Introduction

1. The SRPBA is a membership organisation, uniquely representing the interests of landowners and land managers in Scotland. Our membership includes those who own or manage listed buildings or rural land on which ancient monuments are sited, as well as professional firms who advise rural landmanagers. We believe that the Association and its membership are key stakeholders and therefore the SRPBA welcomes the opportunity to comment on the content of this Bill.

General Comments

2. The SRPBA believes that the education and awareness raising programme to be carried out as part of the Bill process is to be applauded. However, the Association feels that some issues of clarity relating to the legislation should be dealt with in primary legislation rather than through guidance or advice.

3. The SRPBA has appreciated the increased engagement carried out by Historic Scotland during the development of the Bill, and accepts that many of the issues raised by the Association during the draft Bill consultation have been addressed either through changes to the provisions or through assurances in relation to the content of guidance and/or the education programme.

4. Although the Bill does address some of the problems with the current legislation, there are issues in the wider heritage environment which must be addressed. These include lack of definition of curtilage, need for consistent guidance and the approach to siting of developments in relation to scheduled monuments. The SRPBA appreciates that these may not be dealt with through primary legislation but would like a commitment from Historic Scotland that such problems will be addressed.

5. The SRPBA is supportive of the general principles of the Bill but does have a few specific concerns—

6. One of the areas that concerns the SRPBA is the application of the legislation to land covered by an agricultural tenancy. We have discussed this at length with Historic Scotland and are comfortable that they now have an increased awareness of the issues, particularly in relation to notification and enforcement. We are pleased that Historic Scotland has committed to working with the SRPBA and others to raising awareness across the agricultural sector of the impact of the provisions as well as ensuring that all parties are aware of all legislation and good practice in this area. We do feel that specific guidance must be provided to the agricultural sector – including contractors, and looks forward to progressing this with Historic Scotland.
Section 9 – Financial support for preservation of monuments
7. The SRPBA strongly supports this proposal.

Section 10 – Power of entry on land where monument is at risk
8. The SRPBA is heartened that Historic Scotland has confirmed that compensation for damage caused by exercising the new power will be covered by section 46 of the 1979 Act. We are also pleased that the policy memorandum states that best efforts will be made to contact the owner or occupier of the land prior to exercising this right of entry. However, we do not feel that this commitment is reflected in the legislation.

Section 11 – Inventories of gardens and designed landscapes and of battlefields.
9. Whilst the SRPBA thinks it is laudable to create an inventory of battlefields, we do think that there are practical problems. In a significant number of cases, no known physical evidence of the battlefield exists and its exact site and the extent of the site is unclear. In these cases, an inventory may cause unreasonable restriction on land use.

Section 14 – meaning of monument in the 1979 Act
10. The SRPBA remains opposed to the widening of the definition of monument to include ‘any site comprising any thing, or group of things, that evidences previous human activity.’ We fully support the objectives behind the proposal but believe that widening the definition in such a wide and vague manner is not an appropriate approach to ensure that a very small number of sites that do not currently fall within the statutory definition would be covered by legislation. We have suggested to Historic Scotland that if a wide definition is required then perhaps the provision should be amended to ‘any site comprising any evidence of human settlement or industry.’ However, the SRPBA maintains that the most appropriate approach would be to list the limited circumstances under which scheduling could happen, which do not fall within the current definition, and also include a power for Scottish Ministers to add to this list at a later date. The SRPBA contends that experience has shown that wide or vague provisions can result in unintended consequences.

Section 18 – Certificate of Listing
11. Whilst the SRPBA supports this in principle, we do have a number of specific concerns. Firstly, we do not feel that it is appropriate that ‘any person’ can apply to Scottish Ministers for a certificate for a building not be listed for a period of five years, but rather believe that this right should only be available to those with an interest in the building. This ‘interest’ would need to be defined in the legislation. Secondly, clarity is still required on the extent of the certificate. If an estate with multiple buildings was being sold and the purchaser required a certificate of immunity as a condition of sale, would the seller be required to obtain a separate certificate for each building?
12. Thirdly, clarity is also required on the notification process in relation to the certificate application. Will an owner be advised of any application and will he be given the opportunity to make representation or indeed appeal? We agree that this may only be required in a limited number of cases but the owner of the property must surely have a right to be involved in the process.

Section 25 – Liability of owner and successors for expenses of urgent works
13. The SRPBA supports the comments made by the Law Society.

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