

# A

## Aspects of ownership of carved stones

Non-earthfast and non-wallfast carved stones are portable antiquities and capable of being claimed under Scots common law as treasure trove, whereas established earthfast/wallfast stones are potentially heritable and may belong to the owner of the ground/building so long as they remain *in situ*. Stones in the non-earthfast/wallfast category must be declared to the Crown for consideration as treasure trove. For details of the treasure trove system and how to declare objects see [www.treasuretrove.org.uk](http://www.treasuretrove.org.uk).

Ownership of carved stones on ecclesiastical sites has been problematic. Examples include re-appropriation of medieval carved stones for more recent gravemarkers with present day ownership claimed by the families on whose plots the stones now lie.

Gravemarkers are owned by those who erected them or by their descendants. Rarely, even in the case of recent gravemarkers, can owners be readily traced and this creates problems with regard to responsibility and permission for action. The Church of Scotland Property and Endowment Act 1925 is unclear on where responsibility for gravestones lies and there is little accessible test case information to draw upon.

The 1925 Act passed ownership and responsibility for parish burial grounds from the heritors of parishes to parish councils, a responsibility later transferred to the local authorities. Property rights and responsibilities for parish churches and churchyards passed to the Church of Scotland Trustees. Since these transactions did not necessarily involve formal legal conveyance, it is sometimes difficult to get anyone to accept responsibility for a site which may include carved stones additional to gravestones (see above).

New discoveries of portable carved stones may come under the category of treasure trove and require to be declared to the Crown so that it has

the opportunity to claim them. In such circumstances, and if claimed, the Treasure Trove Advisory Panel (Historic Scotland's Finds Disposal Panel for finds from Historic Scotland-funded excavations) advises the Queens and Lord Treasurer's Remembrancer to which Registered Museum (in Scotland Registration is administered by the Scottish Museums Council) Crown-claimed material should be disposed. There is a presumption that where an institution already holds part of an object or the main collection from the same site that it will be allocated new discoveries from it. Museums may also make bids for material that fills a significant gap in their formal Collecting Policy (as ratified by the Scottish Museums Council).

## B

## Aspects of legal protection of carved stones

Both the Ancient Monuments and Archaeological Areas Act 1979 (the 1979 Act) and Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the 1997 Act) apply to the legal protection of carved stones.

Under the 1979 Act Scottish Ministers can include in the Schedule any monument which appears to them to be of national importance. A scheduled monument is defined in section 1(11) as any monument which is for the time being included in the Schedule. To be considered as a scheduled monument a 'site' first needs to constitute a 'monument' under the definitions offered in sections 61(7)-(11) of the Act. For instance, Scottish Ministers may schedule under section 61(7)(c): *any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part thereof*, provided under 61(8)(a): *the situation of that object or its remains in that particular site is a matter of public interest*.

Section 61(8) of the 1979 Act does not permit the scheduling of a church in ecclesiastical use. This would include a carved stone that was moved into it and becomes heritable. Even if the carving is portable its site is still schedulable (section 61(7)9c) if the situation of that object or its remains in that particular site is a matter of public interest (section 61(8)(a)). Section 1(4) does not allow (re-) scheduling if the monument is moved to a location which is occupied as a dwelling house, other than by a custodian or their family. In practical terms this means that it is important before moving a carved stone to a church or dwelling house where it cannot be (re-) scheduled to be confident that this is a secure curated environment in which the long-term protection and conservation of the monument can be ensured (see below).

Our practice has been not to reschedule when a monument has gone to a secure curated environment, where a responsible and suitably skilled organisation has taken over care and

management of the object. If the new location is not deemed to be secure and curated the monument would normally be rescheduled in its new location so that adequate attention can be paid to the future well-being of the monument.

In practice Historic Scotland has tended only to apply the legislation to carved stones that are fixed in some way to the ground or to a structure and therefore immovable, meaning they can be appropriately recorded in the Register of Sasines (a record since 1617 of all transfer of ownership or heritable property in Scotland). This is because the relationship to the place formally scheduled can be clearly established. Although not legally tested, there tends to be the presumption that if material which was fixed is moved it loses its formal protection under the ancient monuments legislation.

When it comes to gravestones, the only way to be sure whether a scheduled area includes these is to check with Historic Scotland. They are normally included unless the wording of the scheduling description specifically excludes them.

In the case of places that are both scheduled and listed section 55 of the 1997 Act (related to listed buildings) disappplies certain sections of the Act where the site is also scheduled, thus only scheduled monument consent is required, not also listed building consent.

Under the 1997 Act carved stones which are entire entities, such as gravestones, milestones and sundials, can be listed in their own right as 'man-made structures'. Carved stones which are not listed in their own right may also be covered under the Act if they date to before 1 July 1948 and are lying directly in a functionally related hinterland of a listed structure in the same ownership at the time of listing. Churchyards and the gravestones and monuments within them are often listed, and accordingly listed building consent would be required for any alterations which affect the historic

or architectural character of the structures. The conservation area part of the 1997 Act is not relevant to carved stones in their own right, but the legislation does require the advertising of applications for planning permission within a conservation area.

The Town and Country Planning (General Development Procedure (Scotland) Order 1992) Amendment Order 1994 requires local authorities to consult Scottish Ministers through Historic Scotland about any proposal that might affect the setting of a scheduled ancient monument or category A listed building, amongst other issues.

Carved stones may form part of a place included on the *Inventory of Gardens and Designed Landscapes in Scotland (1987)*<sup>28</sup> and its supplementary volumes. Places included on the Inventory are subject to the statutory consultation provisions of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992, whereby local authorities must consult Scottish Ministers, through Historic Scotland and Scottish Natural Heritage, in respect of any proposal which requires planning consent involves or may affect Inventory Sites.

<sup>28</sup> Historic Scotland 1998.

## C

# Interim guidance for rubbing carved stones for scientific purposes

Many people make rubbings of carved stones for recording or other purposes. However, this can damage them and there should be a presumption against rubbing, apart from in exceptional circumstances. The prior written consent of Scottish Ministers, known as scheduled monument consent, is required in the case of scheduled ancient monuments. There may be circumstances on scientific grounds when producing a rubbing of a stone will inform the recording and hence interpretation of the monument in question. However, the carved stones are often very delicate and this technique can harm the sculpture. Rubbing should not be done where suitable rubbings already exist, or if to rub the stone might run the risk of causing irreversible damage to the carved surface in question. The following is therefore recommended.

1. Non-contact methods for recording are the preferred first option (i.e. techniques of recording that involve no physical contact with the surface of the stone in question). Consider carefully why a rubbing is needed as opposed to any of the other many existing recording techniques. What is it about this particular carved stone that means that these other techniques are not suitable or adequate?
  2. Find out what rubbings already exist and whether in fact these already meet your purpose (the starting point should be the National Monuments Record of Scotland - see [www.rcahms.gov.uk](http://www.rcahms.gov.uk) - and local Sites and Monuments Record). It is important if rubbings are undertaken that these are not repeated unnecessarily because of the risk to the stone surface.
  3. Ensure that you have the owner/occupier's permission for a rubbing being undertaken.
  4. Find out if the carved stone is scheduled (check PASTMAP on [www.pastmap.org.uk](http://www.pastmap.org.uk) or contact Historic Scotland if you do not have access to the web). It is an offence to damage or deface a scheduled ancient monument and prior consent is needed from Historic Scotland before undertaking works, such as rubbing, on scheduled ancient monuments and properties in care.
  5. Check that the stone surface will not be harmed by the rubbing being undertaken by getting professional advice from a stone conservator. The temptation to clean the surface of the stone, other than by hand-picking of loose vegetation, should be avoided since even light brushing can damage the surface of the stone. Again, seek the advice of a professional stone conservator if further cleaning is thought to be essential. The Historic Scotland 1999 *Assessment Methodology* is a useful start to considering the condition of the stone, but cannot be used for reliable self-assessment of surface condition. If in any doubt, do not consider performing the rubbing.
  6. Ensure that the technique of rubbing follows best practice in terms of technique and performance. See for instance Kallhovd and Magnusson 2000 *Rock Carvings in the Borderlands or the Swedish RockCare project*: [www.raa.se/rockcare](http://www.raa.se/rockcare).
  7. The number of rubbings taken should be strictly limited to what is required to achieve a full record.
  8. Ensure that your rubbings or a copy of your rubbings are lodged formally in a publicly accessible archive, such as the NMRS (see [www.rcahms.gov.uk](http://www.rcahms.gov.uk)) and their production is reported in *Discovery and Excavation Scotland* for the year in question (contact Council for Scottish Archaeology).
- Full details of all organisations cited above can be found in the Contacts for Further Information section of this document.

## D

## Sources of Historic Scotland funding for carved stones

**1. Routine Maintenance**

Historic Scotland grants are not a substitute for the routine works of maintenance that a local authority or other responsible owner should undertake at sites, including graveyards, which it is responsible for.

**2. Timing of grant-aided works**

No work funded by Historic Scotland should begin on site until all necessary associated consents for the work have been obtained, regardless of whether or not a site has any form of legal protection.

**3. Conservation Plans**

We recommend the preparation of a Conservation Plan as part of any application for funds. This is a structured way of thinking about a site to assess why it is significant, and what should be done as a result of this significance. For advice on the preparation of a conservation plan see the free booklet *A Guide to the Preparation of Conservation Plans*. A conservation plan can be particularly useful for graveyards where there may be many elements of significance – archaeological, architectural, natural and historical – all of which will need to be retained. *Conservation of Historic Graveyards. Guide for Practitioners 2* Appendix B contains a conservation plan template tailored for graveyards.

Conservation Plans are a prerequisite for HLF funding.

**4. Ancient Monument Grant**

Although there is much competition for the funds available, Ancient Monument Grant may be available for one-off works aimed at conserving monuments, including for an important carved stone. Applications can be made by the owner, or a third party who has the consent of the owner to undertake works. In the first instance, contact

Historic Scotland and ask for the appropriate ancient monument inspector for the area concerned (write or ring 0131 668 8600; in the case of prehistoric rock art or Roman carved stones ask for the field monument inspector for the council area concerned; for the remainder ask for the standing building inspector).

Ancient Monument Grant can be used to subsidise conservation works of a specialist nature that extend beyond routine maintenance (see above).

A free leaflet, *Grants for Ancient Monuments. A Guide to Grants Available for the Preservation, Maintenance and Management of Ancient Monuments* is available.

**5. Management Agreement**

A Management Agreement is an option for long-term or repeated work at an ancient monument. It can embrace one-off works, but will always include maintenance works that need to take place over an extended period. A Management Agreement must be with the owner (or tenant) of the land in question. An interested party should consult the ancient monument area inspector for the monument concerned.

**6. Historic Building Repair Grant**

Historic Scotland can award grants for works of conservation and repair to structures which are assessed as of *outstanding* architectural and/or historic interest and structures within a conservation area classified as outstanding. Most commonly, in the context of graveyards, these are for repairs to mausolea and boundary walls. Competition for grant assistance is very keen but further particulars can be obtained from the Grants Enquiry Section of Historic Scotland (tel: 0131 668 8801 or e-mail at [hs.grants@scotland.gsi.gov.uk](mailto:hs.grants@scotland.gsi.gov.uk)).