

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

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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

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
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.*