It is against the law to undertake works to a scheduled monument or metal detect on it without our permission. ‘Works’ can include damaging a monument or altering it. Allowing works to take place without our consent is also against the law.

We call works that have taken place without permission ‘unauthorised works’.

This leaflet explains how we deal with unauthorised works.
Our role

The protections for scheduled monuments were set out in an Act of Parliament in 1979. This strong protection reflects how much people value the historic environment, and how important scheduled monuments are.

HES is responsible for the protections in the 1979 Act. We give permission for works at scheduled monuments through a process called scheduled monument consent. We investigate any works that happen without our permission.

We call the process of making sure that any unauthorised works are handled appropriately ‘compliance’. Where the law has been broken, we can take enforcement action.

How we respond to reports of damage

If someone reports that a scheduled monument has been damaged or we find out that works have happened without our permission, we will start to investigate it as quickly as we can. Normally the first thing we do is try to contact the owner of the scheduled monument, or anyone else who might be involved, to let them know what is happening.

When we are investigating possible unauthorised works, we have to follow similar procedures to the police. That means we have to be very strict about what we say and how we say it. We will quote from the law and use very formal language. We have to do things in this way because we are a specialist reporting agency to the Crown Office and Procurator Fiscal Service.

We know that the letters we send when we’re investigating can be very stressful to receive. They can be unexpected, especially if the person we are writing to has no idea that anything has happened.

We will always do our best to find out all the facts and take any relevant circumstances into account. To help us understand what has happened we might start by doing research, like looking at old maps and photographs. We might also work with other public bodies, like Police Scotland or planning authorities.
What happens next

It takes time to investigate a report, and we know that this can be a stressful period for the people involved. We will always try to get all the information we need as quickly as possible. Once we understand what has happened, and how much the scheduled monument has been damaged, we can decide what to do next.

You can expect our decisions to be reasonable and proportionate. We find out the background to an incident before we make a decision. We will take any relevant circumstances into account. A good example of this is whether or not reasonable care has been taken to avoid damage.

Possible outcomes

If we are happy that no one has broken the law, we’ll write a letter to the people involved to let them know. Nothing else will happen after that point.

If we decide that works have happened that would have needed permission, there are two options.

If we would have given permission for the works, we will write a letter to explain how to apply for the consent now the works are done. The letter will also give advice on how to avoid this happening again.

If we decide that we would not have given consent for the works, we may take further action.

Visiting the site

We will normally need to visit the scheduled monument to investigate. We have a legal right to inspect and record scheduled monuments and, in some cases, this includes archaeological investigation.

We might use these rights to inspect the site or do surveys. If we think that there are still works being done to a scheduled monument, we can serve a notice forcing them to stop.

Site meetings and interviews

We might also ask the owner of the scheduled monument, or anyone else involved, to meet with us at the site, so that we can talk through what happened.

For site meetings, we always send two members of staff. They will write down details in an official notebook. In some circumstances, they will ask to formally interview the people involved. This normally happens at our offices, but if that is inconvenient it can happen somewhere else.

We will only ask people to interview if we think that what has happened is serious enough that it might need legal action. At the start of the interview we will caution the person, to make sure that they know their rights. We will also take statements from any witnesses.

The results of lead theft at a scheduled monument. © HES
Further action

Sometimes, even if we wouldn’t have given permission for works, there are things that can be done to reduce the damage. If this is the case, we’ll try to agree with the people involved what the next steps should be. We call this ‘informal resolution’.

Informal resolution can be as simple as asking for someone to remove something they had put on a scheduled monument. Sometimes it will be more complicated and might involve archaeological work.

We will explain what we need to happen in a letter. The letter will normally set a deadline for when the work has to be done. The letter will ask the people involved to write back saying that they agree.

Enforcement notices

If the people involved don’t agree to what we ask, or if they agree but then don’t do what we have asked, we can serve an ‘enforcement notice’.

Enforcement notices set out in formal language what has happened, and what needs to happen next. They will explain what works took place, give the details of the scheduled monument, and say what needs to happen to fix the problem. This will be undoing or making good of the works.

Notices are made public on our decisions portal. There is a right of appeal for enforcement notices. Appeals can be made to the Scottish Government. The process is explained in full on the notice.

If the action described on the notice doesn’t happen, we can report this to the Crown Office and the Procurator Fiscal Service. We can also take direct action and do the work ourselves, and then recover the cost.

Prosecution

In a very small number of cases, we decide to report them to the Crown Office and Procurator Fiscal Service. We will only do this if we think it is in the public interest. When we make this decision, we will take all of the information we have into account. This might include whether the damage was deliberate, serious, or a repeat offence.

We submit our reports to the Crown Office and Procurator Fiscal Service, just as the police would do. They then decide whether to prosecute the case.

Unauthorised works to a scheduled monument can be a serious offence. A guilty verdict can lead to fines of up to £50,000 and a maximum of six months terms of imprisonment.

Cross compliance

We can also report cases to the Scottish Government’s Rural Payments and Inspections Division. Causing damage to a scheduled monument is against their rules, and they may decide to apply penalties to payments.
Data protection

All the personal data we collect at Historic Environment Scotland is held in compliance with the Data Protection Act 2018. If the personal data we collect from you is specifically to do with compliance and enforcement at scheduled monuments, then we will hold and process it under Part 3 of the Data Protection Act 2018, which deals with personal data processed by competent authorities for law enforcement purposes. Historic Environment Scotland is a competent authority. Holding personal data under Part 3 of the Act may mean HES has extended rights to hold the personal data. For personal data collected from you that is not directly relevant to a compliance and enforcement case, you can find out more about how we manage your personal data in our privacy notice.