



HISTORIC SCOTLAND
ALBA AOSMHOR

Equality Impact Assessment Report

Scheduling sites and monuments of national importance

Historic Scotland
18 June 2015

Equality Impact Assessment Report

Title of policy/ practice/ strategy/ legislation etc.	Scheduling sites and monuments of national importance
Minister	Fiona Hyslop, Cabinet Secretary for Culture, Europe and External Affairs
Lead official	Barbara Cummins, Director of Heritage Management
Officials involved in assessment	Alasdair McKenzie, Heritage Management Team Leader Karen Robertson, Senior Research Manager
Directorate / Division:	Historic Scotland, Heritage Management
Is this new policy or revision to an existing policy?	Review of existing policy and practice – ‘Scheduling process’

1. Background and what prompted this EqlA

Equalities Impact Assessment (EqlA) is a process to help consider how our activities, functions, services or processes may impact, either positively or negatively, on different sectors of the population in different ways.

This assessment has been prompted by a petition under consideration by a Scottish Parliamentary Committee: *PE01523 – Give the Tinkers' Heart of Argyll back to the Travelling People*. One of the issues arising as part of the petition process is the way in which sites and monuments come to be designated as being of national importance – known as ‘Scheduled Monuments’. The monument under consideration by the committee, called Tinkers’ Heart, is primarily associated with the Gypsy/Traveller community. We have also taken this opportunity to review our designation processes more generally, as part of our preparations for the creation of Historic Environment Scotland¹ (HES). This focuses on the scheduling process for monuments and the listing process for historic buildings.

What Gypsy/Traveller means

Scottish Gypsy/Traveller is the term used by the Scottish Government to refer to an indigenous, nomadic ethnic minority whose history has been entwined with, but distinct from, that of the wider Scottish population for many centuries. This term is not necessarily adopted by the travelling community itself. However, using the term ‘Gypsy/Traveller’ in this context acknowledges that Gypsy/Travellers are not a single group. For example, it refers to Scottish Gypsy/Travellers, Irish Gypsy/Travellers, English Gypsy/Travellers and Roma. Although there are cultural similarities between these groups, including a history of travelling, they are all different. These ethnic groups do

¹ The merging of Historic Scotland and the Royal Commission on Ancient and Historical Monuments of Scotland is planned to take place on 1st October 2015. This will result in the creation of ‘Historic Environment Scotland’.

not include occupational or new age travellers, such as showpeople. Those outwith the Gypsy/Traveller community are often referred to as the 'settled community'.

2. Screening

What is a scheduled monument?

A scheduled monument is a site of national importance that Scottish Ministers have given legal protection to under the Ancient Monuments and Archaeological Areas Act 1979. The legislation allows for an 'ancient monument' to be 'of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it.' Examples of such monuments include prehistoric burial mounds, Roman camps, and World War II defensive sites. On 31 March 2015 there were 8194 scheduled monuments in Scotland².

Aim of the scheduling process

The process by which monuments are designated is called 'scheduling'. The aim of scheduling is to preserve sites and monuments of national importance as far as possible in the form in which they have come down to us today. The protection of sites and monuments of national importance contributes to a range of Scotland's National Outcomes³, particularly our ability to '*value and enjoy our built and natural environment and protect it and enhance it for future generations*'.

Benefits of the scheduling process

The main purpose of scheduling is to identify, recognise and preserve nationally important monuments, as far as possible in the form in which they have come down to us, for the benefit of current and future generations. The preservation of sites and the activities associated with scheduling can lead to a range of other benefits, including the investigation and discovery of new information about our past. Scheduling also recognises and can highlight to current and future generations the importance of a site, monument or place. In doing so, scheduling can be a 'springboard' for beneficial education and research activities. Overall, we expect scheduling to have long term positive benefits both for the monument and for all involved: raising public awareness of important aspects of our heritage and helping to ensure that our most important monuments survive into the future.

It is important to acknowledge, however, that scheduling is not the sole means of achieving such benefits. Indeed, the vast majority of historic environment assets in

² Historic Scotland Data Service (<http://data.historic-scotland.gov.uk/pls/html/db/f?p=2300:10:0>) [accessed 31/03/2015]

³ Scottish Government National Outcomes (www.scotland.gov.uk/About/Performance/scotPerforms/outcomes) [accessed 25/02/2015]

Scotland (comprising around 285,000 unique records⁴) are valued, researched and recognised despite not having been designated as nationally important.

What might prevent the desired outcomes being achieved?

The scheduling process can encourage collaborative working between a range of bodies, groups and individuals to look after monuments. For example, once scheduled, HES might provide grant support and consent for conservation works to a scheduled monument by an amenity group with encouragement from the landowner. A lack of such collaborative working or not making effective use of the skills, experience and resources of all parties to look after scheduled monuments would be a key barrier to the delivery of the aims underpinning the scheduling process. The same barriers can however also apply to monuments that are not scheduled.

Who does the scheduling process affect?

The scheduling process affects those who own or manage sites or monuments which are scheduled as well as other people who benefit from, or have an interest in, the protection and management of such assets. These people might be grouped in various ways, but will typically include landowners, occupiers, tenants, neighbours, local authorities, business groups, heritage professionals and enthusiasts, and the wider public.

Relevance of equality issues

The first stage in our assessment involved identifying and ‘screening’ for equality issues. Our screening exercise considered the impact of the scheduling process on people who share protected characteristics⁵ such as their age, disability, sex, gender identity, sexual orientation, race, religion or belief. These are the groups of people that are protected by law in the *Equality Act 2010*.

The monument which prompted this assessment, known as Tinkers’ Heart, was considered for scheduling and a decision was taken by Historic Scotland in November 2012 that it did not meet the criteria for national importance⁶. We were subsequently called upon to consider whether protected characteristics, specifically those relating to Race⁷ (Gypsy/Traveller Community) was a consideration in our decision making process to not designate Tinkers’ Heart as a monument of national importance. This had not been the case.

⁴ Approximately 93% of records held on Canmore (308,000 in March 2014) (www.historic-scotland.gov.uk/shear-2014-main-report.pdf) [accessed 31/03/2015]

⁵ (www.equalityhumanrights.com/private-and-public-sector-guidance/guidance-all/protected-characteristics)

⁶ In relation to the Scottish Historic Environment Policy (www.historic-scotland.gov.uk/index/heritage/policy/shep)

⁷ This protected characteristic refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origin.

This is not unusual as in general, equality impact assessments are normally undertaken during the development of new or existing plans, policies or strategies, or where there is a proposed change to an existing service or process. While the scheduling process has been in operation for many years, it has not been subject to an EqIA in the past. As such, we recognised that there has been no specific consideration of the potential impacts of its operation with regard to the protected characteristics in the equality legislation.

Screening conclusion

In light of the matters raised in response to the scheduling proposal for Tinkers' Heart and its related Parliamentary Petition we took the view that there was merit in assessing the potential for direct and indirect discrimination to occur as part of the scheduling process. We therefore set aside our original decision regarding Tinkers' Heart and decided to undertake an EqIA of the scheduling process as part of our reconsideration of the case. This decision was made in the knowledge that any findings would go on to inform future scheduling decisions. Additionally, this EqIA has and will continue to be used to help inform future assessments undertaken in the support of the creation of the new lead body for the historic environment, Historic Environment Scotland.

Framing the assessment

The next stage of our assessment involved what is known as a 'framing exercise'. This involved considering the potential positive and negative impacts for people who share protected characteristics (e.g. gender, age, disability, race). We also examined issues surrounding the Scottish Gypsy/Traveller community, drawing upon evidence provided as part of the Parliamentary Petition process [[PET 01523](#)⁸], the Scottish Government's Equality Outcomes and Mainstreaming Report⁹ and its underlying data, as well as the emerging Scottish Government Gypsy/Traveller Strategy¹⁰.

The framing exercise also involved reviewing the scheduling process, both in terms of the legislative requirements and operational policy (published guidance) and its application.

Extent/Level of EqIA required

The conclusion of the framing exercise was that, in order to ensure that no direct or indirect discrimination forms part of the scheduling process and our reassessment of this particular decision, both the decision making framework and its application should be considered. However, the framing exercise also identified the need to take a sequential approach. As such, we decided to first look at the framework within which the scheduling of monuments occurs (the policy/criteria), followed by the application of that framework in practice.

⁸ www.scottish.parliament.uk/GettingInvolved/Petitions/PE01523 [accessed 25/02/2015]

⁹ www.scotland.gov.uk/Publications/2013/04/2397 [accessed 25/02/2015]

¹⁰ www.scotland.gov.uk/Topics/People/Equality/gypsiestravellers [accessed 25/02/2015]

We also considered which protected characteristics were of most relevance to the scheduling process and concluded that, in the first instance, we would assess implications for all. However, in view of the specific circumstances of the Tinkers' Heart case, we have also undertaken a detailed consideration of issues relating to Ethnicity and Identity (Gypsy/Traveller). The final stage of our assessment involved applying the findings we had identified in tandem with a fresh appraisal of Tinkers' Heart. The three-stage methodology can be summarised as:

- **Stage 1: the framework for the scheduling of monuments**
- **Stage 2: the application of the scheduling process**
- **Stage 3: the Tinkers' Heart case**

3. Data sources and consultation

Our assessment involved reviewing published material relating to the scheduling process in conjunction with available data on groups of people who share protected characteristics. We also held a public consultation on Tinkers' Heart and reviewed information submitted as part of the Parliamentary Petition as well as opinions expressed on social media. In addition to this, we met with members of the Scottish Gypsy/Traveller community and spoke with equality groups who work with this community and other ethnic minorities in Scotland.

A summary of data sources and evidence gathered is set out below, with further information on these available within the Equality Impact Assessment Record (published separately).

Published sources

- [Scottish Government Equalities and Mainstreaming Report](#)
- [Scottish Government National Outcomes](#)
- [English Heritage Protection Designation – Public Attitudes Survey](#)
- [Scottish Household Survey 2012 and 2013](#)
- [People and Culture in Scotland, Scottish Householder Survey 2013 Report](#)
- [Scotland's Historic Environment Audit 2014](#)
- [Ancient Monuments and Archaeological Areas Act 1979](#)
- [Scottish Historic Environment Policy](#)
- [Gypsy/Travellers in Scotland – Statistical Data](#)
- [Petition PE01523: Give the Tinkers' Heart of Argyll back to the Travelling People](#)

Primary data collection & public engagement

- Online, radio, social and print media news articles
- Consultation regarding the Tinkers' Heart (over 12 weeks)
- Discussions with equality groups
- Discussions with members of the Scottish Gypsy/Traveller community

4. Assessment summary

Public awareness and scheduling priorities

While there is a great deal of published information available on the scheduling process and heritage management more generally, there is limited information on how widely scheduling is understood by our customers¹¹. There is also a lack of awareness, particularly amongst some minority communities, of the opportunities available to engage with culture and the historic environment. In addition, the effect that the scheduling process has on people who share protected characteristics is difficult to gauge as we do not routinely collect information regarding the demographics of our customers.

In terms of what is prioritised for designation, although the public generally trusts the authorities to identify themes on their behalf, when asked to identify these themselves, there were contrasting views regarding what was considered to be of national importance. For example, there can be division amongst socio-economic groups relating to the emphasis placed on personal, local and regional cultural significance in the national context. Evidence gathered from Gypsy/Travellers provided a clear sense of pride in their culture, and disappointment and frustration of how little this is understood by the general population and recognised by authorities. It is also clear that Tinkers' heart and the campaign to have it scheduled has in some respect become a symbol of Travellers' wider frustration at lack of public awareness and appreciation of their culture. This issue goes well beyond the designation processes, affecting public policy making more generally.

Consultation and engagement

At present, any consultation is routinely undertaken with owners and other interested parties. There is no public consultation for new or revised scheduling proposals and consultation is undertaken with landowners and occupiers as a matter of courtesy and in recognition that scheduling is a statutory process that they need to be aware of. This focus by Historic Scotland upon existing relationships and partners across the historic environment sector could fail to identify the wider range of information relevant to under-represented heritage. This approach could exclude people who share protected characteristics and the public as a whole from the decision making process. In particular, we have identified that the way in which we gather associative information about certain sites and how we value that information could be strengthened. As part of this, we have recognised that in some cases wider participation in the scheduling and listing processes, as well as using different methods of engagement, may be necessary depending on the types of sites involved and its associations with different groups of people. However, a proportionate approach should be taken in circumstances where it is reasonable to

¹¹ Customers in this context can be defined as any person or organisation who make use of, benefit from or interact with the services provided by Historic Scotland.

expect that wider engagement in the scheduling process would be beneficial.

Expectations and relationships

While some groups of people will have different expectations of the scheduling process and there may be misconceptions of its implications, there is no evidence to suggest this is unique to those who share protected characteristics. In addition, with respect to such characteristics, we have not identified any examples of cases where scheduling has affected relations between groups i.e. where one group's interests have been prioritised over another's. Evidence gathered as part of this assessment and related evidence gathering would indicate that Tinkers' Heart appears to be an exceptional case.

Identifying cultural significance and national importance

Identifying associative significance is challenging; it depends on many factors, including the availability and quality of information relating to a monument, some of which may not be in the possession of Historic Scotland, Royal Commission on the Ancient and Historical Monuments of Scotland or the relevant Local Authority. There may be some rare cases where a lack of information and appreciation of the significance that ethnic minorities (and other groups of people) give to particular monuments is not sufficiently understood using traditional methods of research. Additionally, perceptions of what should be deemed to be 'nationally significant' varies between and within various groups of people, cultures, and geographic areas. For example, we identified that ethnic minority groups are more likely to place greater value on monuments (and buildings) that are traditionally considered to be of 'local' importance.

Evidence from other studies regarding cultural significance assessment would suggest that, in practice, historic and aesthetic values tend to override others, such as social value. This tends to be caused by the familiarity and relative simplicity of classifying archaeological, historic and aesthetic values and because there tends to be an emphasis on academic authority. In light of these and other factors, the scheduling process may be prone to indirect discrimination if too much weight is attached to a particular value at the expense of others. However, this is counterbalanced by the general nature of the national importance 'tests', as well as the ability to make a positive determination on the basis of only one value.

5. Recommendations

In light of the above findings, the following recommendations have been made:

A. Identifying designation cases which might raise equalities issues

1. Ensure that future reviews of the criteria for scheduling and listing take account of equalities issues and the interests of people who share protected characteristics.
2. Ensure that equalities issues and the concerns of people who share protected characteristics are addressed explicitly in any future public consultation about designation priorities or any revision of Scottish Historic Environment Policy, in line with the Equalities Act 2010.
3. Review operational procedures for how we identify associative significance as part of the scheduling and listing processes and how we balance associative values with other factors. As part of this, define those circumstances when wider public engagement might be desirable to ascertain associative significance, particularly with groups who share protected characteristics. This may involve the use of different methods of engagement.

B. Wider work of HES: Engagement and consultation

4. Consider and identify ways in which Historic Environment Scotland can better involve people who share protected characteristics, and the wider public, in both shaping and informing the work we do.

C. Gypsy/Traveller culture

5. Highlight key challenges faced by the Gypsy/Traveller community in Scotland today through internal staff training sessions.
6. Circulate recent Gypsy/Traveller planning guidance to staff involved in heritage management and related services in Historic Environment Scotland.
7. Circulate findings of this assessment to staff.

Historic Scotland
Longmore House
Salisbury Place EH9 1SH
www.historic-scotland.gov.uk