



Strategic Heritage Management Team Historic Scotland Room E13 Longmore House Salisbury Place Edinburgh EH9 1SH	Bruce Mann Vice-Chair ALGAO:Scotland c/o Aberdeenshire Council Archaeology Service Woodhill House Westburn Road Aberdeen AB16 5GB
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1st November 2011

Dear Sirs

**Managing Change in the Historic Environment – Works on Scheduled
Monuments Draft Guidance Note – Consultation Response**

ALGAO:Scotland represents Local Authority and National Park archaeological services in Scotland and is part of the UK-wide organisation, ALGAO:UK. We welcome this opportunity to comment upon this Scottish Government consultation draft and wish to offer our responses to the consultation in the accompanying Respondent Information Form, as provided by Historic Scotland.

In broad terms we welcome the addition of this guidance note to the Managing Change in the Historic Environment series published by Historic Scotland.

Should you have any queries or require any further information regarding our response then please do not hesitate to contact me.

Yours sincerely,

Bruce Mann
Vice-Chair ALGAO:Scotland

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

ALGAO:Scotland

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

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Forename

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

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or

Yes, make my response and name available, but not my address

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Please tick as appropriate

Yes

No

CONSULTATION QUESTIONS

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

Section 1: Introduction

No comment

Section 2: Scheduled Monuments

No comment

Section 3: Information on Scheduled Monuments

No comment

Section 4: Works on Scheduled Monuments

No reference is made to geophysical survey of a scheduled site, of which certain types of survey require a Section 42 Consent. A reference to geophysics could be added to the example section of 4.1.4.

Additionally no reference is made to Management Agreements between landowners and Historic Scotland which can also govern the types and nature of works undertaken within a scheduled site. It would be useful to clarify where such agreements sit within the process, and how they relate to scheduled monument consent.

Section 5: Scheduled Monument Consent

We welcome the addition of an electronic downloadable form as referred to in Sections 5.2.1 and 5.4.1. While noting that these forms can be submitted electronically, we hope that the new form is a truly electronic one which does not require it to be printed out, filled in, and then scanned as has been the case in the past if submitted electronically.

Section 6: Compliance

No comment other than that provided to the related specific question below.

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

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.

Section 7: Compensation

No comment.

Section 8: Further Information and Advice

No comment.

General Comments

Overall ALGAO:Scotland welcomes the addition of this guidance note to the Managing Change in the Historic Environment series published by Historic Scotland.

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

ARCHAEOLOGY SCOTLAND

Title Mr Ms Mrs Miss Dr Please tick as appropriate

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3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

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Please tick as appropriate

Yes

No

CONSULTATION QUESTIONS

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

Section 1: Introduction

Though we understand that the SHEP will be revised subsequent to this consultation, we would wish to see clarification on the status of the current SHEP (as posted in 2009) in relation to this Guidance leaflet.

Other Managing Change leaflets have Key Points summarised at the front and we trust these will similarly be posted at the front of this document. The visual images are going to be crucial to the value of this document.

Section 2: Scheduled Monuments

While we recognise the economy of space and the reduction of unnecessary wording, we feel that this space does not sufficiently stress why Scheduled Monuments (SMs) are important to the people of Scotland. Some information on the criteria for selecting monuments for scheduling would be useful, as this is not transparent.

The equivalent 'Managing Change' document on Battlefields has, for example, 6 paragraphs on their importance, in contrast to only one here for SMs. The range and significance of these monuments needs more space relative to other sections.

Section 3: Information on Scheduled Monuments

While appreciating the brevity of this section and that this refers to documentation available under section 8, the latter only refers to scheduling documents and as with Section 2 does not refer to why individual or groups of monuments are nationally important. We realise that modern schedulings are now informing owners and managers as to why monuments are nationally important but more could be made of this. The single sentence in section 2.3 is the main reference to value (it does occur also under section 5.1).

Section 4: Works on Scheduled Monuments

Class consents are critical factor in incremental and permitted accretional destruction of Scheduled Monuments. It would be useful to have more detailed guidance on what is appropriate management on scheduled monuments, to demonstrate to owners and managers it is important not to breach these class consents. Monitoring of potential damage, despite the best efforts of Historic Scotland's Heritage Managers, can only done on limited occasions and it is therefore important to stress the need to prevent damaging works being carried out. As the title of this series is 'Managing Change' there should be more reference to guidance and to what activities can be done to enhance monuments.

Section 5: Scheduled Monument Consent

These sentences seem an adequate statement of Historic Scotland's position on SMC.

Section 6: Compliance

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.

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

A stand-alone document may be necessary to cover legal requirements as this document is only for guidance. It should also be available on the website but not as an either/or, as suggested here. This Managing Change leaflet is a guidance document and the emphasis should be more on the positive aspects of owning and managing Scheduled Monuments.

Section 7: Compensation

The second sentence in section 7.1 (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.) needs expansion or re-phrasing to makes its meaning clear.

Section 8: Further Information and Advice

Since this guidance is listed under 'Managing Change', there should be more reference made to enhancing monuments. Archaeology Scotland is willing to support developments here and already has some useful sections on its website under both [Identifying Archaeology](#) and [Managing Archaeology](#) that could be further developed in co-operation with Historic Scotland. No reference is made in this document to [Scheduled Monuments: A Guide for Owners, Occupiers and Managers](#) and it would be appropriate to list this here and perhaps also under section 4.

General Comments

We presume from section 8.1 where it offers to supply copies of maps and legal scheduled monument documentation direct from Historic Scotland on request that printed copies of this guidance document will be made available to all owners and managers, otherwise those without internet access will not be aware of this option.

In general we find this document, as described above, slightly disappointing in that the emphasis seems to be on enforcement and compliance. These

are both necessary given the pressures SMs are under but it would good also to emphasise the value of these sites to the people and communities of Scotland. A more positive spin would be helpful to demonstrate where caring for these monuments is beneficial to individuals and wider society.

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Built Environment Forum Scotland

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

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Jo

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3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

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Yes, make my response, name and address all available

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Please tick as appropriate Yes No

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

4.1.4 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.

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

Information on enforcement needs to be clearly accessible. Members of BEFS HEWG would therefore certainly support a clear section on enforcement on Historic Scotland's website.

Section 7: Compensation

Comments

Section 8: Further Information and Advice

Cross-referencing to other documents could be improved upon to ensure consistency with the rest of the series.

General Comments

Members of BEFS will be responding directly on the technical detail of this

document. However following discussion of the consultation by members of BEFS Historic Environment Working Group, BEFS HEWG wishes to comment that generally the **tone** of the document is quite negative and content quite technical. This does not sit well with the rest of the Managing Change series which is written in a more accessible style.

We would very much welcome some revision of the tone which would emphasise the positive aspects of owning an ancient monument (images may help illustrate this). This document provides a good opportunity to help owners of scheduled monuments understand the value of what they have, to promote and celebrate this.

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

British Waterways Scotland

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Strachan

Forename

Sabina

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

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Please tick as appropriate Yes No

CONSULTATION QUESTIONS

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

Section 1: Introduction

Document subtitle: Is it 'The Control of Works on Scheduled Monuments' or 'Works on Scheduled Monuments'?

Section 2: Scheduled Monuments

No comments

Section 3: Information on Scheduled Monuments

Refer specifically to Section 8?

Section 4: Works on Scheduled Monuments

4.2.1 – might there be instances where the proposed change on a scheduled monument would require listed building consent because it is within the curtilage of an adjacent listed building? We had discussions with Historic Scotland (HS) and the relevant planning authority over one case in 2008/09 (however, works were deferred and so no applications have yet been pursued). Annex 7 (Note 13) of the Scottish Historic Environment Policy (SHEP) only makes reference to structures which are both scheduled and listed.

Section 5: Scheduled Monument Consent

5.3.1 – the wording of this paragraph could imply that if no conditions are to be applied then 'Final Consent' will be issued rather than a 'Provisional View'. At 3.10 in the SHEP it states that a Provisional View will be issued to allow representations to be made. If that is the case whether or not conditions are applied then 5.3.1 of the guidance should be reworded to make this clearer.

Section 6: Compliance

6.1.2 – we would appreciate more explicit guidance on the instances where an amendment under Section 4 (3) of the 1979 Act could apply. It is referred to only briefly in the second bullet point under 6.1.2. Given the nature of the scheduled monuments in our care and the associated works for which we and third-parties apply for; advice on amendments is something we seek from HS on a regular basis.

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

6.1.2 – the description of notices in the preceding box and 6.4 on fines could be summarised in the guidance note and expanded on the website or in a stand-alone document with the enforcement box also. This would help to rebalance the guidance note, i.e. help it focus on HS's facilitation of the

schedule monument consent (SMC) process and compliance rather than when things go wrong.

Section 7: Compensation

No comments

Section 8: Further Information and Advice

Provide link to SMC pages on HS website?

General Comments

In general, British Waterways Scotland welcomes timely advice on the SMC process which takes into account the changes brought about by the 2011 Act.

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

CFA Archaeology Ltd

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Neighbour

Forename

Tim

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Musselburgh

East Lothian

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Phone 0131 273 4380

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

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Please tick as appropriate Yes No

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Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

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

Section 1: Introduction

No comment

Section 2: Scheduled Monuments

We agree that nationally important monuments should be protected as scheduled monuments.

However, there is, of course, no reason to protect, or to continue to protect, a site or area as a scheduled monument if it is not of national importance. The ongoing importance of some sites which were scheduled in previous decades is uncertain and there are some scheduled areas that are larger than is perhaps justifiable by the extent of the known remains.

Doubts could arise over the schedulable quality of many types of sites, but particularly cropmarks identified through aerial survey, which we take as a brief example here. Questions that typically arise over cropmark sites are:

1. Do we know what type of site the cropmark is? If not, how do we know it is nationally important?
2. Is the site in its cropmarked condition intrinsically of schedulable quality?
3. Does the site still survive to a schedulable standard? Depending on prevailing agricultural practices, cropmark sites that were scheduled in the 1980s and 1990s may subsequently have been severely plough truncated and possibly obliterated.
4. Is the scheduled area the correct size to protect the known remains of national importance?

Since scheduling has serious implications for a landowner or tenant's land use strategy, it is important that Historic Scotland is certain that the case for scheduling a site or area is reasonable and clearly presented. Where there is reason to doubt this, Historic Scotland should be supportive of proposals to conduct reasonable programmes of research work to explore a site or area's presumed national importance. We discuss this further in our comment on Section 5.

Section 3: Information on Scheduled Monuments

No comment

Section 4: Works on Scheduled Monuments

No comment

Section 5: Scheduled Monument Consent

Following on from our comments on Section 2 and the important point made in Section 5.1 that 'it is the value of the monument to the nation's heritage that is the primary consideration', we believe that it would be useful for Historic Scotland to acknowledge in Section 5 (or elsewhere in the document) that it is sympathetic to Scheduled Monument Consent applications for sites and areas where a programme of archaeological research would help in refining the assessment of whether remains are truly of national importance and/or would help in clarifying the size and shape of a scheduled area by examination of its surrounding aureole.

Whilst appropriate research methods could include desk-based assessment and further remote sensing (aerial photography and geophysics), which do not require SMC, it should be recognised that carefully designed trial trenching evaluation, which would require SMC, may be the most effective means of assessment.

Section 6: Compliance

No comment

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

Given the importance of this statement to monument protection it should be disseminated by all three means.

Section 7: Compensation

No comment

Section 8: Further Information and Advice

No comment

General Comments

This leaflet 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.

We believe that the leaflet should also acknowledge Historic Scotland's responsibility to provide robust and clearly presented evidence that sites are truly of schedulable quality and, hence, should make a statement to the effect that they would countenance agreed works financed by others that help in providing that evidence.

Owners, occupiers, land managers and land users have responsibilities where scheduled monuments are concerned, but the flip side of the same coin is, we believe, their right to be certain that scheduling has been applied proportionately and relevantly to the remains within their property by Historic Scotland.

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Dundee City Council

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Iain

Forename

Jack

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Dundee House

50 North Lindsay Street

Dundee

Postcode DD1 1LS

Phone 01382433507

iain.jack@dundeecity.gov.uk

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

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Please tick as appropriate Yes No

CONSULTATION QUESTIONS

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

Section 1: Introduction

No additional comments

Section 2: Scheduled Monuments

No additional comments

Section 3: Information on Scheduled Monuments

No additional comments

Section 4: Works on Scheduled Monuments

The council's archaeology service provider has also noted that it would be useful to outline the following in section 4;

- acting under Permitted Development rights does not provide an exemption from the Act and requirement for SMC;
- having planning consent does not obligate the granting of SMC for the same ground; and
- being in receipt of SMC does not negate one's responsibilities under other areas of law especially *Bona Vacantia* and *Crimen Violati Sepulchre*

Section 5: Scheduled Monument Consent

No additional comments

Section 6: Compliance

No additional 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

It would be useful to have the enforcement information both on the guidance note and on the website.

Section 7: Compensation

No additional comments

Section 8: Further Information and Advice

No additional comments

General Comments

Dundee City Council welcomes the continued production of the Managing Change in the Historic Environment series of guidance leaflets.



Date: 1 November 2011

Our Ref: BE2/1
(AOK)

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

Dear sir / madam

**MANAGING CHANGE IN THE HISTORIC ENVIRONMENT: WORKS ON SCHEDULED
MONUMENTS
CONSULTATION ON GUIDANCE NOTE**

Thank you for consulting East Ayrshire Council on the above draft guidance note.

As requested, I enclose the completed respondent information form and consultation questions.

Should you require any further information, please contact Alison O'Kane at the number shown above.

Yours faithfully

A handwritten signature in black ink, appearing to read 'K. Doroszenko'.

KARL DOROSZENKO
Development Planning and Regeneration Manager

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

East Ayrshire Council

Title Mr Ms Mrs Miss Dr

Please tick as appropriate

Surname

Doroszenko

Forename

Karl

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ayrshire.gov.uk

3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

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Please tick as appropriate

 Yes No

CONSULTATION QUESTIONS

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

Section 1: Introduction

The introduction is considered clear and concise.

No detailed comments to make.

Section 2: Scheduled Monuments

Again, this section is considered clear and concise.

No detailed comments to make.

Section 3: Information on Scheduled Monuments

As this section refers only to the list of sources at the end of the document, is suggested that this information could be incorporated into the previous section, rather than forming a section in itself.

Section 4: Works on Scheduled Monuments

Generally, this section is considered informative and straightforward. The examples of work requiring consent are particularly useful, although it is suggested that it be made clear that this list is not exhaustive.

In section 4.1.5 it is suggested that, for clarity, it would be useful if the text made clear that the full list of works that do not require scheduled monument consent can be viewed by clicking the link shown.

Section 4.1.5 does not make reference to the need for notification to be carried out for works undertaken under Class Consents. Whilst a brief reference is made to this in section 5.4.1, it is suggested that it would be clearer if this was instead inserted at section 4.1.5.

Section 5: Scheduled Monument Consent

This section is generally clear and straightforward.

In section 5.2.3, from the point of view of a member of the public it should be made clear that the requirement to involve 'a professional with appropriate experience', will be the responsibility of the applicant, both in terms of cost and appointing an appropriate person. The way the text is currently drafted it is not clear that this is indeed the case.

Section 6: Compliance

No specific comments to make.

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

It is considered useful to retain the section on Historic Scotland's approach to enforcement within the guidance document. However, in order that its importance is given appropriate recognition, it would also be appropriate to post this as an additional item on the website.

Section 7: Compensation

No specific comments to make.

Section 8: Further Information and Advice

The links to associated documents are considered a useful inclusion and will help direct members of the public to the more detailed pieces of guidance / legislation that are available.

General Comments

In its experience of managing and working with scheduled monuments, the key challenge the Council has encountered 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 properties which impact on scheduled monuments. With this in mind, the Council fully welcomes the publication of the new guidance document, which introduces new public information on this subject. The Council would encourage Historic Scotland to consider how this could be best publicised and to look at any ways in which the document could be brought to the attention of property owners.

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Falkirk Council

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Ludbrook

Forename

Ian

2. Postal Address

Development Services

Abbotsford House

David's Loan

Falkirk

Postcode FK2 7YZ

Phone 01324 504716

Email

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

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

Section 1: Introduction

Comments **None**

Section 2: Scheduled Monuments

Comments **None**

Section 3: Information on Scheduled Monuments

Comments **None**

Section 4: Works on Scheduled Monuments

Comments **None**

Section 5: Scheduled Monument Consent

Comments **None**

Section 6: Compliance

Comments **None**

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 We see no reason why it can't be included on Historic Scotland's website **and** left in this Guidance note.

Section 7: Compensation

Comments **None**

Section 8: Further Information and Advice

Comments **None**

General Comments

Comments **None**

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Institute for Archaeologists (IfA)

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Howard

Forename

Tim

2. Postal Address

SHES, The University of Reading

Whiteknights

P O Box 227

Reading

Postcode RG6 6AB

Phone 0118 378 6446

Email

tim.howard@archaeologists.net

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

CONSULTATION QUESTIONS

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

Section 1: Introduction

No comment.

Section 2: Scheduled Monuments

No comment.

Section 3: Information on Scheduled Monuments

No comment.

Section 4: Works on Scheduled Monuments

4.1.1 Given the statutory defences in section 2 of the 1979 Act (and notwithstanding the amendments to section 2 introduced by the 2011 Act), it would be more appropriate to say '*Any person carrying out unauthorised works or allowing unauthorised works to be carried out on a scheduled monument, commits ~~is guilty of~~ a criminal offence.*'

4.1.2 The parenthetical statement would be more usefully placed at the beginning of the guidance note.

4.1.3 The initial sentence does not mention an important part of section 2 of the Act – works are also defined as anything where “alterations or additions” are made.

Furthermore, The issue of metal detectors (picked up in the last sentence of paragraph 4.1.3) warrants its own paragraph. It would be helpful if there was explanation regarding how section 42 is applied by Historic Scotland, particularly in relation to archaeology. Since section 42 does specify that any device detecting “mineral or metal in the ground” requires SMC, further clarification as to its application to other geophysical techniques would be useful.

4.1.5 The second sentence (commencing with “For example”) is extremely unclear. To what does “the works” refer? To the ploughing? But if the ploughing has been going on for 10 years, why would they then be described as “commencing”? This entire paragraph would benefit from increased clarity and specificity.

4.2.1 The first sentence needs an explanation of what listing is.

Section 5: Scheduled Monument Consent

5.1 This paragraph should explain how Historic Scotland defines “culturally significant”.

A new paragraph should be inserted after paragraph 5.3.3 as follows:
'All archaeological work (whether it be above or below ground and including

recording) should be carried out 'by accredited / recognised experts¹ to recognised standards²'. The following footnotes would clarify that requirement:

¹ *The Institute for Archaeologists can provide advice on accredited/registered expert historic environment practices and individuals*

(<http://www.archaeologists.net/modules/icontent/index.php?page=22>)

² *The industry standards and guidance for archaeological excavations, archaeological building investigation and recording, and archaeological watching briefs are available at <http://www.archaeologists.net/modules/icontent/index.php?page=15>*

This is consistent with PAN 02/2011 which provides that work should be carried out by professionally competent archaeological organisations or individuals whose works should meet IfA Standards (see, for instance, paragraphs 15, 20 and 26 of PAN 02/2011).

Section 6: Compliance

6.3.2 It would be helpful to explain what a Procurator Fiscal is, for the benefit of those without legal experience who might have heard of the position but be unsure of its function.

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

It should go in all three locations, to ensure the widest possible dissemination.

Section 7: Compensation

No comment.

Section 8: Further Information and Advice

No comment.

General Comments

This is an addition to an extant series of guidance leaflets, so changing a set style might be difficult. However, as it is, the guidance note is not perhaps the most readable of documents. At whom is it aimed? Not all scheduled monuments are on properties owned by organisations with lawyers. Perhaps an FAQ style would be more approachable, either in-text or with little boxes that deal with common questions – e.g. "Q. Am I allowed to plough?" – "A. [answer]". There are also numerous instances where the addition of commas would improve readability, or a shift in word order would increase clarity.

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Institute of Historic Building Conservation (Scotland)

Title Mr

Surname

Cartwright

Forename

Richard

2. Postal Address

c/o North Lanarkshire Council

Environmental Services

Fleming House

Cumbernauld

Postcode G65 1JW

Phone 01236 632628

Email

CartwrightR@northlan.gov.uk

3. Permissions - I am responding as...

Group/Organisation

Please tick as appropriate



- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate



CONSULTATION QUESTIONS

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

Section 1: Introduction

1. Other Managing Change series leaflets have a list of Key Points at the start and it is unfortunate these were not included in this Consultation Draft ; they should nevertheless be added with further opportunity to comment given.
2. Two key points that should be included are that :
 - the importance of conservation/preservation Management Plans and planned, programmed maintenance of Scheduled Monuments should be highlighted.
 - There should be a reference to grants for work to Scheduled Monuments.

Section 2: Scheduled Monuments

1. This section could usefully be expanded to explain why Scheduled Monuments are important, to cover their range and variety, and to set out selection criteria.
2. 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.
3. There should be a link provided here to the actual record of Scheduled Monuments.
4. It might be noted here that Scheduled sites are generally unoccupied.
5. It would be appropriate to mention our duty to pass on our cultural and landscape heritage to future generations.

Section 3: Information on Scheduled Monuments

1. A single sentence does not warrant a separate section of a guidance document.
2. However a section under this heading could usefully be created, eg setting out information on different types of monument and monument groupings.
3. There should be a link provided here to the actual record of Scheduled Monuments.
4. Planning Authority Sites and Monuments Records, as well as the records of RCAHMS, should be referred to here.
5. Context and setting are also important and should be emphasized in this section.
6. The Planning Authority's Local Development Plan should be referred to here as a source of information to understand the planning framework affecting Scheduled Monument sites.

Section 4: Works on Scheduled Monuments

1. Add to end of 4.1.1: "If in doubt, consult Historic Scotland for guidance."
2. Add a further section after 4.1.5 to set out guidance on the appropriate management of land around scheduled monuments, and the importance of this in order not to breach class consents.
3. In para 4.2.1, add an explanation of *listed*. The first two sentences here are a bit confusing- make clear that pl perm is from LA, SMC from HS.
4. The issue of setting should be highlighted in a separate paragraph. The reference to the Managing Change: Setting Guidance Note is not enough in itself – there should also be a simple summary of the importance of context and setting in this MC.

Section 5: Scheduled Monument Consent

1. There should be reference to perhaps a link to the SHEP in this section.
2. Is *preserving* a more appropriate term than *conserving* here, more consistent with the thrust of the Act?

Contd/

Section 5 (contd)

3. Para 5.1.2 should encourage the preparation of conservation Management Plans, and regular surveys of condition.
4. 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 required.
5. Para 5.4 Should anyone using metal detectors be encouraged to carry their approval with them when on site? Advice might also be given to secure the approval of owners or occupiers of the site.

Section 6: Compliance

1. This section is unduly long and it is suggested much of this material could be combined with Enforcement information and published separately on HS website and as a stand-alone document.
2. It would be helpful to say that any *Retrospective SMC* would be without prejudice to any legal action for any criminal offence.
3. There should also be provision (somewhere in this MC guidance) to seek to prevent the deterioration of SM's from weather exposure or erosion. Regular monitoring, management planning, programmed repairs and encouragement by repair grants can all assist and should be encouraged and highlighted more in this MC.

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 AND Stand Alone Document

IHBC would not want the MC document itself to portray any apparent minimisation/reduction of seriousness of any offences (which could be the conclusion from the first sentence under "Use of Enforcement Powers" box and the maximum available fine level, in some cases).

Section 7: Compensation

No Comment

Section 8: Further Information and Advice

1. A useful section, but which could be helpfully expanded to include advice on developing proposals which might affect SM's, so that any change is managed according to best practice. This could include any useful references to guidance from other specialist bodies and their contact details/ websites.
2. Reference should be added to other archives and expertise that may be available at a local level. Museums and libraries should be flagged as potential resources.
3. Para 8.5 should be amended to also refer to the expertise and experience on cultural heritage matters available from many Local Authority Conservation Officers and Archaeologists.
4. The Royal Commission's photographic and drawn records, including aerial photographs, should also be mentioned in para 8.6.
5. Para 8.7 should also include references to Scottish Planning Policy, the relevant Strategic and Local Development Plans and the Sites and Monuments Records

General Comments

1. This draft MC leaflet has a different layout, tone and reads more technically than other MC guidance so far published.
2. More emphasis should be placed on the value of SM's to Scotland's heritage and culture, and on the protection and best practice management of Scheduled Monument sites.

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Royal Town Planning Institute in Scotland

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

McLaren

Forename

Craig

2. Postal Address

18 Atholl Crescent

Edinburgh

Postcode EH3 8HQ

Phone (0131) 229 9628

Email scotland@rtpi.org.uk

3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

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

Section 1: Introduction

There should be a general encouragement for the preparation of conservation/preservation Management Plans and planned, programmed maintenance of Scheduled Monuments.

There should be a reference to grants for work to Scheduled Monuments.

Section 2: 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 link provided here to the actual Schedule of Ancient Monuments.

It might be appropriate to mention that Scheduled sites are generally unoccupied.

Is there any formal or informal minimum age of a structure considered for Scheduling? If so it would be appropriate to mention that here.

Para 2.3 should have 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.

Section 3: Information on Scheduled Monuments

There should be a link provided here to the actual Schedule of Ancient Monuments if it has not already been introduced above.

Here there should be an explanation of a typical entry, including location, description, map and perhaps issues of setting.

Planning Authority Sites and Monuments Records, as well as the records of RCAHMS, should be referred to here. Context and setting are also important and should be emphasised

The Planning Authority's Local Development Plan should be cited as an important document to access in order to understand the planning framework for the area within which the Scheduled Monument sits.

Section 4: Works on Scheduled Monuments

It might be helpful (para 4.1.1) to explain the penalties available to deal with

such criminal offences.

The reference (para 4.1.2) to *Historic Scotland on behalf of Scottish Ministers* should appear in the introduction.

The reference to consent for metal detecting should be inserted after the first sentence. *Within* a Scheduled Monument is ambiguous: presumably what is meant is within the Scheduled Area?

Scheduled Monument Consent can be granted *with or without conditions*.

It should be made clear exactly who can apply for SMC – owner, tenant, lessee, occupier, anyone?

Para 4.1.5 might read

...earlier agricultural regime (for example, *by the introduction of deeper ploughing, sub-soiling or drainage works*)...

Should there not be a Conservation Management Plan for each Monument? A context is required for the evaluation of Consent applications.

Para 4.2.1 – an explanation of *Listed* is necessary. The second sentence should read *In some cases planning permission, in addition to SMC, may be required from the Local Planning Authority*.

The issue of setting deserves a separate paragraph. The reference to the Managing Change: Setting Guidance Note is not enough in itself – there should also be a simple summary of the importance of context and setting (and maybe *curtilage* too).

Section 5: Scheduled Monument Consent

There should be a link to the SHEP. The second and third sentences of para 5.1.1 might be better located in the Introduction. Is *preserving* a more appropriate term than *conserving* here, more consistent with the thrust of the Act?

Para 5.1.2 should encourage the preparation of conservation Management Plans, and regular surveys of condition. If there is a regular visit by Monument Wardens then that should be mentioned here. Grants for such monitoring and review activities, as well as for repair work, if available, should also be flagged up.

Para 5.2.1 might also include the ability to make an on-line application.

The paragraph on pre-application discussions should come before discussion of the application form.

The first sentence of para 5.2.3 should be relocated to head para 5.2.2. An early meeting on site should be promoted.

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.

Para 5.3.2 It might be clearer if this could read ...*accept this provisional view or make representations within 28 days to Historic Scotland...* ...*An Inquiry Reporter from DPEA will carry out the evaluation of the application, but the final decision on the Reporter's recommendations will be taken by Scottish Ministers.*

Para 5.3.4 Is there a *Start Certificate*? Is there a *Completion Certificate*?

Para 5.4 Should detectorists carry their approval with them when on site? Do they need the approval of owners, users, occupiers, tenants, lessees?

Section 6: Compliance

In para 6.1.1 it should be made clear that a breach of the law is a criminal offence, penalties should be explained and examples given.

It might also be appropriate to point out, assuming that it is true, that ignorance of the law is not a valid defence against a criminal prosecution.

In para 6.1.2, *will* should be used instead of *may*. The second bullet point should include reference to granting consent *with or without conditions*.

It may be helpful (third bullet point) to indicate to whom Advisory/Warning letters are sent. Compliance requirements should also include specific details of those who are to take action, as well as what and by when. Copies of these letters should be sent to the Local Planning Authority, the Community Council, and perhaps to the police and Procurator Fiscal, for their information.

Where Notices are concerned the same arrangements should apply, and consideration might be given to advertisement locally and/or provision of a site notice

Text Box:

If, as one would hope, there is provision for a Purchase Notice or other formal acquisition under the AM Acts then reference to it might be included here or in a new bullet point on this page.

To have a Stop Notice that does not involve an immediate **Stop** makes little sense, and it is suggested that the nomenclature here be re-examined. The relationship with seeking Interdict seems odd. If there can be cessation of works through a Notice then perhaps no mention need be made of the possibility of Interdict.

Under *Direct Action*, if there is a provision for the addition of administrative overheads to the cost of direct action then this should be made clear.

Presumably the *Retrospective SMC* will be without prejudice to any legal case for breach of criminal law, and this should be made clear.

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

Use of Enforcement Powers Text Box

It is suggested that the sentence might read as follows: *HS will seek to resolve issues speedily, openly, informally and amicably before resorting to the use of enforcement powers.*

At the first bullet point mention should be made of the estimated cost of works needed to comply.

There should only be **one, or at most two** opportunities (second bullet point) to resolve differences before enforcement action is taken.

There should be a hyperlink to the Enforcement Register. The use of date-tagged digital photography will be a key point of this enforcement work, and should be mentioned/underlined along with any other relevant means of recording.

While enforcement action to counteract deliberate breaches (Acts of Man) is important, there should also be proactive provision to ensure, as far as possible, that SMs do not lose their significance due to Acts of God or Nature, and some regular monitoring, management planning, programmed repairs and encouragement by repair grants should all be encouraged.

Para 6.3.1 should reiterate the need to address any criminal offence, and stress the relevance of action *pour encourager les autres*.

It is surprising (6.4) that there is no mention of an imprisonment option, and that the fines also seem relatively modest as much in the context of potential gains from development value as from the potential losses to Scotland's national heritage.

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 ✓

No. This Enforcement material should appear both on the website and within the Guidance Note. In the former it will be more widely available, in the latter it will be read in the context of the purpose and relevance of the legislation, and be the more readily accepted.

Section 7: Compensation

Para 7.2 refers to 6 month periods for compensation claims: it should be noted that the period for planning appeals has been reduced to 3 months, and it might therefore be for consideration also to reduce the compensation window to three months.

Section 8: Further Information and Advice

This material ought really to be at the beginning of the document, either as part of the Introduction or included in the section on Scheduled Monuments. A hyperlink to the Schedule would be helpful, as would one to the application forms.

There may be other archives and expertise available at a local level. Museums and libraries should be flagged as potential resources.

To the somewhat dismissive reference (para 8.5) to *requirements for other permissions* from local authorities should be added the expertise and experience in dealing with cultural heritage matters which may be available from the Local Planning Authority's Conservation Officer(s) and Archaeologist(s), where they exist, and from its planning staff more generally.

The Commission's photographic and drawn records, at least as much as the aerial photographs, should also be mentioned in para 8.6.

Para 8.7 should also include references to

- Scottish Planning Policy
- Designing Places
- Designing Streets
- The relevant Strategic and Local Development Plans.
- Sites and Monuments Records

General Comments

Guidance Notes of this nature require a measure of precision, clarity and focus, and are not the place for unfettered and inappropriate use of the abbreviation *etc.*

Rob Dickson

Director of Environment and Infrastructure

Bryan McGrath

Head of Economic Development and Environment

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

Please ask for: **Dr Christopher Bowles**

Our Ref:

Your Ref

E-Mail:

christopher.bowles @scotborders.gov.uk

Date:

3 November, 2011

To Whom It May Concern:

Managing Change Guidance: Works on Scheduled Monuments consultation

Many thanks for consulting Scottish Borders Council regarding the new Managing Change in the Historic Environment Guidance. We welcome this new guidance and feel it will help landowners and managers more effectively manage designated sites on their properties. On this occasion we have no further comments to make.

Please feel free to contact me if you wish to discuss this further.

Yours sincerely,

Chris Bowles
Archaeology Officer

Environment and Infrastructure

To view Planning Application information online visit:

<http://eplanning.scotborders.gov.uk/publicaccess>

To view other Planning information visit www.scotborders.gov.uk.

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Scottish Borders Council

Title Mr Ms Mrs Miss Dr x *Please tick as appropriate*

Surname

Bowles

Forename

Christopher

2. Postal Address

Council Headquarters

Newtown St Boswells

Postcode TD6 0SA

Phone 01835 826 622

Email

christopher.bowles@scotborders.gov.uk

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

CONSULTATION QUESTIONS

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

Section 1: Introduction

On this occasion we have no comments to make.

Section 2: Scheduled Monuments

On this occasion we have no comments to make.

Section 3: Information on Scheduled Monuments

On this occasion we have no comments to make.

Section 4: Works on Scheduled Monuments

On this occasion we have no comments to make.

Section 5: Scheduled Monument Consent

On this occasion we have no comments to make.

Section 6: Compliance

On this occasion we have no comments to make.

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

On this occasion we have no comments to make.

Section 7: Compensation

On this occasion we have no comments to make.

Section 8: Further Information and Advice

On this occasion we have no comments to make.

General Comments

We feel this managing change guidance will be a very helpful way for landowners to manage monuments more effectively.

Managing Change in the Historic Environment: Works on Scheduled Monuments



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Society of Antiquaries of Scotland

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Gilmour

Forename

Simon

2. Postal Address

Society of Antiquaries of Scotland

c/o National Museum of Scotland

Chambers Street

Edinburgh

Postcode EH1 1JF

Phone 0131 247 4133

Email

director@socantscot.org

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

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

Section 1: Introduction

The other Managing Change guidance documents have a Key Issues section that appears to be missing from this consultation document. Such a short one page briefing would be very welcome.

A reference to grants for work to Scheduled Monuments would be welcome, and indicate a positive opening to the document; this could be enhanced in Section 4.

Section 2: Scheduled Monuments

Relative to other Managing Change documents (Battlefields for e.g. that don't have statutory protection) which have a much longer section explaining their subject's importance - this section is too brief, it should state here why Scheduled Monuments are important, how they are defined, the criteria used and so on.

There should be a reduction in the references within the text to legislation – this is unnecessary if key documents are listed at the end of the note; for example, the final sentence of 2.1 could be omitted. Instead there should be a clear statement of the purpose of Scheduling, and our responsibility to future generations.

There could be useful references to the broad range and variety of Scheduled Monuments, with examples – images would be especially critical here. The value of our nationally important heritage should be stressed.

Section 3: Information on Scheduled Monuments

This could at least include a note to the effect that information is available from Historic Scotland on the extents and location of scheduled monuments.

A link to the actual record of Scheduled Monuments (perhaps through Pastmap) could be usefully incorporated.

References to other information on Scheduled Monuments, such as local authority records and RCAHMS should be included since the legal Scheduled Monument information is rarely up-to-date nor all-inclusive.

Section 4: Works on Scheduled Monuments

The actual title of this section is “Control of Works...” again this appears to simply transpose legal terminology to what should be a simple to understand guidance note. “Works on..” is perhaps more user-friendly, but then really requires 4.1.3 to move up to the top as 4.1.1 to immediately explain what is meant by works.

4.1.3 should be split into at least 3 parts – first part (removing “Under section...1979 Act” since again this is legal jargon) ending with tipping

operations, and perhaps giving examples.

– second part should start “Works are authorised...” and end with “...to be carried out.”

– third part should be note on metal detecting, again removing ref to section of Act but instead making absolutely clear whether a separate ADDITIONAL consent is required (additional to SMC) and noting that this form is available from the website.

Is it really necessary to stipulate that reference to Historic Scotland should be read as on behalf of the Scottish Ministers? Again this is legal jargon, someone looking at this document just wants to know what a Scheduled Monument is, where it is, and what they need to do to do things to Scheduled Monuments.

4.1.4 should be moved up to just below the description of what works are (4.1.3 moved to top of section), i.e. 4.1.2, and should have some examples.

4.1.5 should note that a notification form is available from Historic Scotland and should be clear when such a form is to be used! Again further examples would be useful here.

It might be useful to stress that when in doubt you should contact Historic Scotland.

This section could usefully include reference to the importance of management plans and appropriate management of the area surrounding Scheduled Monuments.

4.2 should include a brief explanation of listing, or at least reference to guidance on listing.

Setting is important to 4.1, and is not an “other permission”, it should be moved elsewhere (perhaps Section 2) and enhanced beyond a simple reference to the guidance document to a short explanation of what it is.

Section 5: Scheduled Monument Consent

The first sentence of 5.1.1 is redundant since it already states in the intro that the guidance note is explaining how to apply those principles. The second sentence could be usefully tweaked to highlight again the value and importance of the monument and then to explain that it is these criteria that will be taken into consideration – “culturally significant” is an aspect of the consideration of national importance, again it would be useful to explain this and the criteria used to determine cultural significance in advance earlier in the document before referring to it here.

This section could be usefully rearranged to highlight the fact that works can be permitted on monuments, that there is a process for considering this, and what the steps in that process are. 5.1.2 for e.g. could be moved to the end of the section after describing the steps, and indeed perhaps giving

examples of SMC.

5.4.1 should then be clearer since they have already been previously introduced earlier in document.

5.2.3 involvement of a professional with appropriate *expertise* and experience (expertise is important here rather than experience), and why is this restricted to large works – surely it would be best practice to involve such expertise in any works relating to our nationally important heritage?

Section 6: Compliance

This section appears to be overly long and some areas repeat the legal aspects contained in the Act. It would perhaps be better to remove both boxed sections to a separate area describing enforcement. The dominance of this section over the previous areas appears to be an imbalance and heightens what is already a pretty downbeat tone to the document. Again the use of legal jargon is problematical - “Compliance” itself for example could be replaced with something more user-friendly such as “Keeping on the right side of the Law” (not great I know but something similar should be considered).

The bullet point on reporting to Procurator Fiscal could be replaced by the wording of 6.3.2 and 6.3 should be removed (inc 6.3.1).

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

Our preference would be to make this guidance note as user-friendly as possible, with the enforcement information (in both boxes in the current document) placed into a separate document and online. It might be useful to refer to the educational document on changes to the historic environment legislation, at least until the SHEP is revised to include this information.

Section 7: Compensation

Compensation could be moved to before Fines – again simply to put good news first.

7.2 would require to link to the, now removed, boxed information on types of stop notices.

Section 8: Further Information and Advice

The provision of “If you do not have access to the web” is a bit odd given that the Managing Change docs are available only on the web... presumably some paper versions will be circulated to all owners of Scheduled Monuments in case they do not have access to the internet?

There might usefully be references here to other documents or information held by other organisations such as Archaeology Scotland? As per our note

on Section 3 – the legal documentation relating to scheduled Monuments rarely includes the most up-to-date information on the monument or the class of monument and other resources should be included such as LA HERS and RCAHMS at least.

8.7 should include here to find information on planning policy and legal framework, especially considering note in Section 4.2.

General Comments

In general this document as it currently stands is a marked departure from the tone and layout of the previous Managing Change documents. It should be brought back in line with these and certainly should include a Key Issues intro. The document could usefully look to the HE Act education document as an example of the style and information required. Indeed the graphical representation of the Scheduled Monument process and the enforcement notices in the education document, and its general feel, could be usefully used as a template for the to be revised SHEP.

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.