



Works on Scheduled Monuments



Key Issues



Scotland's 8,200 scheduled monuments represent a wide range of nationally important sites, ranging from sites of the earliest known groups living in Scotland over 8000 years ago to 20th-century military defences.

1. There are around 8200 scheduled monuments in Scotland, which are recognised as being of national importance and are legally protected to ensure they are preserved for future generations.
2. Work on scheduled monuments may be required for a number of reasons. For example, management works to help arrest the natural erosion of a monument, consolidation works to stabilise a unstable structure, or works relating to land management practices.
3. Most works on scheduled monuments require the prior written permission of Scottish Ministers. This process is known as scheduled monument consent and is administered by Historic Scotland.
4. It is a criminal offence to undertake works without consent. Anyone undertaking unauthorised works may be liable to enforcement action or prosecution.

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 legal requirements relating to works on scheduled monuments under the [Ancient Monuments and Archaeological Areas Act 1979*](#) ('the Act'). It explains the process for applying for consent and the mechanisms for dealing with unauthorised works. In addition, the note aims to give owners, occupiers and land users clear guidance on their legal obligations when undertaking works on scheduled monuments, and sets out the approach Historic Scotland takes when dealing with reports of unauthorised works.

2. Scheduled Monuments

- 2.1 Archaeological sites and monuments are part of our national and local identity, the physical remains of the lives of people who inhabited Scotland over the past 10,000 years. They are an important part of Scotland's history and contribute to education, tourism, sustainability, local distinctiveness, economy and quality of life.
- 2.2 Archaeological sites and monuments are often fragile and need careful management to ensure their survival. Designation by scheduling under the Act, helps protect the most important examples of these sites and monuments in the national interest.
- 2.3 Under the Act, a scheduled monument may comprise:
 - any building, structure or work, whether above or below the

* as amended by the Historic Environment (Amendment) (Scotland) Act 2011

surface of the land, and any cave or excavation;

- any site comprising the remains of any such building, structure or work or of any cave or excavation;
- any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure, or part thereof;
- any site comprising any thing, or group of things, that evidences previous human activities.

2.4 Currently around 8,200 monuments are scheduled, ranging from sites of the earliest known groups living in Scotland over 8,000 years ago to 20th-century military defences, and from abbeys and castles to the traces of prehistoric and medieval farms. Most monuments are visible above ground (such as prehistoric burial mounds, forts, standing stones, ruined castles, churches, industrial sites), but others may leave no trace on the surface or are only visible from the air. Almost all scheduled monuments are likely to include below-ground archaeology, which often extends further than the upstanding visible features.

2.5 A monument is scheduled to secure its long term legal protection in the national interest, *in situ* and as far as possible in the state it has come down to us. Scheduled monuments have an intrinsic value as monuments, not related to any concept of active use.

3. How to find out if a monument is scheduled

3.1 The easiest way to find out if a monument is scheduled is to check the [PASTMAP](#) website. You can also download a copy of the legal documentation for a scheduled monument, which shows the extent of the scheduled area. This information is also available from Historic Scotland's website.

3.2 Each scheduling document contains a written description of the scheduled area and a map indicating its extent. This description may include information about any exclusions within the scheduled area. If you are in any doubt about the location or extent of a scheduled area please contact Historic Scotland.

4. Management of Scheduled Monuments

4.1 Many scheduled monuments are stable and require little attention, but some may benefit from simple changes in landuse which ensure no inadvertent damage occurs over the long term. Others may benefit from more proactive management which sometimes requires access to specialist conservation skills.

4.2 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 committing a criminal offence.

4.3 There is no legal obligation on an owner to preserve and maintain a scheduled monument. However, Historic Scotland encourages active management of monuments and can help by offering advice, grants and by entering into agreements. Historic Scotland's Ancient Monuments Grants programme provides financial assistance to help preserve and maintain monuments, and in some cases to present them to the public.

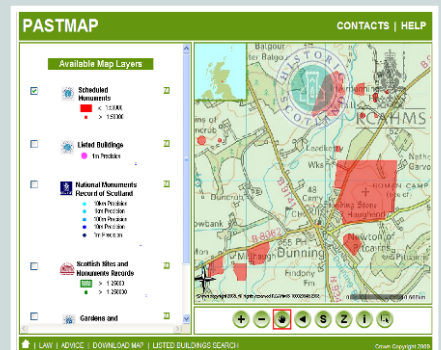


Scheduled Monuments

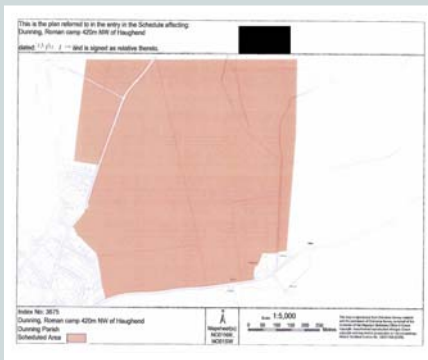
A GUIDE FOR OWNERS, OCCUPIERS AND MANAGERS

HISTORIC SCOTLAND

Historic Scotland's Leaflet 'Scheduled Monuments: A guide for owners, occupiers and managers' provides useful information and advice on the scheduling process.



Pastmap is a useful interactive web-based tool which can be used to identify the location of any scheduled monument. Scheduling documents for each monument can also be downloaded from the site.



Scheduling documents contain a map showing the extent of the scheduled area and a text description of the area.

ABBREVIATED EXTRACT OF ENTRY IN THE SCHEDULE OF MONUMENTS

The monument known as Dunning, Roman camp 420m NW of Haughend comprises the remains of a Roman temporary camp surviving as a cropmarked structure and a linear earthwork. The area to be scheduled is irregular on plan, to include the remains described and an area around within which evidence associated with their construction and use may survive. The scheduling specifically excludes the above-ground components of boundary features and the top surface of modern metalled tracks and roads, to allow for their maintenance, as shown in red on the Plan annexed.

4.4 Historic Scotland's Field Officers visit scheduled monuments and their owners on a regular basis. They check the condition of the site, offer advice on monument management and try to ensure that everyone with a current interest in the site knows about its protection.

5. Consent for works on Scheduled Monuments

5.1 Most works on scheduled monuments require scheduled monument consent, which is administered by Historic Scotland on behalf of Scottish Ministers. Works requiring scheduled monument consent are defined under section 2 of the Act as works resulting in the demolition or destruction of or any damage to a scheduled monument, any works for the purpose of removing or repairing a monument or any part of it or making any alterations or additions or any flooding or tipping operations on land in, on or under which there is a scheduled monument (see below).

5.2 A consent under section 42 of the Act is required for the use of any equipment capable of detecting metal within a scheduled area. This includes metal detecting, magnetometry, gradiometry and ground penetrating radar surveys. Non invasive survey of scheduled monuments is actively encouraged by Historic Scotland as it can help to improve knowledge and understanding of the monument whilst causing no damage. For metal detecting surveys, section 42 consent will normally only be granted where the survey forms part of a wider research strategy, and provision is made for the conservation and reporting of finds. In all cases, the applicant should include evidence that the site owner is aware of the proposed survey and is content for the works to proceed.

5.3 Some types of works do not require scheduled monument consent to be applied for as consent for such works is granted under the terms of the Ancient Monuments (Class Consents) (Scotland) Order 1996 ('the Class Consents Order'). Works covered under this Order include:

- Ploughing, where it has previously lawfully been undertaken in the period of 10 years immediately preceding, providing the depth of ploughing does not exceed previous depths. It is important to note that most changes to an agricultural regime (for example, deeper ploughing, de-stoning, sub-soiling or drainage works) would need scheduled monument consent;

Examples of works requiring scheduled monument consent

(i) works resulting in the demolition or destruction of or any damage to a monument

- Excavation of any part of the monument
- Removal of all or part of a monument
- Insertion or repair of drainage

(ii) works for the purpose of removing or repairing a monument or any part of it or of making any alterations or additions thereto

- Consolidation
- Felling or planting of trees
- Erection of polytunnels
- Erection, removal or replacement of fencing, sign posts or boards
- Field walking as part of archaeological survey
- Removal of material
- Construction of new paths
- Erection of temporary installations

(iii) flooding or tipping operations on land in, on or under which there is a monument

- Diverting a drain or altering the flow of a natural body of water resulting in the flooding of all or part of the monument
- Importing of topsoil or other materials into the scheduled area, whether temporary or permanent

Please note that this list is not exhaustive. If you are unsure whether a particular activity requires consent please contact Historic Scotland for advice

- Works which are urgently necessary in the interests of health or safety, provided that the works are limited to the minimum measures immediately necessary. Historic Scotland must be notified in writing at the earliest opportunity and a full description and justification of the works provided;
- Works executed under a management agreement with Historic Scotland;
- Works executed through the Ancient Monuments Grant programme.

5.4 Some monuments are both scheduled and listed. Where this is the case only scheduled monument consent is required for any works.

5.5 Scheduled monument consent is separate from the statutory planning process. It may run in parallel in cases where planning permission is also required, and such cases are normally dealt with most effectively if applications for planning permission and scheduled monument consent are prepared at the same time.

6. Scheduled Monument Consent

6.1 Scottish Historic Environment Policy sets out Scottish Ministers' policy on scheduled monument consent. It is the value of the monument to the nation's heritage that is the primary consideration in determining applications for scheduled monument consent. Works on scheduled monuments should normally be the minimum necessary to conserve the important features of a monument.

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

6.3 Historic Scotland offers a free pre-application discussion and checking service for scheduled monument consent applications. Our Heritage Management Officers are happy to offer advice on proposals at an early stage, and comment on the content of draft scheduled monument consent applications. This can often enable consent to be granted up to 4 weeks earlier.

6.4 Anyone can apply for scheduled monument consent, but must give the owner of the monument due notice of making the application and will need the permission of the owner before undertaking any works.

6.5 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 website or requested from Historic Scotland. Applications can be submitted electronically, or by post.

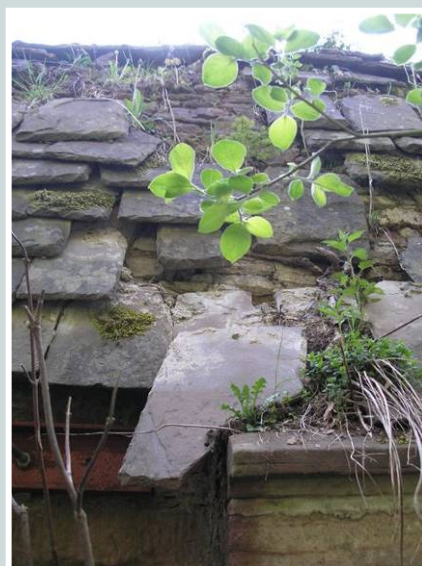
6.6 As applications can cover works ranging from the erection of a fence or the felling of a tree to the full consolidation or restoration of a ruinous building, the amount of information required will vary greatly. In applications for consolidation or restoration schemes, or where excavation is required, the involvement of a professional with appropriate experience may well be necessary. More detailed guidance on the level of information required for various types of work can be found on Historic Scotland's website.



Metal Detecting Yes or No?

METAL DETECTING, SCHEDULED MONUMENTS AND THE LAW

Historic Scotland's Leaflet 'Metal Detecting: Yes or No?' gives more information on metal detecting on scheduled monuments.



Loose masonry and slates can present a health and safety risk. Minimal work to remove the immediate threat can be undertaken under class consent.



Historic Scotland's Heritage Management Officers are happy to provide pre-application advice to applicants.



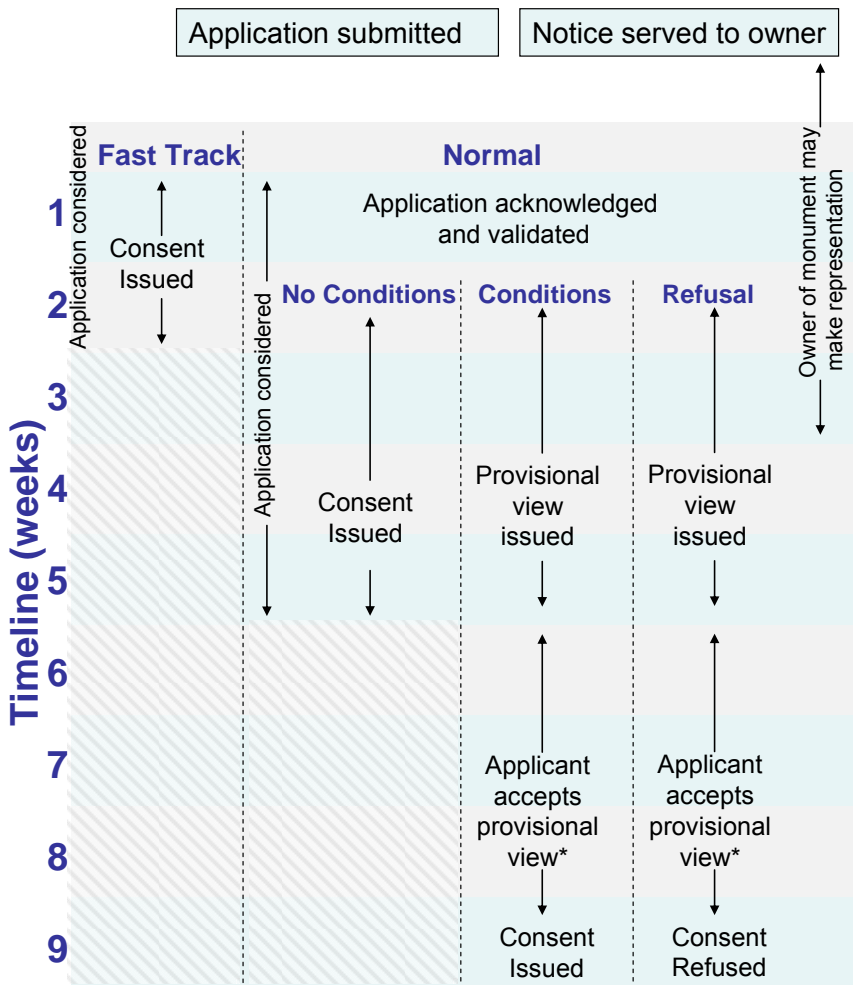
Small areas of earthwork repair can often halt the erosion on a scheduled monument.

- 6.7 The scheduled monument consent process normally takes a maximum of 9 weeks from start to finish. The application is first validated to check that sufficient information is included and an acknowledgement issued.
- 6.8 Where all the necessary information is included in the application, and the works are acceptable, consent may be granted without conditions. This will usually be done within 5 weeks of receipt of the application.
- 6.9 If Historic Scotland is minded to either grant consent with conditions or to refuse consent the Agency will issue a provisional view to the applicant and other interested parties. The applicant can either accept this provisional view within 28 days or make further 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. If Historic Scotland is minded to grant consent without conditions no provisional view will be issued.
- 6.11 Historic Scotland can refuse to entertain applications for scheduled monument consent 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, or where the application is made at a time when a similar application is under consideration.
- 6.12 Consent for some minor works may be issued through a fast track process within 2 weeks. For fast track applications the applicant must submit letters from all owners of the monument confirming they are content with the works proposed.

7. Compliance

- 7.1 Historic Scotland will seek, wherever possible, to engage, encourage and inform those who own or manage scheduled monuments, in order to secure compliance. Where breaches of the law arise, enforcement action will be undertaken in a proportionate manner.
- 7.2 In pursuing compliance, Historic Scotland may use a variety of approaches which include:
- Discussion – this may take place as part of seeking scheduled monument consent, 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 to comply with consent conditions, a timeline will always be included to show when compliance should be achieved;

The Scheduled Monument Consent Process



*If an applicant does not accept the provisional view and no agreement can be reached with Historic Scotland, Scottish Ministers will decide the most appropriate way of determining the application. This takes place out with the 9 week period.

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 scheduled monument consent in cases where such remedial works are desirable or reasonably practicable. The enforcement notice cannot take effect until at least 28 days after it has been served.

Stop notices

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

Temporary stop notices

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



Historic Scotland's Field Officers make routine visits to scheduled monuments to provide advice to owners and record changes in the condition of the monument.

- **Notices** - a formal notice requiring compliance and amelioration (enforcement notice, stop notice or temporary stop notice) may be served by Historic Scotland (see left);
- **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. Where direct action is taken, Historic Scotland will seek to recover costs associated with such works;
- **Reporting breaches of the Act to the Procurator Fiscal**, and recommending prosecution. 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.
- **Seeking an interdict** - in cases where Historic Scotland suspects unauthorised works are likely to take place in the future, a court order prohibiting such works may be sought;
- **Retrospective scheduled monument consent** - where works have been carried out without consent, it may be appropriate and in the best interests of the scheduled monument to retain certain unauthorised works. In these rare cases an application for retrospective scheduled monument consent may be considered.

- 7.3 The objective of enforcement is to ensure that preventative or remedial steps are taken to protect a scheduled monument. Prosecution is one way to achieve that objective.

Use of Enforcement Powers

Historic Scotland is committed to the proportionate use of enforcement powers. We will seek to resolve issues speedily, openly, informally and amicably before resorting to the use of enforcement powers.

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 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.

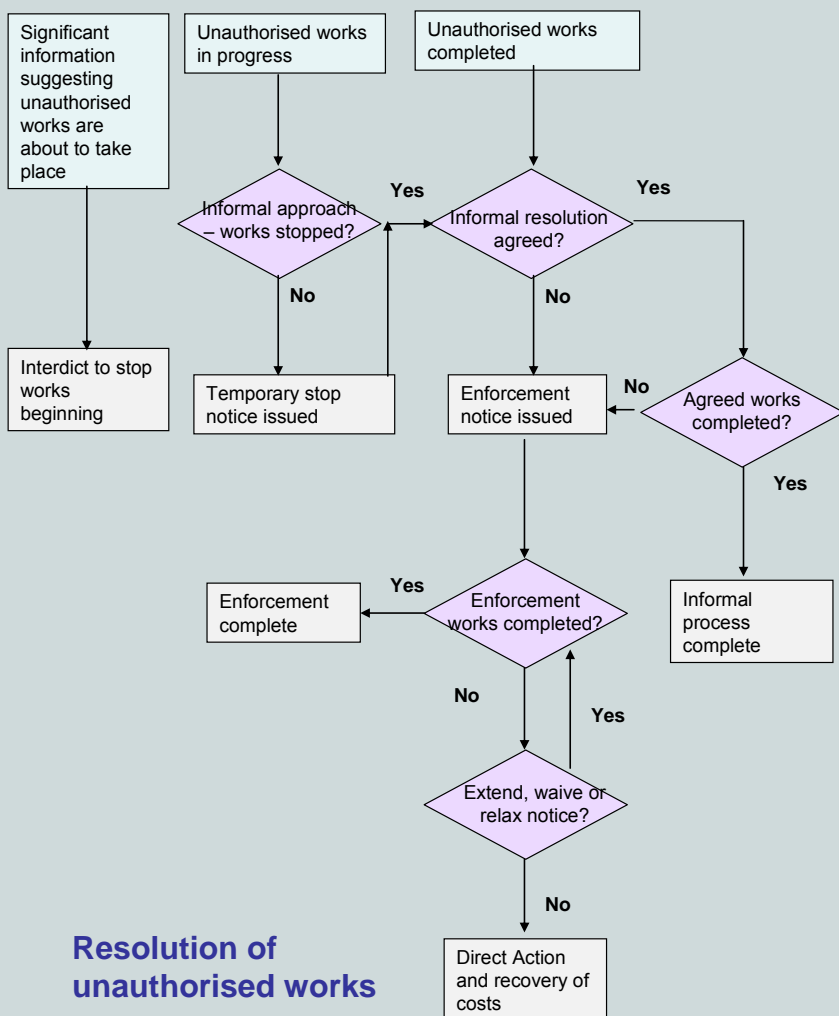
Historic Scotland will be open, helpful, proportionate and consistent in its approach to enforcement action, and will ensure that individuals:

- receive clear explanations of what they need to do to comply;
- 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 its 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 and other government bodies).



Archaeological excavations being carried out to assess the damage caused by the unauthorised erection of polytunnels across a scheduled monument.

8. Penalties under the 1979 Act

Offence	Fine
To destroy or damage a scheduled monument, if the person knew or ought to have known that the monument was protected and intended to destroy or damage the monument, or was reckless as to whether the monument would be destroyed or damaged.	On summary conviction, to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 6 months or both; or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.
To execute, cause or permit unauthorised works on a scheduled monument.	On summary conviction, to a fine not exceeding £50,000; or on conviction on indictment, to a fine.
Failure to comply with conditions of scheduled monument consent.	On summary conviction, to a fine not exceeding £50,000; or on conviction on indictment, to a fine
Failure to comply with an enforcement notice, stop notice or temporary stop notice.	For each breach of notice, up to £20,000 on summary conviction or on conviction on indictment, to a fine
Knowingly to provide, as part of a scheduled monument consent application, a certificate relating to the notification of owners, which contains false or misleading statements.	On summary conviction, to a fine not exceeding £1000.
Unauthorised use of a metal detector .	On summary conviction, to a fine not exceeding £1000.
Removal of any object of archaeological or historic interest discovered through unauthorised metal detecting survey.	Up to £10,000 on summary conviction or on conviction on indictment, to a fine.

9. Compensation

- 9.1 Compensation may be payable for refusal of scheduled monument consent in certain circumstances. These include works which are reasonably necessary for any development which had planning permission before a monument was scheduled, and works which are reasonably necessary for the continuation of use of a monument for any purpose for which it was in use immediately before the date of the application for scheduled monument consent.
- 9.2 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.
- 9.3 Compensation claims must be made within 6 months of refusal of scheduled monument consent or, in the case of stop and temporary stop notices, within 6 months from the date on which the stop notice ceases to have effect

Further Information and Advice

Further advice on any aspect of the control of works on scheduled monuments should be sought from:

Historic Scotland
Heritage Management Directorate
Longmore House
Salisbury Place
Edinburgh
EH9 1SH
Tel: 0131 668 8770
Email: hs.smc@scotland.gsi.gov.uk

www.historic-scotland.gov.uk

Legislation, Policy and Guidance Documents:

Ancient Monuments and Archaeological Areas Act 1979
www.legislation.gov.uk/ukpga/1979/46

Historic Environment (Amendment) (Scotland) Act 2011
www.legislation.gov.uk/asp/2011/3/contents/enacted

Ancient Monuments (Class Consents) (Scotland) Order 1996
www.legislation.gov.uk/uksi/1996/1507/contents/made

Scottish Historic Environment Policy
www.historic-scotland.gov.uk/shep-july-2009.pdf

For the full range of Historic Scotland Managing Change leaflets:
www.historic-scotland.gov.uk/index/heritage/policy/managingchange.htm

Further information on listed buildings and the listing process
www.historic-scotland.gov.uk/scotlands-listed-buildings.pdf

Further information on the scheduling process
<http://www.historic-scotland.gov.uk/scheduled-monuments.pdf>

Further information on metal detecting
http://www.historic-scotland.gov.uk/metal_detecting.pdf

Your local authority archaeology service can advise you further about non-scheduled archaeological sites – see www.alqao.org.uk for members of the Association of Local Government Archaeological Officers in Scotland, or contact your local council.

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
Web: www.rcahms.gov.uk

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

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