



Draft Heritage Protection Bill

**Presented to Parliament by the Secretary of State
for Culture, Media and Sport
By Command of Her Majesty**

April 2008

Cm 7349

£33.45

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A
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TO

Make provision about the protection of heritage.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

HERITAGE REGISTRATION

CHAPTER 1

THE HERITAGE REGISTERS FOR ENGLAND AND WALES: DUTY TO KEEP REGISTERS

1 The heritage registers for England and Wales: duty to keep registers

- (1) English Heritage must compile and keep up to date a register of the heritage assets in England (“the heritage register for England”).
- (2) The Welsh Ministers must compile and keep up to date a register of the heritage assets in Wales (“the heritage register for Wales”).
- (3) In this Act “heritage asset” means—
 - (a) a heritage structure as defined by section 2;
 - (b) a heritage open space as defined by section 3;
 - (c) a world heritage site as defined by section 45;
 - (d) a marine heritage site as defined by section 47.
- (4) References in subsections (1) and (2) to England and Wales include, in relation to a marine heritage site, English waters and Welsh waters.
- (5) In this Act—
 - “heritage authority” means—
 - (a) English Heritage; or
 - (b) the Welsh Ministers;
 - “heritage register” means—

- (a) in relation to English Heritage, the heritage register for England;
- (b) in relation to the Welsh Ministers, the heritage register for Wales.

CHAPTER 2

HERITAGE ASSETS ON LAND

Registrable heritage assets

2 Heritage structures

- (1) In this Act “heritage structure” means –
 - (a) a registrable structure in England which English Heritage considers to be of special historic, archaeological, architectural or artistic interest;
 - (b) a registrable structure in Wales which the Welsh Ministers consider to be of special historic, archaeological, architectural or artistic interest.
- (2) Each of the following (whether above or below the surface of the ground, and whether or not to any extent submerged) is a “registrable structure” for the purposes of this Act –
 - (a) a building or other structure;
 - (b) an earthwork, field system or other work;
 - (c) a part of a building or of any other structure, or of anything within paragraph (b);
 - (d) a cave or excavation;
 - (e) a site comprising the remains of anything within any of paragraphs (a) to (d);
 - (f) a site comprising, or comprising the remains of, the whole or part of a vehicle, vessel or aircraft;
 - (g) a site (other than one within paragraph (e) or (f)) comprising any thing or group of things that evidences previous human activity;
 - (h) a group of things each of which is within any of the preceding paragraphs, whether or not they are within the same paragraph.
- (3) For the purposes of subsection (1) a registrable structure is not to be treated as in England, or as in Wales, if any part of it is in English or Welsh waters (but this is subject to sections 71 and 72 (certain assets in intertidal zone)).
- (4) In this section –
 - “aircraft” means any machine capable of flight (whether or not propelled by mechanical means), including any description of balloon;
 - a “group” of things means any two or more of those things;
 - “remains” includes any sign of the previous existence of the thing in question;
 - “structure” includes machinery.

3 Heritage open spaces

- (1) In this Act “heritage open space” means –

- (a) a registrable open space in England which English Heritage considers to be of special historic, archaeological, architectural or artistic interest; or
 - (b) a registrable open space in Wales which the Welsh Ministers consider to be of special historic, archaeological, architectural or artistic interest.
- (2) In England, each of the following is a “registrable open space” for the purposes of this Act—
- (a) a garden or park;
 - (b) a battlefield;
 - (c) a part of anything within paragraph (a) or (b).
- (3) Any land in Wales is a “registrable open space” for the purposes of this Act.
- (4) For the purposes of subsection (3) “land”—
- (a) does not include land all of which is covered with water;
 - (b) includes land on which there are buildings or other registrable structures.
- (5) For the purposes of subsection (1) a registrable open space is not to be treated as in England, or as in Wales, if any part of it is in English or Welsh waters (but this is subject to section 72 (certain assets in intertidal zone)).

4 Special interest

- (1) In considering whether a registrable structure is of special interest, a heritage authority may take into account not only the registrable structure itself, but also—
- (a) any object or structure fixed to it;
 - (b) any respect in which it contributes to the interest of any group of registrable structures of which, in the opinion of the heritage authority, it forms part.
- (2) In considering whether a registrable open space is of special interest, a heritage authority may take into account not only the registrable open space itself, but also any respect in which it contributes to the interest of any group of registrable open spaces of which, in the opinion of the heritage authority, it forms part.
- (3) In subsections (1) and (2) “interest” means historic, archaeological, architectural or artistic interest.
- (4) A heritage authority must publish—
- (a) criteria by reference to which it will determine whether a registrable structure is of special historic, archaeological, architectural or artistic interest;
 - (b) criteria by reference to which it will determine whether a registrable open space is of special historic, archaeological, architectural or artistic interest.
- (5) Any criteria under subsection (4) may make different provision—
- (a) in relation to different kinds of registrable structure or registrable open space;
 - (b) in relation to special historic interest, special archaeological interest, special architectural interest and special artistic interest.

Compiling and amending heritage registers

5 Procedure for inclusion in register

- (1) A heritage authority must not –
 - (a) include a registrable structure in its heritage register as a registered heritage structure, or
 - (b) include a registrable open space in its heritage register as a registered heritage open space,unless consultation has been carried out and the inclusion is made in accordance with the requirements of sections 11 and 12(2) or (4).
- (2) Section 8 (meaning of “consultation”) applies for the purposes of this section.

6 Procedure for removal from register

- (1) A heritage authority must not remove from its heritage register any registered heritage structure or registered heritage open space unless –
 - (a) consultation has been carried out; and
 - (b) section 19 (timing of removal from register) is complied with.
- (2) Section 8 (meaning of “consultation”) applies for the purposes of this section.

7 Procedure for material amendment of register entry

- (1) This section applies in relation to the amendment by a heritage authority of an entry in its heritage register in respect of –
 - (a) a registered heritage structure; or
 - (b) a registered heritage open space.
- (2) A heritage authority must not make a material amendment of such an entry unless consultation has been carried out.
- (3) For the purposes of this section an amendment is “material” if –
 - (a) it alters the extent of the registered heritage structure or registered heritage open space as identified in the register; or
 - (b) the heritage authority considers that the amendment should not be made unless consultation has been carried out.
- (4) Any amendment that increases (within the meaning of section 85) the extent of a registered heritage structure or registered heritage open space must be made in accordance with the requirements of section 14 and 15(2) or (4).
- (5) In relation to an amendment that makes a relevant reduction (within the meaning of section 20(3) and (4)) in the extent of a registered heritage structure or registered open space, section 20 must be complied with.
- (6) Section 8 (meaning of “consultation”) applies for the purposes of this section.

8 Meaning of “consultation”

- (1) For the purposes of sections 5 to 7, consultation has been carried out if (and only if) the heritage authority has –
 - (a) invited written representations in accordance with the appropriate procedure; and

- (b) taken into account any representations received within the consultation period.
- (2) In relation to a proposal for –
 - (a) including a registrable structure in the register as a registered heritage structure,
 - (b) removing a registered heritage structure from the register, or
 - (c) amending an entry in the register in respect of a registered heritage structure,the “appropriate procedure” is the procedure in section 9.
- (3) In relation to a proposal for –
 - (a) including a registrable open space in the register as a registered heritage open space,
 - (b) removing a registered heritage open space from the register, or
 - (c) amending an entry in the register in respect of a registered heritage open space,the “appropriate procedure” is the procedure in section 10.
- (4) In this section “the consultation period” means the period specified under section 9(4) or 10(7).

9 Inviting representations: registrable structures

- (1) The procedure referred to in section 8(2) is as follows.
- (2) The heritage authority must invite written representations from the appropriate persons about the proposed inclusion, removal or amendment.
- (3) The appropriate persons are –
 - (a) each owner of, or of any part of, the structure concerned;
 - (b) any person who made a request under section 21 in respect of the structure concerned;
 - (c) the local planning authority;
 - (d) any national amenity society specified in an order made by the appropriate national authority for the purposes of this paragraph which has special knowledge of, or interest in, the structure concerned or registrable structures of its type; and
 - (e) any other person the heritage authority considers appropriate in view of that person’s special knowledge of, or interest in, the structure concerned or registrable structures of its type.
- (4) An invitation under subsection (2) must specify the period within which representations may be made, which must be at least 28 days beginning with the date of the invitation.
- (5) An invitation under subsection (2) which relates to a proposed inclusion in a heritage register must state that the structure concerned has been provisionally included in the register under section 11.
- (6) An invitation under subsection (2) which relates to a proposed amendment which would increase the extent of a registered heritage structure as identified in the register must state that the entry in respect of it has been provisionally amended under section 14.

- (7) In this section “the structure concerned” means the registrable structure which the heritage authority proposes to include in or remove from the register or whose entry it proposes to amend.

10 Inviting representations: registrable open spaces

- (1) The procedure referred to in section 8(3) is as follows.
- (2) The heritage authority must invite written representations from the appropriate persons about the proposed inclusion, removal or amendment.
- (3) The appropriate persons are –
- (a) each owner of, or of any part of, the open space concerned;
 - (b) any person who made a request under section 21 in respect of the open space concerned;
 - (c) the local planning authority;
 - (d) any national amenity society specified in an order made by the appropriate national authority for the purposes of this paragraph which has special knowledge of, or interest in, the open space concerned or registrable open spaces of its type; and
 - (e) any other person the heritage authority considers appropriate in view of that person’s special knowledge of, or interest in, the open space concerned or registrable open spaces of its type.
- (4) The heritage authority must also publish a notice inviting written representations about the proposed inclusion, removal or amendment.
- (5) A notice under subsection (4) must be published in a way prescribed by regulations made by the appropriate national authority.
- (6) Where the open space concerned is in Wales –
- (a) the reference in subsection (3)(a) to each owner of any part of it does not include, in the case of a proposed amendment, an owner of any part which is not affected by the amendment;
 - (b) subsection (3)(a) does not apply to any extent where the number of owners concerned makes it impracticable for the Welsh Ministers to invite written representations from each of them.
- (7) An invitation under subsection (2) and a notice under subsection (4) must specify the period within which representations may be made, which must be at least 28 days beginning with the date of the invitation or notice.
- (8) An invitation under subsection (2) and a notice under subsection (4) which relate to a proposed inclusion in a heritage register must state that the open space concerned has been provisionally included in the register under section 11.
- (9) An invitation under subsection (2) and a notice under subsection (4) which relate to a proposed amendment which would increase the extent of a registered heritage open space as identified in the register must state that the entry in respect of it has been provisionally amended under section 14.
- (10) In this section “the open space concerned” means the registrable open space which the heritage authority proposes to include in or remove from the register or whose entry it proposes to amend.

Provisional registration

11 Provisional registration

- (1) This section applies where a heritage authority decides to consult about the proposed inclusion in its heritage register –
 - (a) of a registrable structure as a registered heritage structure; or
 - (b) of a registrable open space as a registered heritage open space.
- (2) The heritage authority must, as soon as practicable after making that decision, provisionally include the registrable structure or registrable open space in its heritage register as a registered heritage structure or (as the case may be) registered heritage open space.
- (3) For the purposes of this section and section 12 a registrable structure or registrable open space is “provisionally” included in a heritage register as a registered heritage structure or registered heritage open space if –
 - (a) it is included in the register;
 - (b) the register states that it is a heritage structure or (as the case may be) heritage open space; and
 - (c) the register states that it is provisionally included.
- (4) In this section and section 12 “consult” means consult in accordance with section 8, and “consultation” is to be read accordingly.

12 End of provisional registration

- (1) This section applies where under section 11 a heritage authority has provisionally included a registrable structure or registrable open space (“the structure or open space concerned”) in its heritage register.
- (2) If following consultation the heritage authority decides that the structure or open space concerned should remain included in its heritage register, it must amend the register so that the inclusion of the structure or open space is no longer provisional.
- (3) If following consultation the heritage authority decides that the structure or open space concerned should not remain included in its heritage register, it must remove the structure or open space concerned from the register if and when –
 - (a) 28 days, beginning with the date the decision is made public, have expired without a relevant application being made; or
 - (b) where any relevant applications are made within those 28 days, all proceedings on them have concluded without the heritage authority’s decision being reversed.
- (4) If the heritage authority decides as mentioned in subsection (3) and its decision is reversed on a relevant application made within those 28 days, the action that it must take under section 28(8) or 31 is to amend the register so that the inclusion of the structure or open space concerned is no longer provisional.
- (5) For the purposes of this section –
 - (a) “included” means included as a registered heritage structure or (as the case may be) registered heritage open space, and “inclusion” is to be read accordingly;

- (b) the inclusion of a registrable structure or registrable open space in a heritage register is “provisional” if the register states that it is provisionally included.
- (6) In this section –
- (a) “relevant application” has the meaning given by section 13;
 - (b) references to a relevant application being “concluded” are to be read in accordance with that section.

13 “Relevant applications” for purposes of section 12

- (1) In section 12 a “relevant application” means –
- (a) where the heritage authority concerned is English Heritage, an application, or decision of the Secretary of State, under section 25(2);
 - (b) where the heritage authority concerned is the Welsh Ministers, an application under section 31(2).
- (2) For the purposes of section 12 –
- (a) proceedings on an application under section 25(2) are concluded when a determination is made under section 28 or the application is withdrawn;
 - (b) proceedings on a decision of the Secretary of State under section 25(2) to make a determination are concluded when the determination is made;
 - (c) proceedings on an application under section 31(2) are concluded when a decision is made on the review or the application is withdrawn.

Provisional amendment

14 Provisional amendment of entry in register

- (1) This section applies where –
- (a) a heritage authority decides to consult about the proposed amendment of an entry in its heritage register in respect of a registered heritage structure or registered heritage open space; and
 - (b) the amendment would increase (within the meaning of section 85) the extent of the registered heritage structure or registered heritage open space as identified in the register.
- (2) The heritage authority must, as soon as practicable after making that decision, provisionally amend the entry as proposed.
- (3) For the purposes of this section and section 15 an entry in a heritage register in respect of a registered heritage structure or registered heritage open space is “provisionally” amended if it is amended and the register –
- (a) states that the entry has been provisionally amended; and
 - (b) indicates the effect of the amendment.
- (4) In this section and sections 15 and 16 “consult” means consult in accordance with section 8, and “consultation” is to be read accordingly.

15 End of provisional amendment

- (1) This section applies where under section 14 a heritage authority has provisionally amended an entry in its heritage register.
- (2) If following consultation the heritage authority decides that the entry should continue to have effect subject to the amendment that it has provisionally made, it must amend the register so that the amendment is no longer provisional.
- (3) If following consultation the heritage authority decides that the entry should not continue to have effect subject to the amendment that it has provisionally made, it must amend the register, so that the entry has effect as it did before the provisional amendment, if and when—
 - (a) 28 days, beginning with the date the decision is made public, have expired without a relevant application being made; or
 - (b) where any relevant applications are made within those 28 days, all proceedings on them have concluded without the heritage authority’s decision being reversed.
- (4) If the heritage authority decides as mentioned in subsection (3) and its decision is reversed on a relevant application made within those 28 days, the action that it must take under section 28(8) or 31 is to amend the register so that the provisional amendment of the entry is no longer provisional.
- (5) For the purposes of this section and section 16—
 - (a) an amendment of an entry in a register is “provisional” if the register does as mentioned in section 14(3)(a) and (b);
 - (b) “relevant application” means—
 - (i) where the heritage authority concerned is English Heritage, an application, or decision of the Secretary of State, under section 25(4);
 - (ii) where the heritage authority concerned is the Welsh Ministers, an application under section 31(2).
- (6) For the purposes of this section and section 16—
 - (a) proceedings on an application under section 25(4) are concluded when a determination is made under section 28 or the application is withdrawn;
 - (b) proceedings on a decision of the Secretary of State under section 25(4) to make a determination are concluded when the determination is made;
 - (c) proceedings on an application under section 31(2) are concluded when a decision is made on the review or the application is withdrawn.

16 Amendments not to be provisionally made so far as they reduce extent

- (1) This section applies where the proposed amendment mentioned in section 14(1) would have both the following effects—
 - (a) the effect of including in the extent of the registered heritage structure or registered heritage open space any area or other thing not previously included in it;
 - (b) the effect of excluding from that extent any area or other thing previously included in it.

- (2) Where this section applies, sections 14 and 15 have effect with the following modifications.
- (3) The provisional amendment that the heritage authority must make under section 14(2) is the proposed amendment except so far as it has the effect mentioned in subsection (1)(b) above.
- (4) Section 15(2) has effect as if it provided that if, following consultation, the heritage authority decides that the entry should have effect subject to the amendment consulted on, it must –
 - (a) amend the register so that the amendment made by virtue of subsection (3) above is no longer provisional; and
 - (b) further amend the register, so that the entry has effect subject to the amendment consulted on, if and when –
 - (i) 28 days, beginning with the date the decision is made public, have expired without a relevant application being made; or
 - (ii) where any relevant applications are made within those 28 days, all proceedings on them have concluded without the heritage authority’s decision being reversed.
- (5) Section 15(3) and (4) have effect as if the reference in section 15(3) to the heritage authority deciding that the entry should not continue to have effect subject to the amendment that it has provisionally made were to the heritage authority deciding that the entry should not have effect subject to the amendment consulted on.
- (6) Section 15(4) also has effect as if the reference to amending the register so that the amendment is no longer provisional were to amending the register so that the entry has effect subject to the amendment consulted on.
- (7) Where this section applies in relation to the proposed amendment of an entry, sections 24(c) and 25(3) each have effect as if for the words “continue to have effect subject to that amendment” there were substituted “have effect subject to the amendment consulted on”.
- (8) In this section any reference to the extent of a registered heritage structure or registered heritage open space is to its extent as identified in the register.

Effect of provisional registration or amendment

17 Effect of provisional registration

- (1) Where (under any provision of this Act) a heritage authority provisionally includes a registrable structure or registrable open space in its heritage register, the registrable structure or registrable open space is to be regarded –
 - (a) during the period when it is provisionally included, as a registered heritage structure or (as the case may be) registered heritage open space; and
 - (b) after that period, as having been a registered heritage structure or (as the case may be) registered heritage open space during that period.
- (2) Subsection (1) is subject to the following provisions of this section.
- (3) Where at the end of the period mentioned in subsection (1) the registrable structure or registrable open space is removed from the register –

- (a) any heritage asset consent granted during that period on an application under this Act shall lapse;
 - (b) any proceedings on or arising out of an application for heritage asset consent made during that period shall lapse;
 - (c) any heritage asset enforcement notice issued during that period, and any proceedings on or arising out of such a notice, shall lapse; and
 - (d) no heritage asset enforcement notice may be issued in respect of any works carried out during that period.
- (4) But section 138(1) and (2) shall continue to have effect as respects –
- (a) any expenses incurred by the local planning authority, owner or occupier as mentioned in those subsections; and
 - (b) any sums paid on account of such expenses.
- (5) References in sections 6, 7, 19, 20, 21 and 72 to a registered heritage structure or registered heritage open space do not include one that is provisionally included in the register.

18 Effect of provisional amendment

- (1) Where (under any provision of this Act) a heritage authority provisionally amends an entry in its heritage register in respect of a registered heritage structure or registered heritage open space, the extent of that registered heritage structure or registered heritage open space is to be regarded –
- (a) during the period when the entry is provisionally amended, as being the extent indicated by the entry as so amended; and
 - (b) after that period, as having been that extent during that period.
- (2) Subsection (1) is subject to the following provisions of this section.
- (3) Where at the end of the period mentioned in subsection (1) the entry is amended so that it has effect as it did before the provisional amendment –
- (a) any heritage asset consent granted during that period on an application under this Act shall lapse, in so far as it relates to anything which is no longer included in the extent of the registered heritage structure or registered heritage open space (“the unregistered part”);
 - (b) any proceedings on or arising out of an application for heritage asset consent made during that period shall lapse, in so far as they relate to the unregistered part;
 - (c) any heritage asset enforcement notice issued during that period and any proceedings on or arising out of such a notice shall lapse, in so far as the notice or proceedings relate to the unregistered part; and
 - (d) no heritage asset enforcement notice may be served in respect of any works carried out to the unregistered part during that period.
- (4) But section 138(1) and (2) shall continue to have effect as respects –
- (a) any expenses incurred by the local planning authority, owner or occupier as mentioned in those subsections; and
 - (b) any sums paid on account of such expenses.

Timing of removal from register

19 Timing of removal from register

- (1) This section applies where a heritage authority decides following consultation to remove a registered heritage structure or registered heritage open space from its register.
- (2) The heritage authority must not remove that registered heritage structure or registered heritage open space from the register unless and until –
 - (a) 28 days, beginning with the date the decision to remove it is made public, have expired without a relevant application being made; or
 - (b) where any relevant applications are made within those 28 days, all proceedings on them have concluded without the heritage authority’s decision being reversed.
- (3) In this section –
 - (a) “consultation” means consultation carried out in accordance with section 8;
 - (b) “relevant application” has the meaning given by section 13;
 - (c) references to a relevant application being “concluded” are to be read in accordance with that section.

20 Timing of amendment reducing extent

- (1) This section applies where a heritage authority decides following consultation to make a relevant reduction in the extent of a registered heritage structure or registered heritage open space.
- (2) The heritage authority must not amend its heritage register to give effect to that decision unless and until –
 - (a) 28 days, beginning with the date the decision is made public, have expired without a relevant application being made; or
 - (b) where any relevant applications are made within those 28 days, all proceedings on them have concluded without the heritage authority’s decision being reversed.
- (3) Subject to subsection (4), a “relevant reduction” in the extent of a registered heritage structure or registered heritage open space means any amendment of the register which alters that extent so as to exclude any area or other thing previously included in it.
- (4) But an amendment is not a relevant reduction if another effect of the amendment is to include in the extent of the registered heritage structure or registered heritage open space any area or other thing previously not included in it.
- (5) In this section –
 - (a) “consultation” means consultation carried out in accordance with section 8;
 - (b) the “extent” of a registered heritage structure or registered heritage open space means its extent as identified in the register;
 - (c) “relevant application” has the meaning given by section 15(5)(b);
 - (d) references to a relevant application being “concluded” are to be read in accordance with section 15(6).

Requests for inclusion in or amendment of register

21 Request for inclusion in or amendment of register

- (1) Any person may request English Heritage –
 - (a) to include in the heritage register for England a registrable structure in England or registrable open space in England;
 - (b) to remove from that register a registered heritage structure or registered heritage open space; or
 - (c) to amend an entry in that register in respect of a registered heritage structure or registered heritage open space.
- (2) Any person may request the Welsh Ministers –
 - (a) to include in the heritage register for Wales a registrable structure in Wales or registrable open space in Wales;
 - (b) to remove from that register a registered heritage structure or registered heritage open space; or
 - (c) to amend an entry in that register in respect of a registered heritage structure or registered heritage open space.
- (3) A request under this section must be made in writing.
- (4) The appropriate national authority may by regulations require a request under this section to contain prescribed information.

22 Action by heritage authority following request

- (1) This section applies where a heritage authority receives a request under section 21.
- (2) The heritage authority must –
 - (a) consider the request; and
 - (b) carry out consultation in respect of the inclusion, removal or amendment proposed by the request, unless the heritage authority considers that there is a negligible likelihood of its deciding following consultation to implement the proposal.
- (3) Subsection (2)(b) does not apply where the request proposes an amendment of an entry which is not a material amendment.
- (4) This section does not affect any power of a heritage authority to consider on its own initiative whether anything should be included in or removed from its heritage register or any entry should be amended.
- (5) The following provisions apply for the purposes of this section –
 - (a) section 8 (meaning of “consultation”); and
 - (b) section 7(3) (meaning of “material amendment”).

23 Modification by heritage authority of inaccurate request

- (1) This section applies where a heritage authority receives a request under section 21 and considers that the proposal in the request is expressed in such a way as to be incapable of implementation.

- (2) The heritage authority may, for the purposes of section 22(2)(b), carry out consultation in respect of the proposal with such modifications as it considers necessary to make the proposal capable of being implemented.

Publicity for decision

24 Publicity for decision

A heritage authority must publicise any of the following decisions that it makes following consultation in accordance with section 8 –

- (a) a decision that a registrable structure or registrable open space which it has provisionally included in its heritage register under section 11 should, or should not, remain included in the register as a registered heritage structure or registered heritage open space;
- (b) a decision that a registered heritage structure or registered heritage open space not within paragraph (a) should, or should not, be removed from the register;
- (c) a decision that an entry in the register that it has provisionally amended under section 14 should, or should not, continue to have effect subject to that amendment;
- (d) a decision that an entry in the register not within paragraph (c) should, or should not, be amended.

Appeals: England

25 Application to Secretary of State following English Heritage decision

- (1) Subsection (2) applies where, following consultation, English Heritage decides –
- (a) that a registrable structure or registrable open space that it has provisionally included under section 11 in the heritage register for England should, or should not, remain included in the register; or
 - (b) that a registered heritage structure or registered heritage open space not within paragraph (a) should, or should not, be removed from the register.
- (2) Where this subsection applies –
- (a) any relevant person may apply to the Secretary of State for a determination of whether the registrable structure or registrable open space should be included in the heritage register for England; and
 - (b) (whether or not such an application is made) the Secretary of State may decide to make such a determination.
- (3) Subsection (4) applies where, following consultation, English Heritage decides –
- (a) that an entry in the heritage register for England that it has provisionally amended under section 14 should, or should not, continue to have effect subject to that amendment; or
 - (b) that an entry in the register not within paragraph (a) should, or should not, be amended.
- (4) Where this subsection applies –

- (a) any relevant person may apply to the Secretary of State for a determination of whether the entry should have effect subject to the amendment; and
 - (b) (whether or not such an application is made) the Secretary of State may decide to make such a determination.
- (5) In this section –
- “consultation” means consultation in accordance with section 8;
 - “included” means included as a registered heritage structure or (as the case may be) registered heritage open space;
 - “relevant person” has the meaning given by section 26.

26 Persons who may apply under section 25

- (1) In section 25 “relevant person” means –
- (a) any owner of, or of any part of, the structure or open space concerned;
 - (b) the local planning authority;
 - (c) any other person invited to make written representations under section 9(2) or 10(2);
 - (d) any person (not within any of paragraphs (a) to (c)) from whom English Heritage received written representations within the consultation period;
 - (e) any person who made a request under section 21(1) in respect of the structure or open space concerned; or
 - (f) any person to whom permission to make an application under this section is granted in accordance with regulations made by the Secretary of State for the purposes of this paragraph.
- (2) In this section “the structure or open space concerned” means the registrable structure or registrable open space mentioned in section 25(1)(a) or (b) or the registered heritage structure or registered heritage open space to which the entry mentioned in section 25(3)(a) or (b) relates.
- (3) In this section “the consultation period” means the period specified under section 9(4) or 10(7).

27 Time limits for applications under section 25, etc

- (1) An application or decision under section 25(2) or (4) must be made before the end of 28 days beginning with the date on which English Heritage’s decision is made public.
- (2) Subsection (1) does not apply where –
- (a) the Secretary of State considers that special circumstances apply; and
 - (b) no certificate has been issued under section 39 or 40.
- (3) The Secretary of State must publicise –
- (a) any application, or decision of the Secretary of State, under section 25(2) or (4);
 - (b) any withdrawal of such an application.
- (4) The Secretary of State may make regulations as to –
- (a) the form and content of applications under section 25;
 - (b) the way in which any such application must be made.

28 Determination of Secretary of State

- (1) Where the Secretary of State receives an application under section 25 for a determination, or decides under that section to make a determination, the Secretary of State must make the determination.
- (2) But the Secretary of State must not make a determination reversing English Heritage’s decision without having carried out consultation.
- (3) For the purposes of this section consultation has been carried out if (and only if) the Secretary of State has invited written representations in accordance with—
 - (a) the procedure in section 29 (where the determination relates to a registrable structure which is included in the register as a registered heritage structure), or
 - (b) the procedure in section 30 (where the determination relates to a registrable open space which is included in the register as a registered heritage open space),and has taken into account any representations received within the consultation period.
- (4) In making any determination under this section, the Secretary of State must have regard to whether the registrable structure or registrable open space in question is of special historic, archaeological, architectural or artistic interest.
- (5) In considering whether it is of such interest the Secretary of State—
 - (a) may take into account anything that under section 4(1) or (2) could be taken into account; and
 - (b) must have regard to the criteria published under section 4(4)(a) or 4(4)(b).
- (6) In making any determination under this section, the Secretary of State may also take advice from any person the Secretary of State considers appropriate.
- (7) The Secretary of State must publicise any determination under this section.
- (8) Where the Secretary of State makes a determination reversing English Heritage’s decision, English Heritage must make such amendment of the heritage register for England as is necessary to give effect to the Secretary of State’s determination.
- (9) Nothing in sections 5 to 7 (procedure for amendment of register) applies to any amendment of the register made under subsection (8) above.
- (10) The Secretary of State may make regulations about procedure in relation to the making of determinations under this section.
- (11) In this section “the consultation period” means the period specified under section 29(4) or 30(6).

29 Inviting representations: registrable structures

- (1) The procedure referred to in section 28(3)(a) is as follows.
- (2) The Secretary of State must invite written representations from the appropriate persons about the matter in question.
- (3) The appropriate persons are—

- (a) each owner of, or of any part of, the structure concerned;
 - (b) the local planning authority;
 - (c) English Heritage;
 - (d) any national amenity society specified in an order made by the Secretary of State for the purposes of this paragraph which has special knowledge of, or interest in, the structure concerned or registrable structures of its type; and
 - (e) any other person the Secretary of State considers appropriate in view of that person's special knowledge of, or interest in, the structure concerned or registrable structures of its type.
- (4) An invitation under subsection (2) must specify the period within which representations may be made, which must be at least 28 days beginning with the date of the invitation.
- (5) In this section “the structure concerned” means the registrable structure to which the Secretary of State's determination will relate.

30 Inviting representations: registrable open spaces

- (1) The procedure referred to in section 28(3)(b) is as follows.
- (2) The Secretary of State must invite written representations from the appropriate persons about the matter in question.
- (3) The appropriate persons are –
- (a) each owner of, or of any part of, the open space concerned;
 - (b) the local planning authority;
 - (c) English Heritage;
 - (d) any national amenity society specified in an order made by the Secretary of State for the purposes of this paragraph which has special knowledge of, or interest in, the open space concerned or registrable open spaces of its type; and
 - (e) any other person the Secretary of State considers appropriate in view of that person's special knowledge of, or interest in, the open space concerned or registrable open spaces of its type.
- (4) The Secretary of State must also publish a notice inviting written representations about the matter in question.
- (5) A notice under subsection (4) must be published in a way prescribed by regulations made by the Secretary of State.
- (6) An invitation under subsection (2) and a notice under subsection (4) must specify the period within which representations may be made, which must be at least 28 days beginning with the date of the invitation or notice.
- (7) In this section “the open space concerned” means the registrable open space to which the Secretary of State's determination will relate.

Appeals: Wales

31 Review of decisions about heritage register for Wales

- (1) This section applies in relation to any decision of the Welsh Ministers which the Welsh Ministers are required by section 24 to publicise.
- (2) Any relevant person may make an application to the Welsh Ministers requesting them to review their decision.
- (3) In this section “relevant person” means –
 - (a) any owner of, or of any part of, the registrable structure or registrable open space to which the decision relates;
 - (b) the local planning authority;
 - (c) any other person invited to make written representations under section 9(2) or 10(2);
 - (d) any person (not within any of paragraphs (a) to (c)) from whom the Welsh Ministers received written representations within the consultation period;
 - (e) any person who made a request under section 21(2) in respect of the registrable structure or registrable open space;
 - (f) any person to whom permission to make an application under this section is granted in accordance with regulations made by the Welsh Ministers for the purposes of this paragraph.
- (4) An application under this section must be made before the end of 28 days beginning with the date on which the decision mentioned in subsection (1) is made public.
- (5) Subsection (4) does not apply where –
 - (a) the Welsh Ministers consider that special circumstances apply; and
 - (b) no certificate has been issued under section 39 or 40.
- (6) On an application under this section, the Welsh Ministers –
 - (a) must carry out the review requested; and
 - (b) must make such amendment (if any) of the heritage register for Wales as they consider appropriate in consequence of the review;but this is subject to subsections (8) and (9).
- (7) For the purposes of making any decision on a review under this section, the Welsh Ministers may take advice from any person they consider appropriate.
- (8) In such circumstances as may be prescribed by regulations made by the Welsh Ministers, a review under this section shall be carried out by a person appointed by the Welsh Ministers instead of by the Welsh Ministers.
- (9) In such a case the Welsh Ministers must make such amendment (if any) of the heritage register for Wales as is necessary to give effect to that person’s decision on the review.
- (10) Nothing in sections 5 to 7 (procedure for amendment of register) applies to any amendment of the register made under subsection (6)(b) or (9) above.
- (11) The Welsh Ministers must publicise –
 - (a) any application under this section;
 - (b) decisions made on reviews under this section;

- (c) any withdrawal of an application under this section.
- (12) The Welsh Ministers may make regulations –
 - (a) as to the form and content of applications under this section and the way in which any such application must be made;
 - (b) about procedure in relation to reviews under this section.
- (13) In this section “the consultation period” means the period specified under section 9(4) or 10(7).

Ongoing effect of determination reversing English Heritage decision

32 English Heritage prevented from taking subsequent decisions on asset

- (1) This section applies to any registrable structure or registrable open space (whether registered or not) in respect of which the Secretary of State has at any time made a determination under section 28 reversing a decision of English Heritage.
- (2) But this section does not apply to such a registrable structure or registrable open space if a direction of the Secretary of State under section 38 has effect in respect of it.
- (3) In this section and sections 33 to 37, a registrable structure or registrable open space to which this section applies is referred to as “a section 32 asset”.
- (4) Except as permitted by subsection (5), English Heritage may not –
 - (a) include in, or remove from, the heritage register for England any section 32 asset; or
 - (b) amend any entry in that register in respect of a section 32 asset.
- (5) Subsection (4) does not prevent English Heritage from complying with section 28(8) or 34(8) or any direction under section 35 or 36.

33 Referral of questions to Secretary of State

- (1) Where a request is made to English Heritage under section 21 in respect of a section 32 asset, English Heritage must request the Secretary of State to determine (as the case may be) –
 - (a) whether English Heritage should include the asset in the heritage register for England as a registered heritage structure;
 - (b) whether it should include the asset in that register as a registered heritage open space;
 - (c) whether it should remove the asset from that register; or
 - (d) whether it should make the amendment proposed by the request under section 21.
- (2) English Heritage may on its own initiative request the Secretary of State, in relation to any section 32 asset, for a determination of –
 - (a) any question mentioned in subsection (2)(a) to (c); or
 - (b) whether an amendment proposed by English Heritage should be made of an entry in the register in respect of the asset.

34 Action by Secretary of State following referral

- (1) This section applies where the Secretary of State receives a request under section 33(1) or (2).
- (2) The Secretary of State must make the determination requested.
- (3) Before making the determination, the Secretary of State must carry out consultation in respect of the proposed inclusion, removal or amendment.
- (4) For the purposes of this section consultation has been carried out if (and only if) the Secretary of State has invited written representations in accordance with—
 - (a) the procedure in section 29 (where the determination relates to a registrable structure which is or is proposed to be included in the register as a registered heritage structure), or
 - (b) the procedure in section 30 (where the determination relates to a registrable open space which is or is proposed to be included in the register as a registered heritage open space),and has taken into account any representations received within the consultation period.
- (5) Subsection (3) does not apply if—
 - (a) the Secretary of State considers that there is a negligible likelihood that the Secretary of State will decide following consultation that the proposal should be implemented; or
 - (b) the proposal is for an amendment of an entry which is not a material amendment.
- (6) For the purposes of subsection (5) an amendment is “material” if—
 - (a) it alters the extent of the registered heritage structure or registered heritage open space as identified in the register; or
 - (b) the Secretary of State considers that the amendment should not be made unless consultation has been carried out.
- (7) Subsections (4) to (7) of section 28 apply also to a determination under this section.
- (8) English Heritage must make such amendment of the heritage register for England as is necessary to give effect to the Secretary of State’s determination.
- (9) Nothing in sections 5 to 7 (procedure for amendment of register) applies to any amendment of the register made under subsection (8) above.
- (10) In this section “the consultation period” means the period specified under section 29(4) or 30(6).

35 Provisional registration following referral under section 33

- (1) This section applies where the Secretary of State decides to consult about whether a section 32 asset should be included in the heritage register for England as a registered heritage structure or registered heritage open space.
- (2) The Secretary of State must, as soon as practicable after making that decision, direct English Heritage to include the asset provisionally in the register as a registered heritage structure or (as the case may be) registered heritage open space.

- (3) If following consultation the Secretary of State decides that the asset should remain included in the register, the Secretary of State must direct English Heritage to amend the register so that the inclusion of the asset is no longer provisional.
- (4) If following consultation the Secretary of State decides that the asset should not remain included in the register, the Secretary of State must direct English Heritage to remove the asset from the register.
- (5) In this section –
 - (a) “consult” means consult in accordance with section 34(4), and “consultation” is to be read accordingly;
 - (b) “included” means included as a registered heritage structure or (as the case may be) registered heritage open space, and “inclusion” is to be read accordingly; and
 - (c) any reference to provisional inclusion is to be read in accordance with section 12(5)(b).

36 Provisional amendment following referral under section 33

- (1) This section applies where –
 - (a) the Secretary of State decides to consult about a proposed amendment of an entry in the heritage register for England in respect of a section 32 asset; and
 - (b) the amendment would increase (within the meaning of section 85) the extent of the asset as identified in the register.
- (2) The Secretary of State must, as soon as practicable after making that decision, direct English Heritage to amend the entry, provisionally, as proposed.
- (3) If following consultation the Secretary of State decides that the entry should continue to have effect subject to the amendment provisionally made, the Secretary of State must direct English Heritage to amend the register so that the amendment is no longer provisional.
- (4) If following consultation the Secretary of State decides that the entry should not continue to have effect subject to the amendment provisionally made, the Secretary of State must direct English Heritage to amend the register so that the entry has effect as it did before the provisional amendment.
- (5) In this section –
 - (a) “consult” means consult in accordance with section 34(4), and “consultation” is to be read accordingly; and
 - (b) any reference to provisional amendment is to be read in accordance with section 15(5)(a).

37 Amendments not to be provisionally made so far as they reduce extent

- (1) This section applies where the proposed amendment mentioned in section 36(1) would have both the following effects –
 - (a) the effect of including in the extent of the section 32 asset any area or other thing not previously included in it;
 - (b) the effect of excluding from that extent any area or other thing previously included in it.

- (2) Where this section applies, section 36 has effect with the following modifications.
- (3) The provisional amendment that the Secretary of State must direct English Heritage to make under section 36(2) is the proposed amendment except so far as it has the effect mentioned in subsection (1)(b) above.
- (4) Section 36(3) has effect as if it provided that if, following consultation, the Secretary of State decides that the entry should have effect subject to the amendment consulted on, the Secretary of State must direct English Heritage to amend the register accordingly.
- (5) Section 36(4) has effect as if the reference in it to the Secretary of State deciding that the entry should not continue to have effect subject to the amendment provisionally made were to the Secretary of State deciding that the entry should not have effect subject to the amendment consulted on.
- (6) In this section any reference to the extent of a section 32 asset is to its extent as identified in the register.

38 Disapplication of section 32

- (1) The Secretary of State may direct English Heritage that section 32 no longer applies to a registrable structure or registrable open space falling within section 32(1).
- (2) The Secretary of State must publicise a direction under subsection (1).
- (3) A direction under subsection (1) ceases to have effect in respect of a registrable structure or registrable open space if a further determination under section 28 reversing a decision of English Heritage is made in respect of that structure or open space.

Certificate of no intention to register

39 Certificate of no intention to register: structures

- (1) A heritage authority may on the application of any person issue a certificate under this section in respect of any land.
- (2) A certificate under this section is a certificate stating that the heritage authority will not, at any time within five years beginning with the date on which the certificate is issued, include the land in question in its heritage register as a registered heritage structure or as part of a registered heritage structure.
- (3) In this section and sections 40 to 43 “land” includes a building or other structure, part of a building or other structure, and land covered with water.
- (4) A certificate issued under this section must clearly identify the extent of the land to which it relates (“the relevant land”).
- (5) Where a certificate has been issued under this section, the heritage authority must not, at any time within five years beginning with the date on which the certificate is issued, include in its heritage register as a registered heritage structure or as part of a registered heritage structure –
 - (a) the relevant land or any part of it; or
 - (b) anything beneath (or above) the relevant land.

- (6) But subsection (5)(b) does not have effect in relation to the relevant land if the certificate provides that it does not.

40 Certificate of no intention to register: open spaces

- (1) A heritage authority may on the application of any person issue a certificate under this section in respect of any land.
- (2) A certificate under this section is a certificate stating that the heritage authority will not, at any time within five years beginning with the date on which the certificate is issued, include the land in question in its heritage register as a registered heritage open space or as part of a registered heritage open space.
- (3) A certificate issued under this section must clearly identify the extent of the land to which it relates (“the relevant land”).
- (4) Where a certificate has been issued under this section, the heritage authority must not, at any time within five years beginning with the date on which the certificate is issued, include in its heritage register as a registered heritage open space or as part of a registered heritage open space –
 - (a) the relevant land or any part of it; or
 - (b) anything beneath (or above) the relevant land.
- (5) But subsection (4)(b) does not have effect in relation to the relevant land if the certificate provides that it does not.
- (6) In this section “land” has the meaning given by section 39(3).

41 Procedure for issue of certificate

- (1) An application under section 39 or 40 must be made in writing.
- (2) The appropriate national authority may by regulations require an application under section 39 or 40 to contain prescribed information.
- (3) A heritage authority must not issue a certificate under section 39 or 40 unless it has carried out consultation.
- (4) For the purposes of this section, consultation has been carried out if (and only if) the heritage authority has –
 - (a) invited written representations in accordance with the procedure in section 42; and
 - (b) taken into account any representations received within the consultation period.
- (5) In subsection (4) “the consultation period” means the period specified under section 42(7).
- (6) Identification of the extent of any land for the purposes of section 39(4) or 40(3) may (but does not have to be) by reference to a map or plan.

42 Inviting representations on proposed certificate

- (1) The procedure referred to in section 41(4) is as follows.
- (2) The heritage authority must invite written representations from the appropriate persons about the proposed issue of a certificate under section 39 or 40.

- (3) The appropriate persons are –
 - (a) each owner of, or of any part of, the land concerned;
 - (b) the local planning authority;
 - (c) any national amenity society specified in an order made by the appropriate national authority for the purposes of this paragraph which has special knowledge of, or interest in, the land concerned or land of its type; and
 - (d) any other person the heritage authority considers appropriate in view of that person’s special knowledge of, or interest in, the land concerned or land of its type.
- (4) The heritage authority must also publish a notice inviting written representations about the proposed issue of a certificate under section 39 or 40.
- (5) A notice under subsection (4) must be published in a way prescribed by regulations made by the appropriate national authority.
- (6) Subsection (3)(a) does not apply where the number of owners concerned makes it impracticable for the heritage authority to invite written representations from each of them.
- (7) An invitation under subsection (2) and a notice under subsection (4) must specify the period within which representations may be made, which must be at least 28 days beginning with the date of the invitation or notice.
- (8) In this section “the land concerned” means the land to which the certificate under section 39 or 40 would relate.

43 Restriction on issue of certificate where request for inclusion in register

- (1) Where a heritage authority receives a request under section 21(1)(a) or (2)(a) to include a registrable structure or registrable open space in its heritage register, it may not, unless and until condition A or condition B is met, issue a certificate under section 39 or 40 in respect of land which constitutes or comprises that registrable structure or registrable open space or any part of it.
- (2) Condition A is that the heritage authority (having decided under section 22(2)(b) not to carry out consultation in respect of the proposed inclusion) has informed the person who made the request that it has decided that the registrable structure or registrable open space should not be included in the register.
- (3) Condition B is that the heritage authority, having provisionally included the registrable structure or registrable open space in the register under section 11, has decided following consultation that it should not remain included, and –
 - (a) 28 days, beginning with the date that decision is made public, have expired without a relevant application being made; or
 - (b) where any relevant applications are made within those 28 days, all proceedings on them have concluded without the heritage authority’s decision being reversed.
- (4) In subsection (3) –
 - (a) “relevant application” has the meaning given by section 13;
 - (b) references to a relevant application being “concluded” are to be read in accordance with that section.
- (5) In this section “consultation” means consultation in accordance with section 8.

Relationship between requirements of Chapter 2 and general duty

44 Relationship between requirements of Chapter 2 and general duty

- (1) Section 1, so far as requiring English Heritage –
 - (a) to include and retain in the heritage register for England registrable structures and registrable open spaces which it considers to be of special historic, archaeological, architectural or artistic interest, and
 - (b) not to include or retain in that register registrable structures and registrable open spaces which it does not consider to be of special historic, archaeological, architectural or artistic interest,has effect subject to any relevant duty under this Chapter.
- (2) For the purposes of this section, a relevant duty under this Chapter is any duty of English Heritage arising from this Chapter –
 - (a) to include or retain in the heritage register for England a registrable structure or registrable open space which it does not consider to be of special historic, archaeological, architectural or artistic interest; or
 - (b) to remove from or not include in that register a registrable structure or registrable open space which it considers to be of special historic, archaeological, architectural or artistic interest.

CHAPTER 3

WORLD HERITAGE SITES

45 World heritage sites

- (1) In this Act “world heritage site” means any cultural heritage or natural heritage within the meaning of Articles 1 and 2 of the World Heritage Convention that has been included in the World Heritage List mentioned in Article 11 of that Convention.
- (2) In this section “World Heritage Convention” means the Convention concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation at Paris on 16 November 1972.

CHAPTER 4

MARINE HERITAGE ASSETS

Marine assets and marine heritage sites

46 Marine assets

- (1) Each of the following, or any combination of the following, is a “marine asset” for the purposes of this Act –
 - (a) a vessel, part of a vessel, or the remains of a vessel or of part of one;
 - (b) any registrable structure within section 2(2)(a), (b), (c) or (d);
 - (c) any vehicle, aircraft or other thing (not within paragraph (a)) which is such that a site comprising it would fall within section 2(2)(e), (f) or (g);

- (d) any object contained or formerly contained in a vessel, vehicle or aircraft.
- (2) In this section –
 - “aircraft” has the same meaning as in section 2;
 - “remains” has the same meaning as in that section.

47 Marine heritage sites

- (1) In this Act “marine heritage site” means –
 - (a) any site in English waters which English Heritage –
 - (i) has been directed by the Secretary of State under this Chapter to include in the heritage register for England; and
 - (ii) has not been so directed to remove from that register;
 - (b) any site in Welsh waters which the Welsh Ministers consider qualifies for registration.
- (2) A site in Welsh waters qualifies for registration if the Welsh Ministers consider that –
 - (a) the site comprises, or may comprise, a marine asset of special historic, archaeological, architectural or artistic interest; and
 - (b) it is appropriate for the site to be included in the heritage register for Wales as a registered marine heritage site.

48 Directions of Secretary of State in relation to heritage register for England

- (1) Where a site in English waters qualifies for registration, the Secretary of State must direct English Heritage, in accordance with this Chapter, to include the site in the heritage register for England as a registered marine heritage site.
- (2) A site in English waters qualifies for registration if the Secretary of State considers that –
 - (a) the site comprises, or may comprise, a marine asset of special historic, archaeological, architectural or artistic interest; and
 - (b) it is appropriate for the site to be included in the heritage register for England as a registered marine heritage site.
- (3) Where the Secretary of State considers that a registered marine heritage site no longer qualifies for registration, the Secretary of State must direct English Heritage to remove the site from the heritage register for England.
- (4) Where the Secretary of State considers that an entry in the heritage register for England in respect of a registered marine heritage site requires amendment, the Secretary of State must direct English Heritage, in accordance with this Chapter, to make that amendment.

49 Special interest

- (1) A marine registration authority must publish criteria by reference to which it will determine whether a marine asset is of special historic, archaeological, architectural or artistic interest.
- (2) Any criteria under subsection (1) may make different provision –
 - (a) in relation to different kinds of marine asset;

- (b) in relation to special historic interest, special archaeological interest, special architectural interest and special artistic interest.
- (3) In this Act “marine registration authority” means –
 - (a) in relation to a site in English waters, the Secretary of State;
 - (b) in relation to a site in Welsh waters, the Welsh Ministers.

Compiling and amending heritage registers

50 Procedure for inclusion in register

- (1) The Secretary of State must not direct English Heritage to include a site in English waters in the heritage register for England as a registered marine heritage site unless –
 - (a) the Secretary of State does so in accordance with sections 55 and 56(2); and
 - (b) consultation has been carried out.
- (2) The Welsh Ministers must not include a site in Welsh waters in the heritage register for Wales as a registered marine heritage site unless –
 - (a) the inclusion is made in accordance with the requirements of section 60 and 61(2); and
 - (b) consultation has been carried out.
- (3) Section 53 (meaning of “consultation”) applies for the purposes of this section.

51 Procedure for removal from register

- (1) The Secretary of State must not direct English Heritage to remove a registered marine heritage site from the heritage register for England unless consultation has been carried out.
- (2) The Welsh Ministers must not remove a registered marine heritage site from the heritage register for Wales unless consultation has been carried out.
- (3) Section 53 (meaning of “consultation”) applies for the purposes of this section.

52 Procedure for material amendment of register entry

- (1) The Secretary of State must not direct English Heritage to make a material amendment of an entry in the heritage register for England in respect of a registered marine heritage site unless –
 - (a) consultation has been carried out; and
 - (b) in the case of an amendment which increases (within the meaning of section 85) the extent of a registered marine heritage site, the amendment is made in accordance with the requirements of sections 57 and 58(2).
- (2) The Welsh Ministers must not make a material amendment of an entry in the heritage register for Wales in respect of a registered marine heritage site unless –
 - (a) consultation has been carried out; and
 - (b) in the case of an amendment which increases (within the meaning of section 85) the extent of a registered marine heritage site, the

amendment is made in accordance with the requirements of sections 62 and 63(2).

- (3) For the purposes of this section an amendment is “material” if –
 - (a) it alters the extent of the registered marine heritage site as identified in the register; or
 - (b) the marine registration authority considers that the amendment should not be made unless consultation has been carried out.
- (4) Section 53 (meaning of “consultation”) applies for the purposes of this section.

53 Meaning of “consultation”

- (1) For the purposes of sections 50 to 52, consultation has been carried out if (and only if) the marine registration authority has –
 - (a) invited representations in accordance with the procedure in section 54; and
 - (b) taken into account any representations received during the consultation period.
- (2) In this section “the consultation period” means the period specified under section 54(6).

54 Inviting representations

- (1) The procedure referred to in section 53(1) is as follows.
- (2) The marine registration authority must invite written representations from the appropriate persons about the proposed inclusion, removal or amendment.
- (3) The appropriate persons are –
 - (a) in relation to a site in English waters, the persons mentioned in Part 1 of Schedule 1;
 - (b) in relation to a site in Welsh waters, the persons mentioned in Part 2 of Schedule 1.
- (4) The marine registration authority must also publish a notice inviting written representations about the proposed inclusion, removal or amendment.
- (5) A notice under subsection (4) must be published in a way prescribed by regulations made by –
 - (a) the Secretary of State (where the site is in English waters); or
 - (b) the Welsh Ministers (where the site is in Welsh waters).
- (6) An invitation under subsection (2) and a notice under subsection (4) must specify the period within which representations may be made.
- (7) An invitation under subsection (2) and a notice under subsection (4) which relate to a proposed inclusion in a heritage register must state that the site has been provisionally included in the register under section 55 or, as the case may be, under section 60.
- (8) An invitation under subsection (2) and a notice under subsection (4) relating to a proposed amendment which would increase the extent of a site as identified in the register must state that the entry in respect of the site has been provisionally amended under section 57 or, as the case may be, under section 62.

- (9) The Secretary of State may by order amend Part 1 of Schedule 1.
- (10) The Welsh Ministers may by order amend Part 2 of Schedule 1.

Provisional registration: sites in English waters

55 Provisional registration

- (1) This section applies where the Secretary of State decides to consult about the proposed inclusion of a site in English waters, as a registered marine heritage site, in the heritage register for England.
- (2) The Secretary of State must, as soon as practicable after making that decision, direct English Heritage to—
 - (a) include the site provisionally in the heritage register for England as a registered marine heritage site; and
 - (b) retain the site in the register unless directed under this Chapter to remove it.
- (3) The direction must specify the extent of the site by reference to the World Geodetic System 1984.
- (4) That extent must be the extent that the Secretary of State considers necessary for the protection of the marine asset.
- (5) For the purposes of this section and section 56 a site in English waters is “provisionally” included in the heritage register for England as a registered marine heritage site if—
 - (a) it is included in the register;
 - (b) the register states that it is a marine heritage site; and
 - (c) the register states that it is provisionally included.
- (6) In this section and section 56 “consult” means consult in accordance with section 53, and “consultation” is to be read accordingly.

56 End of provisional registration

- (1) This section applies where, in compliance with a direction under section 55, English Heritage has provisionally included a site in English waters in the heritage register for England.
- (2) If following consultation the Secretary of State decides that the site qualifies for registration, the Secretary of State must direct English Heritage to amend the register so that the inclusion of the site as a registered marine heritage site is no longer provisional.
- (3) If following consultation the Secretary of State decides that the site does not qualify for registration, the Secretary of State must direct English Heritage to remove the site from the register.
- (4) For the purposes of this section—
 - (a) the inclusion of a site in English waters in the heritage register for England is “provisional” if the register states that it is provisionally included;
 - (b) references to a site qualifying or not qualifying for registration are to be read in accordance with section 48(2).

Provisional amendment: sites in English waters

57 Provisional amendment of entry in register

- (1) This section applies where—
 - (a) the Secretary of State decides to consult about the proposed amendment of an entry in the heritage register for England in respect of a registered marine heritage site; and
 - (b) the amendment would increase (within the meaning of section 85) the extent of the site as identified in the register.
- (2) The Secretary of State must, as soon as practicable after making that decision, direct English Heritage to amend the entry, provisionally, as proposed.
- (3) For the purposes of this section and section 58 an entry in the heritage register for England in respect of a registered marine heritage site is “provisionally” amended if it is amended and the register—
 - (a) states that the entry has been provisionally amended; and
 - (b) indicates the effect of the amendment.
- (4) In this section and sections 58 and 59 “consult” means consult in accordance with section 53, and “consultation” is to be read accordingly.

58 End of provisional amendment

- (1) This section applies where, in compliance with a direction under section 57, English Heritage has provisionally amended an entry in the heritage register for England.
- (2) If following consultation the Secretary of State decides that the entry should continue to have effect subject to the amendment provisionally made, the Secretary of State must direct English Heritage to amend the register so that the amendment is no longer provisional.
- (3) If following consultation the Secretary of State decides that the entry should not continue to have effect subject to the amendment provisionally made, the Secretary of State must direct English Heritage to amend the register so that the entry has effect as it did before the provisional amendment.
- (4) For the purposes of this section and section 59 an amendment of an entry in the register is “provisional” if the register does as mentioned in section 57(3).

59 Amendments not to be provisionally made so far as they reduce extent

- (1) This section applies where the proposed amendment mentioned in section 57(1) would have both the following effects—
 - (a) the effect of including in the extent of the registered marine heritage site any area or other thing not previously included in it;
 - (b) the effect of excluding from that extent any area or other thing previously included in it.
- (2) Where this section applies, sections 57 and 58 have effect with the following modifications.

- (3) The provisional amendment that the Secretary of State must direct English Heritage to make under section 57(2) is the proposed amendment except so far as it has the effect mentioned in subsection (1)(b) above.
- (4) Section 58(2) has effect as if it provided that if, following consultation, the Secretary of State decides that the entry should have effect subject to the amendment consulted on, the Secretary of State must direct English Heritage to amend the register accordingly.
- (5) Section 58(3) has effect as if the reference in it to the Secretary of State deciding that the entry should not continue to have effect subject to the amendment that it has provisionally made were to the Secretary of State deciding that the entry should not have effect subject to the amendment consulted on.
- (6) In this section any reference to the extent of a registered marine heritage site is to its extent as identified in the register.

Provisional registration: sites in Welsh waters

60 Provisional registration

- (1) This section applies where the Welsh Ministers decide to consult about the proposed inclusion of a site in Welsh waters, as a registered marine heritage site, in the heritage register for Wales.
- (2) The Welsh Ministers must, as soon as reasonably practicable after making that decision, provisionally include the site in the heritage register for Wales as a registered marine heritage site.
- (3) For the purposes of this section and section 61 a site in Welsh waters is “provisionally” included in the heritage register for Wales as a registered marine heritage site if—
 - (a) it is included in the register;
 - (b) the register states that it is a marine heritage site; and
 - (c) the register states that it is provisionally included.
- (4) In this section and section 61 “consult” means consult in accordance with section 53, and “consultation” is to be read accordingly.

61 End of provisional registration

- (1) This section applies where under section 60 the Welsh Ministers have provisionally included a site in Welsh waters in the heritage register for Wales.
- (2) If following consultation the Welsh Ministers decide that the site qualifies for registration, the Welsh Ministers must amend the register so that the inclusion of the site as a registered marine heritage site is no longer provisional.
- (3) If following consultation the Welsh Ministers decide that the site does not qualify for registration, the Welsh Ministers must remove the site from the register.
- (4) For the purposes of this section—
 - (a) the inclusion of a site in Welsh waters in the heritage register for Wales is “provisional” if the register states that it is provisionally included;

- (b) references to a site qualifying or not qualifying for registration are to be read in accordance with section 47(2).

Provisional amendment: sites in Welsh waters

62 Provisional amendment of entry in register

- (1) This section applies where –
- (a) the Welsh Ministers decide to consult about the proposed amendment of an entry in the heritage register for Wales in respect of a registered marine heritage site; and
 - (b) the amendment would increase (within the meaning of section 85) the extent of the site as identified in the register.
- (2) The Welsh Ministers must, as soon as practicable after making that decision, provisionally amend the entry as proposed.
- (3) For the purposes of this section and section 63 an entry in the heritage register for Wales in respect of a registered marine heritage site is “provisionally” amended if it is amended and the register –
- (a) states that the entry has been provisionally amended; and
 - (b) indicates the effect of the amendment.
- (4) In this section and sections 63 and 64 “consult” means consult in accordance with section 53, and “consultation” is to be read accordingly.

63 End of provisional amendment

- (1) This section applies where under section 62 the Welsh Ministers have provisionally amended an entry in the heritage register for Wales.
- (2) If following consultation the Welsh Ministers decide that the entry should continue to have effect subject to the amendment that they have provisionally made, the Welsh Ministers must amend the register so that the amendment is no longer provisional.
- (3) If following consultation the Welsh Ministers decide that the entry should not continue to have effect subject to the amendment that they have provisionally made, the Welsh Ministers must amend the register so that the entry has effect as it did before the provisional amendment.
- (4) For the purposes of this section an amendment of an entry in the register is “provisional” if the register does as mentioned in section 62(3).

64 Amendments not to be provisionally made so far as they reduce extent

- (1) This section applies where the proposed amendment mentioned in section 62(1) would have both the following effects –
- (a) the effect of including in the extent of the registered marine heritage site any area or other thing not previously included in it;
 - (b) the effect of excluding from that extent any area or other thing previously included in it.
- (2) Where this section applies, sections 62 and 63 have effect with the following modifications.

- (3) The provisional amendment that the Welsh Ministers must make under section 62(2) is the proposed amendment except so far as it has the effect mentioned in subsection (1)(b) above.
- (4) Section 63(2) has effect as if it provided that if, following consultation, the Welsh Ministers decide that the entry should have effect subject to the amendment consulted on, they must amend the register accordingly.
- (5) Section 63(3) has effect as if the reference in it to the Welsh Ministers deciding that the entry should not continue to have effect subject to the amendment that they have provisionally made were to the Welsh Ministers deciding that the entry should not have effect subject to the amendment consulted on.
- (6) In this section any reference to the extent of a registered marine heritage site is to its extent as identified in the register.

Effect of provisional registration or amendment

65 Effect of provisional registration

- (1) Where a heritage authority provisionally includes a site in English or Welsh waters in its heritage register as a registered marine heritage site, the site is to be regarded –
 - (a) during the period when it is provisionally included, as a registered marine heritage site; and
 - (b) after that period, as having been a registered marine heritage site during that period.
- (2) Subsection (1) is subject to the following provisions of this section.
- (3) Where at the end of the period mentioned in subsection (1) the site is removed from the heritage register in question, the following shall lapse –
 - (a) any marine heritage licence granted in respect of the site;
 - (b) any proceedings on or arising out of an application for a marine heritage licence in respect of the site;
 - (c) any designation of the site under section 198.
- (4) References in sections 48(3) and (4), 51, 52 and 67 to a registered marine heritage site do not include one that is provisionally included in a heritage register.

66 Effect of provisional amendment

- (1) Where a heritage authority provisionally amends an entry in its heritage register in respect of a registered marine heritage site, the extent of that site is to be regarded –
 - (a) during the period when the entry is provisionally amended, as being the extent indicated by the entry as so amended; and
 - (b) after that period, as having been that extent during that period.
- (2) Subsection (1) is subject to the following provisions of this section.
- (3) Where at the end of the period mentioned in subsection (1) the entry is amended so that it has effect as it did before the provisional amendment –

- (a) any marine heritage licence granted during that period shall lapse, so far as it relates to anything which is no longer included in the extent of the registered marine heritage site (“the unregistered part”);
- (b) any proceedings on or arising out of an application for a marine heritage licence made during that period shall lapse, in so far as they relate to the unregistered part; and
- (c) any designation under section 198 made during that period shall lapse so far as it relates to the unregistered part.

Requests for inclusion in or amendment of register

67 Request for inclusion in or amendment of register

- (1) Any person may make a request to the Secretary of State –
 - (a) for a site in English waters to be included in the heritage register for England;
 - (b) for a registered marine heritage site to be removed from that register; or
 - (c) for an entry in that register in respect of a registered marine heritage site to be amended.
- (2) Any person may request the Welsh Ministers –
 - (a) to include a site in Welsh waters in the heritage register for Wales;
 - (b) to remove a registered marine heritage site from that register; or
 - (c) to amend an entry in that register in respect of a registered marine heritage site.
- (3) A request under this section must be made in writing.
- (4) The appropriate national authority may by regulations require a request under this section to contain prescribed information.

68 Action by marine registration authority following request

- (1) This section applies where a marine registration authority receives a request under section 67.
- (2) The marine registration authority must –
 - (a) consider the request; and
 - (b) carry out consultation in respect of the inclusion, removal or amendment proposed by the request, unless the marine registration authority considers that there is a negligible likelihood of its deciding, following consultation, that the proposal should be implemented.
- (3) Subsection (2)(b) does not apply where the request proposes an amendment of an entry which is not a material amendment.
- (4) This section does not affect any power of a marine registration authority to consider on its own initiative –
 - (a) whether any site should be included in or removed from the heritage register for England or, as the case may be, the heritage register for Wales;
 - (b) whether any entry in that register in respect of a registered marine heritage site should be amended.
- (5) The following provisions apply for the purposes of this section –

- (a) section 53 (meaning of “consultation”); and
- (b) section 52(3) (meaning of “material amendment”).

69 Modification by marine registration authority of inaccurate request

- (1) This section applies where a marine registration authority receives a request under section 67 and considers that the proposal in the request is expressed in such a way as to be incapable of implementation.
- (2) The marine registration authority may, for the purposes of section 68(2)(b), carry out consultation in respect of the proposal with such modifications as it considers necessary to make the proposal capable of being implemented.

Notification of direction or decision

70 Notification to consultees of direction or decision

- (1) English Heritage must notify each consultee of any direction made by the Secretary of State following consultation in accordance with section 53.
- (2) The Welsh Ministers must notify each consultee of the decision made by them following consultation in accordance with section 53.
- (3) In this section “consultee” means –
 - (a) any person invited to make written representations under section 54(2); and
 - (b) any person who made written representations following the publishing of a notice under section 54(4).

Intertidal registrable structures and registrable open spaces

71 Intertidal registrable structures not registered as marine sites

- (1) Subsection (3) applies in relation to a site –
 - (a) which comprises or consists of a registrable structure;
 - (b) which is wholly or partly in the English intertidal zone;
 - (c) which is not for the time being a registered marine heritage site; and
 - (d) in respect of which the Secretary of State has at any time either –
 - (i) made a direction under section 48(3);
 - (ii) made a direction under section 56(3); or
 - (iii) issued a certificate under section 74.
- (2) Subsection (3) also applies to a site –
 - (a) which comprises or consists of a registrable structure;
 - (b) which is wholly or partly in the Welsh intertidal zone;
 - (c) which is not for the time being a registered marine heritage site; and
 - (d) which –
 - (i) having been included in the heritage register for Wales as a registered marine heritage site, has at any time been removed from that register (under section 61(3) or otherwise); or
 - (ii) has at any time been specified in a certificate under section 75.

- (3) The site is to be treated for the purposes of section 2(1) (and section 1) as being in England or, as the case may be, Wales, despite section 2(3).
- (4) In this Act –
 - “the English intertidal zone” means that part of England between the high water mark and the low water mark of ordinary spring tides; and
 - “the Welsh intertidal zone” is to be read accordingly.

72 Movement of registered heritage structures and open spaces into intertidal zone

- (1) Subsection (2) applies to a registered heritage structure, or registered heritage open space, in the heritage register for England –
 - (a) which at the time of its inclusion in the register was wholly on English land; but
 - (b) is now wholly or partly in the English intertidal zone.
- (2) The registered heritage structure or registered heritage open space is to be treated for the purposes of section 2(1) or 3(1) (and of section 1) as being in England, despite sections 2(3) and 3(5).
- (3) Subsection (4) applies to a registered heritage structure, or registered heritage open space, in the heritage register for Wales –
 - (a) which at the time of its inclusion in the register was wholly on Welsh land; but
 - (b) is now wholly or partly in the Welsh intertidal zone.
- (4) The registered heritage structure or registered heritage open space is to be treated for the purposes of section 2(1) or 3(1) (and of section 1) as being in Wales, despite sections 2(3) and 3(5).
- (5) For the purposes of this section, the time of the inclusion of a registered heritage structure or registered heritage open space in the register is the time when its inclusion in the register ceases to be provisional (within the meaning of section 12(5)(b)).

73 Registered heritage structure or open space in intertidal zone: prevention of registration as marine site

- (1) The Secretary of State may not make a direction under section 55 in respect of a site in English waters which –
 - (a) is a registered heritage structure included as such in the heritage register for England by virtue of section 71; or
 - (b) is a registered heritage structure or registered heritage open space to which section 72(2) applies.
- (2) The Welsh Ministers may not include in the heritage register for Wales as a registered marine heritage site any site in Welsh waters which –
 - (a) is a registered heritage structure included as such in the register by virtue of section 71; or
 - (b) is a registered heritage structure or registered heritage open space to which section 72(4) applies.

Certificate of no intention to register

74 Certificate of no intention to register: sites in English waters

- (1) The Secretary of State may on the application of any person issue a certificate stating that the Secretary of State will not, at any time within five years beginning with the date on which the certificate is issued, direct English Heritage to include in the heritage register for England a site in English waters specified in the certificate.
- (2) An application under this section must be made in writing.
- (3) The Secretary of State must not issue a certificate under this section unless the required consultation has been carried out.
- (4) For the purposes of subsection (3) the required consultation has been carried out if, in compliance with a direction of the Secretary of State to do so, English Heritage has –
 - (a) invited written representations in accordance with the procedure in section 76;
 - (b) advised the Secretary of State on whether to issue the certificate, having taken into account any written representations received within the consultation period; and
 - (c) provided a copy of those representations to the Secretary of State.
- (5) Where a certificate has been issued under this section in respect of a site, the Secretary of State must not, at any time within five years beginning with the date of its issue, direct English Heritage to –
 - (a) include the site in the heritage register for England as a registered marine heritage site; or
 - (b) include, as a registered marine heritage site, anything comprising the site.
- (6) The Secretary of State may by regulations require an application under this section to contain prescribed information.
- (7) In this section “the consultation period” means the period specified under section 76(6).

75 Certificate of no intention to register: sites in Welsh waters

- (1) The Welsh Ministers may on the application of any person issue a certificate stating that they will not, at any time within five years beginning with the date on which the certificate is issued, include in the heritage register for Wales as a registered marine heritage site a site in Welsh waters specified in the certificate.
- (2) An application under this section must be made in writing.
- (3) The Welsh Ministers must not issue a certificate under this section unless they have –
 - (a) invited written representations in accordance with the procedure in section 76; and
 - (b) taken into account any written representations received by them within the consultation period.

- (4) Where a certificate has been issued under this section in respect of a site, the Welsh Ministers must not at any time within five years beginning with the date of its issue—
 - (a) include the site in the heritage register for Wales as a registered marine heritage site; or
 - (b) include, as a registered marine heritage site, anything comprising the site.
- (5) The Welsh Ministers may by regulations require an application under this section to contain prescribed information.
- (6) In this section “the consultation period” means the period specified under section 76(6).

76 Inviting representations

- (1) The procedure referred to in sections 74(4) and 75(3) is as follows.
- (2) The heritage authority must invite written representations from the appropriate persons about the proposed issue of the certificate.
- (3) The appropriate persons are—
 - (a) in relation to a site in English waters, the persons mentioned in Part 1 of Schedule 1;
 - (b) in relation to a site in Welsh waters, the persons mentioned in Part 2 of Schedule 1.
- (4) The heritage authority must also publish a notice inviting written representations about the proposed issue of the certificate.
- (5) A notice under subsection (4) must be published in a way prescribed by regulations made by—
 - (a) the Secretary of State (where the site concerned is in English waters); or
 - (b) the Welsh Ministers (where the site concerned is in Welsh waters).
- (6) An invitation under subsection (2) and a notice under subsection (4) must specify the period within which representations may be made.

77 Restriction on issue of certificate where request for inclusion in register

- (1) Where a marine registration authority receives a request in respect of a site under section 67(1)(a) or 67(2)(a) (request for inclusion of site in register), the marine registration authority may not issue a certificate under section 74 or 75 in respect of that site unless and until condition A or condition B is met.
- (2) Condition A is that the marine registration authority (having decided under section 68(2)(b) not to carry out consultation in respect of the proposed inclusion) has informed the person who made the request that it has decided that the site does not qualify for registration.
- (3) Condition B is that the site has been provisionally included in the heritage register for England or the heritage register for Wales, but the marine registration authority has decided following consultation that the site does not qualify for registration.
- (4) In this section references to a site not qualifying for registration are to be read—

- (a) in relation to a site in English waters, in accordance with section 48(2); and
 - (b) in relation to a site in Welsh waters, in accordance with section 47(2).
- (5) In this section “consultation” means consultation in accordance with section 53.

CHAPTER 5

THE HERITAGE REGISTERS: SUPPLEMENTARY

Information to be included

78 Information to be included in heritage registers: general

- (1) Subsection (2) applies to—
 - (a) the heritage register for England; and
 - (b) the heritage register for Wales.
- (2) The register must indicate, as respects each heritage asset included in the register, whether the asset is a heritage structure, heritage open space, marine heritage site or world heritage site.
- (3) The Secretary of State may make regulations—
 - (a) as to the form in which the heritage register for England must be kept;
 - (b) requiring prescribed information to be included in that register.

79 Information to be included in respect of assets on land

- (1) An entry in—
 - (a) the heritage register for England, or
 - (b) the heritage register for Wales,in respect of a registered heritage structure or registered heritage open space must clearly identify the extent of that structure or open space.
- (2) In the case of a registered heritage structure within any of paragraphs (e) to (g) of section 2(2), that extent must be the extent that the heritage authority considers necessary for the protection of the remains or other thing or things mentioned in that paragraph.
- (3) In the case of a registered heritage structure within paragraph (h) of section 2(2), the reference in subsection (1) above to the extent of the registered heritage structure is to the extent of each thing forming part of the group.
- (4) In the case of a registered heritage structure which is a building, the extent identified by the entry may consist of—
 - (a) the building; and
 - (b) such objects or structures falling within subsection (5) as are identified by the entry.
- (5) An object or structure falls within this subsection if, though not fixed to the building, it—
 - (a) is within the curtilage of the building; and
 - (b) forms part of the land.

- (6) An entry in respect of any registered heritage structure may provide that—
 - (a) all land beneath or above the registered heritage structure, or
 - (b) so much of that land as is identified by the entry,is to be treated as not part of the registered heritage structure for the purposes of Parts 2 to 5 of this Act.
- (7) Any identification for the purposes of this section may (but does not have to be) by reference to a plan or map.

80 Information to be included in respect of marine heritage sites

- (1) This section applies to an entry in the heritage register for England or the heritage register for Wales in respect of a registered marine heritage site.
- (2) The entry—
 - (a) must identify the extent of the site by reference to the World Geodetic System 1984; and
 - (b) if any designation under section 198 (designation of site for unintrusive diving activities) is in force in respect of the site, must indicate that fact.
- (3) The extent referred to in subsection (2)(a) must—
 - (a) in the case of an entry in the heritage register for England, be as directed by the Secretary of State under Chapter 4;
 - (b) in the case of an entry in the heritage register for Wales, be such as the Welsh Ministers consider necessary for the protection of the marine asset.
- (4) Information included under subsection (2)(b) must be removed if and when the designation is no longer in force.

Publicity

81 Publication of heritage registers

A heritage authority must make its heritage register available for public inspection—

- (a) in the case of the heritage register for England, in accordance with regulations made by the Secretary of State;
- (b) in the case of the heritage register for Wales, in any way the Welsh Ministers consider appropriate.

82 Notification to local authorities

- (1) On first compiling its heritage register, a heritage authority must provide a copy of so much of the register as relates to any local authority area to the relevant authority.
- (2) As soon as possible after amending its heritage register by including, removing or amending an entry relating to a local authority area, a heritage authority must provide to the relevant authority—
 - (a) an up-to-date copy of so much of the register as relates to the local authority area; and
 - (b) notice of the inclusion, removal or amendment.

- (3) Subsection (2) does not apply at any time before the heritage authority has complied with subsection (1) in relation to the relevant authority.
- (4) In this section “local authority area” means –
 - (a) a district;
 - (b) a London borough;
 - (c) a county in Wales;
 - (d) a county borough;
 - (e) the City of London;
 - (f) the Inner Temple;
 - (g) the Middle Temple.
- (5) In this section “the relevant authority” means –
 - (a) in relation to a district, each of –
 - (i) the district council or, if there is no district council, the council for the county in which the district is;
 - (ii) the district planning authority, if different from the council within sub-paragraph (i); and
 - (iii) any county planning authority whose area includes any part of the district;
 - (b) in relation to a London borough, the council of the borough;
 - (c) in relation to a county in Wales or a county borough, each of –
 - (i) the council of the county or county borough; and
 - (ii) the local planning authority, if different from that council;
 - (d) in relation to the City of London, the Inner Temple or Middle Temple, the Common Council of the City of London.
- (6) A copy of an entry provided under subsection (1) or (2) shall be a local land charge, and any authority to whom the copy is provided is to be treated for the purposes of the Local Land Charges Act 1975 (c. 76) as the originating authority as respects the charge constituted by the provision of the copy.
- (7) For the purposes of this section an entry in a register “relates to” a local authority area if all or part of the subject of the entry is in that area.
- (8) The Secretary of State may make regulations as to the way in which anything required by this section to be provided by English Heritage must be provided.

83 Publicity by local planning authorities

- (1) Where a local planning authority receives a copy or notice under section 82(2) which indicates –
 - (a) that a registrable structure in the authority’s area has been included in or removed from a heritage register, or
 - (b) that an entry in a heritage register relating to such a structure has been amended,the authority must notify each owner and occupier of that registrable structure, or of any part of it, of the inclusion, removal or amendment.
- (2) Subsection (1) does not apply where an inclusion or amendment mentioned in that subsection is provisional.
- (3) The reference in subsection (1) to a registrable structure in the local planning authority’s area includes a registrable structure part of which is in that area.

- (4) The appropriate national authority may make regulations as to the time within which and way in which a notification under subsection (1) must be given.
- (5) Any authority which receives a copy or notice under section 82 must make it available for public inspection in accordance with regulations made by the appropriate national authority.
- (6) In this section –
 - (a) any reference to provisional inclusion is to be read in accordance with section 12(5)(b); and
 - (b) any reference to provisional amendment is to be read in accordance with section 15(5)(a).

84 Welsh Ministers’ power to exercise functions under section 83

- (1) The Welsh Ministers may direct a local planning authority not to exercise its functions under section 83.
- (2) A direction under this section may relate to all copies or notices under section 82 or to copies or notices of a prescribed description.
- (3) Where a direction is in force under this section the Welsh Ministers must give any notification under section 83(1) that the local planning authority would have been required to give but for the direction.
- (4) A direction under this section may be varied or revoked.

Increases in extent

85 Meaning of “increase” in extent of registered heritage asset

- (1) This section applies in relation to any amendment of an entry in the heritage register for England or heritage register for Wales which alters the extent, as identified in the register, of –
 - (a) a registered heritage structure;
 - (b) a registered heritage open space; or
 - (c) a registered marine heritage site.
- (2) For the purposes of this Act, the amendment “increases” that extent if it has the effect that any area or other thing not previously included in that extent becomes included in it, whether or not it also has the effect of excluding anything previously included in that extent.

PART 2

CONTROL OF WORKS AND PREVENTION OF DAMAGE TO REGISTERED HERITAGE STRUCTURES

CHAPTER 1

REQUIREMENT FOR HERITAGE ASSET CONSENT

Requirement for heritage asset consent

86 Works requiring heritage asset consent

- (1) A person must not carry out, or cause or permit to be carried out, any works to which this section applies unless the works are authorised.
- (2) The following are works to which this section applies –
 - (a) any works resulting in the demolition or destruction of a registered heritage structure;
 - (b) any works resulting in any damage to or disturbance of a registered heritage structure where the damage or disturbance affects the special interest of the registered heritage structure;
 - (c) any works that –
 - (i) are for the purpose of removing or repairing a registered heritage structure or any part of it or making any alterations or additions to it; and
 - (ii) affect the special interest of the registered heritage structure;
 - (d) any flooding or tipping operations on or in a registered heritage structure.
- (3) Any reference in subsection (2) to a registered heritage structure is to anything that is a registered heritage structure at the time the works are carried out.
- (4) In this section –
 - “authorised” has the meaning given by section 88(1);
 - “special interest”, in relation to a registered heritage structure, means the special historic, archaeological, architectural or artistic interest of the registered heritage structure.
- (5) This section is subject to section 31(1) of the Planning Act 2008 (exclusion, for development for which development consent required, of requirement for other consents).

87 Removal of objects from sites which are registered heritage structures

- (1) A person must not remove from a registered site any object to which this section applies, unless the removal is authorised.
- (2) This section applies to any object which the person reasonably believes, or could reasonably be expected to believe, contributes to the special historic, archaeological, architectural or artistic interest of the registered site.
- (3) In this section –
 - “authorised” has the meaning given by section 88(2);
 - “registered site” means a registered heritage structure within paragraph (e), (f) or (g) of section 2(2).

88 Heritage asset consent

- (1) For the purposes of section 86, works are “authorised” if—
 - (a) written consent has been granted for the works by the local planning authority or the appropriate national authority; and
 - (b) the works are carried out in accordance with the terms of that consent and any conditions subject to which it is granted.
- (2) For the purposes of section 87, a removal is “authorised” if—
 - (a) written consent has been granted for it by the local planning authority or the appropriate national authority; and
 - (b) the removal is carried out in accordance with the terms of that consent and any conditions subject to which it is granted.
- (3) In this Act “heritage asset consent” means consent under—
 - (a) subsection (1) or (2) above; or
 - (b) section 92 (consent for retention of works).

89 Offence of contravening section 86

- (1) A person who contravenes section 86 commits an offence.
- (2) Where works to which section 86 applies are carried out without heritage asset consent, it is a defence for a person accused of an offence under subsection (1) to prove that, at the time the works were carried out, that person—
 - (a) did not know that the registered heritage structure was a registered heritage structure; and
 - (b) had taken all reasonable steps to ascertain whether it was a registered heritage structure.
- (3) Without prejudice to subsection (1), where a person—
 - (a) carries out or causes or permits to be carried out any works in relation to a registered heritage structure under a heritage asset consent, and
 - (b) fails to comply with any condition subject to which the consent is granted,the person commits an offence.
- (4) It is a defence for a person accused of an offence under subsection (1) or (3) to prove the following matters—
 - (a) that the works were urgently necessary in the interests of safety or health or for the preservation of the registered heritage structure;
 - (b) that the works were limited to the minimum measures immediately necessary; and
 - (c) that notice in writing of the works was given to the local planning authority as soon as reasonably practicable.

90 Offence of contravening section 87

- (1) A person who contravenes section 87 commits an offence.
- (2) Where an object to which section 87 applies is removed from a registered site without heritage asset consent, it is a defence for a person accused of an offence under subsection (1) to prove that, at the time of the removal, that person—
 - (a) did not know that the registered site was a registered heritage structure; and

- (b) had taken all reasonable steps to ascertain whether it was a registered heritage structure.
- (3) Without prejudice to subsection (1), where a person—
 - (a) under a heritage asset consent, removes from a registered site any object to which section 87 applies, and
 - (b) fails to comply with any condition subject to which the consent is granted,the person commits an offence.
- (4) In this section “registered site” has the same meaning as in section 87.

91 Penalties

- (1) A person guilty of an offence under section 89 or 90 is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000 or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (2) Until the coming into force of section 154 of the Criminal Justice Act 2003 (c. 44), subsection (1)(a) has effect as if the reference to 12 months were to 6 months.
- (3) In determining the amount of any fine to be imposed on a person convicted of an offence under section 89 or 90, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

92 Heritage asset consent for retention of works

- (1) This section applies where works to which section 86 applies are carried out without being authorised (within the meaning given by section 88(1)).
- (2) Written consent may be granted by the local planning authority or the appropriate national authority for the retention of the works.
- (3) Such consent does not have the effect that the works are to be taken to have been authorised for the purposes of section 86 at any time before the grant of the consent.

CHAPTER 2

OBTAINING, VARYING AND REVOKING HERITAGE ASSET CONSENT

Class consents

93 Class consents

- (1) The appropriate national authority may by order grant heritage asset consent for the carrying out of works or removals of any description specified in the order.
- (2) An order under this section is referred to in this Act as a “class consent order”.

- (3) The Secretary of State may make a class consent order in relation to—
 - (a) all registered heritage structures in England;
 - (b) registered heritage structures in England of a particular description.
- (4) The Welsh Ministers may make a class consent order in relation to—
 - (a) all registered heritage structures in Wales;
 - (b) registered heritage structures in Wales of a particular description.
- (5) Where a class consent order grants heritage asset consent for a particular description of works or removals, the consent may be granted unconditionally or subject to conditions.
- (6) The conditions which may be included in a class consent order include in particular any conditions mentioned in section 110 (but this does not affect the generality of subsection (5) above).
- (7) Before making a class consent order the Secretary of State must consult—
 - (a) English Heritage; and
 - (b) such other persons as the Secretary of State considers appropriate.
- (8) Before making a class consent order the Welsh Ministers must consult such persons as they consider appropriate.

94 Direction that class consent not to apply

- (1) The appropriate national authority may direct that a class consent order does not apply in relation to a registered heritage structure specified in the direction.
- (2) Before giving a direction under this section the appropriate national authority must consult—
 - (a) in the case of the Secretary of State, the local planning authority and English Heritage;
 - (b) in the case of the Welsh Ministers, the local planning authority.
- (3) Where the appropriate national authority proposes to give a direction under this section, it must give notice of that intention to—
 - (a) each owner and occupier of the registered heritage structure or of any part of it; and
 - (b) any other person who in its opinion will be affected by the direction.
- (4) The notice must specify a period within which any person to whom it is given may require an opportunity of appearing before and being heard by a person appointed by the appropriate national authority.
- (5) If, within that period, any person to whom the notice was given requires such an opportunity, the appropriate national authority must give such an opportunity—
 - (a) to that person, and
 - (b) to the local planning authority,before it decides whether to give the direction.
- (6) The period specified under subsection (4) must be at least 28 days beginning with the date of the notice.

- (7) A direction under this section does not affect any works or removal, or so much of any works or removal, as has previously been carried out in respect of the registered heritage structure under the class consent order.

Applications for heritage asset consent

95 Applications for consent: to whom made

- (1) Except as provided by subsections (2) and (3) and sections 99, 104 and 105, any application for heritage asset consent must be made to and decided by the local planning authority.
- (2) Where heritage asset consent is required in consequence of proposals included in an application for an order under section 1 or 3 of the Transport and Works Act 1992 (c. 42) (orders for railways, tramways, waterways etc), any application for that consent must be made to and decided by the appropriate national authority.
- (3) Where heritage asset consent is required by a local planning authority, any application for that consent must be made to and decided by the appropriate national authority.

96 Applications for consent: procedure for making

- (1) The appropriate national authority may make regulations –
- (a) as to the form and content of applications for heritage asset consent and the way in which any such application must be made;
 - (b) requiring any such application to be accompanied by prescribed documents and other items.
- (2) Regulations under subsection (1) may, as well as specifying matters to be contained in an application, require an application to contain such additional information as may be required by the authority to which the application is made.

97 Certificates as to applicant's status etc

- (1) Regulations under section 96(1)(b) may provide that an application for heritage asset consent must not be entertained unless it is accompanied by one of the following certificates –
- (a) a certificate stating that, at the start of the relevant period, no person other than the applicant was the owner of any of the registered heritage structure to which the application relates;
 - (b) a certificate stating that the applicant has given the required notice to the relevant owners;
 - (c) a certificate stating that the applicant –
 - (i) is unable to issue a certificate within paragraph (a) or (b);
 - (ii) has given the required notice to such one or more of the relevant owners as are specified in the certificate; and
 - (iii) has taken such steps as are reasonably practicable to ascertain the names and addresses of the remainder of the relevant owners but has been unable to do so;
 - (d) a certificate stating that the applicant –

- (i) is unable to issue a certificate within paragraph (a); and
 - (ii) has taken such steps as are reasonably practicable to ascertain the names and addresses of the relevant owners but has been unable to do so.
- (2) The regulations may include provision as to the form and content of a certificate, and in particular may –
- (a) require a certificate within subsection (1)(c) or (d) to contain a statement that the required notice has been published, on a date specified in the certificate, in a local newspaper circulating in the locality in which the registered heritage structure is; and
 - (b) require that date to be no earlier than the start of the relevant period.
- (3) In this section –
- (a) “the relevant period” means 21 days ending with the date of the application;
 - (b) “the required notice” means notice of the application in such form as may be prescribed by the regulations;
 - (c) “the relevant owners” means, subject to subsection (4), all the persons who at the start of the relevant period were owners of any of the registered heritage structure to which the application relates.
- (4) Where the applicant is a person within subsection (3)(c), the applicant is not a “relevant owner” for the purposes of this section.

98 Offences relating to certificates

- (1) It is an offence for a person –
- (a) to make in a certificate a statement which the person knows to be false or misleading in a material particular; or
 - (b) recklessly to make in a certificate a statement which is false or misleading in a material particular.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In this section “certificate” means a certificate issued for the purposes of regulations made by virtue of section 97.

Reference of certain applications to appropriate national authority

99 Reference of certain applications to appropriate national authority

- (1) The appropriate national authority may give directions to local planning authorities requiring applications for heritage asset consent to be referred to the appropriate national authority instead of being dealt with by the local planning authority.
- (2) A direction by the Secretary of State under this section may be given to –
- (a) all local planning authorities in England;
 - (b) local planning authorities in England of a particular description;
 - (c) a particular local planning authority in England.
- (3) A direction by the Welsh Ministers under this section may be given to –
- (a) all local planning authorities in Wales;

- (b) local planning authorities in Wales of a particular description;
 - (c) a particular local planning authority in Wales.
- (4) A direction under this section may relate to –
- (a) a particular application;
 - (b) all applications;
 - (c) all applications in respect of a particular registered heritage structure;
 - (d) all applications in respect of registered heritage structures of a particular description.
- (5) An application in respect of which a direction under this section has effect is accordingly to be referred to and decided by the appropriate national authority.

100 LPAs to notify authority of applications they intend to grant

- (1) Where a local planning authority intends to grant an application for heritage asset consent, it must before doing so notify the appropriate national authority of the application.
- (2) Subsection (1) does not apply where a direction under section 101(1) has effect in respect of the application.
- (3) A notification under subsection (1) must give particulars of the works or removal to which the application relates.
- (4) The appropriate national authority may within 28 days beginning with the date of any such notification –
- (a) direct under section 99 that the application be referred to the appropriate national authority;
 - (b) give notice to the local planning authority that it does not intend to direct that the application be referred to it; or
 - (c) give notice to the local planning authority that the appropriate national authority needs further time to consider whether to give a direction under section 99.
- (5) Where a notification is given under subsection (1), the local planning authority must not grant the application unless and until –
- (a) the 28 days mentioned in subsection (4) have ended without the appropriate national authority directing that the application be referred to it or giving notice under subsection (4)(b) or (c); or
 - (b) the appropriate national authority has given notice to the local planning authority that it does not intend to direct that the application be referred to the appropriate national authority.

101 Exceptions from duty to notify

- (1) The appropriate national authority may direct local planning authorities not to give notifications under section 100(1) in respect of applications of a specified description.
- (2) Where a direction under subsection (1) is in force, the appropriate national authority may direct that that direction is not to have effect (and accordingly that section 100(1) applies) in respect of –
- (a) a particular application; or

- (b) applications of a particular description.
- (3) A direction by the Secretary of State under this section may be given to—
 - (a) all local planning authorities in England;
 - (b) local planning authorities in England of a particular description;
 - (c) a particular local planning authority in England.
- (4) A direction by the Welsh Ministers under this section may be given to—
 - (a) all local planning authorities in Wales;
 - (b) local planning authorities in Wales of a particular description;
 - (c) a particular local planning authority in Wales.
- (5) The Secretary of State must consult English Heritage before giving a direction under this section.

102 Directions to LPAs to notify receipt of certain applications

- (1) The appropriate national authority may direct local planning authorities to notify the appropriate national authority of the receipt of any application for heritage asset consent which is of a specified description.
- (2) Subsections (4) and (5) of section 100 apply in relation to a notification under this section as they apply in relation to a notification under section 100(1), but as if the reference in subsection (5) to granting the application were to deciding it.
- (3) Subsection (4) below applies if in response to a notification under this section the appropriate national authority gives notice as mentioned in section 100(5)(b) (notice of no intent to direct that application be referred to appropriate national authority).
- (4) In such a case, even if the local planning authority intends to grant the application it need not give any notification under section 100(1).
- (5) Subject to subsections (3) and (4) above, this section does not affect the operation of section 100.
- (6) A direction by the Secretary of State under this section may be given to—
 - (a) all local planning authorities in England;
 - (b) local planning authorities in England of a particular description;
 - (c) a particular local planning authority in England.
- (7) A direction by the Welsh Ministers under this section may be given to—
 - (a) all local planning authorities in Wales;
 - (b) local planning authorities in Wales of a particular description;
 - (c) a particular local planning authority in Wales.

Procedure for dealing with applications: general

103 Procedure for dealing with applications: general

- (1) The appropriate national authority may make regulations about procedure in relation to the handling of applications for heritage asset consent.
- (2) The regulations may in particular make provision—

- (a) as to the publicity to be given to applications, decisions on applications and such other matters as may be prescribed;
- (b) requiring representations in respect of an application to be invited from –
 - (i) prescribed persons;
 - (ii) persons of prescribed descriptions;
- (c) requiring representations to be taken into account;
- (d) preventing an application from being decided during a prescribed period;
- (e) requiring notice of decisions on applications, and of such other matters as may be prescribed, to be given to prescribed persons;
- (f) as to the contents of any such notice and the period within which it must be given.

Powers not to entertain applications

104 Power not to entertain application similar to previous application

- (1) The authority to which an application for heritage asset consent is made (“the authority concerned”) may decline to entertain the application if –
 - (a) any of conditions A to C is met; and
 - (b) condition D is met.
- (2) Condition A is that in the relevant period the appropriate national authority refused a similar application referred to it under section 99.
- (3) Condition B is that in the relevant period the appropriate national authority dismissed an appeal –
 - (a) against the refusal of a similar application; or
 - (b) under section 117(2)(a) in respect of a similar application.
- (4) Condition C is that –
 - (a) in the relevant period the local planning authority refused more than one similar application; and
 - (b) there has been no appeal to the appropriate national authority against any of the refusals or, if there has been such an appeal, it has been withdrawn or abandoned.
- (5) Condition D is that the authority concerned considers that there has been no significant change in any material considerations since the refusal mentioned in subsection (2), the dismissal mentioned in subsection (3) or the refusals mentioned in subsection (4).
- (6) In this section “the relevant period” means two years ending with the date on which the application mentioned in subsection (1) is received.
- (7) For the purposes of this section, an application is similar to the application mentioned in subsection (1) if (and only if) the authority concerned considers that the registered heritage structure and works or removal to which the applications relate are the same or substantially the same.

105 Power not to entertain application similar to current application

- (1) The authority to which an application for heritage asset consent is made (“the authority concerned”) may decline to entertain the application if it is made at a time –
 - (a) when a similar application is under consideration by the local planning authority and the period for dealing with that similar application has not ended;
 - (b) when a similar application is under consideration by the appropriate national authority in pursuance of section 99;
 - (c) when an appeal under section 117(1)(a) or (b) or (2)(a) could be made in respect of a similar application; or
 - (d) after the making of an appeal under section 117(1)(a) or (b) or (2)(a) in respect of a similar application and before the decision on that appeal has been issued.
- (2) For the purposes of this section, an application is similar to another application if (and only if) the authority concerned considers that the registered heritage structure and works or removal to which the applications relate are the same or substantially the same.
- (3) In subsection (1)(a) “the period for dealing with” an application means –
 - (a) any period prescribed under section 103 within which the local planning authority must give notice that it has decided the application, referred it to the appropriate national authority or declined under section 104 or this section to entertain it; or
 - (b) any longer period that the applicant and the authority have agreed in writing for the giving of such a notice.

Grant and refusal of consent, and conditions

106 Grant or refusal of consent

- (1) In this section “the authority”, in relation to an application for heritage asset consent, means –
 - (a) the local planning authority; or
 - (b) where under the previous provisions of this Chapter the decision on the application is to be taken by the appropriate national authority, that authority.
- (2) The authority may decide an application for heritage asset consent by –
 - (a) granting the application; or
 - (b) refusing the application.
- (3) Where the authority grants the application, the heritage asset consent granted –
 - (a) must contain any conditions required by section 108 or 109;
 - (b) may contain any other conditions.
- (4) In considering whether to grant an application for heritage asset consent, the authority –
 - (a) must have special regard to the desirability of preserving the registered heritage structure or its setting or any features of special historic, archaeological, architectural or artistic interest it possesses; and

- (b) must have regard to any relevant information in the local planning authority's historic environment record.
- (5) A local planning authority must not decide an application for heritage asset consent unless it—
 - (a) has received expert advice in respect of the application (whether as a result of inviting representations under regulations under section 103, or otherwise); and
 - (b) has taken that advice into account.
- (6) Any reference in this section to the local planning authority's historic environment record is, in relation to a local planning authority that is a London borough council, to be read in accordance with section 213(4).

107 Grant of consent: persons for whose benefit consent has effect

Where heritage asset consent is granted on an application under this Act, the consent shall, except so far as it provides otherwise, have effect for the benefit of the registered heritage structure and of all persons for the time being interested in it.

108 Time within which works or removal must be completed

- (1) Every heritage asset consent must be granted subject to the condition that the works or removal to which it relates must be begun within—
 - (a) three years beginning with the date on which the consent is granted; or
 - (b) such other period (longer or shorter) beginning with that date as the person granting the consent considers appropriate.
- (2) If heritage asset consent is granted without the condition required by subsection (1), it is to be taken to have been granted subject to the condition that the works or removal to which it relates must be begun within three years beginning with the date of the grant.
- (3) If proceedings under section 154 to question the validity of a grant of heritage asset consent are begun before the end of the period for beginning the works or removal, that period is to be taken to be extended by one year.
- (4) In subsection (3) “the period for beginning the works or removal” means the period within which the works or removal to which the consent relates must be begun by reason of a condition imposed or taken to be imposed under this section.
- (5) Nothing in this section applies to any consent granted—
 - (a) under section 92 (consent for retention of works); or
 - (b) by a class consent order.

109 Appropriate national authority may direct inclusion of conditions

- (1) The appropriate national authority may give directions to local planning authorities requiring them, where they grant heritage asset consent in respect of works (or a removal) of a particular description, to grant the consent subject to particular conditions.
- (2) A direction by the Secretary of State under this section may be given to—
 - (a) all local planning authorities in England;

- (b) local planning authorities in England of a particular description;
 - (c) a particular local planning authority in England.
- (3) A direction by the Welsh Ministers under this section may be given to –
- (a) all local planning authorities in Wales;
 - (b) local planning authorities in Wales of a particular description;
 - (c) a particular local planning authority in Wales.

110 Other conditions

- (1) The conditions which may be included in a heritage asset consent under section 106(3)(b), or may be the subject of a direction under section 109, include in particular conditions –
- (a) as to the preservation of particular features of the registered heritage structure, either as part of it or after severance from it;
 - (b) as to the making good of any damage;
 - (c) as to the reconstruction of the registered heritage structure after the carrying out of works, in such a way and with such alterations as may be specified in the conditions;
 - (d) requiring particular details of works or a removal to be approved by the local planning authority or the appropriate national authority;
 - (e) requiring a specified person or a person of a specified description to be given the opportunity, before or during the carrying out of works or a removal, to inspect and record the registered heritage structure or carry out archaeological work;
 - (f) as to who may carry out works or a removal;
 - (g) requiring specified persons to be notified of the discovery of archaeological remains or other specified matters;
 - (h) requiring reports on specified matters to be compiled and sent to specified persons;
 - (i) requiring works to which the consent relates to be reversed in specified circumstances;
 - (j) where consent is granted after the carrying out of works in contravention of section 86, requiring those works to be reversed.
- (2) In the case of a consent for the demolition or destruction of a registered heritage structure, the conditions may also include a condition requiring it not to be demolished or destroyed before –
- (a) a contract for the carrying out of redevelopment works has been made; and
 - (b) planning permission for that redevelopment has been granted.
- (3) Nothing in this section affects the generality of sections 106(3)(b) and 109.

Application for variation or discharge of conditions

111 Application for variation or discharge of conditions

- (1) This section applies where, on an application under this Act, heritage asset consent has been granted subject to conditions.
- (2) Any person may apply to the local planning authority for the variation or discharge of the conditions.

- (3) An application under this section must indicate what variation or discharge of conditions is applied for.
- (4) Sections 96 to 103 apply in relation to applications under this section as they apply in relation to applications for heritage asset consent.
- (5) On an application under this section the local planning authority or, as the case may be, the appropriate national authority may –
 - (a) vary or discharge the conditions contained in the consent;
 - (b) add new conditions consequential on the variation or discharge.
- (6) But a variation or discharge of conditions under this section must not –
 - (a) discharge a condition as to the period within which the works must be begun; or
 - (b) vary such a condition by extending that period.
- (7) In subsection (6) “the works” means the works or removal to which the heritage asset consent relates.
- (8) Where heritage asset consent was granted by the appropriate national authority under section 95 –
 - (a) references in this section to the local planning authority are to be read as to the appropriate national authority;
 - (b) sections 99 to 102 do not apply in relation to any application under this section in respect of that consent.

112 Power not to entertain application for variation or discharge of conditions

- (1) Sections 104 and 105 apply in relation to applications under section 111 as they apply in relation to applications for heritage asset consent, but with the following modifications.
- (2) In section 104(3)(b), the reference to section 117(2)(a) is to be read as to section 117(2)(b).
- (3) In section 105(1), the reference in each of paragraphs (c) and (d) to section 117(1)(a) or (b) or (2)(a) is to be read as to section 117(1)(c) or (2)(b).
- (4) In each of sections 104(7) and 105(2), the reference to the works or removal to which the applications relate is to be read as to the variation or discharge of conditions to which the applications relate.

Determination of applications by officers

113 Determination of heritage asset consent applications by officers

- (1) A local planning authority in England must –
 - (a) specify the descriptions of heritage asset consent applications which, following determination by an officer of the authority, are to be reviewable by the authority under section 115; and
 - (b) make arrangements under section 101 of the Local Government Act 1972 (c. 70) for heritage asset consent applications of the descriptions so specified to be determined by officers of the authority.

- (2) A local planning authority in England must comply with subsection (1) before the end of such period as may be prescribed by regulations made by the Secretary of State.
- (3) A local planning authority may at any time vary the descriptions of heritage asset consent applications specified by it under this section.
- (4) The Secretary of State may by regulations make provision about –
 - (a) the specification under this section of descriptions of heritage asset consent applications; and
 - (b) the making of arrangements pursuant to subsection (1)(b) and the content of such arrangements.
- (5) The regulations may in particular include provision –
 - (a) prescribing descriptions of application which must, and descriptions of application which must not, be specified under this section;
 - (b) prescribing descriptions of officers who are permitted, and descriptions of officers who are not permitted, to be authorised to determine heritage asset consent applications by arrangements made pursuant to subsection (1)(b);
 - (c) prohibiting prescribed descriptions of officers from being authorised by such arrangements to determine heritage asset consent applications of a prescribed description;
 - (d) imposing consultation and publication requirements.
- (6) Section 101(4) of the Local Government Act 1972 (c. 70) does not apply in relation to arrangements made by a local planning authority pursuant to subsection (1)(b) of this section; but such arrangements do not prevent the authority, or a committee or sub-committee of the authority, from determining a heritage asset consent application in relation to which the arrangements have effect.
- (7) This section does not affect the power of a local planning authority in England to make arrangements under section 101 of the Local Government Act 1972 for the determination of heritage asset consent applications which are not of a description specified by the authority under this section.
- (8) For the purposes of this section, sections 114 to 116 and section 119 a “heritage asset consent application” means –
 - (a) an application for heritage asset consent;
 - (b) an application for the variation or discharge of conditions subject to which a heritage asset consent to which subsection (9) applies has been granted; or
 - (c) an application for an approval of a local planning authority required by a condition imposed on the granting of a heritage asset consent to which subsection (9) applies.
- (9) This subsection applies to a heritage asset consent granted –
 - (a) by an officer of a local planning authority acting under arrangements made pursuant to subsection (1)(b); or
 - (b) by a local planning authority acting under section 115 or 116.

114 Provision supplementary to section 113

- (1) The Secretary of State may by regulations make provision about the determination of a heritage asset consent application –
 - (a) by an officer of a local planning authority acting under arrangements made pursuant to section 113(1)(b),
 - (b) by a local planning authority, or a committee or sub-committee of such an authority, acting by virtue of section 113(6).
- (2) The regulations may in particular –
 - (a) disapply or modify any provision of, or made under, this Chapter in relation to such an application;
 - (b) impose requirements on the officer, authority, committee or sub-committee determining such an application.

115 Review of officer's decision

- (1) This section applies in relation to a heritage asset consent application if an officer of a local planning authority acting under arrangements made pursuant to section 113(1)(b) –
 - (a) refuses the application or grants the consent or approval to which the application relates subject to conditions; or
 - (b) in the case of an application for the variation or discharge of conditions subject to which heritage asset consent has been granted, grants the application and adds new conditions.
- (2) The local planning authority must review the case if –
 - (a) the applicant requests it to do so; and
 - (b) the applicant's request is made in the prescribed form and before the end of the prescribed period.
- (3) The Secretary of State may by regulations make provision about reviews under this section.
- (4) The regulations may in particular include provision –
 - (a) about the procedure to be followed on a review;
 - (b) about the circumstances in which oral representations may be made on a review;
 - (c) about the documents to be submitted as part of a review;
 - (d) about the matters that may be raised on a review;
 - (e) requiring a local planning authority reviewing a case to have special regard to the desirability of preserving the registered heritage structure or its setting or any features of special historic, archaeological, architectural or artistic interest it possesses;
 - (f) prescribing a period within which the local planning authority is to complete the review;
 - (g) requiring notice in the prescribed form to be given of the decision on a review.
- (5) On a review under this section a local planning authority may –
 - (a) uphold the decision under review; or
 - (b) reverse or vary any part of the officer's decision.

- (6) A local planning authority must not arrange for the discharge of its functions under this section by an officer of the authority.
- (7) In this section “prescribed” means prescribed by regulations made by the Secretary of State.

116 Determination following failure to give notice of decision

- (1) This section applies in relation to a heritage asset consent application if –
 - (a) arrangements made pursuant to section 113(1)(b) provide for the application to be determined by an officer of a local planning authority; and
 - (b) there has been no decision by the authority, or by a committee or sub-committee of the authority, to determine the application itself (by virtue of section 113(6)).
- (2) If by the end of the relevant period none of the notices mentioned in subsection (3) has been given to the applicant by the local planning authority, the local planning authority must determine the application if –
 - (a) the applicant requests it to do so; and
 - (b) the applicant’s request is made in the prescribed form and before the end of the prescribed period.
- (3) The notices referred to in subsection (2) are –
 - (a) notice of the local planning authority’s decision on the application;
 - (b) notice (in the case of an application within section 113(8)(a) or (b)) that the application has been referred to the Secretary of State in accordance with directions under section 99;
 - (c) notice (in the case of such an application) that the local planning authority has under section 104 or 105 declined to entertain the application.
- (4) In subsection (2) “the relevant period” means –
 - (a) in the case of an application within section 113(8)(a) or (b), the period prescribed under section 103 for the giving of a notice mentioned in subsection (3) above, or such longer period as may at any time be agreed in writing by the applicant and the local planning authority;
 - (b) in the case of an application within section 113(8)(c), eight weeks beginning with the date the application is received, or such longer period as may at any time be agreed in writing by the applicant and the local planning authority.
- (5) The Secretary of State may by regulations make provision about the determination of an application by a local planning authority acting under this section.
- (6) The regulations may in particular –
 - (a) disapply or modify any provision of, or made under, this Chapter in relation to such an application;
 - (b) impose requirements on the local planning authority determining such an application.
- (7) A local planning authority must not arrange for the discharge of its functions under this section by an officer of the authority.

- (8) In this section “prescribed” means prescribed by regulations made by the Secretary of State.

Appeals in respect of applications

117 Appeal against refusal of consent, conditions, or failure to take decision

- (1) Where a local planning authority –
- (a) refuses an application for heritage asset consent,
 - (b) grants such an application subject to conditions,
 - (c) refuses an application for the variation or discharge of conditions subject to which heritage asset consent has been granted, or
 - (d) grants such a variation or discharge but adds new conditions,
- the applicant may appeal to the appropriate national authority.
- (2) A person who has applied to the local planning authority for –
- (a) heritage asset consent, or
 - (b) the variation or discharge of conditions subject to which heritage asset consent was granted,
- may appeal to the appropriate national authority if by the end of the relevant period none of the notices mentioned in subsection (3) has been given to the applicant by the local planning authority.
- (3) Those notices are –
- (a) notice of the local planning authority’s decision on the application;
 - (b) notice that the application has been referred to the appropriate national authority in accordance with directions under section 99;
 - (c) notice that the local planning authority has under section 104 or 105 declined to entertain the application.
- (4) In subsection (2) “the relevant period” means the period prescribed under section 103 for the giving of a notice mentioned in subsection (3), or such longer period as may at any time be agreed in writing by the applicant and the local planning authority.
- (5) For the purposes of sections 121(1) and 154(7)(a), in relation to an appeal under subsection (2) it shall be assumed that the local planning authority decided to refuse the application in question.
- (6) This section is subject to section 119.

118 Appeal against refusal of approval required by condition

- (1) Where a local planning authority –
- (a) refuses an application for an approval required by a relevant condition, or
 - (b) grants it subject to conditions,
- the applicant may appeal to the appropriate national authority.
- (2) A person who has made such an application may appeal to the appropriate national authority if the local planning authority has not notified the applicant of its decision on the application by the end of the relevant period.

- (3) In subsection (2) “the relevant period” means eight weeks beginning with the date the application is received, or such longer period as may at any time be agreed in writing by the applicant and the local planning authority.
- (4) In this section “a relevant condition” means a condition, subject to which heritage asset consent was granted, requiring approval of details of works or a removal.
- (5) This section is subject to section 119.

119 Restrictions on rights of appeal

- (1) This section applies in relation to a heritage asset consent application (within the meaning of section 113) if arrangements made pursuant to section 113(1)(b) provide for the application to be determined by an officer of a local planning authority.
- (2) An appeal may be brought under section 117(1) or 118(1) against the refusal of the application, its grant subject to conditions, or its grant with the addition of new conditions (as the case may be) only if –
 - (a) the local planning authority –
 - (i) has been required under section 115 to review the case; and
 - (ii) has failed to complete its review by the end of the period prescribed under section 115(4)(f); or
 - (b) the local planning authority has been required under section 116 to determine the application.
- (3) An appeal may be brought under section 117(2) or 118(2) in relation to the heritage asset consent application only if –
 - (a) the local planning authority, or a committee or sub-committee of the authority, has decided to determine the application itself (by virtue of section 113(6)); or
 - (b) the authority has been required under section 116 to determine the application.

120 Appeals: procedure for making

- (1) The appropriate national authority may make regulations –
 - (a) as to the way in which an appeal under section 117 or 118 may be made;
 - (b) as to the time within which any such appeal must be made;
 - (c) as to the form and content of notices of appeal;
 - (d) requiring any such notice to be accompanied by prescribed documents.
- (2) The period prescribed under subsection (1)(b) must be at least –
 - (a) in relation to an appeal under section 117(1) or 118(1), 28 days beginning with the date the applicant receives notice of the decision;
 - (b) in relation to an appeal under section 117(2) or 118(2), 28 days from the end of the relevant period (within the meaning of section 117 or 118).
- (3) Regulations under subsection (1)(d) may provide that a notice of appeal in respect of an application for heritage asset consent or for the variation or discharge of conditions must not be entertained unless it is accompanied by a certificate corresponding to one of those described in section 97(1).

- (4) Any such regulations may include provision corresponding to any provision which may be included in regulations made by virtue of section 97.
- (5) Section 98 (offences relating to certificates) also applies in relation to a certificate issued for the purposes of regulations made by virtue of subsection (3) above.

121 Determination of appeals

- (1) Where an appeal is made under section 117 or 118, the appropriate national authority –
 - (a) may allow or dismiss the appeal;
 - (b) may reverse or vary any part of the local planning authority’s decision (whether or not the appeal relates to that part);
 - (c) may deal with the application as if it had been made to the appropriate national authority in the first instance.
- (2) The appropriate national authority may make regulations about procedure in relation to the determination of appeals under sections 117 and 118.

122 Appeals against failure to take decision: effect of late LPA notice

- (1) This section applies where a person who has made an application for heritage asset consent appeals to the appropriate national authority under section 117(2).
- (2) The local planning authority may give a notice mentioned in section 117(3) at any time before the end of the additional period.
- (3) If within the additional period the local planning authority gives notice of its refusal of the application –
 - (a) the appeal is to be treated as an appeal under section 117(1) against the refusal; and
 - (b) the appropriate national authority must give the appellant an opportunity to change the grounds of the appeal and any choice the appellant has made as respects the procedure for the appeal.
- (4) If within the additional period the local planning authority gives notice of its grant of the application subject to conditions, the appropriate national authority must give the appellant the opportunity –
 - (a) to proceed with the appeal as an appeal under section 117(1) against the grant of the application subject to conditions;
 - (b) to change the grounds of the appeal;
 - (c) to change any choice the appellant has made as respects the procedure for the appeal.
- (5) Where this section applies, the appropriate national authority may not issue its decision on the appeal before the end of the additional period.
- (6) In this section “the additional period” means such period, beginning with the date of the appeal, as may be prescribed by regulations made by the appropriate national authority for the purposes of this section.

Revocation and modification of consent

123 Revocation and modification of consent by local planning authority

- (1) If it appears to the local planning authority that it is appropriate to revoke or modify any heritage asset consent granted on an application under this Act, the authority may by order revoke or modify the consent to such extent as it considers appropriate.
- (2) The power conferred by this section to revoke or modify heritage asset consent in respect of any works or removal may be exercised at any time before the completion of the works or removal.
- (3) But the revocation or modification does not affect so much of the works or removal as has previously been carried out.

124 Procedure for section 123 orders

- (1) Except as provided by section 125, an order made by a local planning authority under section 123 shall not take effect unless it is confirmed by the appropriate national authority.
- (2) Where a local planning authority sends an order under section 123 to the appropriate national authority for confirmation, the local planning authority must give notice that it has done so to—
 - (a) each owner and occupier of the registered heritage structure or of any part of it; and
 - (b) any other person who in its opinion will be affected by the order.
- (3) The notice must specify a period within which any person to whom it is given may require an opportunity of appearing before and being heard by a person appointed by the appropriate national authority.
- (4) If, within that period, any person to whom the notice was given requires such an opportunity, the appropriate national authority must give such an opportunity—
 - (a) to that person, and
 - (b) to the local planning authority,before it decides whether to confirm the order.
- (5) The period specified under subsection (3) must be at least 28 days beginning with the date of the notice.
- (6) The appropriate national authority may confirm an order submitted to it under this section—
 - (a) without modification; or
 - (b) subject to modifications.

125 Procedure for section 123 orders: unopposed cases

- (1) This section applies where—
 - (a) a local planning authority has made an order under section 123 revoking or modifying a heritage asset consent granted by it; and
 - (b) the persons mentioned in subsection (2) have notified the authority in writing that they do not object to the order.

- (2) Those persons are –
 - (a) each owner and occupier of, or of any part of, the registered heritage structure; and
 - (b) all other persons who in the authority’s opinion will be affected by the order.
- (3) Where this section applies, instead of sending the order to the appropriate national authority for confirmation the authority must –
 - (a) advertise in the prescribed way that the order has been made;
 - (b) give a notice, to the same effect as the advertisement, to the persons mentioned in subsection (2);
 - (c) send a copy of the advertisement to the appropriate national authority within three days beginning with the date on which the advertisement first appears.
- (4) An advertisement under subsection (3)(a) must specify –
 - (a) the period within which persons affected by the order may give notice to the appropriate national authority that they wish for an opportunity to appear before and be heard by a person appointed by that authority;
 - (b) the period at the end of which, if no such notice is given to the appropriate national authority, the order may take effect by virtue of this section without being confirmed by that authority.
- (5) The period specified under subsection (4)(a) must be at least 28 days beginning with the date on which the advertisement first appears.
- (6) The period specified under subsection (4)(b) must be at least 14 days from the end of the period specified under subsection (4)(a).
- (7) If by the end of the period specified under subsection (4)(a) –
 - (a) no person claiming to be affected by the order has given notice to the appropriate national authority as mentioned in subsection (4)(a), and
 - (b) the appropriate national authority has not directed that the order be sent to it for confirmation,the order shall take effect at the end of the period specified under subsection (4)(b), without being confirmed by the appropriate national authority.
- (8) In this section “prescribed” means prescribed by regulations made by the appropriate national authority for the purposes of this section.

126 Revocation and modification of consent by appropriate national authority

- (1) If it appears to the appropriate national authority that it is appropriate to revoke or modify any heritage asset consent granted on an application under this Act, that authority may by order revoke or modify the consent to such extent as it considers appropriate.
- (2) Before making an order under this section the appropriate national authority must consult –
 - (a) in the case of the Secretary of State, the local planning authority and English Heritage;
 - (b) in the case of the Welsh Ministers, the local planning authority.
- (3) Where the appropriate national authority proposes to make an order under this section, it must give notice of that intention to –

- (a) each owner and occupier of the registered heritage structure or of any part of it; and
 - (b) any other person who in its opinion will be affected by the order.
- (4) The notice must specify a period within which any person to whom it is given may require an opportunity of appearing before and being heard by a person appointed by the appropriate national authority.
- (5) If, within that period, any person to whom the notice was given requires such an opportunity, the appropriate national authority must give such an opportunity –
- (a) to that person, and
 - (b) to the local planning authority,
- before it decides whether to make the order.
- (6) The period specified under subsection (4) must be at least 28 days beginning with the date of the notice.
- (7) The power conferred by this section to revoke or modify heritage asset consent in respect of any works or removal may be exercised at any time before the completion of the works or removal.
- (8) But the revocation or modification does not affect so much of the works or removal as has previously been carried out.

Compensation

127 Compensation where consent revoked or modified

- (1) This section applies where –
- (a) heritage asset consent in respect of a registered heritage structure is revoked or modified by –
 - (i) an order under section 123 or 126;
 - (ii) a direction under section 94 disapplying, in respect of the registered heritage structure, a class consent order; or
 - (iii) the revocation or amendment of a class consent order; and
 - (b) on a claim made to the local planning authority in accordance with regulations, it is shown that a person interested in the registered heritage structure has –
 - (i) incurred expenditure in carrying out works which are made abortive by the revocation or modification; or
 - (ii) otherwise sustained loss or damage which is directly attributable to the revocation or modification.
- (2) The local planning authority must pay that person compensation in respect of that expenditure, loss or damage.
- (3) For the purposes of this section, expenditure incurred in the preparation of plans for the purposes of any works, or on similar matters preparatory to any works, is to be taken to be included in the expenditure incurred in carrying out those works.
- (4) Subject to subsection (3), no compensation may be paid under this section in respect of –
- (a) any works carried out before the grant of the heritage asset consent; or

- (b) any other loss or damage arising out of anything done or omitted to be done before the grant of the heritage asset consent.
- (5) Subsection (4)(b) does not apply to loss or damage consisting of depreciation of the value of an interest in land.
- (6) The reference in subsection (1) to an order under section 123 does not include any order which took effect by virtue of section 125.
- (7) A person is not entitled to compensation under this section in a case within subsection (1)(a)(ii) or (iii) unless, on an application for heritage asset consent for the works in question, consent is refused or is granted subject to conditions other than those which applied under the class consent order.
- (8) In this section “regulations” means regulations under section 128.

128 Compensation claims: further provision

- (1) The appropriate national authority may, after consultation with all the authorities concerned, direct that where a local planning authority is liable to pay compensation under section 127 in a particular case or a case of a particular description, it is entitled to be reimbursed –
 - (a) the whole of the compensation, or
 - (b) such proportion of it as the appropriate national authority may direct, by one or more authorities specified in the direction.
- (2) Regulations made by the appropriate national authority may make provision as to –
 - (a) the way in which a claim under section 127 must be made;
 - (b) the time within which any such claim must be made.
- (3) Schedule 2 (assessment of compensation for depreciation in the value of land) has effect.

CHAPTER 3

ENFORCEMENT

Enforcement notices: issue, withdrawal and variation

129 Heritage asset enforcement notices

- (1) This section applies where it appears to the local planning authority –
 - (a) that works have been or are being carried out to a registered heritage structure in its area; and
 - (b) that the works are such as to involve a contravention of section 86 or a failure to comply with a condition subject to which heritage asset consent was granted.
- (2) The authority may issue a heritage asset enforcement notice if it considers it appropriate to do so having regard to the effect of the works on the special historic, archaeological, architectural or artistic interest of the registered heritage structure.

- (3) A heritage asset enforcement notice is a notice specifying the alleged contravention or failure to comply and requiring the taking of specified steps within subsection (4).
- (4) Steps are within this subsection if they are any of the following—
 - (a) steps for restoring the registered heritage structure to its former state;
 - (b) where the authority considers that such restoration would not be reasonably practicable or would be undesirable, steps for carrying out such further works specified in the notice as the authority considers necessary to alleviate the effect of works carried out without heritage asset consent;
 - (c) steps for bringing the registered heritage structure to the state in which it would have been if the terms and conditions of any heritage asset consent which has been granted for the works had been complied with.
- (5) Where a heritage asset enforcement notice requires the taking of a step mentioned in subsection (4)(b), heritage asset consent is to be treated as granted for any works carried out in compliance with the notice.

130 Consultation before issuing notice

- (1) A local planning authority in England must (subject to subsection (3)) consult English Heritage before issuing a heritage asset enforcement notice.
- (2) A local planning authority in Wales must consult the Welsh Ministers before issuing a heritage enforcement notice.
- (3) The Secretary of State may direct that subsection (1) is not to apply in relation to heritage asset enforcement notices in respect of—
 - (a) registered heritage structures of a particular description;
 - (b) a particular registered heritage structure.
- (4) A direction under subsection (3) may be given to—
 - (a) all local planning authorities in England;
 - (b) local planning authorities in England of a particular description;
 - (c) a particular local planning authority in England.

131 Enforcement notices: date on which notice takes effect, etc

- (1) A heritage asset enforcement notice must—
 - (a) specify the date on which it is to take effect; and
 - (b) specify the period within which any steps must be taken.
- (2) Different periods may be specified under subsection (1)(b) in relation to different steps.
- (3) Where different periods are specified by virtue of subsection (2), references in this Part to the period for compliance with a heritage asset enforcement notice are to be read, in relation to any step, as references to the period within which the step is required to be taken.
- (4) Subject to sections 133(4) and 137(6), a heritage asset enforcement notice takes effect on the date specified under subsection (1)(a).
- (5) A copy of a heritage asset enforcement notice must be given to—

- (a) each owner and occupier of, or of any part of, the registered heritage structure to which it relates;
 - (b) any other person having an interest in that registered heritage structure which in the opinion of the local planning authority is materially affected by the notice.
- (6) Any copy under subsection (5) must be given –
- (a) before the end of 28 days beginning with the date the notice is issued; and
 - (b) before the beginning of the relevant period.
- (7) In subsection (6) “the relevant period” means the period of 28 days ending with the date specified in the notice as the date on which it is to take effect.

132 Withdrawal or variation of enforcement notice

- (1) The local planning authority may –
- (a) withdraw a heritage asset enforcement notice (without prejudice to its power to issue another); or
 - (b) waive or relax any requirement of such a notice.
- (2) In particular, the local planning authority may extend any period specified under section 131(1)(b).
- (3) The powers conferred by this section may be exercised whether or not the notice has taken effect.
- (4) Immediately after exercising any power conferred by this section, the local planning authority must give notice of that exercise to every person –
- (a) who has been given a copy of the heritage asset enforcement notice; or
 - (b) who would, if the notice were re-issued, be given a copy of it.

Appeals

133 Appeal against enforcement notice

- (1) Any of the persons mentioned in subsection (2) may appeal to the appropriate national authority against a heritage asset enforcement notice on any of the grounds mentioned in subsection (3).
- (2) Those persons are –
- (a) a person who has an interest in the registered heritage structure to which the notice relates;
 - (b) a person who on the date the notice is issued occupies that registered heritage structure by virtue of a licence, and continues so to occupy it when the appeal is brought.
- (3) Those grounds are –
- (a) that the matters alleged to constitute a contravention or failure as mentioned in section 129(1) have not occurred;
 - (b) that those matters (if they occurred) do not constitute such a contravention or failure;
 - (c) that –

- (i) works to the registered heritage structure were urgently necessary in the interests of safety or health or for the preservation of the registered heritage structure; and
 - (ii) the works carried out were limited to the minimum measures immediately necessary;
 - (d) that heritage asset consent ought to be granted for the works, or that any relevant condition of a heritage asset consent that has been granted ought to be discharged, or different conditions substituted;
 - (e) that copies of the notice were not given as required by section 131;
 - (f) in relation to a requirement to take steps mentioned in section 129(4)(a), that the requirements of the notice exceed what is necessary for restoring the registered heritage structure to its condition before the works were carried out;
 - (g) that the period specified in the notice as the period within which any step required by the notice must be taken falls short of what should reasonably be allowed;
 - (h) that steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
 - (i) that steps required to be taken by virtue of section 129(4)(b) exceed what is necessary to alleviate the effect of the works carried out to the registered heritage structure;
 - (j) that steps required to be taken by virtue of section 129(4)(c) exceed what is necessary to bring the registered heritage structure to the state in which it would have been if the terms and conditions of the heritage asset consent had been complied with.
- (4) Where an appeal under this section is brought the heritage asset enforcement notice is of no effect pending the final determination or withdrawal of the appeal; but this is subject to any order under section 137(6).

134 Appeals: procedure for making, and effect on other proceedings

- (1) Any appeal under section 133 must be made—
 - (a) by giving written notice of the appeal to the appropriate national authority before the date specified in the heritage asset enforcement notice as the date on which it is to take effect; or
 - (b) by sending notice of the appeal to that authority in a properly addressed and pre-paid letter posted to that authority at such time that, in the ordinary course of post, it would be delivered to that authority before that date; or
 - (c) by sending notice of the appeal to that authority using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to that authority before that date.
- (2) A person who gives notice under this section must submit to the appropriate national authority, either when giving the notice or within such time as may be prescribed, a statement in writing—
 - (a) specifying the grounds of the appeal; and
 - (b) giving such further information as may be prescribed.
- (3) If, where more than one ground is specified in the statement, the appellant does not give information required under subsection (2)(b) in relation to each of those grounds within the prescribed time, the appropriate national authority

may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.

- (4) Where a person has appealed under section 133 against a heritage asset enforcement notice, no person is entitled, in any other proceedings instituted after the appeal is brought, to claim that a copy of that notice was not duly given to the person who appealed.
- (5) In this section –
 - “electronic communication” has the same meaning as in the Electronic Communications Act 2000 (c. 7);
 - “prescribed” means prescribed by regulations made by the appropriate national authority.

135 Appeals: further procedural provision

- (1) The appropriate national authority may make regulations about procedure in relation to appeals under section 133.
- (2) Regulations under this section may –
 - (a) require the local planning authority to submit within a prescribed time a statement indicating the submissions which it proposes to put forward on the appeal;
 - (b) specify the matters to be included in such a statement;
 - (c) require the local planning authority or the appellant to give a prescribed notice within subsection (3);
 - (d) require the local planning authority to send to the appropriate national authority within a prescribed time –
 - (i) a copy of the heritage asset enforcement notice; and
 - (ii) a list of the persons to whom copies of that notice have been given.
- (3) A notice is within this subsection if in the opinion of the appropriate national authority it is likely to bring the appeal to the attention of persons in the locality in which the registered heritage structure is.
- (4) Nothing in subsection (2) affects the generality of subsection (1).

136 Powers of appropriate national authority on appeal

- (1) This section applies where an appeal is made to the appropriate national authority under section 133.
- (2) The appropriate national authority may –
 - (a) correct any defect, error or misdescription in the heritage asset enforcement notice; or
 - (b) vary the terms of the notice.
- (3) It may make such a correction or variation only if satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
- (4) Where the appropriate national authority decides to allow the appeal, it may quash the notice.

- (5) The appropriate national authority must give any directions necessary to give effect to its decision on the appeal.
- (6) The appropriate national authority –
 - (a) may dismiss the appeal if the appellant fails to comply with section 134(2) within the prescribed time;
 - (b) may allow the appeal and quash the notice if the local planning authority fails to comply within the prescribed time with any requirement imposed by regulations made by virtue of section 135(2)(a), (b) or (d).
- (7) Where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required to be given a copy of the heritage asset enforcement notice was not given such a copy, the appropriate national authority may disregard that fact if neither the appellant nor that person has been substantially prejudiced by it.
- (8) Where the appeal is to the Secretary of State, the Secretary of State must consult English Heritage before determining it (unless the heritage asset enforcement notice was issued by English Heritage by virtue of section 141).
- (9) On the determination of the appeal the appropriate national authority may –
 - (a) grant heritage asset consent for the works to which the heritage asset enforcement notice relates or for part of those works;
 - (b) discharge any condition subject to which heritage asset consent was granted and substitute any other condition, whether more or less onerous.
- (10) Any heritage asset consent granted under this section is to be treated as granted on an application for the same consent under section 95.

137 Appeals to High Court relating to heritage asset enforcement

- (1) This section applies where the appropriate national authority gives a decision in proceedings on an appeal under section 133 against a heritage asset enforcement notice.
- (2) Any of the persons mentioned in subsection (3) may, according as rules of court provide, either –
 - (a) appeal to the High Court against the decision on a point of law; or
 - (b) require the appropriate national authority to state and sign a case for the opinion of the High Court.
- (3) Those persons are –
 - (a) the appellant;
 - (b) the local planning authority;
 - (c) any other person having an interest in the registered heritage structure to which the notice relates.
- (4) At any stage of the proceedings on any such appeal, the appropriate national authority may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court.
- (5) A decision of the High Court on a case stated by virtue of subsection (4) is to be treated as a judgment of the court within the meaning of section 16 of the

Senior Courts Act 1981 (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).

- (6) In proceedings brought by virtue of this section the High Court or (as the case may be) the Court of Appeal may order that the heritage asset enforcement notice shall have effect, or have effect to such extent as is specified in the order, pending the final determination of those proceedings and any re-hearing and determination by the appropriate national authority.
- (7) An order under subsection (6) may be made on such terms (if any) as the court sees fit.
- (8) Any such terms may include terms requiring the local planning authority to give an undertaking as to damages or any other matter.
- (9) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this section, the power to make rules of court includes power to make such rules—
 - (a) prescribing the powers of the court with respect to remitting the matter with the opinion or direction of the court for re-hearing and determination by the appropriate national authority;
 - (b) providing for that authority, either generally or in circumstances prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and be heard accordingly.
- (10) No proceedings in the High Court may be brought by virtue of this section except with the leave of that court.
- (11) No appeal to the Court of Appeal may be brought by virtue of this section except with the leave of the Court of Appeal or of the High Court.
- (12) Where the heritage asset enforcement notice was issued by English Heritage by virtue of section 141, the references in subsection (3)(b) and (8) above to the local planning authority are to be read as to English Heritage.
- (13) In this section “decision” includes a direction or order, and references to the giving of a decision are to be read accordingly.

Effect of enforcement notice

138 Carrying out of works required by enforcement notice

- (1) If any of the steps specified in a heritage asset enforcement notice have not been taken within the period for compliance with the notice, the local planning authority may—
 - (a) enter the land and take those steps; and
 - (b) recover from the person who is then the owner of the registered heritage structure any expenses reasonably incurred by it in doing so.
- (2) Where a heritage asset enforcement notice has been issued in respect of a registered heritage structure, the following expenses and sums are to be treated as incurred or paid for the use and at the request of the person who carried out the works to which the notice relates—
 - (a) any expenses incurred by the owner or occupier of the registered heritage structure for the purpose of complying with the notice; and

- (b) any sums paid by the owner of the registered heritage structure under subsection (1) in respect of expenses incurred by the local planning authority in taking steps required by the notice.
- (3) The appropriate national authority may by regulations apply (with or without modifications) all or any of the following sections of the Public Health Act 1936 (c. 49) in relation to any steps required by a heritage asset enforcement notice –
 - (a) section 276 (power of local authorities to sell materials removed in executing works under that Act, subject to accounting for the proceeds);
 - (b) section 289 (power to require the occupier of any premises to permit works to be carried out by the owner);
 - (c) section 294 (limit on liability of persons holding premises as agents or trustees in respect of expenses recoverable under that Act).
- (4) Regulations under subsection (3) applying all or any of section 289 of that Act may make modifications for the purpose of giving the owner of land to which a heritage asset enforcement notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice.
- (5) Regulations under subsection (3) may also provide for the charging on land comprising a registered heritage structure of any expenses recoverable by a local planning authority under subsection (1).
- (6) A person who intentionally obstructs a person acting in the exercise of powers under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

139 Offence where heritage asset enforcement notice not complied with

- (1) Where at any time after the end of the period for compliance with a heritage asset enforcement notice any step required by the notice has not been taken, the person who is then the owner of the land is guilty of an offence.
- (2) An offence under this section may be charged by reference to any day or longer period of time.
- (3) A person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.
- (4) It is a defence for a person accused of an offence under this section (“A”) to prove –
 - (a) that A did everything A could be expected to do to secure that all the steps required by the notice were taken; or
 - (b) that A was not given a copy of the heritage asset enforcement notice and was not aware of its existence.
- (5) A person guilty of an offence under this section is liable –
 - (a) on summary conviction, to a fine not exceeding £20,000;
 - (b) on conviction on indictment, to a fine.
- (6) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

140 Effect of consent for retention of works on enforcement notice

- (1) This section applies where, after the issue of a heritage asset enforcement notice, consent is granted under section 92 for the retention of any works to which the notice relates.
- (2) The heritage asset enforcement notice shall cease to have effect so far as it requires steps to be taken that would involve the works not being retained in accordance with the consent.
- (3) If the consent is granted so as to permit the retention of works without complying with some condition subject to which a previous heritage asset consent was granted, the heritage asset enforcement notice shall cease to have effect so far as it requires steps to be taken for complying with that condition.
- (4) The fact that a heritage asset enforcement notice has wholly or partly ceased to have effect under this section does not affect the liability of any person for an offence in respect of a previous failure to comply with the notice.

Powers of English Heritage and appropriate national authority to issue notices

141 Concurrent powers of English Heritage

- (1) This section applies in relation to any area of a local planning authority in England.
- (2) As respects any such area English Heritage has, concurrently with the local planning authority, the functions conferred on the local planning authority by sections 129, 131, 132 and 138.
- (3) References to the local planning authority in those sections and sections 135 and 136(3) and (6) are to be read accordingly.

142 Powers of appropriate national authority

- (1) The appropriate national authority may, if it appears to it appropriate to do so, issue a heritage asset enforcement notice in respect of any registered heritage structure.
- (2) Before issuing such a notice the appropriate national authority must consult –
 - (a) the local planning authority; and
 - (b) if the registered heritage structure is in England, English Heritage.
- (3) A notice issued under this section has the same effect as a heritage asset enforcement notice issued by the local planning authority.
- (4) In relation to a notice issued under this section, section 138 applies as if references to the local planning authority were to the appropriate national authority.
- (5) References in subsections (2) and (3) above to the local planning authority are, in the case of an authority for an area in England outside Greater London, to be read as references to the district planning authority.

Injunctions

143 Injunctions

- (1) Where a local planning authority considers it necessary or expedient for a heritage asset contravention to be restrained by injunction, it may apply to the court for an injunction.
- (2) In subsection (1) “a heritage asset contravention” means –
 - (a) an actual or apprehended contravention of section 86; or
 - (b) an actual or apprehended failure to comply with a condition subject to which heritage asset consent was granted.
- (3) Subsection (1) applies whether or not the authority has exercised or proposes to exercise any of its other powers under this Part.
- (4) References in subsections (1) to (3) to a local planning authority include, in relation to England, English Heritage.
- (5) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the contravention.
- (6) Rules of court may in particular provide for such an injunction to be issued against a person whose identity is unknown.
- (7) In this section “the court” means the High Court or the county court.

CHAPTER 4

PURCHASE NOTICES

144 Purchase notice on refusal or conditional grant of heritage asset consent

- (1) Any owner of a registered heritage structure (“the owner”) may give a purchase notice to the relevant council where conditions A and B are met.
- (2) A “purchase notice” is a notice requiring the relevant council to purchase, in accordance with this Chapter –
 - (a) the owner’s interest in the registered heritage structure; and
 - (b) any relevant land specified in the notice.
- (3) Condition A is that heritage asset consent in respect of the registered heritage structure has been –
 - (a) refused;
 - (b) granted subject to conditions; or
 - (c) revoked or modified by an order under section 123 or 126.
- (4) Condition B is that the owner claims –
 - (a) that the conditions in section 145(1) (structure and land incapable of beneficial use) are met in respect of the registered heritage structure and any relevant land specified in the notice; and
 - (b) that the conditions in section 145(2) (use of land inseparable from use of structure) are met in respect of any such relevant land.
- (5) The appropriate national authority may make regulations as to –

- (a) the period within which a purchase notice may be given; and
 - (b) the way in which any such notice must be given.
- (6) In this Chapter “the relevant council” means –
- (a) the council of the district, Welsh county, county borough or London borough in which the registered heritage structure and any relevant land specified in the notice are situated; or
 - (b) any National Park authority which is the local planning authority for the area in which the registered heritage structure and any relevant land specified in the notice are situated.
- (7) In this section and section 145 “relevant land” means land which is owned with the registered heritage structure, and comprises it or is contiguous or adjacent to it.
- (8) In the following provisions of this Chapter, any reference to “the land” is to the registered heritage structure and any relevant land specified in a notice under this section.

145 Conditions for giving of purchase notice

- (1) The conditions referred to in section 144(4)(a) are –
- (a) that the land has become incapable of reasonably beneficial use in its existing state;
 - (b) that the land cannot be made capable of reasonably beneficial use by carrying out any works or removal for which heritage asset consent has been granted, or for which the local planning authority or appropriate national authority has undertaken to grant such consent; and
 - (c) where heritage asset consent has been granted subject to conditions with respect to the carrying out of works or a removal, or has been modified by the imposition of such conditions, that the land cannot be made capable of reasonably beneficial use by carrying out the works or the removal in accordance with those conditions.
- (2) The conditions referred to in section 144(4)(b) are –
- (a) that the use of the relevant land is substantially inseparable from that of the registered heritage structure; and
 - (b) that the relevant land should be treated, together with that structure, as a single holding.
- (3) In determining for the purposes of subsection (1) what is or would in any particular circumstances be a reasonably beneficial use of land, no account shall be taken of –
- (a) any prospective use which would involve the carrying out of development, other than development specified in paragraph 1 or 2 of Schedule 3 to the Town and Country Planning Act 1990 (c. 8); or
 - (b) any works or removal requiring heritage asset consent which might be carried out to the registered heritage structure, other than works or a removal for which the local planning authority or appropriate national authority has undertaken to grant such consent.

146 Action by council to whom purchase notice given

- (1) Where an owner of a registered heritage structure gives a purchase notice to the relevant council under section 144(1), the council must give to that owner a notice (a “response”) stating one of the following –
 - (a) that the council is willing to comply with the purchase notice;
 - (b) that another local authority or statutory undertakers specified in the response have agreed to comply with the purchase notice in the council’s place;
 - (c) that –
 - (i) for the reasons specified in the response, the council is not willing to comply with the purchase notice and has not found another local authority or statutory undertakers who will agree to comply with it in the council’s place; and
 - (ii) the council has given a copy of the purchase notice and its response to the appropriate national authority.
- (2) A response must be given before the end of three months beginning with the date on which the purchase notice is given.
- (3) Where a response under subsection (1)(a) or (b) has been given, the relevant council or, as the case may be, the other local authority or statutory undertakers specified in the response, shall be taken –
 - (a) to be authorised to acquire the owner’s interest in the land compulsorily under section 163; and
 - (b) to have given a notice to treat in respect of that interest on the date on which the response was given.
- (4) Where the relevant council gives a response under subsection (1)(c), it must at the same time give the appropriate national authority a copy of –
 - (a) that response; and
 - (b) the purchase notice.
- (5) In this section and sections 147 and 148 any reference to a local authority includes a National Park authority.

147 Procedure on reference of purchase notice to appropriate national authority

- (1) This section applies where a copy of a purchase notice is given to the appropriate national authority under section 146(4).
- (2) The appropriate national authority must consider –
 - (a) whether to confirm the purchase notice under section 148;
 - (b) whether to take other action in respect of it under section 149.
- (3) But the appropriate national authority must comply with subsections (4) to (7) before –
 - (a) taking any action within subsection (2)(a) or (b); or
 - (b) deciding not to confirm the purchase notice (under section 148(3) or otherwise).
- (4) The appropriate national authority must give notice of its proposed action to –
 - (a) the person who gave the purchase notice;
 - (b) the relevant council;
 - (c) the appropriate planning authorities; and

- (d) any local authority or statutory undertakers whom the appropriate national authority proposes to substitute for the relevant council under section 148(4).
- (5) The notice must specify a period within which any of the persons to whom it is given may require an opportunity of appearing before and being heard by a person appointed by the appropriate national authority.
- (6) If, within that period, any of those persons requires such an opportunity, the appropriate national authority must give such an opportunity to each of them.
- (7) The period specified under subsection (5) must be at least 28 days beginning with the date of the notice.
- (8) If, after any of the persons to whom a notice under subsection (4) is given has appeared before and been heard by the appointed person, the appropriate national authority considers it appropriate to take action under section 148 or 149 (including deciding not to confirm the purchase notice) otherwise than in accordance with the notice under subsection (4), the appropriate national authority may take that action.
- (9) For the purposes of subsection (4)(c) each of the following is an appropriate planning authority –
 - (a) in England outside Greater London –
 - (i) the county planning authority;
 - (ii) the county council, where the county planning authority is a joint planning board; and
 - (iii) any joint planning board of which a district council to which the purchase notice was given is a constituent member;
 - (b) in Wales, the local planning authority, where it is a joint planning board.

148 Confirmation of purchase notice by appropriate national authority

- (1) The appropriate national authority may not confirm a purchase notice in respect of the land, or any part of it, unless it is satisfied –
 - (a) that the conditions in section 145(1) are met in respect of the land or part; and
 - (b) that the land or part comprises such land contiguous or adjacent to the registered heritage structure as is in the appropriate national authority's opinion required –
 - (i) for preserving the registered heritage structure or its amenities;
 - (ii) for affording access to it; or
 - (iii) for its proper control or management.
- (2) Where the appropriate national authority is satisfied as mentioned in subsection (1) as respects the land, or any part of it, the authority must confirm the purchase notice in respect of the land or part, but this is subject to subsection (3) and section 149.
- (3) The appropriate national authority may decide not to confirm a purchase notice in respect of the land, or any part of it, if it considers that the conditions in section 145(1) are only met in respect of the land or part because of deliberate inaction by the person who gave the purchase notice.

- (4) Where the appropriate national authority confirms a purchase notice, it may modify the notice in relation to the whole or any part of the land by substituting another local authority or statutory undertakers for the relevant council, if it considers it appropriate to do so having regard to the probable ultimate use of the registered heritage structure or its site.
- (5) Where the appropriate national authority confirms a purchase notice in respect of the land or any part of it, the relevant council or, as the case may be, the other local authority or statutory undertakers specified in the notice, shall be taken –
 - (a) to be authorised to acquire the owner's interest in the land or part compulsorily under section 163; and
 - (b) to have given a notice to treat in respect of that interest on such date as the appropriate national authority may direct.

149 Alternative action by appropriate national authority in respect of purchase notice

- (1) Instead of confirming a purchase notice under section 148, the appropriate national authority may –
 - (a) in the case of a notice given on account of the refusal of heritage asset consent for any works or removal, grant such consent for those works or the removal;
 - (b) in the case of a notice given on account of heritage asset consent being granted subject to conditions, or modified by the imposition of conditions, revoke or amend those conditions so far as appears to the appropriate national authority to be required to enable the land to be made capable of reasonably beneficial use by the carrying out of the works or removal for which the consent was granted; or
 - (c) in the case of a notice given on account of heritage asset consent being revoked by an order under section 123 or 126, cancel the order revoking the consent.
- (2) Subsection (3) applies where it appears to the appropriate national authority that the land, or any part of it, could be made capable of reasonably beneficial use within a reasonable time by the carrying out –
 - (a) of any other works or a removal for which heritage asset consent would be required; or
 - (b) of any development for which planning permission would be required.
- (3) The appropriate national authority may, instead of confirming the purchase notice in respect of the land or part, direct that any application for heritage asset consent or planning permission for those works, or that removal or development, shall be granted.

150 No action by appropriate national authority within relevant period

- (1) This section applies where a copy of a purchase notice is given to the appropriate national authority under section 146(4) and by the end of the relevant period that authority has not –
 - (a) confirmed the purchase notice;
 - (b) notified the person by whom the purchase notice was given that the authority does not propose to confirm it; or
 - (c) taken any such action in respect of the purchase notice as is mentioned in section 149.

- (2) Where this section applies –
 - (a) the purchase notice shall be taken to have been confirmed; and
 - (b) the relevant council shall be taken –
 - (i) to be authorised to acquire the owner's interest in the land compulsorily under section 163; and
 - (ii) to have given a notice to treat in respect of that interest at the end of the relevant period.
- (3) In this section “the relevant period” means –
 - (a) the period of nine months beginning with the date on which the purchase notice was given; or
 - (b) if it ends earlier, the period of six months beginning with the date on which a copy of the purchase notice was given to the appropriate national authority under section 146(4).
- (4) But the relevant period does not run at any time when the appropriate national authority has before it both –
 - (a) a copy of the purchase notice given to it under section 146(4); and
 - (b) a notice of appeal under section 117 or 133 (appeal in connection with heritage asset consent or enforcement notice) relating to any of the land to which the purchase notice relates.

151 Quashing of certain decisions of appropriate national authority

- (1) This section applies where under section 154 any of the following decisions of the appropriate national authority is quashed –
 - (a) a decision to confirm or not to confirm a purchase notice in respect of the land or any part of it;
 - (b) a decision to give a direction as to the granting of heritage asset consent or planning permission.
- (2) The purchase notice shall be treated as cancelled, but the owner may give a further purchase notice in its place (and regulations under section 144(5)(a) may make provision as to the period within which such a notice may be given).

CHAPTER 5

MISCELLANEOUS

152 Acts causing or likely to result in damage to registered heritage structures

- (1) A person commits an offence if –
 - (a) the person does or permits the doing of an act which causes or is likely to result in damage to a registered heritage structure;
 - (b) the person would apart from this subsection be entitled to do or permit the act in question; and
 - (c) the person does or permits the doing of the act with the intention of causing damage to the registered heritage structure or is reckless as to whether the act will cause damage to the registered heritage structure.
- (2) Subsection (1) does not apply to an act for the carrying out of –

- (a) works authorised by planning permission granted or deemed to be granted in pursuance of an application under the Town and Country Planning Act 1990 (c. 8);
 - (b) works for which heritage asset consent has been granted under this Act; or
 - (c) works for which development consent has been granted under the Planning Act 2008.
- (3) A person guilty of an offence under subsection (1) is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000 or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (4) Until the coming into force of section 154 of the Criminal Justice Act 2003 (c. 44), subsection (3)(a) has effect as if the reference to 12 months were to 6 months.
- (5) It is a defence for a person accused of an offence under subsection (1) to prove that, at the time of the act, that person –
- (a) did not know that the registered heritage structure was a registered heritage structure; and
 - (b) had taken all reasonable steps to ascertain whether it was a registered heritage structure.
- (6) Subsection (7) applies if a person convicted of an offence under this section fails to take such reasonable steps as may be necessary to prevent any damage or further damage resulting from the offence.
- (7) The person is guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which the failure continues.
- (8) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.
- (9) In this section references to damage to a registered heritage structure include the demolition, destruction or disturbance of the registered heritage structure.

153 Exemptions for ecclesiastical buildings etc

- (1) The provisions mentioned in subsection (2) do not apply in relation to any registered heritage structure which is ecclesiastical and for the time being used for ecclesiastical purposes.
- (2) Those provisions are –
 - Chapters 1 to 4 of this Part;
 - section 152.
- (3) For the purposes of subsection (1), a registered heritage structure used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of that minister's office is to be treated as not being ecclesiastical.

- (4) For the purposes of subsection (1) as it relates to section 86 (requirement for consent for works), a registered heritage structure is to be taken to be used for the time being for ecclesiastical purposes if it would be so used but for the works in question.
- (5) The appropriate national authority may by order restrict or exclude the operation of subsections (1) to (3).
- (6) An order under subsection (5) may –
 - (a) make provision in respect of registered heritage structures generally, in respect of registered heritage structures of a particular description (or other than those of a particular description) or in respect of a particular registered heritage structure;
 - (b) make different provision in respect of registered heritage structures in different areas, in respect of registered heritage structures of different religious faiths or denominations or according to the use made of the registered heritage structure;
 - (c) make such provision in relation to a part of a registered heritage structure (including, in particular, an object or structure falling to be treated as part of a registered heritage structure by reason of section 222) as may be made in relation to a registered heritage structure;
 - (d) make different provision in respect of different parts of the same registered heritage structure;
 - (e) make different provision in respect of works of different descriptions or according to the extent of the works;
 - (f) make consequential modifications of the operation of –
 - (i) any other provision of this Act;
 - (ii) any provision of the Town and Country Planning Act 1990 (c. 8);
 - (iii) any instrument made under a provision mentioned in subparagraph (i) or (ii).
- (7) Chapters 1 to 4 of this Part do not apply in relation to the carrying out of works for the demolition, in pursuance of a pastoral or redundancy scheme (within the meaning of the Pastoral Measure 1983) of a redundant building (within the meaning of that Measure) or a part of such a building.

154 Questioning validity of certain decisions and orders

- (1) The validity of a decision or order mentioned in subsection (2) may not be questioned in any legal proceedings, except as provided by this section.
- (2) Those decisions and orders are –
 - (a) a decision on an application referred to the appropriate national authority under section 99;
 - (b) a decision on a review under section 115;
 - (c) a decision on an appeal under section 117 or 118;
 - (d) an order under section 123 (whether before or after it has been confirmed);
 - (e) an order under section 126;
 - (f) a decision to grant heritage asset consent under section 136(9)(a) or to discharge a condition under section 136(9)(b);
 - (g) a decision under section 148 to confirm or not to confirm a purchase notice in respect of the land to which it relates, or any part of it;

- (h) a decision under section 149 to give a direction as to the granting of heritage asset consent or planning permission.
- (3) A person affected by such a decision or order (including, except in the case of a decision on a review under section 115, the local planning authority directly concerned with it) may make an application to the High Court questioning the validity of the decision or order on the grounds that –
- (a) it is not within the powers of this Act;
 - (b) any applicable requirement of this Act or the Tribunals and Inquiries Act 1992 (c. 53) has not been met; or
 - (c) any applicable requirement of any order, regulations or rules made under either of those Acts has not been met.
- (4) An application under this section must be made before the end of six weeks beginning with –
- (a) in the case of a decision, the date of the decision;
 - (b) in the case of an order under section 123 which is confirmed, the date of confirmation;
 - (c) in the case of an order under that section which takes effect under section 125 without confirmation, the date on which it takes effect;
 - (d) in the case of an order under section 126, the date on which the order is made.
- (5) On an application under this section the High Court may –
- (a) by interim order, suspend the operation of the decision or order until the final determination of the proceedings;
 - (b) quash the decision or order, if satisfied that –
 - (i) it was not within the powers of this Act; or
 - (ii) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement mentioned in subsection (3)(b) or (c).
- (6) Nothing in this section affects the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the appropriate national authority to take a decision mentioned in subsection (2)(a) or (c).
- (7) In this section any reference to “the local planning authority directly concerned with” a decision or order is to the authority which –
- (a) made the decision or order to which the proceedings in question relate;
 - (b) referred the matter to the appropriate national authority; or
 - (c) in the case of an order under section 126, would have had power to make an order under section 123 revoking or modifying the heritage asset consent concerned if the order under section 126 had not been made.
- (8) References in this section to confirmation of an order include confirmation subject to modifications.

PART 3

OTHER EFFECTS OF REGISTRATION

CHAPTER 1

STRUCTURES AND OPEN SPACES

Planning

155 Duty to have regard to registered heritage structures and open spaces in exercise of planning functions

- (1) Subsection (2) applies in relation to any development which affects or would affect –
 - (a) a registered heritage structure or registered heritage open space; or
 - (b) the setting of such a structure or open space.
- (2) In considering whether to grant planning permission for any such development, the relevant authority must have special regard to the desirability of preserving –
 - (a) the registered heritage structure or registered heritage open space;
 - (b) the setting of that structure or open space; or
 - (c) any features of special interest which that structure or open space possesses.
- (3) In the exercise of the powers of appropriation, disposal and development (including redevelopment) conferred by sections 232, 233 and 235(1) of the Town and Country Planning Act 1990 (c. 8), a local authority must have regard to the desirability of preserving features of special interest, and in particular, registered heritage structures and registered heritage open spaces.
- (4) In this section –
 - “disposal” has the meaning given by section 336(1) of the Town and Country Planning Act 1990;
 - “local authority” means a local authority within the meaning given by section 336(1) of that Act or a joint planning board;
 - “the relevant authority”, in relation to an application for planning permission, means –
 - (a) the local planning authority; or
 - (b) the appropriate national authority, where under Part 3 of the Town and Country Planning Act 1990 the decision on the application is to be taken by that authority;
 - “special interest” means special historic, archaeological, architectural or artistic interest.

156 Publicity for planning applications affecting setting of registered heritage structures or open spaces

- (1) The appropriate national authority may make regulations as to the publicity to be given to applications for planning permission in cases where the local planning authority considers that the development of land would affect the setting of a registered heritage structure or registered heritage open space.

- (2) In this section “planning permission” does not include planning permission within section 73A of the Town and Country Planning Act 1990 (c. 8).

Heritage partnership agreements

157 Heritage partnership agreements

- (1) A local planning authority may make an agreement under this section with –
- (a) the owner of, or of any part of, any registered heritage structure or registered heritage open space in the local planning authority’s area; or
 - (b) the owner of, or of any part of, any land which adjoins such a structure or open space.
- (2) An agreement under this section is referred to in this section and sections 158 to 160 as a “heritage partnership agreement”.
- (3) A heritage partnership agreement may make provision for any or all of the following in respect of the registered heritage structure, registered heritage open space or other land in question –
- (a) the maintenance and preservation of the registered heritage structure or registered heritage open space and of its amenities;
 - (b) the carrying out of specified work or the doing of any specified thing in relation to the registered heritage structure, registered heritage open space or land;
 - (c) public access to the registered heritage structure, registered heritage open space or land, and the provision to the public of associated facilities, information or services;
 - (d) restricting the use of the registered heritage structure, registered heritage open space or land;
 - (e) prohibiting the doing of any specified thing in relation to the registered heritage structure, registered heritage open space or land;
 - (f) the making of payments by the local planning authority in such a way, of such amounts and on such terms as may be specified in the agreement (and whether for or towards the cost of any work provided for under the agreement or in consideration of any restriction, prohibition or obligation accepted by any other party to it).
- (4) A heritage partnership agreement may contain incidental or consequential provisions.
- (5) Nothing in a heritage partnership agreement shall be taken to operate as heritage asset consent (but the appropriate national authority may, in a class consent order under section 93, grant heritage asset consent for works or removals carried out in accordance with the terms of a heritage partnership agreement by a party to that agreement).
- (6) Section 84 of the Law of Property Act 1925 (c. 20) (power of Lands Tribunal to discharge or modify restrictive covenant) shall not apply to a heritage partnership agreement.
- (7) For the purposes of this section a registered heritage structure or registered heritage open space is to be regarded as being in a local planning authority’s area if any part of it is in that area.

158 Additional parties

- (1) Any of the following may be a party to a heritage partnership agreement in addition to the local planning authority and any person within paragraph (a) or (b) of section 157(1) –
 - (a) the Secretary of State;
 - (b) English Heritage;
 - (c) the Welsh Ministers;
 - (d) any occupier of the land concerned;
 - (e) any person having an interest in the land concerned;
 - (f) any person involved in the management of the land concerned.
- (2) In subsection (1) “the land concerned” means the registered heritage structure, registered heritage open space or other land to which the heritage partnership agreement relates.

159 Approval for making or varying heritage partnership agreement

- (1) A heritage partnership agreement may not be made unless it has been approved by the heritage authority concerned.
- (2) A heritage partnership agreement may not be varied unless the variation has been approved by the heritage authority concerned.
- (3) The heritage authority concerned may not approve a heritage partnership agreement or any variation of such an agreement unless –
 - (a) it has consulted such persons as it considers appropriate; and
 - (b) it is satisfied that the local planning authority that is party to the agreement has carried out appropriate consultation.
- (4) For the purposes of subsection (3) a local planning authority has carried out appropriate consultation if –
 - (a) before submitting the heritage partnership agreement or variation to the heritage authority concerned for approval, it has consulted such persons as are specified in regulations made by the appropriate national authority for the purposes of this paragraph; and
 - (b) it has consulted such other persons as the heritage authority considers appropriate.
- (5) The appropriate national authority may make regulations as to the publicity to be given to heritage partnership agreements and variations of such agreements.
- (6) In this section “the heritage authority concerned” means –
 - (a) if the registered heritage structure or registered heritage open space is in England, English Heritage;
 - (b) if the registered heritage structure or registered heritage open space is in Wales, the Welsh Ministers.

160 Termination of heritage partnership agreement

- (1) The appropriate national authority may by order terminate a heritage partnership agreement with immediate effect, where it considers this necessary to preserve the special interest of the registered heritage structure or registered heritage open space.

- (2) The Secretary of State must consult English Heritage before making an order under subsection (1).
- (3) In this section “special interest” means special historic, archaeological, architectural or artistic interest.

Restrictions on use of metal detectors

161 Restrictions on use of metal detectors

- (1) It is an offence for a person to use a metal detector in a registered heritage structure or registered heritage open space without the written consent of the heritage authority concerned.
- (2) In this section “the heritage authority concerned” means –
 - (a) if the registered heritage structure or registered heritage open space is in England, English Heritage;
 - (b) if the registered heritage structure or registered heritage open space is in Wales, the Welsh Ministers.
- (3) In this section “registered heritage open space” does not include a registered heritage open space in Wales other than one consisting wholly of –
 - (a) a garden or park;
 - (b) a battlefield; or
 - (c) a part of anything falling within paragraph (a) or (b).
- (4) A consent for the purposes of this section may be granted –
 - (a) on an application made in writing to the heritage authority concerned; or
 - (b) by an order of the heritage authority concerned granting consent to all persons, or to any description of persons, in respect of the use of metal detectors for a particular purpose.
- (5) A consent granted on an application under this section may be in respect of the use of metal detectors for a particular purpose.
- (6) Any consent granted under this section by English Heritage may be in respect of –
 - (a) a particular registered asset in England;
 - (b) registered assets in England of a particular description; or
 - (c) all registered assets in England.
- (7) Any consent granted under this section by the Welsh Ministers may be in respect of –
 - (a) a particular registered asset in Wales;
 - (b) registered assets in Wales of a particular description; or
 - (c) all registered assets in Wales.
- (8) A consent granted for the purposes of this section may be granted unconditionally or subject to conditions.
- (9) The conditions which may be included in such a consent include in particular conditions –
 - (a) as to the preservation of finds;
 - (b) requiring finds to be reported to a specified person;

- (c) requiring records to be kept and made available to a specified person; but nothing in this subsection affects the generality of subsection (8).
- (10) If a person uses a metal detector under a consent granted for the purposes of this section and fails to comply with a condition subject to which the consent is granted, the person commits an offence.
- (11) An order under this section must be published in such a way as the person making it considers appropriate.
- (12) In this section “registered asset” means a registered heritage structure or registered heritage open space.
- (13) In this section and section 162 “metal detector” means any device designed or adapted for detecting or locating any metal or mineral in the ground.

162 Offences under section 161: penalty and defence

- (1) A person guilty of an offence under section 161 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) In determining the amount of any fine to be imposed on a person convicted of an offence under that section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.
- (3) It is a defence for a person accused of an offence under section 161(1) to prove that, at the time the metal detector was used, that person –
 - (a) did not know that the registered heritage structure or registered heritage open space was a registered heritage structure or registered heritage open space; and
 - (b) had taken all reasonable steps to ascertain whether it was a registered heritage structure or registered heritage open space.

Compulsory purchase of registered heritage structures

163 Compulsory purchase of registered heritage structure in need of repair

- (1) This section applies where it appears to the appropriate national authority that reasonable steps are not being taken for properly preserving a registered heritage structure.
- (2) The appropriate national authority may –
 - (a) purchase the registered heritage structure and any relevant land compulsorily under this section; or
 - (b) authorise a relevant authority to purchase the registered heritage structure and any relevant land compulsorily under this section.
- (3) For the purposes of this section and sections 164 and 165 “relevant land” means land comprising or contiguous or adjacent to the registered heritage structure which is in the appropriate national authority’s opinion required for –
 - (a) preserving or maintaining that structure or its amenities;
 - (b) storing equipment or materials for the purpose of preserving or maintaining that structure;
 - (c) the proper control or management of that structure;

- (d) providing or facilitating access to that structure; or
 - (e) providing to the public facilities and services for or in connection with affording public access to that structure.
- (4) For the purposes of this section and sections 164 to 170 each of the following is a “relevant authority” –
- (a) English Heritage, where the registered heritage structure is in England;
 - (b) the council of the county, county borough, district or London borough in which the registered heritage structure is situated;
 - (c) the joint planning board for the area in which the registered heritage structure is situated, where that structure is outside Greater London;
 - (d) the Broads Authority, where the registered heritage structure is in the Broads.

164 Compulsory purchase of easements over neighbouring land

- (1) The appropriate national authority may –
- (a) purchase a relevant easement compulsorily under this section; or
 - (b) authorise a relevant authority to purchase a relevant easement compulsorily under this section.
- (2) For the purposes of this section a “relevant easement” is an easement which –
- (a) is over land which adjoins a registered heritage structure, or any relevant land, in the purchasing authority’s ownership; and
 - (b) is in the appropriate national authority’s opinion required for one or more of the purposes mentioned in subsection (3).
- (3) Those purposes are –
- (a) preserving or maintaining the registered heritage structure or its amenities;
 - (b) storing equipment or materials for the purpose of preserving or maintaining that structure;
 - (c) the proper control or management of that structure;
 - (d) providing or facilitating access to that structure; or
 - (e) providing to the public facilities and services for or in connection with affording public access to that structure.
- (4) The power to acquire a relevant easement under this section includes power to acquire such an easement by the grant of a new right.

165 Compulsory purchase of rights for benefit of registered heritage structure under guardianship

- (1) The appropriate national authority may, for the benefit of any registered heritage structure or relevant land under its guardianship, purchase a right within subsection (3) compulsorily under this section.
- (2) The appropriate national authority may authorise a relevant authority to purchase a right within subsection (3) compulsorily under this section for the benefit of any registered heritage structure or relevant land under the guardianship of the relevant authority.

- (3) A right is within this subsection if it is a right that would be a relevant easement for the purposes of section 164 if the registered heritage structure or relevant land were in the purchasing authority's ownership.
- (4) A right within subsection (3) –
 - (a) is to be treated for the purposes of its acquisition under this section and for all other purposes as if it were a legal easement; and
 - (b) may be enforced by the guardian for the time being of the registered heritage structure or relevant land as if the guardian were the absolute owner in possession of that structure or relevant land.
- (5) A right within subsection (3) shall be a local land charge.

166 Procedure for compulsory purchase

- (1) The Acquisition of Land Act 1981 (c. 67) applies to any compulsory purchase under section 163, 164 or 165.
- (2) The appropriate national authority must not make or confirm a compulsory purchase order for any purchase by virtue of section 163, 164 or 165 unless –
 - (a) it is satisfied that it is expedient to make provision for the preservation of the registered heritage structure in question and to authorise the compulsory purchase for that purpose; and
 - (b) it has consulted English Heritage, where the registered heritage structure is in England and is to be purchased compulsorily by a person other than English Heritage.

167 Issue of repairs notice before compulsory purchase of registered heritage structure

- (1) The purchasing authority must not start the compulsory purchase of a registered heritage structure under section 163 unless –
 - (a) at least two months previously it has given a repairs notice to the owner of that structure; and
 - (b) that notice has not been withdrawn.
- (2) A repairs notice is a notice which –
 - (a) specifies the works which the purchasing authority considers reasonably necessary for properly preserving the registered heritage structure; and
 - (b) explains the effect of sections 163 and 166 to 169.
- (3) Where a repairs notice has been given to the owner of a registered heritage structure, the owner may not give a purchase notice in respect of that structure under section 144 –
 - (a) until the end of three months beginning with the date on which the repairs notice was given; or
 - (b) if during that period the compulsory purchase of the registered heritage structure under section 163 is started, unless and until the compulsory purchase is discontinued.
- (4) Subsection (5) applies where a registered heritage structure is demolished after the purchasing authority has given a repairs notice in respect of that structure to its owner.

- (5) Where the appropriate national authority is satisfied that it would have made or confirmed a compulsory purchase order in respect of the registered heritage structure had it not been demolished, the demolition of the registered heritage structure shall not prevent the purchasing authority from being authorised by or under section 163 to purchase the site of the registered heritage structure compulsorily.
- (6) The purchasing authority may at any time withdraw a repairs notice it has given to the owner of a registered heritage structure.
- (7) Where a purchasing authority withdraws a repairs notice under subsection (6), it must give the owner immediate notice of the withdrawal.
- (8) The Secretary of State must consult English Heritage before giving or withdrawing a repairs notice in respect of a registered heritage structure in England.
- (9) A repairs notice shall be a local land charge.
- (10) For the purposes of this section a compulsory purchase—
 - (a) is started on service of the notice required by section 12 of the Acquisition of Land Act 1981 (c. 67) or, as the case may be, paragraph 3(1) of Schedule 1 to that Act (notice of proposed compulsory purchase order); and
 - (b) is discontinued—
 - (i) when the appropriate national authority decides not to make or confirm the compulsory purchase order; or
 - (ii) when the compulsory purchase order (if made or confirmed) is withdrawn.

168 Compensation on compulsory purchase of registered heritage structure

- (1) For the purpose of assessing compensation in respect of a compulsory purchase of land which immediately before the date of the compulsory purchase order includes a registered heritage structure, it shall be assumed that heritage asset consent would be granted for any works—
 - (a) for the alteration or extension of the registered heritage structure; or
 - (b) for the demolition of the registered heritage structure for the purpose of development of any class specified in Schedule 3 to the Town and Country Planning Act 1990 (c. 8) (development not constituting new development).
- (2) But this section is subject to section 169.

169 Minimum compensation on compulsory purchase of registered heritage structure

- (1) Where the appropriate national authority purchases a registered heritage structure compulsorily under section 163, it may include a direction for minimum compensation in the compulsory purchase order under the 1981 Act.
- (2) Where a relevant authority proposes to purchase a registered heritage structure compulsorily under section 163, it may include a direction for minimum compensation in the compulsory purchase order submitted to the appropriate national authority for confirmation under the 1981 Act.

- (3) A “direction for minimum compensation” is a direction that, for the purpose of assessing compensation in respect of the compulsory purchase, it is to be assumed, notwithstanding anything to the contrary in the Land Compensation Act 1961 (c. 33), the Town and Country Planning Act 1990 (c. 8) or this Act –
 - (a) that planning permission would not be granted for any development or redevelopment of the site of the registered heritage structure; and
 - (b) that heritage asset consent would not be granted for any works for the demolition, alteration or extension of the registered heritage structure other than development or works necessary for restoring it to and maintaining it in a proper state of repair.
- (4) Where a compulsory purchase order is to include a direction for minimum compensation, the notice required to be served in accordance with section 12 of the 1981 Act or paragraph 3(1) of Schedule 1 to that Act (notice of proposed compulsory purchase order) –
 - (a) must state that a direction for minimum compensation has been included in the order or, as the case may be, draft order; and
 - (b) must explain the meaning of the expression “direction for minimum compensation”.
- (5) Subsection (4) is without prejudice to any provision of section 12 of the 1981 Act or paragraph 3(1) of Schedule 1 to that Act which requires the notice to state the effect of the order.
- (6) Where a compulsory purchase order which includes a direction for minimum compensation is made or confirmed, the compensation in respect of the compulsory purchase must be assessed in accordance with the direction.
- (7) In this section “the 1981 Act” means the Acquisition of Land Act 1981 (c. 67).

170 Ending of rights over land purchased compulsorily

- (1) On the completion of a compulsory purchase of land under section 163 –
 - (a) all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land are extinguished; and
 - (b) any such apparatus vests in the purchasing authority.
- (2) But subsection (1) is subject to the following provisions of this section.
- (3) Subsection (1) does not apply to –
 - (a) any rights vested in, or apparatus belonging to, statutory undertakers for the purpose of the carrying on of their undertaking;
 - (b) any right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network; or
 - (c) any electronic communications apparatus kept installed for the purposes of any such network.
- (4) Subsection (1) has effect, in respect of any right or apparatus not falling within subsection (3), subject to –
 - (a) any direction given by the purchasing authority before the completion of the purchase that subsection (1) shall not apply to any right or apparatus specified in the direction; and

- (b) any agreement which may be made (whether before or after the completion of the purchase) between the purchasing authority and the person in or to whom the right or apparatus in question is vested or belongs.
- (5) A person who suffers loss by the extinguishment of a right or the vesting of any apparatus under this section is entitled to compensation from the purchasing authority.
- (6) Any compensation payable under this section is to be determined in accordance with the Land Compensation Act 1961 (c. 33).

Acquisition of registered heritage structures by agreement or gift

171 Acquisition of registered heritage structures and associated rights by agreement

- (1) A qualifying authority may by agreement acquire—
 - (a) a registered heritage structure;
 - (b) an easement within subsection (3).
- (2) For the purposes of this section each of the following is a “qualifying authority”—
 - (a) the appropriate national authority;
 - (b) English Heritage, where the registered heritage structure is in England;
 - (c) the council of the county, county borough, district or London borough in which the registered heritage structure is situated;
 - (d) the joint planning board for the area in which the registered heritage structure is situated, where that structure is outside Greater London;
 - (e) the Broads Authority, where the registered heritage structure is in the Broads.
- (3) An easement is within this subsection if—
 - (a) it is over land which adjoins a registered heritage structure in the qualifying authority’s ownership or guardianship; and
 - (b) it is in that authority’s opinion required for one or more of the purposes mentioned in subsection (4).
- (4) Those purposes are—
 - (a) preserving or maintaining the registered heritage structure or its amenities;
 - (b) storing equipment or materials for the purpose of preserving or maintaining that structure;
 - (c) the proper control or management of that structure;
 - (d) providing or facilitating access to that structure; or
 - (e) providing to the public facilities and services for or in connection with affording public access to that structure.
- (5) The Secretary of State may not acquire a registered heritage structure under this section without consulting English Heritage, unless the Secretary of State considers that the acquisition must be made urgently.

- (6) Part 1 of the Compulsory Purchase Act 1965 (c. 56) (so far as applicable), other than sections 4 to 8, 10 and 31, apply in relation to an acquisition under this section.

172 Acquisition of historical objects by agreement or gift

- (1) The appropriate national authority may purchase by agreement, or accept a gift of, any object which it would be historically appropriate to keep in any of the registered heritage structures mentioned in subsection (2).
- (2) Those registered heritage structures are –
- (a) any registered heritage structure in which the appropriate national authority has an interest, or which is under its control or management;
 - (b) any registered heritage structure under the guardianship of that authority;
 - (c) any registered heritage structure in England in which the National Trust for Places of Historic Interest or Natural Beauty has an interest.
- (3) For the purposes of this section an object is “historically appropriate” to keep in a registered heritage structure if –
- (a) it is or has been ordinarily kept in that structure;
 - (b) it is historically associated with that structure, or is connected with a person or event historically associated with that structure;
 - (c) objects of its kind were produced or used in a period falling within the lifetime of that structure; or
 - (d) the appropriate national authority is of the opinion that it would for some other reason be historically appropriate to keep it in that structure.
- (4) The appropriate national authority may –
- (a) make such arrangements as it thinks fit as to the management, custody or use of any object acquired or accepted by it under this section;
 - (b) dispose of or otherwise deal with any such object as it may determine.
- (5) But the Secretary of State must not exercise a power conferred by subsection (4) without consulting English Heritage.
- (6) English Heritage may be a party to such arrangements as are mentioned in subsection (4)(a) if they relate to any object to be kept in a registered heritage structure in England.

Management of registered heritage structures acquired under this Act

173 Management of registered heritage structures acquired under this Act

- (1) Where the appropriate national authority acquires any registered heritage structure or other land under this Act, it may –
- (a) make such arrangements as it thinks fit as to the management, custody or use of that structure or land;
 - (b) dispose of or otherwise deal with that structure or land as it may determine.
- (2) But the Secretary of State must not dispose of any registered heritage structure or land acquired under this Act without consulting English Heritage.

- (3) English Heritage may be a party to such arrangements as are mentioned in subsection (1)(a) if they relate to property situated in England.
- (4) Subsections (5) and (6) apply where a registered heritage structure is acquired under this Act by any of the following (“the acquiring authority”) –
 - (a) English Heritage;
 - (b) the council of a county, county borough, district or London borough;
 - (c) a joint planning board;
 - (d) the Broads Authority.
- (5) The acquiring authority may make such arrangements as to the management, use or disposal of the registered heritage structure as it considers appropriate for the purpose of the preservation of that structure.
- (6) But –
 - (a) English Heritage must not make arrangements under subsection (5) as to the disposal of a registered heritage structure without consulting the Secretary of State; and
 - (b) any other authority mentioned in subsection (4) which is in England must not make such arrangements without consulting English Heritage.

Preservation works to registered heritage structures

174 Power to carry out preservation works to registered heritage structures

- (1) Where it appears to the Secretary of State that works are necessary for the preservation of a registered heritage structure in England, the Secretary of State may authorise English Heritage to carry out those works.
- (2) Where the Welsh Ministers consider that works are necessary for the preservation of a registered heritage structure in Wales, they may carry out those works.
- (3) A local authority may carry out any works which appear to it to be necessary for the preservation of a registered heritage structure in its area.
- (4) But a local authority in England must not carry out works under subsection (3) unless it has obtained the consent of English Heritage for those works.
- (5) The Secretary of State may give directions to local authorities in England that subsection (4) does not apply in particular cases or cases of a particular description.
- (6) The works which may be carried out under this section may consist of or include works for affording temporary support or shelter for the registered heritage structure.
- (7) Works may be carried out to a registered heritage structure, or any part of it, whether or not that structure or part is in use.
- (8) But works must not be carried out to a registered heritage structure all or any part of which is in residential use where they would interfere with that use.
- (9) A person who intends to carry out works under this section must give at least seven days’ notice in writing to the owner of the registered heritage structure.

- (10) A notice under subsection (9) must describe the works proposed to be carried out.
- (11) A notice under subsection (9) shall be a local land charge.

175 Recovery of costs of works under section 174

- (1) A person who has carried out works to a registered heritage structure under section 174 may give notice in writing to the owner for the time being of that structure (“the owner”) requiring the owner to pay the costs of the works.
- (2) Where works carried out under section 174 consist of or include works for affording temporary support or shelter for the registered heritage structure –
 - (a) the costs which may be recovered include any continuing costs involved in making available the apparatus or materials used; and
 - (b) notices under subsection (1) in respect of any such continuing costs may be given from time to time.
- (3) The owner may, within 28 days beginning with the date on which the notice under subsection (1) was given, represent to the appropriate national authority –
 - (a) that some or all of the works were unnecessary for the preservation of the registered heritage structure;
 - (b) where works have been carried out to afford temporary support or shelter for the registered heritage structure, that the temporary arrangements have continued for an unreasonable length of time;
 - (c) that the amount specified in the notice is unreasonable;
 - (d) that the recovery of that amount would cause the owner hardship.
- (4) The appropriate national authority must determine –
 - (a) to what extent representations made under subsection (3) are justified; and
 - (b) the amount recoverable by the person who gave the notice under subsection (1).
- (5) The appropriate national authority must give notice of that determination, and the reasons for it, to –
 - (a) the owner; and
 - (b) the person who gave the notice under subsection (1), where that person is English Heritage or a local authority.
- (6) Either of the following may appeal to the county court against a determination under subsection (4) –
 - (a) the owner;
 - (b) the person who gave the notice under subsection (1), where that person is English Heritage or a local authority.
- (7) An appeal under subsection (6) must be made within 28 days beginning with the date of the determination.
- (8) A county court shall have jurisdiction to hear and determine an appeal under subsection (6).
- (9) A notice under subsection (1), any determination under subsection (4) and any decision on an appeal under subsection (6) shall be binding on any successor in title to the owner.

Dangerous structure orders in respect of registered heritage structures

176 Dangerous structure orders in respect of registered heritage structures

A local planning authority must consider whether to take action under sections 163, 167 or 174 before taking any steps with a view to –

- (a) the making of an order in respect of a registered heritage structure under section 77(1)(a) of the Building Act 1984 (c. 55) or section 65 or 69(1) of the London Building Acts (Amendment) Act 1939 (c. xcvi) (dangerous structure order); or
- (b) the service of a notice under section 79(1) of that Act of 1984 or section 62(2) of that Act of 1939.

Guardianship of registered heritage structures

177 Power to place registered heritage structure under guardianship

- (1) A person who has a relevant interest in a registered heritage structure may (subject to the following provisions of this section) by deed appoint a public authority as guardian of the registered heritage structure and any relevant land.
- (2) In this section and sections 179 to 181 “public authority” means –
 - (a) in relation to England –
 - (i) the Secretary of State;
 - (ii) English Heritage; or
 - (iii) a local authority in England;
 - (b) in relation to Wales –
 - (i) the Welsh Ministers; or
 - (ii) a local authority in Wales.
- (3) A public authority may be appointed as guardian under subsection (1) only with that authority’s consent.
- (4) A public authority may not consent under subsection (3) where the registered heritage structure is occupied as a dwelling otherwise than by a person employed as a caretaker of that structure or that person’s family.
- (5) English Heritage may not consent under subsection (3) unless it has obtained the consent of the Secretary of State.
- (6) A person may not under subsection (1) appoint a public authority as guardian of a registered heritage structure if that person is not the occupier of that structure, unless the occupier is also party to the guardianship deed.
- (7) Any person who has an interest in a registered heritage structure may be a party to the guardianship deed in addition to –
 - (a) the person appointing the guardian;
 - (b) if that person is not the occupier, the occupier; and
 - (c) the public authority.
- (8) A guardianship deed shall be a local land charge.
- (9) Any person (“A”) deriving title to any registered heritage structure from, through or under any person who has executed a guardianship deed (“B”) is

bound by the guardianship deed unless A derives title by virtue of any disposition made by B before the date of the deed.

- (10) Except as provided by this section and sections 178 to 180, any estate or interest in, or right or title to, a registered heritage structure under guardianship by virtue of this section shall be unaffected by that guardianship.
- (11) In this section “relevant interest” means –
- (a) an estate in fee simple absolute in possession;
 - (b) a leasehold estate or interest in possession for a term of which at least 45 years are unexpired, or which is renewable for a term of at least 45 years; or
 - (c) an interest in possession for the life of a person (“P”) or the life of another, or for lives (whether or not including P’s), under any existing or future trust of land of which the subject is an estate or interest within paragraph (a) or (b) above.
- (12) In this section “relevant land” means land which comprises or is contiguous or adjacent to a registered heritage structure and is required –
- (a) for preserving or maintaining that structure or its amenities;
 - (b) for storing equipment or materials for the purpose of preserving or maintaining that structure;
 - (c) for the proper control or management of that structure;
 - (d) for providing or facilitating access to that structure; or
 - (e) for providing to the public facilities and services for or in connection with affording public access to that structure.
- (13) In this section and sections 178 to 181 “guardianship deed” means a deed executed for the purposes of subsection (1) above.

178 Powers of limited owners for purposes of section 177

- (1) A person may, despite being a limited owner of land –
- (a) establish guardianship of that land under section 177; or
 - (b) join in executing a guardianship deed for the purposes of that section.
- (2) For the purposes of this section –
- (a) a body corporate or corporation sole is a limited owner of any land in which it has an interest; and
 - (b) any other person is a limited owner of any land in which that person holds an interest in one of the capacities mentioned in subsection (3).
- (3) Those capacities are –
- (a) as tenant for life or statutory owner within the meaning of the Settled Land Act 1925 (c. 18);
 - (b) as trustees of land;
 - (c) as trustees for a charity or as commissioners or trustees for ecclesiastical, collegiate or other public purposes.
- (4) Where a person who is a limited owner of land by virtue of subsection (2)(b) executes a guardianship deed in relation to the land, that deed binds every successive owner of any estate or interest in the land.
- (5) But where the land to which a guardianship deed relates is at the date of the deed subject to any incumbrance not capable of being overreached by the

limited owner in exercise of powers of sale or management conferred on him by law or under any settlement or other instrument, the deed does not bind the incumbrancer.

179 Functions of guardian

- (1) A public authority must maintain any registered heritage structure under its guardianship.
- (2) A public authority shall have full control and management of any such registered heritage structure.
- (3) A public authority may, with a view to discharging its duty under subsection (1), do such things as appear to it to be necessary for –
 - (a) the maintenance of the registered heritage structure; and
 - (b) the proper control and management of that structure.
- (4) In this section any reference to the maintenance of a registered heritage structure includes –
 - (a) the fencing, repairing and covering in of that structure; and
 - (b) the doing of any other act or thing which may be required for the purpose of repairing that structure or protecting it from decay or damage.
- (5) Without prejudice to the generality of subsections (2) and (3), a public authority may, in relation to any registered heritage structure under its guardianship –
 - (a) make any examination of it;
 - (b) open it up or make excavations in it for the purpose of examination or otherwise;
 - (c) remove the whole or part of it to another place for the purpose of preserving it.
- (6) Subsections (2), (3) and (5) are subject to any contrary provision in the guardianship deed.
- (7) A public authority may at any reasonable time enter the site of a registered heritage structure under its guardianship for the purpose of exercising any of its powers under this section in relation to that structure (and may authorise any other person to exercise any of those powers on its behalf).

180 Transfer of registered heritage structure under guardianship

- (1) A public authority may, in respect of –
 - (a) any registered heritage structure under its guardianship, or
 - (b) any land associated with such a structure,enter into and carry into effect an agreement for the transfer to another public authority of the guardianship of that structure or land.
- (2) A public authority may not enter into an agreement under this section without the consent of the persons who are for the time being immediately affected by the operation of the guardianship deed.
- (3) The Secretary of State may not enter into an agreement under this section with a local authority without consulting English Heritage.

- (4) English Heritage may not enter into an agreement under this section for the transfer of guardianship from it to a local authority without consulting the Secretary of State.
- (5) English Heritage may not enter into an agreement under this section for the transfer of guardianship to it from a local authority without the consent of the Secretary of State.

181 Termination of guardianship

- (1) A registered heritage structure under the guardianship of a public authority remains under that guardianship unless and until –
 - (a) it is acquired by the public authority; or
 - (b) an occupier of the registered heritage structure who is entitled to terminate the guardianship (see subsection (8)) gives notice in writing to that effect to the public authority.
- (2) Subsection (1) is subject to the following provisions of this section.
- (3) A public authority may by agreement with the persons who are for the time being immediately affected by the operation of the guardianship deed –
 - (a) renounce its guardianship of a registered heritage structure; or
 - (b) exclude from its guardianship any part of a registered heritage structure.
- (4) But a public authority may not enter into an agreement under subsection (3) in respect of a registered heritage structure, or any part of it, unless it is satisfied –
 - (a) that satisfactory arrangements have been made for ensuring the preservation of that structure or part after termination of the guardianship; or
 - (b) that it is no longer practicable to preserve that structure or part (whether because of the cost of preservation or otherwise).
- (5) English Heritage may not enter into an agreement under subsection (3) without consulting the Secretary of State, and the Secretary of State may not enter into such an agreement without consulting English Heritage.
- (6) A local authority in England may not enter into an agreement under subsection (3) without consulting English Heritage.
- (7) A local authority in Wales may not enter into an agreement under subsection (3) without consulting the Welsh Ministers.
- (8) An occupier of a registered heritage structure (“A”) is entitled to terminate the guardianship of that structure if –
 - (a) A has any interest in the registered heritage structure which would qualify A to establish guardianship of that structure under section 177; and
 - (b) A is not bound by the guardianship deed.

Public access to registered heritage structures

182 Public access to registered heritage structures under public control

- (1) A public authority must, to the extent that it is appropriate and practicable to do so, provide access for the public to registered heritage structures under the ownership or guardianship of the authority.
- (2) In considering for the purposes of this section whether it is appropriate and practicable to provide public access to a registered heritage structure, or to any part of it, regard may be had in particular to—
 - (a) the use of the registered heritage structure or part;
 - (b) the need to preserve it;
 - (c) any works to be carried out to it;
 - (d) the availability or otherwise of financial or other resources;
 - (e) the safety of the public.
- (3) Where a public authority provides public access to a registered heritage structure under this section it may control the times of such access.
- (4) But the power of a local authority to control normal times of public access to such a registered heritage structure is exercisable only by regulations under section 183.
- (5) Without prejudice to section 183, a public authority may make such charges as it may determine for the admission of the public to any registered heritage structure under its ownership or guardianship.
- (6) A person (“A”) authorised by a public authority may refuse admission to any registered heritage structure under the ownership or guardianship of the authority to any person who A has reasonable cause to believe is likely to do anything which would—
 - (a) tend to damage or disfigure the registered heritage structure or its amenities; or
 - (b) tend to disturb the public in their enjoyment of it.
- (7) In relation to—
 - (a) the Secretary of State, and
 - (b) the Welsh Ministers,the references in subsections (5) and (6) to any registered heritage structure under the ownership or guardianship of the authority include any registered heritage structure otherwise under the authority’s management or control.
- (8) Where—
 - (a) a local authority proposes not to provide any public access to a registered heritage structure, and
 - (b) this is with a view to preserving the registered heritage structure,the authority must before deciding not to provide such access obtain the consent of the appropriate authority.
- (9) In subsection (8) “the appropriate authority” means—
 - (a) if the registered heritage structure is in England, the Secretary of State;
 - (b) if it is in Wales, the Welsh Ministers.

- (10) In relation to any registered heritage structure under guardianship, subsection (1) is subject to any contrary provision in the guardianship deed.
- (11) Each of the following is a “public authority” for the purposes of this section –
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) English Heritage;
 - (d) a local authority.

183 Regulations about access

- (1) In subsections (2) to (4) “a relevant public authority” means –
 - (a) the Secretary of State;
 - (b) the Welsh Ministers; or
 - (c) a local authority.
- (2) A relevant public authority may by regulations regulate the access of the public to any registered heritage structure under its ownership or guardianship to which it provides such access.
- (3) In relation to –
 - (a) the Secretary of State, and
 - (b) the Welsh Ministers,the reference in subsection (2) to any registered heritage structure under the authority’s ownership or guardianship includes any registered heritage structure otherwise under the authority’s management or control.
- (4) Regulations made by a relevant public authority under subsection (2) may in particular –
 - (a) prescribe the times when the public are to have access to any registered heritage structure to which the regulations apply;
 - (b) make such provision as appears to the authority to be necessary for –
 - (i) the preservation of any such registered heritage structure and its amenities or of any property of the authority;
 - (ii) prohibiting or regulating any act or thing which would tend to damage or disfigure any such registered heritage structure or its amenities or to disturb the public in their enjoyment of it;
 - (c) prescribe charges for the admission of the public to any such registered heritage structure.
- (5) The Secretary of State may by regulations make such provision as appears to the Secretary of State to be necessary for prohibiting or regulating any act or thing which would –
 - (a) tend to damage or disfigure any registered heritage structure under the ownership or guardianship of English Heritage to which the public have access, or the amenities of such a registered heritage structure; or
 - (b) tend to disturb the public in their enjoyment of such a registered heritage structure.
- (6) A person who contravenes any regulations under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) The Secretary of State must consult English Heritage before making –

- (a) regulations under subsection (2) in respect only of registered heritage structures in England;
 - (b) regulations under subsection (5).
- (8) Regulations made by a local authority under this section shall not take effect unless they have been confirmed by the Secretary of State, and the Secretary of State may confirm any such regulations with or without modifications.

184 Provision of facilities for the public

- (1) A public authority may provide such facilities and information or other services for the public as appear to it to be necessary or desirable for or in connection with providing public access –
- (a) in the case of the Secretary of State or the Welsh Ministers, to a registered heritage structure under its ownership, guardianship, management or control;
 - (b) in the case of any other public authority, to a registered heritage structure under its ownership or guardianship.
- (2) Facilities and information or other services for the public may be provided under this section in or on the registered heritage structure itself or on any land associated with it.
- (3) A public authority may make such charges as it may determine for the use of any facility or service provided by it for the public under this section.
- (4) In this section “public authority” has the same meaning as in section 182.

CHAPTER 2

GRANTS AND LOANS FOR WORKS TO REGISTERED HERITAGE ASSETS

185 Power of local authority to contribute to preservation of registered heritage assets

- (1) A local authority may contribute towards the expenses incurred or to be incurred in the preservation, maintenance, repair or management of –
- (a) any registered heritage structure in its area;
 - (b) any registered heritage open space in its area;
 - (c) any registered marine heritage site in its area.
- (2) At the time of making a contribution under subsection (1)(a) the local authority may also contribute towards the expenses incurred or to be incurred in the upkeep of any garden which is occupied with the registered heritage structure and is contiguous or adjacent to it.
- (3) A contribution under this section may be made by grant or loan.
- (4) A local authority may require, as a condition of its making a contribution under this section by way of grant, that the person to whom the grant is made enter into an agreement with the local authority for the purpose of enabling the public to have access to the property in question, or any part of it, during such period and at such times as the agreement may provide.

- (5) A contribution by way of loan may be made on such terms and conditions as the local authority may determine (including a term that the loan shall be free of interest).
- (6) A local authority –
 - (a) may renounce its right to repayment of a loan under this section or to any interest for the time being outstanding;
 - (b) may otherwise vary, by agreement with the borrower, any of the terms or conditions on which such a loan is made.
- (7) In this section and section 186 “local authority” means –
 - (a) the council of a county, county borough, district or London borough;
 - (b) a joint planning board; and
 - (c) in relation to a property in the Broads, the Broads Authority.

186 Recovery of grants under section 185

- (1) A local authority may recover a grant made under section 185, or any part of it, where subsection (2) or (3) applies.
- (2) This subsection applies where –
 - (a) within three years beginning with the date of the grant the recipient (“R”) disposes of the whole or part of the interest which was held by R in the property in question on the date of the grant; and
 - (b) the disposal is effected by way of sale, exchange or lease for a term of at least 21 years.
- (3) This subsection applies where –
 - (a) the recipient of the grant (“R”) gives to another person (“P”), directly or indirectly, the whole or part of the interest which was held by R in the property in question on the date of the grant;
 - (b) that gift is otherwise than by will;
 - (c) P disposes of the whole or part of that interest within three years beginning with the date of the grant; and
 - (d) the disposal is effected by way of sale, exchange or lease for a term of at least 21 years.
- (4) If any condition imposed on the making of a grant under section 185 is breached, the local authority may recover the grant, or any part of it, from the recipient.
- (5) Nothing in this section entitles a local authority to recover amounts which in aggregate exceed the amount of the grant (for example by virtue of a breach of more than one condition or disposals of several parts of an interest in the property in question).

PART 4

MARINE HERITAGE LICENCES

*Requirement for marine heritage licence***187 Activities requiring licence**

- (1) A person must not do, or cause or permit another person to do, anything which—
 - (a) is a prohibited marine activity; and
 - (b) is not authorised by a marine heritage licence or permitted under section 198.
- (2) The following are “prohibited marine activities” for the purposes of this section—
 - (a) tampering with or damaging any marine asset which is in a registered marine heritage site;
 - (b) removing from a registered marine heritage site any marine asset or part of a marine asset;
 - (c) carrying on in a registered marine heritage site, or in the sea above such a site, diving or salvage operations directed to the exploration of a marine asset or to removing objects from a marine asset or the sea bed;
 - (d) using equipment in a registered marine heritage site, or in the sea above such a site, for any purpose of diving or salvage operations or for the purpose of surveying the sea bed;
 - (e) depositing in a registered marine heritage site, so as to fall and lie abandoned on the sea bed, anything which—
 - (i) damages, wholly or partly obliterates, or obstructs access to, a marine asset; or
 - (ii) if it had fallen on a marine asset which is in the site, would have done as mentioned in sub-paragraph (i).
- (3) In this section “the sea bed” includes any area submerged at high water of ordinary spring tides.

188 Marine heritage licences

- (1) For the purposes of sections 187 and 190, an act of a person is “authorised” by a marine heritage licence if—
 - (a) a marine heritage licence permits that act to be done by that person; and
 - (b) it is done in accordance with the terms of the licence and any conditions subject to which the licence is granted.
- (2) In this Act, a “marine heritage licence” means a licence in writing granted for the purposes of section 187 by—
 - (a) English Heritage or the Secretary of State (in the case of a site in English waters);
 - (b) the Welsh Ministers (in the case of a site in Welsh waters).

189 Offence of contravening section 187

- (1) A person who contravenes section 187 commits an offence.

- (2) Without prejudice to subsection (1), where a person –
 - (a) carries on a prohibited marine activity (within the meaning of section 187) under a marine heritage licence, and
 - (b) fails to comply with any condition subject to which the licence was granted,the person commits an offence.

190 Obstruction of person acting under licence

It is an offence for a person to obstruct, or cause or permit the obstruction of, another person (“the licensee”) in the licensee’s doing of anything that the licensee is authorised to do by a marine heritage licence.

191 Penalties and defence

- (1) A person guilty of an offence under section 189 is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000 or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (2) A person guilty of an offence under section 190 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) Until the coming into force of section 154 of the Criminal Justice Act 2003 (c. 44), subsection (1)(a) has effect as if the reference to 12 months were to 6 months.
- (4) In determining the amount of any fine to be imposed on a person convicted of an offence under section 189 or 190, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.
- (5) It is a defence for a person accused of an offence under section 189 or 190 (“A”) to prove that the contravention of section 187 or 190, or the failure to comply with the condition mentioned in section 189(2), occurred –
 - (a) in the course of any action taken by A for the sole purpose of dealing with an emergency of any description;
 - (b) in A’s exercising, or seeing to the exercise of, functions conferred by or under an enactment on A or on a body for which A was acting; or
 - (c) out of necessity due to stress of weather or navigational hazards.

Obtaining licence

192 Applications for licence: to whom made

- (1) Except as provided by section 194, any application for a marine heritage licence in respect of a registered marine heritage site in English waters must be made to and decided by English Heritage.
- (2) Any application for a marine heritage licence in respect of a registered marine heritage site in Welsh waters must be made to and decided by the Welsh Ministers.

193 Applications for licence: procedure for making

The appropriate national authority may make regulations –

- (a) as to the form and content of applications for marine heritage licences and the way in which any such application must be made;
- (b) requiring any such application to be accompanied by prescribed documents.

194 Reference of certain applications to Secretary of State

- (1) The Secretary of State may give directions to English Heritage requiring applications for marine heritage licences in respect of registered marine heritage sites in English waters to be referred to the Secretary of State instead of being dealt with by English Heritage.
- (2) A direction under subsection (1) may relate to –
 - (a) a particular application;
 - (b) all applications;
 - (c) all applications in respect of a particular registered marine heritage site;
 - (d) all applications in respect of registered marine heritage sites of a particular description.
- (3) An application in respect of which a direction under this section has effect is accordingly to be referred to and decided by the Secretary of State.
- (4) The Secretary of State may direct English Heritage to notify the Secretary of State of applications for marine heritage licences received by it.
- (5) A direction under subsection (4) may relate to –
 - (a) all applications;
 - (b) all applications in respect of a particular registered marine heritage site;
 - (c) all applications in respect of registered marine heritage sites of a particular description.

195 Procedure for dealing with licence applications: general

- (1) The appropriate national authority may make regulations about procedure in relation to the handling of applications for marine heritage licences.
- (2) The regulations may in particular make provision –
 - (a) as to the publicity to be given to applications, decisions on applications and such other matters as may be prescribed;
 - (b) requiring written representations in respect of an application to be invited from –
 - (i) prescribed persons;
 - (ii) persons of prescribed descriptions;
 - (c) requiring representations to be taken into account;
 - (d) preventing an application from being decided during a prescribed period;
 - (e) requiring notice of decisions on applications, and of such other matters as may be prescribed, to be given to prescribed persons;
 - (f) as to the contents of any such notice and the period within which it must be given.

196 Grant or refusal of licence

- (1) In this section “the licensing authority”, in relation to an application for a marine heritage licence, means –
 - (a) in relation to a site in English waters –
 - (i) English Heritage; or
 - (ii) where under section 194 the decision on the application is to be taken by the Secretary of State, the Secretary of State;
 - (b) in relation to a site in Welsh waters, the Welsh Ministers.
- (2) The licensing authority may decide an application for a marine heritage licence by –
 - (a) granting such a licence; or
 - (b) refusing to grant such a licence.
- (3) Where the licensing authority grants a marine heritage licence, the licence –
 - (a) must specify –
 - (i) the registered marine heritage site or sites to which it relates;
 - (ii) the activities that are permitted;
 - (iii) the persons who are permitted to carry on those activities; and
 - (iv) the duration of the licence; and
 - (b) may contain such conditions as the licensing authority considers appropriate.
- (4) A licence may comply with subsection (3)(a)(iii) by naming persons permitted to carry on the activities, or by specifying a description of persons so permitted, or both.
- (5) Any person named by the licence by virtue of subsection (4) must be a person who appears to the licensing authority either –
 - (a) to be competent, and properly equipped, to carry out diving or salvage operations in a way appropriate to the special historic, archaeological, architectural or artistic interest of the registered marine heritage site; or
 - (b) not to fall within paragraph (a), but to have a legitimate reason for carrying on in that site the activities permitted by the licence.
- (6) Any description specified in the licence by virtue of subsection (4) must be such that it appears to the licensing authority that persons falling within that description will also fall within paragraph (a) or (b) of subsection (5).

197 Conditions

- (1) The conditions which may be included in a marine heritage licence include in particular conditions –
 - (a) as to the preservation of any marine asset;
 - (b) requiring reports on specified matters to be compiled and sent to specified persons.
- (2) Nothing in this section affects the generality of section 196(3)(b).

*Designation of marine heritage site as suitable for unintrusive diving activities***198 Designation of site as suitable for unintrusive diving activities**

- (1) For the purposes of section 187, the carrying on in a registered marine heritage site, or in the sea above such a site, of diving operations directed to the exploration of a marine asset is permitted under this section if—
 - (a) the diving operations are of a wholly unintrusive nature;
 - (b) they are carried on with the consent of the relevant persons; and
 - (c) the registered marine heritage site has been designated under this section as a site suitable for unintrusive diving operations.
- (2) A registered marine heritage site may be designated as a site suitable for unintrusive diving operations by—
 - (a) if the site is in English waters, the Secretary of State;
 - (b) if the site is in Welsh waters, the Welsh Ministers.
- (3) Before designating a site under this section, the Secretary of State or the Welsh Ministers must consult the relevant persons.
- (4) A designation under this section may be revoked.
- (5) In this section “the relevant persons” means—
 - (a) each owner of, or of any part of, the registered marine heritage site; and
 - (b) (if any) the salvor in possession of the marine asset.
- (6) The reference in subsection (5) to each owner does not include any owner whom—
 - (a) the person carrying on the diving operations (in the case of subsection (1)), or
 - (b) the Secretary of State or Welsh Ministers (in the case of subsection (3)), is unable to identify having taken all reasonable steps to do so.

*Application for variation of licence***199 Application for variation of licence**

- (1) Any person may apply to the licensing authority for the variation of a marine heritage licence.
- (2) In this section “the licensing authority” means the authority which granted the licence.
- (3) The application must indicate what variation is applied for.
- (4) Sections 193 to 195 apply in relation to applications under this section as they apply in relation to applications for a marine heritage licence (but this is subject to subsection (6)).
- (5) On an application under this section the licensing authority (or, where under section 194 the decision on the application is to be taken by the Secretary of State, the Secretary of State) may vary the licence, and in particular may add new conditions consequential on any other variation it makes to the licence.

- (6) Where a marine heritage licence was granted by the Secretary of State under section 194, nothing in that section applies in relation to any application under this section in respect of the licence.

Appeals: England

200 Appeal against refusal of licence etc: England

- (1) Where English Heritage –
 - (a) refuses an application for a marine heritage licence,
 - (b) grants such a licence subject to conditions,
 - (c) refuses an application for the variation of a marine heritage licence, or
 - (d) grants such a variation but adds new conditions,the applicant may appeal to the Secretary of State.
- (2) A person who has applied to English Heritage for –
 - (a) a marine heritage licence, or
 - (b) the variation of a marine heritage licence,may appeal to the Secretary of State if by the end of the relevant period neither of the notices mentioned in subsection (3) has been given to the applicant by English Heritage.
- (3) Those notices are –
 - (a) notice of English Heritage’s decision on the application;
 - (b) notice that the application has been referred to the Secretary of State in accordance with directions under section 194.
- (4) In subsection (2) “the relevant period” means the period prescribed under section 195 for the giving of a notice mentioned in subsection (3), or such longer period as may at any time be agreed in writing by the applicant and English Heritage.
- (5) For the purposes of section 202(1), in relation to an appeal under subsection (2) it shall be assumed that English Heritage decided to refuse the application in question.

201 Appeals: procedure for making

- (1) The Secretary of State may make regulations –
 - (a) as to the way in which an appeal under section 200 may be made;
 - (b) as to the time within which any such appeal must be made;
 - (c) as to the form and content of notices of appeal;
 - (d) requiring any such notice to be accompanied by prescribed documents.
- (2) The period prescribed under subsection (1)(b) must be at least –
 - (a) in relation to an appeal under section 200(1), 28 days beginning with the date the applicant receives notice of the decision;
 - (b) in relation to an appeal under section 200(2), 28 days from the end of the relevant period (within the meaning of section 200).

202 Determination of appeals

- (1) Where an appeal is made under section 200, the Secretary of State –

- (a) may allow or dismiss the appeal;
 - (b) may reverse or vary any part of English Heritage’s decision (whether or not the appeal relates to that part);
 - (c) may deal with the application as if it had been made to the Secretary of State in the first instance.
- (2) The Secretary of State may make regulations about procedure in relation to the determination of appeals under section 200.

203 Appeals against failure to take decision: effect of late English Heritage notice

- (1) This section applies where a person who has made an application for a marine heritage licence appeals to the Secretary of State under section 200(2).
- (2) English Heritage may give a notice mentioned in section 200(3) at any time before the end of the additional period.
- (3) If within the additional period English Heritage gives notice of its refusal of the application –
- (a) the appeal is to be treated as an appeal under section 200(1) against the refusal; and
 - (b) the Secretary of State must give the appellant an opportunity to change the grounds of the appeal and any choice the appellant has made as respects the procedure for the appeal.
- (4) If within the additional period English Heritage gives notice of its grant of the application subject to conditions, the Secretary of State must give the appellant the opportunity –
- (a) to proceed with the appeal as an appeal under section 200(1) against the grant of the application subject to conditions;
 - (b) to change the grounds of the appeal;
 - (c) to change any choice the appellant has made as respects the procedure for the appeal.
- (5) Where this section applies, the Secretary of State may not issue a decision on the appeal before the end of the additional period.
- (6) In this section “the additional period” means such period, beginning with the date of the appeal, as may be prescribed by regulations made by the Secretary of State for the purposes of this section.

Appeals: Wales

204 Application for review of refusal of licence etc: Wales

- (1) Where the Welsh Ministers –
- (a) refuse an application for a marine heritage licence,
 - (b) grant such a licence subject to conditions,
 - (c) refuse an application for the variation of a marine heritage licence, or
 - (d) grant such a variation but add new conditions,
- the applicant may make an application to the Welsh Ministers requesting them to appoint a person to review the Welsh Ministers’ decision.
- (2) A person who has applied to the Welsh Ministers for –

- (a) a marine heritage licence, or
 - (b) the variation of a marine heritage licence,
- may, if by the end of the relevant period no notice of the Welsh Ministers' decision has been given to the applicant, make an application to the Welsh Ministers requesting them to appoint a person to review the case.
- (3) In subsection (2) “the relevant period” means the period prescribed under section 195 for the giving of a notice of the Welsh Ministers' decision, or such longer period as may at any time be agreed in writing by the applicant and the Welsh Ministers.
 - (4) In relation to an application for review under subsection (2), for the purposes of section 206(3) it shall be assumed that the Welsh Ministers decided to refuse the application for the licence or variation.

205 Applications for review: procedure

- (1) The Welsh Ministers may make regulations –
 - (a) as to the way in which an application under section 204 may be made;
 - (b) as to the time within which any such application must be made;
 - (c) as to the form and content of applications;
 - (d) requiring any such application to be accompanied by prescribed documents.
- (2) The period prescribed under subsection (1)(b) must be at least –
 - (a) in relation to an application under section 204(1), 28 days beginning with the date the applicant receives notice of the decision;
 - (b) in relation to an appeal under section 204(2), 28 days from the end of the relevant period (within the meaning of section 204).

206 Reviews

- (1) This section applies where an application is made under section 204.
- (2) The Welsh Ministers must appoint a person to carry out the review requested.
- (3) The person appointed by the Welsh Ministers to review the case –
 - (a) may confirm or reverse the Welsh Ministers' decision;
 - (b) may reverse or vary any part of the Welsh Ministers' decision (whether or not the application under section 204 relates to that part);
 - (c) may deal with the original application as if it had been made to that person in the first instance.
- (4) The Welsh Ministers may make regulations about procedure in relation to reviews on applications under section 204.

207 Applications for review where failure to take decision: effect of late decision

- (1) This section applies where a person who has made an application to the Welsh Ministers for a marine heritage licence (“the original application”) applies for a review under section 204(2).
- (2) The Welsh Ministers may give notice of their decision on the original application at any time before the end of the additional period.

- (3) If within the additional period the Welsh Ministers give notice of their refusal of the original application –
 - (a) the application under section 204(2) is to be treated as an application under section 204(1) in respect of the refusal; and
 - (b) the Welsh Ministers must give the applicant an opportunity to change the grounds of the application under section 204 and any choice the applicant has made as respects the procedure for the review.
- (4) If within the additional period the Welsh Ministers give notice of their grant of the original application subject to conditions, they must give the applicant the opportunity –
 - (a) to proceed with the application under section 204(2) as an application under section 204(1) against the grant of the original application subject to conditions;
 - (b) to change the grounds of the application under section 204;
 - (c) to change any choice the applicant has made as respects the procedure for the review.
- (5) Where this section applies, a decision on a review carried out on the application under section 204(2) may not be issued before the end of the additional period.
- (6) In this section “the additional period” means such period, beginning with the date of the application under section 204(2), as may be prescribed by regulations made by the Welsh Ministers for the purposes of this section.

Revocation or variation of licence by grantor

208 Revocation or variation of licence by grantor

- (1) If it appears to the authority which granted a marine heritage licence that it is appropriate to revoke or vary the licence, that authority may revoke the licence or vary it to such extent as it considers appropriate.
- (2) The power under this section to revoke or vary a licence is exercisable by notice in writing to the person to whom the licence was granted.
- (3) Any such notice must specify the date on which the revocation or variation takes effect, which must be a date falling after the end of the relevant period.
- (4) The relevant period is seven days beginning with the date the notice is served.

Questioning validity of certain decisions

209 Questioning validity of certain decisions relating to licences

- (1) The validity of –
 - (a) a decision on an application referred to the Secretary of State under section 194,
 - (b) a decision on an appeal under section 200, or
 - (c) a decision made on a review on an application under section 204,
 may not be questioned in any legal proceedings, except as provided by this section.

- (2) A person affected by such a decision may make an application to the High Court questioning the validity of the decision on the grounds that –
 - (a) it is not within the powers of this Act;
 - (b) any applicable requirement of this Act or the Tribunals and Inquiries Act 1992 (c. 53) has not been met; or
 - (c) any applicable requirement of any order, regulations or rules made under either of those Acts has not been met.
- (3) An application under this section must be made before the end of six weeks beginning with the date of the decision.
- (4) On an application under this section the High Court may –
 - (a) by interim order, suspend the operation of the decision until the final determination of the proceedings;
 - (b) quash the decision, if satisfied that –
 - (i) it was not within the powers of this Act; or
 - (ii) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement mentioned in subsection (2)(b) or (c).
- (5) Nothing in this section affects the exercise of any jurisdiction of any court in respect of –
 - (a) any refusal or failure on the part of the Secretary of State to take a decision mentioned in subsection (1)(a) or (b);
 - (b) any refusal or failure on the part of the Welsh Ministers to appoint a person to carry out a review on an application under section 204.

PART 5

HISTORIC ENVIRONMENT RECORDS

210 Historic environment record: duty to create and keep up to date

- (1) A local planning authority to which this section applies must create a historic environment record and keep it up to date.
- (2) A historic environment record is a record which contains –
 - (a) details of any registered heritage assets in the local planning authority's area;
 - (b) details of each registrable structure or registrable open space in the local planning authority's area that the authority considers to be of special, local –
 - (i) historic interest;
 - (ii) archaeological interest;
 - (iii) architectural interest; or
 - (iv) artistic interest;
 - (c) details of any other sites in the local planning authority's area that the authority considers to be of archaeological interest;
 - (d) information about the way in which the archaeological, architectural or historic development of the local planning authority's area or any part of it has contributed to the present character of that area or part, and about how that character may be preserved; and

- (e) details of relevant investigations carried out in the local planning authority's area and of the findings of such investigations.
- (3) For the purposes of subsection (2)(a) each of the following is a “registered heritage asset” –
 - (a) a registered heritage structure;
 - (b) a registered heritage open space;
 - (c) a registered marine heritage site;
 - (d) a world heritage site.
- (4) For the purposes of subsection (2)(e) each of the following is a “relevant investigation” –
 - (a) any investigation carried out, for the purpose of obtaining information of historic, archaeological, architectural or artistic interest relating to the area, by –
 - (i) English Heritage;
 - (ii) the Welsh Ministers;
 - (iii) the Royal Commission on the Ancient and Historical Monuments of Wales; or
 - (iv) the local planning authority;
 - (b) any other investigation carried out for that purpose which the local planning authority considers appropriate to include in the historic environment record.
- (5) The Secretary of State may by order amend subsections (2) to (4).
- (6) Before making an order under subsection (5) the Secretary of State must consult the Welsh Ministers.
- (7) For the purposes of this section a site or other thing is to be regarded as being in a local planning authority's area if any part of it is in that area.
- (8) This section applies to any local planning authority which is –
 - (a) a county council;
 - (b) a county borough council;
 - (c) a district council for an area for which there is no county council; or
 - (d) a National Park authority.

211 Greater London historic environment record: duty to create and keep up to date

- (1) English Heritage must, subject to any arrangements under subsection (2), create and keep up to date the Greater London historic environment record.
- (2) The London borough councils, acting jointly, may make arrangements for the Greater London historic environment record to be created and kept up to date by a person other than English Heritage.
- (3) The Greater London historic environment record is a record which contains –
 - (a) details of any registered heritage assets in Greater London;
 - (b) details of each registrable structure or registrable open space in Greater London that the London borough council concerned considers to be of special, local –
 - (i) historic interest;
 - (ii) archaeological interest;

- (iii) architectural interest; or
 - (iv) artistic interest;
 - (c) details of any other sites in Greater London that the record manager considers to be of archaeological interest;
 - (d) information about the way in which the archaeological, architectural or historic development of the area of Greater London or any part of it has contributed to the present character of that area or part, and about how that character may be preserved; and
 - (e) details of relevant investigations carried out in Greater London and of the findings of such investigations.
- (4) For the purposes of subsection (3)(a) each of the following is a “registered heritage asset” –
 - (a) a registered heritage structure;
 - (b) a registered heritage open space;
 - (c) a registered marine heritage site;
 - (d) a world heritage site.
- (5) In subsection (3)(b) “the London borough council concerned” means the council of the London borough in which the registrable structure or registrable open space is situated.
- (6) For the purposes of subsection (3)(e) each of the following is a “relevant investigation” –
 - (a) any investigation carried out, for the purpose of obtaining information of historic, archaeological, architectural or artistic interest relating to Greater London, by –
 - (i) English Heritage; or
 - (ii) a London borough council; or
 - (b) any other investigation carried out for that purpose which the record manager considers appropriate to include in the Greater London historic environment record.
- (7) The Secretary of State may by order amend subsections (3) to (6).
- (8) For the purposes of this section a site or other thing is to be regarded as being in Greater London if any part of it is in that area.
- (9) In this section “the record manager” means –
 - (a) English Heritage; or
 - (b) where arrangements under subsection (2) have effect, the person who under those arrangements is to create the Greater London historic environment record and keep it up to date.

212 Contents of historic environment records: further provision

- (1) A historic environment record must indicate, as respects each registrable structure, registrable open space or other site included in the record, whether it is –
 - (a) a registered heritage structure, registered heritage open space, registered marine heritage site or world heritage site;
 - (b) of special local interest; or
 - (c) of archaeological interest.

- (2) In subsection (1) “special local interest” means special, local—
- (a) historic interest;
 - (b) archaeological interest;
 - (c) architectural interest; or
 - (d) artistic interest.

213 Publication of historic environment records

- (1) A local planning authority must—
- (a) make its historic environment record available for public inspection;
 - (b) provide a copy of all or any part of its historic environment record to any person requesting it;
 - (c) make available, to any person wishing to inspect its historic environment record, appropriate advice and assistance for the purposes of retrieving and understanding information contained in the record; and
 - (d) compile a document containing information retrieved from its historic environment record for any person reasonably requesting it.
- (2) A local planning authority may charge reasonable fees in respect of—
- (a) the provision of copies under subsection (1)(b);
 - (b) the provision of advice and assistance under subsection (1)(c);
 - (c) the compilation of documents under subsection (1)(d).
- (3) Fees charged under subsection (2) must be calculated by reference to the cost of providing the service to which the fee relates.
- (4) Any reference in subsection (1) to a local planning authority’s historic environment record is, in the case of a local planning authority that is a London borough council, a reference to the Greater London historic environment record.
- (5) In this section and sections 214 and 215 “local planning authority” means a local planning authority to which section 210 applies or a London borough council.

214 Guidance

- (1) The appropriate national authority may issue guidance, to which a local planning authority must have regard—
- (a) as to the exercise of any of the local planning authority’s functions under section 213(1); or
 - (b) as to the setting of fees to be charged under section 213(2).
- (2) Before issuing guidance under this section, the Secretary of State must consult—
- (a) English Heritage;
 - (b) each local planning authority in England; and
 - (c) any other person the Secretary of State considers appropriate.
- (3) Before issuing guidance under this section, the Welsh Ministers must consult—
- (a) each local planning authority in Wales; and
 - (b) any other person the Welsh Ministers consider appropriate.

- (4) The Secretary of State may, instead of issuing guidance under this section, direct English Heritage to issue that guidance.
- (5) Before issuing guidance by virtue of subsection (4), English Heritage must consult—
 - (a) the Secretary of State;
 - (b) each local planning authority in England; and
 - (c) any other person English Heritage considers appropriate.

215 Special local interest

- (1) A local planning authority must publish—
 - (a) criteria by reference to which it will determine whether a registrable structure is of special local interest;
 - (b) criteria by reference to which it will determine whether a registrable open space is of special local interest.
- (2) In this section “special local interest” means special, local—
 - (a) historic interest;
 - (b) archaeological interest;
 - (c) architectural interest; or
 - (d) artistic interest.
- (3) Any criteria under subsection (1) may make provision—
 - (a) in relation to different kinds of registrable structure or registrable open space;
 - (b) in relation to special local historic interest, special local archaeological interest, special local architectural interest or special local artistic interest.
- (4) A local planning authority must not determine that a registrable structure or registrable open space is of special local interest unless it has consulted each owner of, or of any part of, the registrable structure or registrable open space in question.
- (5) In the case of a registrable open space in Wales, subsection (4) does not apply where the number of owners makes it impracticable for the local planning authority to consult each of them.
- (6) Where subsection (4) does not apply, the local planning authority must publish a notice inviting written representations about the proposed determination.
- (7) A notice under subsection (6) must specify the period within which representations may be made, which must be at least 28 days beginning with the date of the notice.

PART 6

GENERAL

*Powers of entry***216 Powers of entry**

- (1) A person authorised in writing by a relevant authority may at any reasonable time enter any land for a purpose mentioned in subsection (2).
- (2) Those purposes are—
 - (a) ascertaining whether the authority which granted the authorisation under subsection (1) should exercise a function under this Act;
 - (b) exercising any function of that authority under this Act;
 - (c) ascertaining whether an offence under this Act has been or is being committed (on that land or otherwise);
 - (d) inspecting or surveying that or any other land for the purpose of assessing its historic, archaeological, architectural or artistic interest or its condition.
- (3) A person entering land in exercise of the power conferred by subsections (1) and (2)(d) may carry out excavations in the land for the purposes of archaeological investigation, but only with the consent of every person whose consent to the making of the excavation would be required apart from this section.
- (4) A person who is an officer of the Valuation Office Agency or is authorised in writing by a relevant authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation payable under section 127 or 219 in respect of any land.
- (5) Any power conferred by this section to survey land includes power to search and bore for the purpose of ascertaining the nature of the subsoil; but this is subject to section 218(8).
- (6) In this section “relevant authority” means—
 - (a) if the land is in England, the Secretary of State, English Heritage or a local planning authority;
 - (b) if the land is in Wales, the Welsh Ministers or a local planning authority.
- (7) In this section and sections 217 to 220 “land” includes any registrable structure.

217 Warrants to enter land

- (1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
 - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 216, and
 - (b) that—
 - (i) admission to the land has been refused, or a refusal is reasonably apprehended, or
 - (ii) the case is one of urgency,

the justice may issue a warrant authorising any person authorised in writing by the relevant authority to enter the land.

- (2) In subsection (1) “the relevant authority” means the person who may authorise entry on the land under section 216 for the purpose in question.
- (3) For the purposes of subsection (1)(b)(i) admission to land is to be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (4) A warrant authorises entry on one occasion only and that entry must be—
 - (a) within one month from the date of the issue of the warrant; and
 - (b) at a reasonable time, unless the case is one of urgency.

218 Rights of entry: supplementary provision

- (1) A person authorised under section 216 to enter any land must not demand admission as of right to land which is occupied unless 24 hours’ notice of the intended entry has been given to the occupier.
- (2) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 216 or 217 (referred to in this section as a “right of entry”)—
 - (a) must, if so required, produce evidence of that authority and state the purpose of entry before so entering;
 - (b) may be accompanied by such other persons as may be necessary; and
 - (c) on leaving the land must, if the owner or occupier is not then present, leave it as effectively secured against trespassers as it was before the entry.
- (3) A person who intentionally obstructs a person acting in the exercise of a right of entry commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If a person (“P”), having entered any land in exercise of a right of entry, discloses to any other person information obtained by P while on the land as to any manufacturing process or trade secret, P commits an offence.
- (5) Subsection (4) does not apply if the disclosure is made by P in the course of performing a duty in connection with the purpose for which P was authorised to enter the land.
- (6) A person guilty of an offence under subsection (4) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.
- (8) A person must not carry out any works in exercise of a power conferred under section 216 unless notice of his intention to do so was included in the notice required by subsection (1) above.

- (9) The authority of the appropriate Minister is required for the carrying out of works in exercise of a power conferred under section 216 if –
 - (a) the land in question is held by statutory undertakers; and
 - (b) they object to the proposed works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking.
- (10) For the purposes of subsection (9), “the appropriate Minister” means the person who would be the appropriate Minister for the purposes of section 325(9) of the Town and Country Planning Act 1990 (c. 8).

219 Compensation for damage

- (1) This section applies if any damage is caused to land or chattels in the exercise of –
 - (a) a right of entry within the meaning of section 218; or
 - (b) a power conferred by virtue of section 216(5) in connection with such a right.
- (2) Compensation may be recovered by any person suffering the damage from the authority which gave the written authority for the entry or, as the case may be, the Secretary of State.
- (3) Section 118 of the Town and Country Planning Act 1990 applies in relation to compensation under this section as it applies in relation to compensation under Part 4 of that Act.

220 Treatment and preservation of finds

- (1) If –
 - (a) a person enters any land in exercise of a right of entry (within the meaning of section 218), and
 - (b) while that person is on that land an object of historic or archaeological interest is discovered on that land,that person may take temporary custody of the object and remove it from its site for the purpose of examining, testing, treating, recording or preserving it.
- (2) The object may not be retained by the relevant authority without the consent of the owner beyond such period as may be reasonably required for the purpose of examining and recording it and carrying out any test or treatment which appears to the relevant authority to be desirable –
 - (a) for the purpose of archaeological investigation or analysis; or
 - (b) with a view to restoring or preserving the object.
- (3) Nothing in this section affects any right of the Crown under the Treasure Act 1996 (c. 24).
- (4) In this section “the relevant authority” means the authority which gave written authority for the entry or, as the case may be, the Secretary of State.

Extent of registered heritage structure

221 Extent of registered heritage structure

For the purposes of Parts 2 to 5, any question of the extent of a registered heritage structure at any time is to be determined in accordance with—

- (a) any map, plan or other material that at that time is included in the register for the purpose of identifying the registered heritage structure; and
- (b) sections 222 and 223 (things to be treated as part of registered heritage structure, subject in some cases to contrary provision made by register).

222 Objects fixed to or within curtilage of building

- (1) Where a building is a registered heritage structure (or is part of a group that is a registered heritage structure) —
 - (a) any objects or structures fixed to the building, and
 - (b) any objects or structures within subsection (2),are to be treated for the purposes of Parts 2 to 5 as part of the registered heritage structure.
- (2) An object or structure is within this subsection if —
 - (a) it is within the curtilage of the building; and
 - (b) though not fixed to the building, it forms part of the land and has done so since before 1 July 1948.
- (3) Subsection (1)(b) has effect subject to any provision made by the register under section 79(4) that has the effect of excluding a particular object or structure within subsection (2) from the extent of the registered heritage structure.
- (4) Where a structure is to be treated as part of a registered heritage structure by reason of subsection (1)(b) or of provision made by the register under section 79(4)(b), any objects or structures fixed to that structure are also to be treated for the purposes of Parts 2 to 5 as part of the registered heritage structure.
- (5) Where a part of a building is a registered heritage structure, any objects or structures fixed to that part of the building are to be treated for those purposes as part of the registered heritage structure.

223 Other things to be treated as part of registered heritage structure

- (1) Land beneath (and any land above) a registered heritage structure is to be treated for the purposes of Parts 2 to 5 (apart from section 86(2)(a)) as part of the registered heritage structure.
- (2) Subsection (1) has effect subject to any provision included under section 79(6) in the register entry in respect of the registered heritage structure.
- (3) Where a site within paragraph (e), (f) or (g) of section 2(2) is a registered heritage structure, the remains or other thing or things mentioned in that paragraph are to be treated for the purposes of Parts 2 to 5 as part of the registered heritage structure.

*Orders, regulations and directions***224 Orders, regulations and directions**

- (1) Any regulations under this Act, other than regulations made by a local authority under section 183, must be made by statutory instrument.
- (2) Any order under this Act, other than an order under section 123, 126, 160 or 161, must be made by statutory instrument.
- (3) Subject to subsection (5), any statutory instrument made by the Secretary of State under this Act, except one containing only an order under section 230, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subject to subsection (6), any statutory instrument made by the Welsh Ministers under this Act, except one containing only an order under section 230, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (5) A statutory instrument containing an order made by the Secretary of State under section 54, 210 or 211 may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) A statutory instrument containing an order made by the Welsh Ministers under section 54 may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.
- (7) Any order or regulations under this Act may –
 - (a) contain incidental, supplemental, consequential, transitional, transitory and saving provision;
 - (b) make different provision for different cases.
- (8) A direction under Part 2 or 4 of this Act may be varied or revoked.

*Definitions***225 Meaning of “registered heritage structure”, “registered heritage open space” and “registered marine heritage site”**

- (1) In this Act “registered heritage structure” means a registrable structure which –
 - (a) is included in the heritage register for England or the heritage register for Wales; and
 - (b) is stated by the register in question to be a heritage structure.
- (2) In this Act “registered heritage open space” means a registrable open space which –
 - (a) is included in the heritage register for England or the heritage register for Wales; and
 - (b) is stated by the register in question to be a heritage open space.
- (3) In this Act “registered marine heritage site” means a site in English or Welsh waters which –
 - (a) is included in the heritage register for England or the heritage register for Wales; and

- (b) is stated by the register in question to be a marine heritage site.

226 Meaning of “English waters” and “Welsh waters” etc

- (1) In this Act—
 - (a) any reference to a site “in English waters” is to a site wholly in English waters, or partly in English waters and partly on English land; and
 - (b) any reference to a site “in Welsh waters” is to be read accordingly.
- (2) In this Act—
 - “English waters” means that part of United Kingdom waters which is adjacent to England;
 - “Welsh waters” means that part of United Kingdom waters which is adjacent to Wales;
 - “United Kingdom waters” means any part of the sea within the seaward limits of United Kingdom territorial waters, including any estuary or arm of the sea, and any part of a river within the high water mark and low water mark of ordinary spring tides.
- (3) In this Act—
 - “English land” means any part of England not in the English intertidal zone;
 - “Welsh land” means any part of Wales not in the Welsh intertidal zone.
- (4) The Secretary of State may by order amend the definition of United Kingdom waters in subsection (2) to include the contiguous zone within the meaning of Article 33 of the United Nations Convention on the Law of the Sea adopted at Montego Bay on 10 December 1982.
- (5) The question of which parts of United Kingdom waters are adjacent to Wales is to be determined for any purposes of subsection (2) by reference to any order made under section 158(3) of the Government of Wales Act 2006 (c. 32) (or any provision treated by Schedule 11 to that Act as contained in an order made under section 158(3)).

227 Meaning of “owner”

- (1) The appropriate national authority may make regulations as to who is to be treated, for the purposes of any provision of this Act, as an owner of, or of any part of—
 - (a) a registrable structure;
 - (b) a registrable open space;
 - (c) a site in English or Welsh waters.
- (2) In relation to a site which is a registrable structure within paragraph (e), (f) or (g) of section 2(2), the remains or other thing or things mentioned in that paragraph are to be treated, for the purposes of any reference in this Act to an owner of any part of a registrable structure, as part of the registrable structure.
- (3) In relation to a site in English or Welsh waters comprising a marine asset, the marine asset is to be treated, for the purposes of any reference in this Act to an owner of any part of such a site, as part of the site.

228 Definitions for purposes of Act

In this Act, unless the context otherwise requires –

“the appropriate national authority” means –

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;

“class consent order” has the meaning given by section 93;

“development” has the meaning given by section 55 of the Town and Country Planning Act 1990 (c. 8);

“English Heritage” means the Historic Buildings and Monuments Commission for England;

“the English intertidal zone” has the meaning given by section 71;

“English land” has the meaning given by section 226;

“English waters” has the meaning given by that section;

“flooding operations” means covering with water or any other liquid or partially liquid substance;

“guardianship” means guardianship by virtue of section 177;

“heritage asset” has the meaning given by section 1;

“heritage asset consent” has the meaning given by section 88(3);

“heritage authority” has the meaning given by section 1;

“heritage open space” has the meaning given by section 3;

“heritage register” has the meaning given by section 1;

“heritage register for England” has the meaning given by that section;

“heritage register for Wales” has the meaning given by that section;

“heritage structure” has the meaning given by section 2;

“local authority” means the council of a district, county, county borough or London borough;

“local planning authority” is to be read in accordance with Part 1 of the Town and Country Planning Act 1990;

“London borough” includes the City of London;

“marine asset” has the meaning given by section 46;

“marine heritage licence” has the meaning given by section 188;

“marine heritage site” has the meaning given by section 47;

“marine registration authority” has the meaning given by section 49;

“owner” is to be read in accordance with section 227;

“planning permission” means permission under Part 3 of the Town and Country Planning Act 1990;

“purchase notice” has the meaning given by section 144;

“registered heritage open space” has the meaning given by section 225;

“registered heritage structure” has the meaning given by that section;

“registered marine heritage site” has the meaning given by that section;

“registrable open space” has the meaning given by section 3;

“registrable structure” has the meaning given by section 2;

“tipping operations” means tipping soil or spoil or depositing building or other materials or matter (including waste materials or refuse);

“United Kingdom waters” has the meaning given by section 226;

“the Welsh intertidal zone” has the meaning given by section 71;

“Welsh land” has the meaning given by section 226;

“Welsh waters” has the meaning given by that section;

“works” includes operations of any description and in particular flooding or tipping operations and any operations undertaken for the purposes of agriculture (within the meaning of the Town and Country Planning Act 1990 (c. 8)) or forestry (including afforestation);

“world heritage site” has the meaning given by section 45.

Final provisions

229 Extent

This Act extends to England and Wales only.

230 Commencement

- (1) This section and sections 229 and 231 come into force on the day on which this Act is passed.
- (2) The other provisions of this Act come into force on such day as the appropriate national authority may by order appoint (and different days may be appointed for different purposes).

231 Short title

This Act may be cited as the Heritage Protection Act 2009.

SCHEDULES

SCHEDULE 1

Sections 54 and 76

INVITING REPRESENTATIONS: APPROPRIATE PERSONS

PART 1

SITES IN ENGLISH WATERS

- 1 (1) The persons referred to in section 54(3)(a) and 76(3)(a) are –
 - (a) each owner of, or of any part of, the site;
 - (b) any person who made a request under section 67(1) in respect of the site;
 - (c) any government department the Secretary of State considers appropriate;
 - (d) any national body the Secretary of State considers appropriate;
 - (e) English Heritage;
 - (f) the Maritime and Coastguard Agency;
 - (g) the Marine Management Organisation;
 - (h) any harbour authority, as defined by section 57(1) of the Harbours Act 1964 (c. 40), whose functions include improving, maintaining or managing an area that includes all or part of the site;
 - (i) the Crown Estate Commissioners;
 - (j) any local planning authority whose area includes all or part of the site, or whose area is adjacent to all or any of that part of English waters in which the site is situated;
 - (k) any authority or body with responsibility for fisheries management (not within any of the preceding paragraphs) that the Secretary of State considers appropriate;
 - (l) Natural England;
 - (m) any authority or body with responsibility for nature conservation (not within any of the preceding paragraphs) that the Secretary of State considers appropriate; and
 - (n) any person whom the Secretary of State considers appropriate in view of that person’s special knowledge of or interest in the site or the marine environment.
- (2) The following are “national bodies” for the purposes of sub-paragraph (1)(d) –
 - (a) the Scottish Ministers;
 - (b) the Northern Ireland Ministers;
 - (c) the Welsh Ministers.

PART 2

SITES IN WELSH WATERS

- 2 (1) The persons referred to in section 54(3)(b) and 76(3)(b) are—
- (a) each owner of, or of any part of, the site;
 - (b) any person who made a request under section 67(2) in respect of the site;
 - (c) any government department the Welsh Ministers consider appropriate;
 - (d) any national body the Welsh Ministers consider appropriate;
 - (e) the Maritime and Coastguard Agency;
 - (f) the Marine Management Organisation;
 - (g) any harbour authority, as defined by section 57(1) of the Harbours Act 1964 (c. 40), whose functions include improving, maintaining or managing an area that includes all or part of the site;
 - (h) the Crown Estate Commissioners;
 - (i) any local planning authority whose area includes all or part of the site, or whose area is adjacent to all or any of that part of Welsh waters in which the site is situated;
 - (j) any authority or body with responsibility for fisheries management (not within any of the preceding paragraphs) that the Welsh Ministers consider appropriate;
 - (k) the Countryside Council for Wales;
 - (l) any authority or body with responsibility for nature conservation (not within any of the preceding paragraphs) that the Welsh Ministers consider appropriate; and
 - (m) any person whom the Welsh Ministers consider appropriate in view of that person’s special knowledge of or interest in the site or the marine environment.
- (2) The following are “national bodies” for the purposes of sub-paragraph (1)(d)—
- (a) the Secretary of State;
 - (b) the Scottish Ministers;
 - (c) the Northern Ireland Ministers;
 - (d) English Heritage.

SCHEDULE 2

Section 128

REVOCATION OR MODIFICATION OF CONSENT: ASSESSMENT OF CERTAIN COMPENSATION

- 1 This Schedule applies to any compensation which is payable under section 127 in respect of depreciation of the value of an interest in land.
- 2 For the purpose of assessing such compensation, the rules in section 5 of the Land Compensation Act 1961 (c. 33) (so far as applicable) apply, subject to any necessary modifications, as they apply for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- 3 Where an interest in land is subject to a mortgage—

- (a) any compensation to which this Schedule applies which is payable in respect of depreciation of the value of that interest shall be assessed as if the interest were not subject to the mortgage;
 - (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
 - (c) no compensation to which this Schedule applies is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
 - (d) any compensation to which this Schedule applies which is payable in respect of the interest subject to the mortgage is to be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and in either case is to be applied by the mortgagee as if it were proceeds of sale.
- 4 (1) Except so far as may be otherwise provided by regulations, any question of disputed compensation under section 127 is to be referred to and determined by the Lands Tribunal.
- (2) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 (c. 33) apply, subject to any necessary modifications and to any regulations made for the purposes of this sub-paragraph.
- (3) Any power to make regulations under this paragraph is exercisable by the appropriate national authority.



Draft Heritage Protection Bill

Explanatory Notes

HERITAGE PROTECTION BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Heritage Protection Bill which was published in draft on 2 April 2008. They have been prepared by the Department for Culture, Media and Sport, in consultation with the Welsh Assembly Government, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

As currently drafted

3. The Heritage Protection Bill is a draft 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 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 and Wales. It will also replace the provisions in the Protection of Wrecks Act 1973 dealing with the protection of sites of historic wrecks.

By the time of introduction

4. The Heritage Protection Bill will also 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.

5. The Heritage Protection Bill will also 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, thereby removing duplication of process, since planning permission will be required prior to the submission of the application to the Secretary of State.

SUMMARY

6. Part 1 of the Bill (Clauses 1 - 85) contains provisions on the registration of terrestrial assets of special interest in England and Wales (as heritage structures and open spaces) and sites in English and Welsh waters containing marine assets of special interest (as marine heritage sites), with special interest being defined as special historic, archaeological, architectural or artistic interest. It provides for the heritage authorities in each jurisdiction (English Heritage and the Welsh Ministers) to keep a national register and undertake the registration of terrestrial heritage assets of special interest. The registration of marine heritage sites shall be undertaken by the Secretary of State in England and Welsh Ministers in Wales. This part also provides for a system of appeals against or reviews of registration decisions in each jurisdiction. Further, this part introduces the concept of provisional registration, which enables assets under consideration for registration to be protected as if they were registered, and certificates of no intention to register, which prevent the land in respect of which they are issued from being registered as a heritage structure, a heritage open space or a marine heritage site for a period of 5 years from the date on which the certificate is issued.

7. Part 2 of the Bill (Clauses 86 - 154) provides for a system of consents for works to registered heritage structures (heritage asset consent, or HAC) with associated penalties for failing to apply for or comply with HAC. It establishes that HAC will be required for works that affect the special interest of the registered heritage asset. It also provides for enforcement notices (historic asset enforcement notices, or HAENs) which can be issued where unauthorised works have been carried out to registered heritage structures. HAENs specify the alleged contravention and prescribe steps for its remediation. Chapter 4 of Part 2 makes provision for purchase notices, which are notices issuable by the owner of a registered heritage structure to the relevant council requiring the council to purchase the structure, on the basis that HAC has (among other things) been refused or revoked and that (principally) the structure is incapable of beneficial use. Chapter 5 of Part 2

also makes provision for the Ecclesiastical Exemption, which is a mechanism for works or repairs to certain ecclesiastical structures to be outside the secular heritage asset consent system.

8. Part 3 of the Bill (Clauses 155 -186) provides for registered heritage structures and open spaces to influence planning processes by requiring the special interest of such assets and their setting to be taken into account when planning permission is being sought. Chapter 1 of Part 3 also provides for statutory management agreements, to be known as heritage partnership agreements, to be entered into in respect of registered heritage structures and open spaces. Chapter 1 also provides for the offence of unlicensed metal detecting on registered heritage structures and open spaces. Chapter 1 further provides for the Secretary of State and the Welsh Ministers to have powers to compulsorily purchase, or authorise the compulsory purchase of, a registered heritage structure in order to ensure its proper preservation, and to undertake or authorise preservation works to registered heritage structures where those works do not interfere with residential use. This chapter also contains provisions for public authorities to take guardianship of a registered heritage structure, to acquire registered heritage structures by agreement, and makes further provisions to enable public access to registered heritage structures that are under public control. Chapter 2 of Part 3 provides for local authorities to have powers to make grants and loans towards the cost of the preservation, repair, maintenance and management of any registered heritage structure, registered heritage open space or registered marine heritage site in their area.

9. Part 4 of the Bill (Clauses 187 - 209) provides a system of licences for managing activities on registered marine heritage sites, and for appeals against or reviews of licensing decisions in both England and Wales.

10. Part 5 of the Bill (Clauses 210 - 215) provides for the creation and maintenance of historic environment records (HERs) to be a statutory duty for local planning authorities in England and Wales and for HERs to contain details of assets considered by local planning authorities to be of special local interest.

11. Part 6 of the Bill (Clauses 216 - 231) provides for relevant authorities to have powers of entry in order to carry out their functions under the Bill. This Part also provides that most regulations and orders under this Bill shall be made by statutory instrument and be subject to the negative resolution procedure. Orders amending Schedule 1 and clauses 210 and 211 will be subject to the affirmative resolution procedure. This Part also contains definitions of terms and phrases used in the Bill.

*These notes refer to the Heritage Protection Bill
as published in draft on 2 April 2008*

OVERVIEW OF STRUCTURE

12. The Bill is currently divided into 6 Parts. These Parts are as follows:
 - Part 1: Heritage registration
 - Part 2: Control of works and prevention of damage to registered heritage structures
 - Part 3: Other effects of registration
 - Part 4: Marine heritage licences
 - Part 5: Historic environment records
 - Part 6: General
13. It is also contains two Schedules. These are:
 - Schedule 1 - Inviting representations: appropriate persons.
 - Schedule 2 - Revocation or modification of consent: assessment of certain compensation
14. When introduced, the Bill will also contain additional clauses and, if necessary, related Schedules, covering:
 - Conservation Areas
 - Crown Land
 - English Heritage Grant and Loan-Making Powers
 - The Receiver of Wreck
 - Osborne House
 - Public Statues
15. Outline Explanatory Notes on these additional clauses to be included prior to introduction may be found at the end of this document.

TERRITORIAL EXTENT

16. The entirety of the Bill extends to England and Wales.
17. The provisions relating to Osborne House which will be introduced prior to introduction will extend to the United Kingdom (because they repeal and amend legislation which does so), but they have practical effect only in relation to the Osborne Estate on the Isle of Wight. They do not affect the Devolved Administrations.
18. The provisions relating to the repeal of section 5 of the Public Statues (Metropolis) Act 1854 which will be introduced prior to introduction will extend to the United Kingdom because the 1854 Act contains no express provision as to extent and therefore applies throughout the United Kingdom, but its practical application is limited to the area of the former Metropolitan Police District. By virtue of the London Government Act 1963, as amended by the Greater London Authority Act 1999, the former Metropolitan Police District is now the area of Greater London, excluding the City of London, the Inner Temple and the Middle Temple.
19. It remains our policy objective to include provisions amending Part IX of the Merchant Shipping Act 1995 so as to impose a new reporting duty on the Receiver of Wreck. We are exploring the best way to achieve this policy objective in a manner that respects the current devolution settlement, and will include the relevant clauses prior to introduction of the Heritage Protection Bill. The Explanatory Notes describe the intended effect of these provisions.

Territorial Application: Wales

20. Almost all Minister of the Crown functions under the existing legislation have been devolved in relation to Wales since 1999. Following the Government of Wales Act 2006, statutory functions are conferred on the Welsh Ministers, who exercise such functions on behalf of the Crown and not on behalf of the National Assembly for Wales.
21. The Bill confers equivalent powers on the Welsh Ministers as are being given to the Secretary of State and English Heritage, apart from where there is provision for the Secretary to interact with English Heritage in relation to England. The Welsh Ministers' responsibilities for heritage protection are carried out in practice and on their authority by Cadw, which is the historic environment division of the Welsh Assembly Government. Unlike English Heritage, Cadw is fully part of Government and it has no separate status or identity in law.

COMMENTARY

PART 1: HERITAGE REGISTRATION

Chapter 1: The Heritage Registers for England and Wales: Duty to Keep Registers

Clause 1: The heritage registers for England and Wales: duty to keep registers

22. This clause defines the heritage authorities in England and Wales as English Heritage and the Welsh Ministers respectively and establishes their duties to compile and maintain, by keeping up to date, a register of heritage assets in their separate jurisdictions.

23. *Subsections (1), (2) and (4)* set out the jurisdictions on both land and sea to which the heritage authorities' registers will relate.

24. *Subsection (3)* sets out the four categories of heritage asset that will be capable of being included in the heritage register: heritage structures, heritage open spaces, world heritage sites, and marine heritage sites.

Chapter 2: Heritage Assets on Land

Registrable heritage assets

Clause 2: Heritage structures

25. This clause sets out the range of assets capable of being heritage structures and the test used to determine whether they should be registered – the 'special interest test'.

26. *Subsection (1)* sets out the test which the heritage authorities in England and Wales must use to determine whether a structure should be registered or not. The test is whether the structure is of special historic interest, special archaeological interest, special architectural interest or special artistic interest. The four kinds of 'special interest' are not mutually exclusive, but they are the only basis on which a decision whether to register can be made. *Subsections (4) and (5)* of clause 4 require both English Heritage and Welsh Ministers to publish further details on what constitutes special interest and how it applies to the range of assets falling within the category of 'registrable structures'.

27. *Subsection (2)* sets out the range of assets capable of being considered for registration by English Heritage or the Welsh Ministers as 'heritage structures'. This list includes all those assets previously covered by 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 as well as some additional types of asset. Parts (a) to (f) are objects and sites which evidence human construction (e.g., buildings, monuments, statues, barrows, dockyard cranes etc), or human habitation (e.g., caves) as well as the remains of such assets (e.g., buried archaeological remains, ruins). Part (c) clearly establishes the principle that parts of buildings and other structures may be capable of registration in their own right. Part (g) refers to sites containing objects or material remains which evidence early human activity (whether man-made or not), for example, sites of accumulated animal bone; cup stones, where the surfaces of naturally lying rocks have been worked by prehistoric humans; sites where stone artefacts or fragments of stone artefacts like stone tools lie loose on the ground surface (lithic scatters); and sites where there is evidence of burning (hearths etc) or scratching. Part (h) enables groups of objects, which are related, such as barrows, monoliths and excavations, to be registered as a single heritage structure.

28. The effect of *subsection (3)* is that if any part of a registrable structure extends into English or Welsh waters, it should first be considered for registration as a marine heritage site rather than a heritage structure. Assets which are partly on land and partly submerged (such as piers, or beached wrecks) are within the 'intertidal zone' (further defined at clause 71). Should such an asset have sufficient special interest to be registrable, but the Secretary of State or the Welsh Ministers decide not to register it as a marine heritage site (clause 48) it will be registered as a heritage structure.

29. What are currently termed Areas of Archaeological Importance will not be capable of registration under the provisions of the Heritage Protection Bill.

Clause 3: Heritage open spaces

30. This clause sets out the range of assets capable of being heritage open spaces and the test used to determine whether they should be registered – the 'special interest test'.

31. *Subsection (1)* sets out the test which the heritage authorities in England and Wales must use to determine whether an open space should be registered or not. The test is whether the open space is of special historic interest, special archaeological interest, special architectural interest or special artistic interest. The four kinds of 'special interest' are not mutually exclusive, but they are the only basis on which a decision whether to register can be made.

32. *Subsection (2)* sets out the range of assets capable of being considered for registration by English Heritage as 'heritage open spaces' – gardens, parks, or battlefields, or parts thereof.

33. *Subsections (3) and (4)* provide that any land in Wales is a registrable open space for the purpose of the Act; it also makes clear that a registrable open space can include land on which there are buildings or other registrable structures. The definition is wide to allow not only for inclusion of historic parks and gardens and battlefields, as in England, but also of historic landscapes of which there already exists a register in Wales.

Clause 4: Special interest

34. This clause sets out further details on the special interest test. *Subsections (1) and (2)* define the principle of 'group value', which may be taken into account by the heritage authorities when determining the special interest of an individual heritage structure or heritage open space. In effect it means that an asset that may not be of special interest on its own might be of special interest considered in context with other assets with which it forms a group, such as an individual house that forms part of a crescent. This principle would also apply to assets which, though spatially dispersed, have a functional connection - for example, a national network of radar or early warning stations.

35. The clause also provides that when considering whether a registrable structure is of special interest, account may be taken of any object or structure which is fixed to that structure.

36. *Subsections (4) and (5)* require the heritage authority (English Heritage or the Welsh Ministers) to publish criteria setting out the grounds on which their determinations of special historic, archaeological, architectural or artistic interest will be made. The grounds may be different in relation to different types of asset and different types of special interest, but the criteria of special historic, archaeological, architectural or artistic interest are the only criteria on which a decision on whether to register can be made.

Compiling and amending heritage registers

Clauses 5 and 6: Procedure for inclusion in register and Procedure for removal from register

37. These clauses establish that the heritage authority must not add a terrestrial heritage asset to the register (whether as a registered heritage structure or a registered heritage open space), or remove such an asset from the register, without (among other things) undertaking a formal consultation process.

Clause 7: Procedure for material amendment of register entry

38. This clause provides that the heritage authority must not make a material amendment to an existing register entry for a terrestrial asset without undertaking a formal consultation process. It further provides that applications to increase or reduce the extent of a registered terrestrial asset must follow the procedures set out in subsequent clauses.

39. *Subsection (3)* defines a material amendment as one which alters the extent of the asset as identified in the register or is otherwise an amendment which the heritage authority considers should not be made unless consultation has been carried out.

Clause 8: Meaning of “consultation”

40. This clause defines consultation for the purposes of this Bill as inviting written representations in accordance with the appropriate procedure (as defined by subsequent clauses) and taking into account those representations received during the consultation period.

Clause 9: Inviting representations: registrable structures

41. This clause sets out the consultation procedure that is required to be undertaken before a heritage structure can be registered or, if it is already registered, before its register entry can be amended or removed. It requires that the heritage authority invite written representations from each owner, the local planning authority, the relevant national amenity society, any person who made a request to include the structure in the register or for the register entry to be amended or removed, or any other person deemed appropriate in the light of their special knowledge or interest in the structure concerned or those of its type. The invitation must specify the period for response, which must be at least 28 days.

42. *Subsections (5) and (6)* require that the consultation letter states that the structure has become provisionally registered or that an amendment increasing the extent of a registered heritage structure has been provisionally made (see clauses 11 - 18).

Clause 10: Inviting representations: registrable open spaces

43. This clause sets out the consultation procedure that is required before a heritage open space can be registered or, if it is already registered, before its register entry can be amended or removed. It requires that the heritage authority formally consult each owner, the local planning authority, the relevant national amenity society, any person who made a request to include the open space in the register or for the register entry to be amended or removed, or any other person deemed appropriate in the light of their special

knowledge or interest in the open space concerned or those of its type. Such persons must be given at least 28 days in which to respond.

44. In Wales, *subsection (6)* provides that the requirement to consult all owners does not apply to the owner of any part of the asset which is not affected by a proposed amendment or where the numbers of owners concerned makes it impracticable to invite written representations from each of them. This exception is necessary for Wales because of the facility to register landscapes as heritage open spaces.

45. *Subsection (4)* requires the heritage authority to issue a public notice, in accordance with regulations made by the appropriate national authority, in relation to the open space concerned, seeking views on the proposed amendment, removal or inclusion.

46. *Subsections (9) and (10)* require that the consultation letter and notice state that the open space has become provisionally registered or that an amendment increasing the extent of a registered heritage open space has been provisionally made (see clauses 11 - 18).

Provisional registration

Clauses 11, 12 and 13: Provisional registration, End of provisional registration and "Relevant applications" for purposes of section 12

47. These clauses introduce the concept of interim protection. This concept ensures that any asset being considered for registration will be given the same level of protection as if it were registered. Clause 11 establishes that interim protection will begin from the decision to carry out formal consultation, when the heritage authority will provisionally enter the details of the asset into the register (marking the entry as a provisional registration) and simultaneously initiating the formal consultation process. Clauses 12 and 13 establish that interim protection will end either when the heritage authority decides that the asset should be registered (in which case the provisional marking on the register should be removed and the asset will become fully registered), or where the heritage authority decides that the asset should not be registered and the period for appealing against or reviewing that decision not to register has expired with no appeal or review being made, or any appeal or review process has been concluded without the heritage authority's decision being reversed, or the appeal has been withdrawn (in which case the entire entry will be removed from the register).

Provisional amendment

Clauses 14 and 15: Provisional amendment of entry in register and End of provisional amendment

48. These clauses give effect to the concept of interim protection in relation to assets that are already registered and where there is an application to increase the extent of the asset. Clause 14 establishes that interim protection will apply to the additional area from the decision to carry out formal consultation on that increase, when the heritage authority will provisionally enter the details of the increase into the register entry (marking that amendment as provisional) and simultaneously initiating the formal consultation process. Clause 15 establishes that interim protection will end either when the heritage authority decides that the amendment should be made and the register entry amended to reflect the increased extent of the asset (in which case the provisional marking on the register should be removed and that part of the asset will become fully registered), or the heritage authority decides that the amendment should not be made and the entry should revert to its original details. In the latter case, only when the period for appealing against or reviewing the decision has expired with no appeal or review being made, or any appeal or review process has been concluded without the heritage authority's decision being reversed or the appeal or review withdrawn, will the entry be returned to its original state.

Clause 16: Amendments not to be provisionally made so far as they reduce extent

49. This clause provides that where an amendment simultaneously includes a new area in the extent of a registered heritage structure or open space and excludes an area which is currently part of that extent, clauses 14 and 15 operate so that provisional registration of the new area is effected without the reduction being made during consultation. It further provides that where there is a decision to make the amendment, the reduction is only made when the period for appealing against or reviewing the decision has expired with no appeal or review being made, or any appeal or review process has been concluded without the heritage authority's decision being reversed or the appeal or review withdrawn.

Effect of provisional registration or amendment

Clause 17: Effect of provisional registration

50. This clause provides that where an asset is subject to provisional registration, it shall be treated as a registered asset. Even if the application to register is rejected, the asset is to be treated as having been registered during the period of provisional registration.

51. However, *subsection (3)* establishes that any heritage asset consent (HAC) granted or a heritage asset enforcement notice (HAEN) served during the period of provisional registration, and any proceedings arising out of a HAC application or the service of a HAEN during the period of provisional registration, shall lapse when a decision is made not to include the asset in the register. Also, no HAEN may subsequently be served in relation to unauthorised works during that period.

Clause 18: Effect of provisional amendment

52. This clause provides that, during the period of a provisional amendment, the full extent of the asset as provisionally registered is protected and shall be treated as a registered asset. Even if the application to amend is rejected the asset is to be treated as having been registered during the period of provisional registration. *Subsection (3)* has the same effect as *subsection (3)* of clause 17 in respect of HAC and HAENs in relation to the part of the asset which was provisionally registered, where a decision is taken not to include that part of the asset in the register.

Timing of removal from register

Clauses 19 - 20: Timing of removal from register and Timing of amendment reducing extent

53. These clauses set out the conditions for removal of entries from the register and for amendments to register entries which involve the reduction in extent of a terrestrial heritage asset that is already registered. In order to take into account the appeal provisions set out in this Bill, a terrestrial heritage asset or details of part of an asset will not be removed from the register until either the time period during which an appeal against the decision to remove or to make the amendment may be made has expired and no appeals have been submitted during that time or, if an appeal has been made within time and gone forward (or the Secretary of State has decided to determine the matter), after the appeal has either been concluded in accordance with the original decision or withdrawn. In effect, this will mean that while a decision against inclusion or in favour of reduction in extent may have been made, it will not take effect until after the appeal period, or the activated appeal process, has concluded. The whole of the asset will continue to be protected for as long as its entry remains on the register. The same applies in relation to assets subject to review by Welsh Ministers.

Request for inclusion in or amendment of register

**Clauses 21 - 22: Request for inclusion in or amendment of register and
Action by heritage authority following request**

54. These clauses set out the application procedure for inclusion or removal of terrestrial heritage assets in the register and the procedures by which applications for amendment may be made.

55. Clause 21 establishes that applications to register terrestrial heritage assets or amend or remove existing registrations may be made by any individual or group, and should be made in writing (this includes email). *Subsection (4)* enables the Secretary of State or Welsh Ministers to specify in regulations the information that should be included in an application.

56. Clause 22 requires English Heritage and Welsh Ministers to consider whether to grant each application, and if the case passes the initial consideration (the 'sift test') to proceed to formal consultation on the case. *Subsection (2) (b)* establishes the sift test as one of 'negligible likelihood of its deciding following consultation to implement the proposal.' Where a heritage authority's initial view is that the proposal should not be implemented, this test requires the heritage authority to consider, in the light of the information provided by the request (and any other information that the heritage authority has about the asset), whether there is more than a negligible likelihood that information will be provided to it during the consultation that will change this view. If they determine that there is a negligible likelihood of this they need not proceed to formal consultation and may dismiss the application. In practice this would enable the authorities to reject without formal consultation an application to register an asset that was clearly not registrable (e.g., a tea cup or a functioning car), or an application to register an asset which was clearly not of special interest (e.g., an unremarkable 1980s house), or an application which was a repeat of one recently dealt with, containing no new significant information.

Clause 23: Modification by heritage authority of inaccurate request

57. This clause enables English Heritage or Welsh Ministers to modify an application which is incapable of implementation so as to render it capable of implementation and to then consult formally on it.

Publicity for decision

Clause 24: Publicity for decision

58. This clause states that all decisions to register, to amend the register, to remove from the register, and all decisions not to do any of these things, which are made following formal consultation should be publicised by the heritage authority.

Appeals: England

59. Clauses 25 - 30 establish a formal appeal procedure against decisions by English Heritage to register, to amend an existing register entry, to remove an existing register entry or not to do any of these things (referred to as "registration decisions" in these notes).

Clauses 25 and 26: Application to Secretary of State following English Heritage decision and Persons who may apply under section 24

60. Clauses 25 and 26 establish that an appeal against any registration decision for terrestrial heritage assets by English Heritage may be made to the Secretary of State upon application by a 'relevant person'. It also provides that the Secretary of State may decide to make such a determination on his own initiative. Clause 26 sets out a list of 'relevant persons' who may appeal against English Heritage's decision.

Clause 27: Time limits for applications under section 25, etc

61. Clause 27 establishes that an appeal application must be made within 28 days of the publicising of English Heritage's registration decision, save in special circumstances, as considered by the Secretary of State. This clause also requires the Secretary of State to publicise the fact of an appeal, the withdrawal of appeal or any decision by the Secretary of State to make a determination.

Clauses 28 - 30: Determination of Secretary of State, Inviting representations: registrable structures and Inviting representations: registrable open spaces

62. These clauses set out the procedure the Secretary of State must follow in determining an appeal or making a determination on his own initiative.

63. They establish that the Secretary of State may not overturn a registration decision by English Heritage unless he has formally consulted each owner of the structure or open space concerned, the local planning authority, the relevant national amenity society and any other person the Secretary of State deems appropriate in view of their special knowledge, plus English Heritage themselves and, where a registrable open space is concerned, published a notice in the way prescribed by regulations made by the Secretary of State. All parties will be given 28 days in which to respond.

64. The Secretary of State, in making such determinations is required to take into account responses received within the appeal consultation period, and apply the same special interest test to the evidence received, referring to the same criteria, as used by English Heritage in making their original decision. He must also publicise the result of his appeal determination (clause 28 *subsection (7)*).

65. Clause 28 *subsection (8)* requires English Heritage to amend the register to give effect to the Secretary of State's determination where it reverses their original decision.

Appeals: Wales

Clause 31: Review of decisions about heritage register for Wales

66. This clause establishes a formal review process against decisions by the Welsh Ministers to register, to amend an existing register entry, to remove an existing register entry or not to do any of these things. A review, rather than an appeal, process is being established in Wales since the Welsh Ministers have responsibility for registration decisions and it would not be appropriate for the registration and appeals authorities to be one and the same.

67. Clause 31 sets out the relevant persons who can request a review, which must be made within 28 days of publicising the registration decision of the Welsh Ministers unless special circumstances apply. In reviewing their decision, the Welsh Ministers may take advice from any person they consider appropriate. Alternatively, the review may, in circumstances to be prescribed by regulations, be carried out by a person appointed by the Welsh Ministers.

68. Following a review, the Welsh Ministers have to make any necessary amendments to the register and publicise the applications for a review, decisions made on reviews and any withdrawal of review applications.

Ongoing effect of determination reversing English Heritage decision

Clause 32: English Heritage prevented from taking subsequent decisions on asset

69. This clause establishes that once an asset has been the subject of a decision by the Secretary of State which reverses an initial decision by English Heritage it becomes a 'section 32 asset' and special procedures, as set out in clauses 33 - 38, apply to it. These clauses preclude English Heritage from making further decisions on applications relating to section 32 assets, save at the express direction of the Secretary of State. Unless otherwise specified, the only role for English Heritage in dealing with section 32 assets will be to amend the register to reflect the Secretary of State's determinations on this asset.

Clauses 33 and 34: Referral of questions to Secretary of State and Action by Secretary of State following referral

70. These clauses establish that when English Heritage receives any request to include or remove a section 32 asset from the register, or amend the entry for a section 32 asset, the Secretary of State will take on the responsibility for determining the request, by undertaking the sift and formal consultation process that apply when 'regular' applications are made. Once the Secretary of State has made the determination, clause 34, *subsection (8)* requires English Heritage to amend the register to give effect to the Secretary of State's determination.

Clause 35 and 36: Provisional registration following referral under section 33 and Provisional amendment following referral under section 33

71. These clauses establish that, once the Secretary of State decides to initiate the formal consultation process for a section 32 asset, he must direct English Heritage to enter the details of the asset into the register as a provisionally registered asset or to provisionally amend the entry of a registered asset. Once the Secretary of State has decided either to register or not register the asset (clause 35), or amend the entry for a registered asset (clause 36), he must direct English Heritage to amend the register to give effect to his determination. The register can be amended immediately as there is no appeal from the Secretary of State's determination.

Clause 37: Amendments not to be provisionally made so far as they reduce extent

72. This clause applies to cases where an application to amend a section 32 asset has the effect of both extending the area or extent of an asset in one respect or direction and reducing it in another. In these instances, this clause establishes that when the application is made, the Secretary of State will direct English Heritage to amend the register to provisionally include the extended element of the asset during the consultation period, but not to exclude the reduced element. This ensures that the whole of the area under consideration is protected during consultation. Following determination, the Secretary of State must direct English Heritage to amend the register to give effect to his determination.

Clause 38: Disapplication of section 32

73. This clause establishes that the Secretary of State has the power to disapply the effects of section 32 in respect of a particular asset, by making a specific direction to English Heritage of this intention and publicising it. *Subsection (3)* establishes that this direction ceases to have effect if there is a further determination by the Secretary of State in respect of the asset in question which overturns English Heritage's decision.

Certificate of no intention to register

**Clauses 39 and 40: Certificate of no intention to register: structures and
Certificate of no intention to register: open spaces**

74. Clauses 39 – 40 introduce provisions for ‘certificates of no intention to register’ (CNIRs) which replace and extend what were previously known as Certificates of Immunity. Once granted, a CNIR prevents the land to which it applies from being registered as either a heritage structure (clause 39) or an open space (clause 40) for a period of 5 years from the date on which the certificate is issued. Anyone can apply for a CNIR, and the certificate applies to the land, anything beneath the land, and anything above it, unless the certificate explicitly provides otherwise.

**Clauses 41 and 42: Procedure for issue of certificate and Inviting
representations on proposed certificate**

75. These clauses set out the formal consultation process which needs to be undertaken before a certificate can be granted for an area of land. As with applications to register, and appeals, the heritage authority must consult the owner, the local planning authority, the relevant national amenity society or any other person deemed appropriate in the light of their special knowledge or interest in the structure concerned or those of its type. *Subsection (7)* of clause 42 establishes that people must be given 28 days in which to respond. Given that an area of land may be so large as to make identification and consultation of all owners impracticable, *subsection (6)* of clause 42 disapplies the requirement for English Heritage or the Welsh Ministers to invite written representations from all owners where this is the case.

**Clause 43: Restriction on issue of certificate where request for inclusion in
register**

76. This clause establishes that when an application to register a terrestrial heritage asset is made, the heritage authority cannot issue a CNIR until it has dealt with that application, i.e., it has either informed the applicant for registration that the asset will not be registered as it has not passed the initial sift (*subsection (2)*), or it has decided against registration following the formal consultation process for registration and the time period for an appeal or review has elapsed without an appeal or review being made, or any appeal applications or determinations have been concluded without the decision not to register being overturned or have been withdrawn (*subsection (3)*).

Relationship between requirements of Chapter 2 and general duty

**Clause 44: Relationship between requirements of Chapter 2 and general
duty**

77. This clause provides that English Heritage’s general duty to include in the register assets they consider of special interest or not include in the

register those assets they do not consider of special interest is subject to their duty to include or not include if directed to do so by the Secretary of State, or required by provisions on provisional registration.

Chapter 3: World Heritage Sites

Clause 45: World heritage sites

78. This clause defines what constitutes a world heritage site for the purposes of this Bill. As set out in clause 1 of this Bill, details of world heritage sites in England and Wales shall be entered into the heritage registers for England and Wales respectively. The fact of such inclusion will not subject them to any protection regime and is simply a record of their existence.

Chapter 4: Marine Heritage Assets

Marine assets and marine heritage sites

Clause 46: Marine assets

79. This clause identifies the range of assets which come within the meaning of a marine asset for the purposes of this Bill. In addition to vessels and the remains of vessels, this clause provides that both cargo and other objects from vessels, vehicles and aircraft (e.g., personal effects of passengers and crew), plus anything that would be a registrable structure on land by virtue of this Bill (in some case if comprised in a site), are marine assets.

Clause 47: Marine heritage sites

80. This clause introduces the concept of the marine heritage site. This is the area in the relevant national waters which contains or may contain a marine asset that is capable of being registered. In relation to marine heritage sites in English waters such a site is one which the Secretary of State directs English Heritage to include in the heritage register for England; in relation to sites in Welsh waters, it is one which contains or may contain a marine asset which Welsh Ministers consider passes the “special interest” test and for which Welsh Ministers deem registration appropriate (i.e., registration of marine heritage sites in Wales is discretionary).

Clause 48: Directions of Secretary of State in relation to heritage register for England

81. This clause provides that the registration of marine heritage sites in England by the Secretary of State is also discretionary. A marine heritage site qualifies for registration if the Secretary of State considers that it contains, or may contain, a marine historic asset that has passed the special interest test (i.e., it is of special historic, archaeological, architectural or artistic interest),

and once that test has been passed, he considers that it is appropriate for the site to be registered.

82. *Subsection (3)* gives the Secretary of State the power to direct English Heritage to de-register a marine heritage site, and *subsection (4)* gives him the power to direct English Heritage to amend a register entry for a registered marine heritage site.

Clause 49: Special interest

83. This clause requires the marine registration authority (the Secretary of State or the Welsh Ministers) to publish criteria setting out the grounds on which their determinations of special historic, archaeological, architectural or artistic interest will be made in relation to marine assets. The grounds may be different in relation to different types of marine asset and different types of special interest, but the criteria of special historic, archaeological, architectural or artistic interest are the only criteria on which a decision as to whether a marine asset is of special interest can be made.

Compiling and amending heritage registers

Clause 50, 51 and 52: Procedure for inclusion in register, Procedure for removal from register and Procedure for material amendment of register entry

84. These clauses provide that (among other things) a formal consultation process is required before a marine heritage site in English or Welsh waters can be registered by English Heritage or the Welsh Ministers respectively, or an existing register entry for a marine heritage site be amended (by the making of a “material amendment”) or removed by English Heritage or the Welsh Ministers.

Clauses 53 and 54: Meaning of “consultation” and Inviting representations

85. These clauses set out the formal consultation procedure that must be undertaken before a marine heritage site can be registered, or an existing register entry for a marine heritage site can be amended or removed. The marine registration authority must invite written representations from the individuals and organisations set out in Schedule 1 and publish a notice inviting written representations from members of the public. The consultation notice must specify the period in which representations must be made and state that the site has been provisionally registered or, in the case of an amendment to the register which increases the extent of a registered marine heritage site, that the area has been provisionally registered (see below).

Provisional registration: sites in English waters

Clause 55: Provisional registration

86. This clause provides that once the Secretary of State decides to initiate formal consultation, the extent and details of the marine site in question should be entered into the register and the site marked as provisionally registered. This introduces a means of interim protection for the marine heritage site, pending the outcome of the consultation exercise. In particular, this clause provides that the extent of the marine heritage site must be that which the Secretary of State considers necessary for the protection of the marine asset and must be specified by reference to the World Geodetic System 1984.

Clause 56: End of provisional registration

87. This clause provides that if, following consultation, the Secretary of State decides that the marine heritage site should be registered, he must direct English Heritage to remove the 'provisional' marking from the register entry in question (*subsection (2)*). Alternatively, if he decides that the site should not be registered, he must direct English Heritage to remove the entry from the register (*subsection (3)*).

Provisional amendment: sites in English waters

Clause 57: Provisional amendment of entry in register

88. This clause provides that where the Secretary of State decides to consult formally on a proposal to increase the area of an already registered marine heritage site, he must direct English Heritage to amend the register entry so that the full extent of the site is included in the register and marked as provisionally registered.

Clause 58: End of provisional amendment

89. This clause provides that if, following consultation, the Secretary of State decides that the register entry for the marine heritage site should be amended as requested, he must direct English Heritage to remove the 'provisional' marking from the register entry in question (*subsection (2)*). Alternatively, if he decides against the amendment, he must direct English Heritage to return the register entry in question to its original state.

Clause 59: Amendments not to be provisionally made so far as they reduce extent

90. This clause applies where a proposed amendment has the effect of including something new within the extent of a registered marine heritage site and of excluding something previously included within it. In these instances, this clause provides that the Secretary of State will only direct English Heritage to amend the register to provisionally register the extended

element of the site during the consultation period but not to exclude the reduced element, so that the whole of the area under consideration is protected during consultation. Following determination, the Secretary of State must direct English Heritage to amend the register to give effect to his determination.

Provisional registration and amendment: sites in Welsh waters

Clauses 60 - 64: Provisional registration, End of provisional registration, Provisional amendment of entry in register, End of provisional amendment and Amendments not to be provisionally made so far as they reduce extent

91. These clauses set out the procedure for provisionally registering or amending register entries for sites in Welsh waters. In all respects, save for the fact that Welsh Ministers will be the marine registration authority, the effect of these clauses will be the same as the effect of clauses 55 to 59 in relation to sites in English waters.

Effect of provisional registration or amendment

Clauses 65 and 66: Effect of provisional registration and Effect of provisional amendment

92. These clauses explain the effect of provisional registration (interim protection) in relation to marine heritage sites in England and Wales. Provisional registration of a site, or the provisional amendment of an existing register entry means that the whole of the site entered into the register and marked as 'provisional' is protected as if it were registered for the period during which it is registered. Interim protection will begin from the decision to carry out formal consultation, when the heritage authority will provisionally enter the details of the asset into the register (marking the entry as a provisional registration) or provisionally amend the entry of a registered marine heritage site. If, after consultation, the Secretary of State or the Welsh Ministers decide not to register the site or that the amendment should not be made, marine heritage licences granted during the period of interim protection will lapse (in respect of the site or the unregistered part), as will any designation of the site as one suitable for unintrusive diving activities (clause 198).

Requests for inclusion in or amendment of register

Clauses 67 and 68: Requests for inclusion in or amendment of register and Action by marine registration authority following request

93. Clause 67 provides that any person may apply for a site in English or Welsh waters to be included in the respective register, and for already registered sites to have their entries amended or removed. This application procedure operates in addition to those instances where the Secretary of State or Welsh Ministers consider on their own initiative that a site should be

registered as a marine heritage site, or where they consider that an entry in the register for a registered marine heritage site should be amended or removed.

94. Where an application is made, clause 68, *subsection (2)* requires English Heritage and Welsh Ministers to consider whether to grant each application, and if the case passes the initial consideration (the 'sift test') to proceed to formal consultation on the case. *Subsection (2) (b)* establishes the threshold of the sift test as one where the Secretary of State or Welsh Ministers consider that there is more than a 'negligible likelihood' of deciding after consultation that the proposal should be implemented. This test imposes a duty on the Secretary of State and Welsh Ministers, respectively, to consider the application. In practice, these subsections would enable the Secretary of State and Welsh Ministers to conduct an initial sift of applications prior to initiating the formal consultation process set out in subsequent clauses. As with the sift of terrestrial applications, this power enables the authorities to reject without formal consultation an application that has no more than a negligible prospect of success.

95. *Subsection (3)* provides that the need to undertake a consultation exercise for an amendment of the register only arises where the amendment is a "material amendment". A material amendment is defined as one which alters the extent of the registered marine heritage site as identified in the register or is otherwise an amendment which the marine heritage authority considers should not be made unless consultation has been carried out.

Clause 69: Modification by marine registration authority of inaccurate request

96. This clause allows the Secretary of State or Welsh Ministers to carry out consultation for an application which is incapable of implementation by modifying the application so as to make the proposal capable of implementation.

Notification of direction or decision

Clause 70: Notification to consultees of direction or decision

97. This clause requires the Secretary of State and Welsh Ministers to notify all those persons or bodies they have formally consulted and all those persons or bodies who have submitted written representations in response to the public notice of a proposal to register a marine heritage site or amend or remove an existing register entry for a marine heritage site.

Intertidal registrable structures and registrable open spaces

Clause 71: Intertidal registrable structures not registered as marine sites

98. This clause provides that registrable structures wholly or partly in the intertidal zone (being the area between the high and low tides) which have first been considered by the Secretary of State or Welsh Ministers as marine heritage sites but which are not registered as such because the relevant authority has decided not to register them, or because the relevant authority has issued a certificate of no intention to register, or has directed that the site be removed from the register, shall be treated as terrestrial heritage structures, and be capable of registration under the terrestrial heritage protection regime set out in this Bill.

Clause 72: Movement of registered heritage structures and open spaces into intertidal zone

99. This clause provides that those registered heritage structures and registered open spaces in England and Wales which move from being entirely on land to being wholly or partly in the intertidal zone are to remain within the terrestrial heritage protection regime set out in this Bill.

Clause 73: Registered heritage structure or open space in intertidal zone: prevention of registration as marine site

100. This clause prevents the Secretary of State or Welsh Ministers from provisionally registering a registered heritage structure or open space located in the intertidal zone as a marine heritage site.

Certificate of no intention to register

Clauses 74 and 75: Certificate of no intention to register: sites in English waters and Certificate of no intention to register: sites in Welsh waters

101. These clauses extend the concept of a certificate of no intention to register used in the terrestrial regime to the marine historic environment. As on land, the certificate will prevent the registration of a site in English or Welsh waters as a marine heritage site for a period of 5 years from the date the certificate is issued. While in both England and Wales any person may apply for the certificate, the certificate may not be granted without formal consultation, which in England will be carried out by English Heritage and in Wales by Welsh Ministers.

Clause 76: Inviting representations

102. This clause requires the Secretary of State and Welsh Ministers to consult those individuals and organisations detailed in Schedule 1 and publish a notice inviting representations (as is the case with applications to register a marine heritage site) before granting a marine CNIR. As is the case with applications to register, the notice and the letter to consultees must specify the period in which representations must be made.

Clause 77: Restriction on issue of certificate where request for inclusion in register

103. This clause provides that when an application to register a marine heritage site is made, the marine registration authority cannot issue a CNIR until it has dealt with that application, i.e., it has either informed the applicant for registration that the site will not be registered as it has not passed the initial sift, or following the formal consultation process has decided that the site does not qualify for registration.

Chapter 5: The Heritage Registers: Supplementary

Information to be included

Clause 78: Information to be included in heritage registers: general

104. This clause provides that the heritage register for England and Wales must state whether each asset included in the register is a heritage structure, heritage open space, world heritage site or marine heritage site, and that the Secretary of State may make regulations as to the form of the register for England and the information it must contain.

Clause 79: Information to be included in respect of assets on land

105. This clause provides that an entry in the register must identify the extent of the heritage structure or open space to which it refers. For heritage structures which are sites, that extent should be the extent that the heritage authority considers necessary for the protection of the remains or other things which comprise the site. For heritage structures which are buildings, that extent can either be just the building or can also include objects or structures within its curtilage which form part of the land.

106. This clause also provides that the general rule contained in clause 223 that land beneath or above a registered heritage structure is to be treated as part of it may be disapplied by specific provision to the contrary in the register entry. This allows, for example, the registration of one flat in a block of flats (perhaps because it has special historic interest because of its occupation by a person of note) without the flats above and beneath it having to become registered.

Clause 80: Information to be included in respect of marine heritage sites

107. This clause provides that the register entry for a marine heritage site in English or Welsh waters must identify the location and boundaries of the site by reference to the World Geodetic System and specify details of any designation for unintrusive diving activities which is in force in respect of the site.

Publicity

Clause 81: Publication of heritage registers

108. This clause provides that the heritage registers for England and Wales must be publicly available in accordance with the regulations to be issued in England by the Secretary of State or in Wales in any way considered appropriate by the Welsh Ministers.

Clause 82: Notification to local authorities

109. This clause requires English Heritage and the Welsh Ministers to supply each relevant local authority with a copy of that part of the register which relates to that authority's area when the register is first compiled. It also requires them to send an updated version of that part of the register and a notice of the changes made to it to a local authority when entries for assets in their area are included, removed or amended.

Clause 83: Publicity by local planning authorities

110. This clause requires each local planning authority to notify each owner and occupier of a registrable structure in the authority's area of changes to the register which affect that structure, save when a change is provisional (as in this instance the owner will already have been notified by the heritage authority). *Subsection (5)* also requires the local planning authority to make copies of updated parts of the register and any notices of changes to the register that it receives from English Heritage or Welsh Ministers publicly available.

Clause 84: Welsh Ministers' power to exercise functions under section 83

111. This clause gives a direction making power to Welsh Ministers enabling them to substitute themselves for the local planning authority in notifying owners and occupiers of registration decisions.

Increases in extent

Clause 85: Meaning of "increase" in extent of registered heritage asset

112. This clause relates to the clauses on provisional registration. The principle behind provisional registration is that whenever a proposal is being consulted on which, if it were successful, would result in a new asset or part of an asset being added to the register, that new asset or part of that asset should be protected during the consultation process.

113. The provisional registration requirements for amendments are triggered where the amendment involves an increase in the extent of the asset. However, without clause 85, this would mean that where an amendment both extended an asset in one direction and reduced it in another (so that there would in fact, if the application were successful, be a net decrease in the area

under protection), the potentially new area would not be protected by provisional registration during consultation. Clause 85 therefore defines increase so that it refers to any extension in area in one or more directions, even if there is a separate decrease in area in other directions.

PART 2: CONTROL OF WORKS AND PREVENTION OF DAMAGE TO REGISTERED HERITAGE STRUCTURES

Chapter 1: Requirement for Heritage Asset Consent

Requirement for Heritage Asset Consent

Clauses 86 and 89: Works requiring heritage asset consent and Offence of contravening section 86

114. Clause 86 sets out the range of works to registered heritage structures that will require heritage asset consent (HAC) before they can be undertaken. There are two categories of works – those that will always require consent, and those that will require consent if they affect the special interest of the asset.

115. Any works resulting in demolition or destruction, and any flooding or tipping operations in or on a registered heritage structure will always require heritage asset consent (*subsections (2) a) and d)*). Works that damage, disturb, or that remove, repair, alter or add to the registered heritage structure will require consent if they affect the special interest of that asset.

116. Clause 89 provides that contravention of clause 86 is a criminal offence and that it is a defence if the Defendant can prove that he did not know the structure in question was registered and he had taken all reasonable steps to ascertain whether or not it was registered. Clause 89 also provides for a defence in respect of carrying out works which were urgently necessary in the interests of health and safety.

Clauses 87 and 90: Removal of objects from sites which are registered heritage structures and Offence of contravening section 87

117. These clauses establish that it will be an offence to remove from a registered heritage structure that is a site, any object that contributes to the special historic, archaeological, architectural or artistic interest of that site without obtaining HAC. This would cover, for example, the removal of stone artefacts scattered on the surface of a registered site whose removal would not involve “works” and would therefore not be caught by the provisions of clause 86. Clause 90 establishes that it is a defence if the Defendant can prove that he did not know the structure in question was registered and he had taken all reasonable steps to ascertain whether or not it was registered.

Clause 88: Heritage asset consent

118. This clause explains that works to registered heritage structures will be authorised if the local planning authority or appropriate national authority (Secretary of State or Welsh Ministers) has granted written consent (HAC) and any works undertaken comply with the terms of that consent.

Clause 91: Penalties

119. This clause sets out the penalties for the offences in clauses 89 and 90.

Clause 92: Heritage asset consent for retention of works

120. This clause establishes that HAC may be obtained to retain works which have been carried out without HAC (“retrospective consent”). However, this provision does not affect the fact that the works were illegal at the time they were carried out.

Chapter 2: Obtaining, varying and revoking Heritage Asset Consent

Class Consents

Clauses 93 and 94: Class consents and Direction that class consent not to apply

121. These clauses introduce the concept of class consent - an order issued by the Secretary of State or Welsh Ministers which effectively grants advance consent for certain types of works to certain types of registered heritage structure, or certain types of works to all types of registered heritage structure. Clause 94 enables the Secretary of State and Welsh Ministers to exclude certain individual registered heritage structures from class consent orders. This direction power enables the appropriate national authority to address abuse of the class consent system in individual cases, and enables particularly fragile assets to be excluded from a class consent which would apply without risk to the majority of assets. Such directions are subject to consultation of the local planning authority and, in England, English Heritage and subject to notification of all the owners and occupiers of the structure in question (and others who may be affected by the decision). Those notified must be given an opportunity of appearing in front of a person appointed by the appropriate national authority if they so request. Similar consultation provisions will be included in the Bill on introduction with regards to proposals to revoke or amend class consent orders.

Applications for heritage asset consent

Clauses 95 and 96: Applications for consent: to whom made and Applications for consent: procedure for making

122. These clauses provide that most applications for heritage asset consent should be made to and will be determined by the relevant local planning

authority, with the details of form, content and supporting documentation for applications to be set out in regulations by the Secretary of State and Welsh Ministers. The exceptions to this general provision are when HAC is required in consequence of a proposal included in an application for an order under section 1 or 3 of the Transport and Works Act 1992 and when it is the local authority itself which is seeking the consent, in which case the application shall be determined by the appropriate national authority (the Secretary of State or Welsh Ministers, as appropriate).

Clauses 97 and 98: Certificate as to applicant's status and Offences relating to certificates

123. Clause 97 establishes that one element of regulations made under clause 96 may be a requirement that every application for HAC should be accompanied by a certificate stating that either the applicant is the sole owner of the asset in question, or that all relevant owners have been notified of the application for consent, or that the applicant has taken all reasonable steps to identify all relevant owners, but has been unable to do so. Clause 98 provides that it will be a criminal offence to deliberately or recklessly include false or misleading information in such a certificate, punishable by fine.

Reference of certain applications to appropriate national authority

Clause 99: Reference of certain applications to appropriate national authority

124. This clause provides that the Secretary of State and Welsh Ministers have the power to issue directions to 'call in' certain types of HAC applications and determine them themselves, rather than have the local planning authority determine them. The Secretary of State/Welsh Ministers may call in applications relating to all, some or one particular local authority; and may call in all applications, applications of particular types, applications relating to a particular registered heritage structure or a particular application. On introduction, the Bill will contain equivalent provisions to those to be introduced into the Planning (Listed Buildings and Conservation Areas) Act 1990 by clause 168(2) of the Planning Bill in relation to England, allowing the Secretary of State to be able to make a determination as to the way in which such an application should be considered (i.e. whether an oral hearing is appropriate). A power will be conferred on the Welsh Ministers enabling them to apply these provisions in relation to Wales.

Clause 100: LPAs to notify authority of applications they intend to grant

125. This clause provides that a local planning authority is required to notify the Secretary of State or Welsh Ministers of their intention to grant HAC, thereby giving them the opportunity to exercise their call in powers within 28 days of receipt of such notification. *Subsection (4)* provides that the

national authority may, within that 28 day period, call in the application, decline to call it in, or request additional time during which to decide whether to call in or not. *Subsection (5)* establishes that the local planning authority must not grant the HAC application until the 28 days have ended without any call in by the national authority or the national authority has indicated it is not intending to call in the application.

Clause 101: Exceptions from duty to notify

126. This clause establishes that the Secretary of State and Welsh Ministers may, by direction, exempt individual, some or all local planning authorities from the duty to notify them of their intention to grant HAC in relation to certain types of consent applications (modifications to interiors of all Grade II registered structures, for example). In England, the Secretary of State must consult English Heritage before making a direction.

Clause 102: Directions to LPAs to notify receipt of certain applications

127. This clause gives the Secretary of State and Welsh Ministers the power to direct that certain types of HAC application be notified to them in the first instance, i.e., before the local planning authority has begun the determination on the HAC application, in order that they can decide whether to call it in. The provisions relating to the 28 day period set out in clause 100 also apply in this case. The direction may be made in respect of all, some or one particular local planning authority.

Procedure for dealing with applications: general

Clause 103: Procedure for dealing with applications: general

128. This clause gives the Secretary of State and Welsh Ministers the power to make regulations governing the procedure for dealing with HAC applications.

Powers not to entertain applications

Clause 104: Power not to entertain application similar to previous application [j86]

129. This clause establishes that the authority receiving an HAC application may decline to consider it if, within the past 2 years the Secretary of State or Welsh Ministers have already refused a similar application, or dismissed an appeal against a similar application, or the local authority has refused more than one similar application and the refusal has not been the subject of a concluded appeal, provided that there has been no significant change in material conditions since the refusals mentioned above. On introduction, the Bill will contain additional provision equivalent to that to be introduced into the Planning (Listed Buildings and Conservation Areas) Act 1990 by clause 159(2) of the Planning Bill.

Clause 105: Power not to entertain application similar to current application

130. This clause establishes that the authority may also decline to entertain an HAC application if it is submitted at a time when a similar application is still under consideration, when an appeal against refusal of consent in relation to a similar appeal could be made or during the appeal process in relation to such a refusal.

Grant and refusal of consent, and conditions

Clause 106: Grant or refusal of consent

131. This clause gives the local planning authority or, if they have called in the application, the Secretary of State or Welsh Ministers, the power to grant HAC, refuse HAC, or grant it with conditions. In so doing, they must give special regard to the desirability of preserving the registered heritage structure or its setting or any features of special interest it possesses and also to any relevant information in the relevant Historic Environment Record. *Subsection (5)* requires local planning authorities to receive and take into account expert advice (e.g., from a Conservation Officer and/or an archaeologist) before deciding applications.

Clause 107: Grant of consent: persons for whose benefit consent has effect

132. This clause establishes that any HAC granted on an application applies only to the registered heritage structure in question, and for the benefit of those people who have an interest in it.

Clause 108: Time within which works or removal must be completed

133. This clause establishes that the permitted works granted by HAC must be undertaken within 3 years of the original granting of the HAC unless otherwise specified in the HAC itself. However, *subsection (3)* establishes that, should an application under clause 154 be made that questions the validity of the grant of HAC, the time period for work shall be extended by one year.

134. *Subsection (5)* establishes that this clause does not apply in relation to class consents or to applications under clause 92 – consent for retention of works.

Clause 109: Appropriate national authority may direct inclusion of conditions

135. This clause gives the Secretary of State or Welsh Ministers a power of direction to require all, some or one local authority to impose particular conditions when they grant HAC in relation to a particular type of work or removal.

Clause 110: Other conditions

136. This clause sets out a non-exhaustive list of the conditions that may be imposed when granting HAC. This demonstrates the wide range of conditions which may be imposed.

Application for variation or discharge of conditions

Clause 111: Application for variation or discharge of conditions

137. This clause establishes that where HAC has been granted subject to conditions, any person may apply to the local planning authority for variation or discharge of those conditions, and the local planning authority has the power to vary and discharge those conditions and add new conditions that follow from the variation or discharge of the original conditions. However, *subsection (6)* makes clear that this power does not extend to varying or discharging the time period in which works must be begun.

138. This clause also establishes that the provisions of clauses 96 to 103 (procedure for making HAC applications, call in, notification) apply in relation to applications for variation or discharge of conditions.

Clause 112: Power not to entertain application for variation or discharge of conditions

139. The appropriate authority may decline to entertain applications for the variation or discharge of HAC conditions on the same basis as it may decline to entertain applications for HAC (i.e. in accordance with clauses 104 and 105).

Determination of applications by officers

Clauses 113 - 116: Determination of heritage asset consent applications by officers, Provision supplementary to section 113, Review of officer's decision and Determination following failure to give notice of decision

140. These clauses provide for the effect of the changes to the Planning (Listed Buildings and Conservation Areas) Act 1990 brought into effect by clause 158 of the Planning Bill (as amended in Committee) to be replicated in the Bill. These clauses may need to be amended depending on the final wording of the Planning Bill on commencement. They only apply in relation to England, but on introduction a power will be conferred on the Welsh Ministers enabling them to apply the provision made by them in relation to Wales.

141. These clauses provide for local planning authorities to make arrangements (in accordance with regulations made by the Secretary of State) for HAC applications of certain types to be determined by officers of the local planning authority and for their decisions to be subject to internal review by

the local planning authority. They also provide for the local planning authority to be required to determine such cases if their officer has not done so by the end of the relevant period.

Appeals in respect of applications

Clause 117: Appeal against refusal of consent, conditions, or failure to take decision

142. This clause establishes the right of appeal for HAC applicants against decisions by the local planning authority to refuse their application, grant it with conditions, refuse their application to vary or discharge conditions, or grant that variation or discharge with new conditions. They also have the right of appeal if the local planning authority fails to notify them of their decision on the HAC within the time period prescribed by regulations or fails to notify them of their decision not to consider the HAC application or that it has been called in by the national authority. The appeal will be to the appropriate national authority (Secretary of State or Welsh Ministers) although regulations will be likely to provide that such appeals shall be dealt with, in the main, by Planning Inspectors on their behalf. The rights conferred by the clause are subject to the provisions of clause 119.

Clause 118: Appeal against refusal of approval required by condition

143. This clause establishes that a similar right of appeal exists for HAC applicants who have had an HAC application approved subject to a condition of obtaining further approval from the local planning authority, and the local planning authority subsequently declines to give that approval or grants it subject to new conditions. They also have a right of appeal if the local planning authority fails to notify them of their decision on this condition within 8 weeks of that application (or such longer period as may be agreed). This clause is subject to the provisions of clause 119.

Clause 119: Restrictions on rights of appeal

144. This clause provides that where a HAC application is to be determined by an officer of the local planning authority under clause 113, an appeal to the Secretary of State against his decision to refuse the application or grant it with conditions may only be brought if the local planning authority has been required to review the case under clause 115 and has failed to do so by the end of the prescribed period or where the local planning authority has been required to determine the application under clause 116. Appeals to the Secretary of State following a failure to determine an application by the end of the relevant period may only be brought if the local planning authority has decided to determine the application itself or if it has been required to do so.

Clauses 120 and 121: Appeals: procedure for making and Determination of appeals

145. These clauses establish that the national authorities may make regulations relating to HAC appeals and that, as with regulations relating to applications for HAC, the regulations may include a requirement for a certificate of status to accompany the appeal. On introduction, the Bill will contain equivalent provisions to those to be introduced into the Planning (Listed Buildings and Conservation Areas) Act 1990 by clause 168(2) of the Planning Bill in relation to England, allowing the Secretary of State to be able to make a determination as to the way in which such appeals should be considered (i.e. whether an oral hearing is appropriate).

Clause 122: Appeals against failure to take decision: effect of late LPA notice

146. This clause establishes that where there is an appeal against a failure of the local planning authority to issue a notice in time, and the local planning authority issues a notice of refusal to grant HAC, the appeal is then to be treated as an appeal against refusal of the local planning authority to grant HAC, and the appellant must be given the opportunity to change the grounds of and procedure for appeal. *Subsection (4)* establishes that if the late notice grants the HAC subject to conditions, the appellant has the right to consider whether to continue with the appeal as an appeal against HAC subject to conditions, and change the grounds of and procedure for appeal.

Revocation and modification of consent

Clause 123: Revocation and modification of consent by local planning authority

147. This clause establishes that the local planning authority can revoke or modify HAC already granted at any time before the completion of works, if it is appropriate to do so (a "section 123 order"). However, the revocation or modification may not apply retrospectively to works already undertaken.

Clause 124: Procedure for section 123 orders

148. This clause establishes that a section 123 order must be confirmed by the appropriate national authority before it can take effect (unless it is unopposed – see clause 125). Further, when a section 123 order is sent to the national authority for confirmation, the local planning authority must simultaneously notify each owner and occupier of the registered heritage structure, and anyone else who will be affected by the order, giving them a specified period, no less than 28 days, in which to object against the order. If such an objection is made, the national authority is required to give both the person and the local authority the opportunity to appear before them before deciding whether or not to confirm the order.

Clause 125: Procedure for section 123 orders: unopposed cases

149. Where those notified of the section 123 order have confirmed they have no objections, the local planning authority must advertise that the order has been made, notify the people who made no objections, and send a copy of the advertisement to the national authority within 3 days of making it. The advertisement must specify a period during which persons affected by the order may object (no less than 28 days), and a date following which, if no objections are made, the order may come into effect (no less than 14 days after the end of the initial period).

Clause 126: Revocation and modification of consent by appropriate national authority

150. This clause gives the Secretary of State and Welsh Ministers the power to revoke or modify any HAC at any time before the completion of works, if it is appropriate to do so. However, the revocation or modification may not apply retrospectively to works already undertaken. The national authority is required to consult both the local planning authority and, in England, English Heritage before making an order and further, to give each owner, occupier and person affected by the order an opportunity to appear before and be heard by a person appointed by the national authority if they wish. On introduction similar provisions on consultation and a hearing will be included in the Bill with regards to the revocation or modification of class consent orders made under clause 93, though with amendments to reflect the large numbers of people who may be affected by such a revocation.

Compensation

Clause 127: Compensation where consent revoked or modified

151. This clause establishes that where consent is revoked or modified (whether by a section 123 or 126 order, a direction under clause 94, or the revocation or modification of a class consent order) and a claimant can demonstrate that they have incurred expenses in carrying out the abortive works, or sustained loss or damage as a result of the revocation or modification, the local planning authority must pay them compensation. The compensation covers expenses incurred in preparing plans for the work, but does not apply to works carried out before the grant of HAC or any loss or damage arising from anything occurring before the grant of HAC (other than loss or damage consisting of depreciation of the value of an interest in land).

Clause 128: Compensation claims: further provision

152. *Subsection (1)* of this clause establishes that the Secretary of State or Welsh Ministers may direct another local planning authority or authorities to reimburse a local planning authority which has paid out compensation. This provision would be likely to be used in cases where a local authority

boundary change may result in one local authority being liable for decisions made by another. On introduction, the Bill will also contain a provision replicating the effect of section 90 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which allows the Secretary of State or Welsh Ministers to make payments to local planning authorities in respect of contributions to compensation payments. It is envisaged that consideration will be given to the exercise of this power where class consent orders are revoked or modified.

153. *Subsection (2)* provides for the national authority to make regulations in relation to the procedure for making compensation claims under clause 127 and *subsection (3)* gives effect to Schedule 1 which sets out how compensation is to be assessed.

Chapter 3: Enforcement

Enforcement notices: issue, withdrawal and variation

Clause 129: Heritage asset enforcement notices

154. This clause provides that a local planning authority may issue a heritage asset enforcement notice (HAEN) in cases where works to a registered heritage structure have been or are being carried out without HAC, or where works have breached a condition of that consent.

155. An HAEN will set out the nature of the illegal works and the steps necessary to address them. An HAEN may require that the asset is restored to its former state (i.e., undoing the illegal works); if that is not practicable or desirable, it may specify (and give consent for) additional remedial works; or it may set out the steps necessary to restore the asset to the state it would have been in had the conditions of the HAC been complied with.

Clause 130: Consultation before issuing notice

156. This clause provides that in England the local planning authority must consult English Heritage and in Wales, Welsh Ministers, before issuing an HAEN, subject to any direction issued by the Secretary of State in England.

Clause 131: Enforcement notices: date on which notice takes effect, etc

157. This clause provides that all HAENs must state when they come into effect and specify a time period, or periods, for compliance; and that a copy must be given to all the owners and occupiers, and any other person with an interest in the asset who will be materially affected by the HAEN. Notification of owners etc, must take place within 28 days of the issuing of the HAEN, and not less than 28 days before the date on which the notice comes into effect.

Clause 132: Withdrawal or variation of enforcement notice

158. This provides that an HAEN can be withdrawn in its entirety, and any of its requirements waived or relaxed, regardless of whether the HAEN has come into effect or not. If the local planning authority withdraws the HAEN it must notify the same people it notified when it issued the HAEN.

Appeals

Clause 133: Appeal against enforcement notice

159. This clause sets out who may appeal against an HAEN, with *subsection (3)* setting out the grounds on which appeals can be made. If an appeal is made the HAEN is suspended until the withdrawal or determination of the appeal, subject to any High Court or Court of Appeal order to the contrary (see clause 137).

Clause 134: Appeals: procedure for making, and effect on other proceedings

160. This clause provides for the methods by which appeals must be made to the appropriate national authority and the information that should be included in them. *Subsection (3)* establishes that if there is insufficient information to support any ground, or it is not supplied within time, the appeal may be determined without reference to that particular ground.

Clause 135: Appeals: further procedural provision

161. *Subsections (1)* and *(2)* enable the national authority to make regulations on the procedure for appeals against HAENs. On introduction, the Bill will contain equivalent provisions to those to be introduced into the Planning (Listed Buildings and Conservation Areas) Act 1990 by clause 168(2) of the Planning Bill in relation to England, allowing the Secretary of State to be able to make a determination as to the way in which such appeals should be considered (i.e. whether an oral hearing is appropriate). A power will be conferred on the Welsh Ministers enabling them to apply these provisions in relation to Wales.

Clause 136: Powers of appropriate national authority on appeal

162. This clause enables the national authority, once an appeal against an HAEN has been made, to correct or vary the terms of the HAEN, so long as this does not cause injustice to either party to the appeal (*subsections (2)* and *(3)*); allow the appeal and quash the HAEN (*subsection (4)*); dismiss the appeal or allow the appeal and quash the HAEN if the relevant party has not specified the grounds for appeal, or complied with the regulations, within time. *Subsection (7)*, however, allows the national authority to waive non-compliance with notice regulations, if that non-compliance has not prejudiced the appellant or the person who did not receive the notice. *Subsection (8)* provides that the Secretary of State must consult English Heritage before determining an appeal.

163. *Subsection (9)* establishes that when it determines an appeal, the national authority may grant HAC for the works or part of the works set out in the HAEN and/or discharge or vary the conditions of the HAC as originally granted. *Subsection (10)* makes clear that consent granted following determination of an appeal against an HAEN is to be treated as though it had been granted on application in the normal way.

Clause 137: Appeals to High Court relating to heritage asset enforcement

164. This clause enables the appellant, the local planning authority, English Heritage (where it issued the HAEN) or any person with an interest in the registered heritage structure to appeal to the High Court on a point of law or require the appropriate national authority to state and sign a case for the High Court in relation to a decision of the national authority in determining an appeal against an HAEN. In determining any such appeal the High Court may order the HAEN to take effect in whole or in part during the period of the hearing or any re-hearing and determination of the appeal by the national authority.

Effect of enforcement notice

Clause 138: Carrying out of works required by enforcement notice

165. *Subsection (1)* of this clause entitles the local planning authority to enter land when the terms of an HAEN have not been complied with, and undertake those works itself and recover reasonable expenses incurred in doing so from the owner of the registered heritage structure. *Subsection (6)* establishes that anyone who obstructs someone legitimately trying to enter the land under *subsection (1)* is committing a criminal offence.

Clause 139: Offence where heritage asset enforcement notice not complied with

166. This clause provides that non-compliance with any part of HAEN is a criminal offence for the owner of the land. It is a defence to prove that all reasonable steps to comply with the notice were taken or that the owner was not aware of and did not receive the HAEN. Where a fine is imposed the court must take into account any financial benefit gained by non-compliance.

Clause 140: Effect of consent for retention of works on enforcement notice

167. This clause provides that where an HAEN has been issued, and consent is subsequently granted to retain works covered in the HAEN, the consent and the conditions of that consent take precedence over the HAEN. However, *subsection (4)* makes clear that even if an HAEN has wholly or partly ceased to have effect, a person will still be criminally liable for previous failures to comply with the HAEN.

Powers of English Heritage and appropriate national authority to issue notices

Clause 141: Concurrent powers of English Heritage

168. This clause confers on English Heritage the same functions as those held by local planning authorities under clauses 129, 131, 132 and 138.

Clause 142: Powers of appropriate national authority

169. This clause enables the national authority to issue an HAEN for any registered heritage structure, but they must consult English Heritage (in England) and the local planning authority before doing so.

Injunctions

Clause 143: Injunctions

170. This clause enables a local planning authority and, in England, English Heritage, to apply for a High Court injunction to prevent unauthorised works to a registered heritage structure.

Chapter 4: Purchase Notices

Clause 144: Purchase notice on refusal or conditional grant of heritage asset consent

171. This clause provides for the owner of a registered heritage structure to issue a purchase notice to the relevant council requiring the council to purchase the structure and relevant land (land which is owned with the registered heritage structure and comprises it or is adjacent or contiguous to it). The notice may only be issued when HAC has been refused for that registered heritage structure (or granted subject to conditions or revoked or modified under a section 123 or 126 order) and the conditions set out in clause 145 are met.

Clause 145: Conditions for giving of purchase notice

172. This clause sets out the conditions which the owner must claim are met before a purchase notice can be issued. The first condition requires that the land be incapable of reasonably beneficial use in its existing state and that it cannot be made capable of such use by the carrying out of any works for which HAC has been granted (or for which the local planning authority or national authority have undertaken to grant HAC). What constitutes beneficial use depends upon the nature of the asset and is not limited to occupation, for example, the reasonable beneficial use of an archaeological site may be its potential to inform and educate visitors. The second condition, where the purchase notice concerns relevant land, is that the use of the relevant land is substantially inseparable from that of the registered heritage structure and that the relevant land and the structure should be treated together as a single holding.

Clause 146: Action by council to whom purchase notice given

173. This clause provides that when a council receives a purchase notice they must, within three months, inform the owners of their proposed response, i.e., that they, or another council or statutory undertaker will comply with the notice, or that they do not intend to comply (giving reasons) and have therefore given the notice and their response to the appropriate national authority. *Subsection (3)* provides that where the council or statutory undertaker or national authority intends to comply with the purchase notice they are to be taken to be authorised to acquire the owner's interest in the land compulsorily under clause 163.

Clause 147: Procedure on reference of purchase notice to appropriate national authority

174. This clause provides that when a purchase notice is referred to the appropriate national authority they must consider whether to confirm the notice or take alternative action as provided for in clause 149. Before making such decision the national authority must give notice of their proposed action to the owner, the relevant council, appropriate planning authorities and any local authority or statutory undertaker that they propose to substitute for the relevant council named in the purchase notice, giving them at least 28 days in which to request an opportunity to make oral representations. If such a request is made by any one of these persons, then this opportunity must be provided to all of them. *Subsection (8)* provides that, following such a hearing, the national authority may take action under clause 148 or 149 other than that set out in its notice of proposed action.

Clause 148: Confirmation of purchase notice by appropriate national authority

175. This clause provides that the national authority may not confirm the purchase notice in respect of the land or any part of it, unless they are satisfied that the conditions in clause 145 are met and that the land to which the purchase notice relates includes such land as is required for preserving the registered heritage structure or its amenities or for affording access to it or for its proper control or management. Where the national authority is so satisfied it must confirm the notice (unless it acts in accordance with *subsection (3)*) or takes alternative action in accordance with clause 149).

176. *Subsection (3)* provides that the national authority can decide not to confirm a purchase notice if they consider that the conditions in clause 145 have only been met due to deliberate inaction by the person who gave the purchase notice.

Clause 149: Alternative action by appropriate national authority in respect of purchase notice

177. This clause provides that the national authority may, instead of confirming the purchase notice, grant the HAC which, being previously refused, had given rise to the purchase notice, or revoke or amend the HAC conditions, the imposition of which had given rise to the purchase notice, or, where the granting of a section 123 or 126 order revoking consent has given rise to the purchase notice, cancel the section 123 or 126 order.

178. *Subsections (2) and (3)* provide that, where it appears to the national authority that the land could be made capable of reasonable beneficial use by the undertaking of works requiring HAC or development requiring planning permission, the national authority may, instead of confirming the purchase notice, direct that HAC or planning permission be granted if applied for.

Clause 150: No action by appropriate national authority within relevant period

179. This clause provides that where the appropriate national authority has failed to take any action in relation to the purchase notice referred to it within 9 months from the date on which the original purchase notice was issued by the owner, or, if shorter, within six months from the date on which the purchase notice was referred to the national authority, the notice shall be deemed to have been confirmed and the relevant council authorised to acquire the owner's interest in the land compulsorily under clause 163.

180. *Subsection (4)* provides that the time period does not run during any period in which the national authority is considering both a purchase notice and either an appeal against refusal of consent, conditions, or failure to take decision, or an appeal against an enforcement notice relating to the land to which the purchase notice relates.

Clause 151: Quashing of certain decisions of appropriate national authority

181. This clause provides that where a decision by the appropriate national authority to confirm or not to confirm a purchase notice or to give a direction as to the granting of HAC or planning permission is quashed as a result of the application of clause 154, the purchase notice in question shall be treated as cancelled, but this does not prevent the owner from issuing a further purchase notice in its place.

Chapter 5: Miscellaneous

Miscellaneous

Clause 152: Acts causing or likely to result in damage to registered heritage structures

182. This clause provides that an offence is committed where a person does or permits the doing of an act which causes or is likely to result in damage to a registered heritage structure with the intention of causing such damage or being reckless as to whether the act will cause such damage. The offence is committed where the person would otherwise be entitled to do or permit the act in question. This offence is triable either way and it will be a defence if the Defendant can prove that he did not know the structure in question was registered and he had taken all reasonable steps to ascertain whether or not it was registered. *Subsection (2)* makes clear that it will not be an offence if the Defendant has planning permission, HAC or development consent under what will be the Planning Act 2008 to undertake the works in question.

183. *Subsection (8)* provides that the court must have regard to any financial benefit enjoyed by the Defendant through committing the offence when determining a fine.

Clause 153: Exemptions for ecclesiastical buildings etc

184. This clause provides that works to relevant registered heritage structures which are ecclesiastical in nature and in use for ecclesiastical purposes will not require HAC. It further provides for orders to be made by the Secretary of State or Welsh Ministers to limit the operation of this exemption. An order will be made, similar in terms to the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, which will limit the exemption to certain specified denominations which operate acceptable internal procedures for dealing with proposed works to their registered heritage structures and to certain assets held by such denominations.

Clause 154: Questioning validity of certain decisions and orders

185. This clause establishes that decisions of the Secretary of State and Welsh Ministers on HAC matters and purchase notices and decisions of the local planning authority on reviews conducted under clause 115 are only open to challenge in the High Court according to the procedure set out in this clause.

PART 3: OTHER EFFECTS OF REGISTRATION

Chapter 1: Structures and open spaces

Planning

Clause 155: Duty to have regard to preservation of registered heritage structures and open spaces in exercise of planning functions

186. This clause provides that, in considering whether to grant planning permission for development affecting a registered heritage structure or registered open space or its setting, the local planning authority or, as the case may be, the Secretary of State or Welsh Ministers, shall have special regard to the desirability of preserving the structure or its setting or any features of special architectural, archaeological, artistic or historic interest which it possesses.

Clause 156: Publicity for planning applications affecting setting of registered heritage structures or open spaces

187. This clause gives the Secretary of State and Welsh Ministers the power to make regulations setting out how applications for planning permission which affect the setting of registered heritage structures or open spaces should be publicised.

Heritage partnership agreements

Clauses 157 - 160: Heritage partnership agreements, Additional parties, Approval for making or varying heritage partnership agreement and Termination of heritage partnership agreement

188. These clauses make provision for statutory management agreements, to be known as heritage partnership agreements (HPAs) to be entered into by owners of registered heritage structures and open spaces with the local planning authority and, if appropriate, with such other parties as are listed in clause 158. By the time of introduction, these clauses will be amended so that owners of registrable structures and open spaces of special local interest (see clause 215), and unregistered heritage structures and open spaces will also be able to enter into HPAs, and that English Heritage and Welsh Ministers will have the power to initiate HPAs. All HPAs and any subsequent variations to them will be subject to English Heritage (or the Welsh Ministers') approval (clause 159) and may cover a specific asset or a group of related assets. Where HPAs contain provisions relating to specified works to registered heritage structures, these works will have HAC (for the parties to the HPA) by way of a class consent order made under clause 93.

189. Clause 157, *subsection (3)* sets out a range of provisions that may be included in an HPA. *Subsection (3) (f)* gives local planning authorities the power to make payments to owners to facilitate the beneficial management of the asset or assets covered by an HPA; by the time of introduction, this clause will be amended so that English Heritage, the Secretary of State and Welsh Ministers will also have powers to make these payments.

190. Clause 160 gives the Secretary of State and Welsh Ministers the power to terminate an HPA with immediate effect if this is necessary to preserve the special interest of any of the registered heritage structures or open spaces covered by the HPA. The Secretary of State must consult English Heritage before exercising this power.

Restrictions on use of metal detectors

Clause 161: Restriction on use of metal detectors

191. This clause provides that it will be an offence to use a metal detector on a registered heritage structure or open space (except that in Wales it will only apply to registered open spaces that are, or are part of, gardens, parks or battlefields) without the consent of English Heritage or the Welsh Ministers. *Subsections (4)- (8)* provide that such consent may be given by way of a class consent relating to types of structures or open spaces (e.g. all registered heritage structures without archaeological interest) or a licence for an individual registered structure or open space, and both may contain conditions or be granted unconditionally.

Clause 162: Offences under section 161: penalty and defence

192. *Subsection (3)* of this clause makes clear that it will be a defence if the Defendant can prove that he did not know the structure or open space in question was registered and he had taken all reasonable steps to ascertain whether or not it was registered. *Subsection (2)* establishes that, when determining the level of fine, the court must take into account the financial benefit accruing or likely to accrue to the offender.

Compulsory purchase of registered heritage structures

Clause 163: Compulsory purchase of registered heritage structure in need of repair

193. This clause provides for the Secretary of State or Welsh Ministers (the appropriate national authority) to acquire compulsorily a registered heritage structure if they consider that proper steps are not being taken for properly preserving it. It also provides for the Secretary of State or Welsh Ministers to authorise a local authority (or in England, English Heritage) to acquire compulsorily a registered heritage structure in the same circumstances. *Subsection (3)* provides that land next to the registered structure may also be

compulsorily acquired if it is required for certain purposes relating to the registered heritage structure.

Clause 164: Compulsory purchase of easements over neighbouring land

194. This clause provides for the appropriate national authority to compulsorily purchase or authorise the compulsory purchase of an easement over land adjoining a registered heritage structure in the purchasing authority's ownership if they believe it is required for certain purposes relating to the registered heritage structure.

Clause 165: Compulsory purchase of rights for benefit of registered heritage structure under guardianship

195. This clause provides that where a registered heritage structure is under guardianship, the appropriate national authority may compulsorily purchase, or authorise the compulsory purchase of, a right over land adjoining the registered heritage structure if that right would be a relevant easement under clause 164 if the registered heritage structure were in the ownership of the guardian. Such a right is to be treated as if it were a legal easement and will be a local land charge.

Clause 166: Procedure for compulsory purchase

196. This clause provides that the procedure for compulsory purchase under clauses 163, 164 and 165 will be governed by the Acquisition of Land Act 1981. *Subsection (2)* provides that the appropriate national authority must not make or confirm a compulsory purchase order unless they are satisfied that it is expedient to make provision for the preservation of the structure and to authorise its compulsory purchase for that purpose. If the registered structure is in England and English Heritage is not the purchasing authority, the Secretary of State is also required to consult English Heritage.

Clause 167: Issue of repairs notice before compulsory purchase of registered heritage structure

197. This clause provides that compulsory purchase procedures must not be initiated unless the owner has been served with a repairs notice specifying works which the purchasing authority considers reasonably necessary for properly preserving the registered heritage structure and at least 2 months have passed since the service of that notice without it having been withdrawn. *Subsection (8)* provides that, in England, English Heritage must be consulted before a repairs notice is issued or withdrawn.

198. *Subsection (3)* provides that where a repairs notice has been served, the owner may not issue a purchase notice until 3 months from the date on which the repairs notice was sent or, if a compulsory purchase process has been initiated during that period, after that process has been discontinued.

199. If the registered structure is demolished after a repairs notice has been issued, and the national authority is satisfied that it would have made or authorised a compulsory purchase order in respect of it had it not been demolished, *subsection (5)* gives the national authority the power to make or authorise a compulsory purchase order in respect of the site on which the registered structure previously stood.

Clauses 168 and 169: Compensation on compulsory purchase of registered heritage structure and Minimum compensation on compulsory purchase of registered heritage structure

200. Clause 168 provides that compensation in respect of compulsory purchase orders under the Bill shall be assessed on the basis that HAC would be granted for the alteration or extension of the relevant registered heritage structure or for the demolition of the registered heritage structure for the purpose of development of any class specified in Schedule 3 to the Town and Country Planning Act 1990. However this clause is subject to clause 169.

201. Clause 169 provides that the purchasing authority may include in a compulsory purchase order a direction for minimum compensation. Where a compulsory purchase order under the Bill is made or confirmed with the inclusion of the direction for minimum compensation, compensation in respect of that compulsory purchase order shall be assessed on the basis that planning permission would not be granted for any development or redevelopment of the site of the registered heritage structure and that HAC would not be granted for any works for the demolition, alteration or extension of the registered heritage structure other than development or works necessary for restoring it to and maintaining it in a proper state of repair.

202. It is anticipated that where a direction for minimum compensation is included within a compulsory purchase order (or a draft compulsory purchase order where the order is to be made by the appropriate national authority), the appropriate national authority, as part of its decision as to whether to confirm or make the order, will consider whether that direction should continue to be included, taking into account all the circumstances of the case.

Clause 170: Ending of rights over land purchased compulsorily

203. *Subsection (1)* provides that once land has been compulsorily purchased under the Bill, all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land are extinguished and any such apparatus vests in the purchasing authority.

204. However, *subsection (1)* is subject to the exceptions set out in *subsection (3)* or any direction given by the purchasing authority before completion of the purchase that *subsection (1)* shall not apply or any agreement between the purchasing authority and the person in or to whom the right or apparatus in question is vested or belongs. *Subsection (5)* provides for compensation to be available to anyone who suffers a loss as a result of the operation of this clause.

Acquisition of registered heritage structures by agreement or gift

Clause 171: Acquisition of registered heritage structures and associated rights by agreement

205. This clause gives the Secretary of State, English Heritage, the Welsh Ministers, and local authorities the power to acquire registered heritage structures and related easements over adjoining land by agreement. In England, the Secretary of State will be required to consult English Heritage before entering into such an agreement, except where the acquisition appears to him to need to be made urgently.

Clause 172: Acquisition of historical objects by agreement or gift

206. This clause provides for the appropriate national authority to purchase by agreement or accept as a gift, any object which it would be historically appropriate to keep in a registered heritage structure in which they have an interest, which they manage or control, of which they are guardian or in England, in which the National Trust has an interest. *Subsection (3)* sets out the criteria for determining whether an object is historically appropriate to keep in a structure. In England, when the Secretary of State desires to dispose of such an object or make arrangements as to its management, custody or use, they must first consult English Heritage.

Management of registered heritage structures acquired under this Act

Clause 173: Management of registered heritage structures acquired under this Act

207. This clause provides for the appropriate national authority, when it has acquired a registered heritage structure or other land under the Bill, to be able to make arrangements for its management, custody or use or to dispose of it. *Subsection (2)*, however, requires that, in England, English Heritage must be consulted before the Secretary of State disposes of the registered heritage structure.

208. *Subsections (4)* and *(5)* provide for English Heritage and local authorities, where they have acquired a registered heritage structure or land, to be able to make such arrangements for its management, use or disposal as are appropriate for the purpose of its preservation. Where English Heritage is

the owner of the structure, they must first consult the Secretary of State, and where an English local authority is the owner, they must first consult English Heritage (*subsection (6)*).

Preservation works to registered heritage structures

Clause 174: Power to carry out preservation works to registered heritage structures

209. This clause provides for works (previously referred to as 'urgent works' in the Planning (Listed Buildings and Conservation Areas) Act 1990) to be undertaken by the Secretary of State (acting through English Heritage), Welsh Ministers or local authorities in relation to registered heritage structures. These are works which are necessary for the preservation of the registered heritage structure. *Subsections (4) and (5)* provide that preservation works undertaken by local authorities shall only be executed with English Heritage's consent, but the Secretary of State may make directions removing this requirement in particular cases or classes of cases.

210. *Subsections (7) and (8)* provide that preservation works may be carried out to any registered structure (or any part of a registered structure) in use, except where those works would interfere with residential use. *Subsection (9)* provides that the owner must be given not less than seven days' notice before the works are to be carried out and *subsection (10)* provides that the notice must describe the works to be carried out.

Clause 175: Recovery of works under section 174

211. This clause provides that a local authority, English Heritage or the Welsh Ministers may serve a notice on the owner of a registered heritage structure to which preservation works have been carried out requiring him to pay the costs of the works.

212. *Subsection (3)* provides that the owner may, within 28 days of being served with such a notice, make representations to the appropriate national authority that paying such expenses would cause him hardship, or that some or all of the works were unnecessary, or that the amount claimed was unreasonable, or that where works have been carried out to afford temporary support or shelter those temporary arrangements have continued for an unreasonable length of time. Where such representations are made the national authority must make a determination as to the extent to which these representations are justified and therefore what amount is recoverable. *Subsection (6)* provides for a right of appeal against such determinations to the County Court.

Dangerous structure orders in respect of registered heritage structures

Clause 176: Dangerous structure orders in respect of registered heritage structures

213. This clause requires that local planning authorities who wish to issue a compulsory purchase order, a repairs notice, or a preservation works notice, must first consider whether they should make a dangerous structure order.

Guardianship of registered heritage structures

Clause 177: Power to place registered heritage structure under guardianship

214. This clause provides for the Secretary of State, the Welsh Ministers, English Heritage or a local authority (a “public authority”) to take guardianship of any registered heritage structure, where a person who has a relevant interest (as defined in *subsection (11)*) in the registered heritage structure and any relevant land (as defined in *subsection (12)*) appoints them as such by means of a guardianship deed. *Subsection (4)* provides that the public authorities may not become guardian of a registered heritage structure where the structure in question is occupied as a dwelling by anyone other than a caretaker or his family. The effect of *subsection (6)* is that a guardian cannot be appointed without the agreement of the occupier of the structure. *Subsection (5)* requires English Heritage to obtain the consent of the Secretary of State before becoming a guardian.

215. *Subsection (9)* provides that any person who derives title to a registered heritage structure from, through or under any person who has executed a guardianship deed is bound by the deed unless the title was derived by virtue of any disposition made prior to the date of the guardianship deed.

Clause 178: Powers of limited owners for purposes of section 177

216. This clause provides that where someone is a limited owner of land they may establish guardianship of that land under clause 177. However, where the land is subject to an incumbrance not capable of being overreached by the limited owner, *subsection (5)* provides that the guardianship deed will not bind the incumbrancer.

Clause 179: Functions of guardian

217. This clause sets out the functions of a guardian. Principally, the guardian has full control and management of the registered heritage structure (subject to any provision to the contrary in the guardianship deed), and is obliged to maintain it.

Clause 180: Transfer of registered heritage structure under guardianship

218. This clause provides that a public authority may transfer its guardianship of a registered heritage structure or associated land to another public authority, subject to the agreement of those who are immediately affected by the operation of the guardianship deed. *Subsection (3)* provides that the Secretary of State must not transfer guardianship without consulting English Heritage, and *subsections (4) and (5)* provide that English Heritage must not transfer guardianship to a local authority without consulting the Secretary of State and that they must not accept guardianship transferred to them from a local authority without the consent of the Secretary of State.

Clause 181: Termination of guardianship

219. This clause provides that guardianship ceases when the structure is acquired by the public authority, or when an occupier who is not bound by the guardianship deed and has a relevant interest in the structure gives written notice to terminate. A public authority may also, with the agreement of the persons who are for the time being immediately affected by the operation of the guardianship deed renounce its guardianship of the structure or exclude parts of the structure from the deed (subject to the consent requirements set out in *subsections (5) - (7)*). *Subsection (4)* provides that a termination by agreement must not take place unless the public authority is satisfied that satisfactory arrangements have been made for preserving the structure or that its preservation is no longer practicable.

Public access to registered heritage structures

Clause 182: Public access to registered heritage structures under public control

220. This clause provides that there should be public access to publicly owned registered heritage structures where appropriate and practicable. *Subsection (2)* sets out a non-exhaustive list of factors which may be taken into account when determining whether access is appropriate and practicable. The public authority may control the times of access, make admission charges, or refuse admission to any person where they have a reasonable belief that the person in question may damage or disfigure the structure, or disturb the enjoyment of other members of the public.

221. This clause also provides that where a public authority intends to prevent any public access to a registered heritage structure on the grounds of preserving it, they must first obtain the consent of the Secretary of State in England and Welsh Ministers in Wales.

222. In paragraph 220 “publicly owned” refers to structures that are under the ownership or guardianship of the Secretary of State, the Welsh Ministers, English Heritage or a local authority.

Clause 183: Regulations about access

223. This clause provides that a public authority (excluding English Heritage) which owns or has guardianship of (or in the case of the Secretary of State and the Welsh Ministers, which manages or controls) a registered heritage structure may make regulations setting out the times during which the public may have access to it, what charges will be made for access, and any provisions that are necessary to preserve the structure, prevent damage to it or prevent actions that may disturb others in their enjoyment of the structure. The Secretary of State may make regulations in relation to structures that are owned or under the guardianship of English Heritage in order to prevent damage or disturbance. *Subsection (6)* provides that anyone who contravenes these regulations will be committing an offence punishable by fine. *Subsection (7)* provides that the Secretary of State must consult English Heritage before making regulations under the clause, and *subsection (8)* provides that any regulations made by a local authority cannot take effect until they have been confirmed by the Secretary of State.

Clause 184: Provision of facilities for the public

224. This clause provides that the public authority which has ownership or guardianship of (or in the case of the Secretary of State and the Welsh Ministers, which manages or controls) a registered heritage structure, may provide facilities and information in connection with providing public access to it, and may charge for them.

Chapter 2: Grants and loans for works to registered heritage assets

Clause 185: Power of local authority to contribute to preservation of registered heritage assets

225. This clause provides for local authorities to have the power to contribute (by way of grant or loan) towards the cost of the preservation, repair, maintenance and management of any registered heritage structure, registered heritage open space or registered marine heritage site that is situated in their area and also towards the costs incurred in the upkeep of any garden occupied with a registered heritage structure and is contiguous or adjacent to it. *Subsection (4)* provides that the local authority may make public access to the structure a condition of any such grant. A loan may be made subject to such terms and conditions as the local authority may determine.

Clause 186: Recovery of grants under section 185

226. This clause provides that the local authority may recover all or part of a grant or loan made under clause 185 in certain circumstances where the recipient of the grant or loan disposes of his interest in the registered heritage structure within a particular time period. *Subsection (4)* enables the local authority to recover all or part of a grant if the recipient has breached the conditions that were part of that grant.

PART 4: MARINE HERITAGE LICENCES

Requirement for marine heritage licence

Clauses 187 and 188: Activities requiring licence and Marine heritage licences

227. Registration of a marine heritage site has the effect of prohibiting certain activities from being carried out within the site unless a licence is granted or, in the case of unintrusive diving activities, a designation order has been made by the Secretary of State (see clause 198).

228. Clause 187 provides that in the absence of a licence or a designation order made under clause 198 it will be an offence to undertake a prohibited activity or permit another to undertake a prohibited activity in a registered marine heritage site. *Subsection (2)* sets out the range of prohibited activities. The reference to ‘obliteration’ in *subsection (2) (e) (i)* is included as there may be circumstances where material is dumped on a registered marine heritage site which covers the marine asset without destroying it. The word “obliterate” would cover this situation in the sense that the marine asset would be covered up or obscured from view.

229. Clause 188 establishes that the granting of a licence authorises a person to undertake activities in a registered marine site that would otherwise be prohibited. Licences may be granted by English Heritage, the Secretary of State (in the case of a call-in or on appeal) or Welsh Ministers (where the site is located in Welsh waters).

Clause 189: Offence of contravening section 187

230. This clause establishes that it will be an offence to contravene clause 187, and that it will also be an offence where a person holding a marine heritage licence carries on a prohibited marine activity which is not permitted by the licence, or fails to comply with any condition of the licence.

Clause 190: Obstruction of person acting under licence

231. This clause establishes that it is also an offence to obstruct, or cause or permit the obstruction of someone who is attempting to undertake licensed activities.

Clause 191: Penalties and defence

232. This clause sets out the penalties pertaining to offences in relation to registered marine heritage sites. A person found guilty of the offence of carrying out a prohibited activity without a licence or outside the scope of a licence will be liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding £20,000 or both; and on conviction on indictment to imprisonment for a term not exceeding two years or an unlimited fine or both. The same penalties will also apply for the offence of failing to comply with a condition in a marine licence. The offence of obstructing someone undertaking licensed activities in a registered marine heritage site will also result in a fine. *Subsection (4)* makes clear that when determining the level of fine, the court must take into account the financial benefit accruing or likely to accrue to the offender.

233. *Subsection (5)* sets out the available defences, which include taking any action in response to dealing with an emergency, reacting out of necessity to adverse weather conditions or navigational hazards or exercising functions conferred under another enactment.

Obtaining licence

Clauses 192 and 193: Applications for licence: to whom made and Applications for licence: procedure for making

234. These clauses provide for licence applications to be made to and determined by English Heritage for sites in English waters, and Welsh Ministers for sites in Welsh waters and gives the appropriate national authority the power to make regulations setting out the form and content of, and documents needed in support of, such applications.

Clause 194: Reference of certain applications to Secretary of State

235. This clause gives the Secretary of State the power to make directions setting out circumstances in which licence applications shall be referred to him for determination rather than to English Heritage, as well as circumstances when the Secretary of State shall be notified of licence applications to English Heritage, so that he can decide whether to call them in for determination. This power of direction may apply to all applications or only to certain specified applications.

Clause 195: Procedure for dealing with licence applications: general

236. This clause provides for the Secretary of State or Welsh Ministers to make regulations setting out the procedure for dealing with licence applications and includes a list of indicative, but not obligatory, provisions that may be included in such regulations (including in relation to the consultation procedure).

Clause 196: Grant or refusal of licence

237. This clause provides that the licensing authority may grant or refuse a licence application. When granted, a licence must contain details of the site or sites to which it applies, the person or persons to whom it applies, its duration, the activities which are permitted, and may contain any other conditions or restrictions that are appropriate. *Subsection (5)* requires the licence holder to be a person who appears to the licensing authority to be competent and properly equipped to carry out certain activities in a way appropriate to the special interest of the site, or alternatively, must appear to have a legitimate reason for carrying out the licensed activities.

Clause 197: Conditions

238. This clause provides that particular conditions as to the preservation of the marine asset and the requirement to submit a report, for example, on activities carried on in the registered marine site, may be included in the licence.

Designation of marine heritage site as suitable for unintrusive diving activities

Clause 198: Designation of site as suitable for unintrusive diving activities

239. This clause provides that the Secretary of State (or the Welsh Ministers) may designate a registered marine heritage site as being suitable for unintrusive diving activities directed at the exploration of a marine asset, subject to obtaining the consent of all owners of the site and the marine asset within it, including, where relevant, any salvor in possession. If the site is designated as such, the diving activity on the site will not constitute a prohibited activity.

Application for variation of licence

Clause 199: Application for variation of licence

240. This clause allows any person to apply to vary any of the terms of a marine heritage licence (including any conditions). Such applications are made to the body which granted the original licence.

Appeals: England

241. Clauses 200 - 203 set out the procedure for appeals against the refusal by English Heritage to grant or vary a marine heritage licence, or against the grant of a licence subject to conditions or the grant of a variation with the addition of new conditions. Such appeals may be made to the Secretary of State.

Clause 200: Appeal against refusal of licence etc: England [j241]

242. This clause provides that a person can appeal against a refusal by English Heritage to grant or vary a marine heritage licence, or against the grant of a licence subject to conditions or the grant of a variation with the addition of new conditions and also against the failure of English Heritage to determine the application within the period prescribed by regulations or failure to notify the applicant that the applicant has been referred to the Secretary of State.

Clauses 201 and 202: Appeals: procedure for making and Determination of appeals

243. Clause 201 confers powers on the Secretary of State to make regulations about the procedures governing appeals against marine heritage licence decisions, and makes specific provision about the time limits within which any such appeal must be made. Clause 202 sets out the range of determination options available to the Secretary of State.

Clause 203: Appeals against failure to take decision: effect of late English Heritage notice

244. This clause establishes that where there is an appeal against a failure of English Heritage to notify the licence applicant of their decision on the licence application in time, and English Heritage subsequently refuses to grant that licence, the appeal is then to be treated as an appeal against refusal to grant the licence, and the appellant must be given the opportunity to change the grounds of and procedure for appeal.

Appeals: Wales

245. Clauses 204 - 207 set out the procedure for a review of a refusal by Welsh Ministers to grant or vary a marine heritage licence or against the grant of a licence subject to conditions or the grant of a variation with the addition of new conditions. A review process rather than an appeal is introduced given the role of the Welsh Ministers in decisions on applications for licences. The procedures set out in clauses 204 - 207 generally mirror those for appeals in England, including a power for Welsh Ministers to make regulations governing the making of an application.

Clause 206: Reviews

246. This clause provides that, where an application for a review is made, the Welsh Ministers must appoint a person to carry out the review. *Subsection (3)* sets out the powers of the appointed person in considering the review – to confirm or reverse Welsh Ministers’ decision, to reverse or vary part of it or to deal with the application as if it had been made to the appointed person in the first place.

Clause 207: Applications for review where failure to take decision: effect of late decision

247. This clause mirrors for Wales in relation to reviews the provisions in clause 203 for England regarding appeals against a failure to take a decision on a licence application.

Revocation or variation of licence by grantor

Clause 208: Revocation or variation of licence by grantor

248. This clause provides that the authority which granted the marine heritage licence has the power to revoke or modify it if it considers this appropriate. The power is exercisable by notice in writing to the licensee informing them of this decision, and the revocation or modification may take effect 7 days from the date on which the notice is served.

Questioning validity of certain decisions

Clause 209: Questioning validity of certain decisions relating to licences

249. This clause allows a person affected by an appeal decision or a decision of the Secretary of State under clause 194 to challenge the validity of the decision by way of an application to the High Court within 6 weeks of the decision. On such an application, the High Court may (among other things) quash the decision on the ground that it was not within the powers of the Bill or that the applicant has been substantially prejudiced by the failure to comply with any appropriate procedural requirement.

PART 5: HISTORIC ENVIRONMENT RECORDS

Clause 210: Historic environment record: duty to create historic environment record and keep up to date

250. This clause imposes a duty on a local planning authority to create and maintain by keeping it up to date, a historic environment record (HER) for its particular area. “Local planning authority” in this context excludes district planning authorities in non-metropolitan areas for which there is a county planning authority. *Subsection (2)* sets out the range of information that should be contained in the HER - in particular this includes registrable structures or open spaces which the local planning authority considers to

be of local special interest and sites which the authority considers to be of archaeological interest and which are not included in the relevant heritage register.

251. *Subsections (5) and (6)* provide that the Secretary of State can, by regulations and subject to consulting Welsh Ministers, amend the categories of information in *subsections (2) – (4)*. By the time of introduction, this clause will be amended so that the Secretary of State and the Welsh Ministers have free-standing powers in relation to England and Wales respectively.

252. It will be ensured that local planning authorities have the power to make arrangements with one or more other local planning authorities with HER functions to create and keep up to date an HER for the combined area.

Clause 211: Greater London historic environment record: duty to create and keep up to date

253. This clause places English Heritage under a duty to create and maintain the Greater London HER, unless the London Borough Councils jointly make alternative arrangements for its creation and maintenance. This replicates the current position whereby English Heritage carries out this role on behalf of the London Borough Councils.

Clause 212: Contents of historic environment records: further provision

254. This clause provides that a HER must specify whether assets included within it are registered assets (and which kind), of special local interest or are unregistered assets of archaeological interest. The selection criteria for assets of special local interest are special local historic, archaeological, architectural or artistic interest.

Clause 213: Publication of historic environment records

255. This clause provides that the HER is to be a publicly available resource, access to which should be free of charge. *Subsection (2)*, however, gives local authorities the power to impose reasonable charges in order to recover the costs of certain services that consume their resources, e.g., the production of reports based on analyses of HER content. Such charges will be limited to the costs of the services, i.e., they will be non-profit making.

Clause 214: Guidance

256. As currently drafted this clause provides for the Secretary of State and Welsh Ministers to issue guidance to inform the manner in which a relevant local planning authority should make its HER publicly available, provide associate services and set fees. Before issuing such guidance the appropriate national authority must consult each relevant local planning authority in their

jurisdiction, any other appropriate person, and, in England, English Heritage. By the time of introduction, this clause will be amended to provide that statutory guidance can be issued in relation to the duty to create and keep up to date an HER.

Clause 215: Special local interest

257. This clause provides that, in order to determine whether an asset is of special local interest, the local planning authority will be required to assess the asset with regard to published principles of selection and to consult its owner(s) before including its details in the HER. *Subsection (5)* provides that in relation to a registrable open space in Wales, the requirement to consult all owners does not apply where the numbers of owners concerned makes it impracticable to invite written representations from each of them. This exception is necessary for Wales because of the facility to register landscapes as heritage open spaces.

258. It is likely that local planning authorities will hold separate informal lists of assets of special local interest in their area, but this will not be a legal requirement – the recording requirement with relation to assets of local special interest will be inclusion in the relevant HER which will be the definitive record of such assets. Recognition as an asset of special local interest will not mean that the asset will be included in the heritage register for England or Wales, or the HAC regime.

259. In areas of two-tier local government in England, the duty to create the HER and keep it up to date falls to the county council. By the time of introduction, the Bill will provide that, in England, the power to determine whether an asset is of special local interest will fall to district councils in areas of two-tier local government.

PART 6: GENERAL

Powers of entry

Clause 216: Powers of entry

260. This clause provides for persons authorised by local planning authorities, English Heritage, the Secretary of State, or the Welsh Ministers to have the right to enter onto land, at any reasonable time, for the purpose of exercising their functions under the Bill or ascertaining whether their functions should be exercised, ascertaining whether any offence under the Bill is being or has been committed, inspecting the land in order to assess its archaeological, artistic, historic or architectural interest or conditions.

Clause 217: Warrants to enter land

261. This clause enables a justice of the peace to issue a warrant to enable a person authorised by the relevant authority to enter land for any of the purposes set out in clause 216 where entry is refused or the case is one of urgency.

Clause 218: Rights of entry: supplementary provision

262. This clause provides that a person who has powers to enter land under this Bill must give the occupier 24 hours' notice of his intention to do so, and must, if so required, clearly state his purpose and provide evidence of his authority before entering. This clause also provides that it is an offence to obstruct someone exercising their legal rights of entry, and it is an offence for the person who has legal right of entry to disclose information as to trade secrets or manufacturing processes obtained while on the land.

Clause 219: Compensation for damage

263. This clause provides that any person who suffers damage to their land or chattels as a result of actions undertaken by someone who has powers to enter or survey land under clause 216 or 217 is entitled to compensation from the body who authorised the power of entry.

Clause 220: Treatment and preservation of finds

264. This clause enables someone who has entered land under a right of entry to remove objects of historic or archaeological interest discovered on that land for the purposes of examination, testing, treatment, preservation or recording. Such objects may be retained by the relevant authority only for such a time as is reasonable for examining, recording and carrying out any test for the purpose of archaeological investigation or analysis or with a view to restoring or preserving the object.

Extent of registered heritage structure

Clause 221: Extent of registered heritage structure

265. This clause establishes that the extent of the registered heritage structure is to be determined in accordance with any map or other material included in the register and clauses 222 and 223.

Clause 222: Objects fixed to or within curtilage of building

266. This clause provides that where a building is a registered heritage structure, objects or structures attached to the building will be treated as part of it. It further provides that curtilage objects will be treated as part of the building unless the relevant register entry contains a provision excluding a curtilage object from the extent of the registered heritage structure.

Clause 223: Other things to be treated as part of registered heritage structure

267. This clause provides that any land beneath or above a registered heritage structure is to be treated as part of that structure, unless the relevant register entry contains a provision to the contrary. Transitional provisions will provide that for registered heritage structures which were listed buildings or scheduled monuments prior to the commencement of the Bill, *subsection (1)* of this clause shall not operate so as to increase the extent of the asset from that which it was prior to the commencement of the Bill and that this measure shall operate with regards to such assets until their register entry is amended in any way following commencement of the Bill.

268. This clause also confirms that where a registered heritage structure consists of a site comprising remains or other things, the remains or things are to be treated as part of the registered heritage structure.

Orders, regulations and directions

Clause 224: Orders, regulations and directions

269. This clause establishes that all regulations, and all orders made by this Act save those under clauses 123, 126, 160 or 161 (other than those made by a local authority under clause 183) must be made by statutory instrument, with such statutory instruments subject to the negative resolution procedure, save for orders amending Schedule 1 and clauses 210 and 211 which will be subject to the affirmative resolution procedure in England and Wales as appropriate.

Definitions

270. Clauses 225 – 228 set out the definitions for key terms and phrases in the Heritage Protection Bill.

Final provisions

Clause 229: Extent

271. This clause establishes that this is a Bill whose extent is limited to England and Wales.

Clause 230: Commencement

272. This clause enables the provisions of the Bill to be brought into force at various dates to be specified by order.

SCHEDULES

Schedule 1: Inviting representations: appropriate persons

Part 1: Sites in English Waters

273. This Schedule sets out the list of people who must be consulted by the Secretary of State when he is undertaking formal consultation on registration decisions and CNIR decisions with regard to sites in English waters.

Part 2: Sites in Welsh Waters

274. This Schedule sets out the list of people who must be consulted by Welsh Ministers when they are undertaking formal consultation on registration decisions and CNIR decisions with regard to sites in Welsh waters.

Schedule 2: Revocation or modification of consent: assessment of certain compensation

275. This Schedule sets out the rules for assessing compensation payable under Section 127 (where HAC is revoked or modified).

ADDITIONAL EXPLANATORY NOTES FOR SECTIONS TO BE INCLUDED ON INTRODUCTION

Crown Land

276. This part of the Bill will replicate those provisions referring to Crown land and the appropriate authorities in relation to Crown land currently set out in section 82C of the 1990 Act. This part will also enable the provisions of the Bill to apply to Crown land as they apply to any other land with the exception of the provisions of the new Bill which are the equivalent of those set out in section 82A(2) of the 1990 Act and the provisions of the Bill which set out other offences.

English Heritage Grant and Loan-Making Powers

277. This part of the Bill will make provision for English Heritage to have powers to make grants and loans with regard to registered heritage structures, registered heritage open spaces, and registered marine heritage sites in pursuance of their statutory duties. Similar powers will also be given to Welsh Ministers.

Conservation Areas

278. This part of the Bill will provide for Conservation Areas to be designated as currently, except that it will now be possible to designate a Conservation Area on the basis of special archaeological and artistic interest as well as special historic and architectural interest, but will not replicate the provisions relating to Conservation Area Consent in the Planning (Listed Buildings and Conservation Areas) Act 1990. Instead, amendments to the Town and Country Planning (General Permitted Development) Order 1995 will have the effect of requiring planning permission to be obtained for the demolition or partial demolition of buildings in Conservation Areas.

279. This section of the Bill will contain provisions to reverse the outcome of the case of *South Lakeland District Council v Secretary of State for the Environment and Carlisle Diocesan Parsonages Board* [1992] 2 WLR 204 in which it was held section 72 of the 1990 Act does not require local planning authorities to insist that developments are beneficial to conservation areas, merely that they do not harm them. This section of the Bill will provide that change that does not benefit the conservation area will not be considered to be appropriate.

The Receiver of Wreck

280. This section of the Bill will amend Part IX of the Merchant Shipping Act 1995 (c. 21) in order to impose a new duty on the Receiver of Wreck. The Receiver of Wreck will be under a duty to pass on any information she considers relevant in relation to the protection of marine assets and possible registration of marine historic sites to the relevant heritage agencies. This provision should allow her to pass on all information that might be relevant to the heritage agencies, including the discovery, recovery and disturbance of marine historic assets. This will not amount to a duty on the Receiver to seek out such information. .

Osborne House

281. This part of the Bill removes 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 change the basis on which the House and Grounds can be managed, while retaining the obligation to preserve the royal apartments and keep them open to the public. The basis on which Osborne House and Grounds are managed will be changed, enabling the Secretary of State's powers and duties to be governed instead by section 21 rather than section 22 of the Crown Lands Act 1851, which already applies to unoccupied Royal Palaces such as Hampton Court Palace and the Tower of London. This will be more suitable to a property like Osborne House which consists primarily of a substantial House rather than a park or garden.

*These notes refer to the Heritage Protection Bill
as published in draft on 2 April 2008*

282. Other changes include, removing the requirement for other parts of Osborne House and Grounds (i.e., not the royal apartments) to be used for the benefit of naval and military officers, their wives, widows or families, or various other classes of persons who have rendered public service and removing obsolete provisions of the Osborne Estate Act 1902 which relate to a part of the Osborne Estate (Barton House and its grounds) which was sold to a private purchaser in 1922 and so no longer forms part of the Estate.

283. The statutory obligation for the Secretary of State (in effect English Heritage under a direction given under section 34 of the National Heritage Act 1983) to manage the Estate and preserve the royal apartments in Osborne House and to keep them open to the public as a memorial to Queen Victoria will be retained.

Public Statues

284. This section of the Bill will repeal section 5 of the Public Statues (Metropolis) Act 1854, removing the requirement for the assent of the Commissioner of Works (now the Secretary of State for Culture, Media and Sport) to be obtained for the erection of any statue in any public place in the Metropolitan Police District of London (in effect Greater London). The erection of statues in public places in London will continue to be controlled through planning legislation.

Consequential, Miscellaneous Provisions, Transitionals

285. This section will contain those provisions identified as appropriate for inclusion before introduction.