

# MANAGING CHANGE IN THE HISTORIC ENVIRONMENT – WORKING ON AND NEAR TO SCHEDULED MONUMENTS

## Introduction

This is one of a series of guidance notes on managing change in the historic environment. The series helps explain how the [Historic Environment Policy for Scotland](#) should be applied.

This note contains advice for you if you own, manage or need to make decisions about work on or close to a scheduled monument. It will help you plan work in a way that helps preserve and enhance nationally important historic sites. It contains detailed advice about working on or near scheduled monuments and the processes for related consents.

Historic Environment Scotland is the regulator for scheduled monuments. Our policy for making decisions about consents at scheduled monuments is set out in our [Scheduled Monuments Consents Policy](#). This note will help you understand how we make decisions in line with this policy, and what you can expect from us. We have written this note to be as easy to understand as possible but in certain places, for example to explain our legal role, we have used more formal language.

You might find other guidance notes helpful. These ones are particularly likely to be relevant if you are thinking about works on or near a scheduled monument:

- [Scheduled Monument Consent for Archaeological Excavation](#)  
This note provides guidance for anyone considering undertaking archaeological excavation on a scheduled monument when the primary reason is for research – that is, it concerns excavation which is not prompted by conservation or other factors.
- [Castles and Tower Houses](#)  
This note provides guidance for anyone considering a castle consolidation or restoration project, such as owners, local authorities or other interested parties. It sets out the principles that apply to works on castles and tower houses, and helps guide decision-making on consent for applications relating to castles.
- [Setting](#)  
This note sets out the principles that apply to developments affecting the setting of historic assets or places, including scheduled monuments, listed buildings, Inventory historic gardens and designed landscapes, World Heritage Sites, conservation areas, historic battlefields, Historic Marine Protected Areas and undesignated sites.

## Key messages

1. Scheduled monuments are nationally important, and are protected by law.
2. The main reason for scheduling is to preserve, and control of works on, monuments whose survival is in the national interest.
3. It is an act punishable by law – a criminal offence – to undertake work on scheduled monuments without consent.
4. Historic Environment Scotland makes decisions about what work can be done on scheduled monuments.
5. Decisions about works on scheduled monuments are based on understanding their cultural significance, and how this might be affected by proposed works.
6. Historic Environment Scotland can provide help and advice on the management of scheduled monuments.

## What are scheduled monuments?

Archaeological sites, remains and monuments are an important part of the historic environment. At Historic Environment Scotland we maintain a schedule (a list) of monuments of national importance. We call monuments on the list scheduled and scheduling is the process of adding monuments to the list.

Scheduled monuments are defined by an Act of Parliament, [The Ancient Monuments and Archaeological Areas Act 1979](#). We call this the 1979 Act. It sets out our responsibilities for scheduling monuments, and for protecting them.

The main reason for scheduling is to preserve, and control works on, monuments whose survival is in the national interest. We schedule a monument when we have decided it meets the criterion for national importance. How we do this is explained in [our Designations Policy and Selection Guidance](#).

Scheduling recognises the cultural significance of a monument at a national level. [Historic Environment Policy for Scotland](#) sets out the definition of cultural significance given in the [ICOMOS Burra Charter](#):

Cultural significance means aesthetic, historic, scientific or social value for past, present or future generations. Cultural significance can be embodied in a place itself, its fabric, setting, use, associations, meanings, records, related places and related objects.

For a scheduled monument, cultural significance can be found in its artistic, archaeological, architectural, historic, traditional, aesthetic, scientific and/or social interest.

Over 8000 monuments are scheduled. You can find details of scheduled monuments, and our decisions about them online, using [our online Decisions Portal](#).

## What do we schedule? [TEXT BOX]

The 1979 Act gives a very broad definition of what we can schedule:

- any building, structure or work, whether above or below the surface of the land, and any cave or excavation
- any site comprising the remains of any such building, structure or work or of any cave or excavation
- any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure, or part thereof
- any site comprising any thing, or group of things, that evidences previous human activities

The scheduled monuments in Scotland 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. The law prevents dwelling houses and places of worship in use from being scheduled, although the land beneath them can be.

Many monuments are completely hidden below land or water. Even when parts of them are visible they usually include below-ground remains around them.

There is a [series of leaflets on the different types of scheduled monuments](#) available from our website.

## How are scheduled monuments protected?

The aim of scheduling is to preserve sites and monuments as far as possible in the form they are today. Scheduling protects monuments by making it a criminal offence to carry out work, or allow work to be carried out, without written permission from Historic Environment Scotland. This permission is called scheduled monument consent.

It is also a criminal offence to cause any damage to a monument or to metal detect on it without our consent.

Scheduled monuments also have strong protection in other decision-making processes, which reflects their national importance. The planning system and forestry licensing both have specific protections for scheduled monuments. This includes both monuments and their settings.

Setting is the way the surroundings of a historic asset or place contribute to how it is understood, appreciated and experienced. Setting can often be integral to a monument's cultural significance, and [Scottish Planning Policy](#) gives equal weight to the site of a scheduled monument and its setting. Protecting and managing monuments and their setting is also a key part of the [UK Forestry Standard](#).

This aspect of managing change is explored further in [our Managing Change guidance note on Setting](#).

Scheduled monuments are also protected by the standards set out in the [Good Agricultural and Environmental Conditions](#) (GAEC 7) of the Scottish Government's Rural Payments and Services. If monuments are altered or damaged without our consent penalties can be applied to payments.

## How can I find out if there are any scheduled monuments where I will be working?

The easiest way for you to check the locations of scheduled monuments is to use our [Pastmap](#) website and [our Designations Map Search](#). Both of these are online maps that show the boundaries of scheduled monuments. They let you zoom in and out so you can explore the maps at different scales and levels of detail.

Once you have found the monument you are looking for, you can use Pastmap to get Ordnance Survey grid references that could be used with a handheld GPS to help find a monument on the ground. Our Designations Map Search has a function that lets you measure distances and get Latitude and Longitude.

Pastmap has brief written descriptions of monuments and includes a link to [our online Decisions Portal](#). Our Designations Map is also linked to our portal. On the portal you can get more information about individual monuments and see the legal documents from when they were scheduled. We can send copies of these legal documents by post or email if you ask us to.

The legal documents usually contain some text describing the area of land that is protected, and a map that shows the location of the monument. The text describing a monument often includes measurements, for example the dimensions of the protected area.

Our recent legal documents will show a monument's extent on a modern map. Older documents might not be to current standards. You can still check the extent of monuments with older documents using our online information, or by contacting us. It is important to remember that the map included in the legal document is the legally defined protected area.

We have converted the extents of all the scheduled monuments in Scotland into spatial data. That means that you can view it on an online map (like Pastmap or our Designations Map Search) or download the data from [the downloads section of our Decisions Portal](#). You can view the data on GIS programmes like ArcMap and QGIS.

If you have any difficulty with the online maps, or would prefer not to use them, we can help. Identifying the boundary of a monument on the ground can be challenging if you are not used to working with spatial information. If you are in doubt, we are always happy to provide specific advice and we can visit a monument in person to help if needed. All of our contact details are given at the end of this guidance note.

We normally register the boundaries of scheduled monuments with Land Registry Scotland or Sasines, depending which part of the country it is in. Scheduled monuments can be noted as a burden on title deeds for land or property when ownership changes. However, this is not always the case so you should always check if a monument might be affected when you are planning work. It is a criminal offence to damage a monument if you ought to have known it was there and were reckless as to whether it would be damaged.

## **I am working close to a scheduled monument but not on it, what precautions should I take?**

To avoid damaging a scheduled monument it is very important to make sure you are confident you can locate the extent of it on the ground.

Sometimes the extents of a scheduled area match obvious features like field boundaries, or are described in the legal documents in a way that makes them easy to measure. But in a lot of cases it will be more complicated. If you are not sure whether your work might affect a monument, get in touch with us and we will be happy to help. Our contact details are all given at the end of this guidance note.

We normally recommend that you mark out a buffer zone around the monument – outside the scheduled area – to protect it from damage. This will need to stay in place until any works are finished. How big this buffer should be depends on the type of monument and the kind of work you are planning. You need to consider how precisely you can identify the edge of the scheduled area and how wide-ranging the effects of your work might be. Bear in mind that some kinds of work, for example changing drainage, might cause changes far away from where you are working. If you are unsure what buffer might be appropriate in your situation then please contact us.

Whatever the size of buffer, you will need to measure it from the edge of the scheduled area as marked on the map – not from the edge of any structures or visible remains.

If you are only going to be working for a few days, you can mark out using tape or paint. If your work will go on longer, temporary fencing might be better.

It is your responsibility to make sure everyone working on the site knows about the monument, the area it covers, and that it is protected by law. Use signs to explain why the marking out has been done. If something does go wrong the best thing you can do is get in touch with us straight away. We will work with you to make sure the situation doesn't get any worse and, if possible, to undo any damage.

Archaeology associated with a scheduled monument often extends around it and beyond the legally protected area. We call this 'undesigned archaeology'. If you are planning work that might affect undesigned archaeology you should get advice from your local authority archaeologist. Contact details are listed at the end of this note.

## **I am going to be working on a scheduled monument, do I need consent?**

The short answer is usually 'yes'. All works to a scheduled monuments need scheduled monument consent from Historic Environment Scotland. 'Works' are defined in the 1979 Act, and the definition is very broad:

- anything resulting in the demolition or destruction of or any damage to a scheduled monument
- any works for the purpose of removing or repairing a monument or any part of it
- making any alterations or additions, or any flooding or tipping operations on land in, on or under which there is a scheduled monument

It is a criminal offence to carry out works on a scheduled monument without consent. How we handle works without consent depends on a number of factors. These are set out in the ['Works without consent' section of this guidance](#).

For Crown bodies and departments and agencies of the UK and Scottish Governments there is a parallel system known as scheduled monument clearance. We apply the same principles and policies as the scheduled monument consent process to this system.

## **Exclusions**

Sometimes not all the things within a monument contribute to its cultural significance. When this is the case, we might exclude these in the legal wording of the scheduling documents. Consent will not be required for works that only affect those things – as long as the rest of the scheduled area is not affected.

Exclusions are unique to each monument and you need to carefully read the legal text in each case. If you are unsure, please contact us.

## Class consents

Some types, or 'classes', of works to scheduled monuments have pre-agreed consent. This is because they were given consent by law. This law is called [the Ancient Monuments \(Class Consents\) \(Scotland\) Order 1996](#). We normally call this 'the Class Consents Order', and we call permissions like these 'class consents'. There is no need to make an individual application for scheduled monument consent for works that are covered by a class consent.

The most commonly used class consent is for ploughing. It only applies in specific circumstances, which are set out in the Order:

**Ploughing, where it has been undertaken lawfully in the preceding 10 years, providing that the depth of ploughing does not exceed previous depths.**

This means that if ploughing has been a regular part of the regime over a monument it is likely to have consent. This does not include ploughing any deeper than previously or ploughing if it has not been done within the last ten years. Other agricultural work like de-stoning, sub-soiling or drainage is not covered by the Order. You have to apply for scheduled monument consent for these works.

The only other class consent that gets used widely is for work that is urgently necessary for health or safety. Again, this is specifically defined in the Order:

**Works which are urgently necessary in the interests of health or safety, provided that:**  
a) **The works are limited to the minimum measures immediately necessary; and**  
b) **Notice in writing justifying in detail the need for the works is given to the Historic Environment Scotland as soon as practicable**

An example of this could be fencing an area around an unstable wall and putting up warning signs to keep people at a safe distance. If you are not sure what this might mean in your situation then we can discuss it by phone or email.

You must notify us in writing as soon as you can after completing any work under this class consent. You can do this online using our class consents notification form which is available on [the class consents page of our website](#).

Other class consents cover more specialised areas of work. The [Class Consents Order](#) gives the full list. If what you are planning is not mentioned above it is unlikely to be covered by a class consent. If you are in any doubt, please contact us to check.

## Works that normally require scheduled monument consent [TEXT BOX]

Work that requires scheduled monument consent covers a very broad range of activities, from very simple tasks to complex restoration projects. Here are some examples of common activities that need consent. This is intended to illustrate the range of work that needs consent and is not a complete list. You should always check with us if you are in any doubt about whether you need consent.

**Routine maintenance** will normally need consent. This might include:

- Digging to make or repair drains
- Inserting new fence posts and strainers

- Repairing stonework or masonry

**Putting anything on or into the monument** will normally need consent. This might include:

- Laying new paths or tracks
- Laying services or upgrading utilities
- Putting up polytunnels
- Planting trees or shrubs
- Storing or dumping any material
- Flooding to create a pond

**Removing anything from the monument** will normally need consent. This might include:

- Collecting finds or artefacts from the ground, including through fieldwalking and other archaeological research
- Cropping mature trees
- Digging out any foundations or supports
- Removing any soil or rubble

## Making an application for consent

If you want to do works to a scheduled monument, you must apply to us for consent. We do not charge for applications – or for pre-application advice. We normally reach a decision on an application within eight weeks. If you are not happy with our decision you can appeal against it. You can find all of the [forms and guidance for scheduled monument consent](#) you might need on our website.

The full process is set out in more detail below.

## Getting started with your application

We have a free pre-application service for scheduled monument consent. It will often save you time and effort if you discuss a proposal with us before applying. We might advise you to make some changes to your plans, so that you are more likely to get consent. This can result in a better outcome for the monument and your project.

We can also tell you exactly what information we will need from you. This might make the process easier for you and avoid delays that might happen if we need to ask for more details after you have submitted your application. You will need to leave enough time for the application process between contacting us and the date you are planning to start your work. More information on time scales is given [in the 'Our decisions' section of this guidance](#).

If you have not contacted us before it is usually best to email us a brief summary of your situation and questions using the contact details given at the end of this guidance note. A case officer will look at your inquiry and will normally get back to you within 21 days.

If you are not sure how to fill out our forms, or of anything else, we would be happy to review your application as a draft and let you know if anything is not right.

## The application forms

You can [download application forms from our website](#) or request copies by post or email using the contact details at the end of this guidance note. We operate a paper-free system, so we will use email unless you ask us not to.

There are three parts to the forms – A, B and C. There is also a guidance note to help you fill them in.

Everyone needs to fill in **Part A**. This is the main form. It asks you to describe your proposal in detail, and give your details, and the details of the monument you want to work on.

**Part B** is for notifying all owners, occupiers and agricultural tenants of the monument. You need to include a copy of the notice served on each person. If you are the only owner or occupier, you do not need to include this part.

Everyone will also need to fill in **Part C**. This is a 'certificate of ownership' and tells us who the legal owner of the monument is.

Anyone can apply for scheduled monument consent. Owners, occupiers and agricultural tenants of the monument have the right to make representations to us about an application. This is why Part B of the form needs to be filled in and served unless there is no one who has to be notified.

Anyone notified has 21 days to make a representation from the date of notification. Instructions on how to make a representation are on the notification form.

## A valid application

The first thing we do when we receive an application is check that it has all the information in it that the law requires. This includes:

- a **written description** of the proposed works
- the **name or location of the scheduled monument** to which the works relate, or a description of the location of the land
- the **name and address of the applicant** and, if appropriate, the name and address of the agent acting for the applicant
- a **plan or drawing** sufficient to identify the area of land to which the works relate. We have shown an example of this below.
- any **other plans and drawings** necessary to describe the works in full
- appropriate **ownership certificates** and notices

If your application includes all of this information, it is valid. We will consider all valid applications, unless we have refused a similar application in the previous two years, or we are already considering a similar application. We may still consider a similar application if there have been changes that would affect our decision.

We will write to let you know if your application is valid. If it is not valid we shall let you know what information we require to validate it. If your application is valid we will let you know the deadline for our decision. Even if your application is valid we may need to ask for more information and this is explained further below.



## Supporting information

The amount of supporting information we need will depend on a number of factors. This will include the proposed works themselves – including details of their scale and complexity. It will also reflect the extent of the potential impact of the proposal on the monument.

Our aim is to make sure that our decisions are informed in terms of the cultural significance of the monument and the effect a proposal would have on this. This reflects the first policy in this [Historic Environment Policy for Scotland](#) (HEP1):

**Decisions affecting any part of the historic environment should be informed by an inclusive understanding of its breadth and cultural significance.**

If we do not have enough information to understand the impact on a monument's cultural significance, we may refuse consent. If this happens, you can apply again, as long as you provide additional information that would affect our decision.

In simple cases, like a straightforward repair of an existing feature, a brief written description on Part A of our application form and a plan will normally be enough for us to make a decision.

A more complicated case would need much more supporting information. We may need more information than a local authority might need for a planning application.

## Examples of supporting information for an application [TEXT BOX]

Here are some of the things we might ask for if you are planning extensive or complicated works:

- a justification for the work setting out what benefits it would bring
- an assessment of potential impacts on any structures and archaeological remains
- an overview of the proposed scheme and proposals to mitigate any impacts
- detailed technical drawings
- method statements from a variety of specialist contractors
- an assessment of the monument's cultural significance and condition – this might require a preliminary stage of historical research, survey and archaeological investigation, which could require a separate application for scheduled monument consent

## Accessibility

Our policy for scheduled monuments notes that improving access to monuments, where appropriate, can provide public benefits. Where this is the case, we will take it into account in our decisions.

We understand that this does not just mean removing physical barriers and includes reducing intellectual and social barriers to people connecting with our heritage. It can include making it possible for people to remotely access monuments. You can [find an example of this at St John's Tower, Ayr on our website](#).

While improving public access is a strong justification, proposals still need to be carefully considered against all our policies. It can take thoughtful design to improve access without affecting the cultural significance of monuments. Any changes to improve accessibility should be the minimum necessary to achieve the required improvements.

## Natural heritage

The Nature Conservation (Scotland) Act 2004 placed a statutory duty on all public sector bodies in Scotland to further the conservation of biodiversity. To meet this duty, we will check to see if an application would affect a protected species or place, or have an impact on biodiversity.

We will check if the proposed work is within an area protected for its natural heritage. This includes:

- Sites of Special Scientific Interest
- Special Protection Areas
- Special Areas of Conservation

You can [find out more about these protected areas on Scottish Natural Heritage's website](#).

If the works are in a protected area, we will ask for advice from [Scottish Natural Heritage](#) (SNH). Our consultation with SNH can take up to 28 days. You might be able to avoid this delay if you consult SNH before submitting your application, and send us their response when you apply.

We will follow SNH's advice. This might mean that we ask you for ecological surveys, or for changes to your application to mitigate impacts on natural heritage.

You normally need a licence from SNH for working in a Site of Special Scientific Interest. However, if that work has scheduled monument consent – and does not go beyond the edges of the monument – you will not. If you are in any doubt about whether you need a licence, you should contact SNH.

Some types of work are likely to affect protected species or wildlife breeding sites. If we think there is a risk that your proposals will, we will ask you to commission an ecologist to do survey work and to offer recommendations.

The most likely species to be affected by works on scheduled monuments is bats. This is mainly because they often roost in ruins and trees. There is a useful [section on SNH's website which can help you consider possible impacts on bats and other species](#). If your work could affect bats, we will expect you to have surveys done at the right time of year – and before you apply for scheduled monument consent.

When we make a decision on an application, we will take any response from SNH, professional recommendations from ecologists, and the results of any surveys into account. Impacts on natural heritage could lead us to refuse applications, to attach conditions or to ask for amendments.

## Publication and representations

Once we have validated your application, we will publish it on [our online Decisions Portal](#). This usually happens within five working days. We will remove personal or sensitive

information like signatures, addresses and phone numbers before we do this. We do this in line with our [privacy notice](#).

We publish applications to make our decision-making transparent. We encourage applicants to help this process by engaging with the community when they are developing proposals that are likely to be of wider interest. This allows members of the public and organisations to make representations to us if they would like to. We will consider contacting appropriate bodies, such as Community Councils, if we are aware of wider public interest in an application. We will accept representations to applications by letter or email – the contact details for this are given at the end of this guidance note.

We produce a report that explains our decisions, and this will list any representations we have received. The report will explain how we considered any representations that were material to our decision. Once we have made our decision we will contact anyone who made a representation to us to let them know the outcome, this will include a link to our portal where the decision documents are published.

## Our decisions

We reach a decision on most applications within eight weeks. Very rarely we might ask an applicant to agree to a longer period.

For some applications, we have to notify Scottish Ministers of our decision before it is final. This is because we have been directed to inform Scottish Ministers if we intend to grant consent for some works. We do this 'where proposed works would allow a greater level of intervention than the minimum level of intervention that is consistent with conserving what is culturally significant in the monument'.

If your application falls into this category, we will pass it to Scottish Ministers for them to review. They will then decide whether to allow our decision to go ahead, or to call it in for their own determination.

## Types of proposals that have been passed to Scottish Ministers [TEXT BOX]

Here are a few examples of proposals that have been notified to Scottish Ministers in the past, to illustrate what this might mean in practice:

- a new bridge over a scheduled canal
- restoring a tower house to use as a dwelling
- building a viewing platform for visitors
- an archaeological research excavation

We will let you know if we send your application to Scottish Ministers and this will also be shown on our portal. We will send them the application forms and any other relevant information. They usually take around four weeks to decide whether they want to call the application in.

The four-week period is only a guide and there is no maximum time limit. If Ministers decide to call an application in, it is likely that they will take much longer to come to a decision.

## Application outcomes

An application for scheduled monument consent can be:

- granted (with or without conditions)
- part granted/part refused (with or without conditions)
- refused

Once we have determined your application, we will let you know. We will send you a letter than includes a decision notice and a report of handling. The decision notice will summarise what you have consent for, and any conditions you have to follow. The letter will give you further information and explain how to appeal if you are unhappy with our decision.

The report of handling and decision notice are published on our portal.

## Conditions [TEXT BOX]

You must take care to read and act on any conditions included in your decision notice. It is a criminal offence not to comply with them.

Some conditions can require you to provide us with further information for approval before work can start. Others require work to be undertaken in certain ways. You need to make sure that your programme allows for dealing with conditions at the right time, and that everyone affected understands the conditions that might affect their work.

We will confirm that you have satisfied a condition if you provide evidence that you have. In some circumstances you may wish to vary or discharge, this means delete, a condition. You should not carry out any works associated with your proposed variation or discharge until you have applied and been granted consent for the change. Application forms to vary or discharge a condition and guidance on how to fill them out [can be downloaded from our website](#).

## Appeals and compensation

An applicant can appeal to Scottish Ministers if they do not agree with our decision. We will include details on how to do this in our covering letter. An applicant can appeal against:

- refusal of an application for scheduled monument consent
- granting an application for scheduled monument consent subject to conditions
- refusal of an application for variation or discharge of conditions
- granting subject to conditions an application for variation or discharge of conditions
- refusal of an application for subsequent approval required by a condition to which a scheduled monument consent is subject
- failure to determine scheduled monument consent or variation thereof within a two-month period

Compensation may be payable for refusal of scheduled monument consent. Claims must be made within 6 months of refusal and in circumstances that include:

- refusal of consent for works which are reasonably necessary for any development which had planning permission before a monument was scheduled

- refusal of consent for works which are reasonably necessary for the continuation of use of a monument for any purpose for which it was in use immediately before the date of the application for scheduled monument consent

## Understanding our decisions

Our principles, aims and policies are set out [Scheduled Monument Consents Policy](#) which stands alongside the [Historic Environment Policy for Scotland](#). The decisions we make on scheduled monument consent will be based on the relevant policies in these two documents.

We also take other relevant legislation and policies into account, such as that relating to [natural heritage](#). We often need to refer to laws and policies relating to human remains, which prioritise leaving them undisturbed. We call these policies and laws ‘material considerations’ and links to the most common are included at the end of this note.

We schedule a monument to secure its long-term protection in the national interest. We will only set this principle of preserving monuments aside in circumstances where we decide, on balance, that wider interests are of greater importance to the national interest.

The more important features of a monument are to its cultural significance, the harder it is to justify proposals that would change those features.

Where works are required to preserve a monument, whether masonry consolidation or to stop erosion, we will expect them to be carefully designed with expert advice. We will weigh up the benefits of conservation work against any harm. Conservation should always be aimed at the lowest level of intervention that is consistent with achieving a monument’s preservation.

We will not normally grant consent to what we conclude to be an extensive intervention. Whether a proposal falls within this definition will be considered in terms of the nature of the affected monument and the effect a proposal would have on it.

Policy 3 of [Scheduled Monument Consents Policy](#) (SMCP3) states:

**Extensive intervention to a scheduled monument will only be allowed where:**

- it has minimal effect on the cultural significance of a monument; or
- it is clearly necessary to secure the long-term preservation of the monument; or
- it will clearly generate public benefits of national importance which outweigh the impact on the nationally important cultural significance of the monument. Such public benefits could come from, for example, interventions which improve public access to a scheduled monument (where appropriate), or assist public understanding once the works are completed, or provide economic benefits of national importance once completed.

**Where unavoidable circumstances, such as coastal erosion, threaten the survival of a scheduled monument, it should, where possible, be excavated and/or recorded in detail before its destruction.**

Decisions in line with this policy are made on a case-by-case basis so they will be affected by the individual factors of the case. We have produced some case studies for consented applications to show how our policy has been applied in practice. You can read the individual case studies on our website [[Hyperlink to be added when case studies uploaded](#)].

## Other consents

### Metal and mineral detecting consent

If you want to use equipment that can detect metals or minerals on a protected place then you need to get metal and mineral detecting consent. A 'protected place' is a scheduled monument or monument brought into the care of Scottish Ministers using powers set out in the 1979 Act.

It is a criminal offence to detect metals or minerals on a protected place without our consent.

This includes magnetometry, gradiometry and ground penetrating radar surveys for archaeology or buried services. It also includes metal detecting. Resistivity survey does not need metal and mineral detecting consent.

You can download an application form from [the metal and mineral detecting pages of our website](#). These pages also include a guide on how to apply, and advice for people who metal detect as a hobby. A link to this advice is also included at the end of this guidance note.

Archaeological geophysical surveys of scheduled monuments should be designed to gather information that increases our understanding of the cultural significance of the monument. They must not place its preservation, cultural significance or associated artefacts at risk.

We expect surveys to be supported by a sound research design, methodology and reporting strategy. They should always be undertaken by appropriately skilled and competent people.

We will normally only grant consent for metal detecting when it is a controlled survey as part of a wider research project.

You will not need to submit a separate application for metal and mineral detecting if you are also applying for scheduled monument consent. Instead, you need to include details about it with your scheduled monument consent application.

### Relationship to other consents

Scheduled monument consent is separate from other consents, for example planning permission and forestry licensing. You may need to get planning or other permissions as well as our consent. You should check with the relevant decision-maker.

Scheduled monument consent may run in parallel with planning permission. It is normally best to deal with both applications at the same time. We recommend you get our consent first in more complex cases.

Some monuments are also protected as [listed buildings](#). Where they are, and barring some rare exceptions, only scheduled monument consent is needed. If you are in any doubt, you

should check with your planning authority, as they will be the decision-maker for any application for listed building consent.

## Works without consent

The 1979 Act sets out several offences in relation to scheduled monuments and protected places. We call these unauthorised works, and they include:

- damaging a protected monument
- permitting or executing works to a scheduled monument without consent
- not executing works in accordance with the terms of consent and of any conditions attached to it
- using a device capable of detecting metals or minerals in a protected place without our written consent

We are a special reporting agency to the [Crown Office and Procurator Fiscal Service](#) and have responsibility for the protections given to scheduled monuments by the act. This includes investigating unauthorised works. There is no time limit to us beginning an investigation or taking enforcement action.

We have produced a leaflet that explains what to expect if you are involved in an investigation of unauthorised works. [\[Hyperlink to be added when leaflet uploaded\]](#).

## Enforcement process

The effects of unauthorised works on monuments vary widely and they happen for many different reasons. We find out the background to an incident before we make a decision on how to proceed and we will take any relevant circumstances into account. You can expect our decisions to be reasonable and proportionate.

Before we take enforcement action, we will usually give the relevant parties an opportunity to resolve differences. However, in some cases, immediate action may be needed, or resolution might not be appropriate.

When we undertake enforcement action, we will ensure that:

- relevant parties receive an explanation of any statutory rights of appeal
- relevant parties receive a clear explanation of what they need to do to comply with any notices
- enforcement notices are made public on [our online Decisions Portal](#) – certain information may also be made available under the [Freedom of Information \(Scotland\) Act 2002](#)
- enforcement action is recorded in writing and filed – records of meetings will be kept, actions and timescales will be recorded

Where appropriate, we will work with other agencies. This might include Police Scotland, local authorities and other public bodies. We will make sure there are no unnecessary delays.

## Compliance

It is our role to make sure that works to scheduled monuments comply with the 1979 Act.

The main way we do this is through the granting of scheduled monument consent – this could include granting, refusing, reviewing, varying, suspending or revoking consents. We can also grant retrospective scheduled monument consent where works have been carried out without consent, and it is appropriate to retain them or elements of them.

We will often try to resolve unauthorised works informally, through discussion and written agreement.

Sometimes we might send out an advisory or warning letter. We use these where unauthorised works have taken place, but no damage has occurred to the monument, or where conditions of consent have been breached without damage to the monument. The nature of the breach will be clearly explained and advice on how to avoid future breaches given. Where action is required to prevent a breach of legislation, or to comply with consent conditions, a timeline will always be included to show when compliance should be achieved.

We can also take more formal steps to ensure compliance with the 1979 Act. These include:

- **Notices**  
Several types of formal notice may be served by Historic Environment Scotland. There is more information about these in the text box below.
- **Direct Action**  
Where a person does not fully comply with an enforcement notice, we can enter land and carry out any unfulfilled requirements. Where direct action is taken, we can seek to recover costs associated with it.
- **Reporting breaches of the 1979 Act to the Procurator Fiscal**  
We will report cases to the Procurator Fiscal where we believe it is in the public interest. A guilty verdict can result in substantial penalties that are laid out in detail alongside the relevant offences below.
- **Seeking an interdict**  
In cases where we suspect unauthorised works are likely to take place in the future, a court order prohibiting such works can be sought.

## Notices [TEXT BOX]

We can issue three different types of notices.

### Enforcement notices

A scheduled monument enforcement notice requires the reversal or amelioration of unauthorised works to a scheduled monument or works in breach of any condition attached to scheduled monument consent. It can be used in cases where such remedial works are desirable or reasonably practicable. An appeal against an enforcement notice may be made to Scottish Ministers. The process for doing this is explained in full on the notice. In order to allow an appeal to be made an enforcement notice cannot take effect until at least 28 days after it has been served.

### Stop notices

A stop notice can only be issued alongside or after an enforcement notice and will come into effect not less than three days after being served.

### Temporary stop notices



A temporary stop notice can be issued to effect an immediate halt to unauthorised works. Unlike a stop notice, it does not require the issue of an enforcement notice. It can only be in force for a maximum of 28 days to enable the most appropriate enforcement action to be considered and undertaken during this time.

## Penalties for breaches of the 1979 Act [To be put in a Table]

- To destroy or damage a scheduled monument, if the person knew or ought to have known that the monument was protected and intended to destroy or damage the monument, or was reckless as to whether the monument would be destroyed or damaged.

On summary conviction, to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 6 months or both; or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

- To execute, cause or permit unauthorised works on a scheduled monument.

On summary conviction, to a fine not exceeding £50,000; or on conviction on indictment, to a fine.

- Failure to comply with conditions of scheduled monument consent.

On summary conviction, to a fine not exceeding £50,000; or on conviction on indictment, to a fine.

- Failure to comply with an enforcement notice, stop notice or temporary stop notice.

For each breach of notice, up to £20,000 on summary conviction or on conviction on indictment, to a fine.

- Knowingly to provide, as part of a scheduled monument consent application, a certificate relating to the notification of owners, which contains false or misleading statements.

On summary conviction, to a fine not exceeding £1000.

- Conducting a metal or mineral detecting survey without written consent of Historic Environment Scotland.

On summary conviction, to a fine not exceeding £1000.

- Removal of any object of archaeological or historic interest discovered through unauthorised metal or mineral detecting survey.

Up to £10,000 on summary conviction or on conviction on indictment, to a fine.

## Compensation

Compensation may be payable in certain circumstances in relation to the issuing of stop or temporary stop notices and for any loss or damage directly attributable to the prohibition caused by the notice. Claims must be made within six months from the date on which the stop notice ceased to have effect.

## Contact Us

Call the Monuments Casework team on: 0131 668 8716

Send general inquiries to: [HMConsultations@hes.scot](mailto:HMConsultations@hes.scot)

Send scheduled monument consent applications, inquiries or representations to:  
[ScheduledMonumentConsent@hes.scot](mailto:ScheduledMonumentConsent@hes.scot)

## Further information

### Finding out about scheduled monuments

There is much more information about the scheduling process, management and advice on our website:

<https://www.historicenvironment.scot/advice-and-support/listing-scheduling-and-designations/scheduled-monuments/>

To find out about a particular monument and our decisions:

<https://www.pastmap.org.uk/>

<http://historicscotland.maps.arcgis.com/apps/Viewer/index.html?appid=18d2608ac1284066ba3927312710d16d>

<https://portal.historicenvironment.scot/>

### Relevant laws, policy and guidance

Ancient Monuments and Archaeological Areas Act 1979

[www.legislation.gov.uk/ukpga/1979/46](http://www.legislation.gov.uk/ukpga/1979/46)

The Ancient Monuments (Class Consents) (Scotland) Order 1996

<http://www.legislation.gov.uk/uksi/1996/1507/schedule/made>

Our Place in Time

<https://www.gov.scot/publications/place-time-historic-environment-strategy-scotland/>

Historic Environment Policy for Scotland

<https://www.historicenvironment.scot/advice-and-support/planning-and-guidance/historic-environment-policy-for-scotland-heps/>

Scheduled Monument Consents Policy

<https://www.historicenvironment.scot/archives-and-research/publications/publication/?publicationId=46d8502d-7059-416b-940e-aa250102112d>

Designations Policy

<https://www.historicenvironment.scot/archives-and-research/publications/publication/?publicationId=8d8bbaeb-ce5a-46c1-a558-aa2500ff7d3b>

Managing Change in the Historic Environment <https://www.historicenvironment.scot/advice-and-support/planning-and-guidance/legislation-and-guidance/managing-change-in-the-historic-environment-guidance-notes/>

Metal detecting at scheduled monuments: the Law

<https://www.historicenvironment.scot/archives-and-research/publications/publication/?publicationId=b7c12fe3-7563-4494-9901-a59800baca91>

The Treatment of Human Remains in Archaeology

<https://www.historicenvironment.scot/archives-and-research/publications/publication/?publicationId=02e7320f-4fb2-4c4a-8aba-a58e00e3f22c>

Carved Stones: Scottish Executive Policy and Guidance

<http://www.carvedstones.scot/uploads/4/4/0/3/44032535/carved-stones-scottish-executive-policy.pdf>

## Useful information from other organisations

Contacts for Local Authority Archaeological Officers

<https://www2.gov.scot/Topics/farmingrural/SRDP/RuralPriorities/RPContactUs/LAArchaeologicalOfficers>

Association of Local Government Archaeological Officers

<https://www.algao.org.uk/>

UK Forestry Standard

<https://forestry.gov.scot/sustainable-forestry/ukfs-scotland>

Scottish Natural Heritage

<https://www.nature.scot/professional-advice/planning-and-development/advice-planners-and-developers>

Scottish Government Rural Payments and Services

<https://www.ruralpayments.org/topics/>

Archaeology Scotland

<https://archaeologyscotland.org.uk/>