



# Historic Environment Scotland: Principles and practice for designation

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**DRAFT FINAL VERSION FOR EXTERNAL CONSULTATION**

# Principles and practice for designation

*‘Scotland’s historic environment is the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand.*

*Scotland’s historic environment is intrinsic to our sense of place and strong cultural identity. It is diverse, but collectively it tells the story of our shared past. It is important in its own terms, providing key evidence of the lives and creativity of our forebears. It also helps to create a sense of place, identity and physical and social wellbeing, and benefits the economy, civic participation, tourism and lifelong learning. It is dynamic and ever-changing and that dynamism lies at the heart of the need for sound principles of stewardship.’*  
(Our Place in Time)

## Introduction

This document sets out the principles and practice used by Historic Environment Scotland (HES) when we designate historic sites and places at the national level. It supports the Historic Environment Policy, *Our Place in Time*, the Scottish Planning Policy (SPP) and National Outcomes. It replaces policies and guidance on designation previously published in the Historic Environment Scotland Policy Statement 2016.

Through designation, we seek to ensure that the cultural, social, environmental and economic value of Scotland’s historic environment makes a strong contribution to the development and wellbeing of the nation and its people.

## What is designation?

Designation is the legal recognition and protection of some of our most valued historic sites and places. It ensures that they are protected by law through the planning system and other regulatory processes. The level of protection and how a site or place is managed varies depending on the type of designation and its laws and policies.

Legal protection of our built environment began in 1882 with the designation of ancient monuments. In the 1950s, listing of historic buildings began. Other types of designation followed: conservation areas, world heritage sites, the inventory of gardens and designed landscapes, the inventory of historic battlefields and historic marine protected areas.

The law sets out that HES can designate sites and places as long as they meet certain legal requirements. These requirements are brief, so we have developed the following principles and practices to help HES in deciding what can be designated.

They have been developed using research and consultation, taking into account previous policy documents about how the historic environment should be recognised and protected. This includes the Historic Environment Scotland Policy Statement (2016), which published the designation criteria.

## Historic Environment Scotland's role

We are responsible for designating sites and places at the national level. These national designations are:

- **Scheduled monuments**
- **Listed buildings**
- **Gardens and designed landscapes**
- **Historic battlefields**

Local authorities are responsible for designating areas of special architectural or historic interest as **conservation areas**. By law, Historic Environment Scotland may also designate conservation areas, but we would only consider doing so in the most exceptional circumstances.

We make recommendations to the Scottish Government about **historic marine protected areas**, and the Scottish Government decides whether to designate.

Designation of **World Heritage Sites** is by UNESCO, who inscribe them on the World Heritage list. Nominations are put forward through the UK Government. HES, on behalf of Scottish Ministers, advises parties preparing their nominations, once those parties have secured their site a place on the UK Tentative List.

## Principles and practice

We apply the following principles to designation decisions:

- Knowledge and information about the historic environment is critical to the understanding of our past, present and future. Such knowledge informs our understanding of the cultural significance of a site or place, and is fundamental to designation.
- A wide range of values can contribute to the cultural significance of a site or place – aesthetic, historic, scientific, social or spiritual value – for past, present or future generations.
- The historic environment changes over time, and so does our understanding and appreciation of it.
- Designation should enhance our knowledge of a site or place and help to make this understanding accessible.

- To ensure that the special characteristics of sites and places are protected, conserved or enhanced in a sustainable way, their significance and the significance of elements within them should be understood.
- Good decisions are transparent, robust, consistent and proportionate.

We apply these principles in the following ways:

- We will consider for designation all aspects of our historic environment which have been created by people.
- Designation will take account of the diversity of Scotland's historic environment
- Designation is an ongoing process, as every generation will have its own view of what comprises its heritage.
- Designation will recognise that Scotland's sites and places are valued in different ways by individuals or groups of people.
- We will base our decisions on an up-to-date understanding of the cultural significance of sites and places, and on the best available evidence.
- We aim to increase participation in our decision-making. Designation decisions are normally made with the participation of those affected by, likely to be affected by or having an interest in the decision-making.
- Our decision-making is open and transparent, and will be applied in a consistent way.
- Designation decisions will be explained in clear language with accessible information.
- The purpose and implications of designation will be considered in our decision-making. This will include considering whether designation is the best mechanism for recognising the cultural significance of a site or place; and if so, which designation(s) are most appropriate for its future management.

## How we do our work

Our priorities for designation are:

- Providing an up-to-date understanding of sites or places by responding to external designation requests.
- Prioritising designation projects which address gaps in our understanding of sites or places.
- Developing partnerships to ensure better designation outcomes by planning and undertaking our projects with the participation of stakeholders.
- Improving our designation records to aid decision-making about potential change to designated sites and places.

We carry out designation by:

- adding, reviewing, amending and removing designations;
- responding to external requests to add, review, amend and remove designations; and

- making minor changes to existing designation records.

Any person or organisation can request:

- a site or place to be designated;
- an existing designated site or place to be reviewed;
- an existing designation to be removed;
- minor changes to designation records; or
- for buildings only, a Certificate of Intention Not to List (COINTL).

Requests can be made using our [application form](#).

## How we assess sites and places

Each site or place is assessed individually, using the selection guidance for each designation in Annexes 1–6. These explain what we take into account in our assessments of cultural significance.

Our assessments may involve a site visit, and will aim to make use of the best available evidence.

In deciding whether to proceed with an assessment for designation or a review of an existing designation, we consider whether there are development planning and other regulatory processes that affect the site or place (see **Development proposals and designation**).

We will not take forward a designation assessment when, following an initial consideration,

- it is found that a site or place is unlikely to meet the designation criteria;
- designation is considered unlikely to be the best mechanism for recognising and protecting the cultural significance of a site or place; or
- there is a Certificate of Intention Not to List in place.

In some circumstances, we may decide not to assess a site or place. This is usually because there are development proposals at an advanced stage.

We encourage participation in our decision-making, to include shared knowledge and local understanding. Once we have undertaken our assessment, but before taking a decision to designate, we set out our reasoning in a report of handling and publish this online.

We normally consult with those directly affected, including the owner, occupier or tenant and the local authority. We also welcome views from interested persons or groups through consultation. We are primarily concerned with views that relate to the cultural significance of the sites or places. We also consider comments on the purpose and implications of designation.

A consultation period normally lasts 21 days. For historic marine protected areas, the consultation period is normally 12 weeks. However, the scope and level of participation in the decision-making will be appropriate to the circumstances of the case.

## Development proposals and designation

In carrying out designation work, we will act proportionally in line with the Scottish Regulators' Strategic Code of Practice. This code expects that the functions we fulfil are transparent, accountable, consistent, proportionate and targeted where needed.

In practice, this means that we aim to avoid creating an unnecessary burden in the planning process or other regulatory processes where there are development proposals by adding a new designation. This also extends to reviewing existing designations.

We consider the individual circumstances of each case. In deciding whether or not to designate a site or place or amend an existing designation while there are ongoing development proposals or enforcement, we will consider:

- the extent to which plans have been developed for the site or place – where these are particularly advanced, we will not normally list or schedule; and
- the implications of designation of a site or place on ongoing development proposals.

Where it is highly likely that the site or place no longer meets the designation criteria, we may consider removing the designation to avoid unnecessary regulatory processes, even though there are unresolved development and/or enforcement issues.

We encourage early engagement with the designation process. Local authorities and interested parties are encouraged to:

- request a review of an undesignated site or place before development proposals are advanced. If a site or place is not designated, it does not necessarily mean that it does not merit designation. Many sites or places have not been assessed, recently or otherwise, and this should be taken into account.
- request a review of an existing designation before development proposals are submitted if the designation has not been reviewed for some time.
- request a review of an existing designation if it appears that it may no longer meet the criteria for designation. Where we have reviewed designated sites and places and found they no longer meet the designation criteria, these designations will normally be removed.

Local authorities may consider serving a Building Preservation Notice (BPN) when the usual designation application route for a listed building is not appropriate – for instance, when development proposals are well advanced.

## Our decisions

We aim to make our decisions in a timely manner and work to published service standards. A typical listing or scheduling case may take up to six months to complete; however, timescales will depend on the complexity of the request. Inventory cases will typically take up to nine months. Historic Marine Protected Areas can take longer.

After we have taken our decisions:

- We are required by law to notify owners, occupiers, tenants and local authorities affected by our decisions to add, amend or remove a designation.
- We do not normally notify people about minor changes to designation records, and we normally only notify the local authority when we remove designations from sites and places that no longer exist.

Anyone can ask us to review a designation decision. We will review our decisions if we receive relevant new information which was not available when we made our original decision. Requests can be made using the designation application form.

Decisions to designate listed buildings and scheduled monuments, or to amend existing listed buildings and scheduled monuments, can be appealed to Scottish Ministers. Appeals are determined by the Planning and Environmental Appeals Division (DPEA).

There is no statutory right of appeal for the following:

- Delistings or deschedulings
- Decisions not to list or schedule
- Any change to the inventory of gardens and designed landscapes
- Any change to the inventory of historic battlefields
- Historic marine protected areas

## Other forms of recognition

There are many sites and places which do not meet the criteria for national designation, but which are valued by individuals and communities. National planning policy promotes the care and protection of the designated and non-designated historic environment.

There are local designations which recognise areas of special architectural or historic interest (**conservation areas**) and locally important landscapes (**Local Landscape Areas**). Other sites and places are identified within local authority historic environment records or sites and monument records. These are an important tool for managing the historic environment by supporting local development plans and the determination of planning applications. Sites and places can also be given prominence through survey, recording and commemoration, by inclusion in online

records such as the National Record of the Historic Environment (<https://canmore.org.uk/>) and by commemorative plaques.

We encourage people and communities, local authorities and other decision-makers to work together to consider new ways to recognise sites and places which are important to them. We encourage local authorities to take into account undesignated historic assets in their decision-making, and to develop policies and guidance to reflect this.

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# Annex 1: Scheduled Monuments

## How we decide if a site is of national importance for designation as a scheduled monument

### *Introduction*

1. Scheduling is the process of assessing nationally important monuments for designation under the Ancient Monuments and Archaeological Areas Act 1979. Monuments range from artefact scatters of the earliest peoples to medieval churches and castles to more recent sites such as the remains of 20th-century wartime defences.
2. There are many thousands of archaeological and historical sites and places in Scotland. To be scheduled, a site must be of '**national importance**' as set out in Section 1(3) of the 1979 Act.
3. The primary purpose of scheduling under the 1979 Act is the preservation of, and control of works on, monuments, the survival of which is in the national interest. The intention is to preserve as far as possible the characteristics that make a monument nationally important, and to pass these on to future generations.
4. Designating a site or place as a scheduled monument recognises that its cultural significance is at a national level. The cultural significance of a monument can be found in its artistic, archaeological, architectural, historic or traditional interest (factors listed in the 1979 Act) as well as aesthetic, scientific or social interest.
5. Most works on scheduled monuments require permission from Historic Environment Scotland. This is called scheduled monument consent.
6. Scheduled monument consent is required for any works that would demolish, destroy, damage, remove, repair, alter or add to the monument, or to carry out any flooding or tipping on the monument. Consent under Section 42 of the 1979 Act is also required to use a metal detector within a scheduled monument. It is a criminal offence to carry out any of these works without consent.

### *What scheduling covers*

7. A scheduled monument is a monument which is included in the Schedule (Section 1(11) of the 1979 Act). The definition of a monument is broad and includes any of the following as set out in Section 61(7) of the 1979 Act:
  - a) any building, structure or work, whether above or below the surface of the land, and any cave or excavation;
  - b) any site comprising the remains of any such building, structure or work or of any cave or excavation; and
  - c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part thereof which neither constitutes nor forms part of any work which is a monument within paragraph (a) above;
  - d) and any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled and

- e) any site (other than one falling within paragraph (b) or (c) above) comprising anything, or group of things, that evidences previous human activity.

The site of a monument includes not only the land in or on which it is situated but also any land comprising or adjoining it which is considered to be essential for the monument's support and preservation (Section 61(9) of the 1979 Act).

- 8. The law prevents dwelling houses and places of worship from being scheduled, although the land beneath them can be.

### **Scheduled monument records**

- 9. An entry in the schedule consists of a written description describing the monument, its location, the extent of the scheduled area and any exclusions, and a map depicting the scheduled area. The legal part of the scheduled monument record is the description and map.
- 10. The format of the entry in the schedule has changed over time. Earlier records have very brief descriptions, and the mapping will not be to current standards. Recent entries have fuller descriptions and a digitally created map depicting the scheduled area at an appropriate scale. These have accompanying reports of handling which explain how the monument meets the scheduling criterion.

### **How we schedule**

- 11. We schedule monuments of national importance. This guidance is a framework for making decisions on scheduling. Monuments are assessed on their own merits and individual decisions are made in each case.
- 12. The extent to which a monument survives is a consideration when assessing national importance. However, the present condition of those surviving remains is not a factor when deciding whether to schedule or not.
- 13. The rarity or otherwise of a monument type will be a factor in considering national importance. The rarity of some monument types is such that all surviving examples that retain some remains will be of national importance. For more common monument types, a selection may be made of those monuments which best represent the characteristics of the monument type.
- 14. Understanding rarity should take account of the distribution of particular types of monument, where relevant. A monument that is rare in one area of Scotland may be of national importance, but in another area where such sites are more common, it may not be.

### **Selection guidance for determining national importance for scheduled monuments**

- 15. The legal definition of a scheduled monument is that it is of national importance. When assessing a monument for scheduling we consider if its cultural significance, as understood in its historic, archaeological, artistic, architectural, traditional, aesthetic, scientific, and/or social interest, is of national importance.

16. Cultural significance can be found in the intrinsic, contextual and/or associative characteristics of a site or place.
- Intrinsic characteristics – how the remains of a site or place contribute to our knowledge of the past
  - Contextual characteristics – how a site or place relates to its surroundings and/or to our existing knowledge of the past
  - Associative characteristics – how a site or place relates to people, events, and/or historic and social movements
17. For a monument to be of national importance, it must be one or more of the following;
- It makes a significant contribution to our understanding or appreciation of the past, or has the potential to do so. It may do so in itself or as an example of a specific monument type.
  - It retains structural, architectural, decorative or other physical attributes which make a significant contribution to our understanding or appreciation of the past. This can be in upstanding remains, or in evidence of buried archaeological structures and deposits. It can include the developmental sequence of a monument and the original or subsequent functions of the monument and its parts.
  - It is a particularly rare example of a monument type (or parts of a monument type) when assessed against knowledge of Scotland's archaeology and/or architecture, and of the region in which the monument is found.
  - It is a particular representative example of a monument type (or parts of a monument type) when assessed against knowledge of Scotland's archaeology and/or architecture and of the region in which the monument is found.
  - It has research potential which could significantly contribute to our understanding or appreciation of the past. This research potential may be about the artistic, archaeological, architectural, historic, traditional, aesthetic, scientific or social interest of the monument.
  - It makes a significant contribution to today's landscape and/or our understanding of the historic landscape. This may include the relationship of the monument and its parts to other monuments or features in its vicinity, or the significance of its setting.
  - It has significant associations with historical, traditional, social or artistic figures, events or movements that are of national importance.

# Annex 2: Listed Buildings

## How we decide if a building is of special architectural or historic interest for listing

### *Introduction*

1. Listing is the process of assessing buildings for designation under the Planning Listed Buildings and Conservation Areas (Scotland) Act 1997. 'Buildings' can be defined broadly as anything made by people, such as houses, schools, factories, walls, bridges and sculptures.
2. Listing has existed since 1948, but the first listed building in Scotland was designated in 1957. Since then, thousands of buildings have been listed.
3. The primary purpose of listing under the 1997 Act is to ensure that change to listed buildings is given careful consideration through the planning system. The intention is to maintain the character of Scotland's historic buildings and to prevent unnecessary loss or damage.
4. Designating a site or place as a listed building recognises its cultural significance at a national level. To be listed, a building must be of '**special architectural or historic interest**' as set out in Section 1(1) of the 1997 Act.
5. Listed building consent is required for changes which the local authority considers will affect the building's character as a building of special architectural or historic interest. The planning department of local authorities is the point of contact for applications for listed building consent.
6. It is a criminal offence to demolish, alter or extend a listed building in any way which would affect its character as a building of special architectural or historic interest without listed building consent.

### *What listing covers*

7. The legal part of a listing is the address/name of the site, which is known as the 'statutory address'. Addresses and building names may have changed since the date of listing, and if a number or name is missing from a listing address it will still be listed. We welcome information to help us update addresses.
8. Listing covers both the exterior and the interior as well as any object or structure fixed to the building. Listing also normally covers structures not physically attached but which are part of the curtilage of the building, such as boundary walls, gates, gatepiers or ancillary buildings. The planning authority is responsible for advising what is covered by listing including its curtilage, if any.
9. The Historic Environment Scotland Act 2014, Part 6, Section 22, which amended Section 1(4A) of the 1997 Act, allows us to legally state that an object or structure fixed to the listed building and/or any object or structure within the curtilage of the building is not to be treated as listed, and/or that any part or feature of a listed building is not of special architectural or historic interest and is therefore not listed. If part of a building is not listed, it will say that it is excluded in both the statutory address and in the statement of special interest in the listed building

record. The statement will use the word 'excluding' and quote the relevant section of the 2014 Act. Some earlier listed building records may use the word 'excluding', but if the Act is not quoted, the exclusion carries no legal weight.

### *Listed building records*

10. Listed building records provide an indication of the special architectural or historic interest of the listed building. They are not definitive historical accounts or complete description of the building(s). If part of a building is not described it does not mean it is not part of the listing or of the special interest.
11. The format of the listed building record has changed over time. Earlier records may be brief and some information will not have been recorded. Recent records are more comprehensive and include a statement of special interest.
12. Recent records also provide a polygon map of the listed building, in addition to the GIS location point which is given to all listed building sites. The maps and points give an indication of what is covered by the listing. We welcome information about incorrect data.

### *How we list*

13. We list buildings which are found to be of special architectural or historic interest using the selection guidance. This guidance is a framework for making decisions on listing. Buildings are assessed on their own merits and individual decisions are made in each case.
14. The extent to which a building survives is a consideration when assessing it for listing. However, the present condition of the surviving fabric is not a factor when deciding whether to list or not. For example, the poor condition of a feature such as a staircase is not a consideration for listing, but the total loss of the feature would be. Factors such as future use or financial issues will not be taken into account.

### *Listing categories*

15. Once a building has been found to meet the criteria for listing at the national level it is given a category according to its relative importance. The categories have no legal status, but they do affect how a building is managed in the planning system. The categories are:

#### **Category A**

Buildings that are examples of a period, style or type which are of **outstanding special architectural or historic interest**.

#### **Category B**

Buildings that are examples of a period, style or type which are of **important special architectural or historic interest**.

## **Category C**

Buildings that are examples of a period, style or type which are of **special architectural or historic interest**.

### **Selection guidance for deciding the special architectural and historic interest of listed buildings**

16. Buildings are assessed using two criteria:

- Architectural interest
- Historic interest

Special architectural or historic interest is demonstrated in one or more of the following ways:

#### ***Architectural interest***

17. The architectural interest of a building may include its design and materials, its setting and the extent to which these characteristics survive. These factors are grouped under two headings:

**Design:** This relates to a building's design quality, the materials used to construct it, and whether it has any technological excellence or innovation. The interest or otherwise of its interior, its plan form, and any regional traditions are also taken into account. The level of authenticity will also be considered. Factors include:

- the degree to which artistic skill and/or a combination of details or features is used in the building's design;
- the interest of the materials used in the building's construction;
- the level of technological excellence or innovation;
- the survival of fixed interior decorative schemes and interior design;
- the interest which the plan form has to the design of the building;
- the degree to which the building demonstrates local or regional traditions either in building type, material or form;
- the level of authenticity and completeness of the building's fabric, taking into account later changes that may add to or detract from the special interest.

**Setting:** This concerns how a building's setting and its group interest are taken into account, including:

- the degree to which the immediate and wider setting of a building contributes to today's setting and our understanding of its historical context;
- the contribution a building makes to its surroundings, and/or how it forms part of an architecturally or historically interesting group.

## ***Historic interest***

18. Historic interest is in such things as a building's age, rarity, social historical interest, and associations with people or events that have had a significant impact on Scotland's cultural heritage.

Historic interest is assessed under three headings:

**Age and rarity:** How old and/or rare a building is, including:

- the degree to which the age of the building contributes to its interest;
- the relative rarity of its building type or style.

Age and rarity are a major part of the criteria, as the older a building is, and the fewer of its type that survive, the more likely it is to be of special interest. Buildings which are less than 30 years old are not normally considered for listing, for the following reasons:

- There is insufficient historical perspective to allow a comprehensive assessment of the interest of a building.
- To allow change and adaptation to a building during its period of initial use.

**Social historical interest:** Social historical interest is about the way a building contributes to our understanding of how people lived in the past, and how our social, economic and spiritual history is shown in a building and/or in its setting.

**Association with people or events of national importance:** This refers to the connections that a building has with people or events which have had a significant impact on Scotland's cultural heritage, including:

- the level of significance of the association and whether it is of national importance;
- the degree to which the association is documented and authenticated;
- the degree to which the association is shown in the fabric, planning, design and/or setting of the building;
- the length of the association.

## ***Other provisions for listing***

### ***Building Preservation Notice***

19. As set out in Section 3 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, local authorities can issue a Building Preservation Notice to protect unlisted buildings which they think are of special interest and which are to be demolished or altered in a way that will affect their special architectural or historic interest. The building will be protected in the same way as a building which has been listed. The notice is effective for up to six months, during which

time Historic Environment Scotland will assess whether or not the building should be listed.

### ***Certificate of Intention Not to List***

20. Section 5A of the 1997 Act allows for Historic Environment Scotland to issue a certificate stating that they do not intend to list a building. A Certificate of Intention Not to List (COINTL) prevents a building from being listed during the five years from the date the certificate is issued. A planning authority may not serve a Building Preservation Notice for the building during this time. Applications for a certificate can be made by anyone and are assessed in the same way as a request for listing.
21. Where a building is found to meet the criteria a new listing will normally take place, but certain circumstances related to development proposals and existing designations will be taken into account. Local authorities and owners (if not the applicant) will be notified at the same time when the certificate is issued. A decision on applications will normally be reached within eight weeks. Decisions to grant a certificate will be made as quickly as possible where the building is not found to meet the criteria for listing.

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# Annex 3: Conservation areas

## Guidance for the designation of a conservation area

### *Introduction*

1. Conservation areas are designated under the Planning Listed Buildings and Conservation Areas (Scotland) Act 1997.
2. Conservation areas are areas which have special architectural or historic interest that are considered worthy of protection. It is the character of an area, either architectural or historical, created by buildings and open spaces and their relationship with one another which the designation of a conservation area seeks to preserve. Elements such as the street layout, open spaces and the public realm all contribute to an area's special character.
3. To be designated as a conservation area, an area will be **'of special architectural or historic interest the character or appearance of which is desirable to preserve or enhance'**, as set out in Section 61 of the 1997 Act.
4. Conservation areas were introduced in 1968 and since this date there have been hundreds of conservation areas designated across Scotland, ranging widely. Conservation areas are varied in character, encompassing the urban and the rural; they range from the historic core of our cities to isolated rural settlements or landscapes.

### *The designation of a conservation area*

5. All planning authorities are required from time to time to determine which areas in their district meet the criteria for designation as an area of special architectural or historic interest.
6. As set out in Section 62 of the 1997 Act, once a planning authority has decided to designate a conservation area, notice of the designation must be published in the *Edinburgh Gazette* and at least one local newspaper.
7. Historic Environment Scotland has the power to determine, after consultation with the planning authority, that an area should be a conservation area and may designate it. This is a power which will be used only exceptionally.
8. Scottish Ministers and Historic Environment Scotland, at the same time as the designation is advertised, must be formally notified of the designation of the conservation area. They must also be provided with a copy of the published notice, together with a copy of the designation map and a list of street names which will usually be submitted in an open GIS format.
9. Planning authorities may also amend or remove a conservation area that is already designated. Notification of this will be in the same way as for new designations. Amended conservation areas should normally be re-designated in their entirety.
10. Every planning authority is required to compile and keep available for public inspection a list containing appropriate information about their conservation areas.

11. Planning authorities have a duty to submit their proposals for the preservation and enhancement of conservation areas for consideration to a local public meeting and should, when preparing schemes, seek the advice and views of local residents and amenity groups. Wherever possible, proposals should first be subject to public consultation through the Local Development Plan process, thus providing opportunity for the views of stakeholders to be taken into account. Owners and occupiers of property within a conservation area do not have to be specifically notified and there is no right of appeal against a designation, variation or cancellation.
12. Once an area has been designated it becomes the duty of the planning authority and any other authority concerned, including Historic Environment Scotland, to pay special attention to the desirability of preserving or enhancing the character and appearance of the area when exercising their powers under planning laws.
13. Some types of development which would not otherwise require permission may require permission through the planning process.
14. Historic Environment Scotland expects planning authorities to designate areas which planning authorities consider to be of special architectural or historic interest as conservation areas. As part of this process, it encourages them to undertake a thorough appraisal of any area before designation to ensure that its character or appearance is understood.

### **Selection guidance for designating a conservation area**

15. Areas of 'special architectural or historic interest' will be selected based on a range of factors which may include:
  - areas of significant architectural or historic interest in terms of specific listed buildings and/or scheduled monuments;
  - areas of significant architectural or historic interest in terms of building groupings, which may or may not include listed buildings and/or scheduled monuments, and open spaces which they abut;
  - areas with features of architectural or historic interest such as street pattern, planned towns and villages and historic gardens and designed landscapes; and
  - other areas of distinctive architectural or historic character.

### ***Characteristics and values that should be preserved or enhanced***

16. The characteristics and values that contribute to a conservation area's special architectural or historic interest are:
  - its special architectural and historic importance;
  - its distinct character;
  - its value as a good example of local or regional architectural style;
  - its value within the wider context of the village or town; and
  - its present condition, and the scope for significant improvement and enhancement.

# Annex 4: The inventory of gardens and designed landscapes

## How we decide if a garden and designed landscape is of national importance for inclusion on the inventory

### *Introduction*

1. We assess gardens and designed landscapes for designation under Section 32A of the Ancient Monuments and Archaeological Areas Act 1979.
2. There are thousands of gardens and designed landscapes in Scotland. To be included on the inventory, a garden and designed landscape must be considered to be of '**national importance**'.
3. The purpose of the inventory is to identify sites of national importance and to provide information about them to aid understanding, protection and sustainable management through the planning system, and in other relevant contexts such as landscape and land-use management. When a garden and designed landscape is included on the inventory, it becomes a material consideration in the planning process. This means that planning authorities should take gardens and designed landscapes into account when preparing local development plans and making decisions on planning applications.
4. Parts of some inventory gardens and designed landscapes may have additional protection through other designations such as scheduling, listing or conservation area designation. Scottish Natural Heritage may also recognise areas of scientific or nature conservation value within inventory sites.

### *What the inventory covers*

5. Gardens and designed landscapes are defined in law as grounds which have been laid out for artistic effect, including any buildings, land or water that are on, adjacent or contiguous to such grounds (Section 32A(2) of the 1979 Act). They can include country estate landscapes, botanic garden collections, urban public parks and even some cemeteries and golf courses.

### *Inventory records*

6. The inventory was first published in 1987. Inventory records explain why a garden and designed landscape is of national importance. They also describe its location, history and individual components. All inventory records include a map that shows the extent of the designation. Most will also have photographs. Inventory records are not intended to be definitive historical accounts or a complete description of the garden and designed landscape.

## *How we designate inventory sites*

7. This guidance provides a framework for assessing gardens and designed landscapes for the inventory. Sites are assessed on a case-by-case basis on their own merits, and individual decisions are made in each case with the thinking behind each decision clearly explained.

## **Selection guidance for deciding if a garden and designed landscape is of national importance**

8. To be included on the inventory, a garden and designed landscape must be of national importance, and it should demonstrate sufficient integrity (wholeness or coherence). We also consider social value as a supporting factor (the value of a garden and designed landscape to communities).

### *National importance*

9. National importance relates to the cultural significance of a garden and designed landscape. We consider this by assessing the site's artistic, historic, horticultural, architectural, archaeological, scenic and nature conservation interest. For each of these, we decide whether a site has outstanding, high, some, little or no value. Sites that demonstrate more outstanding and high value are likely to be nationally important. Exceptionally, a site may be of national importance with only one outstanding area of interest.

**Artistic interest:** This refers to the design of a garden and designed landscape as is currently evident, including:

- whether it was appreciated by its contemporary society as a work of art in its own right;
- the degree to which it set the trend for later gardens and designed landscapes, or marked a shift in landscape design history;
- whether it was designed by an important garden or landscape designer. It might have value for its rarity if the designer executed few schemes, or it might be a particularly representative, intact, or important work.

**Historical interest:** This refers to the historical development of a garden and designed landscape, the survival of historical evidence and the relationship of the site with people, events and/or historic and social movements, including:

- the amount and quality of associated documentary or other historical evidence, including maps, plans, written accounts, photographs, film, letters, and any other kind of evidence;
- the degree to which the site as a whole represents a particular period in the history of garden or landscape design;
- the degree to which one or more of its components form an outstanding example of a particular period or style;

- its relationship with historic individuals, events or movements. Associations with significant persons or events should be well-documented, and be reflected in the physical elements of the garden or designed landscape.

**Horticultural interest:** This refers to the plants, trees and shrubs in a garden and designed landscape and any important associations with the history of horticulture, including:

- the presence of horticultural collections which are in good condition and being renewed, and which contain a wide range of species and/or unusual species or rarities, and/or trees recognised for their 'champion' status;
- the presence of scientific collections which are in good condition, documented, propagated and made available to others;
- the site's overall place in the history of horticulture, arboriculture (the cultivation of trees and shrubs) or silviculture (the cultivation of forest trees, or forestry).

**Architectural interest:** This refers to the built features within a garden and designed landscape, including:

- the presence of buildings and structures that are listed in recognition of their special architectural and historic interest;
- the degree to which the buildings or structures contribute to the character of the site, either through their own intrinsic interest, or through their relationship with other aspects of the site.

**Archaeological interest:** This refers to archaeological features contained within the garden and designed landscape, including:

- the survival of physical evidence of an early form of designed landscape;
- the presence of archaeological remains that have been investigated, and which significantly aid understanding of the development and history of the garden and designed landscape;
- other known archaeological sites or monuments which contribute to the character of the site, either by virtue of their own intrinsic interest, or through their relationship with other aspects of the garden and designed landscape.

**Scenic interest:** This refers to the special contribution that the garden and designed landscape makes to the quality of the surrounding landscape. As viewed from outside of its boundaries, a garden and designed landscape may contribute to the visual interest of the wider landscape through its:

- size, location, and/or overall character, including any combination of its built, landscaped, planted, water or natural components;
- rarity and contrast with the surrounding landscape.

When viewed from within its boundaries, a site may also have scenic interest due to planned visual relationships (such as vistas or sightlines) towards landscape features beyond its boundaries (either built or naturally occurring).

**Nature conservation interest:** This refers to the quality and diversity of the environments and habitats within the garden and designed landscape, including:

- the presence of sites recognised at an international, national or local level for their flora (plants), fauna (animals), geology (rocks), geomorphology (landforms) or a combination of these features;
- the degree to which it contains a range of different habitats, or one or more habitats, which appear at the time of assessment to be managed to support nature conservation principles, or to support protected species.

### *Integrity*

10. A garden and designed landscape should have enough integrity to be included on the inventory. By integrity, we mean the quality or state of being whole or undivided – i.e. a site's wholeness and coherence.

11. We do not designate 'lost' gardens and designed landscapes, or those which cannot be readily understood due to the extent of their physical alteration, including the partial or total loss of their components.

12. When we assess integrity, we consider:

- the condition and survival of the garden or designed landscape's main components;
- the overall coherence of the garden or designed landscape, either as an example of a site with just one overarching historic design phase, or as a constantly evolving, multi-period site, which nevertheless retains a generally strong and enduring design structure.

### *Social value*

13. When considering the social value of a garden or designed landscape, we look at issues such as public access and recreation, community events and/or traditions, public interpretation and education, associated amenity groups, tourism, and any other evidence for the role that the garden and designed landscape plays for any community or communities at the time of assessment.

# Annex 5: The inventory of historic battlefields

## How we decide if a battlefield is of national importance for inclusion on the inventory

### *Introduction*

1. We assess historic battlefields for the inventory under Section 32B(1) of the Ancient Monuments and Archaeological Areas Act 1979.
2. Scotland has many historic battlefields, all of which have some cultural significance. To be included on the inventory, a battlefield must be considered to be of '**national importance**'.
3. The purpose of the inventory is to provide information about nationally important battlefields to aid their understanding, protection and sustainable management through the planning system, and in other relevant contexts such as landscape and land-use management. When a battlefield is included on the inventory it becomes a material consideration in the planning process. This means that planning authorities should take battlefields into account when preparing local development plans and making decisions on planning applications.
4. All landscapes in which battles were fought have changed since the battle due to natural processes and man-made interventions. Some may now lie within heavily developed urban areas, or in areas where there is significant development pressure. Every battlefield is unique, and the ability of each battlefield to accommodate change without damaging key landscape characteristics and special qualities varies between inventory sites. The unique nature of each battlefield means that the ability to accommodate change can also vary across different parts of individual inventory sites.
5. Battlefields or parts of them can also be recognised through other designations such as scheduling or listing, or through other area designations (e.g. conservation areas or Local Landscape Areas). Even where actions related to a battle extended beyond the inventory boundary, planning policies recognise that undesignated sites and places are an important part of Scotland's heritage.

### *What the inventory covers*

6. A 'battlefield' is defined in law as an area of land over which a battle was fought; or an area of land on which any significant activities relating to a battle occurred (whether or not the battle was fought over that land). A 'battle' is an engagement involving wholly or largely military forces that had the aim of inflicting lethal force against an opposing army.
7. The inventory defines an overall area of interest for battlefields that includes the main focus of fighting and a wider area that contributes to our understanding

because there is evidence of other significant activities occurring there. This might include:

- zones of secondary fighting or skirmishes;
- lines of advance and retreat;
- associated earthworks and camps;
- burials and memorials.

In some cases, later battle memorials or other features associated with the battle which lie outside inventory boundary may be highlighted in the inventory for their relevance to the battlefield and its subsequent history. Such features may or may not be designated in their own right.

### ***Inventory records***

8. The inventory of historic battlefields began in 2011. Inventory records explain why a battlefield is of national importance. They are not intended to be a definitive historical account of a battle.
9. Inventory battlefield records include information describing the site, its location, history, key characteristics, surviving components and other relevant information. All inventory records include a map or maps that show the overall area of interest and highlight significant landscape characteristics and special qualities, including key surviving features. Relationships between features may also be of interest.

### ***How we designate inventory sites***

10. This guidance provides a framework for assessing battlefields for the inventory and for reviewing existing designations. Sites are assessed on a case-by-case basis on their own merits and individual decisions are made in each case, with the thinking behind each decision clearly explained.
11. We may decide not to assess and/or not to designate a site or place for designation where there are development proposals. Given the scale of inventory battlefields, when we review an existing battlefield designation, a development proposal for one area of a battlefield may not affect the review of the inventory record in other areas. We will assess development proposals and their effect on the landscape characteristics and special qualities of the battlefield before deciding whether to proceed with changes to the designation.

## **Selection guidance for deciding if a battlefield is of national importance**

12. To be included on the inventory, a battlefield must be of national importance and be able to be defined on a modern map.

### ***National importance***

National importance relates to the cultural significance of a battlefield. We consider this under three categories of assessment:

- Historical association
- Significant physical remains and/or archaeological potential
- Battlefield landscape

A battlefield is likely to be of national importance if it contributes significantly to some or all of these categories of assessment. In this context, the concept of 'national' includes the linked regional histories through which the development of Scotland as a nation can be understood. A site will be of more local significance where its contribution or potential lies in understanding the archaeology and history of a specific area.

**Historical association:** This refers to the contribution of the battle to history, including:

- military history, strategy and tactics, such as significant military innovations or occurrences associated with the battle;
- associations with a nationally significant historical person or persons, event or campaign;
- documentary and historic map evidence that may enhance our understanding of historical events. In some cases, there may be alternative valid interpretations of an action based on current evidence;
- the place of the battle in the national history and consciousness. This can be reflected through literature, oral tradition and evidence of the role that the battlefield plays for communities.

**Significant physical remains and/or archaeological potential:** This refers to the special qualities of a battlefield in the form of surviving physical remains and man-made features associated with the battle as well as the archaeological potential of the battlefield, including:

- built features that were present at the time of the battle, such as field walls or buildings, route ways like roads, bridges and paths, or elements resulting from the battle itself, including earthworks or graves;
- archaeological evidence that can support and enhance documentary records and provide details about events, weaponry and combatants that are not available through other sources. This may be in the form of artefacts such as bullets, arrowheads and personal effects; or potential for buried archaeological deposits, such as the remains of earthworks, camps, burials or entrenchments;
- the contribution or potential contribution of the archaeological and physical remains of the battle to our understanding of the broader archaeology and history of Scotland.

The survival and quality of evidence may be affected by a range of factors, including the period within which the battle took place, the scale of the battle,

numbers of fallen, the physical properties of any upstanding remains, artefact scatters or buried deposits, the soil conditions and post-battle land-use.

**Battlefield landscape:** This refers to understanding the landscape characteristics of the battlefield, not just in the main area of fighting but also in the wider landscape where significant events occurred. As battles were seldom fought in small, clearly defined areas but often ranged across a wider landscape, the landscape context is important for understanding military planning and tactics and why events unfolded as they did. The landscape context can also contribute to our sense of place and how battlefields are remembered today. Landscape characteristics include:

- features of terrain providing or restricting vantage points and lines of sight, such as hills and other high ground, or valleys;
- natural obstacles to movement such as water courses, bogs and cliffs;
- areas providing concealment such as slopes, ditches and woodland;
- routes of movement and manoeuvre such as roads, paths, bridges and narrow passes;
- relationships to historic settlements present at the time of the battle;
- memorials that contribute to our understanding and appreciation. These are often located to relate to elements of the battlefield landscape, and may or may not be detached from the main areas of the battle.

13. If a battlefield has been so altered that it appears to have lost all of its special qualities and landscape characteristics, it will not be included on the inventory. While battlefields may retain strong associative value, to merit inclusion on the inventory a battlefield should exhibit some level of preservation and/or significance through which it can contribute to our understanding. This can be the case even where the overall character of the landscape has been affected by development or changes in land use.

#### **Definition on a map**

14. It is essential to be able to identify the location of the site and to map boundaries of the overall area of interest based on informed interpretation of available evidence. Sites that cannot be defined in this way will not be included in the inventory. However, they may be considered for inclusion when sufficient evidence for their accurate location becomes available.

# Annex 6: Historic marine protected areas

## How we assess if a marine historic asset is of national importance for designation as a historic marine protected area

### *Introduction*

1. Under Section 73(1) of the Marine (Scotland) Act 2010, Scottish Ministers may designate a historic marine protected area where they consider it desirable to do so for the purpose of preserving a marine historic asset which is of '**national importance**' and which is, or which they are satisfied may be, located within the territorial seas of the United Kingdom adjacent to Scotland (out to 12 miles offshore). Historic Environment Scotland provides advice to the Scottish Government on designation of historic marine protected areas and advises on their management.
2. Historic marine protected areas help to preserve marine historic assets of national importance and to celebrate and communicate their heritage value so that everyone can appreciate these assets and act responsibly. Alongside other types of marine protected area (e.g. nature conservation, and demonstration and research), they form part of a network of marine protected areas in the seas around Scotland that supports the Scottish Government's vision of 'clean, healthy, safe, productive, biologically diverse marine coastal environments, managed to meet the long-term needs of nature and people'.
3. Designating a historic marine protected area recognises that the cultural significance of marine historic assets is at a national level. The cultural significance of a marine historic asset can be found in its artistic, archaeological, architectural, historic, traditional, aesthetic, scientific or social interest.
4. The 2010 Act requires that preservation objectives are set for each historic marine protected area. These guide management according to the specific needs of individual areas. Once designated, planning permission, marine licensing and other regulatory processes must take account of these preservation objectives. Scottish Ministers can also make marine conservation orders to further preservation objectives of an area – these can be used to prohibit, restrict or regulate activities that are specified in the order.
5. Without authorisation it is a criminal offence to recklessly remove, alter or disturb marine historic assets, or to carry out activities which might damage or interfere with a marine historic asset or significantly hinder the preservation objectives for the area. It is also an offence to contravene a marine conservation order.

### *What historic marine protected areas cover*

6. A marine historic asset is defined in the Marine (Scotland) Act, Section 73(5). The definition of a marine historic asset is broad. It is any of the following:

- a) a vessel, vehicle or aircraft (or part of a vessel, vehicle or aircraft);
  - b) the remains of a vessel, vehicle or aircraft (or a part of such remains);
  - c) an object contained in or formerly contained in a vessel, vehicle or aircraft;
  - d) a building or other structure (or a part of a building or structure);
  - e) a cave or excavation;
  - f) a deposit or artefact (whether or not formerly part of a cargo of a ship) or any other thing which evidences, or groups of things which evidence, previous human activity.
7. Designation orders must specify marine historic assets within the area and the preservation objectives for the asset and the area, and they must identify the area's boundaries. A boundary can be determined by mean high water spring tide. It can include areas of seashore above mean high water spring tides that adjoin the area of sea.
  8. Historic marine protected areas are normally the preferred type of designation for individual marine historic assets (i.e. a single shipwreck) or coherent groups of sites offshore, with scheduling or listing preferred for sites and places at the coast edge.

#### ***Historic marine protected area records***

9. We give each historic marine protected area a record which explains why a marine historic asset, or group of assets, is of national importance. Each record has a description, a statement of national importance, a map showing the boundaries of the area, and preservation objectives for marine historic assets and the area which explain what the designation aims to achieve. We also provide baseline information relating to survival and site condition, based on monitoring information we collect.
10. Each record provides operational advice on man-made activities which can hinder preservation objectives and which sea users and public authorities should take into account. We outline any regulations relevant to managing the area, such as marine conservation orders which might restrict or forbid a particular activity.

#### ***How historic marine protected areas are designated***

11. This guidance is a framework for the advice we provide to Scottish Government on which marine historic assets merit designation and whether marine conservation orders are required. We assess marine historic assets on their own merits and make individual recommendations in each case.
12. We set preservation objectives for marine historic assets and the area, based on the overarching policy principle of 'protection in-situ as the first option'. In every case, we consider what is appropriate and practicable. Objectives normally cover the following:
  - Survival of marine historic assets (we will choose either 'to minimise loss' or 'to maintain the extent of survival');
  - Site condition (we will choose either 'to minimise deterioration in site condition', 'to maintain site condition', or 'to improve site condition')

- Recoveries of marine historic assets (acceptable only where this is desirable for the purpose of making a significant contribution to the protection of the significance of marine historic assets or public knowledge about marine cultural heritage);
  - Marine historic assets are not to be subject to commercial exploitation for trade, speculation or irretrievable dispersal (except for the purpose of professional archaeological services, or provision of public access where this is consistent with other objectives);
  - Avoidance of disturbance to human remains.
13. We advise on the need for marine conservation orders to help preserve historic marine protected areas where there are no other available mechanisms to mitigate risk to marine historic assets, or where the available mechanisms are considered insufficient and a more focused regulatory regime is required.

### **Selection guidance for assessing if marine historic assets are of national importance**

14. A marine historic asset must be of national importance to be designated. When assessing a marine historic asset we consider whether its cultural significance, as understood in its historic, archaeological, artistic, architectural, traditional, aesthetic, scientific and/or social interest, is of national importance.
15. Cultural significance can be found in the intrinsic, contextual and/or associative characteristics of a marine historic asset.
- Intrinsic characteristics – how the physical remains of a marine historic asset contribute to our understanding of the past
  - Contextual characteristics – how a marine historic asset relates to its surroundings and/or to our knowledge of the past
  - Associative characteristics – how a marine historic asset relates to people, events and/or historic and social movements
16. The relationship of marine historic assets to the adjacent land can be complex and variable. Some elements may have been integral parts of adjacent landmasses, now submerged. In the case of wrecks or material associated with wrecks of vessels or aircraft, some have strong and far-reaching connections; others may have a passing association but little or no original link to the places in which they have come to rest. The determination of national importance is to encompass consideration for such assets which may be important beyond Scotland.
17. For a marine historic asset to be of national importance, it must be one or more of the following:
- It makes a significant contribution to our understanding or appreciation of the past, or has the potential to do so. It may do so in itself, or as an example of a specific type of marine historic asset.
  - It retains structural, technical, decorative or other physical attributes which make a significant contribution to our understanding or appreciation of the past. This can be in upstanding remains, or in evidence of buried archaeological structures and deposits. It can include the developmental sequence of a marine historic asset and the original or subsequent functions of the marine historic asset and its parts.

- It is a particularly rare example of a marine historic asset type when assessed against knowledge of the history and archaeology of Scotland, its seas and their place in the wider world.
- It is a particular representative example of a type of marine historic asset when assessed against knowledge of the history and archaeology of Scotland, its seas, and their place in the wider world.
- It has research potential which could significantly contribute to our understanding or appreciation of the past. This research potential may be about the artistic, archaeological, architectural, historic, traditional, aesthetic, scientific or social interest of the marine historic asset.
- It makes a significant contribution to the marine historic environment and wider marine environment. This may include the relationship of the marine historic asset and its parts with other marine historic assets or features in its vicinity.
- It has significant associations with historical, traditional, social or artistic figures, events or movements that are of national importance.

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