



HISTORIC  
ENVIRONMENT  
SCOTLAND

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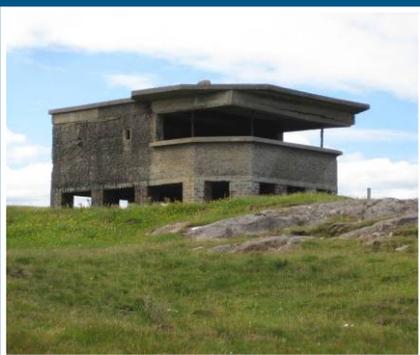
# Managing Change in the Historic Environment

## Works on Scheduled Monuments

Updated November 2016



# Key Issues



Scotland's 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 over 8000 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 an unstable structure, or works relating to land management practices.
3. Most works on scheduled monuments require scheduled monument consent from Historic Environment 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 [Historic Environment Scotland's Policy Statement, June 2016](#) 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 Environment Scotland takes when dealing with reports of unauthorised works.

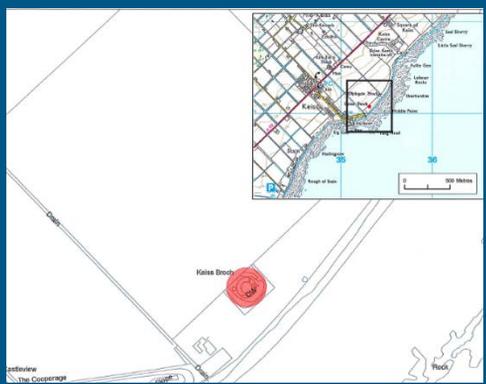
## 2. Scheduled Monuments

- 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.

\* as amended by the Historic Environment (Amendment) (Scotland) Act 2011 and the Historic Environment Scotland Act 2014



Historic Environment Scotland's Leaflet 'Scotland's Scheduled Monuments 2016' provides useful information and advice on the scheduling process.



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 Keiss Broch comprises a broch, complex stone-built substantial roundhouse, dating from the Iron Age (between 600 BC and 400 AD). The broch is visible as a low grass-covered stony mound with a central depression that contains traces of surviving walling and the entrance. It is located on a raised beach overlooking Sinclair's Bay.

The scheduled area is circular in plan, measuring 40m in diameter, to include the remains described above and an area around them within which evidence relating to the monument's construction, use and abandonment is expected to survive. The scheduling specifically excludes the above ground elements of the dry-stone wall and post-and-wire fence, to allow for their maintenance and upkeep.

- 2.3 Under the Act, a scheduled monument may comprise:
- any building, structure or work, whether above or below the 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 over 8000 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 our website [portal.historicenvironment.scot](http://portal.historicenvironment.scot) You can also download a copy of the legal documentation for a scheduled monument, which shows the extent of the scheduled area. Information on decisions related to designation and scheduled monument consent can also be found there.
- 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 Environment 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 Historic Environment Scotland 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 carry out proactive management works on a scheduled monument. However, Historic Environment Scotland encourages active management of monuments and can help by offering advice, grants and by entering into agreements. Historic Environment Scotland's Monument Management Grant programme provides financial assistance to help preserve and maintain monuments, and in some cases to present them to the public.
- 4.4 Historic Environment 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 from Historic Environment Scotland. Works requiring scheduled monument consent are defined 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 Environment 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 been undertaken lawfully in the preceding 10 years, providing that 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;
  - 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 Environment 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 Environment Scotland.

### **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
  - Construction of new paths
  - Erection of temporary installations
  - Erection, removal or replacement of fencing, sign posts or boards
  - Field walking as part of archaeological survey
  - Removal of material
  - Erection of polytunnels
- (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 Environment Scotland for advice**

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. Consent for works on Scheduled Monuments

6.1 Historic Environment Scotland's Policy Statement, June 2016, sets out 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 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 Environment Scotland's website or requested from Historic Environment Scotland. Applications can be submitted electronically, or by post.

6.4 As applications can cover works ranging from the erection of a fence 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 will usually be necessary. More detailed guidance on the level of information required for various types of work can be found on Historic Environment Scotland's website.

6.5 Historic Environment Scotland aims to reach a decision on most applications for scheduled monument consent within eight weeks. Where proposed works would allow a greater level of intervention than the minimum level of intervention that is consistent with conserving what is culturally significant in the monument, Historic Environment Scotland is required to notify the application to Scottish Ministers. In these circumstances it may take up to 12 weeks to reach a decision. Historic Environment 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.

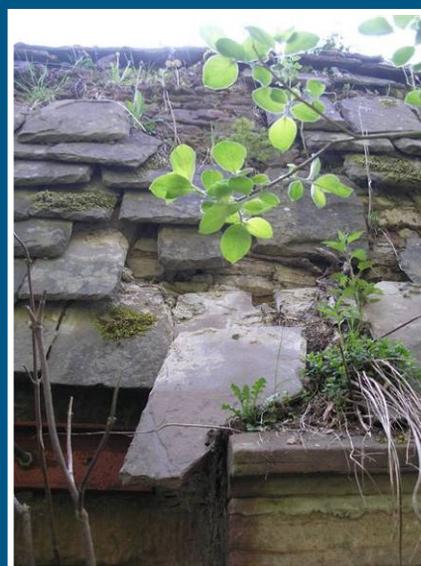
6.6 Pre-application discussions can simplify the process and help you to submit a valid application first time. Anyone can apply for scheduled monument consent, however an applicant must notify all owners, owners, occupiers and agricultural tenants of their.



### Metal Detecting Yes or No?

METAL DETECTING, SCHEDULED MONUMENTS AND THE LAW

Historic Environment 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.

intention to apply for scheduled monument consent. Owners have three weeks to make representations about the works proposed

- 6.7 Applications for scheduled monument consent must include:
- a written description of the proposed works
  - the name or location of the scheduled monument to which the works relate, or a description of the location of the land
  - the name and address of the applicant and, if appropriate, the name and address of the agent acting for the applicant
  - a plan or drawing sufficient to identify the area of land to which the works relate
  - any other plans and drawings necessary to describe the works in full
  - appropriate ownership certificates and notices – Other Parties Notification, if necessary, and Certificate of Ownership

This is the minimum information required for an application to be valid. More supporting information may be needed to describe and justify more complex works proposed to a scheduled monument.

- 6.8 Historic Environment Scotland makes all scheduled monument consent applications and supporting information publicly available online during the application process. This usually happens within five working days of receiving a valid application. Personal information will be removed prior to publication – this may include signatures, personal email addresses and telephone numbers.

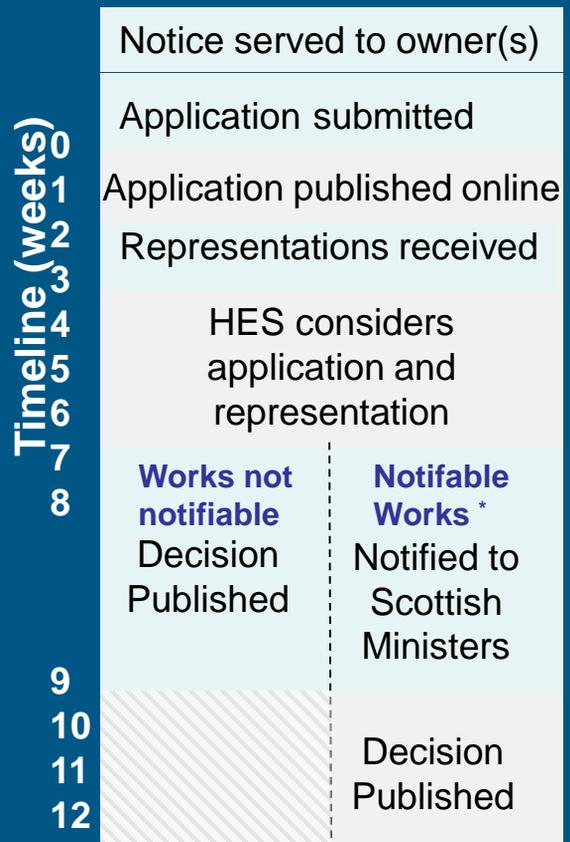
- 6.9 An application for scheduled monument consent may be:
- granted
  - granted with conditions
  - part granted/part refused
  - part granted/part refused with conditions
  - refused

Conditions applied can include a condition reserving specified details of the works (whether or not set out in the application) for subsequent approval by Historic Environment Scotland.

- 6.10 Once an application is determined, the decision notice and handling report are published online. The handling report will address any representations made in relation to the application that were material to its determination.

- 6.11 Applicants have the right to appeal to Scottish Ministers against:
- refusal of an application for scheduled monument consent
  - granting an application for scheduled monument consent subject to conditions
  - refusal of an application for variation or discharge of conditions

## The Scheduled Monument Consent Process



### Notifiable Works

Historic Environment Scotland must notify Scottish Ministers of its intention to grant consent for any works to scheduled monuments which would allow a greater level of intervention than the minimum level of intervention that is consistent with conserving what is culturally significant in the monument. Examples of such works include archaeological research excavation and other interventions which have purposes other than the long term preservation of the monument. This may include access and interpretation works.

Once notified, Scottish Ministers will decide whether to call the application in for their own determination, or clear it back to Historic Environment Scotland.

### 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. There is no time limit for taking scheduled monument enforcement action. An appeal against an enforcement notice may be made to Scottish Ministers.

### 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.

- granting subject to conditions an application for variation or discharge of conditions
- refusal of an application for subsequent approval required by a condition to which a scheduled monument consent is subject
- failure to determine scheduled monument consent or variation thereof within a two-month period

## 7. Compliance

- 7.1 Historic Environment 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 Environment 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;
  - **Notices** - a formal notice requiring compliance and amelioration (enforcement notice, stop notice or temporary stop notice) may be served by Historic Environment Scotland (see left);
  - **Direct Action** - where a person does not fully comply with an enforcement notice, Historic Environment Scotland can enter the land and carry out any unfulfilled requirements of an enforcement notice. Where direct action is taken, Historic Environment 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 Environment 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 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 Environment 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 Environment Scotland's response will take into account why the breach has arisen, for example due to negligence or a deliberate act.

Historic Environment 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 Environment Scotland will follow the principles set out below:

- all enforcement action undertaken by Historic Environment Scotland will be fair and reasonable.

Enforcement action will be recorded by Historic Environment 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 Environment Scotland will liaise with other Agencies to ensure compliance (e.g. Police, Local Authorities and other government bodies).



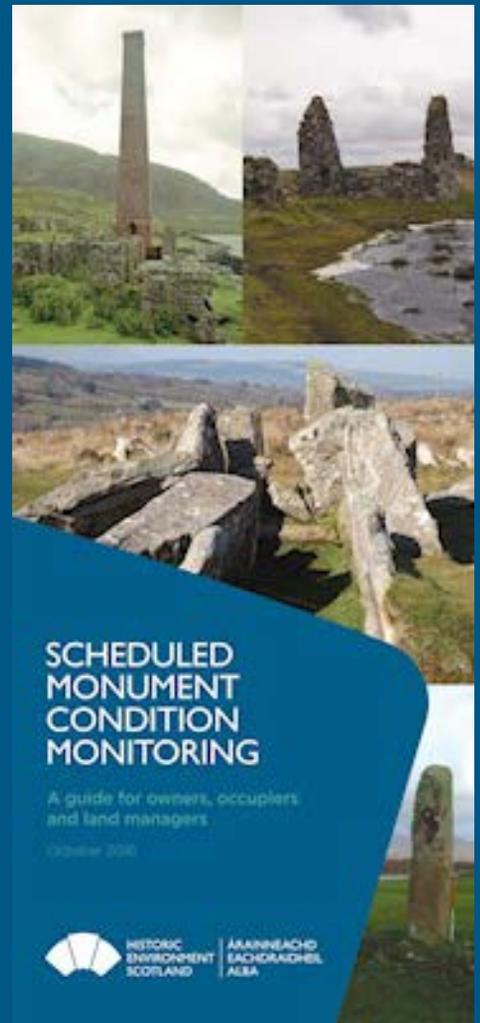
Stabilisation works being undertaken on a fallen standing stone.



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

## 8. Fines

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.



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



## 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

## Scheduled monuments

There is more information about the scheduling process, management and advice on our website, including our Managing Change Guidance Notes

[www.historicenvironment.scot/advice-and-support](http://www.historicenvironment.scot/advice-and-support).

You can also phone us for advice on 0131 668 8716.

## Local authority archaeology services

Contact your local authority archaeologist or archaeology service for advice on development control matters and managing unscheduled monuments.

The Sites and Monuments Records

Forum [www.smrforum-scotland.org.uk](http://www.smrforum-scotland.org.uk)

[/her-contacts](#) provides contact details

for local authority archaeology services

across Scotland.

## Relevant laws and policy

– Ancient Monuments and Archaeological Areas Act 1979

[www.legislation.gov.uk/ukpga/1979/46](http://www.legislation.gov.uk/ukpga/1979/46).

– Historic Environment Scotland policy

statement [www.historicenvironment.scot/advice-and-support/planningand-guidance/legislation-and-guidance/historic-environment-scotland-policystatement](http://www.historicenvironment.scot/advice-and-support/planningand-guidance/legislation-and-guidance/historic-environment-scotland-policystatement).

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– Managing Change in the Historic

Environment. See our series of

guidance notes on our website

[www.historicenvironment.scot/adviceand-support/planning-and-guidance/legislation-and-guidance/managingchange-in-the-historic-environmentguidance-notes](http://www.historicenvironment.scot/adviceand-support/planning-and-guidance/legislation-and-guidance/managingchange-in-the-historic-environmentguidance-notes).

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notes.

## Our publications

We have a range of publications about scheduling and scheduled monuments

[www.historicenvironment.scot/archives-and-research/publications](http://www.historicenvironment.scot/archives-and-research/publications).

[www.historicenvironment.scot/archives-and-research/publications](http://www.historicenvironment.scot/archives-and-research/publications).

## Suggestions and complaints

We welcome feedback about our publications. Please let us know what you think by sending an email to

[hsenquiries@hes.scot](mailto:hsenquiries@hes.scot).

We are committed to providing high-quality services. We value complaints and use information from them to help us improve our services. If something goes wrong or you are not happy with our services, please tell us.

Complaints Officer  
Chief Executive's Office  
Historic Environment  
Scotland

Longmore House

Salisbury Place

Edinburgh

EH9 1SH

Phone: 0131 668 8713

Email: [complaints@hes.scot](mailto:complaints@hes.scot)

You can find out more about our complaints procedure on our website.