HISTORIC ENVIRONMENT SCOTLAND
Principles and Practice for Designation

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ACKNOWLEDGMENTS

Our thanks to the individuals, organisations and others who took the time to respond to this consultation and to staff at Historic Environment Scotland who provided input and offered advice as part of this analysis.

INTRODUCTION

Background to the consultation

In 2016, Historic Environment Scotland (HES) committed to a review and replacement of the <u>Historic Environment Scotland Policy Statement</u> (HESPS). This was an interim document which was put in place when HES was formed, having itself formed an integral part of our predecessor organisations' policy framework for the past 15 years.

Building upon the findings of *What's Your Heritage?*, we held conversations with stakeholders on how to take this forward. We held initial consultations on our approach to the review and replacement of this guidance during July and August 2018 and more recently held a public consultation on a draft policy document between 8 January and 19 February 2019.

This document supports and will coincide with the publication of the Historic Environment Policy for Scotland which is expected to be adopted in May 2019.

What is the purpose of this report?

The purpose of this report is to outline the findings of the consultation exercise between January and February 2019 and explain how we have taken these views into account.

The first part of this report (A) analyses and summarises the views expressed during the public consultation and related engagement activities that took place between 8 January and 19 February 2019. The second part of this report (B) describes what changes we have made in light of this feedback.

The following chapters document the substance of the analysis and present the main views expressed in responses. The consultation questions are included in Appendix 1.

PART A – CONSULTATION ANALYSIS

1.   APPROACH TO CONSULTATION

1.1.   How did we distribute and advertise the consultation?

The consultation was distributed as an online survey consisting of 34 questions. The survey was hosted on SurveyMonkey. A list of the questions asked is provided in Appendix 1.

A notification about the survey was sent to:

- Existing contacts of those already engaged with What's Your Heritage project and the policy review process (123 individuals)
- National Parks and Local Authority Development Plan team mailboxes (34)
- Public bodies and agencies (18)
- The Built Environment Forum – who circulated amongst their members and included in their newsletter

The consultation was also promoted on social media (LinkedIn and Twitter) and was available to view on the current consultations section of the HES website.

1.2.   How did we encourage participation?

Those notified about the consultation were encouraged to complete the online questionnaire hosted by SurveyMonkey. The survey was also provided in other formats upon request (e.g. as pdf and Word documents). A reminder to complete the survey was issued shortly before the consultation closed.

Historic Environment Scotland staff also promoted the consultation during the course of their engagement with stakeholders in other contexts. Finally, discussions were also held with a number of consultees and interested parties before, during and immediately following the consultation period.

1.3.   How did we analyse the responses?

Comments given in response to each question were examined and main themes, similar issues raised or comments made in a number of responses, were identified. In addition, we looked for sub-themes such as reasons for opinions, specific examples or explanations, alternative suggestions or other related comments.

Some questions contained an agree/disagree scale tick box option to allow respondents to indicate their response (typically ranging on a 5 point scale from strongly agree to strongly disagree). Results from these questions are presented in graph format. Where respondents did not use the questionnaire format for their response but indicated within their text their answer to one of the closed questions, these have been included in the relevant count.

The main themes were then looked at in relation to respondent groups to ascertain whether any particular theme was specific to one particular group (e.g. local authorities,

private businesses), or whether it appeared in responses across groups. When looking at group differences however, it must be borne in mind that where a specific opinion has been identified in relation to a particular group or groups, this does not indicate that other groups do not share this opinion, but rather that they have simply not commented on that particular point.

The following sections of this report document the substance of the analysis and present the main views expressed in responses. Some quotes have been included to illustrate a range of views expressed.

2.   EXECUTIVE SUMMARY

This section describes how many responses were given to the consultation, respondent group information and a summary of views expressed. This includes a combination of statistical information and emerging key themes.

2.1.   How many responses did we receive?

We received 37 responses to the survey.

The consultation paper and online survey included a list of organisation and individual groups, and respondents were asked to tick the group most appropriate for themselves or for their organisation. These sub-groups of organisation type were used to enable analysis as to whether differences, or commonalities, appeared across the various different types of organisations and/or individuals that responded.

As can be seen in the following table, the groups with the largest number of respondents were those responding on behalf of an organisation, public body or charity (13) followed by local authorities (10) and individuals (9).

Respondent group	No. of responses	Percentage of responses
Local authority	10	27%
Organisation, public body or charity	13	36%
Private business, such as architect or developer	2	5%
Individuals	9	24%
Other	3	8%
TOTAL	**37**	**100%**

While the consultation gave all those who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, any figures quoted here cannot be extrapolated to the wider population.

A list of those organisations who responded that are content to be identified is included in Appendix 2. The following paragraphs highlight the main themes that emerged in relation to each question posed in the consultation document.

2.2.   What did people say?

Overall, there appears to be broad support for the designations principles and practice across all the questions. Key themes that arose through the comments on the consultation are summarised below.

- Most respondents agreed with the **title** of the document but some suggestions were made to improve it, which would align the title better with other HES policy documentation.

- Respondents generally felt that the **purpose** of the document was clear, but its status and how it fits into the broader policy landscape could be made clearer, as could the roles and responsibilities of HES and other designating authorities.

- Suggestions regarding **scope** of the document included a glossary or better and more consistent definition of key terms (significance/designation/protection); use of infographics to explain the designation landscape and designation processes; reference to Historic Environment Records, and cross-referencing to other documents so that it is easy for readers to navigate between the various policies.

- As to how the **document works alongside the overarching Historic Environment Policy Scotland,** respondents generally felt that it works well, although there were some comments on some inconsistency in wording, uncertainty as to the status of this document in relation to HEPS, and a need for clear sign-posting to allow readers to navigate between the various documents, and to understand the policy hierarchy.

- On **Historic Environment Scotland's role** in designation**,** respondents generally felt that the document wasn't the appropriate place for detailed information on World Heritage Sites although some mention and sign-posting would be appropriate. There were also differing views on whether this is the correct document for information on conservation areas, with some suggestions that the conservation area selection guidance would benefit from further consideration, with HES taking a leadership role in discussion with local authorities.

- Respondents generally welcome the **principles** for designation, but suggested that clearer sign-posting to where the principles have come from would be helpful. One respondent welcomed the principle of greater participation in decision making while suggesting that this principle should go further.

- There was general support for the **priorities** set out by Historic Environment Scotland but with suggestions that there needs to be a greater focus on the quality of our data, greater ambition, and a commitment to consider the social and economic consequences of designation through participation with communities.

- On **how HES assesses sites and places** for designation, there was general support for the process although there were requests for more detailed explanation in some areas.

- On the approach taken by HES for **development proposals and designation**, respondents generally requested more details, for example on the definition of 'development proposals', and the circumstances of 'advanced stage'. Some respondents also indicated a perception that the process as drafted means that the impetus for development outweighs considerations for heritage protection. There was also a comment that the timescales for designation reviews can be incompatible with statutory planning processes.

- Respondents advocated the importance of appropriate existing **other forms for recognition** such as Historic Environment Records. There was some confusion about the relationship between designated and non-designated heritage assets in the planning system.

- Responses on the six annexes containing **selection guidance** were generally positive, but with a call for greater compatibility and alignment in structure and language across the designations. The most common areas of comment on the individual annexes were differing views on the benefits of the additional criteria for social value for gardens and designed landscapes, and revised wording to describe the listing categories.

3.   ANALYSIS OF RESPONSES

Questions 1-2 related to personal information about those completing the survey (name, organisation etc.) and are not summarised here.

3.1.   Principles and practice for designation

3.1.1 **Title of document** Questions 3-4 invited respondents to comment on the proposed name for the policy – Designation Principles and Practice. They were invited to indicate to what extent they considered this to be a suitable title (Strongly disagree, Disagree, neither agree nor disagree, Agree, Strongly agree), reflecting its content and status and to identify any alternatives.
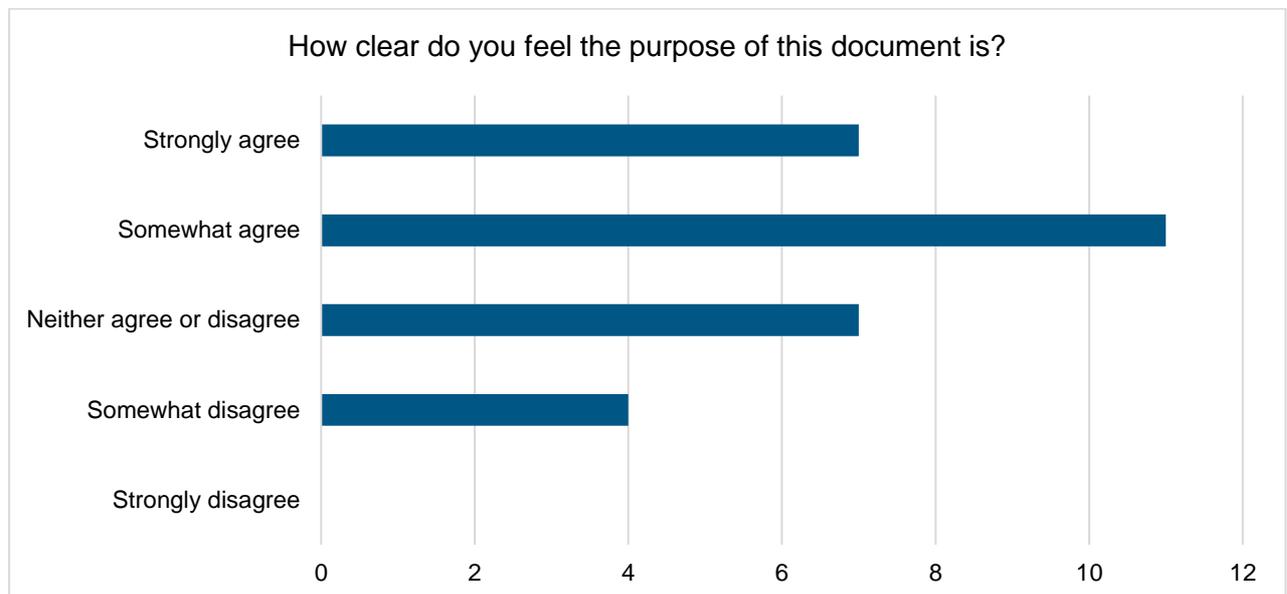
The graph below, which removes those who expressed no view, indicates that the majority of respondents considered the title of the document to be appropriate.

To what extent do you think that 'Principles and Practice for Designation' is a suitable title, reflecting the document's content and status?
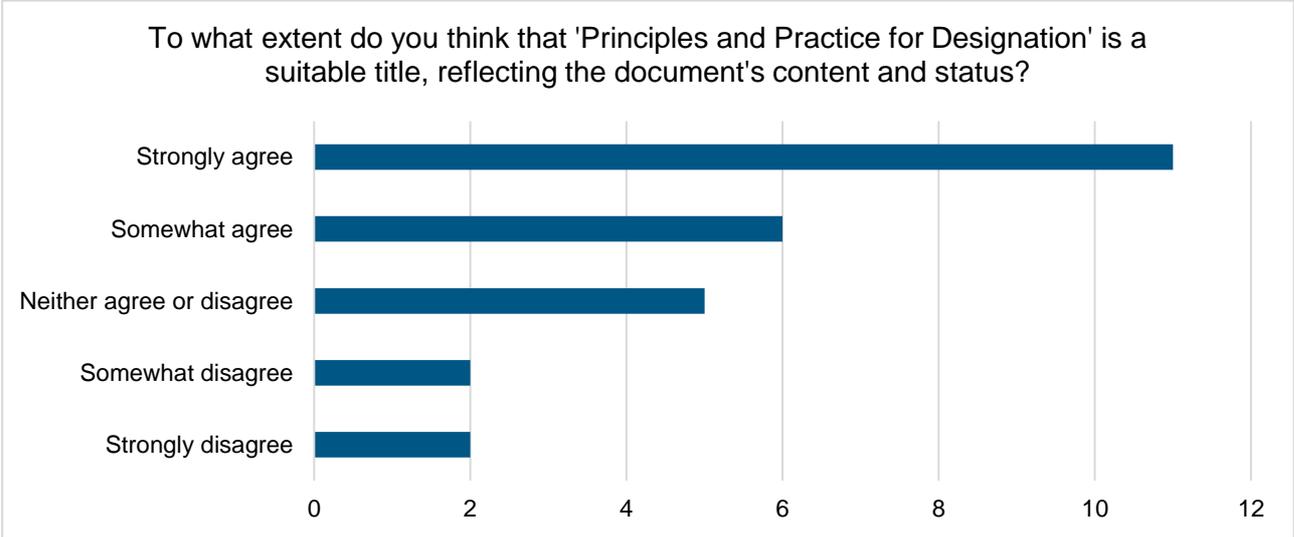
Some respondents commented on the need for a consistent approach to naming, and structure with other policies (e.g. the policy on scheduled monument consent), and also the importance of being clear on the status of the document. Suggested alternative titles for the policy included the following.

- Designation Best Practice
- Principles and Processes for Designation
- Principles and Criteria for Designation
- Principles and Practice for the Designation of National Buildings and Sites of Historic importance'
- Designating Scotland's historic environment: Principles and Practice
- Historic Environment Scotland: Designation, Principles and Practice

3.1.2 **Purpose of document** Questions 5-6 asked respondents to comment on the clarity of purpose of the document. Most respondents agreed that the document did have a clearly set out purpose.

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

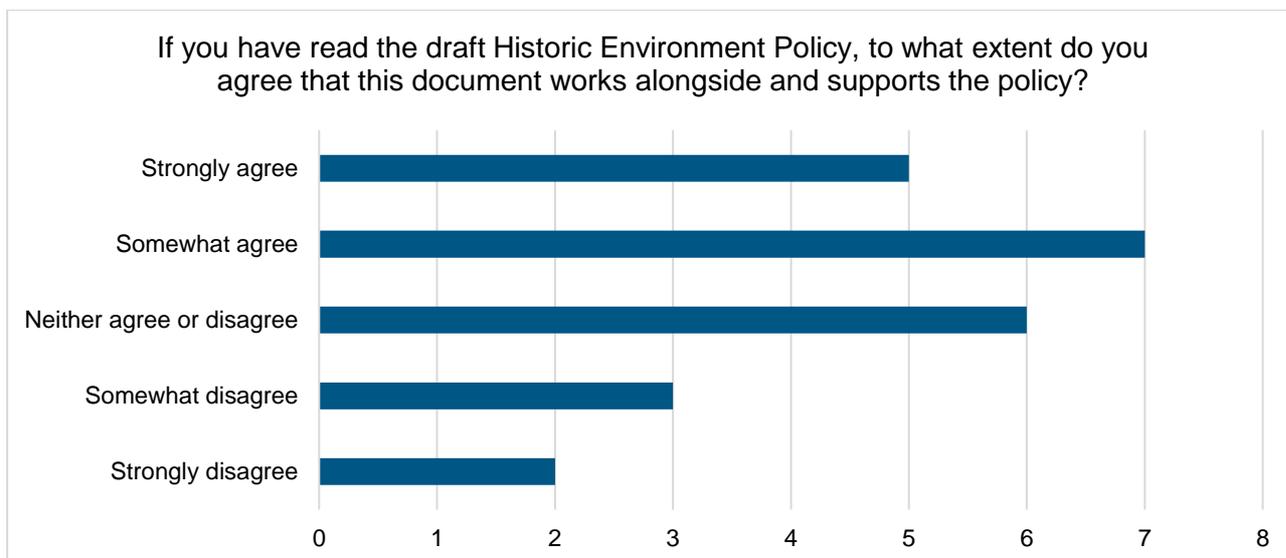|	
Strongly agree	7
Somewhat agree	11
Neither agree or disagree	7
Somewhat disagree	4
Strongly disagree	0

11 respondents provided comments covering the following aspects:

- the variable style and readability of the document;
- some tension between a document that sets out principles and practices used by HES, but with an annex that covers conservation areas;
- need for clarity on what designation is, and which organisations are responsible;
- need for greater clarity and sign-posting on the status of the document, and where this document sits in relation to the hierarchy of other policy documents; and
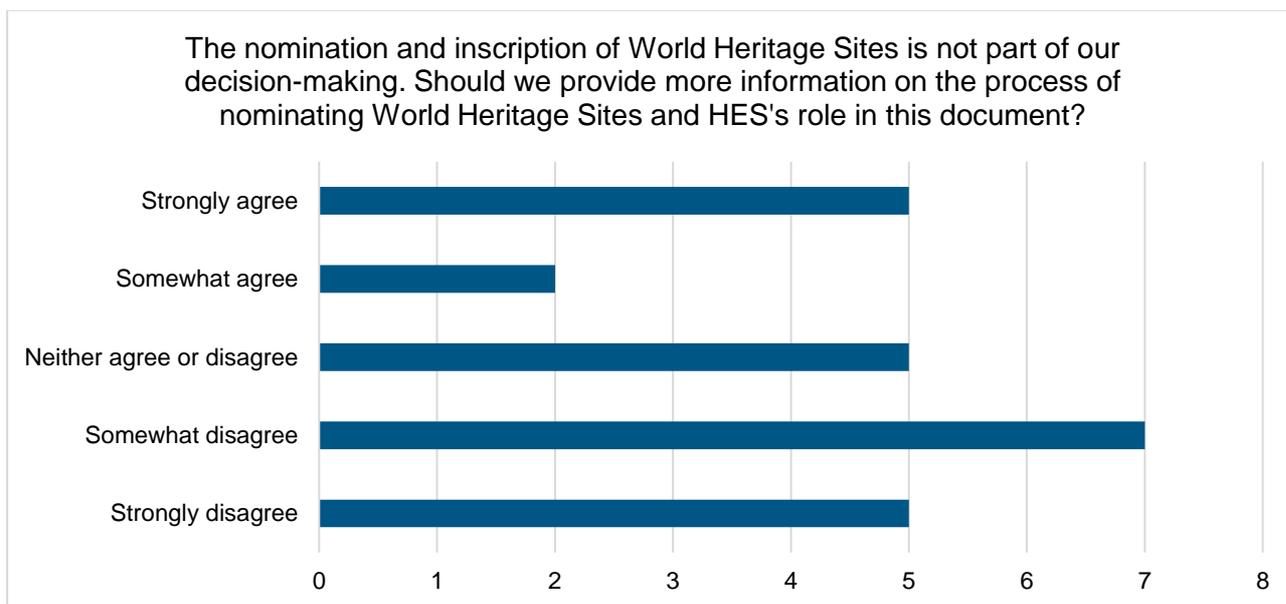- reference to the role of local authorities, for example as decision makers in the planning process.

3.1.3 **Scope of document** Question 7 asked respondents to comment on whether there was anything missing from the document. Of the 29 responses to this question, 48% indicated that nothing was missing; 52% indicated that there was something missing. Two respondents provided more detail:
- a glossary to explain technical terms;
- more information about Building Preservation Notices (BPN);
- reference to Properties in Care;
- use of infographics to illustrate roles and responsibilities in the designation process; and
- reference to Historic Environment Records (HERs).

3.1.4 **Working alonside HEPS** Question 8 invited comments on how the designations policy and principles document works alongside the overarching Historic Environment Policy Scotland. These were generally positive, although individual comments generally indicated that there was some inconsistency in wording, uncertainty as to the status of this document in relation to HEPS, and a need for clear sign-posting to allow readers to navigate between the various documents, and to understand the hierarchy of documents.

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

Response	Count
Strongly agree	5
Somewhat agree	7
Neither agree or disagree	6
Somewhat disagree	3
Strongly disagree	2

3.1.5 **Historic Environment Scotland's Role** Questions 9-10 invited comments on our role in the designation process and asked an additional question about whether we should provide more information about the process for World Heritage Site inscription. The views on this were mixed, although more respondents considered that that this document is not the place for such information.

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

Response	Count
Strongly agree	5
Somewhat agree	2
Neither agree or disagree	5
Somewhat disagree	7
Strongly disagree	5

Six respondents provided further comment on Question 9, with a general consensus around the desirability of further information on the role of HES in World Heritage Site inscription, and the timescales. However there were different views as to whether this document is the place for such information, or whether this should be a standalone document, or indeed whether sign-posting to UNESCO is sufficient.
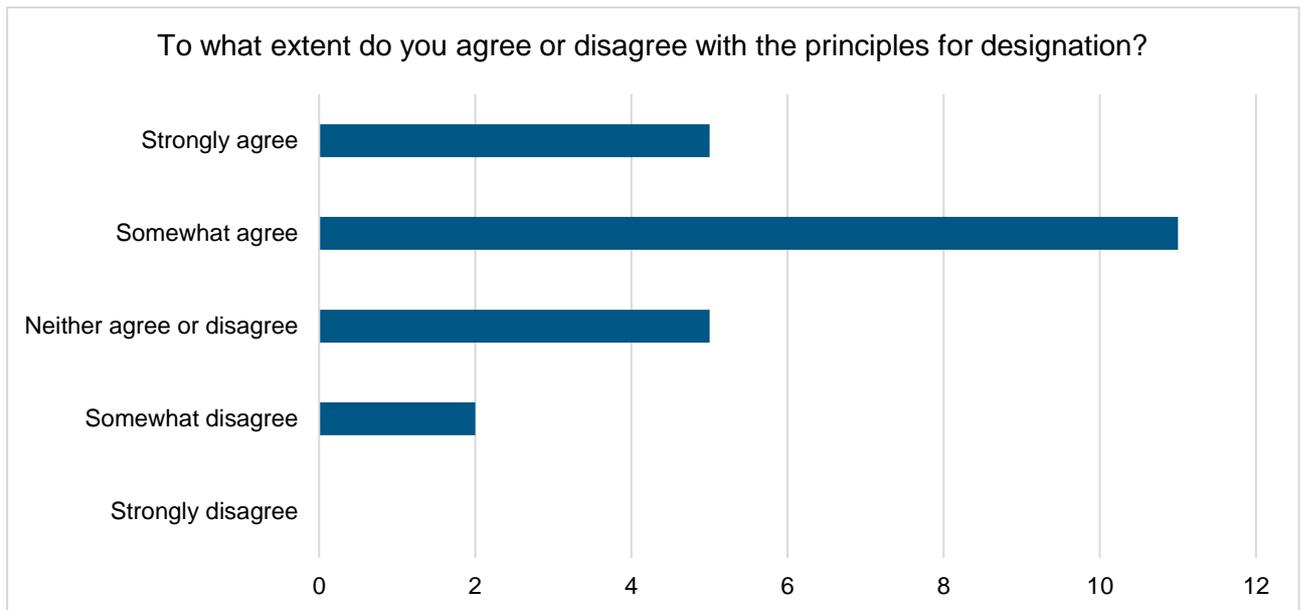
Question 10 invited further comments on the role of HES in the designations process. Further comments covered the following areas.
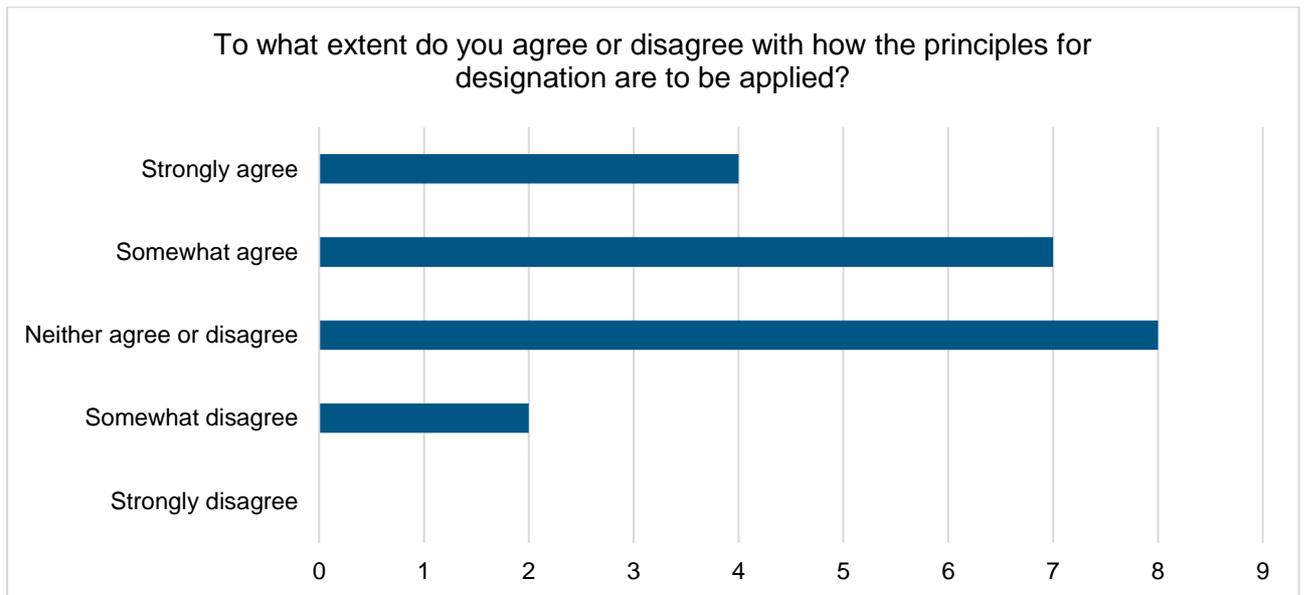
- 'There is reference in the document and in the statement above to "sites and places at the national level". I find this confusing terminology, as sites and places are local.

The responsibility and role HES has is as the national body or for the national designations process' (an individual).

- 'The need to work with local authorities should be emphasised' (local authority)
- '…there is a sense that policy related to the historic environment in Historic Environment Policy as opposed to HESP is being weakened rather than strengthened by the proposed changes' (on behalf of an organisation, public body or charity).
- 'Under 'our decisions' Historic battlefields are missed'. (on behalf of an organisation, public body or charity).
- 'Need to show process for listing and de-listing - show procedures for both as this helps to demonstrate the process more fully' (on behalf of an organisation, public body or charity).
- 'The principal and most significant change, and a matter of great concern to us, is in the apparent down-grading of listed buildings in comparison with the other designations…' (on behalf of an organisation, public body or charity).

3.1.6 **Principles for designation** Questions 11-13 asked respondents to indicate their level of agreement on the principles for designation and how they are to be applied by Historic Environment Scotland. Overall, these responses indicate that there is wide agreement with the principles and their application.

To what extent do you agree or disagree with the principles for designation?

Response	Count
Strongly agree	5
Somewhat agree	11
Neither agree or disagree	5
Somewhat disagree	2
Strongly disagree	0

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

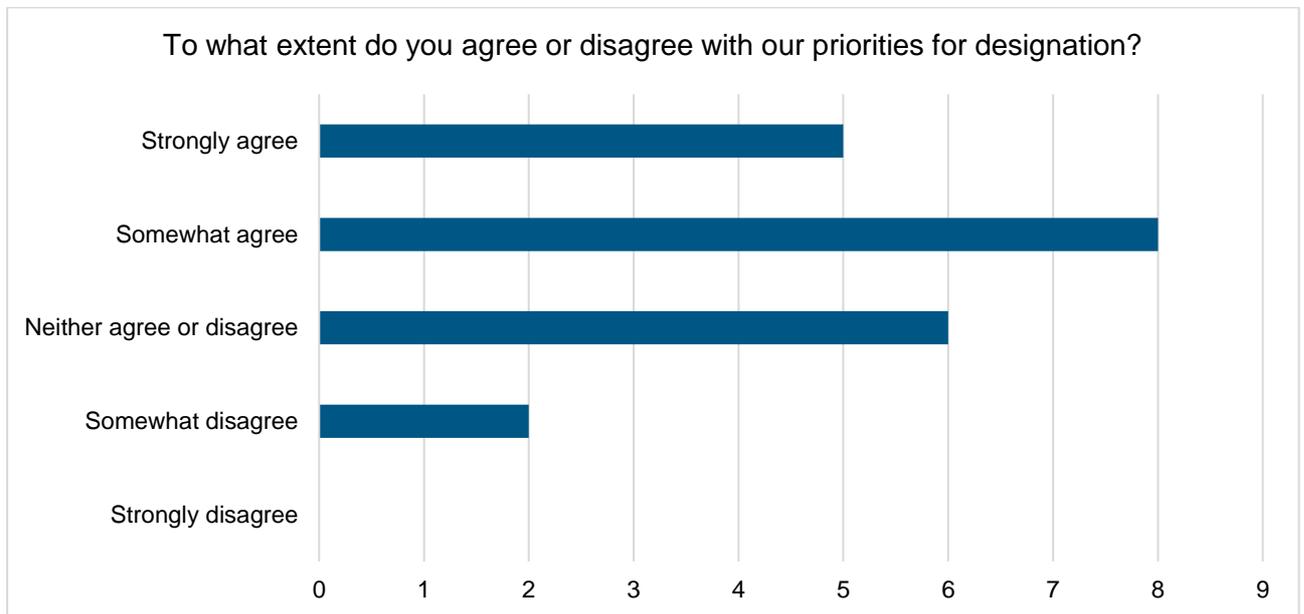| Response	Value
Strongly agree	4
Somewhat agree	7
Neither agree or disagree	8
Somewhat disagree	2
Strongly disagree	0

Comments from those who somewhat disagreed with the principles focussed on the following.

- While the principle of greater engagement was welcomed, the language in places came over as vague and non-committal and needed to be more positive.
- Consideration of aesthetic value – only referred to for scheduled monuments and historic marine protected areas, when clearly this is a consideration also for listed buildings and gardens and designed landscapes.

Other comments covered the following aspects:

- some of the principles were overly generalised;
- embedding the principle of human rights would reflect the community empowerment agenda;
- commitment to increasing participation is welcome;
- sign-posting to HEPS would be useful, as well as international charters (e.g. Burra) to show where the principles have come from; and
- the need for recognition for holy wells.

3.1.7 **Priorities for designation** Questions 14-16 – asked respondents to indicate their level of agreement on the priorities set out by Historic Environment Scotland for designation.

To what extent do you agree or disagree with our priorities for designation?

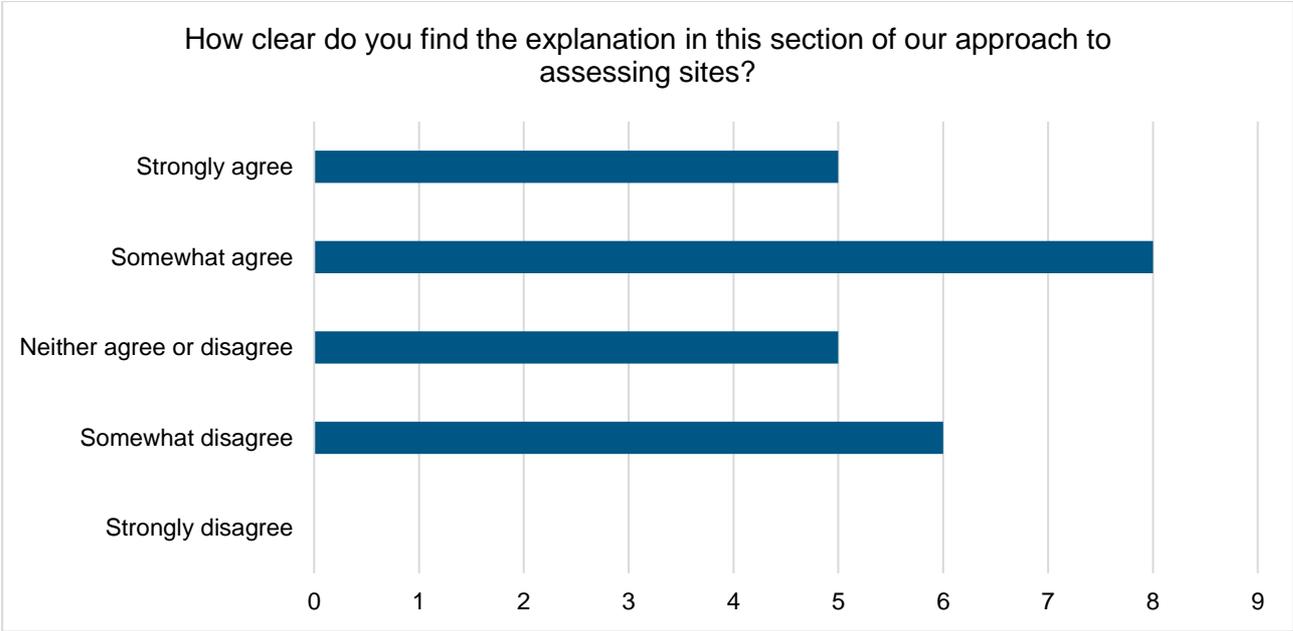| Response	Value
Strongly agree	5
Somewhat agree	8
Neither agree or disagree	6
Somewhat disagree	2
Strongly disagree	0

Comments from those who somewhat disagreed with the principles focussed on the following:

- greater prioritisation for the quality of designation data. This should involve some degree of proactivity, and not rely totally on external requests.

Other comments covered the following aspects.

- A clear commitment is needed to consider the social and economic consequences of designation. Ideally, this needs to involve a process which allows people, other than landowners and tenants, particularly those potentially affected by proposed designations, to be meaningfully involved in decision making.
- Greater definition is needed of how HES identifies stakeholders.
- There is a need for greater ambition, including the need for continued thematic projects.
- Different heritages should be represented.
- A priority should be to address gaps in the schedule/list/inventories.

3.1.8 **How we assess sites and places** Question 17 invited comments on how we assess sites and places for designation. In response to question 17, most respondents indicated agreement with the process. However, six respondents indicated some disagreement.

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

| Response	Count
Strongly agree	5
Somewhat agree	8
Neither agree or disagree	5
Somewhat disagree	6
Strongly disagree	0

Comments from respondents who somewhat disagreed, covered the following.

- There is a need to visit all sites or places to assess them for designation.
- The circumstances in which 'designation is considered unlikely to be the best mechanism for recognising and protecting cultural significance of a site or place' require greater explanation.

Other comments covered the following aspects.

- The types of evidence that will be considered, requires explanation.
- HES should state its reasons for not undertaking an assessment on the grounds that a site is 'unlikely to meet the criteria'.
- Reference to consideration of 'purpose and implications of designation' is important but it reads as an afterthought and should be re-phrased to ensure that communities have appropriate opportunities to participate in decision-making in such a way that their voices are not just able to be heard, but to be heard early enough in the process and in such a way as to carry due weight.

3.1.9 **Development proposals and designation** Questions 18-19 invited comments on the approach proposed by HES for designation where there are development proposals. In response to question 18, most respondents indicated that the explanation of this approach was clear. However, 5 respondents somewhat disagreed, and 1 strongly disagreed.

How clear is this explanation of our approach to designation where there are development proposals?
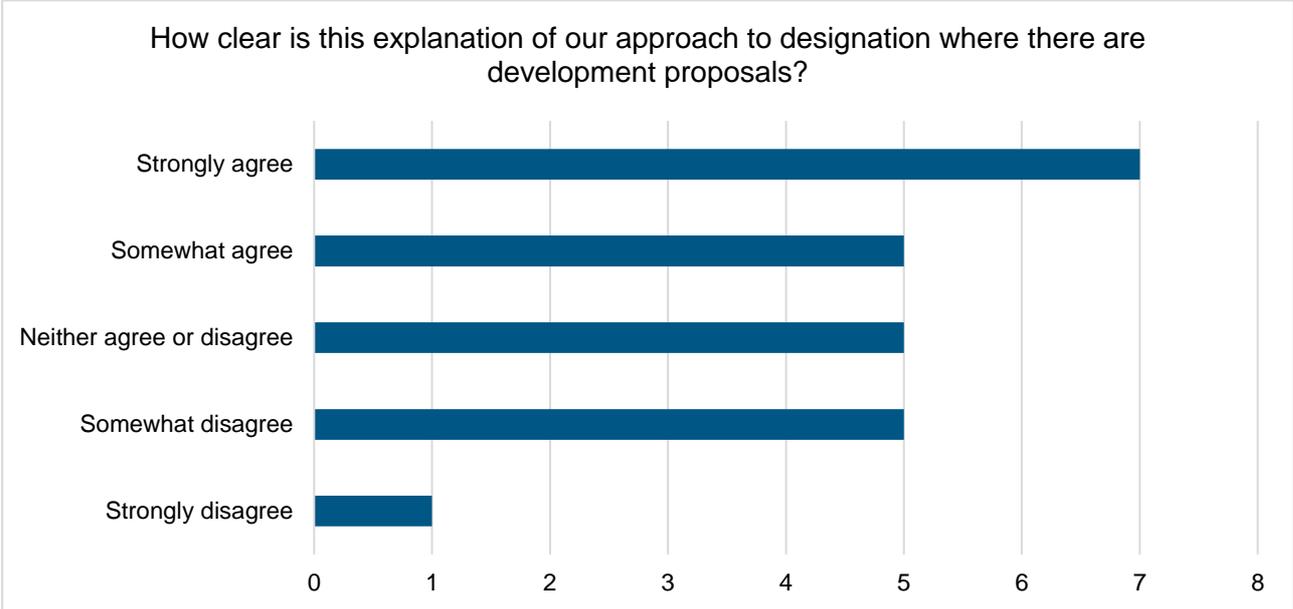
Comments from respondents who disagreed or strongly disagreed, covered the following.
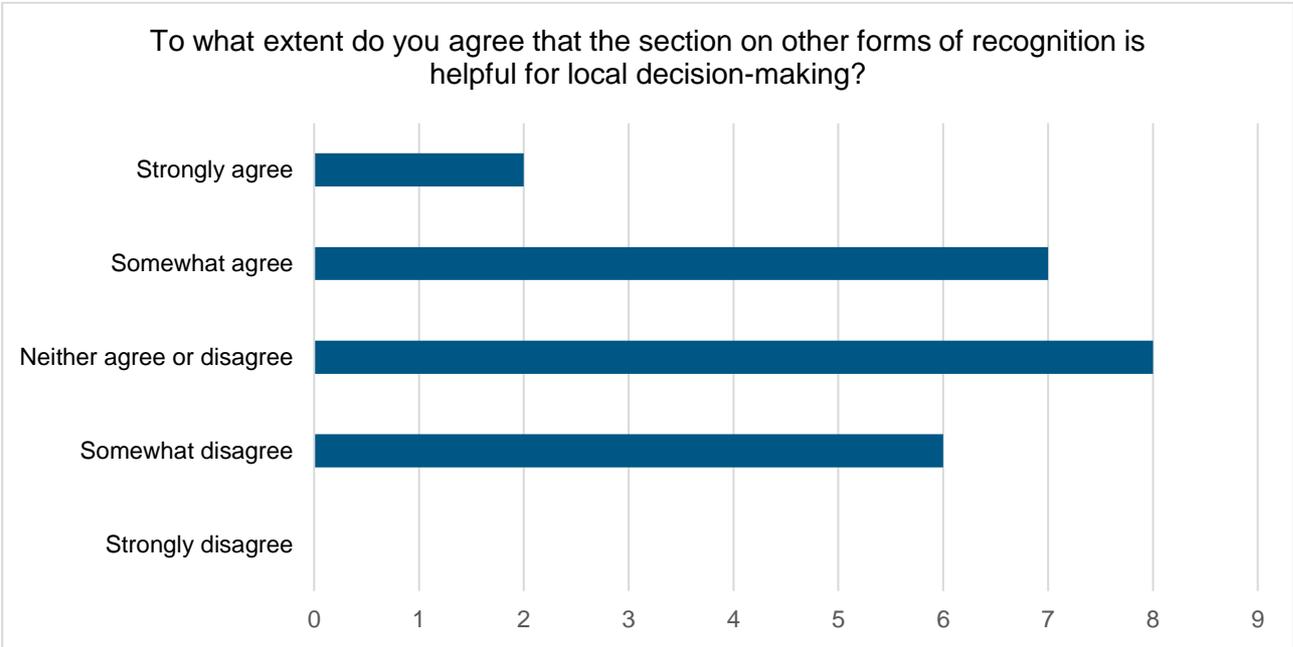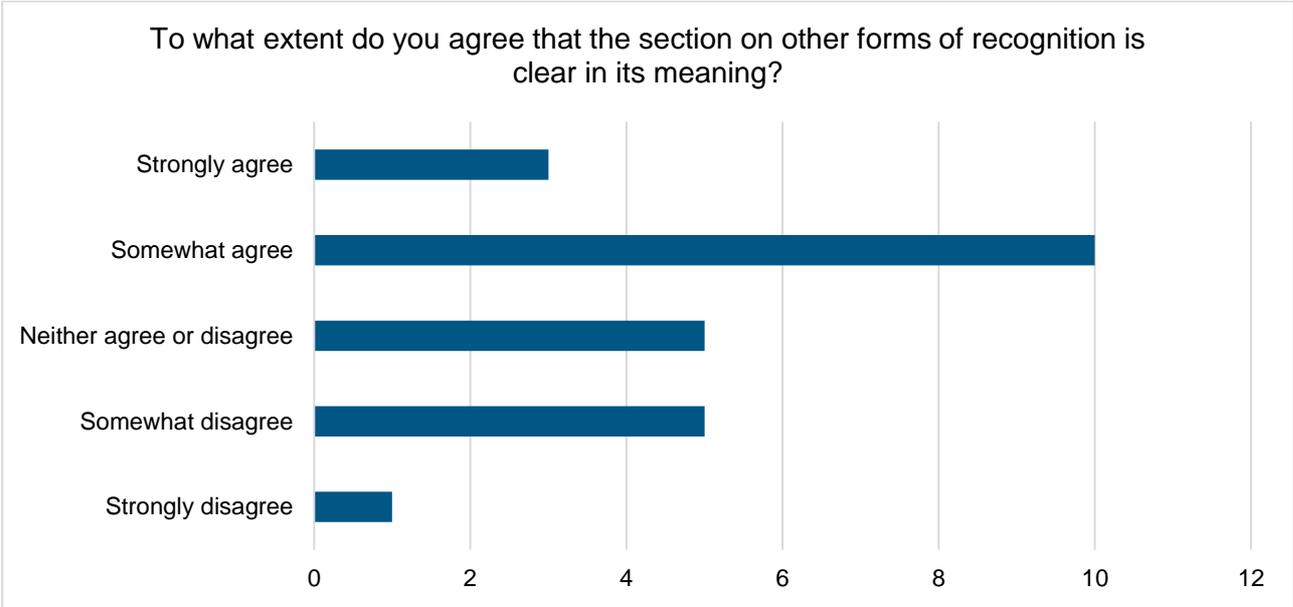
- If a development proposal is seen to be detrimental to a building it should be immediately listed to control this.
- The statements imply that development proposals could be seen as outweighing listed building considerations. This is not helpful and could potentially have major implications when dealing with development proposals.
- There need to be further clarification on what an 'advanced stage' means in terms of development proposals.
- The timescales for reviewing designations where there are development proposals are at odds with statutory planning timescales. Often there is no prior discussion with local authorities from developers (particularly if it is a small scale development) and so the first that is known about proposals is when the application is submitted. By this stage the development proposals are considered too advanced to request a review, which, if requested prior to planning application being submitted a review may not actually take place until after a planning decision has been made.

Other comments covered the following aspects.

- There needs to be clarification on what 'development proposals' are, and explanation of the hierarchy of the development process (e.g. development plans).
- Clearer statements on the relationship between listing and the associated burdens are required.
- There should be more information on the process for involving the public: e.g. following a decision, what should people do if they have queries/new information and there is no right of appeal?
- 'The extent to which a site may be suitable for future development' should also be a consideration in whether or not to take forward a designation/amendment.

3.1.10 **Other forms of recognition** Questions 20-22 sought views about the document's description of other forms of recognition for sites and places.

In response to questions 20 and 21, most respondents indicated that the section on other forms of recognition was clear in its meaning and that it is helpful for local decision-making, however there was some disagreement.

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

Response	Value
Strongly agree	3
Somewhat agree	10
Neither agree or disagree	5
Somewhat disagree	5
Strongly disagree	1

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

Response	Value
Strongly agree	2
Somewhat agree	7
Neither agree or disagree	8
Somewhat disagree	6
Strongly disagree	0

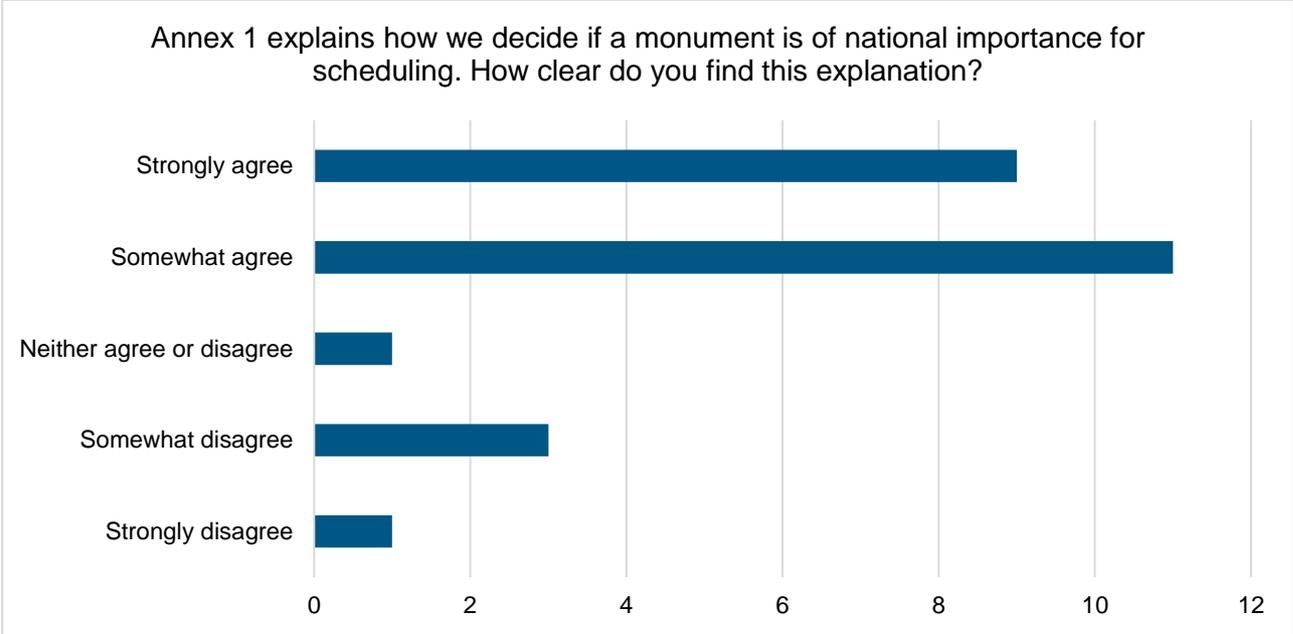Question 22 invited comments on this section. The responses were:

- A suggested change in the wording from 'new' ways to recognise sites and places that are important to them, to 'appropriate' ways.

- The role of Historic Environment Records and Sites and Monuments Records should be promoted. These are already important for the local recognition of sites.
- The realm of other forms of recognition is outwith HES jurisdiction, but clearer links could be made to other organisations who could potentially take action (e.g. local authorities) needs to be more explicit. However, if these organisations are lacking capacity it could be perceived as buck-passing rather than providing information.

3.2. Selection guidance

Questions 23-34 invited comments on the criteria used to guide decision making on six designations. Many respondents commented on the need for greater alignment and consistency across the annexes, in terms of structure, language, and terminology.

3.2.1 Annex 1: Scheduled monuments

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

Response	Count
Strongly agree	9
Somewhat agree	11
Neither agree or disagree	1
Somewhat disagree	3
Strongly disagree	1

Question 24 asked respondents to commend on how clear was the explanation of how we decide if a monument is of national importance for scheduling. Of the 25 responses to this question, 20 respondents indicated that they strongly or somewhat agreed with the explanation, 1 neither agreed or disagreed and 4 respondents either somewhat disagreed or disagreed.

13 respondents provided further comments for Question 25. These focussed mainly on clarity of explanation, a single definition of national importance, the relationship of this annex to other policies, the definition of cultural significance, context/setting and what can be scheduled.

The following comments cover the aforementioned areas.

- 'Point 4 includes a list of cultural factors which differs from the list included in the main document on page 3 (the term "spiritual" is missing)' (Local Authority).
- 'Factors consideration in designation should be consistent throughout for improved clarity. Point 7a and 7b: "any building, structure or work" – the term "work" is unclear in its meaning' (Local Authority).
- 'The readability of this section is terrible - it seems to be simply a regurgitation of the legal background (which is useful) without bothering to explain it in proper English. Should cross reference to Scheduled Monument Policy and procedures' (Local Authority).
- '"12.The extent to which a monument survives is a consideration when assessing national importance. However, the present condition of those surviving remains is

not a factor when deciding whether to schedule or not." The meaning of Paragraph 12 should be made clearer' (on behalf of an organisation, public body or charity).

- '(Page 11, Paragraph 17) – The following bullet point in paragraph 17 cannot be readily understood. "It makes a significant contribution to today's landscape and/or our understanding of the historic landscape. This may include the relationship of the monument and its parts to other monuments or features in its vicinity, or the significance of its setting." There is no method / guidance available regarding the assessment of the significance of the setting of a monument, and it is unclear what this phrase means' (Private business).
- 'Section 17. Please consider the importance of sites which themselves fall short of the criteria but which form part of a pattern with related sites of greater importance. Context can be an important consideration' (Individual).
- 'There should be a reference to dual designations here also – where a building or structure is designated as a listed building and scheduled monument; in relation to works directly affecting these then the scheduled monument designation takes precedent and only Scheduled Monument Consent is required' (Private business).
- 'A definition of 'national importance' would help enormously here.' (Individual)
- 'Point 3: the primary purpose as outlined here is all about preservation of the physical (note the use of 'characteristics' here). Could this be broadened to include practices/activities?' (Individual).
- 'Don't agree with use of aesthetics. Page 11 especially suggests that aesthetics have a research potential'(individual).

3.2.2 Annex 2: Listed buildings and listing categories

Questions 25 to 26 asked about policies specifically related to listed buildings, how listing categories are defined. Question 27 asked for any other comments related to Annex 2.

Question 25 asked respondents to comment on how clear was the explanation of how we decided if a building is of special architectural or historic interest. Of the 24 responses to this question, 20 respondents indicated that they strongly or somewhat agreed with the explanation, 1 neither agreed or disagreed and 4 respondents either somewhat disagreed or disagreed.

Annex 2 explains how we decide if a building is of special architectural or historic interest for listing.How clear do you find this explanation?
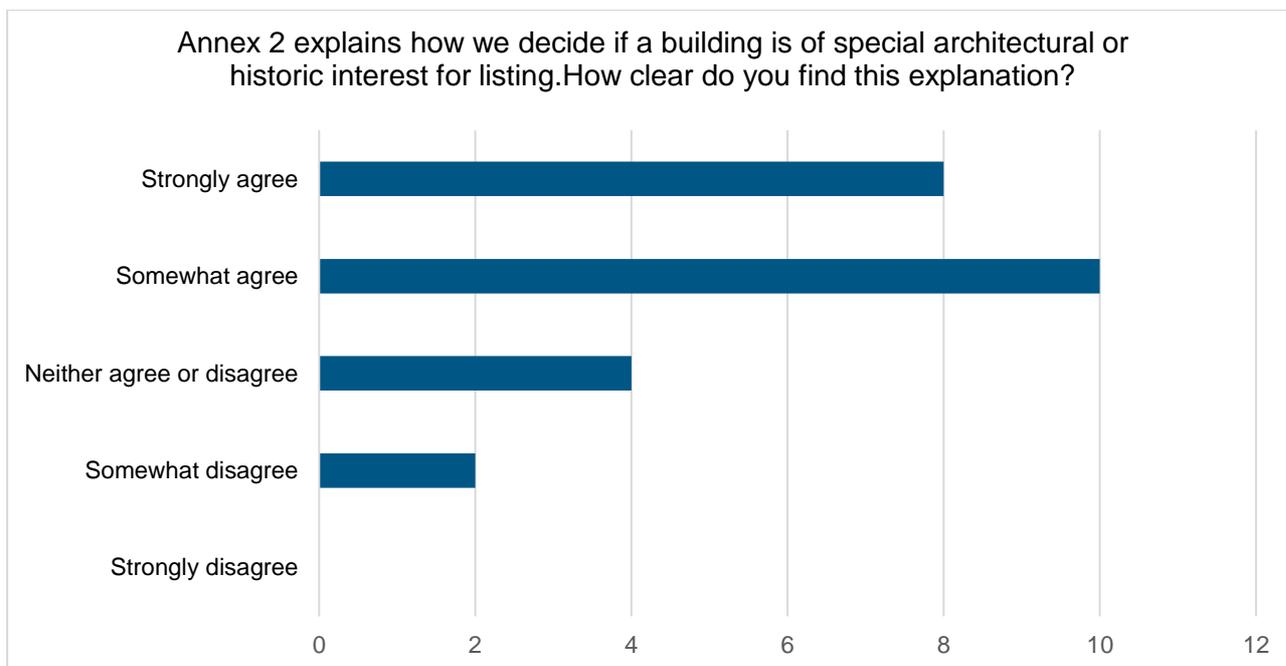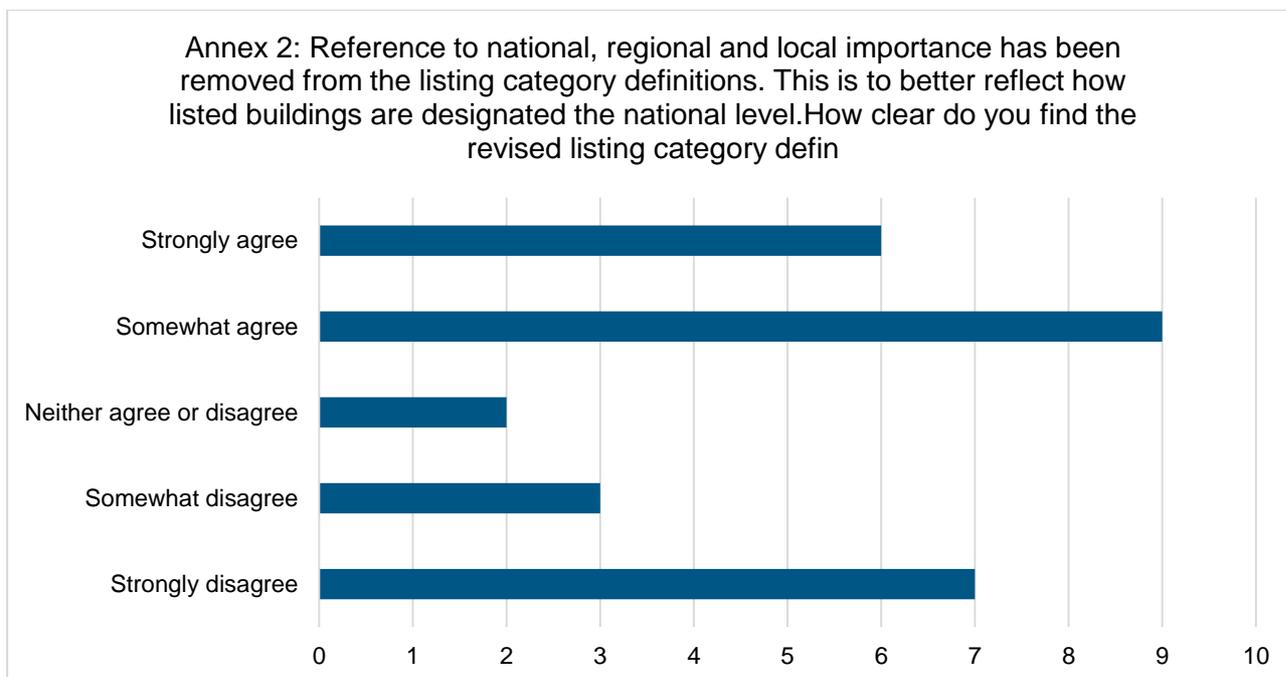
20 respondents provided further comments for Question 25. These focussed mainly on what listing covered, the lack of clarity around curtilage and setting, and other comments related to specific assessment factors such as archaeological interest, the concept of authenticity and the interest of the designer.

These comments covered the following areas.

- 'With regard to sub-30yr old buildings – is there an argument to list, and protect, with a duty to review. If we don't protect sub-30 buildings they may not remain unaltered/undamaged for the appreciation of future generations' (on behalf of an organisation, public body or charity).
- 'Reference should also be made to the number or preponderance, or regularity of similar buildings, particularly churches elsewhere in the local authority or indeed Scotland' (on behalf of the General Trustees of the Church of Scotland).
- 'Paragraph 18 – archaeology or archaeological potential should be a consideration here, as it is in the relevant Gardens & Designed Landscapes Inventory section (on behalf of an organisation, public body or charity).
- 'Annex 2 Para 10, 11 and 12 – This is somewhat unclear as to what the Listing covers, is it effectively everything under the address as that is the only legal part of the listing? [...] Para 10 this is concerning as Planning Authorities are charged with assessing LBC Applications against the listing. If the special qualities which led to the listing are not necessarily noted this makes the baseline for any assessment problematic' (ALGAO Scotland).
- 'To the extent that the two criteria legislated allow for consideration of contemporary cultural significance, I can see that attempts have been made to incorporate it. There does seem to be a risk that listing will be less aligned to the principles because of the nature of the criteria and the knowledge that is considered in the assessment' (individual).
- 'Point 17: suggest removing the two uses of 'authenticity', which can be subjective, and change to what is I think is being referred to here as 'the retention of the original fabric and/or design' (individual).

- 'We would highlight that in the event that the legislation were updated, we would seek to include archaeological interest within the criteria for listing. At present, the evidential value contained within an asset – which derives from the potential of a place to yield evidence about past human activity through archaeological investigation – is not formally recognised as being of relevance to the designation process' (on behalf of an organisation, public body or charity).
- 'Paragraph 8refers to curtilage listing, stating that the LPA is responsible for advising what is covered by listing including its curtilage – will there be new Managing Change Guidance on Curtilage to guide these considerations and advise?   Architectural interest (Setting) The two bullet points describing setting are difficult to understand and require rewording' (on behalf of an organisation, public body or charity).
- 'Points 10, 11 and 12 – It is somewhat unclear what the Listing covers, is it effectively everything under the address as that is the only legal part of the listing? Does the polygon map provided with new designations now formally define the full extent of what is covered under the listing? If not, and merely indicative, what legal status do they hold? Could this be made clearer as to what information takes what legal precedence when establishing what is covered by the designation (on behalf of a local authority).
- 'In paragraph 17 you mention 'authenticity' twice. You do so in a very old-fashioned way. There are now ways of understanding and looking at authenticity that are not just about intrinsic materiality. In both instances, I suggest you replace this usage with 'original fabric', which is what I understand you to mean' (individual).
- 'Paragraph 10 is worrying - if the special interest of a building may not be noted in the listing description then how are decisions on listed building consent to be made? (On behalf of a local authority).
- In relation to paragraph 8, there should be an explanation as to whether the previous definition of curtilage per the previous HES Policy Statement still applies (on behalf of a local authority).
- 'A note also regarding individual architects, engineers, etc. which are not mentioned in the selection guidance for listing however garden or landscape designers are acknowledged in the Inventory of gardens and designed landscapes (individual).

Annex 2: Reference to national, regional and local importance has been removed from the listing category definitions. This is to better reflect how listed buildings are designated the national level.How clear do you find the revised listing category defin

Category	Value
Strongly agree	6
Somewhat agree	9
Neither agree or disagree	2
Somewhat disagree	3
Strongly disagree	7

There were 27 respondents to Question 26 which asked about the proposed removal of national, regional and local in reference to the listing category definitions. More than half of the respondents (15) were in agreement with the change but this question had a high number of respondents (10) who disagreed with the proposed change either somewhat or strongly.

Comments from respondents disagreed or strongly disagreed, covered the following.

- 'The removal of the reference to national or international is not welcomed and is considered a retrograde step' (on behalf of a local authority).
- 'With specific regard to the references to National, Regional and Local Importance: it could appear that the categories become more subjective without the spatial (national, local) aspect of listing' (on behalf of an organisation, public body or charity).
- 'Clarity is sought on the rationale behind the proposed changes to the criteria for A, B and C listings. We recognise that all listed buildings are of national significance, however we are concerned over proposed new wording which does little to guide property owners and potential listed building consent applicants as to the significance of the building, and treatment in decision-making processes' (on behalf of an organisation, public body or charity).
- 'I think it's important to highlight the different levels of importance on buildings and sites. I'm concerned that those with only a national importance will be protected. Or people will think this is the only option' (on behalf of an organisation, public body or charity)'Given the removal of the geographic levels of importance (regional, local etc.) from the listing categories will Category C and B listed buildings be subject to listing reviews to determine whether they still meet the criteria for listing? (Private business, such as an architect or developer).
- 'Need to make clear examples between definitions of outstanding, important and special' (North Ayrshire Council).
- 'The previous listing categories seem less subjective and were easier to understand; the revised terminology applied including "outstanding", "important"

and "of special architectural or historic interest" require further definition to provide clarity' (on behalf of a local authority).

- 'The meaning of 'outstanding' and important' and even 'special' should be more clearly defined. The reason for dispensing with the national, regional and local importance is evident' (local authority).
- 'The principal and most significant change, and a matter of great concern to us, is in the apparent down-grading of listed buildings in comparison with the other designations…...' (on behalf of an organisation, public body or charity).

Comments in favour of the change of category definitions noted:

- 'The text is comprehensive and clear' (on behalf of a local authority)
- 'I do like these revised categories - a real improvement.' (individual)

3.2.3 Annex 3: Conservation areas

Question 28 asked respondents to provide comments on how the policy and guidance on conservation areas could be improved or changed bearing in mind that the designation of conservation areas is primarily the responsibility of local authorities. Of the 21 respondents to this question, 18 indicated that they strongly or somewhat agreed with HES hosting the policy but with an emphasis on local authorities taking a leading role in setting out the policy or at least working closely with HES to do so.

How clear do you find this explanation?
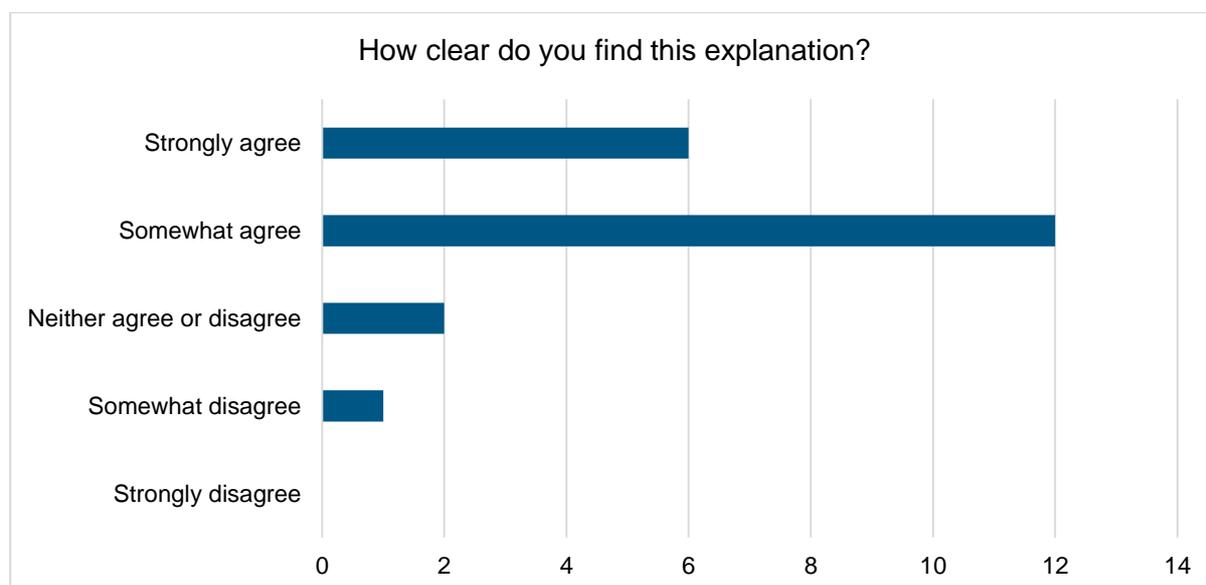
Many comments focussed on how conservation areas are currently managed and how their management could be improved. In this regard, the comments focussed on management rather than designation and an interest in defining the status of conservation area appraisals.
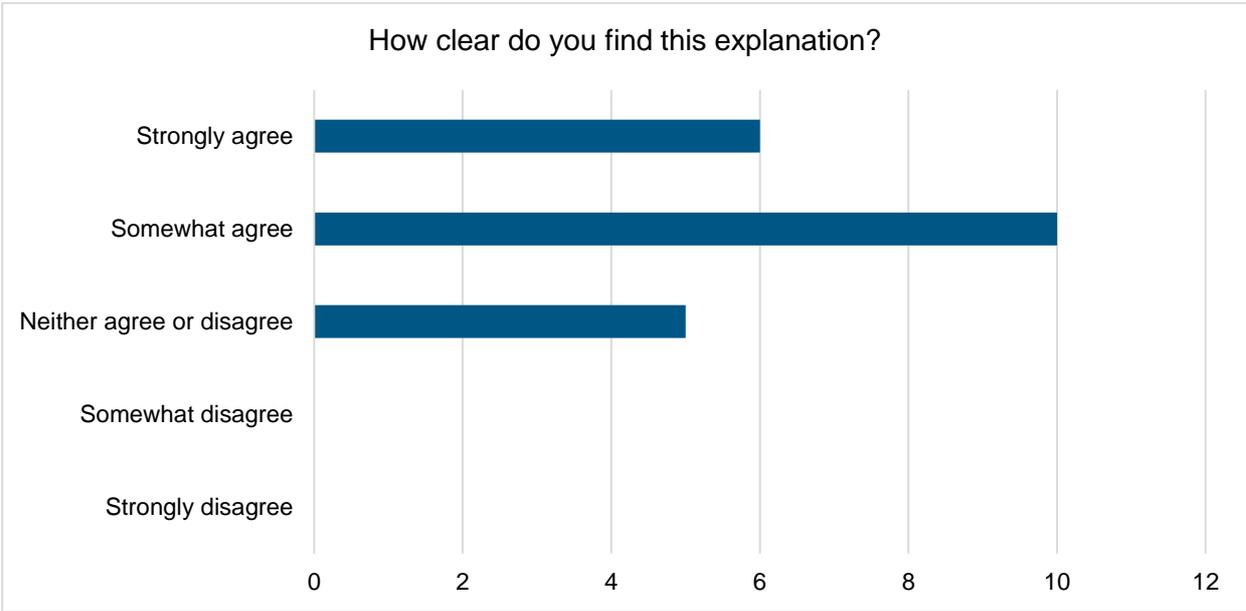
Comments from 8 respondents covered the following.

- 'P.17, The phrase 'from time to time' - problematically weak, need minimum/maximum timeframe for this to have any meaning. Appraisals are often not done. Language could be strengthened. Not a statutory duty but should be.

(p.18 - 14) Conservation area - could be used to aid Gardens & Designed Landscapes and Battlefields (on behalf of an organisation, public body or charity).
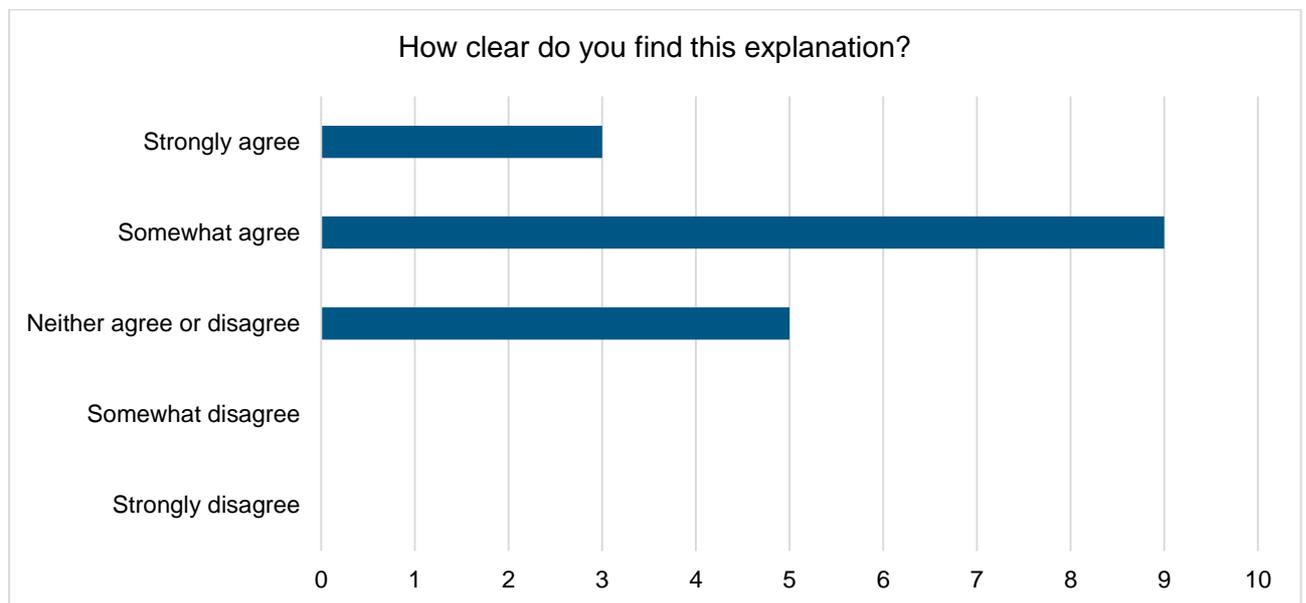
- 'Concern that as conservation areas not usually for HES to designate this section could be seen as an overstep. However we would be pleased to see HES taking the lead in Local Authority Areas. How are transgressions of conservation area requirements monitored and reacted to? What process is there for challenging conservation area requirements? How do planning officers apply requirements of conservation areas where interpretation may be very subjective? This can be harder than for listed buildings' (on behalf of an organisation, public body or charity).

- 'There should be some indication of approach for new-build within conservation areas'   (on behalf of an organisation, public body or charity).

- 'Conservation areas are reviewed from time to time ideally in conjunction with Local Development Plans. Where is this obligation set out?   How proactive do local authorities have to be in reviewing their heritage stock with conservation areas and potential listings (or even de-listing) in mind? (On behalf of an organisation, public body or charity).

- 'The guidance on designating a conservation area touches on the need for information (bullet point 10, page 17) and an appraisal (bullet point 14, page 18). It would be helpful if the document could give more guidance on what would sufficiently constitute a 'conservation area appraisal' (on behalf of an organisation, public body or charity).

- 'Point 16, bullet two: I suggest adding 'and communities' to the end of this point, so that people and their activities are considered as part of character alongside the built environment' (individual).

- 'Does this category also contain designations for sites of folkloric and historic importance? I think it needs more guidance and what we can do as lay people to help protect these areas' (on behalf of an organisation, public body or charity).

- 'Reference to conservation area consent for demolition of unlisted buildings required (separate consenting regime to planning consent) should be mentioned.' Suggest paragraph 14 should be stronger in expecting LPA's to provide a character appraisal when proposing a conservation area for designation (there are far too many without them!) – should reference to PAN 71 be made?   (Private business, such as an architect or developer).

- 'Reference to Permitted Development rights needs to be clear. Needs to refer to controls on demolition and new development within conservation areas' (private business, such as an architect or developer).

- 'Proper management and advice for conservation areas could improve the 'area based' approach and get away from a monument centric approach' (on behalf of an organisation, public body or charity).

3.2.4 Annex 4: Inventory of gardens and designed landscapes

How clear do you find this explanation?

Response	Count
Strongly agree	6
Somewhat agree	10
Neither agree or disagree	5
Somewhat disagree	0
Strongly disagree	0

- Inclusion of the new assessment category of social value. Although the principle of including social value as a consideration was generally supported, a respondent questioned why this value wasn't included in the other designations (on behalf of an organisation, public body or charity); others considered that it would be better to integrate consideration within the main assessment categories or as an aspect of 'how we designate' (an individual). Concerns included uncertainty as to how this category would be assessed when it comes to environmental impact assessment (private business), and also an observation that the description of what social value means, was primarily focussed on public/recreational value, and required further development (on behalf of an organisation, public body or charity).
- Consideration of archaeological potential under the 'archaeological interest' category (private business).
- Clearer definitions of issues of 'integrity' is needed, particularly in respect of lost/remnant landscapes (on behalf of an organisation, public body or charity).
- Clarity of meaning vis-à-vis 'artistic interest' – this is not as clear as 'value as a work of art' (private business).
- A designed landscape can be valued as a work of art if it represents more than one 'style' and has evolved over time (private business).
- Improved mapping of key features e.g. listed buildings within the inventory record (on behalf of an organisation, public body or charity).
- Consideration of views within a designed landscape is not helpful as part of 'scenic' interest but might be appropriate under 'work of art' (private business).
- How landscape architects are referenced in inventory records but civil engineers are not often referenced in listed building records (individual).
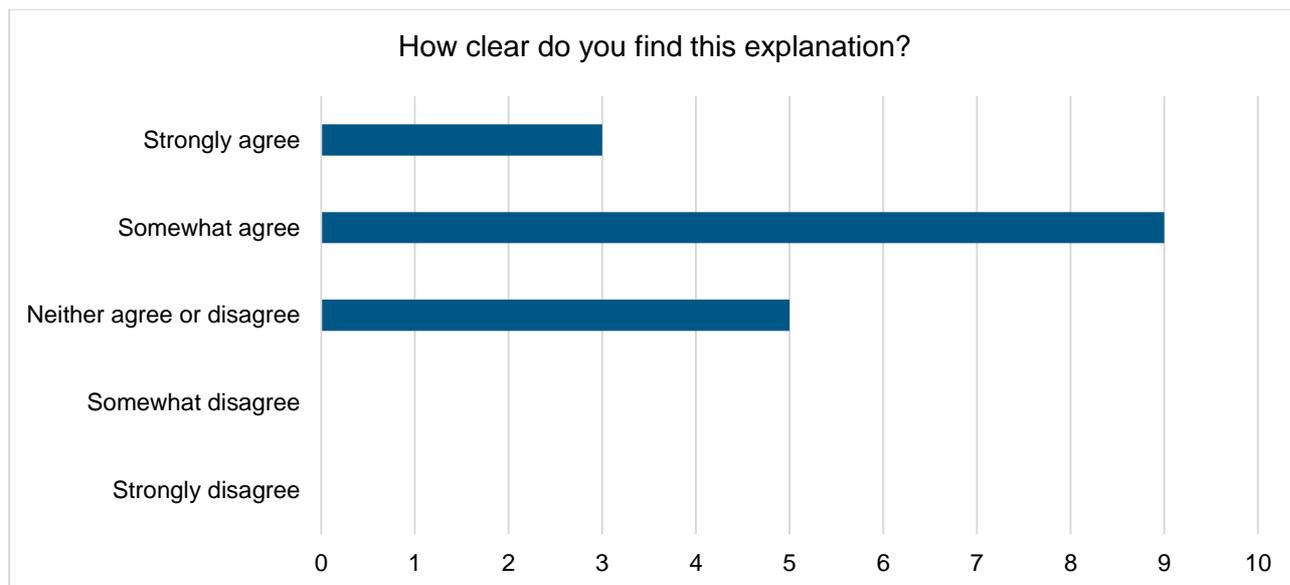- There needs to be recognition for holy wells (on behalf of an organisation, public body or charity).

3.2.5 Annex 5: Inventory of historic battlefields

How clear do you find this explanation?

Response	Value
Strongly agree	3
Somewhat agree	9
Neither agree or disagree	5
Somewhat disagree	
Strongly disagree	

The following key points were raised.

- A suggestion that it could be useful to define conservation objectives for historic battlefields as is the case for historic marine protected areas and nature conservation designations, or grading for sites in relation to their integrity (on behalf of an organisation, public body or charity).
- A concern about whether the wording in relation to the history of Scotland might exclude earlier battlefields (individual).
- Vistas need to be eligible for consideration in battlefields (on behalf of an organisation, public body or charity).
- The role of management plans in historic battlefields should be acknowledged (on behalf of an organisation, public body or charity).
- Wording under the historic association category should be changed to reflect that this also includes contemporary aspects (individual).
- Rewording is needed in relation to the archaeological potential of battlefields (private business).
- Providing examples would be useful to illustrate meaning of some aspects (on behalf of an organisation, public body or charity).

3.2.6 Annex 6: Historic marine protected areas

How clear do you find this explanation?

Response	Value
Strongly agree	3
Somewhat agree	9
Neither agree or disagree	5
Somewhat disagree	0
Strongly disagree	0

The following key points were raised.

- Reference is required as to how historic vessels are recognised (on behalf of an organisation, public body or charity).
- The document needs to refer to be clearer on the role of Historic Environment Scotland, and the regulatory role of Marine Scotland as part of Scottish Government (on behalf of an organisation, public body or charity).
- Conservation objectives should be used in the other designations as is the case for Marine Protected Areas (on behalf of an organisation, public body or charity).
- Text relating to how marine sites can be of interest beyond Scotland should be moved into the section on determining national importance (individual).
- The text needs to set out penalties for offences (on behalf of an organisation, public body or charity).

PART B – CONSULTATION REPORT

4.   APPROACH TO FINALISING THE DOCUMENT

This section describes how we have taken the views expressed during consultation into account in finalising the policy.

4.1.   How have views and information been taken into account?

Each consultation comment was reviewed by the designation policy drafting team to assess whether it was relevant to the policy and selection guidance. The draft policy document was circulated to an internal HES peer review group to assess the nature of the comments. Changes were then made to address relevant comments submitted in consultation and which reflected the recommendations made by the peer review group. A final draft of the designation policy was agreed by the HES Board and the Director of Heritage in preparation for copy editing and publication.

4.2.   Changes to *Principles and Practice for Designation*

The editing and drafting changes to the policy following consultation were either whole scale changes that reflected questions about the status of the document, some of the language used in it, its relationship to other policies and guidance and how the document should be used or were about specific points related the process of designation and particular points raised in relation to the individual designations.

4.2.1. Changes to the title and status of the document

The name of the document has been changed from 'Principles and Practice for Designation' to 'Historic Environment Scotland Designation Policy and Selection Guidance'. This addresses the status of the document as a policy belonging to Historic Environment Scotland and to provide a clearer understanding of the purpose of the document which consists of two sections: policy and selection guidance. It also addresses the point made in some comments about naming consistency.

4.2.2. Changes to the structure the document

The principles within the document were closely aligned to HEPs principles and have now been changed to match those included in HEPS. It was agreed that the slight differences between the two sets of principles was unhelpful.

Following consultation comments, diagrams have been added to explain roles and responsibilities in relation to a number of designations, and where this document sits in relation to other plans and policy documents.

The consultation indicated that most respondents believed that this document was not the place to include detailed information on how World Heritage Sites are designated as this is the responsibility of UNESCO. The information provided was sufficient. Information on this topic will be on our website and clarity on HES's role in management is provided in the new diagram. Similarly, conservation area policy and selection guidance has been removed from the document. Further details about this change are provided in section 4.2.4 below.

4.2.3. Changes to the content of the document

Participation and decision making

Comments were received about wider public participation in decision making and how the policy for designation could foreground human rights as a fundamental principle. These comments pointed to other legislative and policy reforms related to community empowerment.

While some of the policy for designation was reconsidered in light of these comments, it was considered that the points being made were not necessarily about the wording in the document but about the practice and practicalities of creating more participation in decision making. As part of our aim to continually improve our service and in the knowledge that there is a demand for greater involvement in designation decision making, we are committed to improving the way we undertake our consultation on designation decisions. Our aim is to ensure that in most cases anyone can comment on designations proposals before decisions are taken. To do this we will normally publish all designations cases on our online portal and these will normally include a report of handling with assessment documents at the point of consultation. We will also introduce a mechanism for submitting comments at the consultation stage to HES.

This change in our consultation process also responds to feedback from our wider engagement as part of the *What's Your Heritage?* campaign and other meetings held before drafting the new policy.

Social value

Annex 4 included 'social value' as an additional consideration in the guidance for assessing national importance for the Inventory of Gardens and Designed Landscapes (the specifics comments in relation to the guidance on the Inventory Gardens and Designed Landscape are addressed in Section 4.2.4). Some comments suggested that the concept of social value should be included as a consideration for all designations. This has not been done as we drew out factors that emphasise social value or interest from previous selection guidance to make it relevant to scheduling and historic marine protected areas (social interest), listing (social historical interest) and inventory battlefields (role that the battlefield plays for communities). We have made changes to the selection guidance for the Inventory of Gardens and Designed Landscapes to integrate aspects of social value across the other categories of interest.

How we do our work

Following comments, the section on priorities for designation has been clarified and the repetition that caused confusion removed.

Development proposals, assessment and designation

There were a number of consultation comments asking for further detail on the circumstances when we decide not to assess a site or place or when we decided not to designate after an assessment. The legislation is brief and allow us to designate, or not, anything that meets the criteria for national importance or special architectural or historic

interest. It is therefore not possible to set out all the specific circumstances when we will or won't designate a site or place. It was sometimes apparent that comments were made because there was a lack of understanding of the legislation. Further clarity was therefore provided in the final designation policy on the nature of the legislation and how cases are considered on the individual circumstances of each case.

Some comments questioned the circumstances when we would not designate where there was a development proposal. An additional bullet about the implications of designation on development proposals has now been added to provide greater clarity on this issue. The section on Building Preservation Notices in Annex 2 has also been revised to explain how this process can be used in circumstances where there are development proposals (see section 4.2.4 below).

Other forms of recognition

This section has been redrafted in light of comments to provide more clarity about local recognition, the role of Historic Environment Records and what is a material consideration.

Consistency across annexes

A number of comments mentioned lack of consistency between the annexes. Some of these inconsistencies reflect the difference between the designations but changes have been made to make the read across stronger.

4.2.4. Changes to the annexes

Annex 1: Scheduled monuments

There were no significant common themes to draw out from the comments apart from a need to clarify or improve the wording. The annex was updated to address these comments particularly the section on 'How we schedule' and paragraph 17. Other changes were made to improve the readability of the text throughout Annex 1 and where appropriate language was directly aligned to the Scheduled Monument Policy to ensure greater read across.

Some respondents asked for additional definitions for terms such as 'works' and 'national importance'. These terms come from the 1979 Act which does not provide any further definition. The purpose of the selection guidance, however, is to set out how HES decides if a site is of national importance. The definition of a monument has been simplified for ease of understanding. Other respondents questioned why spiritual was not included in the factors considered as part of the cultural significance of a site. These factors are listed in the 1979 Act supplemented by the (former) Ancient Monument Board for Scotland in 1983. The text now makes clear where these factors originate from. We have not added spiritual as this is covered by other factors such as social.

Respondents commented about the purpose of scheduling particularly in relation to the emphasis on the preservation of the physical, without mentioning practices/activities. This is necessary as the 1979 Act defines monuments as physical things. However, when considering sites for designation and determining scheduled monument consent applications, we consider the cultural significance of a site broadly. The text of the Annex

has been clarified to recognise that current practices/activities can make a contribution to the significance of a site.

Another respondent stated that sites which themselves fall short of the criteria but which form part of a pattern with related sites of greater importance, should be considered for designation. We consider that the guidance already sets out that the context of a monument is an important consideration in assessing national importance and that a site that may not otherwise meet the criteria of national importance, can do so if its context is particularly significant.

Annex 2: Listed buildings

Some of the wording used in the section 'what listing covers', including the definition of curtilage and what is stated in the listed building record was confusing to many respondents. This section was updated to clarify the definition of curtilage. The non-statutory status of the description in listing records was also restated.

While there was a general consensus about removing the reference to 'national', 'regional' and 'local' from the listing category definitions, there was some disagreement about how the listing categories were redefined. It was felt that the wording about how the categories were advisory and not legal was not made sufficiently clear. There was also misunderstanding about the removal of the definition of 'national' which some respondents took to mean that national significance would no longer apply to existing listings. The new wording ensures that buildings under each category are recognised for their special architectural or historic interest first, with the category of listing applied after a building is found to meet the criteria for listing. The updated wording explains how buildings are categorised according to their relative importance, either as an outstanding, major or representative examples of their building type, period or style. The position in the document of the definition of listing categories has also been moved to after the selection guidance to emphasise that categories of listing are not legal but only advisory.

Annex 3: Conservation areas

This policy will be relocated to the HES website and will be redrafted as part of a future project involving the direct input of local authorities.

Comments made in consultation related in the most part to the processes that local authorities undertake in managing conservation areas and were not within the scope of a designations policy document. The nature of the comments led us to reconsider how we set out the policy for designating conservation areas and it was decided that creating a standalone document would be better reflect the central role taken by local authorities in designating and managing conservation areas. This proposed new document will require full engagement, participation and consultation with planning authorities whose remit is to designate conservation areas. Development management of conservation areas will also be taken into account in this proposed new document. In the meantime, the information and policy will be relocated to HES's website. Any new guidance will also be used by HES to decide whether, in exceptional circumstances, to designate a conservation area.

Annex 4: Inventory of gardens and designed landscapes

We received differing comments in relation to the addition of 'social value' as a consideration for the inventory of gardens and designed landscapes. We therefore decided to remove this, and instead to integrate aspects of social value within the other existing interest headings.

We have clarified the wording of historical interest so that evidence for a sequence of styles is of equal merit to evidence for a design of a single period. We changed the wording of archaeological interest to clarify that archaeological interest is not concerned solely by physical survival, but can include archaeological potential and its contribution to our understanding, as evidenced by archaeological investigation.

In response to comments regarding the need for clearer definitions of issues of 'integrity' in respect of lost/remnant landscapes, we have removed the word 'lost landscapes' to concentrate more on the definition of 'integrity' as we agreed that this description could be open to misinterpretation.

Although there were comments to the effect that the term 'artistic interest' is not as clear as 'value as a work of art' – we decided on balance to remain with this change in definition as we feel that it allows us to take a slightly broader view. We also move consideration for internal views within a designed landscape from 'scenic' interest to 'artistic interest'.

On the question of improved mapping of key features e.g. listed buildings within the inventory record, our feeling is that our online mapping platforms are the best way for the public to be able to view layers of designation information within the landscape as these display live data. We do not think it would be wise to include such information in a static designation map as these will quickly become out of date.

On the question of holy wells, such structures could be considered as part of an inventory assessment, or through a different designation (e.g. listing or scheduling).

Annex 5: Inventory of historic battlefields

During August-October 2017, we undertook a survey of the public to gather feedback on their experiences with the inventory since its creation in 2011. We published the results of this survey online. We used the results of this survey to draft revised selection guidance, which we consulted on as part of this wider consultation.

In responses to the comments we received through this consultation, we have made some further changes to the text.

We have revised the text which sets out our approach to assessing national importance, to address concerns about whether the original wording in relation to the history of Scotland might exclude earlier battlefields.

We have also revised the wording under the historic association category, to reflect that this also includes contribution to contemporary culture, re-worded references to the archaeological potential of battlefields, and included reference to 'lines of sight' in relation to landscape characteristics.

The suggestion that it could be useful to define conservation objectives for historic battlefields (as is the case for historic marine protected areas and nature conservation designations) and grading of battlefields was raised in the online survey but we have decided against making these changes. Firstly, the requirement for 'conservation objectives' or 'preservation objectives' for marine protected areas is set down in law. There is no such requirement for the inventory of historic battlefields. At this stage, we consider that it would be better to work within the legal framework we have. We intend through our revised policy and selection guidance to focus on assessment of the special qualities and landscape characteristics of historic battlefields, and while recognising the degree of change that is inevitable within inventory battlefields, to make it clear that battlefields which have been so altered that they have lost their special qualities and landscape characteristics will not be included on the inventory. We are also considering revisions to the format of battlefield records to ensure that these provide the best available information to inform decision-making on the management of change within inventory battlefields.

On the subject of management plans, we consider that the place for reference to this is in our managing change guidance on historic battlefields. We will consider changes to how we refer to management plans during the next revision of that document.

Annex 6: Historic marine protected areas

We have added in reference to how historic vessels are recognised, and also taken the opportunity to refer to the Protection of Military Remains Act 1986. We have also introduced a statement on offences, and clarified the roles of Historic Environment Scotland and Marine Scotland (part of Scottish Government).

As the intention is to keep the selection guidance for determining national importance for Historic MPAs in line with that for scheduling, we have introduced a statement to that effect. We have also made some changes to how we refer to the interest of marine sites beyond Scotland.

4.3.   Language

Generally there were few concerns raised about the tone or language used in the document however some respondents asked for further definition of the terms 'designation', 'cultural significance', and 'protection'. This has been addressed in the revised policy document.

4.4.   What we can't respond to

We are unable to respond to requests for revisions to the policy and selection guidance which would require legislative change, such as interim protection.

Some respondents asked for a much higher level of detail related to specific planning circumstances where we might/might not take forward a designation assessment/decision. As we assess each case on its own merits, we consider that providing a greater level of detail could potentially constrain our ability to make a decision. Some respondents suggested this document should refer to Properties in Care (monuments and buildings that are cared for by Historic Environment Scotland on behalf of Scottish Ministers). This is about the management of such sites rather than their designation and therefore outwith the scope of this policy.

Appendix 1: List of questions asked

Q1 Are you answering this consultation on behalf of yourself as an individual or in another capacity?

Q2 Please indicate below which policies you would like to answer questions on.

Q3 To what extent do you think that 'Principles and Practice for Designation' is a suitable title, reflecting the document's content and status?

Q4 Do you have any alternative suggestions for the title of this document?

Q5 How clear do you feel the purpose of this document is?

Q6 Do you have any further comments on how clear you feel the purpose of this document is? If so, please add them here.

Q7 This document sets out the principles and practice applied by Historic Environment Scotland in the designation of historic sites and places at the national level. Do you feel that there is anything missing from the document?

Q8 If you have read the draft Historic Environment Policy, to what extent do you agree that this document works alongside and supports the policy?

Q9 The nomination and inscription of World Heritage Sites is not part of our decision-making. Should we provide more information on the process of nominating World Heritage Sites and HES's role in this document?

Q10 Do you have any additional comments about our role in the designations process?

Q11 To what extent do you agree or disagree with the principles for designation?

Q12 To what extent do you agree or disagree with how the principles for designation are to be applied?

Q13 Do you have any other comments on our principles for designation? If so, please add them here:

Q14 To what extent do you agree or disagree with our priorities for designation?

Q15 Do you have any other comments on our priorities for designation? If so, please add them here:

Q16 Do you have any other comments on this section?

Q17 How clear do you find the explanation in this section of our approach to assessing sites?

Q18 How clear is this explanation of our approach to designation where there are development proposals?

Q19 Do you have any other comments on the section on Development Proposals and Designation? If so, please add them here.

Q20 To what extent do you agree that the section on other forms of recognition is clear in its meaning?

Q21 To what extent do you agree that the section on other forms of recognition is helpful for local decision-making?

Q22 Do you have any other comments on the "Other Forms of Recognition" section? If so, please add them here.

Q23 Annex 1 explains how we decide if a monument is of national importance for scheduling. How clear do you find this explanation?

Q24 Do you have any other comments on Annex 1? If so, please add them here:

Q25 Annex 2 explains how we decide if a building is of special architectural or historic interest for listing. How clear do you find this explanation?

Q26 Reference to national, regional and local importance has been removed from the listing category definitions. This is to better reflect how listed buildings are designated the national level. How clear do you find the revised listing category definitions?

Q27 Do you have any other comments on Annex 2? If so, please add them here.

Q28 Local authorities are primarily responsible for designating conservation areas, but as the lead body for the historic environment we think it is appropriate to set out guidance on this topic. The guidance here close follows that established in the Historic Environment Policy Statement. Do you have any comments on how this can be improved or changed?

Q29 Annex 4 explains how we decide if a garden and designated landscape is of national importance for including on the inventory. How clear do you find this explanation?

Q30 Do you have any other comments on Annex 4?

Q31 Annex 5 explains how we decide if a battlefield is of national importance for including on the inventory. How clear do you find this explanation?

Q32 Do you have any other comments on Annex 5? If so please add them here.

Q33 Annex 6 explains how we decide if a marine historic asset is of national importance for designation as a marine protected area. How clear do you find this explanation?

Q34 Do you have any other comments on Annex 6? If so please add them here.

Appendix 2: Organisations who responded

Of the 37 respondents, four organisations registered their name. These were:

- General Trustees of the Church of Scotland

- ALGAO Scotland

- North Ayrshire Council

- Member of Architectural Heritage Society of Scotland case panel (NE Scotland)

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