

Working in a scheduled or listed graveyard or burial ground

A graveyard or burial ground may be covered by a range of cultural and natural heritage designations. All or part of it may be a scheduled ancient monument, listed building, conservation area or designed landscape. This leaflet describes the legal and practical implications of the cultural heritage designations for anyone wishing to undertake work on such a site.

The following *Graveyards and Gravestones Electronic Leaflets* are free and can be downloaded from Historic Scotland's website: www.historic-scotland.gov.uk

1. Working in a scheduled or listed graveyard or burial ground
2. Good practice in maintaining a historic graveyard
3. Looking after gravestones
4. Health and safety in historic graveyards: guidance for visitors and owners
5. Health and safety in historic graveyards: guidance for works teams and volunteer workers, including volunteer surveyors
6. Short guide for cemetery managers: emergency measures for historic memorials
7. Historic Scotland grants in relation to graveyards or burial grounds
8. Abandoned structures within graveyards

To obtain copies of all Historic Scotland publications referred to in this leaflet, including free leaflets, e-mail hs.conservation.bureau@scotland.gsi.gov.uk or telephone 0131 668 8638. Useful publications include *Conservation of Historic Graveyards: Guide for Practitioners 2* (£19.50) and *The Conservation of Architectural Ancient Monuments in Scotland: Guidance on Principles* (£5.50).

1. Scheduled Ancient Monument legislation as it applies to graveyards

A free leaflet, *Scheduled Ancient Monuments: A guide for owners, occupiers and land managers*, is available on the Historic Scotland website. This provides general advice; it is not specific to graveyards.

1.1 To find out if you are working in a scheduled graveyard

Until maps of scheduled areas are available on the web (and this is in progress), the only reliable and up-to-date way to find out what is scheduled, and what its boundaries are, is to ask Historic Scotland (Telephone 0131 668 8777; e-mail HSAMAdmin@scotland.gsi.gov.uk). Not all of a graveyard and its contents may be scheduled, so it is important that you find out the precise boundaries of the protected area.

1.2 Working in a scheduled graveyard

Check with Historic Scotland whether the wording of the scheduling includes the gravestones. This varies from site to site. The normal rule of thumb is that gravestones are included unless the wording of the scheduling description specifically excludes them.

Under Section 2 of the Ancient Monuments and Archaeological Areas Act 1979, you must have prior written permission from the Scottish Ministers (called Scheduled Monument Consent) to carry out any works that will lead to damage, demolition or destruction of the monument, any works of repair, removal or alteration or addition, and any flooding or tipping. You require special consent under Section 42 of the Act to use a metal detector or some other kinds of geophysical equipment.

Application forms for Scheduled Monument or Section 42 Consent are available from Historic Scotland at the address given at the end of this leaflet, or telephone 0131 668 8777, or e-mail HSAMAdmin@scotland.gsi.gov.uk

Consent applies to routine graveyard management as follows:

- **Grass cutting** – you do not require consent.
- **Works to a gravestone** – if a gravestone is not scheduled (see above), the only works for which you require consent are those involving ground disturbance. If a gravestone is scheduled, you require consent for any works affecting the body or surface of the stone/structure, such as cleaning or lifting.
- **Excavation of a new grave** – most scheduled graveyards explicitly exclude active lairs, but you should check this on a case-by-case basis. If active lairs are not excluded, you require consent to excavate a new grave. You also require consent for auguring to check for burial space in scheduled areas.
- **Gardening** – you do not require consent for management of existing areas of garden providing that the ground is not disturbed to a depth of more than 30 cm. Any new plants in such areas should therefore be shallow rooting.

- **Planting of trees** – you require consent.
- **Pruning of trees** – consult Historic Scotland about any significant pruning (branches around 10 cm in diameter and over) to check whether you require consent.
- **Felling of trees** – you require consent and must ensure that felling is done in a manner that will not damage the archaeological interests of the site. Remember that trees may also be protected by Tree Preservation Orders (see section 4).
- **Path maintenance** – most scheduled areas explicitly exclude modern path surfaces, but you should check on a case-by-case basis. If modern paths are excluded, you do not require consent for path maintenance provided there is no ground disturbance beyond or below the modern surfaces of the existing path. You require prior consent for invasive work.
- **New paths** – you require consent in order to ensure that new paths will not damage sensitive archaeology or have an adverse impact on the setting of the monument.
- **Drains, services and floodlighting** – you require consent in order to ensure that these do not cause unnecessary damage to sensitive archaeology or, in the case of floodlighting, adversely affect the appearance of the monument.
- **Repairs to walls and other structures, including abandoned buildings** – you require consent in order to ensure that these works are done in the appropriate manner (see *Graveyards and Gravestones Electronic Leaflet 8*).
- **Erection of structures, such as sheds or notice boards** – you require consent in order to ensure that these will not damage sensitive archaeology or have an adverse impact on the setting of the monument.
- **Works required for health and safety** – you do not require consent for works which are urgently necessary in the interests of health and safety, providing that you limit the works to the minimum measures necessary, and that you give notice in writing justifying the need for the works to the Scottish Ministers (through Historic Scotland) as soon as practicable.
- **Surveys** – you do not require consent providing the ground is not penetrated or any turf or soil removed. Even when gravestones are unscheduled, you should avoid the temptation to dig to uncover hidden or hidden parts of gravestones for health and safety reasons, since digging equipment can damage stonework, and earth provides good protection for carved surfaces.
- **Use of a metal detector or some other kinds of geophysical equipment** – you require special consent, under Section 42 rather than Section 2 of the Ancient Monuments and Archaeological Areas Act 1979, to use equipment of this type because of the potential to detect (and remove) metal objects (see free leaflet *Metal Detecting – Yes or No? Metal detecting, scheduled monuments and the law*).
- **Works funded by a Historic Scotland Ancient Monuments Grant or through a Management Agreement with Historic Scotland** – you do not require separate consent provided the works being done are exactly as specified by the terms of the grant/agreement, i.e. no additional work should be carried out.

If you discover anything in the course of works you are carrying out, report your find to Historic Scotland.

The planning authority must consult Historic Scotland about any planning application that involves works that might affect the setting of a scheduled ancient monument.

If in doubt, always ask. Although you may not require formal written consent for certain works, this does not mean that you can ignore best conservation practices. For advice on the implications of any works you are planning please ring 0131 668 8600 and ask to speak to the Ancient Monument Standing Building Inspector for your local authority area.

Remember that scheduling takes precedence over listing. Parts or all of some burial grounds, however, may be listed and scheduled. In cases of dual designation your point of contact is the Ancient Monuments Division of Historic Scotland (telephone 0131 668 8777 or e-mail HSAMAdmin@scotland.gsi.gov.uk).

2. Listed building legislation as it applies to burial grounds

For general information see *Historic Scotland Memorandum of Guidance on Listed Buildings and Conservation Areas*, the essential reference document, available free on Historic Scotland's website or in hard copy from Historic Scotland (telephone 0131 668 8638). A free leaflet, *Scotland's Listed Buildings: A Guide for Owners and Occupiers*, is also available.

2.1 To find out if you are working in a listed burial ground

There are currently about 800 entries in the list of listed buildings compiled by the Scottish Ministers which make reference to places used for burial (including churchyards, kirkyards, cemeteries and necropolises). The list entry may refer to the place of burial only but will often cover other items, such as a church, as well. The entry may refer specifically to certain parts of the burial ground such as the walls, gates and gatepiers marking the boundary or to an individual monument or group of monuments within. You can consult the list for a particular area in the offices of the local authority. You can also obtain information on list entries for a particular area from Historic Scotland (Telephone 0131 668 8719 or 8720).

2.2 Working in a listed burial ground

Items mentioned in the list entry are deemed to be 'listed' and are subject to the listed building control procedures set out in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. It is therefore important if you are considering works within a burial ground that you check whether it is listed and, if it is, that you find out whether the work you propose to carry out requires Listed Building Consent (Note: burial grounds are not covered by ecclesiastical exemption). Structures within the curtilage of a listed burial ground are also protected under the Act. This means that you may also require consent for works to items not mentioned in the list entry for the burial ground but lying within its boundary.

It is clearly important that you make early contact with the planning authority to determine what might and what might not need consent. In the case of works promoted by the local authority, the planning authority is the Scottish Ministers and not the local authority. Historic Scotland is responsible to the Ministers for operational matters affecting the built heritage. The Historic Buildings Inspectorate within Historic Scotland will be pleased to discuss local authority proposals and offer guidance and advice.

You should not begin work which is deemed to require Listed Building Consent before consent is given. Work can only be undertaken in advance of consent in cases where there is a direct threat to public safety. In such instances, you must ensure that emergency works are restricted to the minimum needed to avert the immediate danger. If you are considering such action, you should contact the Historic Buildings Inspectorate within Historic Scotland so that they can comment on what you are proposing.

If you are proposing to erect a new structure within a listed burial ground or within a burial ground which is unlisted itself but contains a listed structure, possibly a church, session house or mausoleum, you may have to advertise your proposal as affecting the setting of a listed building. In addition, planning authorities must consult the Scottish Ministers about any planning application involving works that might affect a category A listed building or its setting. This means that early contact with the Historic Buildings Inspectorate is always useful in the case of proposed works to an A listed burial ground or any item which forms part of it and is similarly listed.

Trees within a burial ground may be the subject of a Tree Preservation Order. You can find out from the local authority whether this is the case. If it is, you must obtain local authority permission for the felling or lopping of any tree before surgery takes place. Trees which grow within a burial ground which lies within a conservation area will also be protected. Again, check any work you are proposing with the local authority before taking action.

3. Inventory landscapes

Cemeteries that are considered to be nationally important examples of designed landscapes may be included in the *Inventory of Gardens and Designed Landscapes in Scotland* (1988) and its supplementary volumes (in preparation). The *Inventory* includes The Necropolis in Glasgow, where a pleasure ground (a form of designed landscape aimed at providing ornamented grounds for amenity and recreation) came to be used as a 'garden cemetery'. The idea of the garden cemetery was developed during the 19th century, with the Glasgow Necropolis being one of the earliest and most significant examples. To date, a further two sites have been added – Dean Cemetery, Edinburgh, and Tomnahurich Cemetery, Inverness.

Cemeteries included in the *Inventory* are subject to the statutory consultation provisions of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992. This means that local authorities must consult the Scottish Ministers, through Historic Scotland and Scottish Natural Heritage, regarding any proposal which involves, or may affect, *Inventory* sites. Again, you should consult with the Historic Buildings Inspectorate (and Scottish Natural Heritage) well in advance of any proposed work in order to check what may be necessary.

4. Natural heritage designations

Graveyards may also be protected by natural heritage designations, such as Sites of Special Scientific Interest, or acknowledged for particular natural heritage values, e.g. through listing in the *Inventory of Gardens and Designed Landscapes in Scotland*. Check with your local Scottish Natural Heritage office. You can obtain contact details for your local office by telephoning Scottish Natural Heritage headquarters (0131 447 4784) or on their website (<http://213.121.208.41>).

5. Ownership

You may also require to obtain written permission for any proposed works from owners of graveyards and individual monuments.

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