

**Interim Analysis Report on the  
Consultation on Historic Scotland's Guidance Note  
Managing Change in the Historic Environment: Works on  
Scheduled Monuments**



**Analysis Report  
Heritage Management Directorate  
November 2011  
CRES Ref:Con1445**

## **Table of Contents**

<b>Section 1: Acknowledgements.....</b>	<b>3</b>
<b>Section 2: Executive Summary.....</b>	<b>3</b>
<b>Section 3: Introduction.....</b>	<b>4</b>
<b>Section 4: Responses.....</b>	<b>5</b>
<b>Section 5: Findings.....</b>	<b>7</b>
<b>Section 6: Conclusions.....</b>	<b>11</b>
<b>Section 7: Annexes.....</b>	<b>12</b>

## **Section 1: Acknowledgements**

1. Historic Scotland would like to thank all those who responded to this consultation document by providing written comments.

## **Section 2: Executive Summary**

2. Historic Scotland is pleased to announce the findings of the consultation on a new guidance note in the Managing Change in the Historic Environment series 'Works on Scheduled Monuments'.
3. The guidance note provides advice on how to apply for consent for works on scheduled monuments, and sets out Historic Scotland's new powers in relation to unauthorised works. It aims to give owners, occupiers, land managers and land users clear guidance on the requirement for consent for works on scheduled monuments, and the consequences of conducting unauthorised works.
4. The guidance reflects changes in legislation affecting works on scheduled monuments, brought about by the introduction of the Historic Environment (Amendment) (Scotland) Act 2011. The provisions in the Act which affect such changes will be commenced later this year, subject to parliamentary timetable.
5. The note, like others in the series, is designed to offer clear, consistent advice to professionals, developers and applicants and be published on-line.
6. Between 22 September and 11 November 2011 Historic Scotland ran a public consultation which sought interim views on the contents of a draft guidance note. 16 responses were received. Historic Scotland will continue to collect feedback from members of the public as the leaflet is used over the coming year and, if necessary, revise the content in December 2012.

## Section 3: Introduction

### Background to the Consultation

7. The consultation on Historic Scotland's Guidance Note – Managing Change in the Historic Environment: Works on Scheduled Monuments - commenced on 22 September 2011 and the interim consultation period closed on 11 November 2011. It is available at:  
<http://www.historic-scotland.gov.uk/index/about/consultations/closedconsultations.htm>.  
The consultation invited views on the guidance set out in the draft note.

### Report Objectives

8. This document fulfils the requirement for an Analysis Report set out in the Scottish Government's good practice guidance on consultation. The objective of this report is to analyse and report on the responses made to the consultation on Historic Scotland's Guidance Note – Managing Change in the Historic Environment: Works on Scheduled Monuments.
9. The report does not set out Scottish Ministers' comments on or responses to those suggestions. The inclusion of a comment or suggestion does not imply that any contribution is accepted as accurately characterising the actual policy position or what may be included in the content of the final leaflet.
10. You can find a summary of the findings of the consultation in section 6 – Copies of this report can be downloaded from <http://www.historic-scotland.gov.uk/index/about/consultations/closedconsultations.htm>

Printouts may be requested from:

Historic Scotland  
Heritage Management Directorate  
Longmore House  
Salisbury Place  
Edinburgh EH9 1SH  
Or [hs.smc@scotland.gsi.gov.uk](mailto:hs.smc@scotland.gsi.gov.uk)

### Methodology

11. The response data were recorded, organised and summarised on a spreadsheet. A record was made of the key themes and issues raised. A frequency count was made of the overall number of responses by interest group and of the responses to each question. A qualitative analysis was then carried out using this framework. The summarised data for each question were reviewed and key themes and views were identified.
12. The findings of this report are specific to the consultation exercise and do not necessarily reflect the weight or range of views within the population as a whole.

## Distribution and Advertising

13. This consultation was advertised in the 'forthcoming' section of the Scottish Government's consultation web-pages on 22 September 2011. Organisations and individuals registered with the SE-consult alert service were notified of the consultation. Sixty-nine stakeholders and organisations were also notified by email at the beginning of the consultation period.

## Section 4: Responses

### Introduction

14. The following statistical analysis sets out the number of organisations and individuals who responded to the consultation document in writing by interest group/sector and compares them to the numbers who were notified about the consultation exercise. The consultation asked for general comments on eight sections, and a response to one direct question.
15. Written responses from consultees who agreed that their submissions be made public are available at <http://www.historic-scotland.gov.uk/index/about/consultations/closedconsultations.htm> Responses can be viewed at the Scottish Government Library, F Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD. Copies of responses can be provided by post. Charges for photocopies are made on a cost-recovery basis. To request copies by post, enquire about charges or make an appointment to view responses, telephone 0131 244 4565 or email [SGLibrary@scotland.gsi.gov.uk](mailto:SGLibrary@scotland.gsi.gov.uk).
16. Some organisations represent more than one interest. In these cases the general nature of the response has been used as a guide in order to facilitate the statistical analysis.

## Breakdown of Responses

### Responses by interest group/sector

17. A total of 16 responses were received to the consultation. breakdown of responses by interest group/sector is provided in table 1 below.

Respondent Type	Number	% of all respondents
Private individual	1	6.3
Local authority	4	25.0
Heritage body	4	25.0
Amenity group	0	0
Private sector	1	6.3
Public body	1	6.3
Professional body	6	37.5
<b>Total</b>	<b>16</b>	<b>100</b>

**Table 1: Responses by interest group/sector**

### Responses by interest group/sector relative to distribution list

Respondent Type	Invited	Invited Responded	% Return	Uninvited Responded
Private individual	2	1	50.0	
Local authority	32	4	12.5	
Heritage body	20	4	20.0	
Amenity group	4	0	0	
Private sector	0	1	0	1
Public body	4	1	25.0	
Professional body	7	6	85.7	
<b>Total</b>	<b>69</b>	<b>17</b>	<b>n/a</b>	<b>1</b>

## Section 5: Findings

### General comments on leaflet

18. 38% of respondents positively welcomed the addition of the new leaflet, recognising the benefits such a document could offer to owners, occupiers and land managers.

*“In its experience of managing and working with scheduled monuments, the key challenge the Council has faced has been the lack of awareness and knowledge of property owners as to either the existence of monuments or what their implications are. It is essential that there is good information available to owners and to new owners who acquire monuments. With this in mind, the Council fully welcomes the publication of the new guidance document, which introduces new public information on the subject”. (A local authority)*

19. 31% noted that the tone was markedly different from that of the existing Managing Change guidance leaflets.

*“As it stands the document is certainly perceived as threatening rather than guiding, and appears to be designed to create anxiety in owners of Scheduled Monuments! A change in tone and priorities is required, and certainly a greater emphasis on why Scheduled Monuments are important and their crucial value to Scotland’s heritage and culture.” (A heritage body)*

### Comments on Section 1: Introduction

20. 19% of respondents commented that a key points section should be added to the introduction, to bring the document in line with others in the series.
21. 25% suggested that the importance of conservation/ management plans, and the availability of grant for works on scheduled monuments should be included within the introduction, and expanded upon in following sections.

*“There should be a general encouragement for the preparation of conservation/preservation Management Plans and planned, programmed maintenance of Scheduled Monuments.”(A professional body)*

### Comments on Section 2: Scheduled Monuments

22. There was a general desire to see this section expanded to give more clarity on the purpose of scheduling and wider benefits of scheduled monuments.

*“The purpose of the legislation should be clearly stated either here or in the introduction. The national approach of seeking general preservation of Scheduled Monuments should be made clear. There should be some rather broader purpose or duty on Scottish Ministers than ‘merely’ preparing the Schedule, and this should be clarified.....(there should be) a much stronger justification for preservation of Scheduled Monuments. They are **major assets**. It would be appropriate to mention Scheduled Monuments’ role in achieving Sustainable Development here, and our duty to pass on*

*our cultural and landscape heritage to future generations.” (A professional body)*

### Comments on Section 3: Information on Scheduled Monuments

23. It was generally agreed that the section, as it currently stands, was not necessary as it simply pointed the reader to information in another section.
24. Several respondents suggested a section on how to ‘read’ a scheduling document would be a useful addition.  
*“Here there should be an explanation of a typical entry, including location, description, map and perhaps issues of setting.” (A professional body)*

### Comments on Section 4: Control of Works on Scheduled Monuments

25. 38% of respondents felt that more detail should be included on the definition of works on scheduled monuments, with more illustrative examples given.  
*“(The section) could be further elaborated on, to give owners a better understanding of the types of activity that would require permission and rationale behind this (for example how to address a management issue such as the removal of gorse). Expanding on this type of content as part of guidance notes (without being overly prescriptive) will help owners understand what types and levels of activity can be undertaken without waiting on a site visit, and when it is appropriate to seek permission and further advice.” (A heritage body)*
26. 19% suggested that the setting of a scheduled monument, and management of land surrounding a scheduled monument should be given more prominence within the document.
27. 25% of respondents wished to see an explanation of listing included.
28. 19% asked for clarification on the need for section 42 consent for geophysical survey.

### Comments on Section 5: Scheduled Monument Consent

29. 19% of respondents felt that the section was clear and precise.
30. 25% suggested more information on the policy considerations used to determine scheduled monument consent should be included.
31. The addition of an electronic downloadable form was welcomed.
32. A fast track process for minor works was suggested  
*“..... suggest a fast track process for minor works to reduce bureaucracy and focus resources on works which require further scrutiny” (A professional body)*
33. 25% of respondents felt there should be a requirement to involve professionals in all scheduled monument consent applications.  
*There should be a requirement (5.2.3) for the involvement of a professional with appropriate expertise and experience, and such involvement should not be restricted to large schemes: if the work is significant enough to require SMC then appropriate professional involvement should be the rule rather than the exception.” (A professional body)*

## Comments on Section 6: Compliance

34. There was a clear split between those who felt the quantity of information contained in this section was too great (38%) and those who felt it was essential (44%).

*“This is a long section relative to the earlier ones and there seems to be an imbalance in this document between ‘Managing Change’ and Compliance that is not done justice here. It is necessary for the legal position of the Scottish Ministers towards owners and managers to be clearly stated but a more balanced document outlining the significance of SMs to the people and nation of Scotland would make this document appear less negative and enhance the public value of Scheduled Monuments.” (A heritage body)*

*“Given the importance of this statement to monument protection it should be disseminated by all three means.” (Private Sector)*

Question	Website	Stand-Alone	Note	no answer
Do you agree that it be useful to publish the information contained in the Enforcement box on Historic Scotland’s website, or as a stand alone document, rather than in this guidance note?	11	5	10	2

35. 63% of all respondents agreed that the information contained in the Enforcement box should be retained within the guidance note, with many suggesting that it should also be available on Historic Scotland’s website, or as a stand alone document.

*We would prefer the Enforcement Box to be available both via Historic Scotland’s website, and within the guidance note itself. The importance of making this information widely available in different formats cannot be underestimated, as it helps with both understanding the importance of managing scheduled sites in the appropriate manner, and the consequences of not doing so.” (A professional body)*

36. 13% of respondents suggested a list of bodies/people who should be informed of all enforcement action.

*“All enforcement action undertaken by HS should be advised for information to  
the Local Planning Authority  
The Community Council  
Any Local Amenity or Detectorist Body  
The Owner  
The Occupier  
The Lessee*

*Police and Procurator Fiscal” (A professional body)*

37. 13% of respondents suggested Historic Scotland should take a firmer line on enforcement.  
*“There should only be one, or at most two opportunities to resolve differences before enforcement action is taken”.*(A professional body)

**Comments on Section 7: Compensation**

38. One respondent felt it would be useful to expand the section on compensation to include examples of where compensation has been paid.

**Comments on Section 8: Further Information and Advice**

39. A number of suggestions were made for additional sources to be added to this section.

## Section 6: Conclusions

40. There was a general support for the new guidance leaflet, and recognition of its usefulness as a source of information to the public.
41. There was a recognition that the tone of this leaflet differed from those of other Managing Change leaflets.

*The difference in tone reflects the difference in content of this particular leaflet, which seeks to provide clarity on existing and new legislative requirements and restrictions, rather than provide guidance on policy.*

42. A proportion of respondents felt that the leaflet should have a different focus to that currently planned. In particular, they felt that it should be used as an opportunity to promote the importance and positive management of scheduled monuments, rather than outlining the legal requirements and restrictions on works on scheduled monuments, which was seen as rather negative.

*There is a need to strengthen the introductory section of the leaflet to more clearly explain its purpose as a guide to the legal requirements and restrictions on works on scheduled monuments and new powers of enforcement, rather than a general advice note on scheduled monuments.*

43. There are a number of areas in the leaflet which will be redrafted to provide increased clarity or additional information, as highlighted by the consultation responses.
44. There was a clear divide between those who felt the content of the leaflet should be more general in nature, and those who felt strongly that the legal restrictions on works should be adequately explained in detail. This was particularly evident in the comments which the section on Compliance attracted.

*It is important that the changes brought about by the Historic Environment (Amendment) (Scotland) Act 2011 are widely publicised. Historic Scotland's new enforcement powers will have a significant effect on the way in which unauthorised works on scheduled monuments are dealt with. Given this, it is appropriate to devote a significant section of the leaflet to explaining these changes, in order that land owners, occupiers, managers and other interested parties have a clear understanding of Historic Scotland's role.*

## Section 7: Annexes

### Consultation Paper

Managing Change in the Historic Environment:  
Works on Scheduled Monuments

Consultation on guidance note



## **Background**

This consultation seeks comments on a new guidance leaflet in Historic Scotland's 'Managing Change in the Historic Environment' series. The guidance leaflet 'Control of Works on Scheduled Monuments' provides advice on how to apply for consent for works on scheduled monuments, and sets out Historic Scotland's new powers in relation to unauthorised works. It aims to give owners, occupiers, land managers and land users clear guidance on the requirement for consent for works on scheduled monuments, and the consequences of conducting unauthorised works.

The guidance reflects changes in legislation affecting works on scheduled monuments, brought about by the introduction of the Historic Environment (Amendment) (Scotland) Act 2011. The provisions in the Act which affect such changes will be commenced later this year, subject to parliamentary timetable.

### **Layout of guidance note**

The guidance note in its final form will be laid out and illustrated in a similar manner to existing Managing Change in the Historic Environment Guidance notes. Examples of these can be viewed on the Historic Scotland website ([www.historic-scotland.gov.uk/managingchange](http://www.historic-scotland.gov.uk/managingchange))

### **Strategic Environmental Assessment**

Historic Scotland has applied the criteria specified in Schedule 2 of the Environmental Assessment (Scotland) 2005 Act to the guidance and has determined that it is exempt from Strategic Environmental Assessment under Section 7(1).

### **Responding to this consultation paper**

We invite initial written responses to this consultation paper by **4 November 2011**. Please send your response with the completed Respondent Information Form (see 'Handling your Response' below) to:

**[hs.smc@scotland.gsi.gov.uk](mailto:hs.smc@scotland.gsi.gov.uk)**

or

Strategic Heritage Management Team  
Historic Scotland  
Room E13  
Longmore House  
Salisbury Place  
Edinburgh  
EH9 1SH

If you have any queries contact **Dr Iona Murray on 0131 668 8932**.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### **Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **What happens next?**

Following the closing date, all responses will be analysed and considered along with any other available evidence. We aim to issue an interim report on this consultation process by 22 November 2011.

The finalised version of the Guidance Note will be available to download from Historic Scotland's website in December 2011.

We will continue to collate responses and comments over the forthcoming 12 months, and review the content of this leaflet in December 2012. The final report on the consultation, together with any changes to the leaflet, will be available to download from Historic Scotland's website in February 2012.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to:

Dr Iona Murray  
Strategic Heritage Management Team  
Historic Scotland  
Room E13  
Longmore House  
Salisbury Place  
Edinburgh  
EH9 1SH  
[iona.murray@scotland.gsi.gov.uk](mailto:iona.murray@scotland.gsi.gov.uk)

# **Managing Change in the Historic Environment: The Control of Works on Scheduled Monuments**

## **1. INTRODUCTION**

1.1 This is one of a series of guidance notes on managing change in the historic environment. The series explains how to apply the policies contained in the [Scottish Historic Environment Policy](#) and [Scottish Planning Policy](#).

1.2 This note sets out the overarching principles that apply to works carried out on scheduled monuments; explains the process for applying for consent; and the mechanisms for dealing with unauthorised works.

## **2. SCHEDULED MONUMENTS**

2.1 Scheduled monuments are monuments of national importance which have been given legal protection through the [Ancient Monuments and Archaeological Areas Act 1979](#) ("The 1979 Act") as amended by the [Historic Environment \(Amendment\) \(Scotland\) Act 2011](#) ("The 2011 Act"). The Act places a duty on Scottish Ministers to compile, maintain and publish a schedule of monuments of national importance.

2.2 Currently around 8,150 monuments are scheduled, ranging from sites of the earliest known groups living in Scotland around 8000 years ago to Second World War gun emplacements. Most monuments include above ground remains but scheduling also protects below ground archaeology. For some sites including those identified through aerial survey of cropmarks, there will be little visible on the ground.

2.3 Scotland's scheduled monuments are an important resource for understanding the story of Scotland's people and landscape and are a major asset for tourism, leisure and education.

## **3. INFORMATION ON SCHEDULED MONUMENTS**

3.1 Sources of information relating to scheduled monuments are set out at the end of this document.

## **4. CONTROL OF WORKS ON SCHEDULED MONUMENTS**

### **4.1 Consent for works on scheduled monuments**

4.1.1 Once a monument is scheduled, the prior written consent of Scottish Ministers is required for most works including repairs. Any person carrying out unauthorised works or allowing unauthorised works to be carried out on a scheduled monument, is guilty of a criminal offence.

4.1.2 Scheduled Monument Consent (SMC) is administered by Historic Scotland on behalf of Scottish Ministers. (Any reference to Historic Scotland below should be read as 'Historic Scotland, on behalf of Scottish Ministers'.)

4.1.3 Under section 2 of the 1979 Act, works are defined as anything resulting in the demolition or destruction of a scheduled monument, any works for the purpose of removing or repairing a monument, or any flooding or tipping operations. Works are authorised if Historic Scotland has granted written consent for the works and if the works are carried out in accordance with the terms of the consent. Scheduled

monument consent can be granted unconditionally or with conditions which set out how the works are to be carried out. A consent under section 42 of the 1979 Act is also required to use a metal detector within a scheduled monument.

4.1.4 Examples of works requiring consent include the erection of polytunnels; the repair of a monument; the felling or planting of trees; the erection of a fence; the repair of a drain; and archaeological excavation.

4.1.5 Some types of works do not require scheduled monument consent as they are deemed to have consent, under the terms of the [Ancient Monuments \(Class Consents\) \(Scotland\) Order 1996](#) ('the Class Consents Order'). For example, if ploughing was taking place on a monument in a 10-year period up to the date when the works commence, then similar ploughing may continue without SMC. However, not all agricultural activity is automatically covered by class consents. It is important to note that most changes to an earlier agricultural regime (for example, deeper ploughing, sub-soiling or drainage works) would need SMC. Conversely, a change of use from ploughing to pasture would not require SMC.

## **4.2 Other permissions**

4.2.1 If a monument is both listed and scheduled, only SMC is required for any relevant work. In some cases planning permission may be required from the local authority in addition to SMC. Development close to a scheduled monument which may affect the setting of the monument is a material consideration in the planning system. Historic Scotland's Guidance Note '[Managing Change in the Historic Environment: Setting](#)' provides more information on this issue.

## **5. SCHEDULED MONUMENT CONSENT**

### **5.1 Policy**

5.1.1 Scottish Historic Environment Policy sets out Scottish Ministers' policy on SMC. It is the value of the monument to the nation's heritage that is the primary consideration in determining applications for SMC. Works on scheduled monuments should therefore normally be the minimum level of intervention that is consistent with conserving what is culturally significant in a monument.

5.1.2 As each monument will require treatment specific to its individual nature, characteristics, significance and needs, any proposed change to it must be fully and explicitly justified. Certain works may be appropriate at one monument, but not at another.

### **5.2 Applying for Scheduled Monument Consent**

5.2.1 There is no charge to make an application for scheduled monument consent. Applications are made by completing an application form which can be downloaded from Historic Scotland's web site (link to be inserted) or requested from Historic Scotland's Heritage Management Business Support Team. Applications can be submitted electronically, or by post.

5.2.2 Historic Scotland offers a free pre-application discussion and checking service for SMC applications. Senior Heritage Management Officers will be happy to offer

advice on proposals at an early stage, and comment on the content of draft SMC applications. This can often enable consent to be granted up to 4 weeks earlier.

5.2.3 As applications can cover works ranging from the erection of a fence or the felling of a tree to the full consolidation or restoration of a ruinous building, the amount of information required will vary greatly. More detailed guidance on the level of information required for various types of work can be found on Historic Scotland's website at (LINK TO FOLLOW). In applications for large consolidation or restoration schemes, the involvement of a professional with appropriate experience is likely to be a requirement.

### **5.3 Determining applications**

5.3.1 The SMC process normally takes a maximum of 9 weeks from start to finish. The application will first be validated to check that all required information is included and an acknowledgement issued. Consent can be granted unconditionally, or conditionally. Unconditional consent is normally issued within 5 weeks of receipt of the application. Where conditions are applied, a provisional view will normally be issued within 5 weeks of receipt of the application. If the applicant is content with the conditions, a final view will be issued within 4 weeks and works can then commence.

5.3.2 If the provisional view of the application is that Scottish Ministers are minded to refuse consent, the applicant can either accept this provisional view within 28 days or make representations to Scottish Ministers through Historic Scotland. If agreement cannot be reached, Scottish Ministers will decide the most suitable means of determining each application, through written submissions, a hearing or an inquiry, or any combination of these. The final decision on the Inquiry Reporter's recommendations is taken by Scottish Ministers.

5.3.3 Historic Scotland can refuse to entertain applications for SMC where a similar application has been refused in the previous two years and there has been no significant change in any material considerations since the similar application was refused.

5.3.4 Enforcement of conditions will be undertaken through site visits and monitoring of associated reports. It is an offence to carry out works which were not covered by the consent, or to carry out works in any area of the site which is not specified on the application.

### **5.4 Other applications**

5.4.1 Application forms for section 42 consent to undertake metal detecting, and notification forms for works undertaken under Class Consent can be downloaded from Historic Scotland's website at (LINK TO FOLLOW).

## **6. COMPLIANCE**

### **6.1 Historic Scotland's approach to compliance**

6.1.1 Historic Scotland will seek, wherever possible, to engage, encourage and inform those who are subject to the Ancient Monuments and Archaeological Areas Act 1979, in order to secure compliance. Where breaches of the law arise, enforcement action will be undertaken in a proportionate manner.

6.1.2 In pursuing compliance with the Ancient Monuments and Archaeological Areas Act 1979, Historic Scotland may use a variety of approaches which include:

- Discussion – this may take place as part of seeking SMC, as part of routine on-going compliance checks, site visits, and investigation of reports of unauthorised works or according to other needs or circumstances;
- Ensuring compliance through the granting of scheduled monument consent (this includes granting, refusing, reviewing, varying, suspending or revoking consents);
- Advisory/ Warning letters – these are used 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 in writing, and advice on how to avoid future breaches given. Where action is required to prevent a breach of legislation, or comply with consent conditions, a timeline will always be included to show when compliance should be achieved.
- Notices - a formal notice requiring compliance and amelioration (enforcement notice, stop notice or temporary stop notice) may be served by Historic Scotland (see box below).

**Enforcement notices** - A scheduled monument enforcement notice allows for the reversal or amelioration of unauthorised works to a scheduled monument, or works in breach of any condition attached to SMC. The enforcement notice cannot take effect until at least 28 days after it has been served. There is no time limit for taking scheduled monument enforcement action.

**Stop notices** - A stop notice must accompany or follow an enforcement notice and will come into effect not less than three and not more than 28 days after it was issued unless Historic Scotland considers that there are special reasons to justify it taking effect immediately.

**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.

- Direct Action - Where a person does not fully comply with an enforcement notice, Historic Scotland can enter the land and carry out any unfulfilled requirements of an enforcement notice. Direct action will only be taken in the most serious of circumstances where there is an imminent threat to the national importance of the monument. Where direct action is taken, Historic Scotland will seek to recover costs associated with such works.
- Reporting breaches of the Ancient Monuments and Archaeological Areas Act 1979 to Procurators Fiscal, recommending prosecution.
- Seeking an interdict - Historic Scotland may decide to seek a court order to be served on a person or company prohibiting them from carrying out an activity.

Interdict may be sought by Historic Scotland where there is an immediate requirement to protect a scheduled ancient monument

- Retrospective SMC - Where works have been carried out without consent, it may occasionally be appropriate and in the best interests of the scheduled monument to retain certain unauthorised works, for example, where the reversal of an intervention would be likely to lead to further damage to the monument. In these cases an application for retrospective SMC can be considered.

6.1.3 All enforcement action undertaken by Historic Scotland will be fair and reasonable. Enforcement action will be recorded by Historic Scotland and placed on our on-line enforcement register. Certain information may also be made available under the Freedom of Information (Scotland) Act 2002.

### **Use of Enforcement Powers**

Historic Scotland is committed to the proportionate use of enforcement powers and will seek to resolve issues informally before their use. Once an enforcement notice has been issued, however, Historic Scotland will pursue the action to a satisfactory resolution.

In most cases, working with stakeholders and raising their awareness of the requirements of the Ancient Monuments and Archaeological Areas Act 1979 will achieve the desired outcomes of improved compliance. Breaches of the Ancient Monuments and Archaeological Areas Act 1979 may arise for a variety of reasons and the type and severity of offence will vary considerably. Historic Scotland's response will take into account why the breach has arisen for example due to negligence or a deliberate act. Criminal prosecution will be reserved for the most serious, persistent or deliberate cases. In the majority of cases, the least formal action necessary to secure compliance will be taken, unless there is a presumption to seek prosecution as outlined below.

Historic Scotland will be open, helpful, proportionate and consistent in its approach to enforcement action, and will ensure that individuals:

- receive clear explanations of what they need to do to comply and by when;
- where appropriate, have opportunities to resolve differences before enforcement action is taken, unless immediate action is needed; and
- receive an explanation of their statutory rights of appeal, if any.

In applying this policy, Historic Scotland will follow the principles set out below:

- all enforcement action undertaken by Historic Scotland will be fair and reasonable. Enforcement action will be recorded by Historic Scotland and placed on our on-line enforcement register. Certain information may also be made available under the Freedom of Information (Scotland) Act 2002;
- all enforcement action will be recorded in writing and put on a working file. Records of meetings will be kept and actions and timescales will be recorded;
- action will be swift once the full facts are known. There will be no unnecessary delay.

Where appropriate, Historic Scotland will liaise with other Agencies to ensure compliance (e.g. Police, Local Authorities, other Government Bodies etc).

**Q – Would it be useful to publish the above information on how Historic Scotland uses enforcement powers on our website, or as a stand alone document, rather than in this guidance note?**

### 6.3 Reporting cases to Procurators Fiscal

6.3.1 The objective of enforcement is to ensure that preventative or remedial steps are taken to protect a scheduled ancient monument. Prosecution of offences under the 1979 Act is one of the ways of achieving that objective.

6.3.2 Historic Scotland can recommend to a Procurator Fiscal that a case be brought. Prosecution will be recommended only where it can be justified in order to punish offenders, to avoid a recurrence and/or to encourage improved compliance with the law. Where the circumstances warrant it, a case may be referred to a Procurator Fiscal without prior warning or recourse to alternative methods of enforcement.

### 6.4 Fines

6.4.1 Offences and fines relating to works on scheduled monuments are summarised below. In determining the amount of any fine to be imposed on a person the court will take account of any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.

Offence	Fine
To execute, cause or permit unauthorised works on a scheduled monument, or destroy or damage the monument	Up to £50,000 on summary conviction 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
Failure to comply with conditions of SMC	Up to £50,000 on summary conviction or on conviction on indictment, to a fine
Knowingly to provide, as part of a SMC application, a certificate relating to the notification of owners, which contains false or misleading statements	Up to £200
Unauthorised use of a metal detector	Up to £200
Removal of any object of archaeological or historic interest discovered through unauthorised metal detecting survey	Up to £50,000 on summary conviction or on conviction on indictment, to a fine

## 7 Compensation

7.1 Compensation may be payable for refusal of SMC in certain circumstances. These include works for carrying out any development for which planning permission had been granted before the time when the monument in question became a scheduled monument, and works necessary for the continuation of any use of the monument for any purpose for which it was legally in use immediately before the date of the application for scheduled monument consent.

7.2 Compensation may also be payable in certain circumstances in relation to the issuing of stop or temporary stop notices, in respect of any loss or damage directly attributable to the prohibition effected by that notice.

Compensation claims must be made within 6 months of refusal of SMC or, in the case of stop and temporary stop notices, within 6 months of the loss or damage occurring.

## 8. FURTHER INFORMATION AND ADVICE

8.1 As the designating body, information on scheduled monuments is available on line from Historic Scotland's website: <http://data.historic-scotland.gov.uk> Here you can download maps and copies of the legal documentation for each scheduled monument, as well as find out about other types of designation such as listing. If you do not have access to the web, you can request this information from Historic Scotland direct.

8.2 Advice on the requirement for scheduled monument consent should be sought from Historic Scotland:

Heritage Management Directorate  
Historic Scotland  
Longmore House  
Salisbury Place  
Edinburgh  
EH9 1SH

Tel: 0131 668 8770

Email: [hs.smc@scotland.gsi.gov.uk](mailto:hs.smc@scotland.gsi.gov.uk)

8.3 Scheduling documents are available to anyone searching the Register of Sasines or the Land Register for the title to a property.

8.4 Historic Scotland also makes its data available on PASTMAP: [www.pastmap.org.uk](http://www.pastmap.org.uk), a website jointly developed with the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS), where you can search for information on Scotland's historic environment from multiple sources.

8.5 Advice on the requirement for other permissions such as planning permission or building warrants should be sought from local authorities.

8.6 Aerial photography and other records relating to scheduled monuments can be obtained from:

Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS)

John Sinclair House

16 Bernard Terrace

Edinburgh

EH8 9NX

Tel 0131 662 1456

Fax: 0131 662 1477

Email: [info@rcahms.gov.uk](mailto:info@rcahms.gov.uk)

Web: [www.rcahms.gov.uk](http://www.rcahms.gov.uk)

## 8.7 Legislation and Policy Documents:

Scottish Historic Environment Policy

<http://www.historic-scotland.gov.uk/shep-july-2009.pdf>

Ancient Monuments and Archaeological Areas Act 1979

<http://www.legislation.gov.uk/ukpga/1979/46>

Historic Environment (Amendment) (Scotland) Act 2011

<http://www.legislation.gov.uk/asp/2011/3/contents/enacted>

Ancient Monuments (Class Consents) (Scotland) Order 1996

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

For the full range of Historic Scotland Managing Change leaflets:

<http://www.historic-scotland.gov.uk/index/heritage/policy/managingchange.htm>

For Technical Advice Notes, Research Reports, etc, please see the publications section of the Historic Scotland website.

## Consultation Questions

### CONSULTATION QUESTIONS

Please enter general comments on each section of the guidance leaflet below.

#### Section 1: Introduction

Comments

#### Section 2: Scheduled Monuments

Comments

#### Section 3: Information on Scheduled Monuments

Comments

#### Section 4: Works on Scheduled Monuments

Comments

#### Section 5: Scheduled Monument Consent

Comments

#### Section 6: Compliance

Comments

Do you agree that it be useful to publish the information contained in the Enforcement Box on Historic Scotland's website, or as a stand alone document, rather than in this guidance note?

Website  Stand Alone Document  Contained within guidance leaflet

Comments

#### Section 7: Compensation

Comments

#### Section 8: Further Information and Advice

Comments

#### General Comments

Comments

## **Distribution List**

### **Amenity Groups**

**Commission for Equality and Human Rights in Scotland  
Communication Forum Scotland  
Inclusion Scotland  
Scottish Disability Equality Forum**

### **Heritage Bodies**

**Archaeology Scotland  
Built Environment Forum Scotland  
CADW  
English Heritage  
Historic Houses Association  
Society of Antiquaries of Scotland  
The Scottish Civic Trust**

### **Local Authorities**

**Aberdeen City Council  
Aberdeenshire Council  
Angus Council  
Argyll and Bute Council  
Cairngorms National Park  
City of Edinburgh Council  
Clackmannanshire Council  
Comhairle nan Eilean Siar  
Dumfries and Galloway Council  
Dundee City Council  
East Ayrshire Council  
East Dunbartonshire Council  
East Lothian Council  
East Renfrewshire Council  
Falkirk Council  
Fife Council  
Glasgow City Council  
Highland Council  
Inverclyde Council  
Loch Lomond and Trossachs National Park  
Midlothian Council  
Moray Council**

**North Ayrshire Council**  
**North Lanarkshire Council**  
**Orkney Islands Council**  
**Perth & Kinross Council**  
**Renfrewshire Council**  
**Scottish Borders Council**  
**Shetland Islands Council**  
**South Ayrshire Council**  
**South Lanarkshire Council**  
**Stirling Council**  
**West Dunbartonshire Council**  
**West Lothian Council**

### **Professional**

**Association of Local Government Archaeology Officers**  
**CoSLA**  
**Dundas and Wilson**  
**Institute of Field Archaeologists**  
**Institute of Historic Building Conservation**  
**NFU Scotland**  
**QPA Scotland**  
**The Royal Town Planning Institute, Scotland**  
**Scottish Property Federation**

## **Respondent List**

### **Heritage Body**

**Archaeology Scotland**  
**Built Environment Forum Scotland**  
**Society of Antiquaries of Scotland**

### **Local Authority**

**Dundee City Council**  
**East Ayrshire Council**  
**Falkirk Council**  
**Scottish Borders Council**

### **Private**

**CFA Archaeology Ltd**

### **Professional Body**

**Association of Local Government Archaeology Officers**  
**Institute of Field Archaeologists**  
**Institute of Historic Building Conservation**  
**The Royal Town Planning Institute, Scotland**

### **Other Public Body**

**British Waterways Scotland**