



department for
**culture, media
and sport**

Impact Assessment

Draft Heritage Protection Bill

April 2008

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Summary: Intervention & Options

Department /Agency: Department for Culture, Media and Sport		Title: Impact Assessment for the draft Heritage Protection Bill	
Stage: Final for draft Bill	Version: 1	Date: 29 th February 2008	
Related Publications: 'Heritage Protection for the 21 st Century' White Paper & RIA (2007); 'Consultation Analysis' (2007); 'Review of Heritage Protection' Decision Paper (2004)			
Available to view or download at: www.culture.gov.uk/Reference_library/Publications/			
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What is the problem under consideration? Why is government intervention necessary?

The UK Government and Welsh Assembly Government have a direct role in regulating change to the historic environment. Management of the historic environment is currently governed by four main pieces of legislation and has produced a system that can be confusing, complex, and time-consuming for both users and administrators, imposing unnecessary burdens on various organisations and individuals. Legislative reform presents an opportunity for a more holistic, integrated, flexible and forward-looking approach, while still protecting our historic environment effectively.

What are the policy objectives and the intended effects?

- 1) To update and improve the terrestrial heritage protection system in England and Wales to produce:
 - a positive approach to managing the historic environment which will be transparent, inclusive, effective and sustainable and at the heart of social, environmental and economic agendas at a local as well as a national level;
 - a legislative framework that protects the historic environment but enables appropriate change.
- 2) To update and improve the heritage protection system relating to the marine historic environment for England and Wales.

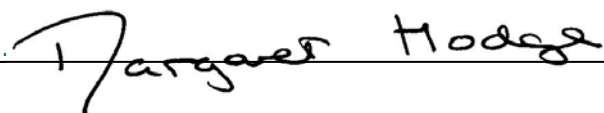
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Actual cost/benefit review to take place 5 years after implementation of Bill provisions.

Ministerial Sign-off for final proposal Impact Assessment:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....  **Date:** 3 March 2008

Summary: Analysis & Evidence

Policy Option: Draft Heritage Protection Bill

Description: Draft primary legislation to reform the heritage protection system in England and Wales

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ 2.26 million	5	Government and English Heritage will incur the majority of costs through providing extra funding to enable local authorities to take on new responsibilities allowing them to provide enhanced management of the historic environment. English Heritage also has monetised costs associated with the creation of a new unified publicly accessible electronic register of heritage assets.
	Average Annual Cost (excluding one-off)		
£ 1.02 million		Total Cost (PV) £ 6.52 million	
Other key non-monetised costs by 'main affected groups' n/a			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ n/a	5	Government, English Heritage and local authorities will all benefit from savings made through new streamlined administrative processes and new voluntary management arrangements that will decrease duplication of work and repeat applications and in many cases will speed up decision-making time.
	Average Annual Benefit (excluding one-off)		
£1.04 million		Total Benefit (PV) £ 4.80 million	
Other key non-monetised benefits by 'main affected groups'			
<p>The main benefits of the reforms set out in the draft Heritage Protection Bill are non-monetisable, and may be best expressed in terms of public value and sustainability.</p> <p>The reform programme which has culminated in this Bill has focused on modifying the heritage protection system to make it more consultative and more open to scrutiny, where the reasons for decisions to protect or to enable change are clearly explained and challengeable, and where, if it is effective and desirable, flexible agreements are available to manage that change. While some of these elements can be analysed in terms of monetisable costs and benefits, the real benefits are not truly expressed through this type of analysis.</p> <p>The historic environment – buildings, landscapes, archaeological remains – is both a public and a private resource; it is a tangible reminder of our past and an expression of how we live now. The benefits of the heritage protection reforms set out in the draft Bill are that they enable us to preserve the historic environment and manage its transition to the future, in the light of both present values and in the interest of future generations.</p>			

Key Assumptions/Sensitivities

The costs/benefit calculations included in this document have been based on the following assumptions:

- 1) Unless clearly stated otherwise, we assume that the number of people working within and using the heritage protection system in the future will not deviate from current trends.
- 2) Organisations involved can continue to carry out administrative duties effectively.
- 3) Staff costs are calculated using average salaries provided by DCMS and English Heritage HR teams, and include an additional 30% overhead (as recommended by guidance published by the Better Regulation Executive).
- 4) Savings are expressed as negative costs in the tables of figures in this document.

The following risks associated with the introduction of the draft Bill have been identified:

- 1) Increased interest in heritage issues resulting from publicity generated by the Bill could lead to increases in applications which deviate from current trends.
- 2) Changes from the long-standing status quo in heritage asset management may initially cause confusion among users and administrators which could result in delays to the start of any savings.

Price Base Year 2007	Time Period Years 5	Net Benefit Range (NPV) -£1.72m	NET BENEFIT (NPV Best estimate) -£1.72m
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What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		tbc		
Which organisation(s) will enforce the policy?		Local Authorities, EH		
What is the total annual cost of enforcement for these organisations?		£ n/a		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2007 Prices – PV adjusted)		(Increase over 5 years)		
Increase of	£ 6.52m	Decrease	£ 4.80m	Net Impact £ 1.72m

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value

Evidence Base

The Draft Heritage Protection Bill

Introduction

1. The UK Government is committed to reforming the various current heritage protection regimes to introduce a single system that will be more open, accountable, efficient, and sustainable, with increased opportunities for public involvement. The draft Heritage Protection Bill, announced in the background briefing to The Queen's Speech on 6 November 2007, has been designed to achieve these reforms. It signifies a new integrated approach to managing the historic environment, and will create a system that is able to protect our historic assets for us, and future generations, to enjoy.
2. The historic environment is one of our greatest national resources and it is important that it is managed effectively. Our castles, churches, monuments, historic houses, parks and gardens are enjoyed by millions of people – the Taking Part survey¹ shows that nearly 70% of adults in England visit a heritage site once a year. They provide communities with a sense of place and belonging, and contribute to a wide range of agendas. There were 2.5 million school visits to historic sites recorded in 2006, and nearly half a million volunteers in the heritage sector in 2005/6². It also has a positive impact on tourism and the economy. According to Online Best Prospects research carried out in 2005, 72% of Russian tourists and 66% of Chinese tourists say that historic buildings and monuments top their list of things to visit in the UK. In 2006, visitors from China and Russia spent an estimated combined total of £337 million in the UK³. We need a heritage protection system that can continue to protect assets, engage communities, and deliver sustainable benefits for people in the 21st century and beyond.
3. The draft Heritage Protection Bill legislation is a UK Parliament Bill designed to reform and unify the terrestrial and marine heritage protection systems in England and Wales. As currently drafted the Heritage Protection Bill will replace the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Historic Buildings and Ancient Monuments Act 1953 and the Ancient Monuments and Archaeological Areas Act 1979 in respect of England

¹ See website for information on the Taking Part survey:
http://www.culture.gov.uk/Reference_library/rands/taking_part_survey/

² Source: Heritage Counts 2007 (English Heritage)

³ Source: ONS International Passenger Survey

and Wales. In England and Wales it will also replace the provisions in the Protection of Wrecks Act 1973 dealing with the protection of sites of historic wrecks.

4. The Government is pursuing legislative reform following a process of public consultation which showed that the public and the historic environment sector are calling for change, highlighting that the heritage protection process can be time-consuming, uncertain and confusing for users and professionals alike. In June 2004, responses to DCMS' consultation document, *Protecting our Historic Environment, Making the System Work Better* (July 2003), were published in the decision paper *Review of Heritage Protection; The Way Forward* (June 2004) which set out proposals for improving the system for protecting buildings, above and below ground archaeology and other land-based heritage assets. A similar consultation exercise was undertaken in Wales called *Protection of Historic Assets in Wales*.
5. The White Paper, *Heritage Protection for the 21st Century*, was published for consultation in March 2007 and gave a more comprehensive account of how the Government intended to reform the heritage protection system. The White Paper was widely welcomed by the sector and in November 2007 the *Heritage Protection for the 21st Century: An analysis of consultation responses* document was published in England and Wales showing overall support from key stakeholders for the proposed changes. Also included in the pre-White Paper consultation process were individual consultations on specific issues, namely the ecclesiastical exemption, the marine historic environment and principles of selection for listed buildings.
6. Government believes that, through legislative reform, a new system will be created which will be better able to meet the needs of the public and the challenges of the 21st century. This legislation provides the opportunity to respond to this call for change with the most comprehensive modernisation of the heritage protection system seen in this country for many years.

Why Legislate?

7. The Regulatory Impact Assessment (RIA) published alongside the White Paper (attached at **Annex A**), recommended reform of the legislative framework for heritage protection over two alternative options which were (1) do nothing, and (2) reform heritage protection policy without changes to legislation. Option 1 was rejected on the grounds of the drawbacks and inefficiencies of the current heritage protection system, alongside the clear appetite for change identified by extensive public consultation. Option 2 was rejected on the grounds that it would not provide the substantial benefits of legislative reform in terms of a more efficient and understandable system, and subsequent improved decision-making and management, but would still impose substantial costs on English Heritage.

8. The third option – legislative reform – was deemed the most effective way to move forward with heritage protection reform. Although this option carries the highest costs, especially for English Heritage (in particular, short-term costs associated with the training and medium-term costs for capacity building) these costs are balanced against the substantial benefits to local stakeholders of a more inclusive and efficient approach to the designation and management of historic assets. In England, DCMS will meet the cost of additional burdens to local authorities. In Wales, no additional costs are expected to be borne by local authorities (see section 4). Any additional central Government costs will be met from existing budgets. This Impact Assessment aims to show where some of these monetisable costs and benefits are likely to occur.

Main Policy Proposals

9. The draft Heritage Protection Bill, which can be divided into provisions for the management of terrestrial heritage assets and marine heritage sites in England and Wales will:
 - unify the designation processes for terrestrial heritage assets to replace the current system of listing, scheduling and registering;
 - create unified Heritage Registers for England and Wales bringing together buildings and structures, archaeology, parks, gardens, historic landscapes (Wales only), battlefields, marine heritage sites and World Heritage sites;
 - introduce a unified heritage consent regime that brings together Listed Building Consent and Scheduled Monument Consent, to be administered by local authorities;
 - abolish a separate Conservation Area Consent by merging it with planning permission;
 - provide a statutory framework for new management arrangements for owners of complex historic sites to enable a proactive and less bureaucratic approach to long-term management of such sites;
 - transfer responsibility for designation of terrestrial heritage assets in England from the Secretary of State for Culture, Media and Sport to English Heritage;
 - introduce a new statutory responsibility for local authorities to maintain or have access to Historic Environment Records, putting responsibility for the historic environment in the hands of the local community;
 - reform the designation and licensing regime for the marine historic environment in England and Wales, broadening the range of marine

assets that can be protected and bringing flexibility to the licensing system.

By the time of introduction, the Bill will contain provisions to:

- introduce a new statutory duty on the Receiver of Wreck to inform appropriate heritage bodies of information received on marine assets;
- repeal Section 5 of the Public Statues (Metropolis) Act 1854, which requires the approval of the Secretary of State for the erection of a public statue in London, which will remove unnecessary bureaucracy;
- repeal the obsolete provisions of the Osborne Estate Act 1902 and the whole of the Osborne Estate Act 1914, thereby removing the Secretary of State for Culture, Media and Sport's existing statutory obligation to use parts of Osborne House and grounds for the benefit of members of the armed forces and civil service and enabling English Heritage (which manages the House and grounds on the Secretary of State's behalf) greater flexibility in managing the House and grounds in ways suitable to their nature and historic character.

Summary of Costs/New Burdens

10. **English Heritage:** In England, most of the impact of the new legislation will fall on English Heritage which will take on new responsibilities and have some of their existing responsibilities enhanced. English Heritage will be responsible for the designation process, which will be slightly expanded in scope through the widening of the range of assets that can be designated, and through the loss of discretion in designating archaeological remains. They will also have a role in training and capacity building in order to enable Local Planning Authorities to undertake their new statutory responsibilities. In addition to initial one-off expenditure for a new unified designation IT system, there will be short term costs for English Heritage for training local authority staff and medium term costs for local authority capacity building before reverting to their current position of providing ongoing advice to local authorities on historic environment management and key protection issues.
11. **Central Government:** A lesser burden will be imposed on central government through the introduction of a statutory process of appeal against designation decisions. This burden will be minimal in nature since it will formalise an existing informal review process and will be offset by the transfer of the designation process to English Heritage. Also, it is intended that an improved designation system, which will involve the owner and the wider public at an early stage, will reduce the demand for formal appeals against designation. DCMS is committed to funding new burdens for local authorities, such as increased responsibilities for maintaining Historic Environment Records, so costs will be incurred there. Costs for establishing civil penalties schemes have not been included in this Impact Assessment. We had been expecting to use powers under the Regulatory Enforcement and Sanctions (RES) Bill

(currently going through Parliament) to establish such schemes. However, we are now considering introducing the powers under the Heritage Protection Bill and this issue will be addressed prior to introduction.

12. **Local Government:** Local Planning Authorities will be responsible for a broader range of activities, taking responsibility for an expanded consent process and the maintenance of Historic Environment Records. New burdens will be funded by DCMS and English Heritage.
13. **Private Sector:** We anticipate that the Bill will have limited impact on the private sector with little/no new costs or administrative burdens. Owners and developers may incur start-up costs if they opt in to a Heritage Partnership Agreement (see Section 5) or apply for a Certificate of No Intention to Register (see Section 1). These, however, will be voluntary arrangements which we anticipate users will only enter into where there is a reasonable expectation of significant net savings over time, either through a reduced overall administrative burden, or increased certainty over the future of a site.
14. **Other Sectors:** Amenity societies (voluntary sector) may also incur costs in providing advice on all designations. However, while they will be statutory consultees, they are not statutorily obliged to respond so are therefore free to fulfil this role in light of their resources and priorities.

Summary of Savings/Benefits

15. The main benefit that the draft Bill will bring is a system that is better equipped to manage the historic environment effectively to ensure it will be better understood and passed on to future generations. The historic environment is valuable in many different ways. It contributes to Government's wider place-making agenda, educational opportunities across all age-groups, and the economy. It is appreciated by millions of people – professionally, academically and recreationally. The draft Bill will put in place a unified heritage protection system that is easier to understand and use, is more efficient, accountable and transparent, and maximises opportunities for public inclusion and involvement. It will remove unhelpful distinctions between different designation regimes (listing, scheduling, registering) to deliver a system that works for the whole historic environment.
16. It will place decision-making powers where they sit most naturally, devolving designation decisions on terrestrial heritage assets in England from the Secretary of State to English Heritage, and unifying consents for works to these assets which will be administered by Local Authorities in England, and in Wales by Local Authorities and Welsh Ministers as appropriate.
17. It will support sustainable communities by putting the historic environment at the heart of an effective planning system operating at a local level. Also, new management arrangements (HPAs) between owners, heritage authorities and planning authorities will enable proactive management of heritage assets

and will ultimately reduce administrative burdens, saving time and money in accordance with Hampton principles.

18. Increased public involvement with and access to the heritage protection system is another important benefit that the reforms will introduce. By placing a new duty on local authorities to maintain and enable public access to Historic Environment Records (see section 6), we will ensure that high quality information and resources relating to the local historic environment will be made accessible at a local level, enabling it to be reached by broader audiences, adding to their knowledge and interest. English Heritage's new combined register of heritage assets in England will also be made accessible to the public via the internet, meaning that more information and resource is being made available to more people. In addition, by making it a statutory requirement for owners to be consulted prior to any designation decision being made, and broadening the range of those who are consulted prior to designation, we are ensuring that there is scope for public involvement in informing designation decisions.
19. While it is not possible to monetise the value of the historic environment or the value of public involvement with the way it is managed, we can talk about the value that our heritage adds to the lives of the people of England and Wales and those that come to visit historic attractions. By putting in place a new legal framework for managing and protecting our historic environment effectively, the draft Bill will help to safeguard these great national resources so that they can be appreciated, studied and enjoyed by current and future generations.

Terrestrial

Section 1: Changes to the Designation System

20. The Bill will create a new single system of national designation, and all designation decisions will be made on the basis of special architectural, historic, archaeological or artistic interest. The current heritage protection system in England and Wales has separate systems for dealing with different aspects of the historic environment (listed buildings, scheduled ancient monuments, registered parks, gardens and battlefields). As a consequence, the current regime can be perceived as complicated, confusing, bureaucratic and burdensome. A key benefit the new legislation will bring, through the introduction of a single designation system, is greater inclusivity – opening it up to new users who have previously been put off from engaging with a complex heritage protection system.

21. The Bill will transfer listing and scheduling designation responsibilities in England from DCMS to English Heritage. This will bring savings through the removal of double-handling of cases, and create an improved process which is more streamlined, thereby benefiting end-users (particularly local planning authorities, owners, amenity societies, etc) through quicker case turnaround times and greater clarity with regard to where their application is being handled. Designation transfer will mean minor changes to public service manpower. It will involve an estimated reduction in civil service posts of 8. The introduction of a new appeals procedure (see section 2) will require additional civil service staffing of approximately 2. The net reduction in civil service posts is therefore 6. English Heritage will absorb the transferred designation process as a marginal addition to their existing responsibilities. A breakdown of estimated costs and savings, based on estimations and assumptions provided by DCMS listing and scheduling experts, is included at **Annex B**. The overall estimated annual saving is £198,000 per annum.

22. The Bill will introduce a mechanism to provisionally register those heritage assets being considered for designation. Provisional registration, or interim protection, means that assets will be automatically protected from the moment an application for designation is consulted upon by English Heritage or Welsh Ministers up until the point at which a formal designation decision is made. This system may impose burdens as owners and developers will need to apply for consent to effect changes to the asset during the period of interim protection, but it is not possible to quantify this. Interim protection is intended to ameliorate the effects of spot-listing (or 'emergency' listing) which occurs at present when a building is under threat of demolition while its application for listing is being considered. It will also reduce the burden on

local authorities by removing the need to address this threat through Building Preservation Notices (BPNs). About 20 BPNs are served each year by local authorities.

23. The creation of a new category of registrable heritage assets is set out in the Bill. This means that for the first time 'sites of human activity without structures' (i.e. early pre-historic sites) can be designated. The Bill also removes English Heritage's discretion when determining applications for ancient monument designation, meaning that if an ancient monument is put forward for designation and is deemed to have passed the special interest test, then it will be registered.
24. These two provisions could impose a burden on English Heritage and Welsh Ministers by increasing the number of assets that are potentially registrable, and removing the Secretary of State's and Welsh Ministers' capacity to reject applications to designate ancient monuments in favour of alternative non-statutory management regimes. However, a large increase in applications is not anticipated by English Heritage, and any increase in application process work will be managed through their Strategic Designation Programme. It is estimated that around 80 sites per year will be designated in the new category. There are non-monetisable benefits to be gained from these changes. Archaeological sites and ancient monuments have always been regarded as valuable for academic and recreational pursuits, and a broader range of assets is now capable of being given increased protection through a more clearly defined, more inclusive and universal system.
25. The Bill will also introduce changes to what were previously known as Certificates of Immunity (COIs) and which will, in future, be called Certificates of No Intention to Register (CNIRs). Under the current system, developers can apply for COIs for buildings. If granted, a COI will provide them with certainty that their building will not be listed for a period of 5 years from the date of issue of the certificate. Applications can only be made once a planning application has been submitted for the building in question. Under the new system, COIs will be replaced by CNIRs which will provide some key non-monetisable benefits. Owners and developers can apply for a CNIR at any time (not only once planning permission has been applied for), and they will be able to apply for a CNIR for that encompasses entire sites rather than individual buildings. Obtaining a CNIR will carry some cost to owners and developers through assessment of the asset/site and public consultation, but on obtaining the certificate, they will benefit from the increased level of certainty and significant reduction of risk that the certificate provides for their site, allowing their developments to progress more smoothly. Application for a CNIR is entirely voluntary, and it is anticipated that owners and developers will only apply when they expect the benefits to outweigh any costs.

26. Under the Bill, English Heritage and Welsh Ministers will be required to consult owners, local authorities and amenity societies on all cases under formal consideration for designation. This will not impose any significant extra cost to EH as these bodies are regularly consulted at present as a matter of course (rather than obligation) and the legislation will merely formalise an informal process. Since amenity societies (e.g. the Victorian Society, the Garden History Society) are voluntary sector organisations this could be perceived as a disproportionate burden on the voluntary sector. However, we do not believe this will be the case. At present around 15% of listing applications come from amenity societies themselves so they are already well integrated into the heritage protection process. The new provisions will not *impose* any extra costs on them, as responding to consultation will be voluntary. The intended non-monetisable benefits of the new system are greater inclusivity through involving more groups in the decision-making process, and also improving the quality of decision-making through consideration of a range of expert opinion.
27. In Wales, the statutory designating authority will continue to be Welsh Ministers and no transfer of responsibilities as in England is proposed. Designations will continue to be carried out in practice by Cadw, the Welsh Assembly Government's historic environment division, for the Welsh Ministers. The community survey of all buildings in Wales for listing was completed at the end of 2005 and the scheduling programme has been progressing at the rate of 130 schedulings a year. It is not anticipated that there will be any significant increase in registrations arising from the Bill – registrations will continue to be carried out in accordance with planned programmes, as well as any 'spot' registrations where structures being put forward for registration are deemed to be at risk.

Change	Cost/Saving	
	One-off	Annual
Transfer of listing and scheduling processes from Secretary of State to English Heritage (using new unified system of designation)	£minimal	-£198,000
Creation of new category	Non-monetisable at this stage	Non-monetisable at this stage
Loss of discretion for ancient monuments	Non-monetisable at this stage	Non-monetisable at this stage
Changes to Certificates of Immunity	Non-monetisable at this stage	Non-monetisable at this stage
Statutory consultation of amenities societies	£minimal	£minimal
TOTAL	£minimal	-£198,000

Section 2: Appeals against Designation Decisions

28. In England, the Bill will introduce a new formal right of appeal against terrestrial designation decisions by English Heritage. Appeals will be made to the Secretary of State. Designations are currently made by the Secretary of State, with an associated informal review process. The new appeal system will allow the benefits of formalised due process with more checks on English Heritage decision-making and a more transparent process as a whole. This change may result in an increase in the number of challenges to designation decisions as people have a formal right of appeal though it is anticipated that the process of full consultation prior to registration will help resolve concerns before designation without recourse to formal appeals post-designation.
29. We have estimated an initial cost of £12,065 to set up the panel that will advise on appeals. This cost falls on DCMS as officials there will bear the administrative burden. Costs for this new panel are based on the assumption that there will be an estimated 100 cases per year for the panel, with 80 standard cases, and 20 more complex cases. These estimates are based on current trends for informal reviews. The annual cost for this number of appeals will be £26,192. A more detailed breakdown of estimated costs for appeals can be found at Annex C. Ongoing familiarity with the new system over time should help to reduce case time, and therefore costs, in future. We believe that any increase in the cost of appeals should be offset to some degree by other provisions in the Bill which aim to produce better decisions in the first place by increasing the quality and amount of consultation prior to designation.
30. In Wales there will be a right of review against registration decisions taken on behalf of the Welsh Ministers. Consultation with owners/ occupiers and the local planning authority is currently being carried out in Cadw on scheduling proposals and on proposals for listing. Cadw is also prepared to review decisions if new information is presented. In 2007 there were 13 requests for an informal review received in Wales.

Change	Cost/Saving	
	One-off	Annual
Introduction of formal right of appeal to Secretary of State against English Heritage designation decision	£12,065	£26,192
TOTAL	£12,065	£26,192

Section 3: New Combined Register

31. Under the Bill, English Heritage will have a duty to set up a Heritage Register for England. They will be required to create, publish and maintain an online register of heritage assets that can be accessed by the public. English Heritage is therefore investing in a new IT system called the 'Unified Designation System' (UDS). Existing records of listed buildings, scheduled monuments, registered gardens, battlefields, parks and wrecks will be migrated on to the new system, and records for all future designations will be added onto UDS as part of English Heritage's new designation process.
32. The monetary cost of setting up the register, enabling access and maintaining the service will be substantial (figures shown below have been provided by English Heritage based on the UDS project budget) *but* the new unified register will provide a number of key non-monetisable benefits. Sector professionals and the public alike will be able to find information about the historic environment in one place, which is free and easy to access. Users will find that the enhanced system can provide details on why an asset is registered, and new entries will contain more detailed information than previous registers, and will include maps. This will help owners and developers recognize when Heritage Asset Consent will be needed, and enable them to manage and maintain their heritage asset with greater ease and certainty.
33. An indication of potential levels of public interface with the register may be gained from looking at user levels for existing electronic historic environment systems. User levels are recorded by numbers of unique visitors and user sessions, rather than numbers of hits which are less informative. In 2007, Images of England had 326,683 unique visitors who carried out 1,124,758 user sessions. Listed Buildings Online had 15,763 unique users with 47,166 user sessions; Listed Buildings Online is only available to local authorities at present, but will soon be available to the general public through the Heritage Gateway.
34. Wales is currently assessing costs for creating a parallel combined register for historic assets in Wales (incorporating historic landscapes) and will be consulting fully before pursuing further. Although Wales does not currently have a register of historic battlefields, work is in hand to prepare one and it is anticipated that battlefields will be included in the new unified register in Wales.

Change	Cost/Saving	
	One-off	Annual
Setting up new combined register/migrating data	£1,050,000	n/a
Publication/enabling access to new register	n/a	£20,000
Ongoing maintenance of new register	n/a	£10,000
TOTAL	£1,050,000	£30,000

Section 4: Changes to the Consent Regime

35. A new unified consent regime will be introduced by the Bill. This will bring together the currently separate systems of Scheduled Monument Consent (SMC) and Listed Building Consent (LBC) into a simpler, more streamlined Heritage Asset Consent (HAC) process. Under the current regime DCMS handles SMC applications, but under the new system HAC will be administered by local authorities, who are already responsible for LBC (33,500 applications in 2006/7). This merger of consent regimes has several benefits, and also some additional administration costs to local authorities which DCMS is committed to funding (estimated at £400,000 per annum). Savings will be gained from relieving DCMS of the SMC process (see Annex B), and applicants will benefit from having a simpler and more streamlined consent regime applicable to all registered heritage structures (including archaeology). This will be particularly helpful for owners and managers of complex sites that include buildings and archaeology. The additional workload resulting from the devolution of archaeological casework to local authorities will result in an estimated further 1,000 applications falling to them countrywide, the determination of which will require them to use in-house and outsourced conservation and archaeological expertise and continued advice from English Heritage.
36. The merging of CAC with planning permission will streamline the planning process and reduce burdens by abolishing the need for a separate consent. There are about 9,300 conservation areas in England and some 3,430 applications for Conservation Area Consent (CAC) for the demolition of unlisted buildings within those areas in 2006/7. The ODPM's *The Planning Service: Costs and Fees Report* (2003) (<http://www.communities.gov.uk/documents/planningandbuilding/pdf/152399>) shows that CACs cost £6,743,442 per year, giving an estimated processing cost of £1,966 per application. In 2006/7 there were 2,573 CAC applications made with Planning Permission applications, and it is with these types of applications that benefits will be gained from a more efficient combined process. At a conservative estimate, using 2003 cost figures and assuming there is just a 10% efficiency gain through the merger there would be an annual saving of around £506,000. Savings could, however, be affected by proposals to address problems arising from the Shimizu judgment, which

would restore local authorities' controls over partial demolition within conservation areas. However it is not possible to quantify this at this stage.

37. A breakdown of costs relating to the training needs for local authorities arising specifically from the introduction of HAC and the merger of CAC and Planning Permission is not currently available. English Heritage is in the process of planning its programme of training, support and capacity building for local authorities. One-off training and capacity building costs arising from changes to the consent procedures will be met by English Heritage from within their current allocation as part of that programme.
38. In Wales, no additional costs are envisaged as a result of merging Listed Building Consent and Scheduled Monument Consent. It is proposed to direct that what would have been scheduled monument consent applications will for the immediate future continue to be referred to Welsh Ministers for determination rather than being dealt with by local authorities. Welsh unitary authorities are generally small and only three authorities and two national park authorities currently have dedicated archaeology advisers. There are about 100 SMC applications per annum in Wales, a figure which has remained largely unchanged over recent years. Most applications are for positive works or for works with a largely neutral impact, and many also incorporate successful applications to Cadw for grant aid or are applications from local authorities which are determined by the Welsh Assembly Government. Given the current capacity in Welsh local planning authorities, it is not envisaged that decisions on HACs in respect of former Scheduled Ancient Monuments will be delegated immediately following Royal Assent of a future Heritage Protection Bill. Statutory powers will however be framed flexibly to enable local authorities in Wales wishing to exercise responsibility over the control of works to monuments in their area to be able to do so in future.
39. In Wales there are 511 conservation areas. The merger of CAC with Planning Permission would deliver operational benefits for LPAs as there are some 100 estimated applications per annum in Wales. These savings may again be offset by the impact of proposals to address the Shimizu judgment.

Change	Cost/Saving	
	One-off	Annual
Merging of Conservation Area Consent with Planning Permission	£minimal	-£506,000
Merging of Listed Building Consent and Scheduled Monuments Consent	Figures not currently available	£400,000
TOTAL	(see paragraph 37)	-£106,000

Section 5: New Asset Management Arrangements – HPAs

40. The Bill provides a statutory framework for a new system of optional management agreements that will be of particular use for owners of large estates or complex sites including local authorities, educational establishments and government departments. These arrangements, which will be agreed by all interested parties involved in the management of a particular site, such as owners, local authorities, amenity societies, and approved by English Heritage, will be known as Heritage Partnership Agreements (HPAs). HPAs will give the owner permission to carry out certain types of work on the site (usually repetitive and/or small-scale works) without needing to apply for specific consent for each individual piece of work. HPAs will replace the need for repetitive consent applications for similar works, reducing bureaucratic and administrative burdens for owners and local authorities, and providing certainty on the long-term management of the site.
41. It is hoped that take-up of these new management arrangements will be high among owners of sites that require repetitive consent applications each year. As an indication, English Heritage note that there are currently around 250 listed building sites in England that have made 6 or more consent applications in the last 3 years. There are, in addition, an unknown number of applications made by owners of multiple sites which would be helped. This new management option for heritage assets will be dependent on the owner, the LPA, and English Heritage (or Welsh Ministers) agreeing on the best way forward. Costs arising from their negotiation and monitoring will be variable. Each HPA will be different in some way, but all of them will be established in order to increase the efficiency of site management. A number of sites took part in pilot HPA schemes in 2004/5 run by EH, and projected costs and savings shown below have been derived from a study of a pilot HPA in Cornwall which provided robust data in its evaluation. A detailed breakdown of how these indicative costs have been calculated is attached at **Annex D**. Projections are based on a conservative estimate of 50% take-up by the owners of sites that could benefit from an HPA. This particular example would begin to deliver monetisable benefits after 2 years.

Change	Cost/Saving	
	One-off	Annual
Introduction of Heritage Partnership Agreements (figures are based on pilot HPA in Cornwall)	£571,392	-£327,424
TOTAL	£571,392	-£327,424

Section 6: Changes to Historic Environment Records Management

42. In England the Bill will place a statutory duty on County Councils, Unitary Councils and National Park Authorities to create and maintain an Historic Environment Record (HER). English Heritage will be placed under a duty to create and maintain the Greater London HER unless London borough councils jointly make alternative arrangements for its maintenance. This will duplicate the current position whereby English Heritage maintains the Greater London HER. Details of how these duties should be fulfilled will be set out in guidance, a draft of which will be published shortly after the draft Bill.
43. HERs are dynamic information services which provide access to comprehensive resources relating to the historic environment of their locality for public benefit and use. Their content will complement that of the Heritage Register and include records of designated, locally designated and non-designated heritage sites, as well as landscape-orientated resources such as historic landscape characterisation. They also hold reference collections, including historic maps, photographs and reports of fieldwork.
44. DCMS is committed to meeting the cost of any ongoing new burdens placed on local authorities by the Bill in relation to HERs, while English Heritage will cover any one-off transitional costs. The figures provided below have been compiled by English Heritage and are based on estimated compliance costs for extant HERs (including improvements to their staffing complement, interoperability and accessibility via the Internet). English Heritage has estimated variable on-going costs at around £240,000 in the first year post-implementation, rising to £565,000 by the third year post-implementation. Costs will rise as the take-up of services increases meaning that an increase in resources is needed to provide them. It is difficult to predict what will happen in Year 4 and Year 5 but it is not anticipated that demand will continue to increase at the same rate, and it is reasonable to assume that demand will plateau as shown in the table below (although we can never be entirely certain when this increasing demand will level out). The Bill will not place a duty on District Councils to maintain an HER and this is reflected in the costings.
45. Beneficiaries of statutory HERs will include their current user base of developers, public utilities, aggregates extractors, property owners, landowners and farmers, historic environment professionals, local societies and interest groups, schools, university students and individual members of the public – as well as national and local government and its agencies. Enhancements to their accessibility should help to broaden audiences still further.

46. Very few local authorities in Wales have dedicated archaeological staff but there is a unique network of four Archaeological Trusts which provide advice to central and local government and others on archaeology in Wales, where appropriate through specific agreements. In Wales we will seek to place a statutory duty on local authorities to adopt and support HERs, either directly or through the agency of others. The existing Service Level Agreements between most local authorities and the Welsh Archaeological Trusts provide a mechanism through which this duty could be discharged with no significant cost increase.

Table 6 Change	Cost/Saving	
	One-off	Annual
Statutory responsibility placed on Local Authorities to maintain HERs		
Year 1	£628,276	£240,346
Year 2	n/a	£402,721
Year 3	n/a	£565,095
Year 4	n/a	£565,095
Year 5	n/a	£565,095

Section 7: New Offences

47. There are fourteen offences in total contained in the Bill, however eleven of these will effectively replicate offences contained in existing legislation while reflecting changes in terminology and asset range as a result of unified designation.

48. Three offences can be described as 'new offences' created by the Bill. One relates to breaching of marine licensing conditions and is the equivalent of breaching of consent for terrestrial works. A second new offence is 'the removal of objects from sites that affect the special interest of the site'. The third is effectively an extension of an existing metal detecting offence which is now applicable to metal detecting in open spaces as well as on registered structures. The latter two new offences have been deemed necessary as a result of the need to give protection to a new type of asset which is protected by the Bill (sites without structures) and for which the existing offence of unauthorised works is technically inappropriate. It is unlikely that the Bill will have any significant impact on the Courts Service – prosecution for heritage offences is seen very much as a last resort only after all other options (enforcement, negotiation, etc) have failed. A legal aid and justice impact test (LAJIT) form has been submitted to the Ministry of Justice.

Section 8: Other Changes Proposed by the draft

Heritage Protection Bill

49. It is intended that, prior to introduction, the Heritage Protection Bill will contain provisions to repeal section 5 of the Public Statues (Metropolis) Act 1854 that will remove the need for statue sponsors to obtain the Secretary of State's approval for erecting statues in London, which will save time and money, and make the process for erecting statues easier. Current planning law provides sufficient safeguards against the proliferation of statues in Greater London as planning permission will continue to be required for the erection of statues in public places. It is not envisaged that the repeal of section 5 will have any noticeable costs or require changes to enforcement procedures. Benefits are expected in the form of a reduced administrative burden for both sponsors and the Secretary of State. There are only about 3 statue applications received for London each year so savings, while welcome, will not be substantial.

50. The widening of the Ecclesiastical Exemption to include the estimated 16,700 designated listed churchyard monuments, crosses, charnel houses, lychgates and churchyard walls, etc, in England (about 4.5% of the total number of heritage assets) is estimated to result in a small reduction in heritage asset control casework, for which no countrywide figures are available. This change will remove the local planning authority layer of dual control over these assets and thus rationalise the protection of heritage assets which are important in relation to church procedures and concerns.

Marine

Section 1: Reform of Marine Designation and Licensing

51. The Bill will reform the designation and licensing regime for the marine historic environment in England and Wales, broadening the range of marine assets that can be protected and bringing flexibility to the licensing system. Since 2003, an average of 54 licences have been issued annually by DCMS. In future, sea-users applying for licences under the new system stand to benefit through being able to apply for licences that cover a range of activities and multiple persons, meaning the need for repeat applications is greatly reduced. It has not, however, been possible to quantify these benefits. English Heritage has estimated that by streamlining their administrative processes associated with licensing, under the new regime they will save approximately £4,500 per annum. A detailed breakdown of estimated costs is attached at **Annex E**.

52. We expect efficiencies to be gained from changing the designation process for marine heritage sites. They are currently designated using individual statutory instruments which can be a convoluted procedure. Under the new system sites containing such assets will be designated by the issuing of a statement by the Secretary of State following a wide consultation process similar to that for terrestrial heritage assets. Since the introduction of the Protection of Wrecks Act 1973, 59 wrecks in UK waters have been designated. We anticipate that the number of wrecks designated will continue to be 1-2 per year in English and Welsh waters. The changes to the designation process will result in the reduction of costs incurred from officials, legal advisers and parliamentary staff time, additional savings by English Heritage streamlining their administration processes, and additional non-monetisable benefits through wider public consultation on the designation process.

53. The Bill has also widened the range of marine assets that will be eligible for designation. English Heritage's initial estimate of the annual designation rates for non-wreck marine sites in the intertidal coastal zone is 3-5 per annum; in the sub-tidal zone, they anticipate about 25 in total. While this does not include ad-hoc discoveries of unexpected assets or sites, we do not think these numbers will generate a significant impact on land or sea users. Furthermore, we expect their designation to be managed through English Heritage's Strategic Designation Programme. Although the new, broader category of marine asset may result in a small number of additional designations, we believe this is an appropriate broadening in scope to protect what needs to be protected.

54. The Bill also introduces provisions for Marine Certificates of No Intention to Register (CNIRs) which work in the same way as terrestrial CNIRs (see Section 1 - Terrestrial). As with terrestrial CNIRs there will be costs to applicants associated with marine CNIRs, however there is no obligation for anyone to apply for one, and costs will be offset by the benefits of having the certificate (for example, developers who successfully apply will have greater certainty over the future of their site).
55. In Wales, mirroring the situation on terrestrial assets, the designating authority is currently – and will continue to be – the Welsh Ministers. There are currently only six designated wrecks in Welsh waters, and it is not envisaged that the new broader scope for designation will result in a significant increase in the overall number of designated marine historic assets.

Change	Cost/Saving	
	One-off	Annual
Changes to marine licence issuing	£minimal	-£4,482
Widening of registrable assets	£minimal	£minimal
New Certificate of No Intent to Register	non-monetisable at this stage	non-monetisable at this stage
Change in designation from statutory instrument to Secretary of State statement.	£minimal	£minimal
TOTAL	£minimal	- £4,482

Key Assumptions

56. The Bill cost and benefit models outlined in this Impact Assessment are based on the following assumptions:
- i) Unless clearly stated otherwise, we assume that the number of designation applications, consents, offences, etc will not in future deviate significantly from current trends.
 - ii) Organisations involved can continue to carry out administrative duties effectively.
 - iii) Staff costs are calculated using average salaries provided by DCMS and English Heritage HR teams, and include an additional 30% overhead (as recommended by guidance published by the Better Regulation Executive)
 - iv) Savings are expressed as negative costs in the tables of figures in this document.

Risks

57. The following risks associated with the introduction of the draft Bill have been identified:
- i) **Risk:** Increased interest in heritage issues resulting from publicity generated by the Bill could lead to increases in applications which deviate from current trends.
Mitigation: A public communications campaign; training and capacity building well in advance of implementation; English Heritage's Strategic Designation Programme.
 - ii) **Risk:** Changes from the long-standing status quo in heritage asset management may initially cause confusion among users and administrators which could result in delays to the start of any savings.
Mitigation: A public communications campaign; training and capacity building well in advance of implementation.

Other Specific Impact Tests

Equality Impact Test

58. An Equality Impact Assessment has been completed for the draft Bill and the White Paper and is attached at **Annex F**. It can also be found on the DCMS website's 'Working With Us' page:

http://www.culture.gov.uk/working_with_us/equality_diversity.htm

Human Rights

59. Legal analysis of the draft Heritage Protection Bill has identified that a number of its provisions engage rights under the European Convention on Human Rights. However, this analysis indicates that on balance, the provisions of the Bill are compatible with the Convention rights and the Minister in charge of the Bill has therefore signed a compatibility statement under section 19(1)(a) of the Human Rights Act 1998.
60. In addition, equality issues (age, gender, ethnicity, disability and religion) raised by the Bill have been explored and, as above, further details may be found at:

http://www.culture.gov.uk/working_with_us/equality_diversity.htm

Sustainable Development

61. DCMS and English Heritage remain strongly committed to the UK Sustainable Development Strategy. The provisions contained in the draft Heritage Protection Bill are in line with the guiding principles of this strategy. In terms of 'ensuring a strong, healthy and just society', the Bill will create a heritage protection system that enables the historic environment to be an asset that can engage, inform and inspire the public. The draft Bill can also be said to contribute to the 'promotion of good governance' – for example, through the lighter touch regulation for complex sites through HPAs, and the merging of CAC and Planning Permission to bring heritage conservation more into the fold of local authority planning and development decisions. In terms of 'achieving a sustainable economy', our heritage assets contribute to national and local economies (although this contribution is difficult to quantify), and they also contribute to the third sector economy by attracting huge numbers of volunteers to help with their maintenance and management each year (there were nearly half a million volunteers in the historic environment in 2005/6).

62. English Heritage will have more decision-making responsibilities transferred to them as a result of the Bill, and they will take on these new responsibilities in light of their own stated commitment to sustainable development. In their 2006 sustainable development strategy document they outline three main responsibilities. These are:
- i) To ensure that the historic environment is recognized as a finite and non-renewable environmental resource in its own right.
 - ii) To ensure that the value of the other environmental capital in the historic environment is not wasted.
 - iii) To ensure that their own activities, actions and advice are fully sustainable.

Competition Impact Test

63. The Bill will have little to no impact on competition. In line with guidance from the Office of Fair Trading, the impact of the Bill on competition has been assessed using four key questions from their 'Completing competition assessments in Impact Assessments' documents which can be found at:

http://www.offt.gov.uk/advice_and_resources/resource_base/guidelines/

Does the Bill:	Yes/No
1. Directly limit the number or range of suppliers? (The Bill contains changes to marine licensing provision however these are not licences to supply goods or services but licences for access to marine historic sites to undertake activities otherwise specifically prohibited by the Bill)	NO
2. Indirectly limit the number or range of suppliers?	NO
3. Limit the ability of suppliers to compete?	NO
4. Reduce suppliers' incentives to compete vigorously?	NO

Rural Proofing

64. The draft Bill will have little to no rural-specific impact. While the policy does rely on communicating information to clients, this is a continuation of the current position. In line with guidance from DEFRA, the impact of the Bill on rural affairs has been assessed using thirteen key questions from their 'Rural Proofing Checklist' webpage which can be found at:

<http://www.defra.gov.uk/rural/proofing/checklist.htm>.

Checklist:	Yes/No
1. Will the policy affect the availability of public and private services?	No
2. Is the policy to be delivered through existing service outlets, such as schools, banks and GP surgeries?	N/A
3. Will the cost of delivery be higher in rural areas where clients are more widely dispersed or economies of scale are harder to achieve?	No
4. Will the policy affect travel needs or the ease and cost of travel?	No
5. Does the policy rely on communicating information to clients?	Yes
6. Is the policy to be delivered by the private sector or through a public-private partnership	No
7. Does the policy rely on infrastructure (e.g. broadband ICT, main roads, utilities) for delivery?	No
8. Will the policy impact on rural businesses, including the self-employed?	No
9. Will the policy have a particular impact on land-based industries and, therefore, on rural economies and environments?	No
10. Will the policy affect those on low wages or in part-time or seasonal employment?	No
11. Is the policy to be targeted at the disadvantaged?	No
12. Will the policy rely on local institutions for delivery?	No
13. Does the policy depend on new buildings or development sites?	No

Overall Summary

Summary of Administrative Costs

Table 8

Stakeholder	One-off	Annual
DCMS	£12,065	£793,287
English Heritage	£1,678,276	£25,518
Local Authorities*	£minimal	-£506,000
HPAs (involve EH, LAs and Owners)**	£571,392	-£327,424
Private Sector	n/a	n/a
Voluntary Sector	n/a	n/a
TOTAL	£2,261,733	-£14,619

* Local authorities will be taking on several new responsibilities as a result of the Heritage Protection Bill. DCMS is committed to funding new burdens hence these are not reflected as administrative costs to local authorities in the above table. In addition, EH will invest in training and capacity building for local authorities to enable them to fulfil these responsibilities. The annual saving shown in the table represents an indicative annual saving arising from the merger of Conservation Area Consent with Planning Permission (see section 4).

** Although it is possible to estimate total costs/savings for HPAs, it is not possible to say with any accuracy who these cost/savings would fall to. For this reason, their costs remain unallocated in this table.

Summary Statement

65. In terms of costs, the main groups affected by the draft Heritage Protection Bill will be Government, English Heritage and local authorities. To some extent, amenity societies and owners/developers will also be affected but most of the new arrangements will be voluntary and will bring non-monetisable benefits that will outweigh any costs for both of those groups. DCMS and English Heritage are committed to meeting new burdens placed on local authorities, and the recent spending review settlement for English Heritage included a cumulative increase in funds of £11 million in total over the three-year period. The total cost of the changes effected by the draft

Bill, based on available estimates of monetisable costs, will be around £6.52 million over 5 years.

66. The draft Bill will also make changes to the heritage protection system that will bring monetisable savings to DCMS, English Heritage and other key groups. These savings are estimated to be about £4.80 million over 5 years. This means that the net monetisable cost is expected to be reasonably low at £1.72 million over 5 years.
67. Simply looking at the impact of this Bill in terms of monetised costs and benefits does not, however, capture its true benefits. The costs involved relate mainly to the administration and infrastructure costs for a more effective, more flexible and more inclusive heritage protection system. Once this system is in place, we can expect a return on this investment in the form of a better managed historic environment – the value of which is high but difficult to quantify. Heritage assets undoubtedly play an important role within the cultural, social and economic fabric of our society. Assessing the monetary value, however, has always presented a challenge. A research project, *Valuing Our Heritage*, currently being conducted in partnership with HM Treasury, is looking at ways to value heritage assets and the benefits of carrying out such valuations. We hope that the final report will be able to contribute to the debate on how best to assess the value of the historic environment.
68. Perhaps the best way to present the overall benefits of a thriving, well-managed and widely-enjoyed heritage sector is to consider how important buildings, archaeology, monuments, parks, gardens, battlefields, historic shipwrecks, etc are to individuals, local communities and the nation as a whole, both in themselves, and in how they shape the places where we live. The historic environment can contribute to contemporary life in delivering more attractive towns and cities; a prosperous and sustainable countryside; world-class tourist attractions (the UK has 25 world heritage sites)⁴; and communities that have a link to their past and a desire to preserve and sustain its heritage for the future. A reformed heritage protection system will help to ensure that the legacy of heritage assets that we have inherited is passed on for others to enjoy, and that information about these assets is widely available to the public at a local and national level. To borrow from the language of sustainable development, our heritage is a finite, non-renewable resource. The public value of an effective system of management and protection enabled by the draft Heritage Protection Bill will outweigh the monetisable costs associated with its implementation.

⁴ Source: www.unesco.org

Specific Impact Test: Checklist

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	n/a	n/a
Legal Aid	Yes (see Terrestrial Section 7)	No
Sustainable Development	Yes	No
Carbon Assessment	n/a	n/a
Other Environment	n/a	n/a
Health Impact Assessment	n/a	n/a
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	Yes	No

Annexes

- Annex A – Regulatory Impact Assessment for the Heritage Protection Reform White Paper
- Annex B – Detailed Costs for Listing and Scheduling Processes
- Annex C – Projected Costs for Appeals Panel
- Annex D – Projected Costs for HPAs
- Annex E – Projected Costs for new Marine Licensing System
- Annex F – Equality Impact Assessment

Annex A: Regulatory Impact Assessment - Heritage Protection Reform White Paper

Heritage Protection for the 21st Century: Regulatory Impact Assessment

Title of proposal

1. Reforming the heritage protection system in England and Wales.

Purpose and intended effect

Objectives

2. To update and improve the heritage protection system in England and Wales to produce:
 - a positive approach to managing the historic environment which will be transparent, inclusive, effective and sustainable and central to social, environmental and economic agendas at a local as well as national level;
 - a legislative framework that protects the historic environment but enables appropriate change.
3. To update and improve the UK-wide heritage protection system relating to the marine historic environment.

Background

4. The heritage protection system in England comprises the systems of listing buildings, scheduling ancient monuments, designating historic wrecks⁵ and registering historic parks, gardens and battlefields. The heritage protection system in Wales comprises the systems of listing buildings, scheduling ancient monuments, designating historic wrecks and registering parks, gardens and landscapes.
5. There are over half a million designated assets in England and around 35,000 in Wales, most of which are listed buildings. In addition to these formally designated assets, there are substantial numbers of historic assets that have been identified and recorded and which affect planning decisions.
6. The main pieces of heritage protection legislation are: the Ancient Monuments and Archaeological Areas Act 1979, a consolidation of measures to protect ancient monuments dating back to 1882; the Planning (Listed Buildings and Conservation Areas) Act 1990, which governs the listing of buildings of special architectural or historic interest; the Town and Country Planning Act 1990, which sets out the planning powers of local authorities and provides for guidance to be given by the Secretary of State; and the Protection of Wrecks Act 1973, covering the designation and protection of historic wrecks in UK territorial waters.
7. In England, Government policy on the historic environment in relation to the planning system is set out in Planning Policy Statements (PPS) and Planning Policy Guidance (PPG) notes, the most relevant of which are PPG 15 on the historic environment and PPG 16 on archaeology. In Wales, the Assembly Government's land use planning policies are contained in Planning Policy Wales and in associated circular guidance relating to planning and the historic environment: Welsh Office Circulars 61/96 and 1/98 on historic buildings and conservation areas and Circular 60/96 on archaeology.
8. Most change to historic assets is managed as part of the planning system. Policies for the protection of the historic environment are usually included in local planning documents. There are also a number of individual regulatory systems affecting particular types of historic asset. These include Listed Building Consent (LBC) for listed buildings, Scheduled Monument Consent (SMC) for scheduled ancient monuments and Conservation Area Consent (CAC) for Conservation Areas. LBC and CAC applications are determined by local planning authorities and by the Secretary of State for Communities and Local Government and the Welsh Assembly Government. In England SMC applications are determined by the Secretary of State for Culture, Media and Sport, and in Wales, the Welsh Assembly Government.

⁵ This is a UK-wide designation system. In this assessment we are referring to the design of a new UK-wide system to protect marine historic assets, not just those in England and Wales.

Consent applications per annum	England	Wales
LBC	32000	c1000
CAC	3400	c100
SMC	1000	100

9. There is also a system of licensing for various activities carried out within the restricted area around a designated wreck. There are approximately 60 licences given for the UK per annum for a range of activities ranging from visiting, survey to surface recovery and excavation. These are determined by the appropriate Minister depending on where in the UK the wreck site is located.
10. In addition to these consent systems, local planning authorities, the Secretary of State for Culture, Media and Sport and the Welsh Assembly Government have enforcement powers in relation to listed buildings. The Secretary of State for Culture, Media and Sport and the Welsh Assembly Government also have powers relating to the compulsory purchase of listed buildings and scheduled ancient monuments.
11. In England, the Government's statutory adviser on the historic environment is English Heritage. In addition to advising the Secretary of State for Culture, Media and Sport and the Secretary of State for Communities and Local Government, English Heritage works directly with local planning authorities on planning cases affecting designated historic assets. It also advises the Secretary of State for Environment, Food and Rural Affairs and works with Natural England on management of the historic environment outside the planning system, including through Environmental Stewardship schemes. Since 2002, English Heritage has also had responsibility for advising Government and other organisations (including licensing bodies, aggregate dredgers and developers) on issues and best practice relating to the marine historic environment within English territorial waters. There is no comparable body to English Heritage in Wales, although advice on proposals affecting the historic environment is provided by local planning authorities and the Welsh Assembly Government through its historic environment service, Cadw.

Rationale for government intervention

12. The UK Government and the Welsh Assembly Government have a direct role in regulating change to the historic environment and in setting the regulatory framework for local planning authorities.
13. There is broad consensus that current legislation and policy relating to the protection of the historic environment needs reform. In 2002, the

Department for Culture, Media and Sport (DCMS) held consultation seminars with over 100 stakeholders from the sector on the operation of the current heritage protection system. This consultation exercise identified four areas for improvement:

- **Simplifying** – the protection systems were felt to be too complex. New protections have been added in a piecemeal fashion. Few people have a grasp of all parts of the legislation. There are overlaps and inconsistencies in interpretation.
 - **Openness** – processes can be inaccessible. The reasons for designating a particular site or building are not always clear. There is insufficient encouragement to owners to feel involved. Restrictions are placed on owners of protected assets, which can sometimes serve to alienate them rather than to engage their enthusiasm for looking after their properties. Opportunities for positive dialogue, community involvement and good planning can be improved.
 - **Flexibility** – The present systems require individual designations for each structure and individual consents for each alteration. Where there are complex sites this can be laborious. There are lessons to be learnt from the more flexible regimes for managing the natural environment.
 - **Rigour** – England and Wales have a rich historic environment and significant individual assets to manage. The system must be robust enough to conserve the best and to continue to take on board changes in what people value without devaluing the currency.
14. Public consultation in 2003 confirmed these findings. Over 500 responses were received to *Protecting our Historic Environment: Making the System Work Better*. A parallel consultation in Wales, *Review of the Historic Environment in Wales*, generated 90 responses. The consultations in England and Wales indicated broad support for the following proposals for change:
- **Designation** - making the designation system more streamlined by unifying the currently separate systems of listing, scheduling and registering, and in England by transferring powers of designation to English Heritage. Making the system more understandable by improving the quality of designation information and publishing clear designation criteria. Making the system more open by introducing greater consultation and a right of appeal. Reviewing the issue of spot-listing in relation to development.
 - **Consents** – making the consents process more streamlined by unifying the separate systems of Scheduled Monument Consent and Listed Building Consent. Reviewing the current protection regimes for archaeological sites on land under cultivation and the link with

environmental management schemes. Reviewing the current protection regimes for locally designated historic assets, including the management of Conservation Areas.

- **Management** – encouraging the greater use of management agreements as an alternative to statutory consents.
- **Delivery** – considering the scope for more pooling of resources between local authorities, and introducing a new statutory requirement for local authorities to maintain access to Historic Environment Records to guide and inform decision making.

Consultation

Within Government

15. Key departments affected by these proposals have been consulted, including Communities and Local Government (CLG), the Department for Environment, Food and Rural Affairs, the Department of Transport, the Scottish Executive, and the Department of Environment Northern Ireland. Individual departments and agencies have also responded to the formal public consultation exercises that have been carried out at various stages of the project. The Welsh Assembly Government has been involved in the process throughout and has produced the Welsh chapter.
16. The proposals in this document have also been cleared with the Panel for Regulatory Accountability.

Public consultation

17. There has been extensive public consultation on these proposals in England and Wales.
 - In 2003, a public consultation was carried out on key proposals for change. Over 500 responses were received to this consultation. The same year, a separate consultation was carried out (in England) on Historic Environment Records and over 150 responses were received.
 - In 2004 further consultations were carried out on the protection of the marine historic environment (UK-wide) and the future of the ecclesiastical exemption (in England). Over 100 responses were received to each of these consultations.
 - In 2005 an England-only public consultation was carried out on proposed revisions to the principles of selection used when selecting buildings for

listing. Over 100 responses were received to this consultation. No comparable consultation occurred in Wales as that year saw the completion of the national listing resurvey.

18. In addition to these formal consultations, DCMS has taken part in a series of stakeholder seminars run by English Heritage that reached over 500 heritage sector professionals, including local authority representatives. The Culture, Media and Sport Committee also invited interested parties to comment on the proposed reform programme as part of its wide-ranging 2005/06 inquiry on *Protecting and Preserving our Heritage*. In Wales, the Welsh Assembly Government held a similar stakeholder seminar and consulted widely on its findings. The Assembly Culture Committee also considered the proposals at meetings in 2003 and November 2006.

Options

19. Three options have been considered as part of developing policy proposals for heritage protection reform:

Option 1 – Do nothing

20. The existing heritage protection system continues to operate. The risks attached to this option are set out in Section 2 (Rationale for Government intervention).

Option 2 – Reform of heritage protection policy without changes to primary legislation

21. Secondary legislation, combined with new planning policy, could be used to make substantial changes to the heritage protection system, including:
 - more rigorous selection criteria for historic assets in England;
 - improved designation documentation and better public access to this through the Heritage Gateway;
 - abolition of Class Consent No.1;
 - improved documentation relating to Scheduled Monument Consent (SMC);
 - improved documentation relating to the reporting of marine historic assets; and
 - refinement of the licensing system for designated wreck sites.
22. New planning policy could also be used to provide a clear, comprehensive Government statement on the purpose and operation of historic environment services nationally and locally. This would provide a helpful framework for future policy and debate.

Risks

23. Without changes to primary legislation, the heritage protection system remains fragmented. Current inconsistencies and overlaps are not addressed and the system becomes increasingly out of step with a renewed and reformed planning system based on the principles of sustainable development, community engagement and good regulatory practice. As a consequence, the priority given to historic environment issues at local level may decline. Without the impetus provided by changes to primary legislation, there is a risk of delay to the development of new planning policy.
24. Reform of the marine heritage protection system to enable protection to be given to a broader range of historic assets would not be possible without primary legislation.

Compliance and enforcement

25. Planning Policy Statements currently represent Government policy and Local Authority Development Plans must accord with these. Decisions should be made in accordance with these unless other material considerations indicate otherwise. Where policies are not complied with, local planning authorities and others may be subject to legal challenge. Revised policy would not introduce substantial new requirements on local planning authorities, owners, or heritage bodies and the costs of complying would be relatively low. Supported by focussed and user-friendly guidance from English Heritage and a well-resourced training programme, it would provide good incentives for compliance.

Unintended consequences

26. A failure to pursue changes to primary legislation, when these changes are strongly supported in public consultation, may encourage perceptions that the historic environment is not a priority for central Government.

Implementation and delivery

27. Planning policy is the responsibility of CLG and the Welsh Assembly Government. The forthcoming Planning White Paper will set out the Government's intentions for the future revision of planning policy in England.
28. English Heritage would be responsible for developing standards and guidance, and the delivery of capacity building programmes, in consultation with DCMS and CLG. DCMS and English Heritage would be responsible for

improvements to the designation and consent systems in England and the Welsh Assembly Government would have similar responsibilities in Wales. All of these measures could be introduced from 2010/11.

29. In England local planning authorities (LPAs) would be responsible for operating a new heritage protection system at local level, although changes made through secondary legislation and new planning policy would not substantially change their current responsibilities. Clear planning policy encompassing the whole historic environment is likely to be welcomed by LPAs and may improve implementation and delivery of services.

Option 3 – Reform of the policy and legislative framework for heritage protection

30. In addition to the secondary legislation and new planning policy discussed in Option 2, primary legislation would be required to make more radical changes to the heritage protection system, including:
 - a unified designation system based on harmonised definitions and selection criteria;
 - in England, transfer of responsibility for designation to English Heritage;
 - a new statutory appeal system relating to designation decisions;
 - interim protection for historic assets under consideration for designation;
 - a new designation system for marine historic assets;
 - a unified consents system for delivery by local planning authorities;
 - a new, flexible system of consents for designated marine historic assets;
 - merger of Conservation Area Consent (CAC) with planning permission;
 - Heritage Partnership Agreements (HPAs); and
 - a new statutory duty for local authorities to maintain or have access to a Historic Environment Record (HER).

Risks

31. Changes to primary legislation are likely to take some time. The earliest date for implementation of the new system would be 2010/11. While this timescale would enable central Government, local authorities and heritage organisations to prepare for changes to the system, there is a risk that the momentum for change would be lost.
32. While the benefits of reform are likely to outweigh the costs, transition to a new system will involve change for local authorities, central Government departments, heritage organisations, the Receiver of Wreck and users of the heritage protection system.

Compliance and enforcement

33. Legislative change would not introduce substantial new requirements on local planning authorities, owners, or heritage bodies, and the costs of complying would be relatively low. Enforcement mechanisms relating to heritage protection are well-established. Levels of compliance are likely to be high. New planning policy, supported by focussed and user-friendly guidance and a well-resourced capacity building programme would provide good incentives for compliance.

Unintended consequences

34. The new system may lead to a stronger focus at local level on statutory requirements, with a consequent reduction in the levels of time and resource devoted to non-statutory activities relating to the historic environment, such as research, education and community engagement.

Implementation and delivery

35. DCMS (in partnership with the devolved administrations) plans to bid for new heritage protection legislation at the earliest opportunity. If a bid for legislation in the 2008/09 session were to be successful, reforms would be implemented from 2010/11.
36. Following the Government of Wales Act 2006, a Heritage Protection Bill would aim to seek equivalent powers for Welsh Ministers to any that it conferred on the Secretary of State in England. These powers would need to be sufficiently flexible to enable the relevant Welsh Minister to exercise them differently, if appropriate, in the light of different circumstances in Wales.

37. It is also proposed that the forthcoming England and Wales Heritage Protection Bill may contain provisions conferring legislative competence on the National Assembly for Wales in respect of the core objectives of the Bill. This would enable the National Assembly to pass Assembly Measures in accordance with the Government of Wales Act 2006. Assembly procedures would specify any requirements for Regulatory Impact Assessments in respect of draft Measures brought forward in Wales.
38. DCMS would be responsible for securing funding to meet new burdens on local authorities arising from the legislation in England, coordinating contributions from other Departments, as appropriate. In Wales there should not be any additional costs for local authorities.
39. Planning policy is the responsibility of CLG and the Welsh Assembly Government. The forthcoming Planning White Paper will set out the Government's intentions for the future revision of planning policy in England.
40. English Heritage (in consultation with DCMS and CLG) would be responsible for promoting culture change in England, developing standards and guidance, and delivering capacity building programmes. In Wales this would be the responsibility of the Welsh Assembly Government.
41. Where possible, change would be embedded into wider Government policies and programmes, and could begin before 2010/11.

Benefits

42. In relation to the terrestrial heritage protection system, the benefits discussed below are for England and Wales; in relation to the marine heritage protection system they are UK-wide.

Option 1 – Do nothing

43. No additional benefits for central Government, English Heritage, LPAs, heritage organisations or customers other than maintenance of a heritage protection system that is well-established and understood in outline.

Option 2 – Reform of heritage protection policy without changes to primary legislation

44. This option would see a fine-tuning of the current heritage protection system, particularly in terms of its accessibility to the public and in the quality of documentation available to guide those responsible for managing historic assets, but would not otherwise deliver significant benefits.

Option 3 – Reform of the policy and legislative framework for heritage protection

45. For developers this option would deliver economic benefits by reducing the impact of late designations on large-scale development, and by providing improved access to information and advice about historic assets at the pre-application stage (through the Heritage Gateway and the Planning Portal).
46. It would also deliver operational benefits for LPAs through the merger of CAC (for which 3,400 applications were determined in 2005/06) and planning permission. Targeted use of HPAs would also deliver quantifiable net benefits for LPAs, with pilots in England indicating that these could range from time savings of three months over 39 months (Cornwall pilot) to reductions in the need for 10-12 consent applications p.a. (UEA pilot). Greater pre-application consideration of historic environment issues should also result in the receipt of better informed planning applications and reduce the need to seek advice from historic environment professionals once an application has been validated and is therefore subject to planning delivery targets.
47. Independent evaluation of the HPR pilot projects has identified improved designation documentation – and consequent improvements in shared understanding of historic assets – as one of the most important benefits of reforms. More effective stewardship of the historic environment would contribute to the wider UK commitment to sustainable development, ensuring that the nation's heritage is passed on to future generations without unnecessary change or loss. A more efficient, understandable and accessible heritage protection system will encourage greater public confidence in quality of decision-making and could reduce the number of appeals and / or enforcement actions. By encouraging more effective local stewardship of the urban and rural historic environment, it is likely that this option would also have a positive impact on amenity costs, including property values and regeneration potential.
48. It would also deliver clear benefits for sea-users by removing double handling in the licensing system relating to historic wrecks, and by introducing voluntary HPAs for marine historic assets (which could further reduce the need for individual licence applications and amendments).

49. For central Government this option would deliver economic benefits through the transfer of responsibility for the designation of historic assets to English Heritage and the devolution of monument consent to LPAs in England. There is no comparable proposal in Wales.

Costs

50. In relation to the terrestrial heritage protection system, the costs discussed below are for England and Wales; in relation to the marine heritage protection system they are UK-wide.

Option 1 – Do nothing

51. Not applicable.

Option 2 – Reform of heritage protection policy without changes to primary legislation

52. Revoking Class Consent No.1 without the availability of HPAs could lead to claims for compensation from affected farmers. The resulting increase in applications for 'heritage consent' could also impact adversely on the workload of rural LPAs in England. In practice, we would expect these costs to be mitigated by the availability of alternative management options such as Environmental Stewardship.

Option 3 – Reform of the policy and legislative framework for heritage protection

53. The devolution of responsibility for Scheduled Monument Consent to LPAs in England as part of a new unified 'Historic Asset Consent' (HAC) would result in costs totalling c£400,000 p.a. from 2010/11, assuming the use by LPAs of in-house and outsourced conservation and archaeological expertise and the continued provision of advice by English Heritage. There is no comparable proposal in Wales.
54. Future thematic reviews may raise the number of designated historic assets and lead to progressive increases in costs – for example, the current Government target is that the number of registered monuments will eventually rise to c30,000 in England, and in Wales the better known monuments will be scheduled, by 2010. However in England this may change following the definition of new selection criteria. Any increases would be phased over a number of years. In the event that HPAs cannot be agreed for archaeological sites under cultivation following the removal of Class Consent No.1, the number of HAC applications may also rise slightly in rural areas (see below).

55. In contrast, the merger of conservation area consent with planning permission would result in operational efficiencies for LPAs from 2010/11, but may increase the costs incurred by applicants through planning fees.
56. HPAs would be developed as a new management option for historic assets, but their uptake would be dependent on all parties (the owner, the LPA and English Heritage or the Welsh Assembly Government) agreeing this as the best way forward. Costs arising from their negotiation and monitoring would therefore not be considered a new burden. The exception would be in relation to scheduled monuments under cultivation and currently covered by Class Consent No.1. Following removal of this, it is estimated that negotiation of an additional 350 HPAs would be required in England, resulting in cumulative costs of c£80,000. In practice, we would expect these costs to be reduced due to the availability of alternative management options such as Environmental Stewardship. The latter is also applicable to Wales and it is anticipated that HPAs can be negotiated within existing budgets.
57. The number of HERs is expected to remain stable. Our expectation would be that self-imposed pressure on local authorities as a consequence of increased public access to their data services via the Heritage Gateway and the Planning Portal, together with their integration into ongoing programmes to implement local e-government, will stimulate improvement in HER provision and performance. Fees applicable to commercial use of HER resources would remain discretionary, as would the inclusion of information on marine historic assets in adjacent UK territorial waters.
58. Costs arising from reform of the marine heritage protection system are expected to be negligible.

Small Firms Impact Test

59. Small firms have been consulted on these proposals as part of wider consultation processes (see Section 3).
60. Representatives of the Country Land & Business Association and organisations involved in property investment, architecture and the delivery of sustainable communities have acted as members of the HPR Steering Committee.
61. The Institute of Field Archaeologists (IFA) and the Institute of Historic Building Conservation (IHBC) – the professional institutes whose members will often be responsible for the delivery of local archaeological and conservation services, either as part of a local authority unit or a commercial service provider – have also been closely involved in the preparation of these proposals.

62. Representatives of diving and salvage organisations, licensees and other sea-users were represented on the working groups convened as part of the marine review.
63. The recommendations in *Heritage Protection for the 21st Century* are unlikely to have a significant detrimental effect on small business. Small businesses are likely to benefit from a clearer designation process, from quicker decision times on designation cases, and from a clearer and more consistent heritage consent process. Potential implications for farmers are discussed, where appropriate, in Sections 5 & 6.

Competition assessment

64. The heritage protection system impacts directly on several markets – notably construction, but also farming and forestry. Within these sectors, we do not anticipate that particular types of firm will be disadvantaged by these proposals.

Enforcement, sanctions and monitoring

Enforcement

65. Options 1 and 2 would be enforced on the same basis as the current heritage protection system. Most enforcement powers rest with local authorities, although the Secretary of State, English Heritage and the Welsh Assembly Government also have powers in some areas. These include:
66. Enforcement Notices (in relation to listed buildings – by the local authority, the Secretary of State, English Heritage (in London) or the Welsh Assembly Government).
67. Compulsory Purchase Orders (in relation to listed buildings – by the local authority, the Secretary of State, English Heritage (in London) or the Welsh Assembly Government; in relation to scheduled ancient monuments – by the Secretary of State or the Welsh Assembly Government).
68. Urgent Works (in relation to listed buildings – by the local authority, the Secretary of State, English Heritage (in London) or the Welsh Assembly Government; in relation to scheduled ancient monuments – by the Secretary of State, English Heritage or the Welsh Assembly Government).
69. Enforcement of Option 3 would be based on revised primary legislation, but enforcement mechanisms would be broadly the same. The only significant change would be that enforcement relating to designated monuments in

England would pass from the Secretary of State for Culture, Media and Sport to local planning authorities as part of the unification of heritage protection systems governing buildings and monuments.

Sanctions

70. Under Options 1 and 2, sanctions relating to a variety of criminal offences would remain as set out in existing primary legislation. The principal offences in the existing primary legislation are summarised below.

Offence	Penalty
<ul style="list-style-type: none"> Executing or causing to be executed works for the demolition, alteration or extension of a listed building (or one subject to a BPN) in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised or failing to comply with any condition attached to LBC. 	<ul style="list-style-type: none"> On summary conviction a fine of up to £20,000 and/or imprisonment for up to 6 months, on conviction on indictment an unlimited fine and/or imprisonment for up to 2 years.
<ul style="list-style-type: none"> Breaching an enforcement notice. 	<ul style="list-style-type: none"> On summary conviction a fine of up to £20,000, on conviction on indictment an unlimited fine.
<ul style="list-style-type: none"> Causing damage to listed building. 	<ul style="list-style-type: none"> On summary conviction a fine of up to £1,000
<ul style="list-style-type: none"> Unauthorised demolition of a building in a conservation area or failure to comply with any condition attached to conservation area consent 	<ul style="list-style-type: none"> On summary conviction a fine of up to £20,000 and/or imprisonment for up to 6 months, on conviction on indictment an unlimited fine and/or imprisonment for up to 2 years.
<ul style="list-style-type: none"> Wilfully obstructing a person acting in the exercise of statutory powers to enter land and take steps specified in a listed building enforcement notice. 	<ul style="list-style-type: none"> On summary conviction a fine not exceeding £1,000
<ul style="list-style-type: none"> Issuing, with regards to an application for LBC, CAC or SMC or appeal in relation to LBC or CAC, a certificate as to the applicant's status etc which contains a statement that is known to be false or misleading in a material particular; or recklessly issuing a certificate which contains a statement that is known to be false or misleading in a material particular. 	<ul style="list-style-type: none"> On summary conviction a fine not exceeding £1,000
<ul style="list-style-type: none"> Executing works to a scheduled monument without authorisation or failing to comply with a condition attached to authorisation. 	<ul style="list-style-type: none"> On summary conviction a fine up to £5,000, unlimited fine on conviction on indictment.
<ul style="list-style-type: none"> Destroying or damaging a scheduled monument. 	<ul style="list-style-type: none"> On summary conviction a fine up to £5,000 and/or up to 6 months' imprisonment, on conviction on indictment an unlimited fine and/or imprisonment for up to 2 years.
<ul style="list-style-type: none"> Unauthorised use of a metal detector in a protected place. 	<ul style="list-style-type: none"> On summary conviction a fine up to £1,000
<ul style="list-style-type: none"> In relation to protected wrecks: <ul style="list-style-type: none"> – Otherwise than under authority of a 	<ul style="list-style-type: none"> On summary conviction a fine up to £5,000 On conviction on indictment, an unlimited fine

Impact Assessment

<p>licence granted by the Secretary of State to, a) tamper with a vessel b) carry out diving or salvage operations c) deposit anything which would damage the wreck or obscure access to it or to cause or permit such activities to take place.</p> <ul style="list-style-type: none"> - Entering a prohibited area without authority. - Obstructing someone carrying out salvage or diving operations with a licence. 	
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71. Under Option 3, these sanctions would be incorporated into new primary legislation.

Monitoring

72. The terrestrial heritage protection system is largely delivered by local planning authorities. This would remain the case under all three options.
73. Aspects of LPA performance in relation to the historic environment are monitored by the Audit Commission through the Best Value process. An indicator relating to Conservation Area Appraisals undertaken by local planning authorities is also being considered for inclusion in the Comprehensive Performance Assessment (CPA) in England.
74. A range of national and regional performance indicators relating to stewardship of the historic environment are collected annually in England by English Heritage and published in the *Heritage Counts* series. In Wales, the *Welsh Historic Environment – Position Statement 2006* will be published in Spring 2007.
75. The marine heritage protection system in the UK is monitored by the respective national heritage bodies. This arrangement would continue under all three options.

Inspections

76. No additional inspections are envisaged as part of any of the three options under consideration.

Reducing the burden of forms

77. Option 1 would maintain the current forms used within the heritage protection systems.

78. Options 2 would, in England, introduce a new standard application form for listing requests as a means of helping to speed up decision times. There is no comparable proposal in Wales.
79. Option 3 would remove the need in England for separate forms for LBC and SMC by combining the two consents, and potentially by including applications as part of the planning standard application form. It would also introduce a single designation application form in England. A new standard application form will also be introduced for the designation and associated licensing of activities on marine historic assets. In Wales, designation requests will be accepted through all modes of communication but no application form is considered necessary.
80. The new forms referred to in Options 2 & 3 would be designed to simplify the submission of necessary information. Where appropriate, they would also be made available for completion online.

Implementation and delivery plan

81. DCMS (in partnership with the devolved administrations) plans to bid for new heritage protection legislation at the earliest opportunity. If a bid for legislation in the 2008/09 session were to be successful, reforms would be implemented from 2010/11.
82. In advance of new legislation, or if new legislation is not sought, central Government, English Heritage and the Welsh Assembly Government will develop and publish guidance designed to help local authorities, owners / managers of historic assets, heritage organisations and other stakeholders prepare for the new system.

Post-implementation review

83. Implementation of a new heritage protection system in England will be monitored by English Heritage through its annual *Heritage Counts* publication.
84. In addition, English Heritage will define an outcomes framework for local authority historic environment services. Regular monitoring of associated indicators (pre- and post-implementation), together with consideration of priorities identified in individual local area agreements and local development frameworks, will help it to target support aimed at stimulating and sustaining improvements in local service delivery.
85. In Wales, it will be monitored by the Welsh Assembly Government through its annual *Welsh Historic Environment – Position Statement* reports.

Summary and recommendation

86. On the basis of the analysis in this RIA, the preferred option for reform of the heritage protection system in England and Wales is Option 3 – reform of the legislative framework for heritage protection.
87. Option 3 carries the highest costs, especially for English Heritage. In particular, there are costs associated with the training and capacity building needed to ensure familiarisation with a new heritage protection system. However, these costs are balanced against the substantial benefits for local stakeholders of a more inclusive and efficient approach to the designation and management of historic assets. In England, DCMS will meet the cost of any additional burdens to local authorities. In Wales, no additional costs are expected to be borne by local authorities. Any additional central Government costs will be met from existing budgets.
 - Option 1 – do nothing has been rejected on the basis of the drawbacks and inefficiencies of the current heritage protection system, alongside the clear appetite for change identified by extensive public consultation.
 - Option 2 – Reform of heritage protection policy without changes to legislation has also been rejected. This option carries considerable costs, especially for English Heritage in delivering change and for local planning authorities, customers and heritage organisations in terms of familiarisation with a new system. Despite these costs, it does not carry the substantial benefits in terms of a more efficient and understandable system, and subsequent improved decision-making and management, made possible through legislative reform.
88. Neither option 1 nor option 2 could deliver the necessary changes for an adequate UK-wide protection system for the marine environment.

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Annex B: Detailed Costs for Listing and Scheduling Processes

Costing the Listing Process at DCMS

Price:

Internal Costs – DCMS Salaries (£):

Payband	Annual Salary	Annual Salary (plus 30% overhead)	Hourly Rate	Daily Rate
Grade A	44,193	57,451	30.69	220.97
Grade B	29,918	38,893	20.78	149.59
Grade C	22,179	28,833	15.40	110.90
Grade D	18,063	23,482	12.54	90.32

Quantity:

Standard Cases:

- One standard case takes 2 hours of Grade C time
- 1219 standard cases from 1st April 2007 to 1st Jan 2008 = 1624 standard cases per year
- 1624 cases x 2 hours = 3248 hours pa spent on standard cases

Non-Standard Cases:

- One non-standard case takes 3 hours of Grade A time and 15 hours of Grade B time
- 155 non-standard cases from 1st April 2007 to 1st Jan 2008 = 206 non-standard cases per year (of which 97 require 1 hour of Ministerial time)
- 206 cases x 3 hours = 618 hours Grade A time pa spent on non-standard cases
- 206 cases x 15 hours = 3090 hours Grade B time pa spent on non-standard cases

Price x Quantity = Cost

£15.40 x 3248 hours = £50,019.20

£20.78 x 3090 hours = £64,210.20

£30.69 x 618 hours = £18,966.42

(£133,195.82)

TOTAL £133,000 pa

Costing the Scheduling and SMC Process at DCMS

Price:

Internal Costs – DCMS Salaries (£):

Payband	Annual Salary	Annual Salary (plus 30% overhead)	Hourly Rate	Daily Rate
Grade A	44,193	57,451	30.69	220.97
Grade B	29,918	38,893	20.78	149.59
Grade C	22,179	28,833	15.40	110.90
Grade D	18,063	23,482	12.54	90.32

Quantity:

Estimated number of hours staff spend on scheduling and SMC:

- 1 hour per week – Grade B
- 21.6 hours per week (3 days) – Grade C
- 36 hours per week (5 days) – Grade D (x2)

Price x Quantity = Cost

£12.54	x	3744 hours	=	£46,949.76
£15.40	x	1123 hours	=	£17,297.20
£20.78	x	52 hours	=	£1,080.56
				(£65,327.52)

TOTAL £65,000 pa

Annex C: Projected costs for Appeals Panel

Projected Costs for new Appeals Panel

Price:

Internal Costs – DCMS Salaries:

Payband	Annual Salary	Annual Salary (plus 30% overhead)	Hourly Rate	Daily Rate
Grade A	44,193	57,451	30.69	220.97
Grade B	29,918	38,893	20.78	149.59
Grade C	22,179	28,833	15.40	110.90
Grade D	18,063	23,482	12.54	90.32

Panel members' remuneration = £209 (daily expenses rate)

Quantity:

One-off Setup Costs:

- Producing Terms of Reference = 14.4 hours of Grade A time (£442)
28.8 hours of Grade B time (£598)
- Producing MoU = 36.0 hours of Grade C time (£554)
- Appointment of 10 Panel members and Secretary = 158.4 hours of 2 x Grade A time (£9723)
(2 days per appointment for reading papers, sifting, interviewing, etc)
- Drafting Member Post Specifications plus other admin = 36 hours of Grade B time (£748)

TOTAL ONE-OFF DCMS SETUP COSTS = £12,065

Operational Costs:**DCMS Staff:**

- Panel business and yearly review of Chair = 21.6 hours of Grade A time pa (£663)
21.6 hours of Grade B time pa (£449)

- **Total annual cost of DCMS staff time for Panel = £1112**

Panel Members expenses:**Standard Cases:**

- 7.2 hours per case
- 80 cases per year
- **Total annual cost of standard cases = £16,720**

Complex Cases:

- 14.4 hours per case
- 20 cases per year
- **Total annual cost of standard cases = £8,360**

TOTAL ANNUAL OPERATING COST OF PANEL TO DCMS = £26,192 pa

Annex D: Projected costs for HPAs

Projected Costs/Savings through HPAs

Price:

Salaries based on English Heritage Officer salary (payband B):

Payband	Annual Salary	Annual Salary (plus 30% overhead)	Hourly Rate	Daily Rate
BAND B	£37,205	£48,367	£25.84	£186.03

Quantity:

Base Case (using Cornish Bridges, Crosses and Milestones pilot HPA):

- Current processing time for each LBC and SMC application = 13 hours
- Average number of consent applications = 9 per year
- Average cost per year of processing LBC/SMC applications for one site = £3,023 pa

New Case:

One-off costs:

Getting an HPA approved and set up is estimated to take:

- EH professional = 15 days (108 hours)
- EH Admin = 2 days (14.4 hours)
- EH Architect = 2 days (14.4 hours)
- Local Authority Officer = 5 days (36hours)

TOTAL TIME = 24 days (172.8 hours) @ £25.84 per hour

TOTAL COST = £4464

Annual Costs/Savings:

- New processing time for LBC and SMC application under HPA = 2 hours
- Average number of consent applications = 9 per year
- Projected average cost per year of processing applications for an HPA site = £465 pa

(base case) – (new case) = estimated annual saving per year
£3,023 - £465 = £2,558

Estimated annual saving for one HPA site per year = £2,558

Table 1: Projected Cost/Savings for 1 HPA (based on Cornwall pilot data) over 5 years

	Year 1	Year 2	Year 3	Year 4	Year 5	
Cost	4464	0	0	0	0	
Saving	2558	2558	2558	2558	2558	
Annual Balance	-1906	2558	2558	2558	2558	
PV adjusted	-1906	2472	2388	2307	2229	7490

Number of sites that could potentially benefit from HPAs:

- 257 listed buildings sites in England where EH has been consulted 6 or more times over the last 3 years.
- All of these sites could potentially benefit from HPAs but for the purposes of this projected we will assume that uptake will be 50%.
- **Indicative uptake of HPAs = 128**

Final Costs/Saving:

- **Over 5 years, 128 HPAs would result in a net saving of £958,720 (128 x £7,490)**
- **One off costs of £571,392 to set up 128 HPAs would be set against a saving over 5 years of £1,530,112 (PV adjusted)**

Further information on the eight pilot schemes carried out by English Heritage can be found at:

http://www.culture.gov.uk/NR/rdonlyres/61156A1B-8BB7-47F8-AB26-F38BE44FB4EE/0/hrp_breport_eightpilotprojects.pdf

Annex E: Projected costs for new marine licensing system

Projected Costs for new Marine Licensing Process

Price:

Cost to applicant;

Costs for applicants to apply for licences are considered negligible as there is no fee. In addition, Licence Renewal forms remove unnecessary time burdens.

Costs to EH

These comprise the time taken from initial licence enquiry through to logging an approved licence. The formal steps include:

1. Discussion with applicant and providing supporting documentation
2. Logging application Admin Asst
3. Preparing & presenting licence recommendation to ACHWS
4. Preparing draft licence for DCMS Maritime Archaeologist
5. Logging authorised licence Admin Asst

Base case:

Total cost to EH of Visitor Licence = **£186.11** per case

Total cost to EH of Survey Licence = **£268.00** per case

Total cost to EH of Surface Recovery Licence = **£495.72** per case

Total cost to EH of Excavation Licence = **£455.11** per case

Current Average cost per licence = £351

New case:

For the future process, there will be a saving, as stage 3 will only be needed in complex cases and 4 will no longer be necessary.

Total cost to EH of Visitor Licence = **£110.19** per case

Total cost to EH of Survey Licence = **£181.53** per case

Total cost to EH of Surface Recovery Licence = **£410.25** per case

Total cost to EH of Excavation Licence = **£368.64** per case

Estimated new average cost per licence = £268

Quantity:

Since 2003, an average of 54 licences have been issued annually for English waters.

Base case:

$£351 \times 54 = £18,954$

New case:

$£268 \times 54 = £14,472$

Based on these assumptions, the new licensing system will save English Heritage **£4,482 pa.**

Annex F: Equality Impact Assessment

**WHITE PAPER: *HERITAGE PROTECTION
FOR THE 21ST CENTURY***

&

DRAFT HERITAGE PROTECTION BILL

EQUALITY IMPACT ASSESSMENT

April 2008

1. INTRODUCTION

This document is the Equality Impact Assessment for the White Paper: Heritage Protection for the 21st Century and the draft Heritage Protection Bill.

The assessment has been conducted in accordance with the Single Equality Scheme for the Department for Culture, Media and Sport (DCMS) and according to the specific guidance relating to Equality Impact Assessments. More information on the Scheme and on Equality Impact Assessments is available on the Department's website: www.culture.gov.uk.

2. POLICY

AIMS AND PROJECTED OUTCOMES OF THE POLICY

Aims

To update and improve the heritage protection system in England and Wales to produce:

- a positive approach to managing the historic environment which will be transparent, inclusive, effective and sustainable and central to social, environmental and economic agendas at a local as well as national level;
- a legislative framework that protects the historic environment but enables appropriate change.

To update and improve the UK-wide heritage protection system relating to the marine historic environment.

Background

The heritage protection system in England comprises the systems of listing buildings, scheduling ancient monuments, designating historic wrecks⁶ and registering historic parks, gardens and battlefields.

⁶ This is a UK-wide designation system. In this assessment we are referring to the design of a system to protect marine historic assets in England, Wales and Northern Ireland. The Scottish Government is pursuing its own approach to protecting marine historic assets in Scottish waters.

There are over half a million designated assets in England, most of which are listed buildings. In addition to these formally designated assets, there are substantial numbers of historic assets that have been identified and recorded and which affect planning decisions.

The main pieces of heritage protection legislation are: the Ancient Monuments and Archaeological Areas Act 1979 which provides for the scheduling of monuments on the basis of national importance; the Planning (Listed Buildings and Conservation Areas) Act 1990, which governs the listing of buildings of special architectural or historic interest; the Historic Buildings and Ancient Monuments Act 1953 which provides for the registration of gardens; and the Protection of Wrecks Act 1973, covering the designation and protection of historic wrecks in UK territorial waters.

In England, Government policy on the historic environment in relation to the planning system is set out in Planning Policy Statements (PPS) and Planning Policy Guidance (PPG) notes, the most relevant of which are PPG 15 on the historic environment and PPG16 on archaeology.

Most change to historic assets is managed as part of the planning system. Policies for the protection of the historic environment are usually included in local planning documents. There are also a number of individual regulatory systems affecting particular types of historic asset. At present, these include Listed Building Consent (LBC) for listed buildings, Scheduled Monument Consent (SMC) for scheduled ancient monuments and Conservation Area Consent (CAC) for Conservation Areas. LBC and CAC applications are determined by local planning authorities and by the Secretary of State for Communities and Local Government. In England SMC applications are currently determined by the Secretary of State for Culture, Media and Sport.

Consent applications per annum (approx)	England
LBC	32000
CAC	3400
SMC	1000

There is also a system of licensing for various activities carried out within the restricted area around a designated wreck. There are approximately 60 licences given for the UK per annum for a range of activities ranging from visiting, survey to surface recovery and excavation. These are determined by the appropriate Minister depending on where in the UK the wreck site is located.

In addition to these consent systems, local planning authorities and the Secretary of State for Culture, Media and Sport have enforcement powers in relation to listed buildings. The Secretary of State for Culture, Media and Sport also has powers relating to the compulsory purchase of listed buildings and scheduled ancient monuments.

In England, the Government's statutory adviser on the historic environment is English Heritage. In addition to advising the Secretary of State for Culture, Media and Sport and the Secretary of State for Communities and Local Government, English Heritage works directly with local planning authorities on planning cases affecting designated historic assets. It also advises the Secretary of State for Environment, Food and Rural Affairs and works with Natural England on management of the historic environment outside the planning system, including through Environmental Stewardship schemes. Since 2002, English Heritage has also had responsibility for advising Government and other organisations (including licensing bodies, aggregate dredgers and developers) on issues and best practice relating to the marine historic environment within English territorial waters.

Outcomes

The UK Government has a direct role in regulating change to the historic environment and in setting the regulatory framework for local planning authorities.

There is broad consensus that current legislation and policy relating to the protection of the historic environment needs reform. In 2002, the Department for Culture, Media and Sport (DCMS) held consultation seminars with over 100 stakeholders from the sector on the operation of the current heritage protection system. This consultation exercise identified four approaches to facilitate improvement:

- **Simplifying** – the protection systems were felt to be too complex. New protections had been added in a piecemeal fashion. Few people have a grasp of all parts of the legislation. There were overlaps and inconsistencies in interpretation.
- **Openness** – processes can be inaccessible. The reasons for designating a particular site or building were not always clear. There is insufficient encouragement to owners to feel involved. Restrictions are placed on owners of protected assets, which can sometimes serve to alienate them rather than to engage their enthusiasm for looking after their properties. Opportunities for positive dialogue, community involvement and good planning can be improved.
- **Flexibility** – The present systems require individual designations for each structure and individual consents for each alteration. Where there are complex sites this can be laborious. There are lessons to be learnt from the more flexible regimes for managing the natural environment.
- **Rigour** – England and Wales have a rich historic environment and significant individual assets to manage. The system must be robust enough to

conserve the best and to continue to take on board changes in what people value without devaluing the currency.

Public consultation in 2003 confirmed these findings. Over 500 responses were received to *Protecting our Historic Environment: Making the System Work Better*. The consultations indicated broad support for the following proposals for change:

- **Designation** - making the designation system more streamlined by unifying the currently separate systems of listing, scheduling and registering, and in England by transferring powers of designation of terrestrial assets to English Heritage. Making the system more understandable by improving the quality of designation information and publishing clear designation criteria. Making the system more open by introducing greater consultation and a right of appeal. Reviewing the issue of spot-listing in relation to development.
- **Consents** – making the consents process more streamlined by unifying the separate systems of Scheduled Monument Consent and Listed Building Consent. Reviewing the current protection regimes for archaeological sites on land under cultivation and the link with environmental management schemes. Reviewing the current protection regimes for locally designated historic assets, including the management of Conservation Areas.
- **Management** – encouraging the greater use of management agreements as an alternative to statutory consents.
- **Delivery** – considering the scope for more pooling of resources between local authorities, and introducing a new statutory requirement for local authorities to maintain access to Historic Environment Records to guide and inform decision making.

The conclusions set out in the decision paper *Review of heritage protection: the way forward* (June 2004), plus the responses to consultations on individual policy areas such as marine historic assets and the Ecclesiastical Exemption, in addition to workshops, working groups and pilot projects, informed the White Paper: *Heritage Protection for the 21st Century* (March 2007), which in turn, has formed the basis of the draft Heritage Protection Bill.

MEASURING SUCCESS OF THE REFORMS

Once new legislation has been enacted we will be able to start to measure the success of these reforms. This will be done through a range of measures.

English Heritage will have targets for how quickly historic assets are designated and how quickly consent applications are processed. These targets will be measured and reported on by English Heritage. English Heritage will also

monitor the system through their annual Heritage Counts publication. In addition, English Heritage will define an outcomes framework for local authority historic environment services. Regular monitoring of associated indicators (pre- and post-implementation), together with consideration of priorities identified in individual local area agreements and local development frameworks, will help it to target support aimed at stimulating and sustaining improvements in local service delivery.

WHAT INDIVIDUALS AND ORGANISATIONS ARE LIKELY TO HAVE AN INTEREST IN OR LIKELY TO BE AFFECTED BY THE POLICY?

The scope of this policy covers heritage organisations and heritage professionals, local authorities, national amenity societies (e.g., the Victorian Society, the Society for the Protection of Ancient Buildings), those involved in development and planning and members of the public. The devolved administrations have responsibility for heritage issues within their jurisdiction.

3. EVIDENCE

WHAT RELEVANT DATA HAS BEEN CONSIDERED?

In putting together this equality impact assessment we have drawn on data from a number of sources. We have looked at some general data on participation to gain an idea of the level of interest in the historic environment from all groups with a view to the implementation plan for new legislation. We have also looked at the responses to a number of consultations run prior to the publication of the White Paper, as well as the consultation responses to the White Paper itself. The evidence from these consultations was used to inform the policy decisions in the White Paper and, in turn, the contents of the draft Heritage Protection Bill and has been used in this Equality Impact Assessment (EIA) to indicate the impact these proposals may have on all sectors of the population.

Participation data

The 'Taking Part' survey was commissioned by the Department for Culture, Media and Sport and its partner Non-Departmental Public Bodies (NDPBs): Arts Council England, English Heritage, the Museums, Libraries and Archives Council, and Sport England⁷. The survey was launched in mid-July 2005 to look at participation in cultural and sporting activities, and is a continual national survey, running for three years in the first instance.

The survey compares take up in cultural and sporting activities by adults of different gender, different religion, different ethnicity, and different age, against take-up of all adults. It found that 70% of all adults attended a historic site in the

⁷ 'Taking Part: The National Survey of Culture, Leisure and Sport', Annual Report 2005/2006, DCMS and ONS, 10 May 2007.

last year. When this result is looked at in further detail there are significant variations between different groups.

- Gender: There was no difference in attendance between males and females.
- Age: The lowest levels of attendance were seen in age groups 75+ and 16-24. The highest levels of attendance were seen in age group 45-64. All age groups had attendance above 50%.
- Disability: Adults with limiting disability/illness had lower rates of attendance (59.5%) to those with a non-limiting disability/illness (77.3%) or no illness (72.3%).
- Ethnicity: Those who were white or from other ethnic backgrounds had the highest attendance 71.9% and 71.7% respectively. Those from mixed ethnic backgrounds had 55.4% attendance; those from Asian backgrounds had 48.3% attendance and those from Black backgrounds had 41.5% attendance.
- Religion: Those who registered as no religion or Christian had the highest attendance 71% and 70.9% respectively. Those who registered as Hindus had 53.1% attendance and those who registered as Muslim had 41.3% attendance.

These figures would indicate that heritage sector participation by those from BME groups, minority religious groups and those with a limiting disability or illness fall below that of the population as a whole. **This EIA is not directly concerned with participation in the heritage sector and the policy set out in *Heritage Protection for the 21st Century* and the draft Heritage Protection Bill is not designed to address this issue. However, these findings will be important when looking at how the changes stemming from any new legislation are communicated to all groups.**

Heritage Protection Reform Consultation

The DCMS consultation documents and resulting analysis documents used to inform the policy making in the White Paper are:

- *The Historic Environment: A Force for our Future*, December 2001.
- *Protecting our Historic Environment: Making the system work better*, July 2003.
- *The Future of the Ecclesiastical Exemption: A Consultation Paper for England*, February 2004
- *Protecting our Marine Historic Environment: Making the system work better*, March 2004.
- *Review of Heritage Protection: The Way Forward*, June 2004.
- *The Ecclesiastical Exemption: The Way Forward*, July 2005.

- *Revisions to the Principles of Selection for Listed Buildings: Planning Policy Guidance Note 15: Consultation document*, July 2005.
- *Implementing the Heritage Protection Review: Evaluating the impact on local delivery of historic environment services*, August 2005.
- *New principles of selection for listed buildings: an analysis of consultation responses*, March 2007.
- *Heritage Protection for the 21st Century*, White Paper, March 2007.
- *Heritage Protection for the 21st Century: Regulatory Impact Assessment*, March 2007.⁸

The consultation documents published prior to the White Paper concentrated on identifying the problems in the current heritage protection system and finding the best solutions to these problems. This was done through a mixture of formal written consultation and more informal workshops involving those that work in or use the current heritage protection system.

The findings of these consultations resulted in the proposals set out in *Heritage Protection for the 21st Century*, published in March 2007, which informed the contents of the draft Heritage Protection Bill. The reformed system that the legislation will put in place is designed to make the process of heritage protection simpler, clearer and more accessible for everyone.

Many of the responses to the consultations focused on specific and technical points of the heritage protection system. These are not relevant when looking at the accessibility of the policy.

For example, the consultation questions in *Review of Heritage Protection: The Way Forward*, published in June 2004 focused on the specific policy proposals and possible changes. The majority of responses were in favour of the proposals and no specific issues were raised in relation to equality implications. The responses to the consultation indicated that there was an appetite for a more open system with a clear route for appeals which was more locally focused. There was also clear support for greater consultation and advertising of designations and decisions this so it was easier for any interested party to be involved. The White Paper policy is designed to achieve this aim and will bring equal benefit to users of the system from all backgrounds.

⁸ All documents are published in full on the DCMS website, www.culture.gov.uk.

Ecclesiastical Exemption

This is the one area of the policy set out in the White Paper and contained in the draft Bill where certain groups of people, depending on their religion or belief, will be affected differently. The Ecclesiastical Exemption currently provides for certain religious denominations to be exempt from the requirement to obtain Listed Building Consent in respect of works to their churches on the basis that their internal control mechanisms impose a level of protection equivalent to that contained in the secular system.

DCMS consulted on the future of the Ecclesiastical Exemption in 2004 and published a summary of responses in *The Ecclesiastical Exemption: The Way Forward*, July 2005. 150 responses were received. This consultation focused on how the Exemption could be made to work better in the future, not on whether or not to retain the Exemption. There were no specific questions or comments on the fact that the Exemption currently only includes the major Christian denominations in England and Wales. There were 2 questions which looked at what denominations could be included. The questions and responses are replicated below:

- *Question 4: Do you agree that it would be sensible to treat Anglican cathedrals as a special group within the framework of the management agreement entered into with the Church of England?*
 - 109 respondents commented on this question. 80 (53% of all respondents, 73% of those who commented) agreed. 7 (5% of all respondents, 6% of those who commented) disagreed. 22 made comments that could not be taken as agreement or disagreement.
 - Key themes in consultation responses to this question were:
 - There is no strong case for treating cathedrals differently from other ecclesiastical or secular buildings.
 - If Anglican cathedrals are to be considered separately, Catholic Cathedrals should also be treated as a special group.⁹
- *Question 6: Do you agree that it would be appropriate to allow those denominations and faith groups which lost the right to exemption following the*

⁹ 'The Ecclesiastical Exemption: The Way Forward', July 2005, 17.

1994 Order to become entitled again to operate the exemption under management agreements entered into with the designated body?

- 106 respondents commented on this question. There were no responses from denominations or faith groups that do not currently operate an exemption. 74 respondents agreed with this proposal (70% of those that commented, 49% of all respondents). 14 disagreed (13% of those that commented, 9% of all respondents) 19 made other comments (18% of those that commented, 13% of all respondents).
- Key themes in consultation responses to this question were:
 - Respondents who were not in favour of retaining the Exemption were also not in favour of increasing its coverage to any extent.¹⁰

As a result of this consultation the White Paper proposes to continue the Ecclesiastical Exemption under the new system. It also states that 'the Exemption will not be extended to other ecclesiastical assets or denominations'.¹¹

The White Paper did not explicitly seek views on the Ecclesiastical Exemption. However, the Ecclesiastical Exemption was mentioned by 8% of all respondents to the consultation. 19% of the respondents who addressed this issue were in favour of retaining the Exemption as opposed to 23% who were in favour of abolishing the Exemption.

Although the proposal to retain the Ecclesiastical Exemption did not receive a majority of support amongst respondents to the White Paper who addressed this issue, we propose to provide for the continuation of the Ecclesiastical Exemption under the new heritage protection system as it reduces burdens on the planning system whilst maintaining protection and dealing appropriately with the needs of particular historic assets used as places of worship. Any system run by the exempt denominations will be required to have similar levels of consultation and engagement as the secular consent system in order for that denomination to continue to benefit from the Exemption. Accordingly, the draft Bill contains provisions to enable the Ecclesiastical Exemption to continue.

The Ecclesiastical Exemption is the policy area which will be examined in detail in this Equality Impact Assessment.

¹⁰ 'The Ecclesiastical Exemption: The Way Forward', July 2005, 17-18.

¹¹ 'Heritage Protection for the 21st Century', March 2007, 23.

IDENTIFYING DATA AND INFORMATION GAPS IN DATA

The White Paper and the draft Heritage Protection Bill set out the proposals for a new system of heritage protection that has yet to be put in place; we are therefore not in a position to obtain data on how these proposals will work in practice.

As part of the preparatory work to inform the White Paper and draft Bill, English Heritage has been running a series of pilot projects. These have focused mainly on the new Heritage Partnership Agreements. So far, the pilots have underlined the crucial role of good information in increasing understanding of a historic asset, in helping owners and managers to feel a sense of ownership and in informing decisions about change.

As these pilots produce further information we will ensure that it informs discussion on the draft Bill and any subsequent legislation and guidance.

COMMISSIONING RESEARCH

At present we are not considering commissioning further research on these proposals. The next steps are the publication of a draft Bill which will be subject to pre-legislative scrutiny. This process will inform the development of any future legislation..

We are seeking the earliest opportunity to introduce the Heritage Protection Bill. If were enacted, English Heritage or DCMS may consider commissioning some research to look at its impact.

4. ASSESSING THE IMPACT OF THE POLICY

IDENTIFYING THE POTENTIAL FOR DIFFERENTIAL / ADVERSE IMPACT

There is no evidence to indicate that the policies set out in *Heritage Protection for the 21st Century* and the draft Heritage Protection Bill will affect people differently according to any of the listed equality strands, with the exception of religion or belief, which is explored below.

Participation

There is evidence from the *Taking Part* survey that participation and relevance of the historic environment is lower among certain groups. This is not something which our policy is designed to address, and therefore has not been specifically looked at during the formation of the policy. As such, this issue falls outside the policy being considered in this EIA.

We will, however, look at the levels of participation of all groups when producing the guidance for the new heritage protection system to ensure that the system is accessible to all.

Religion

- a. The White Paper made the policy decision to continue the Ecclesiastical Exemption under the new system. It also stated that the Exemption would not be extended to other ecclesiastical assets or denominations. However, further consideration of this policy has led us to conclude that, in order for the draft Heritage Protection Bill to be compliant with Article 14 of the European Convention on Human Rights (which prohibits discrimination on the grounds of religion), as incorporated into domestic law by the Human Rights Act 1998 non-Christian denominations should be capable of benefiting from the Exemption.
- b. Secondary legislation accompanying the draft Bill will be used to limit the application of the Exemption initially to those denominations who currently benefit from it on the basis that their internal control mechanisms already meet the required standard but will be capable of amendment to enable other denominations who develop appropriate internal control mechanisms to be included at a later date upon application.
- c. **However, even with this extension of the Ecclesiastical Exemption can still be seen as generating a differential impact under equality of opportunity on the basis of religion. Accordingly, this EIA will consider the policy further.**

INTENTIONAL IMPACT

The Government is on record as saying that the Ecclesiastical Exemption works well in protecting our ecclesiastical assets. Internal denominational systems set

up under a Government-issued Code of Practice are considered to provide a sufficiently robust alternative to secular controls in managing the use and protection of these ecclesiastical assets. The operation of the Exemption has been subject to review, and will be reviewed again when the new provisions of the proposed Heritage Protection Bill have been successfully implemented. The Exemption is currently restricted to those denominations who have been considered to have internal heritage consent systems that provide a sufficiently robust alternative to Local Authority listed building controls. At present these are all Christian denominations. The draft Bill and supporting secondary legislation will enable non-Christian denominations – with internal heritage consent systems that provide a sufficiently robust alternative to Local Authority heritage asset controls – to be eligible to apply for inclusion in the Exemption.

If we were to change the policy to make all the exempt denominations apply to the local planning authorities for listed building consent (at present) and Historic Asset Consent (post enactment of a future Heritage Protection Bill), this would result in a significantly increased burden on local planning authorities.

5. CONSIDERING ALTERNATIVES

CHANGES TO THE POLICY TO REMOVE OR REDUCE THE POTENTIAL FOR DIFFERENTIAL / ADVERSE IMPACT

We have reviewed this policy, in light of the adverse impact on different religions and beliefs and to ensure that the Bill will be compliant with the European Convention on Human Rights, as incorporated into domestic law by the Human Rights Act 1998.. As set out above, the policy on the Ecclesiastical Exemption has been revised to ensure that the legislation will enable non Christian denominations to be capable of benefiting from the Exemption.

It is intended that secondary legislation will be used to limit the application of the Exemption initially to those denominations that currently benefit from it (although it will not rule out including other denominations that develop appropriate internal control mechanisms, to ensure the protection of their assets, becoming included at a later date). The Exemption will only apply to buildings primarily used as places of worship or those related to buildings whose primary use is as a place of worship (e.g. registered churchyard). **We believe that this modification of policy mitigates the adverse impact on the basis of religion and belief and therefore addresses the only equality impact concern in the policy set out in *Heritage Protection for the 21st Century*.**

6. CONSULTING FORMALLY

THE CONSULTATION PROCESS

We have not consulted formally on the most recent policy change as there will be a process for people to comment at a later date. Once the draft Bill is published there will be a period of pre-legislative scrutiny. Should the draft Bill progress to formal introduction it will enjoy the normal parliamentary process and will be debated by both Houses. We believe these measures will be sufficient to flag up any equality impact concerns that will need to be addressed in the final legislation.

7. ADOPTING THE POLICY

THE IMPACT ASSESSMENT PROCESS

Ecclesiastical Exemption

In considering the available evidence, it would seem that the policy set out in the White Paper regarding the Ecclesiastical Exemption did cause an adverse impact on those of different religions or beliefs. On this basis, and to ensure that the draft Heritage Protection Bill is compliant with the European Convention on Human Rights (as incorporated into domestic law by the Human Rights Act 1998), we have amended the policy in order to ensure that the Exemption will be open to all denominations so long as they can prove they have developed the appropriate internal control mechanisms to ensure that the historic assets are protected and managed to an appropriate standard. **In light of this amendment we do not believe the policy in the *Heritage Protection for the 21st Century White Paper* causes any adverse impact on any of the equality strands covered by this impact assessment.**

8. MONITORING ARRANGEMENTS

PILOTING THE POLICY

This is not applicable. The existing Ecclesiastical Exemption has been in place for a number of years.

MONITORING

Once the new legislation is in force English Heritage will monitor the new system to ensure it is fulfilling its aims of providing a simpler, more accessible heritage protection system. As part of this monitoring process the impact of the Ecclesiastical Exemption will be studied to ensure it does not impact adversely on any religious or faith group.



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