



Report on Scottish Executive
Consultation CON302

New criteria and guidance for determining
National Importance under the terms of the
Ancient Monuments and Archaeological Areas Act 1979

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<http://www.scotland.gov.uk/consultations/culture/natimport.pdf>]

1. Introduction

1.1 Background

This is the report on the outcome of a public consultation run between 15 March and 4 June 2004 concerning the proposed adoption of revised criteria and guidance to determine whether ancient monuments are of 'national importance' under the terms of the Ancient Monuments and Archaeological Areas 1979.

This paper comprises:

- a brief description of the consultation process;
- a summary analysis of the responses;
- Historic Scotland's comments and responses;
- three Appendices:

Appendix 1: the revised criteria and guidance;

Appendix 2: a list of the substantive responses.

Appendix 3: a copy of the original consultation document which contains a number of annexes, including:

- Annex A: the background to the consultation;
- Annex B: the 1983 criteria and guidance;
- Annex C: the draft proposed revised criteria and guidance of March 2004;

All the responses are available for public inspection at the Scottish Executive library and the library of Historic Scotland.

1.2 The consultation

The consultation was undertaken as part of a three-stranded reform of the process of scheduling: the other two strands are the development of a more strategic, area-based approach to scheduling, and the development of a more sensitive measure of effort and achievement in the scheduling programme.

The aims of the consultation were:

- To determine whether the proposed revised criteria and guidance were generally acceptable to those involved in monument conservation, including national and local government, NGOs in the historic environment field, bodies representing those affected by the scheduling of monuments, and interested individuals.
- To determine whether there were consequences of the revision that had not been recognised, or not sufficiently taken into account.

The consultation was sent to a wide range of interested parties and publicised through the Britarch electronic mailing list, through a press story in *The Scotsman* and *The Daily Record* on 21 April, and through a range of on-line discussion forums.

The agency received 25 substantive responses. These break down as follows:

Archaeological contracting companies	2
Local Government (includes Association of Regional and Island Archaeologists)	12
National Park Authority	1
NDPB	2
NGO	4
Representative professional body	2
Individuals	2

In addition, the Built Environment Forum Scotland organised a workshop at which Historic Scotland presented a paper explaining the basis of the consultation, followed by detailed discussion, which was minuted and is included as an additional substantive response.

A significant number of respondents also made comments on the nature of the current legislation and suggested changes. These have been gathered together and are being considered within Historic Scotland and will also be passed to the Historic Environment Advisory Council for Scotland (HEACS) working group on heritage legislation.

2. Summary

To aid analysis each response was broken down into four subheadings.

2.1 Appropriateness of consultation: improvement or not

A significant majority of respondents welcomed the new guidance, either warmly, or more cautiously, or with reservations. However, a small minority felt that the consultation was inappropriate, because it was ‘tinkering’ when more major reforms were needed.

2.2 General comments on our approach

The respondents who commented on this aspect welcomed the use made of national and international treaties and charters. The recognition of the regional character of much of Scotland’s historic environment was particularly welcomed. There were conflicting views on the ‘subjective’ or ‘objective’ nature of the process of deciding what was of national importance. Some respondents felt that a quantifiable approach (England’s Monument Protection Programme was specifically mentioned) was desirable or necessary. This is considered further in section **4. Implementation**, below. Conflicting views on local involvement in various parts of the process were expressed: on the one hand, that more emphasis should be given to local/community views; on the other, that scheduling was a national process that should be above perhaps short-term local politics. Some respondents felt that some of the ‘criteria’ were poorly defined; more than once it was said that they were too loosely defined to be ‘criteria’. This is dealt with further below in section **3. Detailed Comments**. Some respondents did not feel that we needed to stay closely in step with other parts of the UK; one felt it was important that we did.

2.3 Detailed comments on the criteria and guidance

There were many useful comments here, on wording and arrangement; these have largely been taken into account in the redrafted criteria. There were, however, some general trends in the comments. Some respondents felt that the wording was loose or vague in places. A concern was expressed that we were leaving ourselves open to local pressure to schedule monuments with ephemeral connections – a potential conflict between engaging at local level and operating a national designation. One approach suggested was that factors related to national consciousness should only be used in conjunction with consideration of more concrete characteristics. One respondent suggested that the inclusion of the ‘national consciousness’ criterion weakened the effect of the rest. It was suggested that any weighting of the guidance could be made explicit. A number of respondents wanted worked-out examples of how the guidance would be implemented. Suggestions were made about re-ordering the factors to group them more effectively. There were mixed views on ‘fragility’, a consideration in the 1983 document but now removed. The majority opinion was that removing it was the right thing to do. It was suggested that we made it clearer that not all the guidance factors had to be satisfied to make a case for a monument being of ‘national importance’, and that Scottish Ministers had discretion whether or not to schedule.

2.4 Implementation

There were many comments, queries and suggestions on how the system could work better, or how the new guidance could be brought into effect. The abandonment of the simple numerical scheduling target was welcomed. A significant issue for many respondents was the fate of monuments that might be de-scheduled as a result of the implementation of the new criteria. In retrospect, many of the concerns might have been allayed if HS had provided more information in the consultation letter of 12 March on the way this process was intended to be implemented.

3. The Main Points Raised by Respondents

The numbered paragraphs below are verbatim extracts, with minor editing where necessary for them to make sense in isolation. In most cases they are a selection of the comments made, to avoid duplication or repetition of similar points. Throughout, Historic Scotland responses to points are in italics in square brackets.

3.1 Appropriateness of consultation: improvement or not

The overwhelming general response to the consultation and the revised guidance was positive (c20 responses), with few critical responses (2–3 depending on interpretation). A small sample of the positive comments is attached (avoiding repetition of points); all the critical ones are listed.

Positive responses

3.1.1 The draft proposals represent a significant improvement, particularly in the focus that it places upon cultural significance and regionality.

3.1.2 They should enable Historic Scotland to extend its remit in a more effective manner to certain highly important classes of sites that have emerged as fields of interest during the past 20 years.

3.1.3 They should also enable Historic Scotland to become more responsive to local attitudes in the selection of sites for preservation and management.

3.1.4 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.

3.1.5 We welcome the revised criteria and support the need to synchronise scheduling and the consent system. Consistency in scheduling and consents is essential in order that the designation and process is defensible and ultimately effective.

3.1.6 We welcome a more transparent, systematic and rigorous approach to the definition of ‘national importance’ under the terms of the 1979 Act.

3.1.7 We...applaud the fact that this new revision will reflect the regional diversity of Scotland’s nationally important monuments and landscapes

[HS welcomes the support it has received for the proposed changes]

Critical responses

3.1.8 The consultation paper does not relate the proposals to the wider UK situation. In England, over at least a 10-year period there has been a review of Scheduled Monuments by the Monument Protection Programme using an objective methodology. The resulting schedule is robust and justifiable. Adoption and application of the proposed new criteria in Scotland is not a comparable exercise. Given these major developments, minor alterations to the current criteria in use in Scotland are inappropriate and premature. The current programme of de-scheduling is already ‘purifying’ the list of designated sites and should achieve the required consistency between the scheduling and consent regimes.

3.1.9 We felt that this exercise, though useful, was essentially just tinkering around the edges and that the real need was to review the primary legislation.

3.1.10 I would say...that the changes appear minor, based on an academic debate about the definition of Scotland's nationhood, and are unlikely to result in any significant change in the types of monuments which become scheduled.

3.1.11 Although this is a Scottish Executive consultation, we feel that some acknowledgement, beyond the reference to MPP, of moves elsewhere to unite at least the processing of scheduling and listed building applications, if not the covering legislation, should have been made.

[HS: A more detailed response to 3.1.8 is given below (after 3.2.15). It should be noted that there is no current programme to 'purify' the schedule, although data-cleansing is under way to correct faults and inadequacies in scheduling documentation. Although HEACS is due to report to the Minister on any need for new legislation, there is no guarantee that new legislation will emerge, or if it does, how long it will take to implement; the problems inherent in the current system are too great to leave to an indefinite future. There will be an effect on what comes onto the Schedule.]

3.2 General comments on our approach

General points

The overwhelming general response to Historic Scotland's approach to the revision was favourable.

3.2.1 We welcome the list of indicators for characterising cultural significance. This seems well thought-out, well balanced, and pragmatically flexible.

3.2.2 It is important that scheduling reflects changes in regulation, treaty and practice.

3.2.3 We welcome the general approach set out, in particular Historic Scotland's growing acknowledgement of the importance of cultural significance. In particular, we note the adoption of the principles contained in the Burra Charter, which recognize that sites may have different kinds of importance or significance to different communities of people.

3.2.4 We also welcome the introduction of a two-step scheduling process, including the assessment of the cultural significance of a monument, reflecting increasing recognition of wider social and cultural values than those forming the current scheduling criteria.

There was clear support for the two underpinning principles – an approach based on an appreciation of the regional nature of Scotland's historic environment; and the statement that no period of Scotland's past and no part of Scotland's land is inherently more or less likely to produce monuments of 'national importance' than another.

3.2.5 We are in full agreement that consideration of the term 'national importance' should be predicated upon principles that: take full account of the regional nature of Scotland's past, the different characters of the archaeology and buildings of the regions, and of patterns of survival; and acknowledge that the past of no one region of Scotland is inherently more important than another's.

3.2.6 We welcome 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 monument types to be encountered in Scotland.

3.2.7 We welcome the thinking behind the revision, namely to produce a clearer set of guidelines for assessing national importance which recognise that Scotland's past is primarily a regional one and that this is reflected in the monument types that make up the archaeological heritage of Scotland.

3.2.8 We welcome...the statement that no period or area is inherently more or less likely to produce monuments of 'national importance' than another.

3.2.9 I would like to express our appreciation that 'cultural significance' and 'spiritual value for past, present and future generations' are seen as valid criteria contributing towards a site's 'national importance'. The cultural and spiritual value of ancient monuments is of particular importance to our members across the UK, and the many people worldwide who share our interests.

3.2.10 We welcome the forthright recognition of the regional characteristics of much of the archaeological resource from which the population of scheduled sites is drawn, but are mildly concerned that the deployment of concepts such as 'association' may, unless parameters for their use are clearly stated, lead to marked imbalances from region to region.

Quantitative approaches

There were two distinct approaches; one pressing an 'objective' or quantitative approach, the other accepting that the process must necessarily have a subjective aspect.

3.2.11 These revisions fail to adopt any process for quantification or objective application of the revised criteria. Rather the guidance continues to rely on subjective judgement against vague, if modernised, criteria. This is, in our view, unfortunate and inappropriate.

3.2.12 The revised criteria bring scheduling guidance up to date in terms of current thinking and practice. However it is not clear how they can be objectively and systematically applied unless there is a prior programme of archaeological evaluation, statistical analysis and development of regional research frameworks, to support the implementation of the criteria.

3.2.13 We would suggest that there should be a nationally agreed system, where each monument type has a statement of significance and there are detailed guidance notes for how to assess each individual site within a class. This would allow assessment of every site, but resources will need to be made available for this. Each site could then be placed in relation to those of known national importance, so the issue of scheduled/not scheduled would not become such a major issue when a site is under threat. It would also allow comparison across Local Authority boundaries, resulting in a more seamless approach. However, given the large numbers of sites about which little detail is known given the lack of recent survey work, it has to be recognised that any such grading system would be extremely resource intensive.

3.2.14 Determining cultural significance is not an exact science, and no set of criteria will ever be unchallengeable. The 1983 criteria...seem to have evolved from natural heritage significance criteria, but natural heritage criteria have now moved on since then – in a much more quantitative direction. We must, however, acknowledge that cultural significance tends to be much more qualitative, with a much higher degree of subjectivity than for the natural heritage. This has the effect of making it difficult to

find unequivocal significance criteria, which in turn may give the impression that the criteria themselves are at fault...even using the new criteria, the determination of national importance will continue, to a greater or lesser extent, to have an element of subjectivity.

3.2.15 We note that a number of the revised criteria, particularly those on the second half of the list in Annexe B, which appear to represent most of the proposed changes from the existing 1983 criteria, lack a clear definition. Some appear to depend on conceptual and subjective rather than physical values, for example 'significance in terms of the national consciousness' and 'formal aesthetic attributes'.

[HS has in the past considered and rejected a quantitative approach to scheduling, but the application of an 'objective' process, underpinned by the sort of structure set out in 3.2.13 below, is problematic. It assumes a more complete knowledge of the character, range and variety of the heritage assets of Scotland than experience leads us to believe we have; and it requires a greater degree of certainty than is prudent, that the evidence of a particular site or building's nature, date, sequence etc is fully visible in the field. Classification produces 'types' whose relationships to past realities is often obscure. The resource requirements of implementing such a system would be prohibitive. The identification and assessment of monuments for inclusion on the schedule has always depended upon the professional judgement of Inspectors of Ancient Monuments and both the 1983 and the new 'criteria and guidance' are intended to structure and inform that judgement. The 1983 criteria were not, as far as we are aware, consciously modelled on nature conservation criteria.]

Effect on the schedule

Although most comments under this heading are best dealt with in section 3.4 *Implementation*, there are more general points.

3.2.16 We feel it necessary for HS to review the current schedule in light of the proposed definition and criteria. This would strengthen the schedule and ensure that when challenged a monument is clearly of national importance.

3.2.17 The actual number of potential SAM [scheduled ancient monument] sites and the number of SAM sites that are presently designated would require a full assessment of all these sites prior to any reclassification.

3.2.18 The adoption of the new criteria will leave the current schedule open to serious challenge from owners and third parties. Unless more resources are made available to deal with any such challenges, Historic Scotland may be unduly diverted from casework, a good deal of which relates to planning applications, or the ongoing processes of scheduling and de-scheduling.

[HS does not intend to undertake an immediate review of all existing scheduled monuments; instead, it intends to review the schedule over a period of time; more information is provided below. It is indeed possible that owners and others may suggest that currently scheduled monuments are no longer of national importance, for example in the face of development. It is already HS practice to assess scheduled monuments for their continued place on the Schedule in such circumstances.]

Local involvement

Matters of local involvement in the processes of scheduling and descheduling are dealt with in section 4 **Implementation**; a more general point may be noted here.

3.2.19 We consider it important to reflect the fact that while some monuments may not be significant in physical terms, their cultural significance to the local communities in which they are situated, and the wider Scottish community, is an equally strong justification for their protection for present and future generations.

[HS: notes this approach, but has been urged by a number of respondents to be cautious in applying it.]

Importance

A suggestion was made in relation to the overall idea of 'importance' as used in the implementation of the 1979 Act.

3.2.20 We recommend 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.

[HS: Monuments on the Schedule are unequivocally of national important by definition; however, we have used the word in the preamble of the document.]

3.3 Detailed comments on the criteria

There were many useful comments here, on wording and arrangement, which are not listed here. The revised criteria take account of most of these comments.

There were some general trends in the comments.

Are these 'criteria'

Some respondents queried whether the 'criteria' were really that.

3.3.1 The new 'criteria' are so broadly drawn as not really to be 'criteria' at all, but might be better described as expressions of value (or by a similar expression);

3.3.2 We have some reservations about whether 'criterion' is really the right word, and wonder if 'value' and 'consideration' might be better. There would be benefit in grouping them in a slightly different order for clarity.

[HS: disagrees - the document contains both guidance, and criteria that monuments must meet, before being judged of national importance.]

Structure

There were many helpful suggestions about re-ordering the criteria to group like with like.

3.3.3 The list of criteria under Cultural Significance and National Importance should be re-ordered so that individual criteria in each section can be easily correlated

3.3.4 The criteria under Cultural Significance and National Importance should be divided into sections, for example, for national importance, the sections could reflect the potential uses of the resource e.g. research, education, amenity

[HS has taken account of these points in the redrafting by subdividing the Cultural Significance factors and simplifying and re-ordering the National Importance factors.]

Relevance of conformity across UK

There was minor disagreement about whether the criteria should continue to be close to those operating elsewhere in the UK.

3.3.5 We recognise that the new criteria do not depart to any significant degree from the guidance in use in England and Wales and we agree with this principle.

3.3.6 It is not easy to judge whether it is true to say that it is ‘inappropriate for definitions of national importance to vary’ over Great Britain if those developed for Scotland are more helpful to the Scottish context. It may be that improvements in Scotland will be followed south of the border in due course.

[HS: At the moment there are no plans to separate further the guidance in use in Scotland]

Cumulative significance/importance

It was suggested that we made it clearer that not all the criteria had to be met to make a case for a monument being of ‘national importance’.

3.3.7 As with national importance characteristics, it needs to be clear that significance is not dependent on achieving all of these characteristics, and that just one may in some cases be enough to argue for national importance.

3.3.8 It should also be made clear that a monument could be worthy of scheduling because of an accumulated value from more than one criterion, rather than having to completely satisfy one criterion

[HS has made this clear in the revised criteria]

‘National consciousness’, ‘spiritual value’ and local input

There were some concerns that the ‘national consciousness’ criterion was too vague and was not appropriate. There were related concerns about the ‘vagueness’ of the wording or definition of some of the criteria.

3.3.9 As far as the individual criteria are concerned, that of ‘place in the national consciousness’ seems to be at odds with the others. Given that one of the purposes behind the revision of the criteria is to bring clarity and focus to the scheduling process, the inclusion of this criterion seems to introduce a much vaguer concept. This raises the question of how to define whether a monument is in the national consciousness or not, and who is qualified/in a position to make that decision.

3.3.10 The definition of some of the criteria is not clear. Specifically, for example, the proposed core criteria of cultural significance as outlined in paragraph 2 include ‘spiritual value’ for past, present or future generations. There is no guidance given as to the definition of spiritual value, which is not self-evident. Spiritual value to one group in society may conflict with the values of another group, and no guidance is offered as to the resolution of such conflicts.

3.3.11 There needs to be more discussion of the potential community value of cultural significance and national importance

3.3.12 We remain slightly concerned that there is the potential for local pressure to schedule monuments with ephemeral associations.

[HS: The role of ‘national consciousness’ has been reduced in significance in the revised draft. It is important to remember that scheduling is applied to secure the protection of monuments in the national interest, and that it is the national interest that is the primary consideration in determining scheduling, descheduling or the outcome of scheduled monument consent applications. Prioritising local views on a monument over the national

interest undermines the purpose of scheduling. ‘Spiritual value’ is indeed too vague and difficult to define to be a valuable factor and has been removed.]

‘Fragility/vulnerability’& ‘representivity’

There were opposing views as to whether we were right to drop ‘fragility/vulnerability’ – included in the 1983 guidance – from the new guidance. The majority view was in favour of dropping it.

3.3.13 While monument ‘vulnerability’ is primarily a management issue, it may not be desirable to exclude it completely as one of several criteria that could be deployed to make the case for scheduling an individual monument;

3.3.14 The removal of questions of fragility and vulnerability is appropriate, as these issues affect management decisions but do not relate to the intrinsic significance of the monument

3.3.15 The characteristic of ‘representivity’ seems no longer to be accommodated in this list. It is, of course, necessary to ensure the protection of some high-quality examples of commonplace archaeological sites and monuments, as well as those of high status.

[HS continues to be of the opinion that vulnerability is not appropriate in consideration of national importance, although it might figure as a consideration as to whether scheduling was the appropriate mechanism to apply. ‘Representativeness’ has been included in the revised draft.]

Weighting

3.3.16 There is also an apparent lack of specific practical guidance as to the weighting and application of the different criteria and how conflicts between different criteria might be resolved.

3.3.17 We have some concern over how the list of reference points for the characterisation of cultural significance will be weighted and in addition feel that perhaps there is little difference in meaning between reference points 7 and 8.

[HS: The determination of Cultural Significance comes before the determination of National Importance and we do not feel that weighting is appropriate. However, the factors for determining national importance have been simplified and the ‘national consciousness’ factor has been reduced in relative significance.]

3.4 Implementation

The largest number of comments related to implementation.

Targets & the Programme

3.4.1 We welcome the implication that there is to be a long overdue move away from a simplistic numerical target for schedulings and de-schedulings.

3.4.2 The move away from trying to achieve numerical annual targets for scheduling monuments is welcome, but should not detract from the goal of including all monuments of national importance on the Schedule.

3.4.3 Consideration should be given in terms of the area by area approach of the strategic programme to how areas will be prioritised. Given the rapidly increasing renewable energy developments proposed around the country, scheduling of

monuments in areas identified for large-scale development such as Dumfries & Galloway, Scottish Borders, and Argyll, is critical.

3.4.4 CSA welcomes the introduction of a strategic scheduling programme to replace the target driven scheduling programme since this will result in a more evenly balanced schedule. The main objective of this being the need to include all monuments of national importance on the Schedule.

[HS: See also 3.1.8, 3.1.11 and 3.2.11 ff. HS is developing new targets that relate better to the achievement of the long-term aim of keeping the schedule under constant review. As part of this, Historic Scotland will publish a paper setting out how it intends to operate the scheduling programme in future. In response to point 3.4.3, scheduling in reaction to generalised, and possibly short-term, development threats has not proved a worthwhile way of structuring the scheduling programme in the past, and HS has consciously avoided this approach for some time.]

Local involvement

3.4.5 We would request that any future evaluations of existing or potential Scheduled Ancient Monuments be carried out in consultation with local authority (or equivalent) archaeologists. We feel that this would help to ensure that regional factors are fully taken into account and would bolster the authority of any decision reached.

3.4.6 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 we 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.

3.4.7 There is a real and grave danger that sites in need of protection because of their 'national importance' could be lost to future generations because of a lack of local knowledge.

3.4.8 One purpose of scheduling is to take a national view that is above local politics. A view was expressed that community value should not be included in any criteria for scheduling: events had shown that communities could be bitterly split over proposals to change scheduled monuments. The criteria set out to establish what is nationally significant to *Scotland*. Local views can be assessed at different levels, and there is a mechanism for local views to be taken into account at Public Local Inquires, and whilst there is no legal obligation to consult owners during scheduling they always are. Beyond owners it would be difficult to know where to draw the line about who to consult.

3.4.9 As an organisation whose remit includes encouraging understanding of and involvement in Scotland's archaeological heritage by all, we would like to see an encouragement for local communities to contribute to the scheduling process by identifying/bringing attention to monuments in their area that are at risk and could be considered for scheduling. In this regard it is important that the criteria used for defining national importance are clear and accessible to as wide an audience as possible to enable informed identification.

[HS has begun to develop, in consultation with the local authority archaeology services, a system that will allow them to engage with the new strategic scheduling process. Processes involving detailed local consultation on scheduling or descheduling cases would have very

considerable resource implications. In future HS will publish advance notice of where it will be carrying out its strategic scheduling programme and interested parties can seek or provide information. The point is made above that scheduling is intended to express the national interest, and that local pressures for or against the preservation of a scheduled monument, while of value, should not overwhelm that national view.]

Descheduling

The fate of any monuments that might come off the schedule as a result of adopting new criteria caused particular concern. In retrospect, more information should have been provided in the consultation document. This is a representative selection of a large number of responses.

3.4.10 we are 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 not receive adequate protection by existing heritage legislation, either by listing or through the planning system, as has been suggested...This consideration should not, however, detract from the desire to apply rigorous and defensible criteria when determining whether a monument is of national importance.

3.4.11 We note the statement in Annex C, para 8 that understanding of cultural significance may change in future. We would not wish to see monuments descheduled as a result of these proposed revisions becoming candidates for re-scheduling in the more distant future as the zeitgeist moves on, as this may bring the system into disrepute.

3.4.12 We welcome the recognition that some monuments presently scheduled do not merit the strong presumption against development afforded by scheduling, but it is unclear from the consultation whether this will lead to a process of systematic descheduling of monuments, and if so, who will be involved in this process and how it will be carried out.

3.4.13 Arising from this question...it is unclear whether there is to be a systematic approach to reviewing the existing schedule and researching monuments for inclusion in the schedule, rather than the present ad hoc approach.

3.4.14 We are also concerned that there is no explanation or discussion of what will happen to those currently scheduled sites which would not qualify, under the new definition, nor what resources will be available to the Council and Regional Archaeologists whose remit those, now de-scheduled sites, would fall under.

3.4.15 The revised criteria will be used for new scheduling proposals and will also be applied retrospectively to the existing schedule. However, no timetable is proposed for a systematic review of the existing schedulings.

3.4.16 We agree that sites can be safeguarded in ways other than through scheduling, but know from experience that in the present situation scheduling retains a much stronger level of protection and care in the eyes of the public and developers than existing provisions through the planning process.

3.4.17 We recognise that there may be cases where sites which are scheduled at present are not really worthy of that level of protection...We also wonder whether it might be feasible to initiate levels of scheduling rather than remove sites from the list altogether

[HS: The review of existing monuments will take place as part of the new area-based approach to scheduling. The work will be done by Historic Scotland staff. As new monuments are considered for scheduling, existing schedulings will be reviewed, to see if they need to be amended (for example, if too small an area is scheduled, or the scheduling is in the wrong place or on an old map) or descheduled. This process will take place over some 30 years, according to present estimates. The 5–10% of monuments that might come off the schedule is a very rough estimate. So far, in the first pilot, no existing monuments were descheduled, and in the second, two are likely to be descheduled (because Listing appeared to be a more appropriate designation), while over 100 monuments are likely to be added to the schedule through the pilot scheduling programmes. The number of descheduled monuments, the fate of which might fall to the local authorities, will be greatly outnumbered by monuments being added to the schedule.]

Data cleansing and redesignation

3.4.18 It is well known that the present system is inaccurate, and many sites are vaguely plotted onto inaccurate maps. There have been occasions where sites appear on the other side of a road from where they actually lie.

[HS is aware that there are quality and accuracy problems, particularly in the older scheduling documentation and mapping. During 200–6 all schedulings will be reviewed for the adequacy of documentation and mapping, and, where there are problems, if appropriate, rescheduled.]

Case studies, publicity, testing

Some respondents wanted to have worked-up examples to demonstrate how the new system would work.

3.4.19 We would suggest that it would be a productive exercise to develop test cases upon which the new criteria are applied to see to see how the criteria will work in practice and to highlight any problem areas and to review and modify criteria accordingly.

3.4.20 In order to aid public understanding, the Scottish Executive should consider producing an easy to use guide written for a popular audience.

[HS: Worked-up examples will be prepared and the existing guidance booklet will be revised. We plan to begin implementing the new criteria during 2005.]

Non-Statutory Registers

3.4.21 The Council raises concerns about the continued usefulness of the Non-Statutory Registers. It is unclear what the implications for the NSR will be if National Importance is to be reassessed and applied retrospectively. Will NSR data still be of use, particularly within the planning process, or will it be made effectively redundant?

3.4.22 We would suggest that an assessment of monuments already identified in most areas of Scotland as being worthy of inclusion on the schedule should take place before the strategic programme is started. Delays in the assessment of these monuments, many of which will be in vulnerable positions, will put them at greater risk of damage or destruction.

[HS: The Non-Statutory Registers of monuments likely to be of National Importance were created using the 1983 guidance. They reflect the period and circumstances in which they were created and can no longer be used uncritically in the scheduling programme. However, they continue to be of use and relevance until such time as the strategic area-based

scheduling programme covers the area (or part of) the area covered by the NSR, when the NSR (or the relevant part) will be superseded. We feel that the area-based scheduling programme is the best way forward, rather than any attempt to 'cherry-pick' sites from across Scotland.]

Listing/Scheduling

3.4.23 ...the implications of scheduling require full consideration when assessing potential scheduled ancient monuments. In considering this, other mechanisms providing protection should also be examined and given equal weight. Guidance advising when scheduling is more appropriate would be helpful although it is understood that each case will be judged on its own merit.

3.4.24 It was suggested that there is a great need for closer practical work between those involved in listing and scheduling and that improvements can be made without resorting to a change in the legislation.

3.4.25 Relationship to listing – more guidance needed on how to decide whether a site should be listed or scheduled, especially where there is some potential for a site to be brought back into active use. This document should make the point that active use is the basis for making the decision between Listing and Scheduling.

[HS: will continue to address the scheduling/listing overlap. There will be careful consideration of which designation is more appropriate for each monument. It will be appropriate for some sites and buildings to remain both scheduled and listed.]

General

3.4.26 The current consultation does not provide any guidance on how Historic Scotland intends to deal with the resource implications of the application of the new criteria for designation, including consideration of both scheduled sites and those on the 'Non-Statutory Register'.

[HS: There are no resource implications for the new approach to scheduling.]

3.4.27 We also consider it important that HS should continue to seek external *expert* advice for scheduling and casework where required.

[HS: The arrangements for external scrutiny of scheduling proposals by the Ancient Monuments Board have been removed by the Scottish Parliament and have not been replaced. We will continue to seek informal advice and input on scheduling where appropriate.]

3.4.28 we welcome the revised criteria but would like further guidance particularly how the criteria will be applied in terms of scheduling and how the planning system can protect and manage monuments of importance but perhaps not of national importance.

[HS is working to develop its lines of communication with local authorities, which should help the two-way flow of information.]

3.4.29 The application of the new criteria should mean that those monuments which remain on the schedule, and any which are added subsequently to the schedule, should be capable of a more robust defence in terms of their national importance and thus the primacy of their protection against destruction or inappropriate change. While not opposing such a move, we believe that it exposes an underlying difficulty in the scheduling process, one that will remain under the proposed system. This is the

impossibility of writing a definitive, or even in some circumstances an appropriate, description of remains which, in the case of cropmarks, are buried and only partially visible. Some system of pre-scheduling evaluation through trial trenching, or, in appropriate locations, geophysics, is perhaps indicated here.

3.4.30 ... no mention should be made of preliminary evaluation of a site through excavation, because of the potential to damage the site. An assessment of significance can be made without this, by considering other criteria – e.g. rarity, etc.

[HS: notes that virtually all scheduling has been undertaken on the basis of available information and the professional judgement of Inspectors, and that the courts and other quasi-legal forums have not felt it necessary for us to provide the level of information that might be provided by excavation. In any case, experience shows that limited scale excavations could well mislead, depending on which part of a site the trenches were sited. The resource implications are prohibitive.]

3.4.31 Questions over cropmark sites and how they can be justified in terms of significance: if the more rigorous criteria leads to less sites being scheduled, how is the schedule (in its current form overall) affected.

[HS: It will still be possible to schedule sites appearing only as cropmarks.]

3.4.32 it is important to explain that scheduling is discretionary, and that the criteria do not automatically require a monument to be scheduled

[HS: This has been included in the new draft.]

4. The Next Stage

In the coming months we intend to:

- publish strategic and operational policies for scheduling (the new criteria and guidance will be formally promulgated through these);
- develop a new target to measure achievement in the scheduling programme;
- run a further pilot area-based scheduling project, in Strathdon, Aberdeenshire;
- prepare staff training and external guidance materials; and
- prepare worked-up examples of the use of the new criteria.

In the meantime, any queries or comments should be sent direct to:

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Appendix 1: revised guidance and criteria

Criteria for and Guidance on the Determination of ‘National Importance’ under the terms of the Ancient Monuments etc Act 1979

Preamble

1. The Ancient Monuments and Archaeological Areas Act 1979 provides for the ‘scheduling’ of ancient monuments, the sole criterion being that they are of ‘national importance’. A definition and operational guidance on how to determine whether or not a monument was of ‘national importance’ was approved by the Ancient Monuments Board in 1983. The guidance offered here is the fruit of a revision of these texts, taking account of the development of treaty, charter and practice, in the UK and abroad. While being based on the 1983 text, it also reflects the principles of Scotland’s *Stirling Charter* (2000), which ‘has been informed by, and builds on, the body of international conservation charters already in being’. One of the most influential of these is the Burra Charter (current edn 1999), which introduced the now widely accepted concept of ‘cultural significance’. While taking into account national and international developments, the revised guidance has been written with the welfare of Scotland’s archaeological and built heritage in mind.

2. The process of scheduling is undertaken by Scottish Ministers, and is discretionary. The selection of monuments to propose for scheduling is undertaken by Inspectors of Ancient Monuments and their proposals are vetted by professional and administrative officers within Historic Scotland. The primary aim of this document is to provide guidance to these officers so that they can determine that monuments are unequivocally of national importance.

Cultural Significance

3. For a monument or a class of monuments to be considered as of national importance it must, first, have a particular cultural significance: artistic; archaeological; architectural; historic; traditional (factors listed in the 1979 Act); aesthetic; scientific; social for past, present or future generations. Such significance is inherent in the monument itself, its fabric, setting, use, associations, meanings, records, related monuments and related objects.

4. For most of Britain’s and Scotland’s past, there are no ‘national’ prehistories or histories, as reflected in the built heritage; instead there is an aggregation of related prehistories and histories of different regions, which may have wider national or international links. It is through these linked regional histories and prehistories that the history of Scotland and the UK can be understood.

5. Cultural significance can be characterised by reference to one or more of the following; the characteristics are in three groups: Intrinsic – those inherent in the monument; Contextual – those relating to the monument’s place in the landscape or in the body of existing knowledge; Associative – more subjective assessments of the associations of the monument, including with current or past aesthetic preferences. **This is a separate process from identifying the sub-set of sites and monuments that are of national importance** (para 7 below).

Intrinsic characteristics

- i. the condition in which the monument has survived. ‘Condition’ includes the potential survival of archaeological evidence above and below ground, and goes beyond the survival of marked field characteristics;

- ii. the archaeological, scientific, technological or other interest or research potential of the monument or any part of it;
- iii. the apparent developmental sequence of the monument. Monuments that show a sequence of development can provide insights of importance, as can places occupied for a short time;
- iv. the original or subsequent functions of the monument and its parts;

Contextual characteristics

- v. The present rarity or representativeness of all or any part of the monument, assessed against knowledge of the archaeology of Scotland and of the region in which the monument occurs;
- vi. the relationship of the monument to other monuments of the same or related classes or period, or to features or monuments in the vicinity. This is particularly important where individual monuments, themselves perhaps of limited immediate significance, form an important part of a widespread but varied class. The diversity of the class should be a material consideration in making individual decisions;
- vii. the relationship of the monument and its parts with its wider landscape and setting.

Associative characteristics

- viii. The historical, cultural and social influences that have affected the form and fabric of the monument, and vice versa;
- ix. the aesthetic attributes of the monument;
- x. its significance in the national consciousness or to people who use or have used the monument, or descendants of such people;
- xi. the associations the monument has with historical, traditional or artistic characters or events.

6. Understanding of cultural significance may change as a result of the continuing history of the monument, or in the light of new information, or changing ideas and values. The concept of 'cultural significance' will apply widely and to different degrees to all of Scotland's historic environment, and should not be confused with the establishment of 'national importance', which is another process.

National Importance

7. The primary purpose of scheduling under the 1979 Act is the preservation of, and control of works on, monuments, the survival of which is in the national interest. The provisions of the 1979 Act are consistent with the principles of minimal intervention to ensure that a monument is preserved as far as possible in the state in which it has come down to us, and is passed on to future generations in as unchanged a state as is practicable, in accord with the principles of sustainable development. In general, those principles will only be set aside in circumstances where wider considerations are deemed, on balance, to be of greater importance **to the national interest**, rather than to any sectoral or local interest; in individual cases such considerations may include the needs of research into Scotland's past.

8. It should be noted that no period of Scotland's past and no part of Scotland's land is inherently more or less likely to produce monuments of 'national importance' than another.

9. The purpose and implications of scheduling are issues that require to be taken into consideration when assessing monuments for scheduling. Scheduling may not be the only, nor the most appropriate, mechanism to secure the future of all sites, even those that may otherwise meet the criteria.

10. The 'particular' significance needed to define the monument as of 'national' importance may be established in terms of one or more of the following:

- i. its inherent capability or potential to make a significant addition to the understanding or appreciation of the past;
- ii. its retention of the structural, decorative or field characteristics of its kind to a marked degree;
- iii. its contribution, or the contribution of its class, to today's landscape and/or the historic landscape;
- iv. the quality and extent of any documentation or association that adds to the understanding of the monument or its context; and
- v. the diminution of the potential of a particular class or classes of monument to contribute to an understanding of the past, should the monument be lost or damaged;
- vi. its place in the national consciousness is a factor that may be considered in support of other factors.

Historic Scotland
December 2004

Appendix 2: substantive responses

Ref no (not continuous sequence)	Respondent	Sector
1	Dr Richard Hingley	University
3	North Ayrshire Council	Local Government
4	City of Edinburgh Council	Local Government
5	South Lanarkshire Council	Local Government
6	Society of Antiquaries of Scotland	NGO
7	Cairngorms National Park	National Park Authority
8	David Connolly	Individual
9	Rathnell Archaeology	Archaeological contracting company
10	HEACS	NDPB
11	RICS	Professional body
12	Scottish Natural Heritage	NDPB
13	The National Trust for Scotland	NGO
14	North Lanarkshire Council	Local Government
15	Council for Scottish Archaeology	NGO
16	Association of Regional and Island Archaeologists	Local Government
17	Dumfries & Galloway Council	Local Government
18	CFA Archaeology	Archaeological contracting company
21	Heritage Action	NGO
22	Institute of Field Archaeologists	Professional body
23	Stirling Council	Local Government
25	Comhairle nan Eilean Siar	Local Government
26	East Lothian Council	Local Government
27	Aberdeen City Council	Local Government
28	Scottish Borders Council	Local Government
29	The Highland Council	Local Government

Also, the minuted discussions of the Built Environment Forum Scotland workshop

Appendix 3: the March 2004 consultation document and its annexes

In versions of this report downloaded from the Scottish Executive website, this appendix is not included. It can be downloaded separately, if required, from:

<http://www.scotland.gov.uk/consultations/culture/natimport.pdf>