

## **SCHEDULED MONUMENT CLEARANCE: REVISED GUIDANCE NOTE FOR CROWN BODIES IN ENGLAND**

### 1.0 Introduction

1.1 This revised guidance note clarifies the procedures for Crown bodies or managing bodies operating on behalf of the Crown, when applying for scheduled monument clearance. This follows changes to the administrative arrangements between DCMS (the Department for Digital, Culture, Media and Sport) and Historic England (formerly English Heritage) which came into effect on 1 November 2009, as well as changes arising from the publication by the Ministry of Housing, Communities and Local Government (MHCLG) of the National Planning Policy Framework (2019) and planning practice guidance issued in 2019. This revision also reflects the change of name to Historic England on 1 April 2015, and the amendment of Historic England's extended Pre-application advice in 2017. The following publications are also referred to:

- DCMS: Scheduled Monuments and nationally important but non-scheduled monuments: October 2013; <https://www.gov.uk/government/publications/scheduled-monuments-policy-statement>
- Ancient Monuments and Archaeological Areas Act: 1979; <https://www.legislation.gov.uk/ukpga/1979/46>
- Statutory Instrument 1994 No. 1381: The Ancient Monuments (Class Consents) Order: 1994; <https://www.legislation.gov.uk/uksi/1994/1381/contents/made>

1.2 MHCLG is responsible for planning policy. DCMS has overall responsibility for heritage policy in England. It is also responsible for the listing of buildings of special architectural or historic interest and the scheduling of ancient monuments, as well as for determining scheduled monument consent applications, although the administration now lies with Historic England.

1.3 Historic England is sponsored by DCMS and is the government's statutory adviser on the protection of England's historic environment. This guidance note is written by Historic England's Government Historic Estates Unit (GHEU). GHEU processes formal casework for specific buildings and monuments in London and Windsor, by giving advice to the local planning authority on listed building consent or planning applications, and to DCMS for their determination of applications for works to scheduled monuments.

## 2.0 The Government Estate

2.1 Government is committed to ensuring that this historic estate is treated in an exemplary fashion in accordance with the Protocol for the Care of the Government Historic Estate issued by Historic England and DCMS in 2017, which all government departments and agencies are required to adopt. The protocol can be found here: <https://historicengland.org.uk/images-books/publications/protocol-for-the-care-of-the-government-historic-estate/>

2.2 Government policy on work to heritage assets including world heritage sites, scheduled monuments, listed buildings, protected wreck sites, registered parks and gardens, registered battlefields, conservation areas and other non-designated assets, is given in MHCLG: National Planning Policy Framework: 2019. Detailed guidance on the application of the NPPF is available from the MHCLG website: <http://planningguidance.communities.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/>. Local planning authorities should "recognise that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance" (NPPF, paragraph 184).

2.3 This guidance note is primarily concerned with scheduled monuments, but building managers should also be mindful of undertaking works to non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, because those assets should be considered subject to the policies for designated heritage assets (NPPF, paragraph 197).

## 3.0 Crown Compliance with the planning acts

3.1 Prior to 7 June 2006, the Crown was exempt from planning legislation. This changed when the provisions relating to the Crown in the Planning and Compulsory Purchase Act 2004 came into force. This resulted in the Crown being bound by various sections in the following planning acts:

- Town and Country Planning Act 1990;
- Planning (Listed Buildings and Conservation Areas) Act 1990;
- Planning (Hazardous Substances) Act 1990.

3.2 Guidance regarding the Crown is set out in the Planning Practice Guidance under "Crown Development" <https://www.gov.uk/guidance/crown-development>

The distinction between Crown land, Crown interest and Duchy interest is found in the Ancient Monuments and Archaeological Areas Act 1979 section 50 (4):

*“Crown land” means land in which there is a Crown interest or a Duchy interest;*

*- “Crown interest” means an interest belonging to Her Majesty in right of the Crown, or belonging to a Government department, or held in trust for Her Majesty for the purposes of a Government department;*

*- “Duchy interest” means an interest belonging to Her Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall.*

#### 4.0 Scheduled monument clearance and compliance with the AMAA Act (1979)

4.1 The Planning and Compulsory Purchase Act 2004 only removed Crown immunity from the planning acts. For the time being, therefore, the Crown continues to remain immune from the provisions of the Ancient Monuments and Archaeological Areas Act 1979. However, Crown development on a scheduled monument is subject to a parallel, non-statutory system known as 'scheduled monument clearance' (DCMS, Scheduled Monuments, paragraph 17).

4.2 Where a Crown monument is both scheduled and listed, only scheduled monument clearance is required for any works; the relevant parts of the Planning (Listed Building and Conservation Areas) Act 1990 are disapplied. This does not affect the requirement for planning permission.

4.3 A non-Crown body can be responsible for managing Crown Land, as this type of permission is linked to land ownership rather than applicant type.

4.4 Since 1 November 2009 the procedures relating to scheduled monument clearance have changed. As noted above, the Secretary of State for Digital, Culture, Media and Sport remains ultimately responsible for determining applications, but responsibility for their administration has been transferred to Historic England.

4.5 The purpose of pre-application advice is to reduce the risk to the applicant of an application for consent being refused by the determining body, with all of the wasted expense that would entail. Applicants are strongly advised to contact the appropriate Historic England team to discuss their plans at an early stage before submitting an application.

Historic England's initial pre-application advice sets out to:

- Establish those aspects of a proposed change that engage the relevant heritage Acts, the historic environment policies of the National Planning Policy Framework (NPPF) or DCMS policy for scheduled monuments;
- Identify areas both of compliance and potential conflict with relevant national legislation, guidance and historic environment policies;
- Suggest any obvious ways in which potential conflicts might be avoided or mitigated;
- Indicate what information would be expected by Historic England to accompany any formal application.

Extended Pre-Application Advice covers Historic England's engagement in on-going pre-application advice. We will first offer an initial free cycle of advice, following a submission by the applicant we will attend one meeting, which will be followed by a letter outlining initial advice. Beyond this free service, applicants requiring extended pre-application advice will then be charged on a cost-recovery basis. This extended pre-application advice service will be subject to applicants agreeing to the Enhanced Advisory Services (EAS) terms and conditions.

Further information on pre-application advice and prices for EAS can be found on the Historic England Website:

<https://historicengland.org.uk/services-skills/our-planning-services/enhanced-advisory-services/extended-pre-application-advice/>

<https://historicengland.org.uk/services-skills/our-planning-services/enhanced-advisory-services/prices/>

4.6 There is no separate application form for scheduled monument clearance, so a scheduled monument consent application form (AM112) should be sent to the relevant Historic England local office or to GHEU as appropriate. The application form can be downloaded from the Historic England website: <https://www.historicengland.org.uk/advice/planning/consents/smc/>. The application should describe the proposed works in sufficient detail to enable their impact on the monument to be assessed; list the plans and drawings accompanying the application, including a plan identifying the monument to which the works relate, the exact location where the works would take place and such other plans, drawings or documents as are necessary to assist in clearly describing the proposed works; and include any other information relevant to the application. Where it is proposed to involve a professional archaeologist, their full contact details should be given. The form should be signed and dated on page 2.

4.7 It is essential that one of the four certificates in form AM112 is completed and signed by the Crown body, and that the Crown body serves a copy of form AM112A to all those who own or have an interest in the monument as listed on the paragraph 1(1)(b) or 2(1)c certificates. This is so that other owners or occupiers of a monument are made aware that consent has been applied for and are thus provided with an opportunity to make any representation that they consider appropriate. They do not have a right of veto under the Ancient Monuments and Archaeological Areas Act 1979 over proposed works but on receipt of the application Historic England will write to every party the Crown body identifies as eligible for notification and invite them to make any comment within 14 days. The clearance application cannot be determined until 14 days have elapsed and any views provided by other parties must be taken into account in the decision. This is the only form of publicity for Scheduled Monument Clearance applications as there is no statutory duty to advertise these to the public, unlike for Listed Building Consent and Planning Applications.

4.8 The applicant should:

Sign **2(1) (a)** if there are no other owners/occupiers of the monument other than the Crown body.

Sign **2(1) (b)** if there are other owners/occupiers of the monument and list the names and addresses of the other parties to be notified. The Crown body must send a completed 'Form of Notice for the Purposes of Paragraph 2(1) of Schedule 1 of the Ancient Monuments and Archaeological Areas Act 1979' (form AM112A - the last page of the application form) to each owner/occupier listed in this section, to notify them of the planned works.

Sign **2(1) (c)** if neither of the above can be completed because there are owners/occupiers of whom the Crown body is aware but whose contact details

cannot be obtained. The applicant must nevertheless provide the names and addresses of the parties that it is able to identify and send each of these the required notification form that a clearance application has been made.

Sign **2(1) (d)** if none of the above can be completed because the Crown body has been unable to obtain the details of any of the owners/occupiers of the monument.

4.9 Historic England's "Scheduled Monument Consent (SMC) Notes for Applicants"

contains further detailed guidance notes on the preparation and submission of applications; it can be downloaded from the Historic England website:

<https://www.historicengland.org.uk/advice/planning/consents/smc/>.

4.10 Works should not start before clearance has been granted. In the great majority of cases, scheduled monument clearance applications are successful. The principles used when formulating whether or not scheduled monument clearance should be granted can be found in DCMS, Scheduled Monuments, found here:

<https://www.gov.uk/government/publications/scheduled-monuments-policy-statement>

4.11 Geophysical surveys do not routinely require scheduled monument consent but Section 42 of the 1979 Ancient Monuments and Archaeological Areas Act makes it a criminal offence to use a metal detector in a 'protected place' unless the user can produce written consent. A 'protected place' includes all scheduled monuments. A metal detector is defined as any device designed or adapted for detecting or locating any metal or mineral in the ground. This definition is held to include certain types of geophysical survey and so the convention is that the written consent of Historic England should be obtained. This takes the form of a Section 42 licence that is issued by means of a letter. Applications to carry out a geophysical survey on a scheduled site should be made in writing to the relevant Historic England office (or GHEU for Kensington Palace and Windsor Castle), indicating on a plan the area under investigation, detailing the proposed dates and the reason for the work, the specification of the equipment used, and the named individuals using it. Where geophysical investigation is part of a larger project leading to excavation or other works, Crown bodies should apply for a Section 42 licence in addition to submitting a scheduled monument clearance application to Historic England. There is no application form but guidance can be found on HE's website at <https://www.historicengland.org.uk/research/approaches/research-methods/terrestrial-remote-sensing/geophysical-survey/>

4.12 "Works urgently necessary for safety or health" are covered by Class 5 Consent under Statutory Instrument 1994 No. 1381, The Ancient Monuments (Class Consents) Order 1994. Persons proposing to undertake urgent works under class consent 5 should, wherever practicable, discuss their proposals with Historic England in advance followed by notice in writing justifying in detail the need for the works.

4.13 Works of archaeological evaluation to assist in determining an outstanding application for scheduled monument clearance are covered by Class 7 Consent under The Ancient Monuments (Class Consents) Order 1994. Written specifications for archaeological evaluation should be submitted to Historic England for approval.

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