

ENGLISH HERITAGE

Scheduled Monuments A Guide for Owners and Occupiers

This guide explains what scheduling means for you as the owner or occupier of a scheduled monument and summarizes the main provisions of the Ancient Monuments and Archaeological Areas Act 1979 (as amended) ('the 1979 Act'), which is the legal framework for the protection of scheduled monuments. The guide does not attempt to be fully comprehensive and you are strongly advised to consult English Heritage, or seek independent professional advice, before carrying out any works that might affect the site of a scheduled monument.

What is scheduling?

Scheduling refers to the legal system for protecting nationally important monuments and archaeological remains in England. Its aim is to preserve the best examples of these for the benefit of current and future generations. Scheduled monuments are added to the 'Schedule' (the list of legally-protected monuments) by the Secretary of State for Culture, Media and Sport, under powers contained in the 1979 Act. English Heritage takes the leading role in identifying nationally important monuments and archaeological remains in England, but suggestions for scheduling are also put forward by individuals, often *via* local authorities. In making decisions on scheduling (and de-scheduling: the removal of monuments from the Schedule), the Secretary of State is advised by English Heritage.

Not all scheduled monuments are ancient. Monuments and archaeological remains of all dates can be given the protection of scheduling, whether they are prehistoric burial mounds, 20th-century remains of the coal industry or from World War II. Some scheduled monuments contain standing buildings or ruins. Others have no visible remains above ground: it is the buried archaeology that is of national importance. Sometimes the form and layout of monuments only becomes clear from the air or through geophysical survey.

Scheduling is carefully restricted to the most important examples of each type of monument and to those for which this type of designation provides the most appropriate protection. Scheduled monuments are registered as Local Land Charges and therefore will appear on the results of Local Land Charge Searches carried out during the sale and purchase of property. Scheduling does not affect your freehold title or other legal interests in the land. The inclusion of a monument in the Schedule does not give members of the general public any rights of access. It does give English Heritage some legal powers of entry but, in practice, English Heritage will make every attempt to obtain the owner's or occupiers' permission to inspect a monument; the legal power of entry will only ever be used as a last resort.

How does scheduling affect me?

If you wish to carry out any works that will affect a scheduled monument, whether above or below ground level, you must apply to the Secretary of State for prior written permission. This is known as Scheduled Monument Consent (SMC). 'Works' are defined by section 2(2) of the 1979 Act as:

- any 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 scheduled monument or any part of it or of making any alterations or additions thereto; and
- any flooding or tipping operations on land in, on or under which there is a scheduled monument.

You are strongly recommended to contact the relevant English Heritage Local Office at an early stage if you are planning changes that might affect a scheduled site or monument (see below for contact details). We will try to help you develop your application in a way that avoids damage to the remains and is, therefore, more likely to be successful. We can also advise you on how to prepare an application for Scheduled Monument Consent and on how best to look after your scheduled monument, whether or not you are planning any works that affect it. No fee is payable for applying for Scheduled Monument Consent and there is no charge for English Heritage's advice. Grants are sometimes available to help maintain scheduled monuments.

Certain works to your property may also require planning permission from the local planning authority, or permissions from other bodies (such as those from Natural England covering protected wildlife species). However, obtaining such permissions does not remove the need for Scheduled Monument Consent. If your scheme needs planning permission or other permissions as well as Scheduled Monument Consent, it is helpful if you can make all the necessary applications at the same time, so that the various issues can be considered together.

How do I obtain Scheduled Monument Consent?

Consent for works is granted by the Secretary of State and must be given in writing before works are started. Consent cannot be given retrospectively, and undertaking works before consent has been given is a criminal offence. The Secretary of State is advised by English Heritage regarding applications for Scheduled Monument Consent and the application process is administered by English Heritage.

An application for Scheduled Monument Consent must be made on a standard form (AM112). This can be downloaded, together with guidance on filling in the form and details of the supporting documentation needed, from www.english-heritage.org.uk/smc Alternatively, you can request a form and guidance notes from English Heritage's Local Offices (see below for contact

details).

In the great majority of cases, Scheduled Monument Consent applications are successful. You are strongly advised to contact the appropriate English Heritage Local Office to discuss your plans at an early stage and certainly before sending in an application. This will help to identify whether a proposed scheme is likely to be acceptable in principle before any detailed design is undertaken. It is usually possible, following discussion with English Heritage, to agree on a scheme that both preserves the significance of the monument and meets your needs. If, however, following a formal application for Scheduled Monument Consent, English Heritage and the applicant are not able to reach agreement on the suitability of a scheme, the applicant has a right to a hearing before a decision is made on their application. In practice, this should rarely be necessary.

When Scheduled Monument Consent is granted, it is usually subject to certain conditions that may specify methods of working, or arrangements for prior archaeological investigation and recording. These conditions are listed in the consent letter and are applied in order to safeguard the scheduled remains. Please note that breach of the conditions listed in the consent letter is an offence.

Class Consents: works for which consent has been granted by Order

Some works are covered by a Class Consents Order (i.e. an Order made by the Secretary of State). Where the proposed works are of the types specified in the Order, there is no need to apply for Scheduled Monument Consent, regardless of the monument or site they take place on. It must be noted, however, that the classes of works to which the Order applies are very narrowly and precisely defined and are subject to specified conditions, limitations and/or exclusions. Undertaking works that are not covered by the Order, without obtaining Scheduled Monument Consent first, is an offence. It is recommended that you seek professional or legal advice, or contact English Heritage, before undertaking any works that you believe may benefit from a Class Consent. The activities most commonly covered by Class Consent are agriculture, gardening and works urgently needed in the interests of safety and health.

Agricultural works under Class 1 Consent

The Class Consent for agriculture permits some existing agricultural operations, which already benefit from this Class Consent, to continue. Certain operations that may be particularly damaging to the buried archaeological remains are excluded from the Class Consent: for example, ploughing where this does not already have Class Consent; ploughing to a greater depth than that previously carried out lawfully; subsoiling; drainage works; planting or uprooting trees, hedges or shrubs; the stripping of top soil; tipping operations; or the commercial cutting and removal of turf. Building work, including demolition, is also excluded from this Class Consent. It should

be noted that, where the activities have been carried out under Class 1 Consent, the Class Consent is lost after the activity concerned has ceased for a period of six years or longer. Scheduled Monument Consent would be needed before the activity could be resumed.

English Heritage wants to encourage farmers to consider ways of minimizing the risk to scheduled monuments under cultivation. Ploughing gradually erodes earthworks and breaks up undisturbed archaeological remains. English Heritage and Natural England have worked together to make alternative land-uses more achievable through support from the Entry Level and Higher Level environmental stewardship schemes. Further information on the options available can be obtained by contacting Natural England <http://www.naturalengland.org.uk/ourwork/farming> or English Heritage's Local Offices (see contact details below).

Gardening under Class 1 Consent

Class Consent 1 also covers horticulture. This means that, where part or all of a scheduled monument is already in use as a garden, many ordinary gardening activities, which are already taking place, can continue in the same location as before without the need to apply for Scheduled Monument Consent. Works specifically excluded from Class Consent 1 for gardening include any works likely to disturb the soil below the depth of 30cm and, as with agricultural works, any sub-soiling, drainage, the planting or uprooting of trees, hedges or shrubs, the stripping of top soil or tipping operations.

Where Class Consent does not apply to gardening works that you propose to carry out, then an application for Scheduled Monument Consent must be made to the Secretary of State. English Heritage is aware of the need of many owners and occupiers to carry out domestic gardening on their scheduled monuments and aims to consider applications for Scheduled Monument Consent sympathetically so long as the work will not harm the monument. If you are in any doubt about whether what you are doing, or propose to do, is covered by Class 1 Consent, you are strongly advised to seek advice from English Heritage and/or your own professional or legal adviser.

Works urgently necessary in the interests of safety or health (Class 5 Consent)

Works to a scheduled monument may be needed as a matter of urgency in the interests of safety or health. In this instance, the minimum work that is immediately required in the interests of safety and health may be carried out under Class 5 Consent. When the need to carry out such works is realized, you should write to English Heritage as soon as is reasonably practicable. You will need to detail the works proposed or undertaken and present a full justification of why they are or were necessary.

Managing a scheduled monument

A good general rule for scheduled monuments that contain buried archaeological remains is: the less disturbance of the ground the better. Monuments which consist of, or include, built structures can be particularly vulnerable to decay, especially if the structure is already ruinous and may need more proactive maintenance of the structural parts. Monuments that include earthworks often require nothing more than ordinary good land management, such as the control of vegetation growth, burrowing animals, prevention of erosion and ensuring that sites under pasture are not over-grazed. Scheduling does not imply that monuments are being poorly managed or that they are under threat; nor does it impose any legal obligation to undertake any additional management of the monument. However, English Heritage encourages owners and occupiers to maintain their scheduled monuments in good condition so that the remains survive for future generations.

Advice

You can get free expert advice on the good management of your monument by contacting your English Heritage Local Office (contact details below). From time to time, a member of English Heritage staff may wish to visit your monument to check on its condition. Your permission will always be sought first if we need access to private land. We will be able to advise you on management measures and answer questions about the monument's archaeology, history and importance. Detailed information on the archaeology of your area is also available *via* the local Historic Environment Record (for contact details, see www.heritagegateway.org.uk). Useful information on archaeological issues in general, and guidance on good practice, can be found in the on-line guidance library at www.helm.org.uk

Financial assistance

Grants for the repair or management of scheduled monuments may be available from English Heritage. Further information can be obtained from our Local Offices. In some circumstances, grants may form part of a Management Agreement with you to support the good maintenance and management of a scheduled monument over a number of years. Either English Heritage or Natural England can provide information on management payments that may be available for farmers *via* environmental stewardship schemes. Built structures (including ruins) may be eligible for historic buildings grants to assist with repair or consolidation work.

Offences

It is a criminal offence to destroy or damage a scheduled monument either intentionally or through recklessness. It is also a criminal offence to carry out

or to permit others to carry out unauthorised works to a scheduled monument, i.e. works undertaken without Scheduled Monument or Class Consent. As noted above, where Scheduled Monument Consent has been granted subject to conditions, it is an offence to fail to comply with those conditions when implementing that consent.

The use of metal detecting equipment on a scheduled site is illegal without the written consent of English Heritage, as is the removal of objects found by detection equipment.

Where a criminal offence is suspected, English Heritage may choose to investigate with a view to prosecution or to refer the matter to the police and to the Crown Prosecution Service. A conviction for any of these offences can lead to a fine and, in respect of intentional or reckless damage or destruction of a monument, a fine and/or imprisonment.

Contact details for English Heritage Local Offices

London (covering Greater London)

English Heritage
1 Waterhouse Square
138-142 Holborn
London
EC1N 2ST
Telephone: 020 7973 3000
Fax: 020 7973 3001
E-mail: london@english-heritage.org.uk

South East (covering Berkshire, Buckinghamshire, East Sussex, Hampshire, Isle of Wight, Kent, Oxfordshire, Surrey, West Sussex):

English Heritage
Eastgate Court
195 – 205 High Street
Guildford
GU1 3EH
Telephone: 01483 252000
Fax: 01483 252001
E-mail: southeast@english-heritage.org.uk

South West (covering Bristol, Cornwall, Devon, Dorset, Gloucestershire, Isles of Scilly, Somerset, Wiltshire)

English Heritage
29 Queen Square
Bristol
BS1 4ND
Telephone: 0117 975 0700
Fax: 0117 975 0701
E-mail: southwest@english-heritage.org.uk

East of England (covering Bedfordshire, Cambridgeshire, Essex, Hertfordshire, Norfolk, Suffolk):

English Heritage
Brooklands
24 Brooklands Avenue
Cambridge
CB2 8BU
Telephone: 01223 582700
Fax: 01223 582701
E-mail: eastofengland@english-heritage.org.uk

East Midlands (covering Derbyshire, Leicestershire, Lincolnshire, Northamptonshire, Nottinghamshire, Rutland):

English Heritage
44 Derngate
Northampton
NN1 1UH
Telephone: 01604 735400
Fax: 01604 735401
E-mail: eastmidlands@english-heritage.org.uk

West Midlands (covering Herefordshire, Shropshire, Staffordshire, Warwickshire, Worcestershire):

English Heritage
The Axis
10 Holliday Street
Birmingham
B1 1TG
Telephone: 0121 625 6820
Fax: 0121 625 6821
E-mail: westmidlands@english-heritage.org.uk

North West (covering Cheshire East, Cheshire West and Chester, Cumbria, Greater Manchester, Lancashire, Merseyside):

English Heritage
3rd Floor
Canada House
3 Chepstow Street
Manchester
M1 5FW
Telephone: 0161 242 1400
Fax: 0161 242 1401
E-mail: northwest@english-heritage.org.uk

Yorkshire (covering East Riding of Yorkshire, North Yorkshire, South Yorkshire, West Yorkshire)

English Heritage
37 Tanner Row
York
YO1 6WP
Telephone: 01904 601901
Fax: 01904 601 999
E-mail: yorkshire@english-heritage.org.uk

North East (covering Co. Durham, Northumberland, Tees Valley, Tyne and Wear):

English Heritage
Bessie Surtees House
41 – 44 Sandhill
Newcastle upon Tyne
NE1 3JF
Telephone: 0191 269 1200
Fax: 0191 261 1130
E-mail: northeast@english-heritage.org.uk

Other useful information

For contact details for your local Historic Environment Record:
www.heritagegateway.org.uk

For the main English Heritage website:
www.english-heritage.org.uk

For the Scheduled Monument Consent application form and Guidance Notes for Applicants:
www.english-heritage.org.uk/smc

For the Department for Culture, Media and Sport:
Heritage Protection Branch
2–4 Cockspur St
London
SW1Y 5DH
Tel: 020 7211 6200
www.culture.gov.uk

Appendix 1

Class Consents

Class Consents are granted by an Order of the Secretary of State. They give consent for works of a particular kind (or 'class') to be carried out on any scheduled monument to which they apply. Class Consents are carefully defined legal consents and are subject to specified conditions, limitations and/or exclusions. You are therefore strongly advised to contact English Heritage and your own legal adviser before any works are undertaken in reliance on a Class Consent. This will help to ensure that you are fully aware of the conditions and restrictions of these consents and that you do not inadvertently undertake unauthorised works.

The current Class Consents can be found in the Ancient Monuments (Class Consents) Order 1994 (Statutory Instrument No. 1994/ 1381). A brief outline of each Class is provided here but it should be noted that the conditions, limitations and exclusions are not included, and for these you are advised to consult the 1994 Order:

- Class 1: This covers certain 'agricultural, horticultural and forestry works of the same kind as those previously carried out lawfully in the same location and on the same spot within that location during the previous six years'. "Carried out lawfully" means 'carried out in accordance with the terms of a consent granted by order under section 3 of the Act or which would have been so carried out if during the period in question the monument had been a scheduled monument' (quoted from the Ancient Monuments (Class Consents) Order 1994).

The previous Class Consent 1 for agricultural, horticultural and forestry works was under the Ancient Monuments (Class Consents) Order 1981. The 1981 Order provided that agricultural, horticultural or forestry works could only be lawfully carried out if works of the same kind had previously been executed in the same field or location during the period 9th October 1976 to 8th October 1981, subject to certain exclusions including sub-soiling, drainage works, the planting or uprooting of trees, hedges or shrubs or any other works likely to disturb the soil below the maximum depth affected by normal ploughing.

The 1994 Order replaced the 1981 Order but permits those rights to undertake agricultural, horticultural and forestry works acquired under Class 1 of the 1981 Order to continue so long as they are executed at least once in every six year period. The 1994 Order defines further and extends those works excluded from Class 1.

Therefore, Class Consent 1 under the 1994 Order does not provide Class Consent for agricultural, horticultural and forestry works to be extended, either within the same area or to another area of the scheduled monument; it merely permits those rights acquired under the 1981 Order to be continued under the 1994 Order subject to further limitation and the six year qualifying period.

Before relying on Class Consent 1, you are strongly advised to consult the 1994 Order and seek advice from English Heritage or your own professional adviser to establish what activities on your scheduled monument currently benefit from Class Consent 1.

- Class 2: Works executed more than 10m below ground level by the British Coal Corporation or their licensees.
- Class 3: Certain works executed by the British Waterways Board.
- Class 4: Certain works for the repair or maintenance of machinery.
- Class 5: Works urgently necessary in the interests of safety or health, being the minimum measures necessary and subject to giving notice in writing as soon as reasonably practicable to the Secretary of State. The Secretary of State will be satisfied that notice has been given if it is sent to the relevant English Heritage Local Office.
- Class 6: Works executed by the Historic Buildings and Monuments Commission for England, more commonly known as English Heritage.
- Class 7: Certain works of archaeological evaluation carried out by or on behalf of an applicant for Scheduled Monument Consent.
- Class 8: Certain works carried out in accordance with agreements made between the occupier of a scheduled monument and the Secretary of State or English Heritage under section 17 of the 1979 Act (i.e. where Management Agreements are in place).
- Class 9: Certain works in respect of which the Secretary of State or English Heritage pay a grant under section 24 of the 1979 Act.

Freedom of Information

English Heritage is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 which provide a general right of access to information it holds or is responsible for.

If you require an alternative accessible version of this document (for instance in audio, Braille or large print) please contact our Customer

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