



# COMPLIANCE AND ENFORCEMENT

AT SCHEDULED MONUMENTS

SEPTEMBER 2023



HISTORIC  
ENVIRONMENT  
SCOTLAND

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## About this leaflet

It is against the law to undertake works to a scheduled monument or metal detect on it without our permission. We call this 'unauthorised works'.

This leaflet explains how we deal with unauthorised works.

## Our Role

Scheduled monuments are archaeological and historic sites of national importance. The protections for scheduled monuments are set out in the Ancient Monuments and Archaeological Areas Act 1979. This strong protection reflects how much people value the historic environment and how important scheduled monuments are.

HES gives permission for works at scheduled monuments through a process called scheduled monument consent (SMC). We investigate, and seek to resolve, any works that happen without our permission. We call this process compliance.

## What are unauthorised works?

Works are defined as any activity that damages, destroys, demolishes, removes, repairs, alters, or adds to a scheduled monument. This includes flooding and tipping operations. It is an offence to carry out, cause, or permit these works without SMC. Using a metal detector within a scheduled monument without our permission is also an offence.

## How we respond to reports of unauthorised works

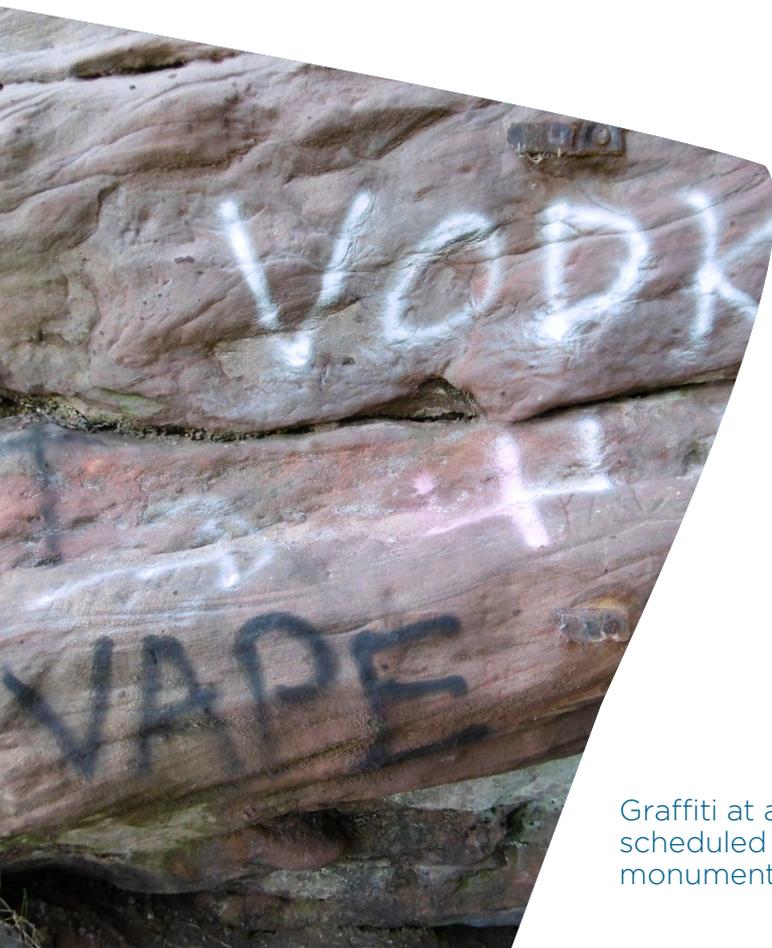
We will investigate reports as quickly as possible. First, we will contact the owner of the monument, and anyone else who might be involved, to let them know what is happening. If works are ongoing, we can serve a Temporary Stop Notice forcing works to stop.

Next, we will try to understand how the monument has been affected. This may involve speaking with owners, occupiers, and any witnesses to the incident, as well as examining photographs.

When we investigate, 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 know that the letters we send when we are investigating can be very stressful to receive. We are always happy to discuss any concerns you might have.

We will always do our best to find out all the facts and take any relevant circumstances into account. We might also work with other public bodies, like Police Scotland or planning authorities.



Graffiti at a scheduled monument

## Site visits and interviews

We will normally need to visit the monument during our investigation. We always attempt to contact owners and occupiers before visiting. We prefer to visit with their agreement but have a legal right to inspect and record scheduled monuments and, in some cases, this includes archaeological investigation.

We usually ask owners or occupiers, or anyone else who might be involved, to meet us on site so that we can learn more about what has happened, address any concerns they might have, and discuss next steps. Normally we send two members of staff to a compliance site meeting. During the meeting, we will take notes in an official notebook and, in cases where legal action may be taken, we will note statements from any witnesses.

If we identify that an offence has been committed, we may invite those we suspect of involvement to be interviewed. They will be informed of their rights prior to interview, including the right to seek legal advice.

## What happens next?

It takes time to investigate a report, and we recognise 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 affected, we will decide what further action is required and update those involved.

You can expect our decisions to be proportionate, consistent and transparent. We will take any relevant circumstances into account.

## Possible outcomes

If we conclude that no one has broken the law, we will write a letter to the people involved to let them know and close our investigation. If unauthorised works have taken place, we take a proportionate approach to what happens next.

### Education and Advice

Where minor unauthorised works have taken place and no repairs to the monument are necessary, we will send an advisory letter. This letter gives general information on scheduled monuments, our compliance process and SMC.

### Enforcement Action

Where unauthorised works have affected a monument, but can be repaired or mitigated in some way, we will follow our enforcement procedures. There are a number of steps we can take depending on the level of cooperation of those involved.

Our preference is to resolve unauthorised works by mutual agreement. We will set out the steps required and ask those responsible to undertake them. We call this an Informal Resolution. This typically requires the completion of specific works within a certain time period. Where we cannot reach agreement through informal resolution, we will normally proceed to formal action through the issuing of an Enforcement Notice. This may be accompanied by a Stop Notice if we are concerned that works might restart.

We can issue three different types of formal notice:

- Temporary Stop Notices - Issued where unauthorised works are ongoing and have not been stopped voluntarily. They require all unauthorised works to cease and can be in force for up to 28 days.
- Stop Notices - Issued alongside Enforcement Notices where unauthorised works are ongoing and have not been stopped voluntarily. They require all unauthorised works to cease and can remain in force until the Enforcement Notice takes effect.
- Enforcement Notices - Issued to require works to be undertaken to resolve the unauthorised works. Typically this means the undoing or making good of the unauthorised works.

Formal notices are made public on our decisions portal. There is a right of appeal against an enforcement notice; these are made to the Scottish Government. Failure to comply with a formal notice is an offence and we can report this to the Procurator Fiscal. We can also take direct action to carry out the required work ourselves and then recover costs from the monument owner.

### Reporting

We are a specialist reporting agency and, in a small number of cases, we will make a report to the Procurator Fiscal. 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 will also report breaches of Formal notices to the Procurator Fiscal.

Once we have made a report, the Procurator Fiscal will decide whether or not to seek prosecution. Conviction under the 1979 Act can result in an unlimited fine or a prison sentence.

### 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 for the protection of landscape features, and they may decide to apply penalties to payments.

Our team can provide advice about scheduled monuments and help to mark them out if you are planning work nearby.



## 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](#).



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[www.historicenvironment.scot/smc](http://www.historicenvironment.scot/smc)



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