



Our Regulatory Framework

How we provide regulatory and advisory services in the planning and other consenting systems



HISTORIC
ENVIRONMENT
SCOTLAND

ÀRAINNEACHD
EACHDRAIDHEIL
ALBA

OUR REGULATORY FRAMEWORK

How we provide regulatory and advisory services in the planning and other consenting systems

| | |
|--|-----------|
| 1. ABOUT THIS FRAMEWORK | 4 |
| 2. WHO WE ARE | 6 |
| 3. OUR REGULATORY ROLE | 8 |
| 4. OUR DECISIONS AND ADVICE | 14 |
| 5. OUR REGULATORY PRINCIPLES | 25 |
| 6. MEASURING OUR PERFORMANCE AND IMPACT | 26 |
| 7. FURTHER INFORMATION | 27 |
| | |
| Glossary | 29 |



CHAIR'S FOREWORD

I'm delighted to publish Our Regulatory Framework which explains Historic Environment Scotland's responsibilities in the planning process and other regulatory systems. The framework sets out what we do, and how we do it.

These duties are assigned to us by The Scottish Parliament. They are a key part of our role in caring for and protecting the [historic environment](#).

Valuing our past

Scotland is internationally known for the quality and diversity of its historic environment. As a nation, we have long placed a high value on it, celebrating the lives of our ancestors as well as recognising the contribution it makes to a modern, dynamic and flourishing Scotland.

The historic environment contributes to our identities as a nation, and as individuals – it provides the backdrop to our lives. Our heritage is important to many aspects of life. It defines the character of the places where we live and work, promotes a sense of belonging and cultural identity, encourages civic participation and makes a significant contribution to our economy.

We have a responsibility to ensure that it is passed on with pride to future generations.

The benefits of the historic environment for Scotland's people are clear. Our ambitions to protect and look after historic sites and places form the basis of the sustainable approach outlined in this framework.

Managing change

We have an important role to play; we are here to help everyone manage change. We are committed to working in a way that is enabling, proportionate and collaborative.

One of our objectives is to ensure that decisions about key aspects of our lives consider the effect on historic sites and places, and to show how this can deliver multiple benefits for society.

These decisions affect where and how we live, work and relax. They affect how we maintain our infrastructure and reimagine or reuse aspects of our built environment as part of the circular economy. They can support the delivery of new technologies, grow our economy in an

inclusive way, support health and well-being, and drive our response to the climate emergency.

Looking to our future

We are facing a climate emergency and ecological crisis. We are also on a journey of recovery from a world-changing pandemic. Scotland is uniquely placed to set a global example in our response. There are big challenges and difficult choices, and there will be more in the future.

As an organisation we care about the protection of our historic environment. There are important lessons we can learn from the past as we look to the future. We will [contribute to Scotland's Green Recovery](#) and support the longstanding planning principle of 'the right development in the right place', ensuring we make the most of our existing buildings and infrastructure.

We are committed to using our regulatory and advisory roles to take positive action that helps to tackle these challenges. We will do so in a way that ensures change in the historic environment is carefully considered and opportunities are grasped.

Our world is changing rapidly, and we'll revise our guidance, advice and policies as appropriate to reflect changes as they occur. We will continually review our regulatory and advisory work to ensure that we are leading the way in what we do. We will be a forward-looking, outcome-focused, proactive and enabling [regulator](#).

In this way, the historic environment won't just be conserved – it will be alive and thriving, for generations to come.

Dr Hugh Hall
HES Board Chair



I. ABOUT THIS FRAMEWORK

This framework describes our approach to taking decisions and providing advice on managing Scotland's **historic environment**. It is for anyone who engages with the services we provide or wants to understand more about the decisions we take and the advice we give.

We undertake this role across a wide range of activities, some of which are required by law and some which form part of our wider responsibilities as a public service organisation. In every process we're involved in, our overarching aim is to support and enable good decision-making about changes to the historic environment.

There are two key purposes to our regulatory and advisory role. The first is to protect and seek positive change for the historic environment. The second is to demonstrate how the **historic environment can make a real difference to people's lives: to our health, to our economy, to our culture, to our environment. Above all, we want to empower people and enable good decisions.**

This framework includes several key pieces of information. You can jump straight to these topics by clicking the links below.

KEY INFORMATION

Who we are

This section includes information about [what we do](#), [our goals](#), and [our responsibilities](#), focusing on the work of our heritage directorate.

Our regulatory role

This section sets out the [legal basis for our regulatory and advisory services](#), including links to relevant acts of parliament. It gives the [wider context for our work](#), and sets out [our governance process](#), which ensures our services are high-performing and robust.

Our decisions and advice

This includes our roles in [designation](#), [building survey](#), [environmental assessment](#), the [planning system](#), [World Heritage](#), [dangerous buildings](#) and [scheduled monuments](#). Each section explains our process and safeguarding measures for the role.

Our regulatory principles

This sets out our principles of being transparent, accountable, consistent, proportionate and targeted. More information about how we make our decisions transparent is in specific sections on [designation](#) and works to [scheduled monuments](#).

Measuring our performance and impact

This includes how we assess our performance, seek feedback from service users and stakeholders, and how we use this to improve our services.

Throughout this framework, you'll see some very specific and technical language. Where a term is not in general use it's explained in the text, but you can also click on any word [underlined in orange](#) to go to the [glossary](#) and read a full definition.



Hover over any word **underlined in orange** to read a full definition.

The Forth Bridge is a triumph of engineering. It is a World Heritage Site and Category A listed building. A globally recognised icon of Scotland, it still plays a key strategic role in the local and national transport network.



2. WHO WE ARE

We are a public body leading the way in protecting, understanding and sharing Scotland's **historic environment**, for today and for the future. We were established by the [Historic Environment \(Scotland\) Act 2014](#). We are a non-departmental public body with charitable status, and we are directed by a Chair and a Board of appointed members.

In every aspect of our work we strive to follow our five organisational values – we are **collaborative, professional, innovative, open and respectful**.

What we do

We are a charity and public body leading the way in protecting, understanding and sharing Scotland's historic environment, for today and the future.

- We are at the forefront of investigating and researching the historic environment, and addressing the impacts of climate change on its future.
- We help to develop the knowledge, skills and materials that Scotland needs to look after our heritage.
- We make a strong contribution to the economy, and to building a fairer, more sustainable future for Scotland.
- We award millions of pounds each year to local communities to repair, revitalise and reuse their historic environment, helping to foster social cohesion and a strong sense of place.

- We enable change to our most significant heritage assets while providing the protection they need through designations and consents, ensuring this resource is available for generations to come.
- We support the conservation and reuse of Scotland's historic environment by providing advice and technical expertise.
- We seek to grow understanding of our historic assets, the benefits they bring and the diverse stories that make up our shared histories.
- We look after more than 300 sites of national importance, more than 41,000 objects in the collections and five million archives on behalf of the people of Scotland.

It is our role in managing change that this framework focuses on. We do this through several processes. We give advice on strategic plans and policies and development proposals affecting the historic environment. We record threatened buildings and administer consents for scheduled monuments, and we designate historic sites and places. In this way, we ensure these invaluable resources are available for generations to come.

You can find out more about what we do and our vision and wider outcomes in our corporate plan, [Heritage For All](#).



OUR GOALS

Our regulatory work contributes to the goals in our corporate plan, but we have also set ourselves the following goals for our regulatory work. These long-term goals help deliver our vision and give a shared understanding of what success looks like. Focusing on these goals keeps our work targeted and relevant. Each goal sets out a specific focus, so that our work delivers for our **historic environment**, the people of Scotland, and our long-term future.

Valuing our heritage

We will identify, record and manage change at historic sites and places for the benefit of both current and future generations. We will work towards an ever more inclusive understanding of the **cultural significance** of the historic environment.



Looking after our heritage

We will protect and enhance historic environment assets and places, for everyone's benefit, now and in the future. We will work to maximise the historic environment's cultural, social, environmental and economic contribution to our wellbeing.

Improving equality

We will help to create opportunities to significantly improve equality and accessibility in our places and eliminate discrimination through positive change to the historic environment and the diversity of our workforce.

Building a better future

We will champion the reuse of our built environment as part of our **circular economy**. We will support owners, occupiers, and developers to sympathetically repurpose and adapt historic buildings, sites, and landscapes, and sustainably enhance our environment.

Responding to our changing climate

We will help Scotland's places to thrive within the planet's sustainable limits. We will seek to maximise new economic and wellbeing opportunities offered by a just transition to a net zero nation. And we will support environmentally positive and **carbon conscious places**, with increased resilience to our changing climate.

Restoring biodiversity

We will support land managers and communities to address **biodiversity** loss. We will enable good decision-making, focussing on the multiple benefits that can be realised through the sustainable management of our cultural heritage.

Empowering communities

We will help to sustain a sense of place in our communities, retain regional and local distinctiveness and forge connections between people and the places where they live, work and visit. We will support the **Place Principle** and enable change in a way that helps to grow the economy sustainably and inclusively. We will do this through two mutually supportive ambitions – to boost Scotland's competitiveness and to tackle inequalities.

3. OUR REGULATORY ROLE

This section of our regulatory framework sets out the [legal framework that establishes our role](#) in making decisions and giving advice on the [historic environment](#). It then lays out the wider context for our duties and explains our governance structure. It gives specific references, including laws, policies and strategies, and codes of conduct.

Our [heritage directorate](#) is responsible for the day-to-day regulatory and advisory services we provide within the planning and other regulatory systems. This document covers both our regulatory and advisory services. Some of these are requirements under law and some of these are discretionary for us. When our work is discretionary, it often means decision-makers have to ask for our input, but we can choose whether to get involved. In these cases, whether we offer detailed advice will depend on the circumstances.

We work in partnership with a range of organisations. Many decisions affecting the historic environment are made by national, regional or local government such as local councils or national park authorities.

In the majority of cases, local government is responsible for assessing, providing advice and deciding what change should happen. They listen to the public, applicants, and consultees like us when making decisions. They also deliver a wide range of services, such as:

- maintenance of Historic Environment Records (HERs)
- advising on development plans and policies
- giving advice to developers on planning proposals that may affect historic asset and places, including input into development design
- monitoring compliance with planning requirements including conditions
- advising on the management of the rural and urban historic environment
- working with all elements of the community to foster understanding of the historic environment
- where resources permit, leading community-based projects to explore the local historic environment, and through this contribute to skills development, learning and community cohesion

THE LEGAL BASIS OF OUR SERVICES

Our regulatory and advisory services are founded in several laws and regulatory procedures. These include:

- [Historic Environment \(Scotland\) Act 2014](#)
- [Planning \(Scotland\) Act 2006](#)
- [Ancient Monuments and Archaeological Areas Act 1979](#)
- [The Planning \(Listed building and Conservation Areas\) \(Scotland\) Act 1997](#)
- [Marine \(Scotland\) Act 2010](#)
- [Environmental Assessment \(Scotland\) Act 2005](#)
- [Environmental Impact Assessment Regulations 1972 World Heritage Convention](#)

These, alongside a range of other related legal instruments and [protocols](#), establish two roles for HES. **The first is as a [decision-maker](#) for certain heritage designation decisions and scheduled monument consent.**

Our second role is as a [statutory consultee](#) for a range of development plans and proposals. This means that decision-makers have to ask for our advice before making a decision – and then have to take that advice into account. In the planning system, this means that our advice is a [material consideration](#).

CONTEXT FOR OUR DECISIONS AND ADVICE

Our advice and decisions reflect national policies and strategy. These set out the wider context for our services and our approach to them.

Policy and strategy

The [Historic Environment Scotland Act 2014](#) includes a requirement that we help develop and deliver policies and strategies relating to the historic environment. We also contribute to Scottish Government strategies, plans and policies by helping to form and deliver them. Our focus is to make sure that they align with outcomes for the historic environment. This work also ensures we take



wider national and local outcomes, and the effects on communities, into account in everything we do.

The planning system

The **planning system** manages most of the decisions that make changes to our environment. The purpose of the planning system is to manage the development and use of land in the long-term public interest. Our input and advice supports that purpose.

Scottish Ministers set Scotland's national planning policies through the **National Planning Framework 4 (NPF4)**. NPF4 also reflects priorities for the operation of the planning system and for the development and use of land. It is part of the statutory development plan, which means that its policies play a key role in day-to-day decision making. Priorities for land use and where development should and should not take place are also set within **Local Development Plans** for all council areas and national parks.

Where works extend offshore, the **National Marine Plan** and **Regional Marine Plans** play the key role for informing decisions about developments in the marine environment.

Strategic priorities

The national strategy for the historic environment applies principles that the UK and Scottish Governments have

agreed to in international charters and conventions on cultural heritage and landscape. It sets strategic priorities for the heritage sector in Scotland. It sits alongside a variety of other national strategies which set a range of priorities that we need to respond to and help to enable, covering topics such as energy, transport and agriculture.

OUR MISSION

Our mission is to sustain and enhance the benefits of Scotland's historic environment, for people and communities now and into the future.

Our Priorities

- Delivering the transition to net zero
- Empowering vibrant, resilient, and inclusive communities and places
- Building a wellbeing economy

The Strategy for Scotland's Historic Environment (2023)

3. OUR REGULATORY ROLE (CONT)

Historic environment policy

The [Historic Environment Policy for Scotland](#) (HEPS) supports the delivery of these priorities. It sets out a series of principles and policies for the recognition, care and sustainable management of the historic environment.

HEPS promotes a way of understanding the value of the historic environment which is inclusive and recognises different views. It expects decision-makers to take a long-term view, with consistent, integrated management and decision-making supporting positive outcomes for the people of Scotland.

HEPS also highlights how good management maintains the quality of this resource and secures the benefits of the historic environment, making sure that nothing is lost without considering its value and exploring options for retention. Most importantly, it encourages everyone's participation in decisions that affect the historic environment - both now and in the future.

Alongside HEPS, we use the [Designation Policy and Selection Guidance](#) when we designate historic sites

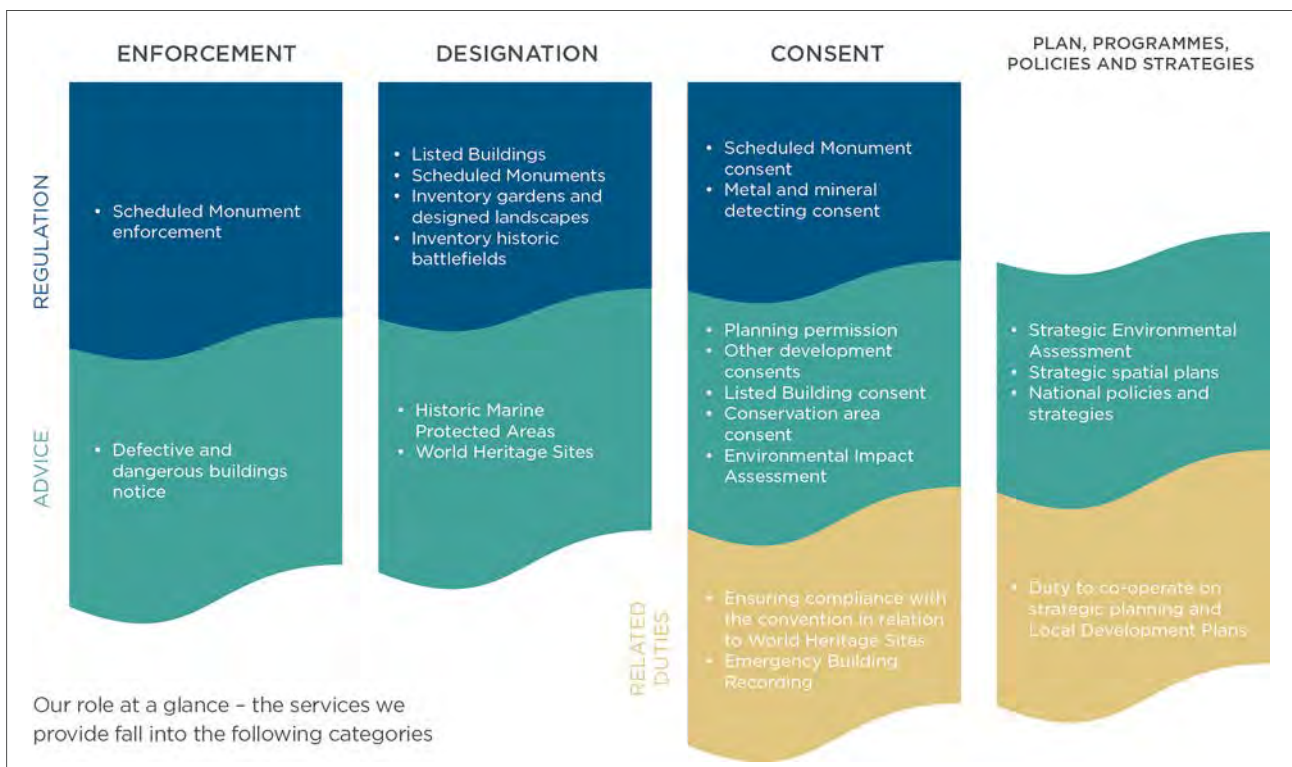
and places and the [Scheduled Monument Consents Policy](#) when we make decisions about scheduled monuments. These three policies are supported by a series of [Managing Change in the Historic Environment guidance notes](#).

Other duties

We have a duty under the [Nature Conservation \(Scotland\) Act 2004](#) to further the conservation of biodiversity. Where we are the decision-making authority, we must take account of protected species and places, ensuring that the impact of any decision on them is fully considered.

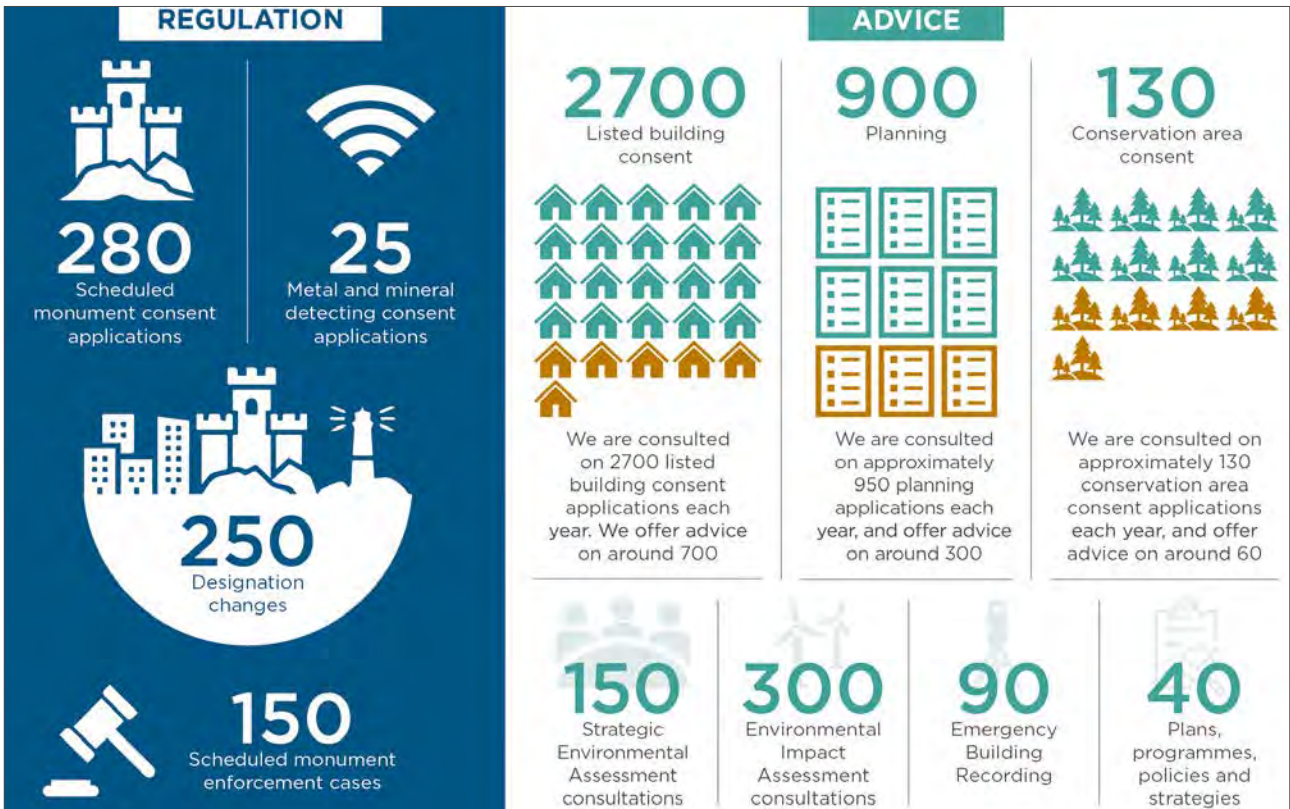
As a public body in Scotland, we also have duties under the [Climate Change \(Scotland\) Act 2009](#) and [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Act 2019](#). We must:

- contribute to the 'net-zero' emissions target for 2045
- deliver adaptation programmes to increase resilience
- act in a sustainable way





Key sources of historic environment advice for development management - the services we provide alongside those of local authorities



Our role at a glance - in a typical year we will provide the following level of advisory and regulatory services:

3. OUR REGULATORY ROLE (CONT)

CULTURAL SIGNIFICANCE

“Decisions affecting the historic environment should be based on careful consideration of cultural significance. This helps to ensure that the historic environment can be appreciated today and passed on with confidence for the future.”

The Historic Environment Policy for Scotland (2019)



HISTORIC ASSETS AND PLACES

Policy Intent:

To protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.

Policy Outcomes:

- The historic environment is valued, protected and enhanced, supporting the transition to net zero and ensuring assets are resilient to current and future impacts of climate change.
- Redundant or neglected historic buildings are brought back into sustainable and productive uses.
- Recognise the social, environmental and economic value of the historic environment, to our economy and cultural identity.

National Planning Framework 4 (2023)

NPF4 POLICY 7(A):

“Development proposals with a potentially significant impact on historic assets or places will be accompanied by an assessment which is based on an understanding of the cultural significance of the historic asset and/or place. The assessment should identify the likely visual or physical impact of any proposals for change, including cumulative effects, and provide a sound basis for managing the impacts of change. Proposals should also be informed by national policy and guidance on managing change in the historic environment, and information held within Historic Environment Records.”

National Planning Framework 4 (2023)

We also help to deliver the Environment Strategy for Scotland and [the UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#) which retains provisions for the protection of the environment:

- the principle that protecting the environment should be integrated into the making of policies
- the precautionary principle as it relates to the environment
- the principle that preventative action should be taken to avert environmental damage
- the principle that environmental damage should as a priority be rectified at source
- the principle that the polluter should pay.

OUR GOVERNANCE

Our governance is defined through a number of documents and processes, from strategic direction down to individual decision-making.

Our board and Chief Executive

The HES Board is responsible for setting our strategic direction as an organisation. The board approves our Regulatory Framework and national policy in the [Historic Environment Policy for Scotland](#) (HEPS). HEPS was adopted in 2019 and influences all the decisions we make and the advice we give.

Our internal Scheme of Delegation identifies our Chief Executive as the Accountable Officer. This means the Chief Executive has responsibility for the exercise of our statutory functions as set out in regulations. This covers our decision-making and advice-giving roles.

Decisions and advice

Within our [heritage directorate](#), decision-making and advisory processes are standardised across our services. They are underpinned by a series of approval and quality control procedures. We publish our [schedule of governance](#) for these services on our website.

We are only the [decision-maker](#) where we designate historic sites and places or determine applications for works to scheduled monuments. These can be appealed. Appeals against these decisions are heard by the Scottish Government.

Where we provide advice in other contexts it is for the decision-maker to balance our views with a range of other factors and a range of material considerations. That might include the views of other consultees, communities and other relevant parties – as well as a variety of legal requirements or policy expectations. Local and national level appeal processes are available to applicants when they are refused planning permission or other consents. We will sometimes participate in these appeal processes, but we do not have a decision-making role.

Avoiding conflicts of interest

Sometimes HES has two different roles in the same process. A good example of this is when we need to carry out works on sites that we care for. In cases like this, HES can be the applicant as well as the [decision-maker](#). When this happens, applications from HES are logged, consulted on, and assessed in the same way as any those from other applicants.

We keep these functions separate by delegating advice and decision-making on individual cases to the Director of Heritage and relevant Heads of Service. While decision-making is delegated, the Director of Heritage is responsible for keeping the Accountable Officer and the HES Board updated about any novel or contentious cases.

We have an internal code of conduct for all our work. It requires staff to declare any potential conflict of interest. Where relevant, we will put steps in place to ensure a conflict does not occur.

Reporting and feedback

We publish an overview of all of the work we do in the planning system in our annual [Planning Performance Report](#). This measures the overall quality of our planning service and is used to promote continuous improvement. These reports are approved by the HES Board.

We share feedback on planning performance with a range of partners across the planning system, including fellow [Key Agencies](#). We also receive feedback on our performance from the Scottish Government.

4. OUR DECISIONS AND ADVICE

We make decisions about and give advice on changes that affect the [historic environment](#). Our historic environment is dynamic – it has always changed over time and always will. Our role is to make and support good decisions on those changes. Good decisions strike the right balance between development and the protection of significant historic sites and places.

Each area of our regulatory work has an individual procedure covering the following key areas:

- designation of historic sites and places
- emergency building recording
- environmental assessment
- the planning system
- World Heritage Sites
- defective and dangerous buildings
- scheduled monument regulatory work

Our procedure for each of these areas of work is set out below.

DESIGNATION OF HISTORIC SITES AND PLACES

We're responsible for designating a range of historic sites and places at a national level. To do this, we add the site or place to a legally recognised list. The four lists are for [listed buildings](#), [scheduled monuments](#), [gardens and designed landscapes](#) and [historic battlefields](#). We also assess requests to review and/or remove existing designations. We also give advice to Marine Scotland on the designation of historic [Marine Protected Areas](#). Additionally, we have the power to designate [Conservation Areas](#), but as this is normally the role of local authorities, we have not used that power.

The Historic Environment Scotland [Designation Policy and Selection Guidance](#) guides the designation decisions we take. We follow [our governance and sign-off procedures](#) in all our decision-making.

Our decisions to designate listed buildings and scheduled monuments can be appealed by [owners and occupiers](#). In these cases, Scottish Ministers review the decision independently. This process is handled by the [Scottish Government Planning and Environmental Appeals Division](#).

Making our decisions public

We publish information on our website to ensure that our decision-making for designations is transparent. Our [online portal of applications](#) shows the details and supporting documents for all designation proposals, and we welcome public comment on these.

In some cases, we also run public consultations on designation proposals before we make a decision. We publish these on our [consultation website](#).

We explain the decisions we take about designation in a report of handling. These are also published on our online portal.

EMERGENCY BUILDING RECORDING – NOTIFICATION OF DEMOLITION

We survey and record a range of historic sites and places. When there is going to be a big change to a site or place that has [cultural significance](#), it is important that we know about it. This gives us the chance to record that site and add the information to the national record on the [Canmore website](#).

Because of this, there is a [legal requirement for us to be told](#) about proposals to demolish listed buildings and unlisted buildings in conservation areas. Some planning authorities carry out this notification themselves, some others put the responsibility on owners and agents to do so.

Planning authorities can also let us know at their own discretion about developments where there will be significant changes to listed buildings or buildings in conservation areas. This can include changes of use. When authorities give consent for a historic site to be demolished or altered, they can add a condition to make sure that the applicant arranges a suitable programme of recording. We strongly encourage this.

Where we can, we'll let planning authorities know in advance when we're going to undertake emergency recording work. In most cases, we'll also publish information about this on our website once the work is complete.

When we get involved

We'll work with Planning Authorities to keep everyone up to date with consent conditions and recording works being carried out in their area. Where surveying and recording can be done by a local architectural or archaeological practitioner, we don't normally carry out a detailed recording. We do sometimes make records in parallel with commercial practitioners – this will depend on the individual circumstances.

Where recording cannot be carried out by a local archaeological or architectural practitioner via planning condition, we may be able to prioritise this work within our recording programme.

ENVIRONMENTAL ASSESSMENT

We are a **Consultation Body** for **Strategic Environmental Assessment** (SEA) and **Environmental Impact Assessment** (EIA). Both **SEA** and **EIA** focus on identifying significant environmental effects, including effects on the historic environment.

Strategic Environmental Assessment

Public bodies in Scotland have to assess, consult on, and monitor the likely impacts their **plans, programmes and strategies (PPS)** will have on the environment through the SEA process. This includes Local Development Plans, strategies for topics like biodiversity and transport, and a range of policies and programmes. You can see every PPS that has gone through SEA in Scotland on the [SEA database](#).

In our role as a **Consultation Authority** in SEA we help **Responsible Authorities** to decide whether an assessment is required. We then support them through the process. The other Consultation Authorities for SEA are [SEPA](#) and [NatureScot](#).

A key aim of SEA is for the findings of the assessment to inform the preparation of the PPS. We help Responsible Authorities to make sure this happens. We do this by helping authorities to identify how the historic environment might be affected by what the PPS is going to do. This can include positive and negative effects.

Environmental Impact Assessment

Development proposals that are likely to have a significant impact on the environment may need to go through the EIA process. EIA can cover lots of types of projects, but often relates to planning applications, or consents for other types of development such as transport, infrastructure or forestry. You can find the details of the various EIA regimes in Scotland in the [EIA Handbook](#).

Our role as a Consultation Body for EIA is to provide information and help inform the assessment of predicted impacts of a development proposal on the historic environment. To do this, we give advice on how the development proposal might affect aspects of the historic environment. Where possible, we explain how any adverse impacts can be mitigated by avoiding or reducing them. We also give advice on compensatory or offsetting measures, where relevant.

In EIA, the focus of our advice will be our interests in the relevant permission or consenting regime.

When we get involved

For SEA, Responsible Authorities have to consult us at screening, scoping and report stage. For EIA, we are required to provide information to developers preparing an EIA Report and decision-makers need to consult us at scoping and report stage.

Screening

The screening process is when a decision is made as to whether environmental assessment is required.

For SEA, the Responsible Authority has to ask for our advice on this. We need to reach an agreement with them and the other consultation authorities. If we can't, then Scottish Ministers can decide.

For EIA, decision-makers do not have to ask our advice on screening. If they do, it will be for a specific issue and we will advise them on any likely significant effects on our historic environment interests.



Historic Environment Scotland staff viewing visualisations of a proposed windfarm that could affect the setting of historic assets and places.

4. OUR DECISIONS AND ADVICE (CONT)

Scoping

The scoping process is when the scope of assessment is agreed. This might include identifying particular historic assets and places to be assessed and identifying particular types of impacts.

Responsible Authorities need to consult us on the scope and level of detail for any SEA, and the timescale for the public consultation. We need to reach an agreement on this. If we can't, Scottish Ministers can decide instead.

For EIA, planning authorities or other consenting authorities ask us for our advice on the scope of any assessment. We will also offer advice on assessment methodology for the historic environment, referring to the [EIA handbook](#) and our [Managing Change guidance series](#).

Report

For SEA, the Responsible Authority will consult us on the Environmental Report alongside the PPS. We will give our views on the findings of the assessment and the PPS. When the PPS is adopted, the Responsible Authority will send us a copy of their SEA adoption statement.

For EIA, we have a duty to provide relevant environmental information to developers preparing an EIA Report. The decision maker will then consult us on the EIA Report alongside the relevant application for permission or consent. We will comment on the assessment and its findings, as well as the impacts of the proposed development on our interests.

THE PLANNING SYSTEM – DEVELOPMENT PLANNING AND DEVELOPMENT MANAGEMENT

Most decisions affecting our historic environment are made through the [planning system](#). We have a number of specific roles in planning.

The Scottish planning system is [plan-led](#). Development plans identify and allocate land for future development. We're a [statutory consultee](#) for development plans and their related [strategic environmental assessments](#) (SEA). [Planning authorities](#) consider our views alongside advice from other consultees and the views of the public.

We're also a statutory consultee for planning applications that are accompanied by [environmental impact assessments](#) (EIA). These give consent to development proposals and assess their effect on the environment.

Our [Planning Service Standard](#) sets out all the circumstances where planning authorities consult with us. We strongly encourage and welcome pre-application consultation in line with the [Key Agencies Statement-pre-application engagement](#).

Planning permission

[Decision-makers](#) normally ask for our advice on a planning application when it is likely to affect a nationally designated historic asset or place.

For planning applications, this includes developments which are likely to affect one of the following:

- a category [A listed building](#) or its setting
- [a scheduled monument](#) or its setting
- a site included on the [Inventory of Gardens and Designed Landscapes](#)
- a site included on the [Inventory of Historic Battlefields](#)
- a [World Heritage Site](#)
- the preservation objectives of a [Historic Marine Protected Area](#)
- the amenities of any Royal Palace or Park.

For [historic battlefields](#) and [World Heritage Sites](#), planning authorities only consult us if the development is not classed as [householder development](#). Householder development normally covers alterations or additions to private homes within their garden areas.

For Royal Palaces and Parks, we are only consulted if the land to be developed is within 800 metres of the Palace or Park.

Bell Street Stables is a remarkable conversion of a Category B listed Victorian council depot to create 52 new homes for affordable rent in the centre of Glasgow. The development was undertaken by Collective Architecture for the Wheatley Housing Association and they retained many significant elements of the existing building.



4. OUR DECISIONS AND ADVICE (CONT)

Listed building and conservation area consent

Planning authorities consult us on listed building consent when it relates to:

- Alterations to a Category A or B **listed buildings**
- Demolition of any listed building
- Listed building consent applications where the planning authority is the applicant

Authorities also consult us on conservation area consent. This is only needed to demolish an unlisted building in a conservation area.

Other consents

We are a consultee for projects coming forward for a range of other consents sectors such as **transport**, **forestry**, and **electricity generation** and transmission. Many of these projects require Environmental Impact Assessment. We provide information and advice to developers and decision-makers in these sectors in line with our Planning Service Standard.

Works within a marine context may also require a **Marine Licence** and we may be notified about any decisions that have the potential to put at risk the preservation objectives for any Historic Marine Protected Areas.

Our role

Our role in the planning system is to give advice to **decision-makers** on the impact of development proposals on the historic environment. By working with others, we aim to help sustainable development happen in the appropriate places. We expect a **plan-led** approach and early engagement to avoid or minimise most significant impacts on the historic environment.

Our advice helps decision-makers and developers understand whether there will be significant impacts on the historic environment. If we think there will be significant impacts, we will give advice on any ways to reduce them. This

might be by changes to siting or design, or any other **mitigation**.

When we engage in the development planning and development management process, we will:

- consider each proposal on its own merits
- focus on the greatest opportunities for, or threats to, the historic environment
- ask for information only when we need it to inform our view and give clear advice
- object only where we identify impacts on the historic environment that raise issues of national interest

Our advice will be proportionate, enabling, clear and unambiguous.

Decisions and appeals

When we object to a development proposal, it can trigger a notification process. This means that if the **planning authority** intends to give permission for the development, they must notify Scottish Ministers. Ministers then consider whether the application should be passed to them for a decision. This is known as a **notified application**.

Scottish Ministers can also intervene in any planning application by recalling it so that they can make their own decision on it. This is known as a **called-in application**. An application can be called in at any point before a decision is made by a planning authority. It is at Ministers' discretion whether to do so. It doesn't happen very often in practice, in recognition of the fact that it is important that authorities make decisions on the future development of their areas at a local level. Current called-in cases can be viewed on the Scottish Government's **Planning Decisions** website.

Other types of consents which we are consultee on, such as windfarms which are to be determined under the **Electricity Act 1989** have different decision making and appeal processes. Guidance on these processes can be found on the Scottish Government's **website**.

4. OUR DECISIONS AND ADVICE (CONT)

WORLD HERITAGE

We have an advisory role in relation to World Heritage Sites. This covers the designation process for World Heritage Sites, their management, and development that may affect them.

Designation

The designation of [World Heritage Sites](#) is the responsibility of [UNESCO](#), who inscribe them on the World Heritage list on the basis of their [Outstanding Universal Value](#). Nominations are put forward through the UK Government. Once parties have secured their site a place on the [UK Tentative List](#), we advise them on preparing their nominations.

Management plans

UNESCO requires every World Heritage Site to have a management plan. This helps to ensure a coordinated approach by all partners who work together to deliver the plan. We support the development and implementation of [World Heritage Management Plans](#). We are a partner on the management plan for every World Heritage Site in Scotland.

Development affecting World Heritage Sites

As part of our role in planning we give advice on any development proposal that affects a World Heritage Site. If we identify the potential for a development proposal to affect a Site's Outstanding Universal Value, we will notify Scottish Ministers. Ministers may then advise the UK Government [Department for Culture, Media and Sport](#) (DCMS).

The purpose of this [notification protocol](#) is to ensure UNESCO are aware of the proposals as soon as possible. The aim is that they know before any decision is made – as development decisions can be difficult to reverse. This gives UNESCO's World Heritage Committee the chance to assist in seeking appropriate solutions to ensure that the Outstanding Universal Value of the Site is preserved.

DEFECTIVE AND DANGEROUS BUILDINGS

[Local authorities](#) have powers under the [Building \(Scotland\) Act 2003](#) to serve defective building and dangerous building notices. These notices require owners to undertake works to rectify defects or address dangers. Authorities can also undertake immediate works themselves in the interest of public safety.

Local authorities have a duty to consult us where it is reasonably practical to do so prior to issuing the notice or carrying out work themselves when it affects:

- a [scheduled monument](#)
- a [listed building](#)
- a building subject to a [building preservation notice](#)
- a building that cannot be demolished without conservation area consent.

Our role

Our role in these cases depends on the significance of the asset and the nature of the notice. In some cases, we will give advice on the need for consent. We can also be involved in discussing the requirements of the notice. Our advice will aim to ensure that the work is the minimum necessary to ensure public safety. In some cases, where the issues are significant, we may be involved in conversations about the best course of action.

In most cases, we also expect to be involved in discussions about recording to mitigate any potential loss and in case we need to attend the site at short notice. There is more information on our role in this process in the section above on [emergency building recording](#).

SCHEDULED MONUMENT REGULATORY WORK

We are the regulatory body for works on scheduled monuments. This means we are responsible for scheduled monument consents and enforcement. This includes consent for works to scheduled monuments in the care of Scottish Ministers, where HES can have more than one role to play.

There are over 8000 scheduled monuments across Scotland, and we work with their owners and occupiers to support their long-term care and protection.

Scheduled monument consents

We're responsible for granting [scheduled monument consent](#) (SMC). SMC is needed when someone wants to do work to a scheduled monument. The Historic Environment Scotland [Scheduled Monument Consents Policy](#) guides our decision-making on this. We follow [our governance and sign off procedures](#) in all our decision-making.

We can also agree a management plan for a scheduled monument, known as a [Section 17 agreement](#). A Section 17 agreement allows people to carry out some types of works for the preservation and maintenance of a scheduled monument without the need to gain SMC each time the works are carried out. There are also some categories of works that can automatically take place under a special type of permission known as [Class Consent](#).

Making our decisions public

We publish information on our website to ensure that our decision-making for scheduled monument consents is transparent. Our [online portal of applications](#) shows the details and supporting documents for all consent applications.

We explain the decisions we take about consents in a report of handling. These are also published on our online portal.

Independent reviews

Our SMC decisions can be reviewed independently by Scottish Ministers in two ways – through appeals and notifications.

Applicants have a legal right to appeal our SMC decisions. Appeals are made to Scottish Ministers through the [Scottish Government's Planning and Environmental Appeals Division](#).

If our [heritage directorate](#) proposes to grant consent for any application which is not the 'minimum necessary consistent with conserving the cultural significance of the monument' then we must notify Scottish Ministers. This process is set out in [The Scheduled Monument Consent \(Notification of Applications\) Direction 2015](#). Scottish Ministers can either return the case to us and we proceed as planned, or they can [recall the application](#) for their own decision.

Scheduled monument enforcement

Where works have been undertaken without consent (referred to as [unauthorised works](#)) we have legal powers to ensure compliance through various enforcement measures. The Ancient Monuments and Archaeological Areas Act 1979 sets out a series of offences specific to scheduled monuments, and it is these breaches of the 1979 Act that we investigate.

We also have a number of powers under the 1979 Act to enable us to carry out our inspection, compliance, and [enforcement](#) roles. Many of these powers of inspection come with notice periods or other restrictions.

In exercising our enforcement duties for scheduled monuments, we place significant emphasis on guidance, support and education in our interaction with landowners, occupiers and land managers. We recognise the challenge that landowners face in caring for our nationally important scheduled monuments.

Our [scheduled monument condition monitoring programme](#) provides targeted management advice to landowners, offering accessible guidance and customer facing support.



We work with Police Scotland and other partner agencies to investigate unauthorised works on scheduled monuments

4. OUR DECISIONS AND ADVICE (CONT)

Crown bodies and departments and agencies of the UK and Scottish Governments do not require **scheduled monument consent**. We operate a parallel non-statutory system for them, known as scheduled monument clearance. We apply the same principles and policies as the **scheduled monument consent** process to this system.

Enforcement activities

When we do take **enforcement** activity, depending on the circumstances we can take a range of approaches, including:

- retrospective consent
- advisory/warning letters
- temporary stop or stop notices
- scheduled monument enforcement notices
- referral to the Crown Office and Procurator Fiscal Service

We are a **specialist reporting agency**, meaning we can refer cases of unauthorised works to the Crown Office and Procurator Fiscal Service where we feel it is in the public interest to do so. Our role as a specialist reporting agency, in tandem with our powers of entry and enforcement, allows us to investigate unauthorised works using procedures similar to the police. We regularly liaise with Police Scotland and other agencies when investigating **unauthorised works**.



Damage to a scheduled monument is a serious offence which can lead to significant fines. This prehistoric burial cairn was damaged during ground works. The responsible party was taken to court and fined £18,000.

4. OUR DECISIONS AND ADVICE (CONT)

Safeguards

We have safeguards in place to ensure that our **enforcement** activity is robust, fair and transparent.

We follow [guidance for specialist reporting agencies](#) published by the Crown Office and Procurator Fiscal Service. We also publish information on our website, including:

- the details of [scheduled monument enforcement notices](#) that we issue
- [guidance on compliance and enforcement at scheduled monuments](#)
- [webpages on scheduled monument consent and enforcement](#)

As well as our internal safeguards, there is a legal right to appeal our enforcement notices. Appeals are reviewed independently by Scottish Ministers.

Our powers of entry require the person exercising them to provide evidence of their right to exercise that power. In most cases proof is provided by official identification cards. A letter signed by the Director of Heritage can be used instead of this. To exercise any power for urgent access requires authorisation from the Director of Heritage.

Applications by Historic Environment Scotland

Scottish Ministers' properties in care

There are over 300 sites of national importance in the care of Scottish Ministers. We are responsible for their maintenance and any works they need. Our **operations directorate** carries out the work on our properties.

Most of these sites are designated as [scheduled monuments](#), so works to them require [scheduled monument consent](#). This means that when our operations or cultural assets directorate want to carry out work, they have to apply for consent. Our heritage directorate is then responsible for assessing and, if appropriate, granting the consent, guided by our [Scheduled Monument Consents Policy](#) as it would for any other applicant.

We also have a management agreement with our operations directorate, which allows them to carry out some types of works for preservation and maintenance without applying for scheduled monument consent each time. This is known as a Section 17 agreement.

Some works to properties in care may need other permissions, such as planning permission or listed building consent. Our operations directorate applies for these from the relevant **decision-maker**, which is usually the **planning authority**.

Other applications for consent

In addition to work on properties in care, we sometimes also carry out works on other scheduled monuments, including metal and mineral detecting consent for geophysical survey. Some of these applications come from within heritage directorate.

Safeguards

We have safeguards in place to ensure that internal decisions for scheduled monument consent are taken in the same way as all applications we receive. Our **planning consents and advice service** within our **heritage directorate** assess and decide internal applications. The colleagues who do this do not form part of the project team for any works proposed by HES.

This area of work also forms part of our audit programme. This ensures that applications affecting properties in our care are handled in the same way as those from all other applicants. Finally, we have a functional separation in place for decision-making. This means that we have clear separation of responsibilities for scheduled monument applications and **enforcement** activity where HES is both the operator and regulatory body.

Occasionally, we may be asked by other areas in HES to review a designation of a site. We treat such requests the same as requests from external bodies.

5. OUR REGULATORY PRINCIPLES

The [Regulatory Reform \(Scotland\) Act 2014](#) emphasises the need for **regulators** to enable and engage in a positive way. We follow the [Scottish regulators' strategic code of practice](#) in delivering all of our services. The code of practice asks regulators to recognise in their policies and practice a commitment to the five principles of better regulation: regulation should be **transparent, accountable, consistent, proportionate and targeted**.

In addition to this code, **Our Principles** describe our focus as a modern, forward-looking, outcome-focused, proactive and enabling regulator:

We are committed to making a positive difference to the historic environment for the people of Scotland. We are also committed to continuously improving the quality and timeliness of our advisory services. We always welcome early engagement and feedback on the work we do.



6. MEASURING OUR PERFORMANCE AND IMPACT

We will regularly assess the impact of our services through:

- annual stakeholder and public surveys with ‘you said, we did’ outcomes
- regular nationwide engagement programmes
- engagement and public consultation about our policies and guidance
- audits examining the effectiveness of our governance and controls in relation to our decisions about scheduled monument consent applications for Scottish Ministers’ properties in care

We also report on our activities and performance regularly. We publish:

- our [Planning Performance Report](#) which provides a range of evidence against our targets and the outcome of what we do, as well as our progress towards delivering service improvements
- information from our scheduled monument monitoring programme
- data and information on [Buildings at Risk](#) and the outcomes of our emergency building recording service
- [case studies](#) published on our website

By working with our partners in the public, private and voluntary sectors, we will also measure how our regulatory and advisory services contribute to the achievement of the multiple National Outcomes in the [Scottish Government’s National Performance Framework](#) and the [United Nations Sustainable Development Goals](#).



7. FURTHER INFORMATION

We consult on new policies, guidance and some designations at www.haveyoursay.historicenvironment.scot

You can find information on designated historic assets and places at portal.historicenvironment.scot You can also comment on current scheduled monument consent and designation applications that are in progress.

You can read what we say about key national plans, policies and strategies on the [external consultations section of our website](#).

There is a range of other information on the legislation and regulations relating to the management of Scotland's historic environment on our website at www.historicenvironment.scot/historic-environment-legislation-in-scotland

GETTING IN TOUCH

We are available to answer any questions that you might have.

For general enquiries, please contact us at HMEnquiries@hes.scot or on 0131 668 8716.

To propose a building for designation, please download an application form from our website: www.historicenvironment.scot/propose-a-building-for-listing

To propose a monument for designation, please download an application form from our website: www.historicenvironment.scot/propose-a-site-for-scheduling

For any other queries about the designation of historic assets and places, please contact us at designations@hes.scot

To appeal against the refusal of scheduled monument consent or conditions attached to a decision notice, please follow the advice on our website: www.historicenvironment.scot/scheduled-monument-consent-process

To appeal against the designation of a listed building or a scheduled monument, please follow the advice on our website: www.historicenvironment.scot/appeal-a-scheduling-decision

To provide feedback or to make a complaint, please view our [complaints handling procedure](#).

Recording archaeological remains during excavations at Iona Abbey, one of the oldest and most important religious centres in Western Europe.



GLOSSARY

building preservation notice

Building preservation notices can be served on owners, lessees and occupiers of an unlisted building which the local authority consider is of special architectural or historic interest and is in danger of demolition or alteration which would affect its character.

buildings at risk

Buildings at risk are properties of architectural or historic merit throughout the country that are considered to be at risk. Buildings at risk are not necessarily in poor condition, they may simply be standing empty with no clear future use or be threatened with demolition.

circular economy

In a circular economy, resources are kept in use for as long as possible, the maximum value is extracted from them while in use and then products and materials are recovered and regenerated at the end of each product's viable life cycle.

consultation authority

A public body that offers advice on the Strategic Environmental Assessment process. In Scotland, the consultation authorities are Historic Environment Scotland, NatureScot and The Scottish Environment Protection Agency.

consultation body

A public body that offers advice on the Environmental Impact Assessment process. In Scotland, the consultation bodies include Historic Environment Scotland, NatureScot, Scottish Water and The Scottish Environment Protection Agency.

cultural assets directorate

HES's cultural assets directorate is responsible for the development of strategy and standards for the sustainable management

of HES Properties in Care, collections and archives.

cultural significance

Cultural significance means aesthetic, historic, scientific or social value for past, present or future generations. Cultural significance can be embodied in a place itself, its fabric, setting, use, associations, meanings, records, related places and related objects. (Australia ICOMOS Burra Charter 2013).

decision-maker

A decision-maker for the historic environment is anyone who has a role or interest in making decisions that might affect it. In this context the term often refers to planning authorities, but it could also mean individuals, public- or private sector organisations, Ministers, communities or developers. The decisions might be about land use, funding, alterations to a building, site or place, or long-term strategies.

enforcement

Enforcement is the process of ensuring compliance with laws, regulations, rules and standards.

environmental impact assessment (EIA)

Environmental Impact Assessment (EIA) is the assessment of the environmental consequences of a plan, policy, programme, or actual projects prior to the decision to move forward with the proposed action.

heritage directorate

HES's Heritage Directorate leads our role in protecting, understanding and sharing information about Scotland's historic environment. This includes providing advice, policy and guidance about the historic environment as well as recognising and protecting our historic places

through survey and recording and designations and consents. The directorate also maintains the National Record of the Historic Environment.

historic environment

The historic environment is the physical evidence for past human activity. It connects people with place, and with the traditions, stories, and memories associated with places and landscapes. (The Historic Environment Strategy for Scotland).

historic environment records

Historic Environment Records (HERs) provide information about historic sites and places of a defined geographic area – normally a local authority. They contain details on local archaeological sites and finds, historic buildings and historic landscapes. This information is regularly updated and is usually held in a database with a digital mapping system.

householder development

Householder development normally covers alterations or additions to private homes within their garden areas that require planning permission.

impact

The effect of changes on the historic environment is often referred to as the impact. This can be neutral, positive or negative. There can be impact on the physical elements of a place or on its setting, if its surroundings are changed so that our understanding, appreciation or experience is altered. Changes in the historic environment can also affect people's associations with a place or its setting, and their responses to it.

GLOSSARY (CONT)

local authorities

Local authorities are administrative bodies in local government. Scotland has 32 local authorities who are responsible for providing a range of public services.

material consideration

A material consideration is a planning issue which is relevant to the application and can include national policy, comments by the public and by organisations the planning authority (or another decision-maker) has consulted, the design of the proposed development, and the effect of the plan on the environment. The decision-maker must decide how important these material considerations are.

mitigation

Mitigation refers to ways in which we can minimise the impact on the historic environment, avoid it, or make it less damaging. Sometimes it is possible to offset the impact, compensating for it through positive actions.

operations directorate

HES's operations directorate is responsible for the operational delivery of all the activity on our sites and much of the day-to-day activity we do in local communities. Its role covers conservation, visitor services, local community engagement, ranger services and asset management.

outstanding universal value

Outstanding Universal Value means cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance to the international community as a whole.

owners and occupiers

Owners and occupiers are people who own, rent, lease or live in or on a designated historic asset. They might live in a listed building, or own or rent the land that a scheduled monument is on.

place

Place can refer to the environment in which we live, the people that inhabit these spaces and the quality of life that comes from the interaction of people and their surroundings. Architecture, public space and landscape are central to this. ([Creating Places: A Policy Statement on Architecture and Place for Scotland](#)).

plan-led

The planning system in Scotland is plan-led. The law says that decisions on planning applications are to be made in accordance with the Development Plan, unless material considerations indicate otherwise.

planning authorities

Planning authorities are responsible for administering the planning system. All local authorities are planning authorities. The Cairngorms National Park and Loch Lomond and Trossachs National Park are also planning authorities.

plans, programmes and strategies (PPS)

In Scotland, public bodies and private companies operating in a public character, such as utility companies, are required to assess, consult on, and monitor the likely impacts their plans, programmes and strategies (PPS) will have on the environment. This process is known as Strategic Environmental Assessment (SEA).

HES's planning consents and advice service

HES's planning, consents and advice service is a team within

our heritage directorate that is responsible for making decisions about works to scheduled monuments and for providing a range of advice in the planning and other regulatory systems.

planning system

The planning system is the process by which local and national government bodies make decisions about how and where development should take place. Change to some designated sites and places is also managed through separate consent regimes.

protocol

The official procedure or system of rules governing affairs of state or diplomatic matters or an agreed way of working together.

regulations

Regulations are rules made by government or other authorities in order to control the way something is done, or people behave. They often explain in more detail how laws should be followed. In the planning system, they give more detail on the processes and rules which planning authorities must follow to ensure a transparent planning system.

regulatory body

A regulatory body is a public organisation or government agency that is required to exercise a regulatory function. This involves imposing requirements, conditions or restrictions, setting the standard for activities, and enforcing in these areas or obtaining compliance.

responsible authority

Any person, body or office-holder exercising functions of a public character (usually public bodies), whose plans, programmes or strategy may qualify for Strategic

Environmental Assessment. This includes government bodies at local and national level.

setting

Setting is the way the surroundings of a historic asset or place contribute to how it is understood, appreciated and experienced.

scheduled monument consent

A non-statutory parallel system to scheduled monument consent, for crown bodies, departments and agencies of the UK and Scottish Governments.

scheduled monument condition monitoring programme

A national programme which

monitors the condition of scheduled monuments and provides management advice to owners and occupiers.

statutory consultee

Statutory consultees are organisations and bodies, defined by law, which decision-makers (often local planning authorities) are legally required to consult in certain circumstances before reaching a decision on relevant planning applications.

strategic environmental assessment (SEA)

Strategic Environmental Assessment (SEA) is a systematic decision support process, aiming to ensure that environmental

and possibly other sustainability aspects are considered effectively in policy, plan and programme making.

sustainable development

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. (World Commission on Environment and Development).

unauthorised works

Unauthorised works are works that have taken place to a scheduled monument without the necessary consents being in place, or without the conditions of consent being met.



Historic Environment Scotland is the lead public body established to investigate, care for and promote Scotland's historic environment.

We are committed to ensuring this publication is accessible to everyone. If you need it supplied in a different format or language including Gaelic, please get in touch.



HISTORIC
ENVIRONMENT
SCOTLAND

ÀRAINNEACHD
EACHDRAIDHEIL
ALBA

Historic Environment Scotland
Longmore House,
Salisbury Place
Edinburgh EH9 1SH
0131 668 8600
historicenvironment.scot

Historic Environment Scotland - Scottish
Charity No. SC045925
Registered Address: Longmore House,
Salisbury Place, Edinburgh EH9 1SH

© Historic Environment Scotland 2023. You may re use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned. All images Historic Environment Scotland.