

Longmore House  
Salisbury Place  
EDINBURGH  
EH6 4SQ

12 March 2004

Dear Sir or Madam

**SCOTTISH EXECUTIVE CONSULTATION CON 302  
REVISED CRITERIA AND GUIDANCE FOR DEFINING NATIONAL  
IMPORTANCE, UNDER THE TERMS OF THE ANCIENT MONUMENTS  
AND ARCHAEOLOGICAL AREAS ACT 1979**

I am writing to consult you about proposals to adopt revised criteria and guidance for the application of Section 1 of the Ancient Monuments and Archaeological Areas Act 1979.

Historic Scotland is an Executive Agency of the Education Department of the Scottish Executive. It is responsible to Scottish Ministers for the administration of the process of applying legal protection (scheduling) to ancient monuments under the terms of the Ancient Monuments and Archaeological Areas Act 1979. As part of a wider review into the process of scheduling, Historic Scotland has identified a need to review the current non-statutory criteria and guidance provided to help Scottish Ministers determine whether a monument meets the sole statutory requirement – to be of ‘national importance’.

Historic Scotland proposes to adopt revised criteria and guidance to determine ‘national importance’. These are based on the current set (written in 1983), but take account of subsequent developments in UK and international regulation, treaty and practice. The new document would be used in making decisions on scheduling, and would replace the existing criteria and guidance where published in Scottish Executive documents (for example Planning Advice Note 42).

I attach a document setting out the reasoning behind the proposed revision (Annex A), as well as copies of the existing and proposed new criteria and guidance (Annexes B and C respectively).

**Responding to this consultation**

I would be grateful if you could send any comments on the draft criteria and guidance document (Annex C) to me at the e-mail address given below (or to the postal address if you do not have access to e-mail), to arrive no later than Friday 4 June 2004.

e-mail [gordon.barclay@scotland.gsi.gov.uk](mailto:gordon.barclay@scotland.gsi.gov.uk)

Historic Scotland  
Rm G51  
Longmore House  
Salisbury Place  
Edinburgh  
EH9 1SH

Fax 0131 668 8765

If you have any queries please do not hesitate to contact me on 0131 668 8919.

Please ensure that you complete and return the Respondee Information Form (Annex E) with your response to the consultation. Annex F contains information about the Scottish Executive's consultation process.

### **For future engagement**

If you wish to access this consultation online (after 15 March) go to <http://www.scotland.gov.uk/views/views.asp>.

### **SEConsult**

A new email alert system for SE consultations (<http://www.scotland.gov.uk/consultations/>) was launched in December 2003. This system will allow stakeholder individuals and organisations to register and receive a weekly email containing details of all new SE consultations (including web links). SEconsult will complement, but in no way replace SE distribution lists, and is designed to allow stakeholders to 'keep an eye' on all SE consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We encourage you to register as soon as possible.

### **Access to consultation responses**

We will make all responses available to the public in the Scottish Executive Library by 24 June 2004, unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library.

Yours faithfully



Gordon J Barclay  
Principal Inspector of Ancient Monuments

- Annex A Background document
- Annex B The 1983 criteria and guidance
- Annex C The proposed revised criteria and guidance
- Annex D List of organisations consulted
- Annex E Respondee information form
- Annex F The consultation process

## **Annex A**

### **CONSULTATION ON THE REVISED CRITERIA AND GUIDANCE FOR DEFINING NATIONAL IMPORTANCE, UNDER THE TERMS OF THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979**

#### **Aims and objectives of the consultation**

1. To determine whether the revised criteria are generally acceptable to those involved in monument conservation in national and local government, agencies of government, NGOs in the historic environment field, bodies representing those affected by the scheduling of monuments, and interested individuals.
2. To determine whether there are consequences of the revision that have not been recognised, or not sufficiently taken into account.

#### **Background**

3. A scheduled ancient monument is a monument that is considered to be of national importance and has been given legal protection under the Ancient Monuments and Archaeological Areas Act 1979. The Act (section 61(7)) 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.

A structure in use as a dwelling house cannot be scheduled as an ancient monument nor can a building in ecclesiastical use.

4. Works on or alterations to scheduled monuments cannot be undertaken without the prior written consent of the Scottish Ministers ('scheduled monument consent').

5. Listed buildings are buildings of special architectural or historic interest protected under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The lists are compiled and maintained by Historic Scotland on behalf of Scottish Ministers. Unlike scheduling, listings are divided into three categories, to distinguish between different levels of interest. Buildings of national or international importance are listed category A, buildings of regional importance, or major examples of a particular period, style or type, are listed category B, and buildings of local importance are listed category C(S). Some buildings are both scheduled and listed. This issue is referred to but not addressed substantially in this document.

6. The number of scheduled monuments in Scotland has increased by more than 50% since Historic Scotland became an Executive Agency in 1991 and currently

stands at around 7,700. Historic Scotland receives over 200 applications for scheduled monument consent each year. Both of these areas of work have featured as Key Performance Indicators for the Agency.

7. The 1979 Act is the latest in a series of Ancient Monuments Acts that began in 1882. The first Act established the existence of the Schedule. Until the 1979 Act an owner of a monument was obliged only to give three months' notice of any intention to damage or destroy it. While provision did exist for temporary and permanent Preservation Orders to be applied during this three-month period, there is no record of such Orders ever having been used in Scotland. It was therefore only with the 1979 Act that it became an offence to damage or destroy a monument without the prior written consent of the Secretary of State (first of Environment, then Scotland; now Scottish Ministers).

8. This consultation grows out of consideration of two issues:

- the definition of national importance, taking account of 'national' versus 'regional' importance and the concept of cultural significance; and
- the need for synchronisation between scheduling and consent regimes.

### **The need for revised criteria and guidance**

9. The 1979 Act provides for the creation of a Schedule of monuments. The term 'monument' is defined as 'any...monument which in the opinion of the Scottish Ministers is of public interest by reason of the historic, architectural, traditional, artistic and archaeological interest attaching to it'. The sole criterion provided by the Act for the inclusion of a monument on the Schedule is that it appears to the Scottish Ministers to be 'of national importance'. Guidance was therefore needed and the current definition of what makes a monument of 'national importance', and the guidance prepared for Inspectors of Ancient Monuments, were adopted in 1983, when the 1979 Act was brought into force; both are at Annex B.

10. Since the development of the current legislation and the supporting criteria and guidance for scheduling, a greater appreciation has developed that for most of Britain's and Scotland's past there are no 'national' prehistories or histories, as reflected in the built heritage, nor has Scotland been united within its present boundaries for longer than five centuries. Instead, there is an aggregation of related prehistories and histories of different regions, which may have wider national or international links. The existence of strong regionality in Scotland (e.g. The Lordship of the Isles, Moray or Galloway) is reflected in many aspects of the archaeological and built heritage, for example in the regionally restricted designs of many prehistoric monuments and medieval buildings. This 'regional' approach is recognised in other monument identification and protection schemes, for example in English Heritage's approach to Monument Protection Programme monument definitions, which are broken down where necessary into regional sub-types.

11. 'National importance' must therefore be established primarily in relation to a regional context for most classes of monument, taking account of the regional nature of Scotland's past, the different characters of the archaeology and buildings of the regions, and of patterns of survival. Further, it has been made explicit (e.g. in *State-funded Rescue Archaeology in Scotland* (Historic Scotland 1997)) that the past of no one region of Scotland is inherently more important than another's. The consideration of 'national importance' below is predicated upon these two principles.

12. Since 1983 the concept of ‘cultural significance’ has been developed and is now well-established. The most commonly quoted source of authority is the Burra Charter (1999 version), where ‘cultural significance’ is defined as ‘aesthetic, historic, scientific, social or spiritual value for past, present or future generations’, ‘embodied in the place itself, its fabric, *setting, use, associations, meanings, records, related places and related object*’. The full text of the Burra Charter and its supporting documents can be consulted at <http://www.icomos.org/australia/burra.html>.

### **The relationship between designation and consent**

13 The development and implementation of the current criteria and guidance has also had an impact on the relationship between the scheduling process and the application of the scheduled monument consent regime. As a consequence of decisions in legal and planning inquiry proceedings, we have moved from a position 20 years ago where admittance to the schedule was ‘loose’ and responses to consequent applications for scheduled monument consent could be fairly flexible, to the current position where admittance to the schedule remains relatively ‘loose’, but the consent system is being applied more tightly and consistently. This is problematic in relation to those monuments that were scheduled using the ‘loose’ criteria but which now face a stricter consent regime. It could be argued that some monuments at present on the Schedule are not of sufficient importance to merit the very strong presumption against development that scheduled status now provides.

### **New criteria and guidance**

14 A review of the existing criteria and guidance within Historic Scotland, taking account of developing regulation, treaty and practice, in particular the Stirling Charter (2000) has concluded that they are fundamentally sound, but require some revision. A revised draft has been prepared and is at Annex C. It takes the substance of the 1983 text and builds into it developments in UK and international regulation, treaty and practice. It is intended to replace the current published criteria and guidance. At the same time, it does not move too far from the guidance still in use elsewhere in England and Wales, as it would be inappropriate for definitions of ‘national’ importance to vary too much over Great Britain (the 1979 Act does not apply in Northern Ireland), although this may have to be revisited in light of the conclusions that emerge from current reviews of legislation.

15. A major issue addressed in the new draft guidance is the preservation of monuments that have a value as being members of a particular class, having well-preserved, clearly typical, or exceptional characteristics. An example of this is hut circles (Bronze Age or Iron Age house sites) in upland Scotland where a great part of their ‘national importance’ lies in the *integrity* of the group of surviving examples, preserving evidence to make a significant contribution to an understanding of Scotland’s past: this is defined in Annex C as ‘Class Value’. While this has been a standard approach in the application of the Act throughout the UK, the existing criteria provide little support.

16. The revised criteria and guidance as presented will ensure that monuments on the Schedule **are** of national importance and defensible as such, for example at Public Local Inquiry. This will also help Historic Scotland to be consistent in how it deals with scheduled monument consent cases.

17. It is envisaged that the revised criteria would be used for new scheduling assessments and would also be applied retrospectively as we reconsider monuments already included in the Schedule. Over time this will sift out monuments that can no longer be justified as being of 'national' importance or which might be more appropriately protected by other mechanisms, such as listing. It is estimated that 5-10% of monuments currently scheduled might be removed from the Schedule. Although not of 'national importance' their preservation would be a material matter in the planning system, and in the administration of a range of agricultural and forestry grant schemes.

END OF ANNEX A

## **Annex B: The 1983 Criteria & Guidance**

1. A monument is of national importance if, in the view of informed opinion, it contributes or appears likely to contribute significantly to the understanding of the past. Such significance may be assessed from individual or group qualities, and may include structural or decorative features, or value as an archaeological resource.
2. For a monument to be regarded as of national importance it is necessary and sufficient:
  - first, that it belong or pertain 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 part of the national consciousness or as retaining the structural decorative or field characteristics of its kind to a marked degree, or as offering or being likely to offer a significant archaeological resource within a group or subject of study of acknowledged importance.
3. Advice was provided for day-to-day operations, in the form of 8 considerations to take into account in scheduling a monument (these were drawn directly from the criteria adopted in England):
  - **Survival/condition.** The existence of well-preserved field characteristics can be of importance in itself. The survival of the monument's archaeological potential both above and below ground is a crucial consideration, and goes beyond survival of marked field characteristics.
  - **Period.** It is important to consider for preservation examples of all types of monument that characterise a period; monuments of different contemporary types complement each other in the evidence they present.
  - **Group value.** The value of a single monument, such as a field system, is greatly enhanced by association with a group of related contemporary monuments. In the case of such groups it is preferable to protect the whole, including adjacent land, rather than to protect individual monuments within the group (i.e., a monument for the purposes of scheduling may consist of a group of monuments).
  - **Rarity.** There are monuments of types which, though originally abundant, are now so rare that even apparently poorly preserved examples should be preserved.
  - **Situation.** Types of monuments abundant in one topographical/land use situation may be rare in others and special regard should be had to their heightened potential archaeological value.
  - **Multi-period/single-period.** Multi-period sites with well-preserved components are of special value since they can allow fine phasing. A single-period site, on the other hand, will in general have more diversity of evidence for its functions in better preserved relationships. Examples of a type in both multi-period and single-period sites should be preserved.
  - **Fragility/vulnerability.** Highly important archaeological evidence from some field monuments can be destroyed by a single ploughing; there are structures of particular form or complexity whose value could be severely reduced by even slight mistreatment.
  - **Documentation.** Records of previous investigations can aid definition of the importance of a site, but it is important to recognise that un-excavated sites need

not be any less important for lack of previous excavation. Documentation in the form of early estate records, annals, charters, etc., can provide information not available through archaeological excavation, and it is of particular importance to record significant information which may be capable of correlation with archaeological evidence.

END OF ANNEX B

## **Annex C Proposed revised Criteria and Guidance**

### **Preamble**

1. The Ancient Monuments and Archaeological Areas Act 1979 provides for the ‘scheduling’ of ancient monuments that are of ‘national importance’. A definition and operational guidance on how to determine whether or not a monument was of ‘national importance’ was approved by the Ancient Monuments Board in 1983. The criteria and guidance offered here are the fruits of a revision of these texts, taking account of the development of treaty, charter and practice, in the UK and abroad. While being based on the 1983 texts, they also reflect the principles of Scotland’s Stirling Charter (2000), which ‘has been informed by, and builds on, the body of international conservation charters already in being’. One of the most influential of those is the Burra Charter (1999), which introduced the now widely accepted concept of ‘cultural significance’. While taking into account national and international developments, the revised criteria and guidance have been written with the needs of Scotland’s archaeological and built heritage in mind.

### **Cultural Significance**

2. For a monument or a class of monuments to be considered as of national importance it must, first, have a particular cultural significance: artistic; archaeological; architectural; historic; traditional; aesthetic; scientific; social (factors listed in the 1979 Act); or spiritual value for past, present or future generations. Such significance is embodied in the monument itself, its fabric, setting, use, associations, meanings, records, related monuments and related objects.

3. For most of Britain’s and Scotland’s past, there are no ‘national’ prehistories or histories, as reflected in the built heritage; instead there is an aggregation of related prehistories and histories of different regions, which may have wider national or international links. It is through these linked regional histories and prehistories that the history of Scotland and the UK can be understood.

4. Cultural significance can be characterised by reference to:

- the apparent developmental sequence of the monument. Multi-period and single period sites can provide insights of importance;
- the condition in which the monument has survived. ‘Condition’ includes the potential survival of archaeological evidence above and below ground, and goes beyond the survival of marked field characteristics;
- the present rarity of all or any part of the monument;
- the technological or scientific interest of all or any part of the monument;
- the functions of the monument and its parts;
- the relationship of the monument and its parts with its wider landscape and setting;
- the historical, cultural and social influences that have affected the form and fabric of the monument, and vice versa;
- the historical content of the monument, with particular reference to the ways in which its fabric has been influenced by historical forces or has itself influenced the course of history;
- the associations the monument has with historical, traditional or artistic characters or events;

- the archaeological, scientific or other research potential of the monument;
- the formal aesthetic attributes of the monument;
- its significance in the national consciousness or to people who use or have used the monument, or descendants of such people;
- the relationship of the monument to other monuments of the same or related classes or period, or to features or monuments in the vicinity. This is particularly important where individual monuments, themselves perhaps of limited immediate significance, form an important part of a widespread but varied class. The diversity of the class should be a material consideration in making individual decisions.

The concept of ‘cultural significance’ will apply widely and to different degrees to all of Scotland’s historic environment.

### **National Importance**

5. The primary purpose of scheduling under the 1979 Act is the preservation of monuments of national importance, and for that purpose, the control of works that affect them. The provisions of the 1979 Act are consistent with the principles of minimal intervention to ensure that the most important surviving evidence is preserved as far as possible in the state in which it has come down to us, and is passed on to future generations in as unchanged a state as is practicable, in accord with the principles of sustainable development. In general, those principles will only be set aside in circumstances where wider considerations are deemed, on balance, to be of greater importance to the national interest; this may include the needs of research into Scotland’s past.

6. The purpose and implications of scheduling are issues that require to be taken into consideration when assessing monuments for scheduling. Scheduling may not be the only, nor the most appropriate, mechanism to secure the future of all sites, even those that may otherwise meet the criteria.

7. The ‘particular’ significance needed to define the monument as of ‘national’ importance may be established in part by considering the consequences of loss of, damage to, or change to the monument, in terms of:

- its potential to make a significant addition to the understanding or appreciation of the past;
- its place in the national consciousness;
- its place, or the place of its class, in and its contribution to the modern or surviving historical landscape;
- its retaining the structural, decorative or field characteristics of its kind to a marked degree;
- the quality and extent of any documentation or association that adds to the understanding of the monument or its context; and
- the diminution of the potential of a particular class or classes of monument to contribute to an understanding of the past.

8. It should be noted that:

- no period of Scotland's past and no part of Scotland's land is inherently more or less likely to produce monuments of 'national importance' than another;
- cultural significance may change as a result of the continuing history of the monument; and
- understanding of cultural significance may change as a result of new information.

END OF ANNEX C

## **Annex D: List of Consultees**

Chief Executives and Directors of Planning (or equivalent) of all Scottish Local Authorities  
Scottish Local Authority archaeology services (or Heritage Trust etc equivalents)  
AOC Archaeology Group  
Association of Local Government Archaeological Officers  
Association of Preservation Trusts, Scottish Committee  
Built Environment Forum Scotland  
Cadw: Welsh Historic Monuments  
Cairngorms National Park  
CFA Archaeology Ltd  
Confederation of British Industry  
COSLA (Environment & Regeneration Team)  
Council for British Archaeology  
Council for Independent Archaeologists  
Council for Scottish Archaeology  
English Heritage  
Forestry Commission  
FWAG Scotland  
Garden History Society  
Glasgow Caledonian University (Historic Environment Reporting Team)  
Glasgow University Archaeology Research Division  
Dept of Archaeology, University of Edinburgh  
Dept of Archaeology, University of Glasgow  
Headland Archaeology  
Historic Environment Advisory Council for Scotland  
Historic Houses Association  
ICOMOS UK  
Institute of Field Archaeologists  
Institute of Field Archaeologists - Scottish Group  
Loch Lomond & Trossachs National Park  
Maritime and Coastguard Agency  
National Farmers Union of Scotland  
National Museums of Scotland  
National Trust for Scotland  
Nautical Archaeology Society  
Rescue: The British Archaeological Trust  
Royal Commission on the Ancient and Historical Monuments of Scotland  
Royal Incorporation of Architects in Scotland  
Rural Scotland  
Scottish Crofting Foundation  
Scottish Environmental Link  
Scottish Historic Buildings Trust  
Scottish Landowners Federation  
Scottish Museums Council  
Scottish Natural Heritage  
Scottish Trades Union Congress  
Scottish Wildlife Trust  
Society of Antiquaries of London  
Society of Antiquaries of Scotland  
Strathclyde Building Preservation Trust  
SUAT LTD  
The Royal Institution of Chartered Surveyors in Scotland  
The Royal Town Planning Institute, Scotland  
The Scottish Castles Association  
The Scottish Civic Trust  
WWF Scotland  
And several individuals  
END OF ANNEX D

## Annex E: Respondee Information Form

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name:

Postal Address:

Consultation title: **CONSULTATION ON THE REVISED CRITERIA AND GUIDANCE FOR DEFINING NATIONAL IMPORTANCE, UNDER THE TERMS OF THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979**

1. Are you responding as: (please tick one box)

(a) an individual  (go to 2a/b)

(b) **on behalf of** a group or organisation  (go to 2c)

### 2a. INDIVIDUALS:

Do you agree to your response being made available to the public (in SE library and/or on SE website)?

Yes (go to 2b below)

No, not at all

2b. Where *confidentiality is not requested*, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

### 2c ON BEHALF OF GROUPS OR ORGANISATIONS:

Your name and address as respondees *will be* made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

Yes

No

3. We will share your response internally with other SE policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future for consultation or research purposes?

Yes

No

END OF ANNEX E

## **Annex F The Scottish Executive Consultation Process**

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

If you have any comment about how this consultation exercise has been conducted, please send them to the officer responsible for running this consultation.

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