



Historic England

Guidance for Crown Bodies on Scheduled Monument Clearance

On 1st April 2015 the Historic Buildings and Monuments Commission for England changed its common name from English Heritage to Historic England. We are now re-branding all our documents.

Although this document refers to English Heritage, it is still the Commission's current advice and guidance and will in due course be re-branded as Historic England.

[Please see our website](#) for up to date contact information, and further advice.

We welcome feedback to help improve this document, which will be periodically revised. Please email comments to guidance@HistoricEngland.org.uk

We are the government's expert advisory service for England's historic environment. We give constructive advice to local authorities, owners and the public. We champion historic places helping people to understand, value and care for them, now and for the future.

HistoricEngland.org.uk/advice

REVISED GUIDANCE NOTE FOR CROWN BODIES ON SCHEDULED MONUMENT CLEARANCE IN ENGLAND

1.0 Introduction

1.1 This revised guidance note clarifies the procedures for Crown bodies applying for scheduled monument clearance following the administrative arrangements between the Department for Culture, Media and Sport (DCMS) and English Heritage which came into effect on 1 November 2009 (see section 5). This revision also reflects the changes arising from the publication of the Department for Communities and Local Government (CLG), *National Planning Policy Framework* (2012). The following publications are also referred to:

- CLG, DCMS and English Heritage, *PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide* (2010);
- DCMS, *Scheduled Monuments. Identifying, protecting, conserving and investigating nationally important archaeological sites under the Ancient Monuments and Archaeological Areas Act 1979* (March 2010);
- Ancient Monuments and Archaeological Areas Act 1979;
- Statutory Instrument 1994 No. 1381, *The Ancient Monuments (Class Consents) Order 1994*.

1.2 CLG is responsible for planning policy. DCMS has overall responsibility for heritage policy in England. It is also responsible for the listing of historic buildings and the scheduling of ancient monuments, as well as for determining scheduled monument consent applications, although the administration now lies with English Heritage (see paragraph 5.2 below).

1.3 English Heritage is sponsored by DCMS and is the government's statutory adviser on the protection of England's historic environment. This paper is written by English Heritage's Government Historic Estates Unit (GHEU), a unit within the National Engagement Team providing strategic advice to government departments, their agents and other public bodies on the management of their historic estates (or sites) in England. GHEU processes formal casework for specific buildings and monuments in London and Windsor, by giving advice to the local planning authority on listed buildings or planning applications, or to DCMS for scheduled monuments.

2.0 The Government Estate

2.1 There are 25 government departments or agencies with historic estates in England, including over 1,100 listed buildings of special architectural or historic interest, and over 1,500 scheduled monuments. 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 English Heritage, DCMS, and the Office of Government Commerce in 2009 which all government departments and agencies are required to adopt.

3.0 Government Policy on Heritage Assets

3.1 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 CLG, *National Planning Policy Framework* (2012) with detailed guidance in the *PPS5 Practice Guide* (2010) which remains in force. Local planning authorities should "recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance" (*NPPF*, paragraph 126). 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 139).

4.0 Crown Compliance with the planning acts

4.1 This guidance relates to bodies which have a Crown interest. The distinction between Crown land, Crown interest and Duchy interest is defined 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.

4.2 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.

4.3 Prior to this change in legislation, the Crown had followed a quasi statutory procedure for applying for planning and listed building consent under DoE Circular 18/84 Crown Land and Crown Development. That circular was revoked by the CLG Circular 02/06, *Crown Application of the Planning Acts*. Circular 02/06 gives guidance on the content of the relevant Statutory Instruments and explains to local planning authorities and Crown bodies how applications from the Crown should be handled.

5.0 Scheduled monument clearance

5.1 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 23).

- 5.2 Since 1 November 2009 the procedures for applying for scheduled monument clearance have changed. The Secretary of State for Culture, Media and Sport remains ultimately responsible for determining applications, but responsibility for their administration has been transferred to English Heritage.
- 5.3 Applicants are strongly advised to contact GHEU regarding Kensington Palace and Windsor Castle, or the appropriate English Heritage local office to discuss their 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 the applicant's needs.
- 5.4 There is no separate form for scheduled monument clearance, so a scheduled monument consent application form should be sent to the relevant English Heritage local office or to GHEU as appropriate (DCMS, *Scheduled Monuments*, paragraphs 29-30). The application form can be downloaded from the English Heritage website: www.english-heritage.org.uk/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.
- 5.5 Of particular importance is the completion of section 2(1) (a) to (d) at the end of the application form which relates to the owner/occupier of the monument. Usually this will mean that either 2 (1) (a) or (b) will be completed – depending on whether or not the applicant has complete/part ownership of a monument. Crown bodies should not normally need to sign 2(1) (c) or (d) on pages 5 and 6 which concern owners/occupiers who cannot be traced.
- 5.6 English Heritage'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 English Heritage website www.english-heritage.org.uk/smc.
- 5.7 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*, paragraph 32. Paragraph 33 lists the common conditions required where works would result in the loss of the whole or part of a scheduled monument's significance. These conditions are normally monitored by English Heritage.

- 5.8 Written consent is required from English Heritage to use a metal detector or other geophysical equipment "designed or adapted for detecting or locating any metal or mineral in the ground" on a scheduled monument (Ancient Monuments and Archaeological Areas Act 1979, Section 42 as amended by the National Heritage Act 1983). Consent is also required to remove any object of archaeological or historic interest discovered by a metal detector (this would include the use of a metal detector to scan over a spoil heap). The Crown body should apply for a "Section 42 licence" by writing to the relevant English Heritage local office or to GHEU as appropriate, 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. English Heritage will issue a Section 42 licence authorising the named individuals to carry out the work; the licence is not transferrable. 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 English Heritage.
- 5.9 "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 English Heritage in advance (DCMS, *Scheduled Monuments*, paragraph 40) followed by notice in writing justifying in detail the need for the works. The works should be limited to the minimum measures immediately necessary. For example, a fractured section of string course that is in imminent danger of falling could be removed under Class 5 Consent, but its reinstatement or replacement would require a separate scheduled monument clearance application.
- 5.10 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 English Heritage for approval (DCMS, *Scheduled Monuments*, paragraph 40).
- 5.11 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 (DCMS, *Scheduled Monuments*, paragraph 22).

Government Historic Estates Unit,
English Heritage, 1 Waterhouse Square, 138-142 Holborn, London, EC1N 2ST
T: 020 7973 3803 Email: gheu@english-heritage.org.uk

Revised 18 February 2013

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

Services Department:

Telephone: 0870 333 1181

Fax: 01793 414926

Textphone: 0800 015 0516

E-mail: customers@english-heritage.org.uk