

*Submitted by online form*

19 February 2019

## **Re: HES - Designations and Scheduled Monument Policy Consultation**

Main points:

- We do not have many objections with the documents, as they stand, as they more or less reproduce the current policy contained within HESPS. However, it does not appear that there has been much effort made to review potential areas of improvement, and this may be a missed opportunity to improve clarity in some areas. Also, given the influence of the What's Your Heritage project, it is perhaps surprising that more has not changed.
- We have included some ideas of where we feel the current guidance could be clarified or improved from HESPS.
- Some of our major issues with the guidance originate from what we would perceive to be flaws with the primary and secondary legislation which overarches these documents. These issues are outwith the scope of the review of this guidance, which is unfortunate. However, we hope that it may be possible to review this legislation in due course, and so these points are raised throughout our response.
- As we commented when responding to the draft HEP document, it is difficult to properly judge the how the overall suite of documents (from high level HEP policies, to top level guidance, to technical guidance), will work. We trust that the revised final HEP will reflect changes based on comments made in the consultation, but we remain concerned that it is difficult to judge whether the consultation documents will sit within this new structure, since that structure and the other documents are not available to view. We are concerned at the lack of signposting in this document (as in the HEP) and a lack of clarity as to how each document relates, who it is for, and what it is intended to do.
- At present, the draft documents in this consultation are written in a near identical style to HESPS, something which we understood to have been criticised for not being clear enough. We agree that important policies are sometimes buried within long paragraphs of text, and that this is not always easy to comprehend. That said, we strongly criticised the ultra-high level approach taken in the HEP document. We recognised the reasoning

for attempting to simplify, but that this was at the cost of useful content, and that the ambition was not achieved.

## Questions: Designation principles and practice

1. To what extent do you think that 'Principles and Practice for Designation' is a suitable title, reflecting the document's content and status?

Scale: Not suitable to suitable.

Answer: Neither suitable nor unsuitable

### *Do you have any alternative suggestions for the title of this document?*

The title does not clearly indicate how the document relates to the HEP, and to other guidance. We recommend a uniform approach to naming for all related documents (see below). We also feel that the current use of various terminology is confusing, for instance, the use of the terms 'Principles' and 'Policies' in the HEP as well as 'principles' and 'practice' (guidance?) in this designation document.

Our understanding is that this document will carry the same weight as HEP (i.e. as a material consideration in the planning process) although is described as 'underpinning' HEP policies, indicating subordination and possibly lower weighting.

These documents sit below higher tiers of strategy and policy such as Our Place in Time (OPiT), Scottish Planning Policy, and National Outcomes, and above technical guidance in the Managing Change series. We feel that this layered approach is probably justified in terms of supporting strategic goals and vision, stating policy, and supporting policy with guidance. However, the relationship and hierarchy of each layer is not clear from the titles.

This document includes a very short explanatory note in its first paragraph, which is useful, but we think that even clearer signposting could be added which outlines the layers of strategy, policy and guidance – perhaps in the form of a pop-out box with a diagram. One way that signposting could be improved is by the use of hyperlinks, which should be used in all similar documents, as most users will be viewing them digitally. This information could be replicated in each document in the hierarchy.

We appreciate that this document focuses on HES' duties, but we think that it should seek to give an impression of a unified and joined up process, referencing or signposting, where applicable, processes undertaken at local authority level, professional standards and guidance, and other processes (for example UNESCO World Heritage).

### *Uniform approach to naming:*

As a comparison to this new suite of former HESPS documents we have looked at the *Managing Change* series. These documents creates clear understanding link between documents by use of

a uniform approach to titles. With the new documents which sit above *Managing Change*, it would be useful to similarly indicate where there is parity in status and avoid the imprecise and overlapping use of wordings such as 'policy'.

We would therefore title HEP, Principles for designation, and the Scheduled Monuments policy and Practice with the unified title *Historic Environment Policy*, following this with a colon and a description of the document, i.e.:

- *HEP* becomes ***HEP: Core Principles for good decision-making***
- *Designation principles and practice* becomes: ***HEP: Our practice for designation***
- *Scheduled Monument Policy and Procedures* becomes: ***HEP: Scheduled Monument procedures***

## 2. How clear do you feel the purpose of this document is?

Scale: Not clear to extremely clear.

Answer: Not clear.

**Do you have any further comments on how clear you feel the purpose of this document is? If so, please add them here:**

At present, the hierarchy of documents is unclear. As stated above, while the document contains a short explanatory note in its first paragraph, which is useful, we think that even clearer signposting should be added which outlines the layers of strategy, policy and guidance – perhaps in the form of a pop-out box with a diagram with hyperlinks to any quoted or otherwise relevant documents. This information could be replicated in each document in the hierarchy and reproduced in the relevant section of the HES website, with hyperlinks to each document.

This box could include a short statement of purpose for the document which could easily be read alongside other documents. It should include the following information: The status of the document (i.e. as a material consideration in the planning process) the way HES will use the document. Other audiences who should/may use the document and descriptions of how they should/may use it.

For example, this document is of relevance to local authorities who should have regard to this document in preparing local plans, to local authority historic environment advisors and planners who may cite this document at planning inquiries, and to owners of heritage assets who may require information about how HES manages designation processes.

As stated above, we appreciate that this document focuses on HES' duties, but we think that it should seek to give an impression of a unified and joined up process, referencing or signposting, where applicable, processes undertaken at local authority level, professional standards and guidance, and other processes (for example UNESCO World Heritage).

**3. This document sets out the principles and practice applied by Historic Environment Scotland in the designation of historic sites and places at the national level. Do you feel that there is anything missing from the document?**

We understand that this document primarily outlines HES' statutory responsibilities to designate heritage assets of national importance, and the processes which inform decision making within this role. However, the document has a wider purpose and is utilised by Local Authorities as a framework through which to devise processes for and apply their own decision, and has relevance to communities. We feel that it would be appropriate to include more reflection on non-HES audiences.

We believe that greater exploration of the value of historic environment records (HERs) should be included on page 8 (other forms of recognition). The HER is both an important form of local recognition of sites for the majority of sites which are not designated and a useful tool to help HES identify potential sites worthy of consideration for designation. Some HERs (e.g. Dumfries and Galloway Council, West of Scotland Archaeology Service) identify sites of potential National importance, and I think these identifications should be recognised by HES as being of value in when it is making scheduling/designating decisions. Greater detail here would help to highlight the public purpose of HERs and would be a valuable response to the What's Your Heritage project.

We think that there are a number of places in which language requires further information to explain, in order to retain value. For example: Page 4, the sixth bullet point in the final list under the 'Principles and practice' heading states: "Designation decisions are normally made with the participation of those...". In these cases, we feel that it would be valuable to describe, or at least give examples of, where these caveats apply – for example, in relation to spot listing.

**4. If you have read the draft Historic Environment Policy, to what extent do you agree that this document works alongside and supports the policy?**

Scale: Strongly disagree to strongly agree.

Answer: Disagree.

No box for comment.

**Historic Environment Scotland's role**

This question relates to Historic Environment Scotland's role in designation. We are responsible for designating sites and places at the national level:

- 5. The nomination and inscription of World Heritage Sites is not part of our decision-making. Should we provide more information on the process of nominating World Heritage Sites and HES's role in this document?**

Scale: Strongly disagree to strongly agree.

Answer: Neither agree nor disagree.

As stated above, if the document is to have utility to wider audiences, it would not be unreasonable to include a short section about the nomination and inscription of WHS, with signposting to UNESCO's processes and to the UK Tentative List.

### **Principles and Practice**

These questions refer to the section on Principles and Practice.

- 6. To what extent do you agree or disagree with the principles for designation?**

Scale: Strongly disagree to strongly agree.

Answer: Agree.

- 7. To what extent do you agree or disagree with how the principles for designation are to be applied?**

Scale: Strongly disagree to strongly agree.

Answer: Agree.

***Do you have any other comments on our principles for designation? If so, please add them here:***

As mentioned above, there is an unclarified caveat in bullet 6 within the list of how these principles are applied. These caveats should be explained, possibly within a footnote.

In relation to bullet point 10 on page 10 *Scheduling monument records*, we think that it would be worthwhile stating what HES is doing and/or committing to in order to bring earlier SM records up to modern standards.

### **How we do our work**

These questions relate to the section on how we do our work.

- 8. To what extent do you agree or disagree with our priorities for designation?**

Scale: Strongly disagree to strongly agree.

Answer: Agree.

*Do you have any other comments on our principles for designation? If so, please add them here:*

It is notable to us that the content of this section has not been developed in the light of outcomes from the What's Your Heritage project. For example, improving access to information on designations and to other information (e.g. HERs) through the use of digital technologies and thematic reviews may be relevant.

### How we assess sites and places

This question refers to how we assess sites and places.

#### **9. Do you have any other comments on this section?**

Paragraph five of this section states that 'In some circumstances, we may decide not to assess a site of place. This is usually because there are development proposals at an advanced stage.'

We understand that this happens in practice, particularly where compensation would be due to developers who have already obtained planning permission, but we question whether this is lawful, given the non-discretionary nature of listing.

#### **10. How clear do you find the explanation in this section of our approach to assessing sites?**

Scale: Not clear at all to Extremely clear.

Answer: Clear.

### Development Proposals and Designation

These questions relate to the section on Development Proposals and Designation.

#### **11. How clear is this explanation of our approach to designation where there are development proposals?**

Scale: Not clear at all to Extremely clear.

Answer: Neither clear nor unclear.

*Do you have any other comments on the section on Development Proposals and Designation? If so, please add them here:*

No comment.

**Other forms of recognition:**

**12. To what extent do you agree that the section on other forms of recognition is clear in its meaning?**

Scale: Strongly disagree at all to Strongly agree.

Answer: Agree.

**13. To what extent do you agree that the section on other forms of recognition is helpful for local decision-making?**

Scale: Strongly disagree at all to Strongly agree.

Answer: Agree.

***Do you have any other comments on the "Other Forms of Recognition" section? If so, please add them here:***

We think that this section should add a reference to the fact that recording a heritage asset in an HER is an important form of local recognition of sites. This helps to highlight the public purpose of HERs and would be a response to the What's Your Heritage project.

We also recommend that, in order to comply with planning policy, the final sentence on page 8 which reads "we encourage local authorities to take into account undesignated historic assets in their decision-making" should be amended to say "local authorities **must** take into account undesignated historic assets in their decision-making". It would be useful in making this statement to refer to Scottish Planning Policy along the following lines: "as stated in SPP, local authorities (Para 140) 'should have access to a Sites and Monuments Record (SMR) and/or a Historic Environment Record (HER) that contains necessary information about known historic environment features and finds in their area.'"

**Annex 1: Scheduled Monuments**

These questions relate to Annex 1: Scheduled Monuments.

**14. Annex 1 explains how we decide if a monument is of national importance for scheduling. How clear do you find this explanation?**

Scale: Not clear at all to Extremely clear.

Answer: Clear.

*Do you have any other comments on Annex 1? If so, please add them here:*

As stated above, we think that points 10 and 12 would benefit from a further explainer, possibly as a footnote or as a boxed example.

### **Annex 2: Listed Buildings**

These questions relate to Annex 2: Listed Buildings.

**15. Annex 2 explains how we decide if a monument is of special architectural or historic interest for listing. How clear do you find this explanation?**

Scale: Not clear at all to Extremely clear.

Answer: Clear.

*Do you have any other comments on Annex 1? If so, please add them here:*

As the process of determining special interest is constrained by primary legislation, we have no comments on this section which are within the scope of this document to address. However, we would highlight that in the event that the legislation were updated, we would seek to include archaeological interest within the criteria for listing. At present, the evidential value contained within an asset – which derives from the potential of a place to yield evidence about past human activity through archaeological investigation – is not formally recognised as being of relevance to the designation process.

In practice, this kind of value is likely to be noted in the process of designation, but at present is not represented within legislation or within this guidance.

**16. Annex 3: Conservation Areas**

**17. Annex 4: The Inventory of Gardens and Designed Landscapes**

**18. Annex 5: The Inventory of Historic Battlefields**

**19. Annex 6: Historic Marine Protected Areas**

## Scheduled Monument Policy and Procedures

These questions relate to the Scheduled Monument Policy and Procedures.

**1. To what extent do you think that 'Scheduled Monument Policy and Procedures' is a suitable title, reflecting the document's content and status?**

Scale: Not suitable to suitable.

Answer: Neither suitable nor unsuitable

As above, the title does not clearly indicate how the document relates to the HEP, and to other guidance or how it relates to the Managing Change series. The HEP contains language of 'Principles' and 'Policies'. This document also contains 'policies' in addition to 'procedures'. There is no clear explanation given to the relationship between these principles/policies/procedures across the different documents.

The hierarchy between this document and Our Place in Time (OPiT), Scottish Planning Policy, HEP, and the Managing Change series are made clear in paragraph 3. However, we feel that the titles could do a better job at indicating clearly these relationships.

We think that even clearer signposting could be added which outlines the layers of strategy, policy and guidance – perhaps in the form of a pop-out box with a diagram. A further way that signposting could be improved is by the use of hyperlinks, which should be used in all similar documents, as most users will be viewing them digitally. This information could be replicated in each document in the hierarchy.

***Do you have any alternative suggestions for the name of this document?***

As stated above, we suggest that titles for the HEP, Principles for designation, and the Scheduled Monuments policy and Practice are changed to illustrate a relationship, using a unified title *Historic Environment Policy*, following by a colon and a description of the document, e.g.:

- *HEP* becomes ***HEP: Core Principles for good decision-making***
- *Designation principles and practice* becomes: ***HEP: Our practice for designation***
- *Scheduled Monument Policy and Procedures* becomes: ***HEP: Scheduled Monument procedures***

***This document sets out the policies and procedures applied by Historic Environment Scotland when undertaking its regulatory functions in regards to Scheduled Monuments. In your opinion, are there any priority areas that we have missed? If so, please let us know:***

No comment.

**2. To what extent do you agree that this document works alongside our Historic Environment Policy?**

Scale: Strongly disagree to Strongly agree.

Answer: Neither agree nor disagree.

**3. To what extent do you agree that the purpose of the document is clear?**

Scale: Strongly disagree to Strongly agree.

Answer: Agree

**4. How clear do you find the purpose of this section?**

Scale: Not clear to extremely clear.

Answer: Clear.

**5. How clear do you find the purpose of Policy 8?**

Scale: Not clear to extremely clear.

Answer: Clear.

**6. We have not added any new procedures to this section, but have tried to make them clearer and easier to understand. To what extent are these procedures clear?**

Scale: Not clear to extremely clear.

Answer: Clear.

**Part B: Policy Background**

This section refers to Part B: Policy Background, which sets out the background to our policies and decision making.

**7. Is there anything that is missing from this section on Policy Background?**

The section on conservation approaches in Scotland is a section which is substantially for information, and does not contain any particular policies or statement of practice. The exception to this is paragraph 39, which is a new addition. This paragraph makes statements about what change should/should not be permitted. This appears to be in the wrong place. The paragraph also refers to 'this new policy', although the meaning of this is unclear.

### **Part C: Scheduled Monument Policies**

This section refers to Part C: Scheduled Monument Policies.

- 8. The policy tests rely upon an understanding of cultural significance. It is intended that guidance on how to determine cultural significance should be set out in a separate document. To what extent do you agree that a definition of cultural significance should be included within the policy?**

Scale: Strongly disagree to Strongly agree.

Answer: Agree

- 9. This question refers to Policy 8, which sets out how these policies are applied in relation to the management of certain kinds of Scheduled Monuments, such as carved stones. It translates "Carved Stones: Scottish Executive Policy and Guidance (2005)" into our own decision making. To what extent do you agree or disagree with this policy?**

Scale: Strongly disagree to Strongly agree.

Answer: Agree.

- 10. Is there anything that is missing from the policy? Please let us know your comments:**

We think that there should be glossary in this document. One of the terms which should be included is 'intrinsic value', which is mentioned in the box titled Scheduled Monument Policy Aim. However the term has the potential to be problematic and subject to a variety of interpretations. We would prefer if the term was dropped from policy. The purpose of its use is much better set out in SM policy 1, which explains that 'SMs can have meaning and value beyond their physical remains'. If retained, however, a suitable definition (using the wording from SM policy 1) should be included.

We think that it would be worthwhile adding a policy which stated HES' commitment to modernising SM records.

We would also like to propose a change to the wordings in box titled 'Scheduled Monument Consent (SMC) Policy aim'. The text here refers to "outweighing the impact [of intervention] on cultural significance". What this is saying is that investigation necessarily decreases the cultural

significance of a Scheduled Monument. We disagree that this is always the case, and which to ensure that there is clear wording here which indicates that investigations (even those with destructive components) have the potential to reveal new understandings of the monument which will enhance or modify cultural significance. We would like to propose that the wording of this aim and the wording of SMC policy 3 bullet 3 be amended in order to indicate this. We would phrase this around “opportunities of investigation to enhance significance, and compensate for the impacts on other aspects”.

SMC policy 6 should specify which professional standards and signpost (and hyperlink, as suggested above). This would be helpful for practitioners and should include reference to ClfA standards and guidance.

SMC policy 9 would be more informative with reference to standards, to help unpack points (f) and (h). In (f) the reference to experienced may be discriminatory – we’d replace this with competent. Likewise, in (i), the word qualifications should be replaced – or at least supplemented – with accreditation

SMC policy 9 could also usefully state that the requirements for SMC for works for archaeological research apply equally to any archaeological works occasioned by erosion, emergency repairs or other unplanned changes (as mentioned elsewhere).

We are pleased with the inclusion of a new section on Section 42 consent, however, we would add reference and signposting to Treasure Trove procedures at S42 Policy 2.

It should be noted that Section 42 consent is mentioned in paragraphs 8 and 10, but is not explained until the box titled ‘Section 42 Policy aim’ which sits below paragraph 46. An additional explanation should be included at the first mention.

#### **Part D: Compliance Procedures**

This section refers to Part D: Compliance Procedures which sets out our procedures for ensuring compliance with the 1979 Act.

**11. In your opinion, is there anything that is missing from the policy? If so, please let us know:**

No.

Yours sincerely,



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