



SCOTTISH OFFICE

Environment Department

Planning Advice Note
PAN 42

ARCHAEOLOGY

- the Planning Process and
Scheduled Monument Procedures

January 1994
© Crown copyright 1994
ISSN 0141-514X
ISBN 0 7480 0833 0

planning series:

- **National Planning Policy Guidelines (NPPGs)** provide statements of Government policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.
- **Circulars**, which also provide statements of Government policy, contain guidance on policy implementation through legislative or procedural change.
- **Planning Advice Notes (PANs)** provide advice on good practice and other relevant information.

Statements of Government policy contained in NPPGs and Circulars may, so far as relevant, be material considerations to be taken into account in development plan preparation and development control.

Introduction	1
The Importance of Archaeology	2
Archaeological Matters in the Planning Process	
Sites and Monuments Records	12
Development Plans	16
Planning Applications	17
Early Discussions between Developers and Planning Authorities	18
Field Evaluations	20
Environmental Assessment	22
Consultations by Planning Authorities	24
Arrangements for Excavation	25
Planning Decisions	30
Planning Conditions	32
Article 4 Directions	37
Simplified Planning Zones	38
Discovery of Archaeological Remains during Development	39
Legislative Arrangements : Scheduled Monuments	
Scheduling of Ancient Monuments of National Importance	41
The Secretary of State's Criteria for Scheduling	45
Control of Work to Scheduled Monuments	49
Offences Relating to Scheduled Monuments	54
Metal Detectors	57
Legislative Arrangements: Portable Antiquities	58
Monument Management, Grants and Advice	59
Excavation	63
Areas of Archaeological Importance	64
Note	65
Annex 1: Key Bodies and Organisations	
Annex 2: Contact Addresses for Regional and Islands Archaeologists	
Annex 3: The Ancient Monuments (Class Consents)(Scotland) Order 1981	

introduction

1. This Planning Advice Note (PAN) includes advice on the handling of archaeological matters within the planning process and on the separate controls over scheduled monuments under the Ancient Monuments and Archaeological Areas Act 1979. The PAN supports an associated National Planning Policy Guideline -Archaeology and Planning - which sets out the Governments planning policy on how archaeological remains and discoveries should be handled within the development plan and development control systems.

the importance of archaeology

2. Archaeological remains offer a tangible, physical link with the past. They are a finite and non-renewable resource containing unique information about our past and the potential for an increase in future knowledge. Such remains are part of Scotland's identity and are valuable both for their own sake and for education, leisure and tourism. The remains are often very fragile and vulnerable to damage or destruction; care must therefore be taken to ensure that they are not needlessly destroyed.

3. There are remains of every period and of many types. They vary enormously in their state of preservation and in the extent of their appeal to the general public. Upstanding remains are familiar enough - the great prehistoric stone circles, the castle and abbey ruins of the Middle Ages or more modern abandoned coastal defence systems. But less obvious archaeological remains, such as ancient settlements and field systems, are also to be found across large parts of the country. Many sites, which are not conventionally thought of as archaeological, have a great deal of information to offer for example abandoned industrial complexes. Some sites in wetland areas may contain important remains of wood and other organic materials, not normally preserved elsewhere. Many buildings in older towns, particularly Scotland's historic burghs, lie on top of far earlier structures, and almost any ground disturbance in such localities will have archaeological implications. Even in the countryside, many sites may be completely invisible from ground level and revealed only when aerial photography detects traces of former human activity.

4. In some parts of Scotland extensive areas may be so obviously influenced and characterised by archaeological features as to constitute archaeological landscapes as, for example, found in the West Mainland of Shetland, parts of north east Perthshire, areas in mid Argyll and the industrial landscapes of parts of Ayrshire and Lanarkshire.

5. The present century has been a period of striking environmental change. Although some changes, such as the erosion of coastal areas, have occurred by natural mechanisms, much of our archaeological heritage has been destroyed by human activity - for example, by modern construction methods in urban development and expansion of the road network, by modern agricultural techniques (in particular deep ploughing or drainage of wetlands), by afforestation and by mineral extraction. It is hoped that the arrangements set out in the associated NPPG 5 for the encouragement of developer funding of archaeology attributable to development will as a consequence, enable Historic Scotland to deal more effectively with natural threats to archaeological remains.

6. Because of the many demands of modern society, it is not feasible to save all archaeological remains. There are archaeological records of over 70,000 sites and monuments in Scotland and over 5600 of these had been protected by 1 January 1993 as nationally important scheduled monuments under the Ancient Monuments and Archaeological Areas Act 1979. However, not all nationally important sites have yet been scheduled and there is a continuing programme of scheduling. Certain categories of site, particularly those in the historic burghs, may not be effectively protected by scheduling, and the best way forward here may be through survey and the identification of archaeologically sensitive areas in local plans. There is also a large number of sites of more local significance as well as many other locations (findspots) where apparently stray artefacts have been found. As NPPG 5 indicates, nationally and more locally important archaeological remains and their settings should be preserved wherever feasible. Where archaeological remains of lesser importance are affected by proposed development, planning authorities should weigh their importance against other factors, including the benefits of the proposed development. Regardless of the circumstances, taking decisions will be easier when archaeological aspects of a development site are considered early in the planning process.

7. Scheduling archaeological remains ensures that the case for preservation of nationally important sites is fully considered by the Secretary of State whenever proposals are made for development or other work which might damage them or their settings. The planning system is also in a position to consider the desirability of preserving archaeological remains and their settings, and the various options open to planning authorities are considered below. Much can be achieved within the wider planning process when developers are prepared to enter into discussions with archaeologists and consider fully the needs of archaeology. This voluntary approach is rapidly becoming well-established and has been formalised in the British Archaeologists and Developers Liaison Group (BADLG) Code of Practice (see paragraph 28), and the Confederation of British Industry (CBI) Archaeological Investigations Code of Practice for Mineral Operators in Scotland. Both Codes reflect UK-wide best practices, and are approved by Historic Scotland.

8. Archaeological issues are often important in minerals planning, particularly in the extraction of sand and gravel. River valleys have provided an attractive place for human settlement, but at the same time these areas often contain valuable sand and gravel resources. In parts of Scotland the quarrying of hard rock also presents a threat to archaeological remains. Since minerals can only be worked where they are found, mineral workings tend to differ from other forms of development in that there is usually not the same flexibility in the choice of location. The CBI's Code of Practice for Mineral Operators on archaeological investigations provides advice on how minerals operators should consult archaeological interests in formulating planning applications, to ensure that archaeological factors are fully taken into account in the planning decision process. In addition, large-scale mineral extraction proposals frequently come within the scope of Environmental Assessment (see para 22). Planning guidance on minerals is included in the forthcoming NPPG Land for Mineral Working.

9. The key to informed and acceptable planning decisions is for consideration to be given before formal planning applications are made to the question of whether archaeological remains exist on a development site and what the implications for the development proposal might be. When archaeologists know or have good reason to believe that important remains exist, developers should be able to help by modifying their plans, for example by designing foundations which avoid or minimise disturbance or by raising the ground levels on which a proposed structure is to be

built, or by careful siting of landscaped or open areas. Techniques are available for sealing archaeological remains under buildings or areas of landscaping, thereby ensuring that they are preserved for the future even though they remain inaccessible for the present.

10. The preservation *in situ* of important archaeological remains is always to be preferred. However, where this is not possible, an archaeological excavation may be an acceptable alternative (see also paragraphs 25 to 29) From the archaeological point of view this is the second-best option. Excavation means the total destruction of evidence (apart from removable artefacts). Because the science of archaeology continues to develop rapidly, it follows that future techniques will almost certainly extract more information than is currently possible. If sites are excavated now, this opportunity of future understanding is lost. Excavation is also expensive and time-consuming, and important discoveries may have to be evaluated in a hurry and within a less than adequate research framework.

11. Positive planning and management help to reduce areas of potential conflict between development and preservation. The Government has an important part to play, but the future of the great majority of archaeological and historic sites and landscapes lies with local authorities, acting within the framework set by national policies, in their various capacities as planning, education and recreation authorities, as well as with the owners of sites themselves. As the NPPG indicates, development plans have a particularly important role in protecting archaeological sites.

archaeological matters in the planning process

Sites and Monuments Records

12. A regularly maintained and augmented record of all known sites is an essential prerequisite of any policy aiming to protect and manage archaeological remains. Most of Scotland's Regions and Islands Areas have Sites and Monuments Records (SMRs) operated by a professional officer, usually employed by the Regional or Islands Area Authority as a Regional Archaeologist (as defined in para 8 of the NPPG), with many other duties besides SMR curation. In addition there is the National Monuments Record of Scotland (NMRS) maintained by the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). Historic Scotland endeavours to provide a basic service of advice for those areas which lack Regional Archaeologists, but this can never be as responsive as that which could be obtained from a Regional Archaeologist and it is the intention that this will be available for a limited period only [At 1 October 1993 there was no regional SMR or archaeologist post in Lothian, Tayside or the Western Isles]. Planning authorities with access to the services of Regional Archaeologists, working with properly maintained SMRs, should make the fullest possible use of their expertise. Historic Scotland, although willing to advise on the archaeological policies proposed for inclusion in draft plans, preferably through Regional Archaeologists, is in general better placed to advise on policies and procedures rather than on detailed casework, other than for scheduled ancient monuments.

13. The development of records at Regional or Islands Area level provides an indispensable tool for the formulation of local plans, and the determination of planning applications. More generally, the SMR is an important first stage in the positive management and presentation of the historic landscape for the purposes of

education and recreation, and as an input to local history, conservation and tourism projects.

14. The SMR should have 4 main elements:-

- a professionally qualified curator:
- a list and description of all known ancient monuments and archaeological sites and finds, which will allow accurate assessments of their importance to be made;
- a map record (commonly at a scale of 1:10000) which identifies the location and extent of each monument, site and findspot; and
- an archive which contains detailed records for specific sites, monuments and finds, such as copies of aerial photographs, survey and excavation reports, references and other written and graphic records. (In some cases this element is absent in whole or part, and reliance for archive material is placed upon NMRS, who may also be able to provide access to data in the establishment phases of a new SMR.)

The task of compiling and maintaining the record usually rests with a Regional or Islands Archaeologist from whom detailed advice can be obtained. A list of contact addresses for Regional or Islands Archaeologists is at Annex 2

15. RCAHMS can offer assistance to authorities creating or improving Regional SMRs and will shortly be able to offer computer linkage to SMRs which meet certain technical criteria.

Development Plans

16. As stated in the NPPG, development plans should reconcile the need for development with the interests of archaeology. Not all archaeological sites are of equal importance and planning authorities should base their development plan policies and proposals on an evaluation of the archaeological remains in their area, following advice from the Regional Archaeologist. Structure plans should contain appropriate general protection policies and local plans should include policies for the protection, preservation and enhancement of sites of archaeological interest both of national and local importance and of their settings.

Planning Applications

17. When determining a planning application, the desirability of preserving a monument (whether scheduled or not) and its setting is a material consideration.

Early Discussions between Developers and Planning Authorities.

18. The needs of archaeology and development can usually be reconciled, and potential conflict much reduced, where up-to-date and relevant development plans exist and if developers are encouraged to discuss their preliminary proposals with the planning authority at an early stage. Once detailed designs have been prepared and finance lined up, flexibility becomes much more difficult and expensive to achieve. In their own interests prospective developers should undertake an initial assessment of whether a property or area is known or likely to contain

archaeological remains as part of their pre-planning application research into its development potential. This they may choose to do themselves or by appointing an archaeological consultant to develop this aspect of their proposals. The first step will be to contact the Regional Archaeologist, who holds the SMR [or, for the time being, Historic Scotland if the development falls in an area where there is no officially appointed Regional or Island Archaeologist (but see para 12 above)] and can provide information about the locations where archaeological remains are known or thought likely to exist. Where nationally important remains are known or thought likely to exist, Historic Scotland is ready to join in early discussions, preferably at the invitation of the Regional Archaeologist. Historic Scotland must be consulted over scheduled ancient monuments, whether or not a Regional Archaeologist is in post.

19. These consultations will help to provide prospective developers with advance warning of the archaeological sensitivity of a site. As a result they may wish to commission their own archaeological assessment by a professionally qualified archaeological organisation or consultant. This need not involve fieldwork, but this would depend upon the quality of existing records. Assessment normally involves desk-based analysis of existing information, including records of previous discoveries and historic maps held in local archives, museums and record offices.

Field Evaluations

20. Where early discussions with the planning authority or the developer's own research indicate that important archaeological remains may exist, it is reasonable for the planning authority to request the prospective developer to arrange for an archaeological field evaluation to be carried out before the planning application is determined. It is normally a rapid operation, involving ground survey and small-scale trial trenching, often with the use of geophysical survey techniques, carried out by a professionally qualified archaeological organisation or archaeologist approved by the Regional Archaeologist. Field evaluations of this kind help to define the character and extent of any remains that exist in the area of a proposed development, and thus indicate the weight to be attached to the case for preservation. They also provide information useful for identifying potential options for minimising or avoiding damage. On this basis, an informed and acceptable planning decision may be taken.

21. Developers should provide the results of such assessments and field evaluations as part of their planning application. If they are not prepared to do so voluntarily, the planning authority may wish to consider whether it would be appropriate to direct the applicant to supply further information under the provisions of Article 13 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992. If necessary, authorities will need to consider refusing permission for proposals, which are accompanied by inadequate information.

Environmental Assessment.

22. For certain types of development (listed in Schedules 1 and 2 to the Town and Country Planning (Environmental Assessment) (Scotland) Regulations 1988) formal environmental assessment (EA) may be necessary. Where EA is required, the developer must provide an environmental statement setting out the information specified in Schedule 3 to the Regulations about the site and the likely significant effects of the proposed development on the environment. This should include information relating to any significant effects on natural assets and the cultural

heritage, such as archaeological features and other human artefacts, and the measures envisaged to avoid, reduce or remedy adverse effects. It may, in certain circumstances, be necessary to undertake field evaluation as well as desk-based assessment to enable adequate information to be provided.

23. Under the Environmental Assessment Regulations, Historic Scotland is consulted (as the Secretary of State's archaeological executive) on all requests by planning authorities for environmental assessments and on all submitted environmental statements. Regional Archaeologists should also be consulted on cases in their geographical areas. Regional Archaeologists can provide archaeological information and advice to developers required to produce environmental assessments and can advise planning authorities on the adequacy of the archaeological content of submitted statements. Further information about the environmental assessment procedures may be found in SDD Planning Circular 13/88 and the booklet *Environmental Assessment - A Guide to the Procedures* published in 1989 by HMSO.

Consultations by Planning Authorities

24. When planning applications are made without prior discussion with the planning authorities, those authorities should seek to identify applications, which have archaeological implications, and to assess their likely archaeological impact by consulting the Regional Archaeologist and the local SMR or Historic Scotland as appropriate. When it is evident that a particular development proposal is likely to affect archaeological remains or their setting, applicants may need to be asked to provide more detailed information about their scheme - for example, the type of foundations to be used - or they may be asked to carry out a field evaluation and outline a strategy for mitigation of the impact of their development upon the archaeological remains. Planning authorities should ensure that they are fully informed about the nature and importance of the archaeological site itself, and the importance of its setting. They should therefore seek professional archaeological advice, normally from the Regional Archaeologist who in turn may wish to consult the National and locally based museums and archaeological units and societies. Existing information about a site may be sufficient to allow authorities to make a planning decision, which takes into account all material considerations. In the case of a development proposal that is likely to affect the site of a scheduled ancient monument, Article 15(1) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 requires planning authorities to consult Historic Scotland.

Arrangements for Excavation Including Funding

25. The Secretary of State recognises that the extent to which remains can or should be preserved will depend upon a number of factors, including the intrinsic importance of the remains. Where it is not feasible to preserve remains, an acceptable, though inferior, alternative may be to arrange excavation, during which the archaeological evidence is recorded.

26. Planning authorities should not include in their development plans policies requiring developers to finance archaeological works in such a manner that the grant of planning permission may be seen as a direct return. (In the same way developers should not expect to obtain planning permission for archaeologically damaging development merely because they arrange for the recording of sites whose physical preservation in situ is both desirable and feasible.) But where

preservation of remains in situ is not justified, the planning authority may reasonably require evidence that the developer has made satisfactory provision, including provision of funding or identification of the sources of funding, for the excavation, recording and analysis of the remains, and publication of the results, before development commences.

27. Satisfactory arrangements covering these matters should be achieved by agreements between the parties, taking archaeological advice where appropriate. Such agreements may take different forms. In many cases it will be appropriate to secure the arrangements by imposing conditions on the planning permission.

28. Where it is considered that conditions cannot fulfil the required purposes or are likely to be ineffectual in the circumstances of the case, developers or their archaeological consultants and planning authorities may wish to negotiate a planning agreement under section 50 of the Town and Country Planning (Scotland) Act 1972 or other similar powers. Such agreements must, however, be used with discrimination. Model agreements between developers and the appropriate archaeological body, regulating archaeological site investigations and excavations, can be obtained from the British Archaeologists' and Developer's Liaison Group. These agreements can provide for the excavation and recording of sites before development work starts, and may provide more flexibility and be of greater mutual benefit to all the parties than alternative statutory means. They have the advantage of setting out clearly the extent of the developer's commitment, thereby reducing both uncertainty over the financial implications of having to accommodate any archaeological constraints and the possibility of delays to construction programmes.

29. In particular cases where the developer is a non-profit-making, community body, such as a charitable trust, which is unable to raise the funds to provide for excavation and subsequent recording without undue hardship, or in the case of an individual who similarly does not have the means to fund such work, planning authorities may wish to consider funding certain work themselves. In cases where no other possibilities for financial support exist Historic Scotland may be able to help. It is now government policy that where development is carried out by, or on behalf of, government departments, the archaeological costs shall be considered as part of overall project budgets.

Planning Decisions

30. Once the planning authority has sufficient information, there is a range of options for the determination of planning applications affecting archaeological remains and their settings. The NPPG indicates that important archaeological remains, whether scheduled or not, should be preserved in situ wherever feasible, and proposed developments which would have an adverse effect on such remains or their setting should not normally be permitted. Each case must, however, be assessed on its individual merits taking into account archaeological policies in development plans, together with all other relevant policies and material considerations, including the intrinsic importance of the remains, and weighing these against the need for the development.

31. There will no doubt be occasions, particularly where remains of lesser importance are involved, when planning authorities may decide that the significance of the archaeological remains is not sufficient when weighed against all other material considerations, including the benefits of development, to justify their physical preservation *in situ* and that the proposed development should proceed. As paragraph 26 explains, planning authorities will need, in such cases, to satisfy

themselves that the developer has made appropriate and satisfactory arrangements for the excavation, recording and analysis of the archaeological remains and the publication of the results. If this has not already been secured through some form of voluntary but legally binding agreement planning authorities may consider granting planning permission subject to conditions which provide for the excavation and recording of the remains before development takes place. Planning authorities may need to consider refusing planning permission when planning applications fail to accommodate important remains.

Planning Conditions

32. Planning authorities should seek to ensure that potential conflicts are resolved and agreements with developers concluded before planning permission is granted. Although the specific archaeological guidance and model conditions in SDD Planning Circular 18/86 are superseded by NPPG 5, that Circular remains the definitive statement of the government planning policy that, where the use of planning conditions is necessary, authorities should ensure that they are fair, reasonable and practicable. Provided that there is early consultation, archaeological investigation should normally have taken place in advance of development and, even if it is considered necessary to impose conditions which may hold up development and construction work while investigation of remains discovered during development takes place, the likelihood of such delays will have to be taken into account in the initial planning of the development project.

33. It is open to the planning authority to impose a condition to protect a monument or its setting. Where this is appropriate the following model condition is suggested, and should be applied bearing in mind the impact of fencing upon the setting and surroundings of a monument:-

No development shall take place until fencing has been erected, in a manner to be agreed with the planning authority, about [insert name of monument] along the line shown on the plan annexed; and no works shall take place within the area inside that fencing without the prior agreement of the planning authority.

34. In cases where planning authorities have decided that planning permission may be granted but they wish to secure the provision of archaeological excavation and the subsequent recording of the remains, it is open to them to do so by the use of a negative suspensive condition. This is a condition prohibiting development until such time as works or other action, eg an excavation, have been carried out by a third party. In such cases the following model is suggested:-

No development shall take place within the area indicated [this would be The area of archaeological interest] until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the Regional Archaeologist and approved by the Planning Authority.

Developers will wish to ensure that in drawing up such a scheme, they make allowances for archaeological investigations within their construction programme. The use of a similar model is also advocated in the OBI *Archaeological Investigations Code of Practice for Mineral Operators in Scotland*. Schemes of investigation should incorporate the methods of analysis and publication of the results of fieldwork.

35 In cases where the likely archaeological remains are of a very minor or uncertain nature, (even after field evaluation in line with paragraph 24) planning authorities may wish to ensure that reasonable access is given to a nominated archaeologist or archaeological body either to hold a watching brief during the construction period or specifically to carry out archaeological investigation and recording in the course of permitted operations on site. It should be stressed, however, that the application of such a condition is not appropriate where significant archaeological remains are known to exist within a proposed development. In the specific circumstances outlined in this paragraph, the following model condition is suggested:-

The developer shall afford access at all reasonable times to any archaeological organisation acceptable to the planning authority, and shall allow them to observe work in progress and record items of interest and finds. Notification of The commencement date, information as to whom the Regional Archaeologist should contact on site and the name of the archaeological organisation retained by The developer shall be given to The planning authority in writing not less Than 14 days before development commences.

A condition on these lines can help ensure that if remains of archaeological significance are discovered in the course of work they can be recorded and, if necessary, emergency salvage excavation undertaken. In circumstances where significant archaeological remains are known to exist either preservation in line with paragraph 33 or excavation in advance of development, in line with paragraph 34, should apply.

36. These model conditions will require adaptation to the circumstances of particular cases. In addition, other types of conditions may be appropriate to deal with other planning issues.

Article 4 Directions

37. Where planning authorities are aware of a real and specific threat to a significant archaeological site, or its setting, as a result of the potential exercise of permitted development rights as set out in Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland Order 1992), they may wish to consider the use of their powers under Article 4 of that Order to withdraw those rights and to require specific planning permission to be obtained before development can proceed. Where appropriate it is recommended that the intention to obtain an Article 4 Direction be included in a local plan. Most such directions require the Secretary of State's approval, either before they come into effect or within 6 months of being made.

Simplified Planning Zones

38. The provisions relating to Simplified Planning Zones (SPZs) are explained in SDD Circular 16/1987 and SDD Planning Advice Note 31 provides guidance on the form and content of SPZ schemes. SPZs have the effect of granting planning permission for specified types of development within the scheme. Where archaeological remains lie within the area of a proposed SPZ., the remains must be assessed by the Regional Archaeologist, and it may be necessary to tailor the scheme to accommodate them. Scheduled monuments within SPZs remain subject to scheduled monument consent.

Discovery of Archaeological Remains During Development

39. The preceding guidance (paragraphs 18 and 19 in particular) has been framed to minimise occasions when totally unexpected problems arise while the development is in progress. Nevertheless, even following the best pre-planning application research, there may be occasions when the presence of archaeological remains becomes apparent only once development has commenced. In these circumstances, the Regional Archaeologist should be informed immediately, and will be able to offer practical advice. BA DLG may also be able to offer developers advice, and most standard forms of building contract do, already, provide for the suspension of works in these circumstances. Where fresh archaeological discoveries are deemed by the Secretary of State to be of national importance, in accordance with his published criteria (see paragraphs 45 to 48), the Secretary of State has power to schedule the remains, and this can be done in a matter of days. In that event developers would need to seek separate scheduled monument consent before they continued work. A reserve power to revoke planning permission is also available to the planning authority or the Secretary of State. If exercised compensation would be payable. Although it should normally prove possible for the parties to resolve their differences through voluntary discussions, developers may see fit to insure against the unexpected discovery of archaeological remains during work.

40. Planning authorities and developers should be aware of the legal requirement to report the discovery of human remains and archaeological artefacts. Human remains should be reported to the police, who will normally request an archaeologist from a local museum or the National Museums to confirm their antiquity. Archaeological artefacts should be reported to a local museum acting on behalf of the National Museums, or to the latter direct, for identification and possible Treasure Trove assessment. Wherever possible, human remains and artefacts should be left in situ while the archaeologist is summoned, rather than being lifted and taken off site.

Scheduling of Ancient Monuments of National importance

41. Under the Ancient Monuments and Archaeological Areas Act 1979, the Secretary of State has a duty to compile and maintain a Schedule of monuments; monuments on the Schedule have statutory protection. Inclusion of additional monuments is at the Secretary of State's discretion, although monuments added to it must be of national importance. The non-statutory criteria for scheduling published in 1983 are set out below. Although most proposals for scheduling originate from Historic Scotland, it is possible to consider scheduling at the request of local authorities or amenity groups, but the decision rests with the Secretary of State. Occupied dwellings and churches in use for ecclesiastical purposes cannot be scheduled, although such structures can, of course, be listed as buildings of special architectural and historic interest under the listed buildings provisions of the Town and Country Planning (Scotland) Act 1972.

42. Although it is not a statutory requirement, Historic Scotland always attempts to notify owners before monuments are added to the Schedule. On very rare occasions there may not be time to do this, for example in the face of an imminent threat. Publication by recording in the Sasine Register or registration in the Land Register of Scotland as appropriate of a scheduling certificate has the effect of burdening the land. Scheduling of sites is notified to the local and national Sites and Monuments Records and to planning authorities only once the notification to owners and the registration process is completed. Historic Scotland publishes, from time to time, a list of scheduled monuments, copies of which are issued to planning authorities. For the purpose of compiling accurate information for local plans, it is possible to provide completely up-to-date lists from computer records. Enquiries concerning the published list, and regarding specially produced lists, should be directed to Historic Scotland.

43. The present schedule of some 5,600 sites [at 1 January 1993] has been compiled over a period of 100 years, since the first statutory protection for monuments was introduced in 1882. However, it is recognised still to contain only an inadequate and unrepresentative sample of the extensive archaeological remains now known to survive in Scotland. Historic Scotland keeps the Schedule under review and, with the assistance of Regional Archaeologists, RCAHMS and others, adds new sites. Efforts are made to redress recognised imbalances of period, monument type and geographical coverage. Many monuments which may be of schedulable quality will, however, remain unscheduled for years to come. Historic Scotland is at present undertaking a scheme, with the assistance of Regional Archaeologists, to create non-statutory registers of sites which appear to meet the scheduling criteria and which should be considered for scheduling as opportunity arises. However, because of the stringent criteria for scheduling, which are based upon national importance, large numbers of identified sites will remain unscheduled. In addition, scheduling may not afford a suitable vehicle for protecting important archaeological remains, notably in urban contexts, nor does it afford a particularly effective means of dealing with the setting of monuments beyond the physical limits of the archaeological remains. Whether or not these monuments and settings are preserved will therefore depend upon the archaeological importance of the remains, the commitment of their owners and of the public, and the policies of local authorities and other public bodies.

44. As a selective sample of the nation's archaeology, the Schedule differs from the more comprehensive list of buildings of special architectural or historic interest compiled under section 52 of the Town and Country Planning (Scotland) Act 1972, both in the subject matter and in the procedures which arise from inclusion. Where buildings are both scheduled and listed, ancient monuments legislation takes precedence, and scheduled monument, rather than listed building. consent is required for works. Such cases are kept under review by Historic Scotland and, where appropriate, either de-scheduling or de-listing is being initiated, in order to leave the monument or building protected under whichever is the more suitable legislation.

The Secretary of State's Criteria for Scheduling

45. In 1983 the Ancient Monuments Board for Scotland (AM B) advised the Secretary of State for Scotland to adopt the following criteria for national importance, and this advice was accepted, to form the basis for Historic Scotland's scheduling work:-

A monument is of national importance if, in The view of informed opinion, it contributes or appears likely to contribute significantly to the understanding of the past. Such significance may be assessed from individual or group qualities, and may include structural or decorative features, or value as an archaeological resource.

46. In addition the following advice was offered as a working definition, and also accepted:-

For a monument to be regarded as of national importance it is necessary and sufficient - first, that it belong or pertain to a group or subject of study which has acknowledged importance in terms of archaeology, architectural history or history; and second, That it can be recognised as part of the national consciousness or as retaining the structural decorative or field characteristics of its kind to a marked degree, or as offering or being likely to offer a significant archaeological resource within a group or subject of study of acknowledged importance.

47. From these overall criteria have been drawn the scheduling considerations in daily use. Because the characteristics which make a monument of national importance are sometimes not readily visible, their identification is a matter of informed judgement. The considerations on which that judgement is based are subordinate to the criteria listed above and can be listed (though not in order of importance) as follows:

Survival/condition. The existence of well-preserved field characteristics can be of importance in itself. The survival of the monument's archaeological potential both above and below ground is a crucial consideration, and goes beyond survival of marked field characteristics.

Period. It is important to consider for preservation examples of all types of monument that characterise a period; monuments of different contemporary types complement each other in the evidence they present.

Group value. The value of a single monument, such as a field system, is greatly enhanced by association with a group of related contemporary monuments. In the case of such groups it is preferable to protect the whole,

including adjacent land., rather than to protect individual monuments within the group [ie. a monument for purposes of scheduling may consist of a group of monuments].

Rarity. There are monuments of types which, though originally abundant, are now so rare that even apparently poorly preserved examples should be preserved.

Situation. Types of monument abundant in one topographical/land use situation may be rare in others and special regard should be had to their heightened potential archaeological value.

Multiperiod/single period. Multiperiod sites with well-preserved components are of special value since they can allow fine phasing. A single period site, on the other hand, will in general have more diversity of evidence for its functions in better preserved relationships. Examples of a type in both multiperiod and single period expressions should be preserved.

Fragility/vulnerability. Highly important archaeological evidence from some field monuments can be destroyed by a single ploughing for forestry or agriculture; there are also structures of particular form or complexity whose value could be severely reduced by even slight mistreatment.

Documentation. Records of previous investigations can aid definition of the importance of a site, but it is important to recognise that unexcavated sites need not be any less important for lack of previous excavation. Documentation in the form of early estate records, annals., charters, etc., can provide information not available through archaeological excavation, and is of particular importance to record significant information which might be capable of correlation with archaeological evidence.

48. These detailed considerations are not substitutes for the criteria: their contribution to the case of scheduling a monument is supplementary to demonstration that the monument contributes significantly to a theme or area of study of acknowledged importance.

Control of Work to Scheduled Monuments

49. Once a monument has been scheduled, the consent of the Secretary of State is required before any works are carried out which would have the effect of demolishing, destroying, damaging, removing, repairing, altering, adding to, flooding or covering up the monument. The scope of the control is therefore both more extensive and more detailed than that applied to listed buildings. Consent can be granted only for detailed proposals and., unlike planning permission, there is no provision for granting outline consent. There are however five class consents currently in force which enable owners to proceed with certain specified types of work without application for consent - they are listed at Annex 3. These class consents are currently being reviewed with a view to issuing a revised Order in the near future. The Secretary of State has power to revoke or modify a consent (whether granted following an application or deemed to have been granted by class consent).

50. Although monuments on Crown land may be scheduled (section 50 of the Ancient Monuments and Archaeological Areas Act 1979), works by or on behalf of the Government on such land currently have Crown exemption from statutory

scheduled monument consent controls. However, the Government is in the process of reviewing Crown exemptions, and removing as many of these as possible. At present departments with exemption are encouraged to act as if such exemptions did not apply, and to follow analogous procedures, which includes clearing any proposed developments with Historic Scotland.

51. The form of application for scheduled monument consent is laid down in "Ancient Monument and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 1981 and forms may be obtained from Historic Scotland. Given the need for detailed proposals to be included in the application, it generally helps applicants to discuss proposals at the very earliest opportunity with Historic Scotland, if possible before making a formal application.

52. There is no formal provision for consultation with planning authorities on scheduled monument consent applications. The majority involve minor works on which it would not in any case be appropriate to offer consultation. Where the Sip application relates to a development proposal in which the planning authority is concerned, Historic Scotland will normally discuss the application with the authority (concerned before advising the Secretary of State).

53. Applicants are notified by Historic Scotland of the proposed decision before it is formally issued, and asked whether they intend, given the provisional decision, to exercise their right to ask for a hearing. If a hearing is sought, this is normally dealt with through a public local inquiry. The Secretary of State may himself decide that a public local inquiry should be held before a final decision is reached. Where such a hearing or inquiry is arranged for a proposal which is also subject to a planning inquiry, every attempt will be made to ensure that both inquiries are conjoined.

Offences Relating to Scheduled Monuments

54. The 1979 Act created a number of criminal offences relating to ancient monuments. Well-publicised, successful prosecutions of those who carry out - unauthorised work to scheduled monument can provide a valuable deterrent to the wilful damage or destruction of monuments, and it is Historic Scotland's policy to encourage proceedings where it is considered that a good case can be sustained. The Act provides a number of defences, which (meanwhile) include genuine and reasonable ignorance of the scheduled status of the site, and the need for work for health and safety purposes, although these provisions are under review.

55. Historic Scotland keeps a record of reported incidents, and carries out a preliminary investigation, often with police assistance. If there does appear to be a case for prosecution, Historic Scotland will encourage the police to present a case for prosecution to the Procurator Fiscal.

56. Local authorities may be the first source of information about damage and may have both the archaeological expertise and local knowledge to follow up cases quickly. Speed in assembling evidence is often critical to success in securing a conviction before memories fade, or vital evidence is concealed. Where local authorities wish to take the initiative, Historic Scotland will co-operate fully to supply any documentation or other evidence, which may help the case. In addition, where costs incurred by the local authorities in proceedings are significant, and cannot be reclaimed, Historic Scotland will be prepared to consider making a financial contribution, provided it has agreed in advance to support the (case for prosecution. Alternatively, Historic Scotland itself may take the lead. It should be

noted that. since the offences under the 1979 Act are criminal offences. the actual prosecution is conducted at the discretion of the Procurator Fiscal acting upon information gathered on his behalf by the police.

Metal Detectors

57. Most metal detector users act responsibly, but illegal metal detecting often causes serious damage to ancient monuments - not only to the fabric of the monument, but also to its interpretation and understanding once artefacts have been removed from their archaeological context. It is an offence under section 42 of the 1979 Act to use metal detectors in a protected place (any place which is the site of a scheduled monument or any monument in the ownership or care of a local authority or the Secretary of State, as defined in the 1979 Act) without prior written consent from the Secretary of State. An Historic Scotland leaflet entitled Scheduled Ancient Monuments and Metal Detectors explains the law and the procedure for obtaining consent. Consent is not normally given except for bona fide, non-destructive, research purposes or for the recovery of valuable items of lost property, eg rings and watches.

Legislative Arrangements - Portable Antiquities

58. All newly discovered ancient objects in Scotland, whether of precious metal or not, belong by law to the Crown. The Crown does not always exercise its claim, but all objects found must be reported so that a decision can be made by the Crown Office. Advice on finds of archaeological objects can be obtained from local museums or from the National Museums of Scotland, to whom any such discoveries should be reported as a matter of course.

Monument Management, Grants and Advice

59. Statutory protection may not of itself secure the future preservation of a monument. In most cases it is essential to develop a management plan and to carry out regular maintenance to prevent progressive decay of the building or site. Ruins, as much as any building in use, need constant minor repair to prevent their deterioration. Grassed field monuments can be seriously damaged by neglect, which allows pests and shrubs or trees to proliferate, or by unsuitable farming regimes.

60. While the responsibility for repairing and maintaining monuments lies squarely with the owner or occupier, Historic Scotland can provide financial assistance of two main kinds for the preservation of important monuments;-

- Grants under section 24 of the 1979 Act are given by Historic Scotland principally for the costs of the protection, repair, archaeological recording and consolidation of monuments. More rarely, they may be given to a suitable body for purchase of monuments, which are at risk of damage or destruction. Grants may also be available towards the capital costs of schemes for the presentation or display of monuments, although Historic Scotland has indicated that this type of scheme has lower priority for funding than urgent and essential repairs.
- Management agreements made under section 17 of the 1979 Act, either by Historic Scotland or by local authorities, may also involve payment. Such agreements may often be used to encourage the beneficial management of field monuments on agricultural land. eg field systems or deserted settlement

sites. They may run for an agreed number of years, usually in return for a lump sum payment at the outset to cover any capital costs, eg fencing, and additional costs to the owner of a positive management regime over the period in question. This may involve pest and weed control and control of stocking levels. Assistance towards schemes of presentation may also be available.

61. Historic Scotland provides advice on the conservation and management of ancient monuments, principally through the Inspectorate of Ancient Monuments but also through the network of Monument Wardens based in local areas. The Wardens in particular inspect scheduled monuments on a regular basis, reporting on their condition, and are available to discuss with the owners measures for the improved management of sites. Technical advice on the conservation of masonry and timber structures, carved stones and decorated plasterwork is also available from Historic Scotland's Architects and conservation staff.

62. Local authorities may also offer advice, through Regional Archaeologists, and may also assist financially with management and preservation schemes. This may be thought particularly appropriate where monuments have a high regional or local importance.

Excavation

63. Historic Scotland can offer financial assistance for excavation but, as demand consistently outstrips the funds available, it must be extremely selective in its choice of projects for funding. In terms of quality, sites must be of national importance measured against the non-statutory scheduling criteria, although not necessarily scheduled (see paragraphs 45 to 48). Exceptionally sites of more local importance will be considered. Excavation projects must accord with current academic priorities and seek to fill gaps in knowledge by addressing specific research questions. Historic Scotland funds will not normally be made available unless the destruction of sites is both imminent and unavoidable. Historic Scotland takes the view that developers must be encouraged to accept their responsibility for producing and publishing a record of archaeological deposits which are unavoidably threatened by development and which cannot be preserved in situ.

Areas of Archaeological Importance (AAs)

64. Part II of the Ancient Monuments and Archaeological Areas Act 1979 provides for designation of Areas of Archaeological Importance either by the Secretary of State or by local planning authorities (subject to confirmation by the Secretary of State). It has not been brought into force in Scotland.

note

65. Enquiries about the content of this advice note should be addressed to Ken Jobling (031 244 7548). Further copies and a list of current SPPs, NPPGs and Planning Advice Notes may be obtained from John Stuksis, 2-H, Victoria Quay, Edinburgh EH6 6QQ (031 244 7543).

Key bodies and organisations

Note that only those functions, which relate to the present guidance are listed below. Most of the organisations have much wider remits.

Historic Scotland
20 Brandon Street
Edinburgh EH3 5RA

031-244-3144

Historic Scotland is an executive agency of the Secretary of State for Scotland and is responsible for implementing the Secretary of State's policies for the built heritage, including protecting and preserving archaeological and historical remains of importance compiling and maintaining a Schedule of nationally important monuments which are subject to legal protection, and controlling works to such scheduled monuments through the scheduled monument consent procedures. As well as the provision of advice and the operation of the scheduling system on behalf of the Secretary of State, Historic Scotland may provide financial assistance towards the upkeep of ancient monuments and towards archaeological investigation. Historic Scotland, acting for the Secretary of State, shares with local authorities the power to acquire or take into guardianship ancient monuments.

**Royal Commission on the Ancient
and Historical Monuments of Scotland**
John Sinclair House
16 Bernard Terrace
Edinburgh EH8 9NX

031-662-1456

RCAHMS is the national body of survey and record. Its aim is to compile and make available a basic database of Scotland's ancient monuments and buildings (the National Monuments Record of Scotland: NMRS) for use by individuals and bodies concerned with understanding, conserving and managing the built environment. NMRS helps support, and exchanges information with, Regional and Islands SMRs, and where local posts have been recently created, or where there is no local post, may hold more detailed information than is available within the Region or Islands Area.

National Museums of Scotland
Archaeology Department
Queen Street
Edinburgh EH2 1JD

031 225 7534 ext 305 or 344

The Archaeology Department of the National Museums of Scotland acts as the secretariat for the Treasure Trove Advisory Panel and co-ordinates action on any newly discovered archaeological object in Scotland. The Department provides an identification service and undertakes any necessary studies through its Artefact Research Unit.

Association of Regional and Island Archaeologists
c/o Mrs L Main, Secretary
Department of Development and Planning
Central Regional Council
Viewforth
Stirling FK8 2ET

0786-442752

ARIA is the national group representing Regional or Island Archaeologists or their equivalents. It seeks to co-ordinate and represent their views to Government and to national archaeological and environmental organisations, and may also offer advice to local authorities on the creation and maintenance of SMRs and other archaeological services.

Council for Scottish Archaeology
c/o National Museums of Scotland
Queen Street
Edinburgh
EH2 1JD

031-225-7534 ext 311

The CSA is the leading representative body for archaeology in Scotland, its membership comprising national and local organisations, archaeological units and trusts, museums and universities. It seeks to co-ordinate and represent the view of the archaeological community and presents those views to Government and others. It also seeks to promote public interest in archaeology. It is a source of advice on local plan policies and is regularly consulted by many authorities. It liaises on UK matters with the Council for British Archaeology (CBA).

The Institute of Field Archaeologists
Metallurgy and Materials Building
University of Birmingham
Edgbaston
Birmingham B15 2TT

021-471-2788

The IFA is the UK's professional institution for archaeologists in Britain. It is concerned with defining and maintaining proper professional standards and ethics in field archaeology. All members conform to a Code of Conduct and there is a disciplinary procedure for investigating and dealing with allegations of improper conduct. It also maintains a Code of Approved Practice for the Regulation of Contractual Arrangements in Field Archaeology. A Directory of Members is published which lists the registered areas of competence of each member. Corporate membership of the Institute carries the distinction MIFA, AIFA or PIFA according to experience and qualifications.

**The British Archaeologists' and
Developers' Liaison Group**
British Property Federation
35 Catherine Place
London
SW1E 6DY

071-828-0111

The Liaison Group is a permanent body initiated jointly by the British Property Federation (BPF) and the Standing Conference of Archaeological Unit Managers (SCAUM), the national body representing some 75 professional archaeological units. It is endorsed by Historic Scotland and the Council for Scottish Archaeology, and their English counterparts, as well as the Institute of Field Archaeologists and others. Its aim is to foster voluntary co-operation between developers and archaeologists to encourage good working practices through their Code of Practice. Copies of the Code are available from the BPF and SCAUM

The Scottish Museums Council
County House
20-22 Torphichen Street
Edinburgh
EH3 8JB

031 229 7465

Many local museums have information and displays on aspects of local archaeology, and provide educational services and events. Some have collections of finds excavated from sites in their area, and may also house excavation records. A number employ professional archaeologists on their staff; otherwise they can help to contact the appropriate authorities or experts. The Scottish Museums Council acts to co-ordinate and advise local museums in Scotland, and can provide information about local museum services.

annex 2

Contact addresses (or Regional and Islands Archaeologists)

Borders	Mr John Dent Department of Planning & Development Borders Regional Council Newton St Boswells, Roxburghshire TD6 OSA	0835 23301
Central	Ms Lorna Main Development & Planning Department Central Regional Council Viewforth, Stirling FK8 2ET	0786 442752
Dumfries and Galloway	Ms Jane Brann Department of Physical Planning Dumfries and Galloway Regional Council 4 Market Street, Castle Douglas DG7 1 HT	0556 502351
Fife	Mr Peter Yeoman Economic Development and Planning Department Fife Regional Council North Street, Glenrothes KY7 5LT	0592 754411
Grampian	Mr Ian Shepherd Economic Development & Planning Department Grampian Regional Council Woodhill House, Westburn Road, Aberdeen AB9 2LU	0224 664723
Highland	Mr Robert Gourlay Department of Libraries and Leisure Highland Regional Council Kinmylies Building Leachkin Road, Inverness IV3 6NN	046371176
Lothian	No Regional Archaeologist	
Orkney	Dr Raymond G Lamb Orkney Archaeologist 48 Junction Road, Kirkwall, Orkney KW1 5 1 AG	0856 872632
Shetland	Ms Val Turner Shetland Amenity Trust 22-24 North Road, Lerwick, Shetland ZE1 0NQ	0595 4688
Strathclyde	Dr Carol Swanson Department of Physical Planning Strathclyde Regional Council Strathclyde House, 20 India Street, Glasgow G2 4PF	0412273669
Tayside	No Regional Archaeologist	
Western Isles	No islands Archaeologist	

STATUTORY INSTRUMENTS

1981 No. 1468(S.148)

The Ancient Monuments (Class Consents) (Scotland) Order 1981

Made..... 7 October 1981

Laid before Parliament..... 26 October 1981

Coming into Operation..... 30 November 1981

In exercise of the powers conferred on me by section 3 of the Ancient Monuments and Archaeological Areas Act 1979, and of all other powers enabling me in that behalf I hereby make the following order:-

1. This Order may be cited as the Ancient Monuments (Class Consents) (Scotland) Order 1981, and shall come into operation on 30 October 1981.

2 - (1) Subject to the provisions of this article, consent is hereby granted to the execution of works of any class or description specified in the Schedule to this Order.

(2) The consent hereby granted for the execution of works is subject to any limitation or condition specified in the said Schedule in relation to works of a particular class or description.

(3) **Nothing** in this article shall operate so as to grant consent for the execution of any works contrary to any limitation or condition specified in a consent granted under Part I of the Ancient Monuments and Archaeological Areas Act 1979 otherwise than by this Order.

Schedule

Classes and descriptions of works

Class I Agricultural, horticultural or forestry works, being works of the same kind as works previously executed in the same field or location during the period of 5 years immediately preceding the date on which this Order came into operation, but not including subsoiling, drainage works, the planting or uprooting of trees, hedges or shrubs, or any other works which are likely to disturb the soil below the maximum depth affected by normal ploughing.

Class II Works executed more than 10 metres below ground level by the National Coal Board, or by any person acting pursuant to a licence granted by the said Board under section 36(2) of the Coal Industry Nationalisation Act 1946.

Class III Works executed by the British Waterways Board in relation to land owned or occupied by them, being

- (a) works of repair or maintenance not involving a material alteration to a monument;
- (b) works which are essential for the purpose of ensuring the functioning of a canal.

Class IV Works for the repair or maintenance of machinery not involving a material alteration to a monument.

Class V Works, which are essential for the purposes of health or safety.

Explanatory note (*This Note is not part of the Order*)

This Order grants scheduled monument consent under Part I of the Ancient Monuments and Archaeological Areas Act 1979 for the execution of certain classes or descriptions of works in Scotland.

The works for which consent is granted include

- (a) certain agricultural, horticultural or forestry works;
- (b) works executed more than 10 metres below ground level by the National Coal Board; and
- (c) certain works executed by the British Waterways Board.