

Historic Scotland Guidance Note

MONUMENTS, ANCIENT MONUMENTS AND SCHEDULED MONUMENTS

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Q1. What is an ancient monument ?

Some ancient monuments are self-evident: prehistoric chambered tombs and stone circles, Roman forts, ruined castles. But the phrase “ancient monument” includes every site which retains direct evidence of past human action. Ancient monuments are often fine examples of human ingenuity, from the brochs and forts of prehistory through the beautiful ruined abbeys of Medieval times to the first factories of the Industrial Revolution. But ancient monuments need not be decorative or impressive to be important: some of the most important sites are in fact ancient rubbish tips, which can contain a wealth of evidence about past lifestyles and industries.

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Q2. How ancient does it have to be ?

The earliest Scottish ancient monuments are the very slight traces of temporary settlements once occupied by hunters and gatherers moving up the coasts and main river valleys not long after the end of the last Ice Age. The most recent are the remains of recently deserted farms or factories, for archaeology begins today. For example, wartime defence structures, some of which are only 50 or so years old, are now a recognised subject of study.

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Q3. Are all ancient monuments obvious to the non-expert ?

Many are, but not all. Over much of Scotland long-term ploughing has removed the surface traces of ancient settlements and fields, fortifications and holy places. But in certain conditions, such as drought, the differences between undisturbed and disturbed subsoil, or the existence of buried foundations or ditches, can result in sites being visible from the air. Archaeologists call these crop marks. Where the surface evidence has been almost, but not quite, obliterated, low sunlight or frost can show up slight traces clearly, allowing sites to be recognised which become almost invisible at other times.

Even such apparently slight remains can provide a great deal of information about the past. Some sites are completely hidden, leaving no trace on the surface, or lie sealed below peat or drowned in marshes or lochs. These will be revealed only by chance, as when a Bronze Age burial cist is turned up during ploughing, or when flint and pottery appear in the plough soil. In areas where peat is cut for fuel, it is not unusual to find ancient walls and houses on the old soil underneath the peat.

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Q4. What is the difference between ancient monuments and scheduled monuments ?

An ancient monument is any of the wide range of sites, ruins, buildings or other things outlined above. A scheduled monument is an ancient monument which has been given legal protection under the Ancient Monuments and Archaeological Areas Act 1979. By law, ancient monuments must be considered to be of national importance before they can be scheduled.

There are (in early 1998) about 6800 scheduled monuments in Scotland. It is estimated that the full number which meet the scheduling standards will be more than twice this, so scheduling is on-going.

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Q5. Is scheduling the same as listing ?

No, although Historic Scotland is responsible for both, and both safeguard the national heritage. Scheduling is usually applied to monuments which have passed their day, and are unlikely ever to be used again in anything like their original form. Indeed, a structure in use as a dwelling house cannot be scheduled as an ancient monument, nor can a building in ecclesiastical use, whereas both categories can be listed.

Listing is carried out under the Town and Country Planning legislation. It generally applies to structures which are not so far from their origins: indeed most listed buildings are in use. Even if they are not in use, most of the remainder might conceivably be brought back into use. Houses, bridges, factories, public buildings, war memorials are more likely to be listed than scheduled.

There is a separate booklet about the effects of listing, available from Historic Scotland.

There is some overlap: canals are likely to be scheduled, and some very old buildings, such as abbeys or castles, are likely to be both listed and scheduled. In these cases, the provisions of scheduling normally take precedence. Listed buildings consent work is normally dealt with by local authorities in the first instance, whilst all matters affecting scheduled monuments are dealt with directly by Historic Scotland.

Scheduling applies to the monument and the land on which it lies, and runs with the land. Moving a scheduled monument will usually reduce its importance dramatically, whereas if a listed structure is moved with meticulous care it may retain much of its historic value. For this reason listing runs with the structure

rather than the land. Of course, leaving both ancient monument and listed buildings where they are, and always have been, is much to be preferred.

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Q6. Why protect monuments ?

They are the physical evidence for Scotland's past, its history and prehistory. As well as a source of local and national identity and pride, they form an irreplaceable resource for archaeological, historic and architectural study, a powerful symbol of the march of human progress and an important and integral part of today's landscape.

Scotland's wealth of ancient and not-so-ancient remains is a major asset in the tourism and leisure industries. For much of the past, ancient monuments are the only source of information, either because they date from times when no records were kept, or because what records there were have not survived, or because they provide information about aspects of life which are not otherwise known: even during historic times, little hard evidence exists about how people lived from day to day.

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Q7. What makes a monument nationally important ?

Each monument is judged against a set of standards approved by the Ancient Monuments Board for Scotland, an advisory body to the Secretary of State, and also against the standards of the monuments on the existing Schedule.

Monuments can be important for different reasons, or combinations of reasons: for example good historical documentation might make an archaeologically unimpressive site important, or a very battered cross might be important because it is the only one of its type surviving.

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Q8. Who decides ?

In law, the Secretary of State for Scotland decides to add a monument to the Schedule. In day-to-day terms, scheduling proposals are drawn up by Inspectors of Ancient Monuments, specialists in archaeology, architectural history or history, who work for Historic Scotland. They use the approved standards in deciding whether to nominate a monument. All proposals are vetted by the Ancient Monuments Board for Scotland before they go forward for scheduling.

Q9. Are monuments scheduled for all time ?

Normally, yes. A monument may be de-scheduled, but this is only done if, for example, it has been damaged so badly it no longer meets the quality standards of the Schedule, or if agreement has been given to remove it (after prior excavation and recording) to allow some vitally necessary development which cannot be diverted.

Scheduled areas may also be varied or extended if appreciation of a particular monument or class of monument grows, indicating that the area of archaeological importance is larger than was at first realised.

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OWNERS AND OCCUPIERS: RIGHTS AND RESPONSIBILITIES

Q10. Can I object to a monument being scheduled ?

There is no formal provision in the 1979 Act for an appeal against scheduling. However, if, after scheduling, there is an application for scheduled monument consent to carry out works which affect the scheduled monument, there are statutory procedures which give the applicant every opportunity of making his case before a decision is reached on whether the consent should be granted and if so what conditions, if any, should be attached to that consent.

In view of this initial lack of a right of appeal, Historic Scotland's staff are instructed to make every reasonable effort to contact owners and occupiers before submitting a proposal to schedule a monument, to explain what they propose to do and to take on board any comments and suggestions.

Once a monument is formally proposed for scheduling, owners are invited to comment by letter, and supplied with a copy of the map showing the area proposed for scheduling.

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Q11. Does scheduling mean that the State takes ownership ?

No. A scheduled monument remains the property of its owner. But scheduling does restrict what can be done within the scheduled area.

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Q12. What is not permitted on scheduled monuments ?

Any works which will lead to damage, demolition or destruction of the monument, any works of repair, removal or alteration and addition, and any flooding or tipping: all these can only be carried out with prior written permission from the Secretary of State (called scheduled monument consent). Land uses which will not cause damage are encouraged.

If in doubt, seek advice from Historic Scotland.

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Q13. Does this mean I must stop using the monument, perhaps stop ploughing it ?

Because so many monuments are on land in the stewardship of farming businesses, there is special provision for routine ploughing and similar activities to continue. If the monument was under the plough at the date it was scheduled, or in the five years preceding, similar ploughing may continue without written consent. This special provisions is called a class consent, and also applies to some minor forestry and horticultural activities, as well as to farming.

There are also class consents for certain bodies (British Waterways Board and the Coal Authority), and for emergency works needed on health and safety grounds. Remember that not all agricultural works are covered by class consents: changes such as deeper ploughing, sub-soiling or drainage works will need written consent, whereas a change from ploughing to grazing will not.

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Q14. What about forestry ?

If there are trees on a scheduled monument, written consent is needed before felling if this is likely to cause damage to the monument. It is also needed before planting of new trees or any preparatory ground works if this will cause damage to the monument. In most cases both felling and planting are likely to cause damage, so it is as well to seek advice in each case.

Historic Scotland generally prefers to see trees and scheduled monuments kept separate, but if existing tree cover forms a landscape feature of particular importance, or is part of a historic designed landscape, then one-for-one replacement may be considered. But consent must be sought.

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Q15. Do I have to fence off a scheduled monument, or change the way I use it?

No. Scheduling does not *require* any positive maintenance on the part of land managers, but Historic Scotland encourages positive management of monuments, and can offer grants and enter into agreements (see later, Making Things Happen). In the case of fencing, this may not always be helpful, if for example it excludes stock and allows shrubs and trees to grow up.

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Q16. Does scheduling allow people to walk all over my land ?

No. Only officers appointed by the Secretary of State have a right of entry to a scheduled monument but only in cases of urgency or for the purposes of inspection and even then only after making all reasonable efforts to contact the owner or occupier first. Scheduling does not change public access rights, or lack of them: see Visitors, below.

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Q17. Is the fact that a monument is scheduled advertised ?

The owner and occupier are formally notified, and supplied with a map showing the protected area. The fact of scheduling is disclosed in the Register of Sasines or the Land Register, as the case may be, so it should be found by anyone searching for the title to a property. In addition, the local planning authority and their archaeological service are informed when a monument is scheduled. This is because under planning rules special attention must be paid to scheduled monuments.

All monuments newly recommended for scheduling are listed by name, location and national grid reference in the annual report of the Ancient Monuments Board for Scotland, available from Historic Scotland.

About every second year, a consolidated list of scheduled monuments is published. In the future, such lists may be published in electronic form, perhaps on computer disc, as well as on paper.

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Q18. Do I, as the owner or occupier, need to tell anyone else ?

Yes: you need to tell anyone who is about to work on your land, be it a contractor working for yourself or for one of the water authorities or an electricity, gas or telecommunications company. If you have the scheduling notice to hand, make sure they are aware of the protected area, or instruct them to contact Historic Scotland for advice.

The various special exemptions from planning control held by utilities companies do not apply on scheduled monuments, nor do permitted development rights. If you permit work which damages a scheduled monument, then you may be legally liable.

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Q19. Do I need to do anything about scheduled monuments if I am selling or buying land ?

If you are selling, it is helpful to inform the potential purchaser that you have a scheduled monument on the land, and to arrange for the scheduling documents to be passed on to the new owner: this helps ensure continued protection for the monument.

If you are buying, your solicitor should have already found out about the existence of a scheduled monument because scheduling is disclosed in the Register of Sasines or the Land Register, as the case may be. However, if you are in any doubt, check with Historic Scotland. The most efficient way is to supply a map extract showing the area of land you may be purchasing. In return, Historic Scotland will supply copies of the scheduling documents, including a map showing the boundary of any scheduled monuments.

Such enquiries are, of course, confidential between Historic Scotland and the enquirer.

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Q20. What about privacy ?

Details of ownership are not published. Historic Scotland holds owner and occupier information, and seeks to keep this up to date. Ownership information is only released to third parties with the prior agreement of the owner.

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MAKING THINGS HAPPEN

Q21. How do I apply for scheduled monument consent ?

It is usually worth discussing your ideas with Historic Scotland staff before applying for scheduled monument consent, both to consider if what you want to achieve can be done without damage to the monument and also to gain some idea of the likely problems. Once you are sure you wish to apply, ask Historic Scotland for an application form.

Complete the form and supply any additional information which seems appropriate (a map or plan, with proposals marked on it, is always useful). If you do not yourself own the land, you must inform the owner that you are applying for consent. Historic Scotland does not charge any fee for applications, and advice is likewise free.

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Q22. What happens then ?

Once your application is submitted, Historic Scotland staff will give it careful consideration, and this may include a visit to inspect the monument and/or discuss the application. They then recommend either that consent be granted, that it be granted with conditions, or that it be refused.

Their main consideration will be the continued well-being of the monument and the information potential it contains, but they will also take account of the practical effect of their recommendation upon, for example, farming operations. Normally, you will receive either a provisional decision or a request for further information within six weeks of the application reaching Historic Scotland. Historic Scotland will consult the owner(s) if you are not the sole owner.

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Q23. What if I am not happy with the provisional decision ?

If the provisional decision is a refusal, or contains conditions to which you object, then you can ask Historic Scotland to reconsider. If you remain unhappy with any revised provisional decision, it is open to you to request, and/or the Secretary of State to offer, a hearing or a public local inquiry so that you have the opportunity fully to argue your case before a final decision is made.

Once that final decision is made, however, the only appeal against it is on grounds of procedural impropriety or insufficient powers. It is therefore important to ensure that you act promptly on receipt of the provisional decision letter.

Q24. Can anyone object to my application ?

Yes. If you are not the owner, then the owner will automatically be given an opportunity to comment or object. In addition Historic Scotland has discretion to seek comment from anyone else. Usually this is limited to those with a direct interest in the land or who have expressed an interest in the application.

Scheduled monument consent applications are not normally publicly advertised, but they may be if the application is for works which are likely to arouse a great degree of public interest.

Historic Scotland (acting on behalf of the Secretary of State) can offer a hearing or a public local inquiry if objections are received, even if the applicant is content with the provisional decision on consent.

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Q25. If I receive consent, will there be a subsequent inspection ?

Yes, Historic Scotland staff try to visit all monuments during or soon after work which has been permitted by scheduled monument consent.

Q26. Must I stick to exactly what I applied for ?

Yes. It is an offence to carry out works which are not covered by the consent, or to carry out permitted works in any area of the site which was not covered by the consent. Consents can be varied once granted, but this must be done in writing.

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Q27. Do I need consent even if I am trying to protect or repair the monument ?

Yes, because it is easy to damage a monument by well-intentioned but ill-informed action. Consent application allows Historic Scotland an opportunity to provide formal expert advice, at no charge to the applicant.

Q28. How does scheduled monument consent relate to planning consent ?

Planning consent and scheduled monument consent are different. Obtaining one does not guarantee the other, and you will need to make separate applications, to the local planning authority and to Historic Scotland respectively. If you have a

scheduled monument on which you wish to undertake work which needs planning consent, you must have *both* consents before you start work.

Planning authorities are required to inform Historic Scotland if they receive a planning application which affects a scheduled monument. Although the initial procedures are separate, if you wish to appeal through public local inquiry over an unwelcome planning decision and you also wish to appeal over an unwelcome scheduled monument consent decision, the two inquiries can be dealt with together to save time and expense.

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Q29. Can I get financial help to look after my monument ?

Yes, although funds may sometimes fail to be adequate to meet all demands on them. Assistance may be available for work which benefits a monument's condition or contributes to its long-term survival. There are two schemes: the Grants to Owner scheme is usually for one off work, and Management Agreements, which are usually for long-term or repeated work.

See the list of leaflets at the end.

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Q30. If I lose money because my application is refused, can I be compensated?

The position on compensation is complicated, and you should seek legal advice. Briefly, it is unlikely that compensation will be payable if the monument was already scheduled before you first proposed the works for which consent was eventually refused, or for which consent was given with unacceptable conditions.

If, on the other hand, a monument is scheduled after you have lodged a planning application, and certainly if planning permission has already been granted, then you may have a claim.

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VISITORS

Q31. If I have a scheduled monument, will large numbers of people want to visit ?

Not unless they already do: scheduling provides a recognition of the monument's importance and legally protected status, but is unlikely to cause any increase in visitors.

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Q32. Will archaeologists come and excavate ?

Scheduling will not result in archaeologists wishing to excavate a monument. If anything, it will tend to discourage digging. Archaeologists who do wish to dig, for research reasons, on a scheduled monument, require scheduled monument consent (which the owner and occupier can object to), and will also, of course, require permission from the landowner and occupier to work on the land.

Scheduling gives archaeologists no special status as regards access to, or work on, privately-owned land.

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Q33. Will Historic Scotland staff visit?

Yes, but not often. The owner and occupier should have met the Inspector who writes the scheduling proposal. Once the monument has been scheduled, Historic Scotland's Monument Warden will visit every 3 to 5 years, to check the condition of the monument, answer any queries the owner and occupier may have, and check if ownership or tenancy have changed.

Wardens will make contact before their visits. If you have any particular problems, or the Warden cannot answer detailed questions, the Warden will arrange for an Inspector to visit.

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Q34. What about people wanting to use metal detectors ?

Because metal-detecting can remove important archaeological evidence from sites, it is not permitted on scheduled monuments without written consent from the Secretary of State. Application should be made to Historic Scotland, and is

normally only granted for detecting in conjunction with properly-run schemes of excavation, or for finding recently-lost items of value, for example a lost ring.

There is a separate leaflet on Scheduled Ancient Monuments and Metal Detectors.

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Q35. May I encourage visitors ?

Provided that it does not cause damage, there is nothing wrong with encouraging visitors to scheduled monuments, and much to be said for it. Points to consider are whether or not the monument is likely to be damaged by an increase in the number of feet passing over it, and whether or not access can be arranged without inconveniencing local residents. Also, take care in encouraging visitors on to dangerous or awkward sites: an invitation by the owner may be taken as evidence of a liability if someone has an accident.

Remember that any work within the scheduled area is likely to need scheduled monument consent, so take advice before you open a monument to the public.

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Q36. Can I get financial help to encourage visitors ?

It can be useful to provide information about access arrangements and about the monument, either by leaflets or on notice boards. Sometimes stiles, gates or improvements to paths may be desirable. Historic Scotland can advise on these aspects, but usually the provision of access alone, rather than as part of a package including beneficial works to the monument, is unlikely to receive grant support: not because it is ineligible, but because calls on grant funds are usually great, and the survival of monuments has a higher priority than their resentation.

If what you want to do is part of a wider package involving public access and nature conservation, then Scottish Natural Heritage may be able to help and even, in areas under special schemes, the Scottish Office Agriculture, Environment and Fisheries Department.

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ARCHAEOLOGY IN GENERAL

Q37. If I find an old object on my land, do I own it ?

No. All objects found in Scotland whose original owner or rightful heir cannot be identified belong to the Crown, not to the finder or landowner. This applies regardless of what they are made of or how they were originally deposited or lost.

When the Crown claims a find, the finder may be given a reward based on its market value, and the find is allocated to an approved museum or museum service. Finds should be reported to your local museum or the National Museum (non-reporting may be deemed an offence).

A separate leaflet explaining the law in more detail is available from the National Museums of Scotland.

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Q38. I am interested in a lot of sites, few of which are scheduled. Who can tell me more about them ?

The best first contact is the local authority archaeologist, whom you can usually contact through the planning department of the council. Local museum staff can also be very helpful. There may be a local archaeology or history society. Failing all else, the National Monuments Record for Scotland in Edinburgh is the central repository of most archaeological knowledge.

There is a separate leaflet on Sources of Archaeological Information available from Historic Scotland.

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Q39. How do ancient monuments fit in with nature conservation ?

Little of Scotland is truly natural, because human activity has modified the landscape and vegetation everywhere. This is recognised by a formal Statement of Intent between Historic Scotland and Scottish Natural Heritage, in which each undertakes to consider the other's area of interest. So you should not find yourself being asked to conserve nature in ways which damage monuments, or being asked to damage nature conservation interests while preserving monuments.

Particular danger areas are the encouragement of tree regeneration, planting natural species and pond creation/improvement (which can damage archaeology), and spraying, vegetation cutting and rodent control, which can damage natural interests (although both sides seem equally keen on humane rabbit control).

There are some genuinely insoluble problems: such as dealing with badgers (a protected species) who decide to live in a scheduled earthen long barrow (a protected site). Both Historic Scotland and SNH welcome requests for advice: they do not guarantee to solve all problems !

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“HEALTH WARNING”

This leaflet is only for information and illustrative purposes only. The definitive legal position on the topics covered in this leaflet is set out in the Ancient Monuments and Archaeological Areas Act 1979, and the Ancient Monuments (Class Consents)(Scotland) Order 1981. The latter is to be revised and will reissue under the same title, but dated 1996.

FURTHER INFORMATION

The following leaflets are available from Historic Scotland:

- Scheduled Ancient Monuments and Metal Detectors
- Grants for Ancient Monuments
- Managing Scotland’s Archaeological Heritage
- The Carved Stones of Scotland: A Guide to helping in their protection
- Scotland’s Listed Buildings: A Guide to their Protection

The following leaflet is available from the National Museums of Scotland:

- Treasure Trove in Scotland

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USEFUL ADDRESSES

Historic Scotland Longmore House, Salisbury Place, Edinburgh, EH9 1SH 0131 668 8777 (advice on all scheduled monuments matters)

National Monuments Record for Scotland, and Royal Commission on the Ancient and Historic Monuments of Scotland John Sinclair House, 16 Bernard Terrace, Edinburgh, EH8 9NX 0131 662 1456 (information on archaeological sites and monuments in general)

The National Museums of Scotland Royal Museum of Scotland, Chambers Street, Edinburgh, EH1 1JF 0131 225 7534 (advice on Treasure Trove, finds of artefacts: also consider your local museum)

Council for Scottish Archaeology c/o National Museums of Scotland, York Buildings, Queen Street, Edinburgh, EH2 1JD 0131 225 7534 ext 311 (advice on finding your local archaeological society)

Local planning authorities (to contact the local authority archaeologist for your area)

Scottish Natural Heritage local office (see telephone directory) (advice on nature conservation, public access to the countryside and similar matters)

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Historic Scotland
Heritage Policy Group
January 1998