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Dear Elizabeth

**THE HEACS REPORT ON THE NEED TO REVIEW HERITAGE LEGISLATION
IN SCOTLAND**

The Minister has asked me to provide you with additional information regarding her consideration of the HEACS report on whether there is a need for a review of heritage legislation in Scotland. The information is provided in the attached annex.

Please let me know if you have any queries.

Yours sincerely

Dr Gordon J Barclay
Head of National Policy

The Analysis and Stakeholder Engagement Process

1. In line with the commitment given in the previous Minister's interim response to HEACS in December 2006 officials in Historic Scotland reviewed the existing legislation and consulted widely on the issues raised in the HEACS report during the course of 2007. This process included setting up an internal Historic Scotland Working Group with representation from across the Agency. The Local Authority Historic Environment Forum (LAHEF) was reconvened to examine the HEACS reports on legislation and local authorities. LAHEF comprised representatives from local planning authorities across Scotland. The Forum provided Agency officials with useful and informed comment on the issues raised by the HEACS report. A Local Authority Historic Environment Forum Working Group was also established with the aim of considering in greater detail the issue raised by the HEACS reports. This Group comprised representatives of the Association of Local Government Archaeological Officers (Scotland); the Convention of Scottish Local Authorities; the Institute of Historic Buildings Conservation; the Institute of Field Archaeologist; and the Scottish Society of Directors of Planning. The Built Environment Forum Scotland also organised a consultation day on behalf of Historic Scotland on the HEACS reports on 5 July 2007.

2. The evidence gathered during the stakeholder engagement process suggested strongly that the nature of the system was broadly right and that, while there was a limited need for legislative reform, the deficiencies of the current system could be largely addressed by delivering administrative improvements. Stakeholder engagement also indicated that the heritage protection system in Scotland provided a considerable level of protection for the historic environment (albeit a system that could be improved). Moreover it was clear that the system was basically fit for its present purpose and certainly not in a state to require a full "root and branch" review with the likelihood of a major new piece of legislation. This view was in some measure reflected in the HEACS report where it was noted that "existing legislation has enabled the range of designated and protected heritage assets to be expanded considerably in the last 30 years". Elsewhere the report noted that "from the evidence which HEACS has gathered and examined, it is clear the current legislation has considerable virtues and strengths".

3. It was difficult to reconcile the strength of the recommendation for a review with both the evidence set out in the HEACS report and gathered by the stakeholder engagement process. The stakeholder engagement revealed a wide range of different understandings of what a review might entail, and what its consequences might be: in some cases it seemed to reflect a generalised feeling that change of some sort was needed.

Rationale for the current system

4. The HEACS report laid stress on the process of review in England and Wales, where the hope is that a single system of designation will adequately replace the current system; Ministers will be interested to see exactly how this can be made to work. HEACS did not fully consider the underlying rationale for having different legal frameworks for scheduled monuments and listed buildings: the "default position" for Scheduled Monuments is that they should as far as possible remain in the state to which they came down to us; for listed buildings it is that they should remain in active use. Not all things needing protection are the

same and the different approaches of the Acts governing each main group are rational and useful. This view was supported by the Local Authority Historic Environment Forum which noted that “the existing legislation worked well in the main” and “there was value in retaining the existing separate designations since each had a different purpose”.

Risks of a full review

5. The report did not consider the significant risks associated with a full review and new legislation. Some of these risks may be summarised as follows:

- there is a lack of hard data on Scotland’s historic environment that could inform the review process in a meaningful way. The lack of data may be addressed in due course by the Historic Environment Audit but meaningful results are some years away. It would be extremely problematic to embark on a fundamental root and branch review without the basic data on the state of our historic environment;
- the results of full “root and branch” review could not be taken forward to legislation in the certainty that there would be no weakening of existing levels of protection;
- any Bill could be subject to significant amendment during its progress through parliament and the “virtues and strengths” of the current system as identified by HEACS could be altered or lost;
- there would be major resource and opportunity costs for the Scottish Government and other parts of the sector in driving the review and legislative process forward from its initiation to implementation;
- there would be a considerable length of time between the beginning of a review process and any major legislation, which would give rise to a long period of uncertainty for stakeholders about where the system is headed; the prospect of legislation would probably also dissuade stakeholders from investing in any improvement to the current system in the interim.

“Gaps and Weaknesses” of the current system

6. The Minister recognised that the HEACS report did raise a number of valid concerns about the “gaps and weaknesses” in the current system. A fairly consistent set of “gaps and weaknesses” emerged from the stakeholder engagement process, but Ministers did not feel that a full review and major legislation were the ways forward for most of them – these are better addressed in ways other than new primary legislation, for example, Single Outcome Agreements; the concordats being discussed between HS and local authorities; and judicious amendment of the existing legislation. Ministers, however, have reservations about extending the reach of the statutory system or overseeing the proliferation of statutory duties. Ministers will shortly be publishing a final version of the Scottish Historic Environment Policy on Gardens and Designed Landscapes and a SHEP on Battlefields for consultation.

7. As noted in the Minister’s response of 21 December there are various legislative changes that might merit consideration and Scottish Ministers “may well choose to address these as policy develops and legislative opportunities arise”.