

**A Joint Working Agreement
Between Historic Scotland and
Planning Authorities in Relation to
Statutory Casework and
Consultation**

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The Purpose of the Joint Working Agreement

1. Scottish Ministers expect planning authorities and Historic Scotland to work in partnership to deliver their objectives for the historic environment. In this context, the joint working agreement sets out the basis for an effective partnership between planning authorities and Historic Scotland.
2. The aims of the joint working agreement are to:
 - Manage Scotland's historic environment effectively and efficiently;
 - Improve performance in handling statutory casework;
 - Empower planning authorities to provide advice and make decisions locally;
 - Add value to the development planning and management processes by encouraging planning authorities to engage Historic Scotland where appropriate and as early as possible;
 - Protect the outstanding universal values of Scotland's World Heritage Sites; and
 - Encourage partnership between Historic Scotland and planning authorities.

Managing Change in the Historic Environment

3. The historic environment is a dynamic one and its conservation relies on carefully managed change based on an understanding of cultural significance. It is also an important resource which can only be sustained through careful management.

4. For this to happen effectively, planning authorities need to have clear policies for the historic environment, access to specialist advice on the historic environment and an understanding of how and when to involve Historic Scotland. This will allow Historic Scotland to devote more of their resources to providing support in other ways, for example through pre-application discussions where appropriate, best practice advice notes and working directly on significant cases. Appendix 3 provides more information on specialist advice.

The Role of Planning Authorities

5. Planning authorities are central to the effective management of Scotland's historic environment. Their key roles are to set a local policy framework which accords with national policy and to implement this through their development management and related functions. To fulfil these roles effectively requires planning authorities to have access to appropriate professional advice, be aware of current national policy and legislative provisions and to have systems in place to ensure these are adequately considered in decision making.

The Role of Historic Scotland

6. Historic Scotland is an executive agency of the Scottish Government responsible for discharging Scottish Ministers' functions in relation to the historic environment and advising them on historic environment policy. All functions performed by the agency are carried out on behalf of Scottish Ministers.
7. In the context of this joint working agreement Historic Scotland's role covers four main areas of work:
 - Statutory designation;
 - Development planning;
 - Development management; and
 - General advice.

Designations

8. There is currently a range of statutory and non-statutory designations relating to the historic environment, each dealing with a different aspect.

Scheduling

9. Scheduled monuments are nationally important monuments protected under the provisions of the Ancient Monuments and Archaeological Areas Act 1979. Once a monument is scheduled it becomes an offence to carry out certain works to it without written permission from Scottish Ministers.
10. Historic Scotland is responsible for scheduling monuments and determining applications for scheduled monument consent on behalf of Scottish Ministers. The selection of monuments is guided by the policies set out in Scottish Historic Environment Policy (SHEP) 2 - Scheduling. Planning authorities have no formal role in this process but may nominate sites to be considered for scheduling.

Listing

11. Listed buildings are buildings of special architectural or historic interest protected under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. It is an offence to carry out works affecting their character without listed building consent. Applications for listed building consent are dealt with by planning authorities.
12. Listing is carried out by Historic Scotland on behalf of Scottish Ministers. Planning authorities are consulted on listing proposals within their area, are able to propose building for listing and have powers to serve Building Preservation Notices to allow threatened buildings to be considered for listing.¹

¹ Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Section 3

Inventory of Gardens and Designed Landscapes

13. Sites included within the Inventory are defined as being of national importance. Where development is proposed on or near such a site, planning authorities should consult Historic Scotland and take account of the impact of the proposed development on the site.²
14. Historic Scotland compile the Inventory and will consult planning authorities on sites within their area. Planning authorities are also able to nominate sites for inclusion.

Wrecks

15. Wrecks of historic, archaeological or artistic importance can be protected under the Protection of Wrecks Act 1973. Historic Scotland identifies wrecks for protection under this legislation. The Ancient Monuments and Archaeological Areas Act 1979 may also be used to designate wrecks in territorial seas (see Scheduling), if not already protected by the 1973 Act.

Conservation Areas

16. Conservation areas are areas of special architectural or historic interest the character and appearance of which it is desirable to preserve or enhance.³
17. Conservation areas are designated by planning authorities in consultation with local residents, occupiers and other interested bodies.⁴ Historic Scotland should normally be consulted on proposals to designate a conservation area.

Development Planning

18. Planning authorities are responsible for preparing development plans.⁵ Planning authorities should consult Historic Scotland when they bring forward development plans and related documents. In this way Historic Scotland can help planning

² Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (SI 1992/224), Article 15 (1)(j)(iv)

³ Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Section 64

⁴ Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Section 61

⁵ Planning etc. (Scotland) Act 2006, Part 2

authorities ensure that their plans properly reflect national planning policy and guidance in relation to the historic environment and reduce the potential for challenge through the consultation and inquiry stages of development planning.

Development Management

19. Planning authorities are responsible for dealing with most development management casework relating to or affecting the historic environment. Historic Scotland, on behalf of Scottish Ministers, has a formal role in this process which is established by statute.⁶

Requirements for consultation on casework

20. There are currently three main areas in which planning authorities must involve Historic Scotland before a decision can be issued - listed building consent, conservation area consent and planning permission.

Listed Building Consent

21. Under section 12 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997, planning authorities must notify Historic Scotland, on behalf of Scottish Ministers, where they intend to grant listed building consent. Under Circular 17/1987 this requirement relates only to Category A and B buildings and for the demolition of Category C(S) buildings.⁷

Conservation Area Consent

22. Under section 66 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 Act planning authorities must notify Historic Scotland on behalf of Scottish Ministers where they intend to grant conservation area consent for demolition.

⁶ Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Section 12 and 66

⁷ Scottish Development Department Circular No 17/1987: New provisions and revised guidance relating to listed buildings and conservation areas

Planning Permission

23. Under the current General Development Procedure Order⁸ (GDPO) planning authorities must consult Historic Scotland on any development proposal which:
- May affect a scheduled monument or its setting; or
 - May affect a Category A listed building or its setting; or
 - May affect a site on the Inventory of Gardens and Designed Landscapes.

Involving Historic Scotland in Development Management Casework

24. There are three stages in the life of an application at which planning authorities may involve Historic Scotland's Inspectorate in a proposal for change affecting a historic asset or its setting:
- Pre-application;
 - During the assessment of an application; and
 - Post-determination.
25. In addition, there is a separate process which authorities should follow when dealing with their own applications for listed building consent and conservation area consent.

Pre-application consultation

26. It is not always necessary for planning authorities to consult Historic Scotland at the pre-application stage. In most cases planning authorities are able to provide sound pre-application advice to owners or developers. In sensitive or significant cases however, there may be a role for Historic Scotland and they should be involved as early as possible. This will enable Historic Scotland to use their expertise to contribute to the development of creative solutions in the long term interests of the historic environment and the wider community.

Consultation during the assessment of an application

27. Planning authorities are required to consult Historic Scotland on behalf of Scottish Ministers on certain applications under the GDPO.⁹ In addition, Historic Scotland is a

⁸ Town and Country Planning (General Development Procedure)(Scotland) Order 1992 (SI 1992/224) Article 15(1), as amended by the Town and Country Planning (General Development Procedure) (Scotland) Amendment (No 2) Order 1994 (SI 1994/3293)

consultee for Strategic Environmental Assessment¹⁰ and Environmental Impact Assessment.¹¹

28. Planning authorities are not required to consult Historic Scotland on listed building consent applications until they are minded to approve them (see Post-determination Notification). However, where applications are more complex or raise sensitive issues, early consultation with Historic Scotland will allow them to provide planning authorities with advice to help inform their decision.
29. Where consulted, Historic Scotland will provide a written assessment of the development proposal in light of the relevant national policy and the planning authority should take account of these views in their decision.
30. Where Historic Scotland has concerns or formally object to a development proposal the opportunity exists to involve them in revising the proposal to overcome the objection

Post-determination Notification

31. If a planning authority is minded to approve an application for listed building consent or conservation area consent they must notify Historic Scotland. On receipt of a formal notification from a planning authority, Historic Scotland will respond in one of two ways.

Formal Letter of Clearance

32. Where Historic Scotland is satisfied that the proposal does not raise any issues of significance they will send a clearance letter to the planning authority within 28 days of receiving the notification.

⁹ Town and Country Planning (General Development Procedure)(Scotland) Order 1992 (SI 1992/224) Article 15(1), as amended by the Town and Country Planning (General Development Procedure) (Scotland) Amendment (No 2) Order 1994 (SI 1994/3293)

¹⁰ The Environmental Assessment (Scotland) Act 2005

¹¹ Environmental Impact Assessment (Scotland) Regulations 1999 and Environmental Assessment (Scotland) Act 2005

Confirmation of Extension

33. Where Historic Scotland consider that a proposal is unacceptable as presented and raises an issue of national significance, they will write to the planning authority explaining the need to extend their consideration of it to look at the proposal in more detail. Consent cannot then be issued by the planning authority until Historic Scotland has completed their assessment and written a clearance letter to the planning authority.
34. Where, having extended an application and carried out a further assessment, Historic Scotland considers that consent should not be issued, they will prepare a briefing for Scottish Ministers recommending the application be 'called-in' for their determination. Scottish Ministers may accept this recommendation and written confirmation of the next steps will be issued to the planning authority. Where Scottish Ministers do not accept this recommendation Historic Scotland will write to the planning authority confirming that they are now free to issue the consent.
35. Guidance on the information required for consultations with Historic Scotland on proposals affecting the historic environment can be found in Appendix 1.

World Heritage Sites

36. There is no legislative requirement for planning authorities to consult Historic Scotland on applications for planning permission purely because they lie within World Heritage Sites or impact on its setting. If, however, a planning authority believes that proposals may threaten the outstanding universal values of the World Heritage Site they are expected to seek the advice of Historic Scotland at an early stage.

General Advice

37. Planning authorities are best placed to provide information and advice to local communities on works to listed buildings and within conservation areas. In addition, they should advise on the need for consent and guide applicants on most proposals. Planning authorities should not normally need to seek general advice from Historic Scotland on these issues.

38. In considering more complex or sensitive issues it may be appropriate for planning authorities to seek general advice from Historic Scotland. In these cases Historic Scotland will endeavour to respond promptly to consultations and aim to deal with the majority of these within 21 days of receipt. For more information on what may constitute complex or sensitive issues please see Appendix 4.
39. In order to ensure a consistent standard of service Historic Scotland's responses will set out their locus in the case. Where appropriate, they will also provide an assessment of the impact the proposal will have upon the historic environment having regard to national policy and guidance.

Freedom of Information

40. Planning authorities and Historic Scotland are bound by the Freedom of Information (Scotland) Act 2002. They will therefore make all correspondence available to third parties if requested to do so, unless it falls within the exemptions outlined within the Act. For more information on Historic Scotland approach to this please refer to their Freedom of Information Policy.¹²

Strategic liaison between Historic Scotland and Planning Authorities

41. In addition to involvement in specific casework, Historic Scotland and planning authorities recognise the value of liaison on strategic issues. Historic Scotland and the planning authority should ensure they:
- maintain a regular dialogue on historic environment issues;
 - hold annual meetings to review the operation of the agreement and consider proposals for change; and
 - examine ways to increase awareness of the historic environment among the planning authority's staff.

¹² <http://www.historic-scotland.gov.uk/foi>

Delegation of Listed Building Casework

42. Section 55(2) of the Planning Etc. (Scotland) Act 2006 introduced the potential to extend the delegation currently in place for Category C(S) buildings¹³. Historic Scotland welcomes this opportunity to streamline the planning system and will work with planning authorities to implement a scheme of delegation. The 2006 Act allows for separate schemes of delegation to be agreed with each planning authority according to their resources and needs. Any scheme of delegation would be subject to the planning authority concerned being a signatory to the joint working agreement and having adequate resources to deal with the casework (see appendix 5).

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¹³ Scottish Development Department Circular No. 17/1987 directed that applications for alterations or extensions to category C(S) listed buildings which are received by planning authorities on or after 1 January 1988 shall not be required to be notified to Scottish Ministers (then the Secretary of State).

Appendix 1

Guide to the information required for consultations with Historic Scotland on proposals affecting the historic environment

In order to be able to assess any development proposal affecting the historic environment effectively and efficiently it is important that certain basic pieces of information are provided. The type and amount of information needed will vary according to the kind of development proposed but in most cases the following will be required:

- Application forms;
- A site plan to a scale of at least 1:2500;
- Accurate, existing and proposed scale drawings comprising, where appropriate, relevant elevations, plans and sections;
- A detailed schedule of works;
- A detailed schedule of existing and proposed materials;
- A statement of significance which demonstrates an understanding of the historical, archaeological and architectural interest of the site
- A statement outlining the impact of the works proposed upon the special interest of the building; and
- Design and Access Statements as appropriate.

Drawings should be at a sufficient scale to show the impact of the proposals on the asset and its setting, usually 1:50. Larger scale drawings should be provided for detailed elements such as windows and door joinery, decorative plasterwork, ironwork etc. Plans, elevations and sections as existing should clearly indicate areas proposed for down-taking or demolition.

In addition, and depending upon the nature of the proposals, it may be helpful for applicants to submit the following:

- Photographs showing the site, its context and the area of proposed change;

- Perspectives, photomontages, models or computer visualisations to show the impact of new works; and
- Landscape works, to include contours and planting schemes.

Demolition

Where the proposal involves the demolition of a listed building, or an unlisted building in a conservation area, a statement of justification should be provided. This should set out the applicant's case based on one or more of the following:

- Where the applicant believes the building is not of sufficient interest to be listed or, in the case of an un-listed building, fails to make a positive contribution to the character of the conservation area, a statement outlining the evidence to support this assertion should be provided;
- Where the applicant believes the building is incapable of repair, a detailed survey should be provided highlighting the issue(s) which cannot be resolved;
- Where the applicant believes that the building is capable of repair but that this is not economically viable to achieve, a detailed survey should be provided together with a priced schedule of works for the repair of the building and evidence of the value of the building once repaired. In addition it will normally be important to show that the building has been marketed for a reasonable period; and
- Where the applicant believes that the replacement scheme offers significant community benefits a statement should be provided which explains the nature of these benefits and how they cannot be realised if the building is retained.

Further guidance on this is set out within the SHEP and the Memorandum of Guidance.

Appendix 2

National legislation, policy and guidance for proposals affecting the historic environment

Legislation

- Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
- The Town and Country Planning (Scotland) Act 1997
- Archaeology and Ancient Monuments Act 1979
- Protection of Wrecks Act 1973
- The Town and Country Planning (General Development Procedure) (Scotland) Order 1992
- The Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987
- Planning Etc. (Scotland) Act 2006

Policy

- Scottish Historic Environment Policy series (SHEP)
- National Planning Policy Guideline 5: Archaeology and Planning
- National Planning Policy Guideline 18: Planning and the Historic Environment

Guidance and Advice

- Memorandum of Guidance on Listed Buildings and Conservation Areas, (Historic Scotland, 1998)
- Planning Advice Note PAN 42: Archaeology
- Planning Advice Note PAN 71: Conservation Area Management
- Scotland's Listed Buildings (Historic Scotland, 2006)
- Scheduled Monuments (Historic Scotland, 2008)
- Scheme to Apply Listed Building Control to Exterior of Churches in Ecclesiastical Use (Historic Scotland, 2006)
- Technical Advice Notes (Historic Scotland, various)

- Guides for Practitioners (Historic Scotland, various)
- Inform: Information for Historic Building Owners (Historic Scotland, various)
- The Conservation of Architectural Ancient Monuments (Historic Scotland, 2001)

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Appendix 3

Specialist Conservation Advice

Planning authorities deal with a range of development proposals which affect the historic environment. In preparing development plan policies and assessing development proposals they should ensure that they have access to the appropriate expertise. Broadly this will cover both archaeology and buildings issues but may include landscape, gardens, marine, urban design and other aspects relevant to the conservation of the historic environment.

There are many ways in which planning authorities can ensure that they have access to such expertise. These include employing archaeologists and/or conservation officers to handle or provide comments on development applications and prepare policies for the local development plan; training development planning and development management staff to deal with such issues; using specialist external consultants or establishing shared services with adjoining planning authorities. The key issue is that whatever model is chosen it delivers the right advice and support the best outcomes for the historic environment.

Generally staff employed in this area should be qualified in a relevant profession; have undertaken an appropriate post-graduate conservation course and be a member of the Institute of Field Archaeologists (IFA) or Institute of Historic Building Conservation (IHBC) depending on the role they are expected to fulfil.

Appendix 4

What constitutes a complex or sensitive issue?

Planning authorities are able to deal effectively with most casework relating to the historic environment. Only where there are more complex or sensitive issue should it be necessary to involve Historic Scotland.

Such issues will include:

- the demolition of buildings or their substantial alteration;
- development affecting a scheduled monument; and
- significant development within the setting of a Category A-listed building or scheduled monument.

In addition, though not within the statutory locus of Historic Scotland:

- significant development within or affecting a world heritage site; and
- major developments within a conservation area.

Appendix 5

What do planning authorities need to do to deal with more historic building casework?

The opportunity to approve listed building consent and conservation area consent applications without first notifying Historic Scotland on behalf of Scottish Ministers now exists. To take advantage of this opportunity, planning authorities must be able to demonstrate that they have:

- signed up to this Joint Working Agreement;
- access to specialist conservation advice;
- appropriate policies; and
- supporting processes to operate effectively.

The success of delegation will rely on ensuring that the quality of decision making is maintained. To realise this Historic Scotland will work with planning authorities to monitor and review the decisions taken on an annual basis. Whilst individual decisions will not be reversed, should an authority be unable to operate delegation effectively, then Scottish Ministers could require notification to resume.

Appendix 6

Postal Address for Historic Scotland Consultations

Please send consultations on listed building consent, conservation area consent and planning permission to:

Historic Scotland's Inspectorate
Room 2.31
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

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