

# SCHEDULED MONUMENT CONSENTS POLICY



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# SCHEDULED MONUMENT CONSENTS POLICY

## Introduction

1. Historic Environment Scotland is the regulator for scheduled monuments. This document sets out our policy for making decisions about consents at scheduled monuments.
2. Scheduled monuments are monuments of national importance designated under the [Ancient Monuments and Archaeological Areas Act 1979 \(the 1979 Act\)](#).
3. We are committed to ensuring that Scotland's scheduled monuments continue to contribute to Scotland's identity, heritage, landscapes and the understanding of our past. They also contribute to socio-economic development.
4. Responsibility for scheduled monuments sits with their owners. This remains the case even if they are cared for by land managers, organisations and/or wider communities. Some monuments are cared for by Historic Environment Scotland on behalf of Scottish Ministers.
5. It is important to preserve physical remains of the past for what they can tell us about history, as objects of interest in their own right, for what they contribute to contemporary landscapes and for their cultural significance to contemporary communities.
6. We help ensure that the condition of all scheduled monuments is maintained. We do this by monitoring their condition, assessing if they are at risk, and liaising with owners and communities. We provide support, advice and, where appropriate, financial assistance to help preserve scheduled monuments. This is often achieved through working in partnership with a range of stakeholders.

## What is this policy's status?

7. This document stands alongside the [Historic Environment Policy for Scotland \(2019\) \(HEPS\)](#). It aims to deliver the vision and objectives of the Historic Environment Strategy for Scotland *Our Place in Time* (2015), the National Outcomes, and national policies for planning and land use.
8. The policies in this document are supported by our [Managing Change in the Historic Environment: Guidance Note](#) series, and in particular our guidance note on [Works on Scheduled Monuments](#).

## What are scheduled monuments?

9. Scheduling is the process that identifies, designates and provides legal protection for monuments of national importance.
10. Scheduled monuments are part of Scotland's identity and are important both for their own sake and as a resource for research, education, regeneration, leisure and tourism. They range from artefact scatters of the earliest peoples to medieval churches and castles to more recent sites such as the remains of 20th-century wartime defences. They offer a tangible, physical link with the past and can also make a significant contribution to Scotland's landscapes.
11. Scheduled monuments are a finite and non-renewable resource containing unique information, and they have the potential to increase our knowledge of our past. They help create a sense of national and local identity and community. They are often very fragile and vulnerable to damage or destruction, and care must be taken to ensure that they are not needlessly damaged or destroyed.
12. The great majority of scheduled monuments are no longer used as intended when first built. Many have seen long periods of re-use and/or decay, many are ruined, and the way they appear and are appreciated today is an important part of their significance.
13. The 1979 Act provides for the protection, conservation and preservation of the cultural significance of scheduled monuments through a series of consents, compliance, enforcement and monitoring procedures managed by us.

## What protection do scheduled monuments have?

14. Nationally important monuments in Scotland are protected under the Ancient Monuments and Archaeological Areas Act 1979. More information on the detailed regulations that apply to Scheduled Monument Consent, compliance, enforcement and appeals can be found on our website.
15. Scheduled Monument Consent is required for any works that would demolish, destroy, damage, remove, repair, alter or add to a monument, or to carry out any flooding or tipping on a scheduled monument.
16. Metal and Mineral Detecting Consent is required to use any device that can detect metals or minerals at a protected place. This includes geophysics, and the removal of artefacts identified using a detecting device. The term 'protected place' is defined in the 1979 Act as a scheduled monument or monument brought into the care of Scottish Ministers by using the powers set out in the 1979 Act. This consent was previously known as Section 42 consent.
17. Some types of works are deemed to have consent under the terms of the [Ancient Monuments \(Class Consents\) \(Scotland\) Order 1996](#). Scheduled Monument Consent is not needed for these works.
18. For Crown bodies and departments and agencies of the UK and Scottish Governments undertaking works to scheduled monuments, there is a parallel system to consent. This is known as Scheduled Monument Clearance, and is governed by the same principles and policies as the Scheduled Monument Consent process. Applications for Scheduled Monument Clearance will therefore be assessed against the policies set out in this document.
19. It is a criminal offence to cause damage to or carry out works to a scheduled monument without Scheduled Monument Consent. It is also a criminal offence to detect metals or minerals at a protected place or subsequently remove artefacts without Metal and Mineral Detecting Consent.
20. Works undertaken without consent are normally referred to as 'unauthorised works'. This term also covers works that are outwith the scope of a granted consent, including any attached conditions.

21. Scheduled Monument Consent is separate from any other consent or permission process, including planning permission. Some works will require both planning permission and Scheduled Monument Consent. Where this is the case, it is normally best to prepare both applications at the same time.
22. In complex cases, it is best to obtain Scheduled Monument Consent before applying for planning permission. Scheduled Monument Consent and planning applications are determined based on separate policies and guidance. A successful application for one does not mean that an application for the other will be successful.
23. Where a scheduled monument has also been designated as a listed building, its scheduling normally takes precedence, although there are some exceptions. This means that Scheduled Monument Consent will normally be needed for works, rather than Listed Building Consent.

## Historic Environment Scotland's role

24. We determine applications for Scheduled Monument Consent, with the exception of applications that Scottish Ministers call in for their own determination.
25. Applicants can appeal against a refusal of Scheduled Monument Consent, and against conditions placed on a consent. Applicants can also appeal if we fail to determine an application within an agreed timeframe. Appeals are determined by the [Scottish Government Planning and Environmental Appeals Division \(DPEA\)](#) unless Ministers have decided that a decision requires to be taken directly by them.
26. We also determine applications for Metal and Mineral Detecting Consent and Scheduled Monument Clearance.
27. Where consent is granted, this can be with or without conditions.
28. There is a duty to notify us of certain works undertaken under the Class Consents Order.
29. We have enforcement powers to ensure compliance with the 1979 Act. We investigate reports of damage to scheduled monuments and potential unauthorised works. Where appropriate, we are responsible for undertaking enforcement action in relation to such works.



## Historic Environment Policy for Scotland

30. The Historic Environment Policy for Scotland outlines four policies we take into account when making decisions that affect scheduled monuments:

**HEP1:** Decisions affecting any part of the historic environment should be informed by an inclusive understanding of its breadth and cultural significance.

**HEP2:** Decisions affecting the historic environment should ensure that its cultural significance and enjoyment as well as its benefits are secured for present and future generations.

**HEP3:** Plans, programmes, policies and strategies, and the allocation of resources should be approached in a way that protects and promotes the historic environment.

If detrimental impact on the historic environment is unavoidable, it should be minimised. Steps should be taken to demonstrate that alternatives have been explored, and mitigation measures should be put in place.

**HEP4:** Changes to specific assets and their context should be managed in a way that protects the historic environment. Opportunities for enhancement should be identified where appropriate.

If detrimental impact on the historic environment is unavoidable, it should be minimised. Steps should be taken to demonstrate that alternatives have been explored, and mitigation measures should be put in place.

31. These policies directly translate to our decision making for scheduled monuments and the policies outlined below.
32. Scheduled monuments are legally recognised as being of national importance. This nationally important cultural significance should therefore be recognised when considering changes to them.

## Scheduled monument policies

33. The following overarching principles, aims and policies are applied to all the consent decisions we take in regard to proposals for work at scheduled monuments and protected places. They apply equally to Scheduled Monument Consent and Metal and Minerals Detection Consent. The principles set out the aspirations and explain the following policies. The aims set out their overall objectives.

### SCHEDULED MONUMENTS

#### AIM

A monument is included in the schedule to secure its long-term protection in the national interest, in situ and as far as possible in the form it has come down to us. The aim of this policy is to ensure this long-term protection wherever possible.

#### PRINCIPLES

Scheduled monuments have an intrinsic value as monuments, not related to any concept of active use. It is the value of the monument to the nation's heritage that is the primary consideration in determining applications for consent at scheduled monuments.

The principle of preserving scheduled monuments will only be set aside in circumstances where wider considerations are deemed, on balance, to be of greater importance to the national interest.

The more important particular features are to the monument's cultural significance, the greater will be the case against interventions which modify those features.

Each monument will require treatment specific to its individual nature, characteristics, significance and needs. Any proposed change to it should be fully and explicitly justified.

The management of scheduled monuments should be informed by current policy and guidance, up-to-date professional and academic research and, where appropriate, relevant consultation.



**SCHEDULED MONUMENT POLICIES (SMP)**

**SMP1: When undertaking works to scheduled monuments, their significance should be maintained.**

Scheduled Monuments can have meaning and value beyond their physical remains. Many have important historical, cultural or emotional associations that give them a particular significance in the life of the nation, or of the local community within which they are set. Many also have outstanding landscape or picturesque values. When undertaking works to them, it is therefore essential their significance is maintained and not reduced.

**SMP2: Conservation and research works should always be aimed at the lowest level of intervention that is consistent with achieving a monument’s preservation.**

Monuments are subject to decay and the threat of destruction from natural and human causes. Conservation work may be needed to prolong the life of a monument, but there is a risk that this can be so invasive that it irreversibly modifies the monument’s cultural significance and affects the features that made the monument important in the first place. These might include its character, value, evidence for construction and use, or any other factor that contributes to a monument’s cultural significance.

Research projects can deliver important public benefits, improving understanding of our most important monuments. However, they can also affect a monument’s cultural significance and result in irreversible loss of information for future generations. Research project works should therefore be carefully considered to ensure they are fully justified and any impact is minimised. They should be well targeted, properly researched and undertaken to high professional standards.

**Scheduled Monument Consent**

34. The following policies are applied specifically to decisions which Historic Environment Scotland takes in regard to determining applications for Scheduled Monument Consent. The aim sets out the objective of the policies. Additional explanation of and guidance on the purpose of some of the policies is also provided.

**SCHEDULED MONUMENT CONSENT POLICY AIM**

Works on scheduled monuments should normally be the minimum level of intervention that is consistent with conserving what is culturally significant in a monument.

**SCHEDULED MONUMENT CONSENT POLICIES (SMCP)**

**SMCP1: Works to scheduled monuments will normally only be permitted if they have minimal impact upon a monument’s cultural significance.**

**SMCP2: Extensive intervention at scheduled monuments will not normally be permitted.**

**SMCP3: Extensive intervention to a scheduled monument will only be allowed where:**

- **it has minimal effect on the cultural significance of the monument; or**
- **it is clearly necessary to secure the long-term preservation of the monument; or**
- **it will clearly generate public benefits of national importance which outweigh the impact on the nationally important cultural significance of the monument. Such public benefits could come from, for example, interventions which improve public access to a scheduled monument (where appropriate), or assist public understanding once the works are completed, or provide economic benefits of national importance once completed.**
- **Where unavoidable circumstances, such as coastal erosion, threaten the survival of a scheduled monument, it should, where possible, be excavated and/or recorded in detail before its destruction.**



Works to scheduled monuments should be considered in terms of the cultural significance of the monument and the impact that the proposals would have upon its cultural significance. The more important particular features are to the monument's cultural significance, the greater will be the case against interventions which modify those features.

**SMCP4: Proposals for change should be carefully considered, based on good authority, sensitively designed, and properly planned and executed. The level of information provided should be in proportion to the sensitivity of the monument or feature and the level of change proposed.**

For all applications where change is proposed, the following factors will be taken into account when considering if works meet this policy:

- a) the use of appropriate assessment methodologies to determine the full impact of any proposed management, use or development on a monument's fabric and/or cultural significance;
- b) the avoidance of irreversible change, particularly wherever its effects cannot be adequately assessed;
- c) that where change is necessary, strategies should be adopted to mitigate its impact and limit intervention;
- d) that the management and execution of alteration, including remedial work, is sympathetic to the historic character and wider cultural significance;
- e) that appropriate skills and techniques, materials and construction techniques are specified where appropriate;
- f) that an appropriate level of record is made before, during and after any work and deposited in local and national archives, and, where appropriate, published;
- g) that it is possible on close inspection to differentiate new work from old, particularly on masonry structures;
- h) that any archaeological excavation or other intrusive investigation should be based upon a detailed research strategy, with adequate resources, using appropriately skilled and competent archaeologists with a satisfactory record of the completion, archiving and publication of projects; and

- i) that the design, planning and execution of works on scheduled monuments are undertaken by people with appropriate professional and craft qualifications, skills and experience.

**SMCP5: Carved stones should normally be retained in their current location unless there are sound conservation reasons for moving them. If they are to be moved, any impact on cultural significance should be minimised.**

Carved stones, like many other monuments or parts of monuments, often have a cultural significance which encompasses their fabric, context, setting, use, contemporary social value and their contribution to a sense of place, among other factors. Because of this there is normally a presumption in favour of retaining the physical association of these monuments with their current locality (regardless of whether or not they are in their primary or original location).

However, carved stones can sometimes be vulnerable to erosion from weathering, as well as other natural or human threats. There may therefore be sound conservation reasons to relocate them. If it is necessary to move a carved stone, it should normally be retained as close as possible to its current position, and any associations with its location should be maintained as much as feasible. The decision to move a stone to a new structure should ensure public access, long-term responsibility for continued conservation and longer-term responsibilities for maintaining any new infrastructure.

## Metal and Mineral Detecting Consent

35. As defined under the 1979 Act, metal detecting can include forms of geophysical survey such as magnetometry, gradiometry and ground-penetrating radar. This consent also relates to the removal of artefacts identified through metal detecting.
36. The following policies are applied specifically to our decisions in determining applications for Metal and Mineral Detecting Consent. The aim sets out the objective of the policies.

### METAL AND MINERAL DETECTING CONSENT POLICY AIM

Detecting metals or minerals in protected places should only be undertaken in an appropriate manner. The methods should ensure information gained increases our understanding of the cultural significance of the monument and does not place the preservation of the monument, its cultural significance or associated artefacts at risk.

### METAL AND MINERAL DETECTING CONSENT POLICIES (MMDCP)

**MMDCP1: Proposals for detecting metals or minerals in protected places should be carefully considered, based on good authority, and properly planned and executed.**

Where the use of devices for detecting metals or minerals is proposed, it should:

- be supported by an appropriate research design, methodology and reporting strategy, and
- be undertaken by appropriately skilled and competent personnel with a satisfactory record of the completion, archiving and publication of projects.

**MMDCP2: The information gained from metal and mineral detecting should not place the preservation of the monument, its cultural significance or artefacts at risk.**

Recovery of objects of archaeological or historical interest will only be permitted where the work forms part of a wider research strategy and provision is made for the conservation and reporting of finds.

All applications for the removal of objects will be assessed in line with the policies outlined above for Scheduled Monument Consent.

Metal detecting should not place archaeological deposits or artefacts at risk (for example, risks might come from revealing the locations of artefacts that may have high monetary or cultural value).



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