There was much appreciation of what was seen as Historic Scotland's effective performance to date. Its performance against its targets was viewed as impressive but there was concern that the targets did not represent a comprehensive picture of functions.

The targets were perceived as being too quantitative in focus at the expense of qualitative assessment. They were also criticised for what was viewed as their focus on process rather than outcomes.

Many suggestions were made for more that could be done and further performance measures which could be adopted. Calls were repeated for the introduction of targets with a qualitative focus and an emphasis on outcome.

Suggestions were made for more detailed performance measures which incorporated a baseline against which to measure progress.

It was considered that establishing a performance framework compatible with that of the Scottish Executive and local authorities would be advantageous.

Calls were made for consultation to feed into a review of current performance targets.

In comparison with English Heritage, Historic Scotland was seen as less pro-active in

promoting the historic environment. English Heritage was also seen as having more productive relationships with its stakeholders. However, Historic Scotland compared well against English Heritage in terms of its technical research and publications.

SNH was perceived as being more pro-active than Historic Scotland at promoting its aims and objectives to the public.

Respondents highlighted a lack of comparator information which made it difficult to assess Historic Scotland's performance and recommended research or peer review to fill this gap.

## Partnerships and Stakeholders

Most of those who responded reported a clear understanding of Historic Scotland's role. Weaknesses in understanding focused on strategic issues as opposed to operational/case issues and on Historic Scotland's role in providing advice and guidance.

A recurring theme was Historic Scotland's poor level of communication with stakeholders and the public. Historic Scotland was perceived by some to lack reciprocity in understanding of stakeholders' business, roles and constraints.

Respondents reporting positive views on their relationship with Historic Scotland outstripped those reporting negative views in a ratio of roughly 2:1. Some respondents were most appreciative of what they saw as a very productive relationship, others considered that the relationship was poor and/or could be improved.

Commonly quoted factors which curtailed the building of productive relationships included geographical distance between Historic Scotland's headquarters and the stakeholder and the perceived frequently changing personnel at Historic Scotland and their lack of knowledge of the wider planning process.

Respondents made a wide range of suggestions as to how relationships might be strengthened. These ranged from relatively

simple ideas to more sophisticated proposals. More generalisable comments included: increased contact between Historic Scotland and its stakeholders; a decentralising of some of Historic Scotland's functions; its adoption of a more open and transparent stance; and a greater understanding of stakeholders' concerns.

Local authorities were the most commonly identified stakeholders in need of closer links with Historic Scotland.

The main difficulties reported were in setting up meetings and discussions with Historic Scotland and its perceived lack of approachability, its inflexibility and particular weakness in relation to involvement in local issues.

An overarching perception was of Historic Scotland's poor public image, fuelled by particular media coverage. There was a perception that the public lacked awareness of what Historic Scotland did. Many ideas were presented for improving Historic Scotland's accessibility and responsiveness to the wider public.

There was a general perception that the promotion of its purposes and services was a valid activity for Historic Scotland. Most of those who responded thought that Historic Scotland promoted all or some of its role and services effectively or generally well. However, many consultees considered that the promotion of all or some of Historic Scotland's role and services could be greatly enhanced.

Of those who responded, just under three-quarters had confidence in Historic Scotland as a body with which they could do business.

Many respondents, however, specified a number of changes which they considered would increase the effectiveness of Historic Scotland in delivering its functions.

For some, the current organisational framework was a major barrier to more effective delivery of Historic Scotland's functions.

## **Overview of Consultation**

The consultation responses were wide ranging and varied. They represented the views of a broad range of stakeholder sectors enabling both sector specific and generalisable comments to be presented.

Many respondents used the consultation paper structure as a framework for articulating their views. Others, however, used the issues raised as stimuli for in-depth comments on particular issues of most relevance to their organisation. From the nature of the responses it appeared that consultees had ample opportunity to express their views on the specific questions posed and on any other relevant issues they wished to raise.

The consultation attracted a relatively high volume of responses in relation to the number of bodies invited to respond. Respondents appeared to be satisfied with their access to the consultation papers, the advertising of the consultation and the time allowed for responses.

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# ANNEX C

## REVIEW OF THE STRUCTURE AND FUNCTIONS OF HISTORIC SCOTLAND:

1. Under Section 1 of the *Planning (Listed Buildings and Conservation Areas) Scotland Act 1997*, Scottish Ministers are required to compile lists of buildings of special architectural or historic interest ‘with a view to the guidance of planning authorities in the performance of their functions under this Act’. The compilation of a list is therefore a statutory requirement, however, what is included in the list is a matter of discretion for Ministers. The function of the ‘list’ of buildings is primarily therefore to identify buildings of interest for the information of local authorities.

### Listing practice in Scotland

2. The listing of buildings is generally achieved by 3 methods:

(i) spot listing – individual buildings are considered and listed or not depending on whether they meet the criteria;

(ii) survey of complete geographical neighbourhoods; and

(iii) thematic surveys of specific types or classes of buildings e.g. railway stations, schools, hospitals.

3. Method 2, the geographical survey, has been the main method used in Scotland to compile the current List.

4. The survey process began in 1947, building on work done in earlier years such as the private survey of some 50 burghs by the Marquis of Bute, and the work done by Edinburgh City Council in the 1930s to identify the City’s historic buildings. The work to prepare the lists was done quickly, descriptions were short and the work was farmed out to retired architects and young art-historians (a new breed). The whole country was covered by 1964 – the only national architectural survey ever to be completed.

5. By the late 1970s it had become apparent that the Lists provided poor coverage of the cities, particularly in relation to buildings of the late 19<sup>th</sup> and early 20<sup>th</sup> century, and that there was a patchiness of quality of the lists across the country. It was then decided to commence a resurvey. This resurvey is still continuing.

6. This resurvey has progressed as quickly as resources have allowed, and extra resources have been allocated to it from time to time. However, the length of time it has taken has itself caused problems, with those lists prepared in the late 1970s now a generation old and not reflecting modern understanding and appreciation of buildings.

7. Spot listing is undertaken on a regular basis, with members of the public, local authorities and voluntary sector organisations all regularly put forward potential candidates. So great has been the interest this year, Historic Scotland is seeking to clear a backlog of suggestions.

8. Thematic listing has been undertaken only occasionally in Scotland, though it is now the preferred option in England. Thematic listing can cover particular types of buildings or periods.

## Mapping

9. 40 years of survey work has produced a wide variety of geographical information about listed buildings, ranging from no information at all to 10m accuracy. With the advent of Geographical Information Systems (GIS), it has been necessary to standardise and upgrade information, and hold it for display against digital maps. The joint HS/RCAHMS project to upgrade all listed building mapping to 1m accuracy is currently two-thirds complete and will be launched later this year. An early decision was taken to use a single point as a marker for each property, rather than try to identify the boundaries or cartilage of each listed building (which would have required visits to 46,000 listed items, and would have been fraught with disputed extents of listing). This initiative is unique in the UK.

## LISTED BUILDING CONSENT

### Legislative Background

10. Under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 listed building consent is required for the demolition of a listed building or its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest. Listed Building Consent (LBC) allows proper consideration to be given to proposals affecting our built heritage, a finite resource that requires to be managed in a sustainable way. LBC applications are dealt with by planning authorities. A similar consent (Conservation Area Consent) is required for the demolition of a building in a conservation area.

11. Where the planning authority determines that listed building consent is required (certain minor works do not require consent), the application is assessed by the planning authority and considered on its merits. In addition to the legislation, the planning authority is required to pay particular attention to Executive policy in this area as set out in the *Memorandum of Guidance on Listed Buildings and Conservation Areas*. This publication contains the accumulation of advice from the Government on policy and practical issues relating to listed buildings (and to conservation areas).

### Historic Scotland Involvement

12. If a local authority is disposed to grant consent for an application affecting a building listed at category A or B, an application that involves a demolition of any listed building, the application is notified by the authority to Historic Scotland, acting on behalf of Scottish Ministers. Historic Scotland's Historic Building Inspectorate then considers whether the application raises any matters that require to be addressed by Scottish Ministers rather than the planning authority.

13. The staff within the Historic Buildings Inspectorate work with the applicant and the planning authority conservation officer to try to show how an applicant's needs can be accommodated within a listed building without damage to the character that makes it worthy of listing in the first place. The aim is to find a viable solution that satisfies both needs. The Inspectorate works to a performance target of dealing with 97% of listed building consent applications within 28 days – and on average it takes just 9 days to process an application. The legislation allows for an extension, beyond the 28-day period, of difficult cases where

more consideration is needed, and this is done in about 100 cases a year. The great majority of these are also cleared but it is from this group that the handful of call-in cases is drawn. This extra time allows for an examination of the issues to see whether there are grounds for recommending that the case should be called in by Scottish Ministers for their own decision. Out of all the applications submitted to Historic Scotland annually – currently around 2,600 – the number recommended for call-in has been in single figures for many years. All the rest are cleared, which means that the applicant is granted consent.

### **Call-in**

14. Although the vast majority of LBC applications are cleared, sometimes after negotiation by the Inspectorate and subsequent amendment by the applicant, in a very small number of cases each year Historic Scotland recommends to the Minister that an application be called-in to be dealt with by Scottish Ministers themselves rather than by the planning authority. At this stage of the process Historic Scotland is simply seeking the Minister's view on the question of call-in, rather than a determination of the application itself.

15. This course of action might be prompted for number of reasons including:

- a) the building and its setting are of particular national or international importance;
- b) there is significant public concern with the nature of the proposed works; or
- c) what is proposed is at odds with Executive advice and policy as set out in the *Memorandum of Guidance*.

16. If Ministers do decide to call in an application, the matter must be referred to an independent Reporter, either for a public local inquiry or under the written procedure, depending on what the principal parties wish. The Reporter is appointed by the Scottish Executive Inquiry Reporters Unit.

17. Following consideration of all the evidence, the Reporter produces a report of findings and recommendations. This report is considered by Historic Scotland, who will offer advice to the Minister on the Reporter's recommendations. The Minister will make his or her own decision informed by a wide range of considerations including, but not only, the advice of Historic Scotland.

## INVENTORY OF HISTORIC GARDENS AND DESIGNED LANDSCAPES

### Background to the Inventory of Gardens and Designed Landscapes in Scotland

18. The Inventory of Historic Gardens and Designed Landscapes in Scotland was prompted into being by two factors. First, the growing understanding that landscapes were cultural creations every bit as much as buildings (plus, the cultural significance we assign a building might be diminished by loss of its setting or landscape). Secondly, government in the early 1980s made provision for Inheritance Tax exemption on nationally-significant designed landscapes. But which were these? To meet this need the Inventory was compiled for the predecessor bodies of Scottish Natural Heritage and Historic Scotland. Five volumes were published in 1987. This work represented only the first count of obvious candidates (for instance, Kinross). Work on supplementary volumes - co-sponsored by Scottish Natural Heritage - is on-going. The *Lothians* volume was published in 2001 and the *Highlands and Islands* in 2003.

19. There is currently no legislation to give statutory protection to historic gardens and designed landscapes. However, the Inventory is recognised formally within the planning system. Since 1992, planning authorities - under the terms of the General Development Procedure Order (GDPO) (1992) - are required to consult Historic Scotland and Scottish Natural Heritage on applications that affect Inventory sites. However, there is no provision for Ministerial call-in following such consultation.

## REVIEW OF THE STRUCTURE AND FUNCTIONS OF HISTORIC SCOTLAND: ANCIENT MONUMENTS

### Legislative background

1. The main piece of legislation covering the protection of ancient monuments is the *Ancient Monuments and Archaeological Areas Act 1979*. This is a United Kingdom Act, Part II of which, relating to archaeological areas, was never introduced in Scotland.

2. Section 1 of the 1979 Act provides for Scottish ministers to compile and maintain a Schedule (list) of ancient monuments. Scottish Ministers may include in the Schedule any monument which appears to them to be of “national importance”. The Act defines a monument as:

(a) any building, structure or work, whether above or below the surface of the land, and any cave or excavation;

(b) any site comprising the remains of any such building, structure or work or of any cave or excavation; and

(c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure or part thereof which neither constitutes nor forms part of any work which is a monument as defined within paragraph (a) above; and any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled.

In accordance with section 1(4), a structure in use as a dwelling house cannot be scheduled as an ancient monument. Nor can a building in ecclesiastical use.

3. A monument is considered by Scottish Ministers to be of national importance if, in the view of informed opinion, it contributes or appears likely to contribute significantly to the understanding of the part. Such significance may be assessed from individual or group qualities, and may include structural or decorative features, or value as an archaeological source.

4. The Ancient Monuments Board for Scotland in 1983 offered the following advice as a working definition:

“For a monument to be regarded as being of national importance it is deemed necessary and sufficient:

first, that it belongs or pertains to a group or subject of study which has acknowledged importance in terms of archaeology, architectural history or history; and

second, that it can be recognised as being part of the national consciousness or as retaining the structural, decorative or field characteristics of its kind to a marked degree, or as offering of being likely to offer a significant archaeological resource within a group or subject of study or acknowledged importance.”

5. Section 2 of the Act requires that any works affecting a scheduled monument require the prior written consent of Scottish Ministers, known as scheduled monument consent (SMC). SMC is the mechanism whereby Scottish Ministers, through Historic Scotland, control works affecting scheduled monuments. There are exceptions to this general rule and these are specified in the Schedule to the Ancient Monuments (Class Consents) (Scotland) Order 1996: certain specified works, for example agricultural, horticultural and forestry works and works which are urgently needed in the interests of health and safety, may proceed without the need to obtain prior written consent of Scottish Ministers. The Act provides that before a decision is taken on any SMC application the applicant is provided with an opportunity to appear before, and be heard by, a person appointed for that purpose. The right is flagged up in a letter sent by Historic Scotland to the applicant indicating the provisional view of Scottish Ministers on the application.

6. Section 17 provides for Scottish Ministers entering into agreements with the occupier of an ancient monument or any person who has an interest in an ancient monument, which provide for the maintenance and preservation of the monument. Scottish Ministers pay for any costs arising under these “management agreements”.

7. Section 24 provides for Scottish Ministers at the request of the owner, undertaking or contributing towards the cost of the preservation, maintenance and management of any ancient monument. This is what is referred to as the grants to Owners Scheme.

8. Where a building or structure is both listed and scheduled, the scheduling legislation takes precedence, as it is the earlier piece of legislation. This is largely a matter of history. Scheduling was first introduced in 1882, listing not until the 1940s. Thus many sites such as ruined castles were scheduled and have remained so. There is some advantage to ‘overlap’ at such sites as scheduling can protect below and above ground archaeology whereas listing can only protect that archaeology associated with the upstanding structure. Thus, it may be sensible to make use of both Acts to protect the various parts of an historic site.

### **Scheduling and Consent: Administrative Arrangements**

9. There are over 7,600 scheduled monuments, of which 50% have been added to the Schedule since Historic Scotland was established as an Executive Agency of the Scottish Executive.

10. Scheduling is undertaken by the Ancient Monuments Division within Historic Scotland’s Heritage Policy group. Scheduling cases are initiated by the Inspectors, who undertake the necessary data gathering and research, contact owners (to discuss the implications of scheduling) and undertake field inspections. The standing instructions of the Division are that every effort must be made to contact the owner and (where relevant) tenant of the ground on which a monument lies, prior to the visit to a scheduling candidate to discuss the proposal and the effects of scheduling. A letter is usually sent to arrange a meeting on the ground.

11. The Inspectors prepare the formal case, which comprises significant evidence about the site (plans, photographs, descriptions), formal description, a ‘statement of national importance’ and a map, showing the area that will be protected by the designation. The proposal is vetted by the Principal Inspector of Ancient monuments (PIAM) in charge of the scheduling programme within Inspectorate of Ancient Monuments (IAM), the programme

and the proposals both being approved by the Chief Inspector of Ancient Monument and scrutinised by the Scheduling and Consents Manager in the Division. If the proposal is accepted, either immediately or after revision, the scheduling process is completed through the establishment of title through the Office of the Solicitor of the Scottish Executive (OSSE). Information on the mapped boundaries of the protected area is disseminated to other Government Departments, Agencies and local authorities.

12. The Inspectorate has a system under which 10 locally-based Monument Wardens visit on scheduled monuments on a 5-year cycle. They provide advice and information to the owner or occupier, note changes in ownership and tenancy, and alert the Inspectorate of Ancient Monuments to any damage or management problems on site.

13. The Division deals with other 200 applications for Scheduled Monument Consent a year. Applications are made on a standard form; however, in most cases there have been prior discussions between the applicant and relevant area Inspector (such discussions also lead to many proposals being dropped before they reach the level of a formal application). The Inspector will carefully examine the proposals, obtain any further information needed; make a site visit where appropriate, and provide a recommendation: either (a) to give consent, (b) to give consent with conditions or (c) to refuse consent outright. The applicant will receive a letter with a 'provisional view'; the applicant can accept this or raise objections, which can lead, rarely to a Public Local Inquiry.

14. There is currently no formal system of appeal against scheduling. If an owner responds to the formal scheduling proposal letter by objecting to the scheduling, or raising other issues, the case is passed to the Principal Inspector of Ancient monuments for consideration. A scheduling proposal may be amended at this stage.