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Dear Ms Robinson

Thank you for your letter of 18 February requesting advice from Historic Scotland on measures that can be taken as a last resort to protect a scheduled monument from damage in circumstances where the landowner is uncooperative. This relates to the Committee's consideration of PE 1523 regarding the Tinkers' Heart. I hope the following is helpful.

There are a number of measures open to Historic Scotland, and others, to address issues of damage to a scheduled monument. The nature of the measures depend on the type of 'damage' caused or anticipated. Deterioration in a monument's condition can result from a large number of activities or circumstances. These may include deliberate acts of damage, unintentional acts, poor practices, lack of maintenance or natural processes. Some types of damage constitute a statutory offence, others may raise cross-compliance issues.

Statutory Offences under the 1979 Act

Where damage to a scheduled monument occurs as a result of human intervention, whether deliberate or accidental, a statutory offence under the Ancient Monuments and Archaeological Areas Act 1979 ('the 1979 Act') may have occurred. Historic Scotland's approach to offences under the 1979 Act is set out in the attached leaflet 'Works on Scheduled Monuments'. Steps may include:

- Informal resolution with owner
- Retrospective scheduled monument consent for works
- Advisory/ Warning letter
- Scheduled Monument Enforcement Notice
- Prosecution

Historic Scotland's response will be proportionate to the severity of unauthorised works undertaken, and level of damage which occurs. We will normally seek an informal resolution



in the first instance, and only proceed to the issuing of a formal notice, or referral of the case to the procurator fiscal as a last resort. During the period April 2013-March 2014, Historic

Scotland dealt with a total of 38 reports of unauthorised works. Further action was taken in 71% of cases, with 14 advisory letters sent, 12 informal resolutions agreed with the land owner, and 1 Scheduled Monument Enforcement Notice issued, compelling reparative works to be undertaken.

Cross Compliance Issues

Poor farming practices such as overstocking, can lead to damage through trampling, scraping and rubbing. Such practices may constitute a breach of The Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014. Standard 7(4) of the Good Agricultural and Environmental Conditions (GAEC) states 'beneficiary must not alter, or cause (whether directly or indirectly) the damage or destruction of a (scheduled) monument.'

Landowners in receipt of Single Farm Payment may face financial penalties where a breach of GAEC conditions has occurred.

Other forms of deterioration

The condition of a monument may also deteriorate as a result of actions which do not constitute an offence under the 1979 Act.

Inappropriate maintenance, or lack of maintenance may contribute to deterioration. There is no obligation on a landowner to take positive steps to maintain or improve the condition of a scheduled monument. Historic Scotland has a range of grant schemes which can assist with the cost of repair and maintenance of scheduled monuments. In exceptional circumstances, where there is a clear public interest and in a matter of urgency, Historic Scotland may, under section 5 of the 1979 Act, execute works for the preservation of a monument.

Natural processes such as coastal erosion, wild animal scrapes and burrows and growth of rank vegetation may also lead to deterioration. Historic Scotland regularly monitors the condition of scheduled monuments in private ownership, and offers management advice to owners in dealing with such issues. Where practical management steps are possible, Historic Scotland may offer a landowner a Monument Management Grant to assist with the costs of management works.

I hope this information is of assistance to you. Please do not hesitate to get in touch if you require anything further.

IAN WALFORD