

Historic Environment Scotland

managingchange@hes.scot

5 May 2021

Dear Managing Change Team,

Managing Change Guidance Note: Working on and near to scheduled monuments

Many thanks for giving the Society an opportunity to respond to this consultation. Details about the Society are available on our website (www.socantscot.org), we are a Learned Society established in 1780 and governed by Royal Charter since 1783. The Society is particularly interested in the education and research of Scotland's past, and as such welcomes this review and will engage positively with it.

As an independent charitable organisation we can offer our services as a place to host discussions across the heritage sectors/disciplines, and wider if required. We are particularly pleased to see an emphasis on the language used – ensuring clarity of communication with the wider public is crucial if the managing change guidance and its outcomes are to be supported and efficiently implemented.

We are happy to continue these conversations at a future date.

The response is on behalf of the Society of Antiquaries of Scotland and may be published with that name; the Society agrees to your privacy notice.

The following are responses to specific questions, with some additional material as required.

6) To what extent is this document helpful to:?

Understand what options are available to you if you are planning work on a scheduled monument?

Very helpful

Understand more about scheduled monuments and the role of HES?

Very helpful

Understand more about the legal protection of scheduled monuments and the consent processes?

telephone

• general enquiries 0131 247 4133 • director 0131 247 4115 • facsimile 0131 247 4163
• finance 0131 247 4135 • publications 0131 247 4145 • website www.socantscot.org • email info@socantscot.org

Somewhat helpful

7) We will publish separately short case studies about working on or near scheduled monuments. What kind of case studies would you like to see to illustrate this guidance?

Please type below the kind of case studies and topics you would like to see featured

Different monument types – such as cropmark sites vs ruins vs single stone monuments

8) Do you have any examples that you would like us to publicise?

Please type your example/s in the text field below. Please include the name of the scheduled monument or the place, a brief description of activities and the main outcomes.

N/A

9) If you suggested a case study, please give us your email address so we can follow up with you.

10) We tried to use language that is as clear and accessible as possible throughout this guidance. To what extent do you think the guidance achieves this?

Well – there are however several instances of technical jargon used throughout when less technical wording could be used. The document starts with jargon – “scheduled monuments”, “consent processes”, “regulator” – and needs to start instead with simple introductions to these concepts if to be plain English (then can use some legal jargon in doc later, but only when absolutely required).

For example, the document would benefit from an initial simplified description of SMC and requirement for permission. Something like – “In Scotland some places are protected by law because they are important to the nation and any work on or near these places will require permission from Historic Environment Scotland.”

There is a surfeit of commas used throughout the document, for example in No 2 of the Key Messages (as well as being grammatically convoluted), could read for e.g.: “The main reason for scheduling is to preserve and control work undertaken on monuments whose survival is in the national interest.” No 3 could be simplified to “It is a criminal offence to undertake work on scheduled monuments without consent.” Later on no commas are needed for “...preserve, and control works on, monuments...” for example.

We might also for example suggest the replacement of the word “consent” with “permission” whenever possible (i.e. when not an actual named process), and “obey” instead of “comply” etc. Some words noted that could be changed to help simplify the language are:

“valid” = “acceptable/accepted”

“vary” = “change” = “change or delete (called ‘vary’ or ‘discharge’) a condition”
“applied and been allowed the change” etc.
“engaging” = “talking to”
“schedule” = “a list” (which we call a ‘schedule’)
“legislation” = “law” or “the law” at various points
“archaeological research excavation” = “archaeological excavation”
“comply” = “obey” at various points
“compliance” = “to ensure the Act is obeyed”, “followed” etc.
“breached” = “broken”, “not followed properly” etc.
“unauthorised” = “unallowed”
“amelioration” = “reduced harm” or something similar
“elements” = “parts of”
“inquiry” = “enquiry” in this context

These are just some, there are likely more.

In addition, throughout the document it should be remembered that “archaeology” is not a thing, it is defined as a process, and is generally considered as such outwith the profession, this should be checked throughout, and phrases like: “Archaeology associated with a scheduled monument...” perhaps changed to “Remains of human activity...” or “structures” or “remains” or similar (for example “...call this ‘undesigned’ remains...”).

Also for same reasons and simplification, “Archaeological sites, remains and monuments...” should be simplified to reflect the wording of the act – “Ancient monuments...”

Ditto text box use of “archaeological remains” – just remains would do...

Ditto use “...archaeological research or buried services...”

Ditto “If you are planning work that might affect undesigned archaeology you...” = “If you are planning work that might affect undesigned remains you...”

There are also some grammatically or otherwise confusing sentences such as:
“You need to include a copy of the notice served on each person.” Is confusing at this point without the form itself, or other context – what does this mean?
and
“The more important features of a monument are to its cultural significance, the harder it is to justify proposals that would change those features.” Is grammatically confusing.

“We are a special reporting agency to the Crown Office and Procurator Fiscal Service and have responsibility for the protections given to scheduled monuments by the act. This includes investigating unauthorised works. There is no time limit to us beginning an investigation or taking enforcement action” – needs plain English

We very much support the efforts to make otherwise technical information as jargon free and easy to read as possible.

11) After reading these sections, to what extent do you feel confident that you could:

Find out if there is a scheduled monument near where you are planning work?

Somewhat confident

Consider what options might be suitable to protect it?

Somewhat confident

Get further advice if you need it?

Very confident

Is there anything that we missed out? Please type your suggestions here.

Perhaps add "...defined in law by an Act of Parliament...?"

Why are the links here and on the HES website to old versions of Acts, not the amended ones? This can lead to confusion.

Why have Burra Charter definition then state a different set of definitions for SMs?

The map search through the designations portal doesn't appear to show SMs unless searched by text search...at least it didn't when tried.

"Artefact scatter" – jargon?

"Integral" = "important" in this context?

Most people following this guidance will probably not be looking for a monument, just checking if there is one on a specific piece of land, so we suggest this part is reworded.

May be useful to explain that SMs are areas and coloured red on these digital maps, which are also clickable to get further information.

"buffer zone" – is there a plain English way to describe this? Also, would be useful to have a graphical indication of what an appropriate buffer zone might be.

Are HES suggesting that if drainage some distance away affects, say, the preservation of remains on a SM then this constitutes an offence? If so this needs to be spelled out in a separate and clear way – perhaps list of examples of works at a distance that might constitute a problem would be useful?

It may be worth highlighting the role of Local Authority archaeological services at this point in the document – and explain when and how to contact them.

"All works to a scheduled monuments" – remove the "s"

It would probably be helpful to move the definitions of “works” earlier in the document, perhaps clearly labelled “Works that need permission”. Also, do changes to management regime like livestocking require SMC, again a short list or examples would be helpful; could also add here works that do not require permission e.g. grass cutting?

12) After reading the text, to what extent do you feel confident that you understand:

When consent is required?

Somewhat confident

How to make an application?

Very confident

What the process involves?

Very confident

However, at this point the term “project” starts to be used, rather than “works” or similar as defined throughout previously.

Some visual indication of “Setting” would be useful.

With regard to the final bullet point in the text box of supporting information examples – if archaeological investigation is required to advise on the SMC application, then apparently this is covered by Class consent... may need clarity on this.

Where is “Our policy for scheduled monuments”? Link at least...

“considered against all our policies” – which are where? ALL of them? Corporate plan policies for e.g.? List?

Later there is mention of and links to the docs which are probably being referred to (SMC Policy etc.), would be useful to bring this forward in the document.

A lot of the “Understanding our decisions” is repeating statements made earlier, and some aspects could usefully be brought earlier too.

13) To what extent do you feel there is enough information about:

Metal and mineral detecting consent?

Too much if there is other documentation.

Relationship to other consents?

Too much if there is other documentation.

14) *Is there anything missing from this section?*

Why does resistivity not require consent? Doesn't it also detect minerals?

SNH is now known publicly as NatureScot – the repeated references to SNH will be confusing.

“natural heritage” could be replaced with “nature” in this context.

Why single out bats? Could affect hares or badgers for example - burrowing animals might often be present on or near buried SMs? The suggestion here is that SMs are mainly ruins.

Aren't archaeological surveys outside the definition of works? Shouldn't they be in the SMC for archaeological excavation doc instead?

Might wish to make heading “Relationship to Planning and Forestry” and move earlier in document (before the application process information).

SMC providing consent for Listed Buildings works – is there something in the Acts that determines this? Otherwise presumably in law you DO need both?

Note also that some Listed building decisions are made by LAs and some by HEs, so should ideally contact both? Needs a bit of clarity here.

15) *To what extent do you feel you understand:*

What actions HES can take in response to works without consent?

Very confident

How scheduled monuments are legally protected?

Very confident

Is there anything that we missed out? Please type your suggestions here.

“report of handling” needs to be explained.

Principles, aims and policies links etc should be much earlier in doc.

Just “Enforcement” as a heading?

When resolving issues can it be said to be informal? It will be a formal resolution with a written agreement, so maybe requires different wording – just “...works through discussion and...”

Two bits of the document relate to compensation, this could be simplified to one.

16) Does the document leave out anything that should be included?

Yes

17) If you said 'Yes', please explain your answer in the box below.

No 6 in the list of Key Messages could be broadened beyond just help and advice on management (as noted throughout the doc there are various places when HES will help and advise).

Could be more internal links within doc., perhaps clear where they are external vs internal.

Just noticed that HEP1 makes no grammatical sense – “...of its breadth and cultural significance...” = breadth = width, size? Breadth here doesn't make sense, breadth of what?

Research designs should include reference to ScARF.

Use of graphics and flow charts to help elucidate the processes involved would be very useful (as per HES Circular 2019 for example).

18) Do you have any links or sources of information that you think we should include in our 'Further Information' section?

A link to ScARF

19) As we continue to develop our suite of guidance are there topic areas you would like to see covered?

N/A

I hope that this response will help to enhance the document, if you have any further queries please do not hesitate to contact me.

Yours sincerely,



Dr Simon Gilmour
Director (director@socantscot.org)

Contact details: Society of Antiquaries of Scotland, Chambers Street, Edinburgh EH1 1JF, email: director@socantscot.org, Tel: 07799691981