

# Planning Committee

10.00 am, Thursday, 1 October 2015

## Historic Environment Scotland

<b>Item number</b>	6.2
<b>Report number</b>	
<b>Executive/routine</b>	Routine
<b>Wards</b>	All

### Executive summary

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This report advises Committee of a reorganisation in national arrangements for heritage management and associated changes in procedures. From 1 October 2015, Historic Environment Scotland (HES) will take over the duties of Historic Scotland and the Royal Commission on the Ancient and Historic Monuments of Scotland.

The change will mean a new statutory requirement for local planning authorities to consult with HES on certain applications for listed building consent and on all applications for conservation area consent. The current arrangements whereby this Council can determine certain categories of listed building applications without notifying Scottish Ministers will cease but the circumstances under which Ministers must be notified will be much narrower.

There is the potential to enter into a Joint Working Arrangement with HES to the effect that HES will not provide detailed comments on certain types of application when consulted and the application can be determined without further process.

### Links

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<b>Coalition pledges</b>	<a href="#">P40</a>
<b>Council outcomes</b>	<a href="#">CO19</a> <a href="#">CO25</a> <a href="#">CO26</a>
<b>Single Outcome Agreement</b>	<a href="#">SO4</a>

## Historic Environment Scotland

### Recommendations

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- 1.1 It is recommended that the Committee:
- (a) notes the changes outlined in this report; and
  - (b) agrees that the Council should seek to enter into a Joint Working Arrangement with Historic Environment Scotland to restrict the number of applications on which detailed comments would be provided.

### Background

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- 2.1 This report advises Committee of a reorganisation in national arrangements for heritage management and associated changes in procedures for the processing of planning applications, applications for listed building consent, conservation area consent and scheduled monument consent.
- 2.2 The reorganisation involves the creation of a new Non-Departmental Public Body, Historic Environment Scotland. The new body will take over the functions currently carried out by Historic Scotland and the Royal Commission on the Ancient and Historic Monuments of Scotland.
- 2.3 Historic Scotland is an Agency within the Scottish Government and is directly responsible to Scottish Ministers for safeguarding the nation's historic environment and promoting its understanding and enjoyment. It has existed in its present form since 1991. It shares the same legal identity as Scottish Ministers and its staff are civil servants.
- 2.4 Historic Scotland's role is to deliver policy and advise on all aspects of the historic environment on behalf of Scottish Ministers. It also carries out statutory functions relating to two acts of Parliament - the Ancient Monuments and Archaeological Areas Act 1979, which allows it to schedule sites of national importance and take them into state care and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that grants it the authority to list structures for their architectural or historical significance.
- 2.5 The Royal Commission on the Ancient and Historic Monuments of Scotland (RCAHMS) is an executive Non-Departmental Public Body (NDPB) of the Scottish Government, sponsored through Historic Scotland.
- 2.6 RCHAMS is responsible for recording, interpreting and collecting information about the built and historic environment. This information, which relates to buildings, sites, and ancient monuments of archaeological, architectural and

historical interest (including maritime sites and underwater constructions), as well as historical aspects of the landscape, is then made available to the public, mainly at no cost.

- 2.7 The current legislation requires the planning authority to consult Historic Scotland on certain categories of planning applications. These are:
- (a) development of land which is situated within 800 metres from any Royal Palace or Park, and might affect the amenities of that Palace or Park;
  - (b) development which may affect:
    - (i) a World Heritage Site;
    - (ii) a historic garden or landscape;
    - (iii) the site of a scheduled ancient monument or its setting; or
    - (iv) a category A listed building or its setting; or
  - (c) development (other than householder development) which may affect a historic battlefield.
- 2.8 There is also a legal requirement to notify Scottish Ministers of all decisions to grant listed building consent. Ministers have 28 days in which to decide whether to direct that the application be referred to them but this time period can be extended. This is outwith the Council's control and has the effect of extending the time taken to issue a decision.
- 2.9 In 2010, following a change in legislation, Scottish Ministers directed that certain planning authorities, including the City of Edinburgh Council, would no longer be required to notify them of certain types of works to Category B listed buildings. This is referred to as a Removal of Duty to Notify (RDN). This was introduced because Historic Scotland considered that those authorities had sufficient expertise to be able to make such decisions without the need for national oversight.
- 2.10 The first RDN Direction came into effect on 1 August 2010 and subsequent Directions extended the scope of discretion. Largely as a result of this measure, the percentage of listed building applications determined within two months increased from 46% in 2009-10 to 81% in 2014-15.
- 2.11 The statutory period for determining a listed building application is two months. However the current legislation makes provision for an extended period of time that may be agreed in writing between the applicant and the planning authority.

## Main report

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- 3.1 The Historic Environment Scotland Act 2014 establishes Historic Environment Scotland (HES) as an NDPB which will take over the functions of Historic Scotland and RCAHMS from 1 October 2015. An NDPB is funded by the Scottish Government but not considered part of Government. It has a separate legal identity and its staff are not civil servants.

- 3.2 The 2014 Act amends several existing acts and is accompanied by a series of regulations, orders and ministerial directions. These set out the new operating requirements of HES which are fully explained in Historic Environment Circular 1. The main changes as they affect the planning system are described below and are summarised in Appendix 1.
- 3.3 HES will take over Historic Scotland's responsibilities for maintaining the List of Buildings of Special Architectural or Historic Interest, the Inventory of Gardens and Designed Landscapes, the Inventory of Historic Battlefields and the Schedule of Monuments. It will also be able to designate Historic Marine Protected Areas, grant Scheduled Monument Consent and issue grants.
- 3.4 There will be a new requirement for HES to notify the owner, occupier and local authority of its decisions to include or amend entries in the List or Schedule. There will also be a new right of appeal against such decisions to Scottish Ministers but this will not extend to decisions not to list. HES will also be able to legally state what is not to be treated as listed and/or what is not of special architectural or historic interest and is therefore not listed. This is a useful power that should ensure listed building consent is only required where it is appropriate.
- 3.5 HES will join SNH and SEPA as a key agency for the purposes of development planning. This means that HES has a duty to cooperate with strategic development planning authorities or planning authorities during the development planning process. HES will also be a consultation body for all Environmental Impact Assessment and Strategic Environmental Assessment regimes in Scotland.
- 3.6 HES will take over Historic Scotland's status as a statutory consultee for certain categories of planning applications. These categories, listed in paragraph 2.7, are unchanged.
- 3.7 As regards listed building consent and conservation area consent, there will be a new requirement for local planning authorities to consult HES before determining certain types of application. These are:
- (a) applications to alter Category A and B listed buildings;
  - (b) applications to demolish all listed buildings;
  - (c) applications by local authorities involving all listed buildings; and
  - (d) applications for conservation area consent (demolition of unlisted buildings in conservation areas).
- 3.8 If HES does not respond within 14 days, or within any amended agreed timescale, the planning authority may proceed to determine the applications.
- 3.9 It should be noted that the new regulations do not allow for an extended period of time beyond the two month period to be agreed with the applicant.

- 3.10 If a planning authority intends to grant consent against the advice of HES or does not propose to attach conditions recommended by HES, it must notify Scottish Ministers who will then consider whether to “call-in” the application for determination.
- 3.11 From 1 October 2015, the Removal of Duty to Notify will be withdrawn as the new statutory procedures, which significantly restrict the notification requirements, render it redundant.
- 3.12 In terms of applications where the Council is the applicant, the process will be the same as for any application for listed building consent or conservation area consent. Previously these applications had to be referred to HS for a decision as the Council could not grant itself consent. In future, it will only be necessary to consult HES.
- 3.13 The Scottish Government continues to recognise that there is sufficient capacity and expertise in many local authorities to determine applications without requiring detailed input from HES. Therefore, while the statutory duty to consult will remain, HES may agree through Joint Working Agreements that it will not provide detailed individual advice on certain types of application for certain categories of listed building. Subject to Committee’s approval, the Acting Head of Planning and Building Standards intends to approach HES at the earliest opportunity with a view to putting such an agreement in place. This will be important in maintaining good performance in dealing with applications.
- 3.14 Finally, in terms of transitional arrangements, the existing legislation applies to any applications for listed building consent or conservation area consent made before 1 October 2015. There is therefore no statutory requirement to consult HES on any application submitted before this date and the RDN applies until the application has been determined, even if this is after 1 October.

## **Measures of success**

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- 4.1 The Council’s performance in processing applications affecting the historic environment.

## **Financial impact**

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- 5.1 There is no direct financial impact arising from this report. However the comments under 6.1 are relevant.

## **Risk, policy, compliance and governance impact**

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- 6.1 Unless adequate Joint Working Arrangements are put in place quickly there is a risk that the new consultation requirements will place an additional burden on staff and impact on performance figures.

## Equalities impact

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- 7.1 The report concerns procedural changes in legislation. An Equalities Impact Assessment was carried out by the Scottish Government before the legislation was enacted.

## Sustainability impact

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- 8.1 The impact of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties has been considered, and the outcome is summarised below.
- The contents this report will have no impact on carbon emissions because it concerns administrative processes;
  - The contents of this report will have no effect on the city's resilience to climate change impacts because it concerns administrative processes; and
  - The contents of this report will have no impact on a sustainable Edinburgh because it concerns administrative processes.

## Consultation and engagement

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- 9.1 The report concerns procedural changes deriving from legislation and there is no requirement for consultation.
- 9.2 The Council proposes to engage with HES on Joint Working Arrangements.

## Background reading/external references

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[Historic Environment Scotland Act 2014](#)

[The Planning \(Listed Building Consent and Conservation Area Consent Procedure\) \(Scotland\) Regulations 2015](#)

[Historic Environment Circular 1](#)

Report to Planning Committee 8 August 2013 [Historic Environment Strategy for Scotland and merger of Historic Scotland and Royal Commission on the Historic and Ancient Monuments of Scotland](#)

### John Bury

Acting Director of Services for Communities

Contact: John Inman, Senior Manager

E-mail: [john.inman@edinburgh.gov.uk](mailto:john.inman@edinburgh.gov.uk) | Tel: 0131 469 3721

## Links

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<b>Coalition pledges</b>	P40 – Work with Edinburgh World Heritage Trust and other stakeholders to conserve the city’s built heritage.
<b>Council outcomes</b>	CO19 - Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm. CO25 - The Council has efficient and effective services that deliver on objectives. CO26 – The Council engages with stakeholders and works in partnership to improve services and deliver on agreed objectives.
<b>Single Outcome Agreement</b>	SO4 – Edinburgh’s communities are safer and have improved physical and social fabric.
<b>Appendices</b>	Appendix 1: Summary of Changes in Historic Environment Procedures

## APPENDIX 1

### SUMMARY OF CHANGES IN HISTORIC ENVIRONMENT PROCEDURES

	Stays the Same (with change of name)	Changes from 01/10/15
Development Plans	HES will be a consultation authority for SEA	HES will be a Key Agency
Planning Applications	<p>HES will be a statutory consultee for:</p> <ul style="list-style-type: none"> <li>• development of land which is situated within 800 metres from any Royal Palace or Park, and might affect the amenities of that Palace or Park;</li> <li>• development which may affect: <ul style="list-style-type: none"> <li>○ a World Heritage Site;</li> <li>○ a historic garden or landscape;</li> <li>○ the site of a scheduled ancient monument or its setting; or</li> <li>○ a category A listed building or its setting; or</li> </ul> </li> <li>• development (other than householder development) which may affect a historic battlefield.</li> </ul>	
Listed Buildings	HES will be a consultation body for EIA	<p>1. HES will be statutory consultee for:</p> <ul style="list-style-type: none"> <li>• applications to alter Category A and B listed buildings;</li> <li>• applications to demolish all listed buildings;</li> <li>• applications by local authorities;</li> <li>• applications for conservation area consent.</li> </ul> <p>2. Planning authority to notify Ministers if it intends to grant consent against the advice of HES or does not propose to attach conditions recommended by HES.</p> <p>3. Removal of Duty to Notify revoked.</p> <p>4. Joint Working Arrangements for certain categories of application.</p> <p>5. No provision to extend the period for determination.</p>