

HISTORIC ENVIRONMENT ADVISORY COUNCIL FOR SCOTLAND

RESPONSE TO 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

Introduction

The Historic Environment Advisory Council for Scotland came into being on 01 June 2003 and was established by Scottish Ministers as a new advisory Non-Departmental Public Body to provide informed and independent advice on issues affecting the historic environment, which includes structures and places of historical, archaeological and architectural interest. It has twelve Members appointed in accordance with the Code of Practice for Ministerial Appointments to Public Bodies.

HEACS received an initial briefing on the suggested changes at its meeting at St Andrews in October 2003 and it welcomes the opportunity to comment further on the consultation paper.

The need for revised criteria and guidance

The review is timely in the light of recent Public Local Inquiries at which the basis of scheduling monuments has been examined in detail and in the light of the recommendations following the Review of the Structure and Functions of Historic Scotland, in which more meaningful targets by which to measure the performance of the agency were called for. The consultation paper recognises the risks associated with meeting specified targets for scheduling monuments and seeks to rectify past anomalies through succinct criteria defining 'national importance'. HEACS endorses this approach, while acknowledging the limitations of the current review.

New criteria and guidance

HEACS welcomes the recognition of regional distinctiveness in the criteria for determining national importance, and the degree to which this reflects diversity in historical associations throughout Scotland and which are not to be found in other parts of the UK. Although the principles of the 1979 Act, applying to England and Wales also, would need to be followed in general terms there must be leeway in the revised criteria to ensure that they are relevant to the diverse range of monuments and monuments types to be encountered in Scotland. HEACS recommends the adoption of wording similar to that for the protection of the natural heritage within the planning system, in which the words 'unequivocally of national importance' were used in a 1998 review to describe the designation of SSSIs.

HEACS considers the revised criteria set out in Annex C to be appropriate, and an improvement on those adopted previously. The principles upon which they are founded set down a clear framework which appears well considered, and the degree to which they are founded upon international conservation charters should add to their credibility and acceptance. It should perhaps be made clear that the test for scheduling should depend upon one or more of the listed criteria to avoid any suggestion that the threshold requires a minimum number of criteria to be met. There would be obvious merit in defining the basis upon which the decision to schedule has been made by way of a statement of significance by reference to the criteria, and HEACS would favour taking into account

local knowledge of a monument through historical research and oral evidence (as appropriate) in the interests of transparency, and with a view to justification at a later date were those criteria to be tested at a public inquiry, or by other means.

HEACS is seriously concerned that the relatively small percentage of monuments which fail the test of the criteria and which will, as a consequence, be descheduled will receive adequate protection by the existing heritage legislation, either by listing or through the planning system, as has been suggested. It would wish to return to this through the review of heritage protection legislation. This consideration should not, however, detract from the desire to apply rigorous and defensible criteria when determining whether a monument is of national importance.

Review of heritage protection legislation

It is accepted that the review must be undertaken within the current constraints of the 1979 Act, but discussion of the revised criteria has taken place within the context of a desire to consider the case for changing the current legislation. One of five tasks given to HEACS by the Minister when announcing the establishment of the Council was a review of heritage protection legislation, for which a working group has been set up and which has been taking evidence. The working group is aware of the 15 pilot schemes set up recently by English Heritage following the 2003 DCMS Consultation Paper and proposes to look at the potential benefits of a unified approach to the management of sites.

In the context of reviewing the legislation affecting scheduled monuments HEACS may wish to consider the following topics

- The overlap between listing and scheduling
- Whether a hierarchical approach may be adopted, as for listed buildings
- The concept of 'potential usefulness' as a criteria for scheduling
- Protection of the setting of a monument
- Sharing wisdom and the advantages of statements of significance to support/validate the criteria for scheduling
- Transparency in decision-making and owners' rights of appeal at the time of scheduling
- As noted above, the protection of monuments that are not scheduled

HEACS
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