1. The Scottish Property Federation (SPF) welcomes this opportunity to comment on the proposed Historic Environment (Amendment) (Scotland) Bill, to which we have submitted comments at earlier stages of the preparation process. We are happy for our comments to be made public.

2. The SPF is a representative body for the Scottish commercial property industry and speaks for over 100 corporate members. Included within our membership are commercial property developers, landlords and managers, fund managers, property owners and long term investors in both commercial and residential property. We are an integral part of the UK-wide British Property Federation which represents most of the UK’s largest property investors, developers and professional property industry advisers.

3. According to research published at the end of 2007 the commercial property industry in Scotland was worth some 8.5% of gross value added to the Scottish economy, representing some £7.34bn in 2005. Since the onset of the credit crunch in late 2007 the economic output of the sector has been significantly impaired leading to a fall of some 40% in the value of new construction orders by the commercial property industry in Scotland from 2007 to 2008. Commercial property values in Scotland are also estimated to have fallen by some 40% since their peak in mid-2007.

4. The SPF supports the over-arching intentions of the amending Bill; to improve the management of Scotland’s historic environment and to contribute to sustainable economic growth. We encourage appropriate protection and investment in historic buildings and monuments of significant national importance and recognise that it is important that policy protects and safeguards such buildings.

5. However, there have been previous concerns expressed by our members that the use of listed building powers is not always consistent or is sometimes arbitrary and ineffective. Further, some have suggested that the listing of buildings is an overly complex process and leads to conservation bodies being overly protective of every building, where a more sampled approach may suffice. Overall, we believe that the best possible form of preserving heritage property is to ensure its appropriate continued use and maintenance. This can require the refurbishment and modernisation of some parts of a building in order to preserve its usability.

6. SPF agrees with the aims of this consultation document to improve the protection and management of the historic environment and simplify the legislation. In

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1 GVA Grimley: the role and contribution of commercial property in the Scottish economy, commissioned by the Scottish Property Federation (2007)
2 Annual Construction statistics, then UK Department for Business, Enterprise & Regulatory Reform (2009)
3 Jones Lang La Salle (December 2008)
particular, we are generally supportive of the introduction of Certificates of Immunity (CoI) and the increased certainty for developers and property owners in relation to grants.

7. We welcome the harmonisation of legislation relating to the historic environment and we support much of this policy initiative. However, it will be crucial to understand how certain aspects of the amending Bill will be implemented in practice, such as the removal of the defence of ignorance and enforcement procedures, and we look forward to further guidance being issued.

**Increase clarity on grants and their removal**

8. Members have raised concerns over the proposal by Ministers to state from the outset the amount that they will recover if the conditions of a grant are not complied with. Members point out that this may lead to ambiguity over the status of the grant and concern by lenders that it may be withdrawn. Members suggest that by highlighting the amount that can be withdrawn at the start of the process, could impact on bank funding and the viability of development appraisals.

**Removal of defence of ignorance**

9. SPF recognises the importance of requiring developers to show that they have taken all reasonable steps to ascertain whether there are important historic articles, before embarking on a development. We support the recognition by ministers that this defence cannot be completely removed, as suggested in the earlier consultation, and that there is still potential for developers to show that they have taken reasonable steps to find out whether a scheduled monument is affected by works. SPF welcomes the proposed awareness-raising of these issues and look forward to the additional guidance being produced to assist developers.

**Fines; increases and duty of court in determining the amount**

10. The increase in maximum fine up to £50,000 is considered to be a very significant increase from the previous maximum of £10,000. This is at a time when the development industry is already facing major economic hardship and is considered to potentially be rather excessive. However, we agree with the theory of the fine being set at a scale to act as an appropriate deterrent to illegal development and to bring it into line with other fines for crimes against the environment. However, caution must be taken that this fee is imposed upon the person who is set to make financial benefit from the illegal activity and not other parties.

**Enforcement- stop notices**

11. There is some concern relating to the introduction of temporary stop notices, as there is no definition of an ‘urgent threat’ and this may lead to ambiguity and inconsistency of their use. The fact that these notices can be issued by planning authorities without the requirement for an enforcement notice, has raised questions over their robustness and raised concerns that they may be issued on an ad hoc basis. Members believe that these notices should only be used as a
last resort. Additionally, notices should be accompanied by a detailed guidance advising of the reasons why the notice has been issued and detailed steps of how it can be appealed.

**Greater flexibility on grants and loans**

12. We recognise that the Bill is largely intended to amend existing legislation and practice, offering greater clarity and certainty to businesses and public authorities about the intention of government policy and the process of protecting heritage property (and monuments). Our members welcome this greater clarification and direction in relation to grants. We support the increased powers and flexibility given to the Scottish Government to issue grants and loans to stimulate appropriate development of the historic environment.

**Certificates that building is not intended to be listed**

13. Our members broadly agree with the introduction of certificates of immunity for listed buildings, as if used appropriately we believe that they can deliver greater certainty to landlords and developers considering a particular building project. Given the relatively small cost, we feel that that this proposal should therefore be supported. However, we would like to see further certainty in relation to any potential costs and projected timescales for approving CoI requests and greater detail of how the applications will be assessed. We acknowledge that immunity is not guaranteed and therefore, members will only apply after very careful consideration. Additionally, we believe that greater clarification is required to define what ‘urgent cases’ would receive temporary listing, as this statement has the potential to reduce the benefits of CoI, if it can be invoked at any time.

14. We note from the policy memorandum accompanying the Bill the intentions for the Bill to benefit the development industry. However, one key change to CoI’s from the previous consultation that has been drawn to our attention, relates to Section 18 where it is proposed that any person can apply to Scottish Ministers for a certificate for a building not to be listed for a period of five years, without having to notify the owner, occupier or tenant. Members are concerned that one of the unintended effects will be that third parties will be able to request a listing for buildings outwith their ownership, which will lead to the historic buildings being subjected to lengthy and rigorous assessments and result in development being significantly delayed. Further, there is concern that buildings that do not attain a COI will be automatically listed by Scottish Ministers. Thus, applications for CoIs may not be made for the purposes set out by the Bill Guidance.

15. It is suggested in fact that CoIs will provide an opportunity for hostile third parties to delay or derail a proposal, without the developer being aware. Therefore, SPF believes that this point should be revised and reworded, so that those who are entitled to apply for a certificate is restricted to the owner or some other person with a legal interest in the building (i.e. a consultant on behalf of an applicant). It would also be helpful if there is an agreed timeframe for Scottish Ministers to issue the certificate or determine otherwise.
16. It is acknowledged that CoIs have operated in England over a number of years. However, they have not been deemed to be straightforward benefit for developers, due to the high level of scrutiny and process involved. This may explain the relatively small numbers of applications that have been made in England (e.g. 20 applications in 2008).

17. Overall, SPF is broadly supportive of the amending Bill and its aims of simplifying legislation and improving consistency of policy in relation to the historic environment. The Scottish Property Federation would be pleased to explain our comments in greater detail at your convenience.

Naomi Cunningham
Policy Officer
20 August 2010