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Dear Mr Sharratt

CONSIDERATION OF PUBLIC PETITION PE1523

Thank you for your letter of 11 December. We would be pleased to attend and give evidence at a future Petitions Committee meeting.

The Committee has asked for further information from us on two issues, which are addressed in order below.

1. The Committee would be interested to know whether Historic Scotland will be seeking a legislative change to ensure that landowners have a responsibility of care to scheduled monuments on their land.

Generally the expectation with ownership of any scheduled monument is that an owner will do no harm and the legislation allows for change to be regulated and remedy in the event that damage occurs. It is an offence to cause deliberate damage. But no additional duty requiring positive action is added when an element of the property is designated as being of national significance, either through listing or scheduling. The introduction of a duty on owners would bring significant burdens and would have implications for other designations across the natural and built environments.

Instead, we encourage owners to care for their assets by providing them with generic advice and guidance. In the case of the 8000 or so scheduled monuments in Scotland, our Field Officer programme involves regular visits and contact with owners. We offer financial assistance wherever possible (as is also the case of Tinkers' Heart despite it not being a scheduled monument), and we support other bodies working in this area (such as Archaeology Scotland's Adopt-a-Monument scheme). We know through this process that 85% of scheduled monuments are in stable or good condition.





In the case of the Tinkers' Heart, the owner has already demonstrated care by fencing off the Heart to protect it from cattle damage. Even if there were a duty of care for the physical elements of a scheduled monument, this would not extend to a duty on owners to provide a car park, signage and interpretation, as has been suggested for this site.

2. The Committee would be grateful if you could comment on whether the current criteria for scheduling ancient monuments are adequate in recognising and protecting the monuments of minority cultures with strong oral traditions, such the travelling community.

The main aim of the Ancient Monuments and Archaeological Areas Act 1979 is to make provision for the investigation, preservation and recording of matters of archaeological or historical interest and thus give legal recognition to nationally important monuments in Scotland. Monuments are assessed for scheduling against non-statutory criteria set out in Annex 1 of Scottish Historic Environment Policy. These criteria have been developed over many years of scheduling practice and they are based on principles which underpin heritage protection across the UK and most of Europe. Our assessment of Tinkers' Heart for scheduling highlighted that its value lies in its *associations*, rather than in its *intrinsic* characteristics. Scottish Historic Environment Policy states that '*it is the intrinsic value of the monument to the nation's heritage that is the primary consideration in deciding whether or not a site shall be scheduled*' (SHEP 2011, 2.15.h). Consequently, we concluded that although the site is clearly of cultural heritage interest, it does not meet the criteria for scheduling as a monument of national importance.

We apply the scheduling criteria equally across all scheduling assessments to help us determine significance as objectively as possible. However, these criteria were developed before requirements on public bodies to assess equalities impacts were introduced in 2012. As part of the programme of the implementation of the Historic Environment Scotland Act 2014, the Scottish Government is currently consulting on a suite of Regulations covering the procedures relating to heritage management functions which will take effect from 1 October 2015. Equalities impact assessment (EQIA) is being conducted on these provisions and the public consultation will gather views on how respondents feel equality issues are being addressed.

Given the particular issues raised by the campaign for Tinkers' Heart, and the parallel consultation on new procedures, I have asked my officers to review this case to identify any issues regarding equalities. In the short-term, this will help us determine how to establish a proportionate approach to identifying those cases which pose challenges in relation to equalities issues, and identify whether any reconsideration of our decision on Tinkers' Heart is necessary.

For the longer-term, it will help us consider whether or not there is a need to review the scheduling criteria to ensure that they adequately reflect modern consensus on the value of Scotland's historic environment as set out in Scotland's first Historic Environment Strategy *Our Place in Time*, including greater emphasis on the intangible heritage.





As requested, we will provide an oral update on progress on these issues at the Committee's meeting on 17 February.

IAN WALFORD

