

Title: Consultation on changes to the listed building consent system IA No: DCMS055 Lead department or agency: DCMS Other departments or agencies: CLG, English Heritage	Impact Assessment (IA)
	Date: 1 st October 2012
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Liz Ager 020 7211 2371

Summary: Intervention and Options **RPC:** OIOO sent to RPC

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCBoN 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£68.65	£21.59	£-2.51	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?
 To protect special interest, listed building consent (LBC) is required in law for works to a listed building which will affect its character as one of special architectural or historic interest. This requirement is inconsistently interpreted, bringing into the control process works which have no or limited impact on special interest, imposing burdens on local planning authorities, owners and developers. Government committed in its response to the Penfold Review to exploring the options for legal change to reduce the numbers of full LBC cases where special interest is only minimally impacted, or to introduce lighter-touch mechanisms for gaining consent.

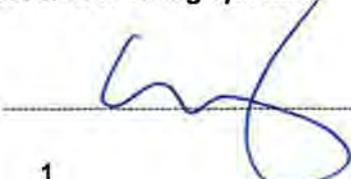
What are the policy objectives and the intended effects?
 1) Introduction of a light-touch approach for approving works to listed buildings through a system of national and local class consents for defined assets and defined works. 2) To enable local planning authorities to give a definitive opinion on the need or otherwise for LBC through the introduction of a certificate of lawful works. 3) To enable accredited independent agents to act as expert adviser to local authorities on LBC applications, in lieu of in-house advice, if the applicant so wishes.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Introduce proposals to create a system of local/national class consents.
- Introduce proposals to create a certificate of lawful works for listed buildings
- Introduce new powers for accredited independent agents to act on LBC cases, if the applicant wishes

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Five years after implementation					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			Traded: N/a	Non-traded: N/a	

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

Signed by the responsible SELECT SIGNATORY:  Date: 3.10.12

Summary: Analysis & Evidence

Description: All Measures

FULL ECONOMIC ASSESSMENT

Price Base Year 2009	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 68.65

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	1	2.7	24.5

Optional cost to owners/developers to pay for accredited agents taking on role from LPA. Evidence shows that 27% of owners/developers currently don't use agents, it is therefore assumed that this 27% may need to use agents (although this is optional so the lowest cost could be zero). 73% of owners/developers do use agents, and would experience neutral or greater costs – it would not be possible to quantify these. It is assumed not all the cost will transfer to the applicant as the LPA still has a role to play.

Other key non-monetised costs by 'main affected groups'

Small additional administrative burden for LPAs to grant certificates of lawful works.
Small cost to owners/developers in applying for certificates of lawful works.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate		11.4	93.2

Description and scale of key monetised benefits by 'main affected groups'

Savings for owners/developers from having to make fewer full applications for LBC. Savings for local planning authorities from having to determine fewer full applications for LBC. Some savings are not fully realised as LPA still needs to be notified, we have assumed half days work by LPA and applicant. Savings to LPAs as their role for cases involving accredited agent recommendation becomes one of scrutinising and signing off rather than detailed assessment and recommendation. This benefit has only been assumed for 27% of applicants.

Other key non-monetised benefits by 'main affected groups'

Faster turnover and earlier certainty for owners/developers over proposals affecting listed buildings. Local planning authorities freer to give informal views on whether or not LBC required, leading to fewer formal submissions of any kind. Earlier engagement of conservation expertise in developments through use of accredited agents, earlier clarity about acceptability of proposals, and therefore, more certainty for owners about gaining LBC, and quicker process.

Key assumptions/sensitivities/risks Discount rate (%) 3.5

It is assumed that DCMS, English Heritage and LPAs will be resourced to carry out administrative duties effectively and efficiently.

It is assumed that the number of proposals generating applications for LBC in the future does not deviate from current trends.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 2.5	Net: 2.5	Yes	OUT

Evidence Base (for summary sheets)

The Penfold Review of Non-Planning Consents

The Penfold Review of non-planning consents published in July 2010 examined the various consents that are required by developers alongside or after planning permission, such as environmental permits, highways orders and heritage consents, as a parallel exercise to reform of the planning system itself. These development consents were acknowledged to deliver key economic, social and environmental benefits – for example protecting the best of the historic environment – but were found to be time-consuming for businesses and sometimes an additional and unplanned burden. The Review therefore made recommendations for streamlining these processes and improving the service which consenting organisations offer their customers.

The Government accepted the recommendations of the Penfold Review, and in November 2011 published a programme, 'Implementation of the Penfold Review' (BIS, November 2011) to put in place the recommended reforms, stating:

"The Autumn Statement set out the action that the Government is taking to promote economic growth and enhance the competitiveness of the business environment in the UK.

An important part of this agenda is reforming the planning system. The Government has already made substantial progress through the Localism Act and the publication of the draft National Planning Policy Framework, which sets out a presumption in favour of sustainable development.

In addition to the planning system, there are several consent regimes that businesses must apply for, depending on how they wish to develop or operate properties. These 'development consents' deliver significant economic, social and environmental benefits – such as maintaining our heritage, tackling climate change, and ensuring a well-functioning road network. However, the Penfold Review found these consents to be "numerous and complex", and that they could create delay, uncertainty and costs to business.

The Government's aim is to support growth and competitiveness by ensuring these regimes operate in the most flexible and simplified way possible, whilst delivering the benefits they were established to achieve. The Government has therefore announced a further programme to:

- *scrap unnecessary development consents and simplify others;*
- *reform the remits and working practices of the public bodies granting or advising on development consents;*
- *set a clear timescale for deciding development consent applications; and*
- *make it easier to apply for development consents.*

Taken together, the measures in this programme will reduce costs and bureaucracy, speed the process up and increase certainty; and ensure the regulatory benefits delivered by development consents are achieved with the minimum of burden."

Actions B1 – B3 of the action plan set out in "Implementation of the Penfold Review" commit Government to consultation on a number of options for legislative reform of the statutory heritage protection system;

*B1 Nearly nine out of ten applications for Listed Building Consent are approved. A more risk-based approach would focus enforcement on those applications most likely to impact a building's special interest, enabling a lighter touch approach for non-controversial applications. This would lighten the burden on developers whilst allowing public agencies to focus their resources on higher risk applications. Therefore **the Government will consult on options for introducing a***

system of prior-approval for specified types of works to listed buildings. Under the system Listed Building Consent would be deemed granted if the local planning authority does not respond to a developer's notification by requesting a full application within a specified time period.

B2 Local authorities rely upon their conservation officers to provide advice on granting Listed Building Consent. To expand the market for that advice and increase choice and flexibility for developers, **the Government will consult on options for allowing certification of applications for Listed Building Consent by accredited independent agents.**

B3 To provide greater certainty to the owners of listed buildings and reduce the cost to local authorities of enforcement, **the Government will consult on legally defining circumstances in which minimum compensation should be payable when listed buildings are subject to compulsory purchase.**

These actions would be implemented by the measure set out in this impact assessment.

The heritage protection system

In relation to terrestrial heritage assets in England, the key elements of the statutory heritage protection system are set out in:

- the Ancient Monuments and Archaeological Areas Act 1979, which provides for the designation of nationally important archaeological and historical sites and monuments as Scheduled Monuments (and establishes the Scheduled Monument Consent (SMC) regime to control works to them); and
- the Planning (Listed Buildings and Conservation Areas) Act 1990, (the 1990 Act) which provides for the designation of buildings of special historic or architectural interest as Listed Buildings (and establishes the Listed Building Consent (LBC) regime to control works to them).

The 1990 Act establishes a two-part system for firstly identifying, "listing", buildings which are judged to be of national importance in terms of their special architectural or historic interest, and, secondly, protecting them through a system of control which ensures that any changes made to them will be mindful of that special interest.

A 'listed building' is a building, object or structure that has been judged to be of national importance in terms of architectural or historic interest and included on a special register, called the National Heritage List for England. Compiled by the Department for Culture, Media and Sports (DCMS), under the provisions of the 1990 Act, the list includes a wide variety of structures, from castles and cathedrals to milestones and village pumps. When a building is listed, it is listed in its entirety, which means that both the exterior and the interior are protected. In addition, any object or structure fixed to the building, and any object or structure within the curtilage of the building, which although not fixed to the building, forms part of the land and has done so since before 1 July 1948, are treated as part of the listed building.

Listed building control is a type of planning control, which protects buildings of special architectural or historical interest. These controls are in addition to any planning regulations which would normally apply. Listed building status can also result in the requirement for planning permission where it wouldn't ordinarily be required - for example, the erection of means of enclosure.

This special form of control is intended to prevent the unrestricted demolition, alteration or extension of a listed building without the express consent of the local planning authority or the Secretary of State. The controls apply to any works for the demolition of a listed building, or for its alteration or extension, in any way which is likely to affect its character as a building of special architectural or historical interest.

The existing legislation in the 1990 Act is prescriptive, and provides that applications for LBC must be made to the local planning authority, must contain various particulars, as set out in the 1990 Regulations, and the LPA must give written consent. Legislation would be required to give effect to any of the consultation proposals, as these provisions may be effected.

There are currently c375,000 Listed Buildings and c20,000 Scheduled Monuments in England.

The Government's Statement on the Historic Environment for England (DCMS, 2010) states that:

The Government believes that the historic environment is an asset of enormous cultural, social, economic and environmental value. It makes a very real contribution to our quality of life and the quality of our places. We recognise that while some of today's achievements may become tomorrow's heritage our existing heritage assets are also simply irreplaceable.

We realise the importance of understanding, conserving, and where appropriate, enhancing the markers of our past. We believe in encouraging a wider involvement in our heritage, in order to ensure that everyone, both today and in the future, has an opportunity to discover their connection to those who have come before.

Aside from its inherent cultural value, the historic environment also has an important role to play in helping Government to achieve many of its broader goals. It can be a powerful driver for economic growth, attracting investment and tourism, and providing a focus for successful regeneration. Alongside the best in new design, it is an essential element in creating distinctive, enjoyable and successful places in which to live and work. Heritage can be a significant focus for the local community, helping to bring people together, to define local identities and to foster a new understanding of ourselves and those around us.

The historic environment even has a role to play in assisting us to meet one of the greatest challenges we face for the future. By promoting the inherent sustainability of historic buildings and their surroundings and by learning from them and the other types of evidence left by the low carbon economies of the past, we can make real progress in helping to mitigate and adapt to climate change.

To fully realise all this potential, however, it is vital not only that those who actively manage the historic environment, but also all those who have the potential to impact on it, recognise the contribution it can make to our collective aims.

At the same time we must recognise that change is inevitable. While it is right to provide protection and support for our past, this must be managed intelligently, with an appropriate balance of priorities and an understanding of what could be gained or lost.

For Government this work starts, but does not end, with our statutory responsibilities for heritage protection; the designation and consent systems for heritage assets, and the management of the planning process. In shaping places, Government at all levels must give priority to creating high quality environments for those who use them, developing and implementing policies which seek to retain local distinctiveness and give due weight to the obligation to protect, enhance and promote the historic environment.

The second of the six strategic aims set out in the Government Statement on the Historic Environment for England is to "ensure that all heritage assets are afforded an appropriate and effective level of protection, while allowing, where appropriate, for well managed and intelligent change".

Micro Businesses Exemption

It is proposed that micro businesses should not be exempt from the proposed reforms.

These reforms are deregulatory in nature. Any measures that do impose a cost on business are optional, and any change to minimum compensation in regard CPOs will be at the discretion of local authorities.

Measures

The measure set out below will help to deliver Government's strategic aim for heritage protection by improving operation of the consent regime set out in the 1990 Act, by:

- Reducing the numbers of full applications for listed building consent, where the works applied for have little or limited impact on special interest;
- Reducing the number of unnecessary applications for listed building consent, where there is no impact on special interest;
- Introducing flexible approaches to determining listed building consent to reduce burdens on local planning authorities and owners or developers of listed buildings.

Legislation would be required to achieve these changes.

Measure 1 looks to reduce the number of full applications for listed building consent through a system of local and national class consents whereby the local authority or Secretary of State unilaterally determines that certain works to listed buildings will no longer require consent.

Measure 2 introduces proposals to create a certificate of lawful works for listed buildings, intended to give prospective applicants a formal view on whether or not an application for listed building consent will be required, intended to remedy the current situation whereby the lack of such a formal mechanism means that applications for LBC may be submitted even where the works have no impact on special interest.

Measure 3 looks at a proposal to expand the range of expertise that may be fed into the determination of LBC and opening up determination to accredited independent agents. It ascribes such agents a role as independent witnesses making a recommendation to the local planning authority, which they would then normally be expected to take into account. It would be optional for applicants to use accredited agents.

“Do nothing” scenario

There would be no additional costs or benefits from not implementing the proposals outlined above. However potential efficiency savings for the owners and managers of heritage assets, for local planning authorities and for business (particularly developers) would not be realised - nor would the wider public benefits of a better targeted heritage protection system. Government would also be seen to be failing to implement measures that it has already announced.

1) Reducing the number of full listed building consents for works with limited impact on special interest through a system of local and national class consents

Objective

Legislation to introduce a system of locally or nationally created class consents for defined works to defined groups of assets would be able to reduce the number of listed building consents for works with limited impact on special interest. A more bespoke system would allow a light touch for a range of works which have minor or acceptable impact on the special interest of known categories of listed building, but could not, without risk to special interest, be applied nationally. This approach has the potential to reduce regulation and lift burdens by removing altogether any requirement to consider, make or process an application.

What is proposed is legislation to allow local planning authorities unilaterally to grant consent in advance for certain defined works to types or areas of heritage assets within their jurisdiction. It is also proposed

that the Secretary of State, advised by English Heritage, be enabled to grant a class consent for an area or group of assets that cross local authority boundaries for a defined class or classes of works.

Costs and Benefits

Consent activity

There are currently around 30, 000 applications per year for listed building consent. Research commissioned by English Heritage and the HLF indicates that around 90% of LBC applications are for small schemes (costing less than £100, 000) or minor works (around 20% of total LBC applications)¹. The same study confirms statistics that a very high proportion of LBC applications – around 95% in the sample examined - are approved.

Subject	Number	%	Subject	Number	%
Sign	294	39%	Signs + Other	13	2%
Windows	105	14%	Gate	10	1%
Roof Repairs/Windows	68	9%	Opening	7	1%
Doors	62	8%	Railings	7	1%
Wall	35	5%	Access	6	1%
Lights	33	4%	Flag Pole	6	1%
Miscellaneous	27	4%	Photovoltaic Panels	6	1%
Awning/Canopies	18	2%	Conservatory	5	1%
Boundary Wall	14	2%	Banner	4	1%
Door/Window	14	2%	Mezzanine	4	1%
Bathroom/Kitchen	13	2%	Balustrade	3	0%
			Total:	754	100%

However, anecdotal evidence from conservation professionals suggests that a significant number of these applications will have been amended following a request from the local planning authority in order to gain consent. It has not been possible to establish through research what this proportion is; the basic evidence in the form of planning data is published in such a way as to make it exhaustively hard.

The overwhelming majority of LBCs have conditions attached; some may only have standard conditions attached (i.e. time limit or all works to be carried out in accordance with approved plans) some will also have bespoke conditions which are material to the acceptability of the grant of consent. Again, it has not been possible to establish through research the relative numbers.

Estimated saving per LBC application avoided: For this measure the saving is a full one per application, as once a class consent is in place, no applications will be generated for the defined works.

It is a permissive measure, which local planning authorities will adopt as and when they perceive an advantage.

This proposal would enable the local planning authority to grant conditional class consent, and to specify in advance the kind of works which would or would not fall under the class consent. These works, will be predominantly minor in nature – assumed to be around 20% of total applications at present (see research above) – but could also encompass works with greater impact on special interest, the effects of which could be mitigated by approved specifications and conditions associated with the class consent. This means that there are potentially a higher proportion of works that that could be pre-consented under this mechanism than the 20% (6 000 applications per annum) however, more research was not forthcoming from the consultation exercise so these assumptions have remained.

¹ "The Patterns of Business Occupation and Consent Applications for Listed Buildings", Colliers International for English Heritage and the Heritage Lottery Fund, May 2012.

However, the implementation of this mechanism could not be at a stroke; it would have to be built up incrementally over the short- to medium-term through the actions of individual local planning authorities. Greater savings would therefore be realised over time.

Because this is class consent, there would not be an application to be made or considered and therefore there would not be any resource requirement for this from the applicant or LPA.

This impact assessment has calculated the savings based on the number of LBC applications that would be avoided.

There is no research relating to the cost of making an application for LBC. However, research for DCLG in 2009² shows that the average cost of making a householder planning or change of use application was around £1,190, including a fee of at least £150 (flat fee for householder applications, CLG Circular 04/08, "Planning Fees"). For single house construction or conversion the cost was £18,000 (although the median cost was £8,600 suggesting that a few applications are very costly to make). The majority of LBC applications are likely to be closer to householder applications than other planning application types that involve a much larger scale of new development. More complex heritage cases are much more likely to require planning permission and preparation costs will be covered in large part by the requirements of the planning application, so the average marginal cost of making an LBC application might well be around £1,040. (£1,190 minus the planning fee as LBC does not incur a fee).

Research for DCLG in 2010³ shows that the average cost of determining planning applications for the local planning authority was £619. Data from an ODPM report in 2003 (The Planning Service Costs and Fees, ODPM, 2003) showed that, on average, LBC applications cost 5% more than planning applications to deal with (i.e. £650).

The total saving per LBC application avoided is therefore estimated to be £1,690 (£1,040 + £650).

£ million 2009 prices	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
Number of LBC applications avoided	500	1250	2000	3000	4000	5000
Estimated Saving to LPAs (£)	0.3	0.8	1.3	2.0	2.6	3.3
Estimated Saving to Applicants (£)	0.5	1.3	2.1	3.2	4.2	5.3
Total Savings	0.9	2.1	3.4	5.2	6.9	8.6

Year 6	Year 7	Year 8	Year 9
6500	8000	9500	11000
4.3	5.3	6.3	7.3
6.9	8.5	10.0	11.6
11.2	13.7	16.3	18.9

For the purpose of impact on business this IA has assumed that all applicants are businesses. This could be an overestimation of the saving to business. If none of the applicants are business the saving would be zero, however for the purpose of estimating the impact on business a best estimate of half the benefit has been used which assumes that 50% of applicants are business. The consultation did not provide further evidence on this split between business and households.

² Benchmarking the costs to applicants of submitting a planning application. Arup for DCLG, 2009

³ Planning Costs and Fees, Ove Arup and Partners for DCLG, 2010

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
Impact Non-business	0.3	0.7	1.1	1.6	2.1	2.6
Impact Business	0.3	0.7	1.1	1.6	2.1	2.6
Total Savings to applicant (£)	0.5	1.3	2.1	3.2	4.2	5.3
Year 6	Year 7	Year 8	Year 9			
3.4	4.2	5.0	5.8			
3.4	4.2	5.0	5.8			
6.9	8.5	10.0	11.6			

Due to the variety of ways in which local class consents could be deployed – by area or type of building – it is difficult to derive generalised estimates of their potential costs and benefits: each agreement would be different. However, some illustration of the savings possible might come from consideration of the following scenario:

These savings provide the estimation of benefits to business. The direct impact on business (equivalent annual) is a positive £2.5 million a year. The business net present value is 21.59 and the EANCB is -2.51.

The terraced townhouses of seaside or spa towns, often have a lengthy history of subdivision into flats accompanied by changes to interior layouts and features. Their special interest could often be seen to reside primarily in their external, townscape and group value, although their interiors can retain features with special interest. Specified internal changes to such much-altered properties could be exempted from the need for further LBC application, and might include removal, relocation or alteration of internal partitions and features. Known, unaltered survivals could be specifically exempted from the class consent.

In one such area a review of the past six months of LBC applications and decisions suggests that from 30% to 50% of the works granted would be appropriate for inclusion in local class consents.

Transition Costs

Setting up a local class consent would require a one-off, transition cost. For the local planning authority this might include; survey or desktop review of planning record for properties to be included in the class consent; production of specifications or conditions for consented works; publicising the measure and notification of the owners affected; consultation on the proposal and collation and response to representations received. This is estimated to require 10 days of professional time and 10 days of administrative time to achieve. There would also have to be provision to review class consents – say 1 day of professional time per annum, and, potentially, revoke them if there was evidence that they were encouraging unauthorised works. This would produce a transition cost of £2,320 per local authority, which would total to £879,000 for 353 local authorities. The annual cost of review would be around £60,000 per year.⁴

Professional time is based £17.39 per hour and administration time is based on administrative and secretarial occupations at £10.9 per hour.⁵ Final calculations take account of non-wage costs.

These figures are indicative only, as class consents may vary in size and nature, and, as an untested mechanism there is no current best practice to draw on. They have not, therefore, been factored into overall calculations. Further information was not forthcoming from the consultation.

⁴ In 2009 prices.

⁵ 2011 Annual Survey of Hours and Earnings, ONS

National class consent would be capable of realising substantive savings for owners such as providers of national infrastructure. The following figures, supplied by British Waterways/Canals and Rivers Trust, are illustrative:

Case Study: Example of a national class consent to show the benefits to an owner:

Investigation of the costs to British Waterways Board/Canals and Rivers Trust in making LBC applications, and savings achieved through heritage partnership agreements, suggest that savings and efficiencies could be considerable from an 'England-wide' class consent covering a range of operational/repeat works to heritage assets.

How many consents does BW make each year?

British Waterways carried out 353 works to designated heritage assets in the year 2010/11. 164 of these required full LBC applications and 189 were performed after 'clearance to proceed without consent' (i.e. an exchange of correspondence with the LPA) was received from the local planning authorities. The fact of so many clearances suggests that a large number of minor works are effectively already being dealt with 'by agreement'.

How much does a typical consent cost BW?

Estimates from BW's heritage advisers suggest that preparing a typical consent application, as the owner/applicant, and submitting it, costs around £1,520 a time. So in 2010/11 BW spent £249,280 on consent applications. (This is higher than average, and may be due to operational requirements and the nature of the heritage assets involved.)

Indicative common works that might be covered by an England-wide Class Consent

- Lock-gate replacements
- Lock ladder extensions
- Renewing handrails (like for like)
- Paddle gearing (like for like)
- Grouting
- Bridge plates
- Dredging
- Fendering
- Parapet repairs (like for like)
- Repointing areas of brick/stonework (like for like)
- Re-painting
- Vegetation clearance

Assuming a reduction of 20% in the number of full LBC applications for minor works (see 2A above):

20% of 164 full LBCs = 33

33 x £ 1 520 (typical BWB cost/application) = **£50 160** - savings to BWB for reduction in full LBCs

Assuming a figure of around £650 per application for local planning authorities (see 2A above);

33 x £650 = **£21 450** – savings to LPAs from reduction in full LBCs.

Risks and Assumptions

This measure will require take-up from local planning authorities, and will require their input to set up, review and monitor; however this will be balanced by savings in the long term through reduced numbers of LBC cases.

While owners will be relieved of the need to make any application at all for certain categories of work, loss of the consultation arrangements normally associated with LBC may lead to a perceived loss of transparency. This could be addressed in part by consulting on the proposed local class consent

There may be a risk of class consented works being exceeded in unauthorised works; although this may not be any greater than the current risk of unauthorised works. Normal enforcement procedures would apply, and if class consent is manifestly leading to abuse, then there would be a mechanism to rescind or change it.

It will be necessary to give LPAs the option of "opting out" of a national class consent, mirroring the ability to make Article 4 Directions in respect of Permitted Development Rights. This would generate costs for an LPA choosing to take up this option.

2) A certificate of lawful works to listed buildings

Objective

Works to a listed building which do not affect its character as a building of special architectural or historic interest do not require consent. Interpretations of the need for consent can vary between local planning authorities, and the local planning authority may believe itself not legally empowered to confirm that consent is not needed without "fettering its own discretion". As a result, listed building consent applications may be made which are not really necessary, imposing a burden on local planning authority and developer alike. This will be impacted to some extent by legal reform in the Enterprise and Regulatory Reform Bill to enable better definition of special interest, although the improvements will be incremental, and benefits felt over the medium to long term.

The proposal is for legislation to introduce a light-touch mechanism allowing local planning authorities to grant a certificate of lawful works for proposed works. This would be a voluntary mechanism, whereby an owner or prospective developer could receive assurance concerning works which are proposed. It would reduce the numbers of unnecessary applications for LBC.

This proposal deals specifically with works which do not affect special interest, and for which LBC is not legally required. It is therefore different from measure 1 which is aimed at works for which LBC is legally required because they have some impact on special interest, however minor. Using measures such as local/national class consent to deal with works which do not anyway require LBC is not efficient, as it would be generating potential new LBC cases, even if it were then set aside, nor does it aid clear interpretation of the law.

Costs and Benefits

Consent activity

There are currently around 30,000 applications per year for listed building consent. It is not possible to quantify how many of these have arisen from either misinterpretation of the law, misunderstanding of the nature of special interest or on the insistence of a local planning authority, even if the works do not affect special interest; this will not be recorded. Anecdotal evidence suggests that the numbers are small, but significant.

Estimated saving per LBC application avoided: The numbers of LBCs avoided cannot be estimated as no distinction is made in published data between applications which are submitted to test the need for LBC. Such applications will normally be determined as if consent were required, even if it was not, and so are not easily distinguishable in the planning record. Therefore no overall calculation can be made.

Costs to applicants and LPAs would be generated by the inclusion of an appeal mechanism.

Small costs would be incurred by the owner in submitting an application for a certificate and the LPA in determining it.

The consultation did not gather more robust evidence in which to make these calculations. Impact on business and therefore OIOO has therefore not been calculated for this measure. However, we expect the impact on businesses to be marginal. Whilst a business may have initial costs incurred in applying for a certificate (should they wish to do so), these may well be countered by savings for those businesses not having to submit a full listed building consent application further down the line.

Risks and Assumptions

It is possible that the existence of a formal mechanism to indicate that LBC was not required would in fact encourage local planning authorities to give that assurance more informally, without requiring application for a certificate or for full LBC.

3) Accredited agents replacing local authority officer recommendations on LBC, if the applicants wish

Objective

An independent agent may be taken on by the applicant, and will offer an expert report and recommendation to the LPA, effectively "certifying" the works as acceptable, and which would normally be expected to be taken into account by the LPA as it determines the application. The LPA will continue to administer consultation and notifications including to English Heritage, as at present, and the decision will continue to be taken within the democratic arena.

Costs and Benefits

Research indicates that 73% of all applications for listed building consent in commercial areas are made by an agent on behalf of the owner/tenant of the property, with the proportions significantly higher for non-residential than residential projects, and with architects the biggest single category of agent used overall (36%) covering both residential and non-residential applications, and planning consultants (9% of total) and chartered surveyors (7% of total) used almost exclusively for non-residential schemes⁶. Pre-consultation discussions with heritage bodies and consultancies acknowledged that detailed heritage reports are often submitted to accompany major applications affecting heritage assets.

This approach would be optional, but if owners or applicants chose to pursue it, a new or additional cost would be incurred. Enabling owners or developers to take on independent agents to provide expert report and recommendation to the local planning authority as part of the listed building consent application, effectively "certifying" the works as acceptable, may increase costs for that expert input as it will go beyond describing or analysing a building or site to take on some of the role otherwise fulfilled by the LPA, that is, to address the suitability of the proposed works to receive LBC, advise on any modifications that may be required to achieve this, and apply appropriate conditions.

Owners who do not at present use an agent to submit applications would take on new costs should they wish to do so under this system. However, the majority of applications which at present are submitted without expert support will tend to be small-scale and householder applications, where there may be fewer advantages to be gained by doing so. This is unlikely to change if this proposal were to be introduced.

Benefits to owners or developers taking advantage of this proposal would include earlier advice on proposals focused on achieving LBC, and a greater likelihood of achieving LBC as a result. This would also bring more certainty to the outcome, and a faster consent process.

Most local planning authorities already have access to expert advice in some form. The local planning authority would continue to administer consultation and notifications, including to English Heritage and national amenity societies, as at present, and decisions would continue to be taken with democratic accountability. This would not therefore impose a further burden on them, and there will be savings, as the preparation of the technical assessment of the development is passed over to the accredited agent, and the role of the LPA becomes one of scrutinising and signing off the recommendation.

As this is optional the lowest estimate of the impact would be zero, as applicants would not need to undertake anything new. If 73% of all applications for listed building consent in commercial areas are made by an agent on behalf of the owner/tenant of the property, then we would assume that the impact on applicants would be on the 27% that don't currently make use of agents. This would mean the cost (£650) of processing an application which falls onto LPAs will transfer to the applicant. However we have assumed that only 50% of the cost will be transferred as the local planning authority would continue to administer consultation and notifications. This produces an annual benefit to LPAs of £2.7m as the burden is shifted to applicants. There is an argument that the other 73% of applicants may also provide

⁶ "The Patterns of Business Occupation and Consent Applications for Historic Buildings", research for English Heritage and the Heritage Lottery Fund, Colliers International, May 2012

saving to LPAs, as LPAs spend less resource on all applications. Taking a conservative approach this this has not been calculated here.

The cost to applicants that normally would not have employed an agent is £2.7m; the cost has essentially been transferred from LPAs.

However, this assumes all applicants are business for the purpose of calculating OIOO this is likely to lead to an overestimation of the cost to business. These cost are optional and therefore would not form part of OIOO (as they are indirect costs), to make these calculations consistent with measure 1 we have assumed that 50% of the applicants are business. The consultation did not collect any further robust evidence.

	Year 0	Year 1	Year 2	Year 3	Year 4	Year
Estimated Cost to Applicant (£)	2.7	2.7	2.7	2.7	2.7	2.
<i>of which cost to Business (£) is</i>	1.3	1.3	1.3	1.3	1.3	1.
<i>of which cost to non-Business (£) is</i>	1.3	1.3	1.3	1.3	1.3	1.
Savings to LPA (£)	2.7	2.7	2.7	2.7	2.7	2.
Year 6	Year 7	Year 8	Year 9			
2.7	2.7	2.7	2.7			
1.3	1.3	1.3	1.3			
1.3	1.3	1.3	1.3			
2.7	2.7	2.7	2.7			

Accreditation has the potential to drive up standards for applications – key conservation advice will be built into the development of proposals from an early stage and into their improvement until they are fit for consent to be granted. This will be smoother process where the likelihood of flat rejection is reduced, and which will bring more certainty to the outcome, improve the speed of determination and improve productivity.

Because these costs are indirect costs the Direct impact on business is 0. Furthermore this means that the business NPV and EANCB are both zero.

Risks and Assumptions

This mechanism may create the impression that it is weighted in favour of the developer/applicant, whether it is implemented with proper professionalism and impartiality or not, with increased likelihood of challenge through judicial review.

The possibility of judicial review may in practice result in accredited agents taking an approach to recommendations which are more conservative than strictly necessary.

There are potentially significant start-up costs for professional bodies in setting up this system. It has not yet been possible to quantify this. The costs of accreditation will be taken on by the individual professionals seeking accreditation, for whom this may act as a deterrent, meaning that there may initially be insufficient accredited agents to enable the system to operate effectively.

One In One Out:

The measures set out above have the potential to deliver savings for businesses (for example, by reducing the range and frequency of heritage related consent applications). They are therefore classified as OUT for One in One Out purposes.

Measure 1 produces saving to business.

Measure 3 impacts on businesses, and so is potentially IN, but as it is optional it is indirect cost and is therefore classed as no impact.

The final OIOO calculations include the benefit to business of measure 1 but do not include the indirect cost to business of measure 3 in OIOO. The business PV is 21.59 and the EANCB is -2.51.

Wider impacts

Statutory Equalities Duties

We have considered equalities impacts in light of the general equality duty, and have not identified any adverse impacts on equalities.

Competition

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

- Will the proposals directly limit the number or range of suppliers? **No**
- Will the proposals indirectly limit the number or range of suppliers? **No**
- Will the proposals limit the ability of suppliers to compete? **No**
- Will the proposals reduce suppliers' incentives to compete vigorously? **No**

Small Firms

We have not identified any impacts that are specific to small businesses, or that would disproportionately affect small businesses. Most of the reforms being proposed are overall de-regulatory in nature or relate to permissive measures.

Wider Environmental Issues

- Will the proposals be vulnerable to the predicted effects of climate change? **No**
- Will the proposals lead to a change in the financial costs or the environmental and health impacts of waste management? **No**
- Will the proposals impact significantly on air quality? **No**
- Will the proposals involve any material change to the appearance of the landscape or townscape? **No – the proposed reforms would support more effective and efficient conservation and enhancement of heritage assets (and of their contribution to the character of our landscapes, seascapes and townscapes).**
- Will the proposals change 1) the degree of water pollution, 2) levels of abstraction of water or 3) exposure to flood risk? **No**
- Will the proposals change 1) the amount or variety of living species, 2) the amount, variety or quality of ecosystems? **No**
- Will the proposals affect the number of people exposed to noise or the levels to which they're exposed? **No**

Health and Well-being

Having considered the relevant screening questions, we do not think that a health impact assessment is necessary. The proposed reforms will not have a significant impact on health, lifestyles or health and social care services.

Human Rights

At the consultation stage it is not possible to identify whether the proposals are likely to engage rights under the European Convention on Human Rights. This analysis will be possible once a decision has been made on options, and considerations have progressed on the legislative change needed to deliver them.

Justice System

At the consultation stage it is not possible to conduct a justice impact test. This will be possible once a decision has been made on options, and considerations have progressed on the legislative change needed to deliver them.

Rural Proofing

- Will the proposals affect the availability of public and private services? **No**
- Are the proposals to be delivered through existing service outlets, such as schools, banks and GP surgeries? **No**
- Will the cost of delivery be higher in rural areas where clients are more widely dispersed or economies of scale are harder to achieve? **No**
- Will the proposals affect the availability of public and private services? **No**
- Do the proposals rely on communicating information to clients? **Yes**
- Are the proposals to be delivered by the private sector or through a public-private partnership? **No**
- Do the proposals rely on infrastructure (e.g. broadband, main roads, utilities) for delivery? **No**
- Will the proposals impact on rural businesses, including the self-employed? **No**
- Will the proposals have a particular impact on land-based industries and, therefore, on rural economies and environments? **No**
- Will the proposals affect those on low wages or in part-time seasonal employment? **No**
- Are the proposals to be targeted at the disadvantaged? **No**
- Will the proposals rely on local institutions for delivery? **No**
- Do the proposals depend on new buildings or development sites? **No**
- Are the proposals likely to impact on the quality and character of the natural and built rural landscape? **Yes - the proposed reforms will support more effective and efficient conservation and enhancement of the historic environment. Many heritage assets are located in rural areas, positively contributing to their character and – through tourism – to their economic vitality.**
- Will the proposals impact on people wishing to reach and use the countryside as a place for recreation? **No**

Sustainable Development

Environmental Standards, see below.

Implementation

If these proposals are adopted, an appropriate opportunity will be sought via legislative reform.

Monitoring

'Heritage Counts' is an annual survey of the state of England's historic environment. It is produced on behalf of the Historic Environment Forum (HEF) by English Heritage. The report summarises policy

changes from the preceding year and uses indicators to explore data trends at national, regional and local levels. The current 'Heritage Counts' indicator set includes several relevant to the proposed reforms, including the number of LBC applications determined by LPAs, the number of Scheduled Monuments, and the percentage of Listed Buildings / Scheduled Monuments deemed to be 'at risk'.

Stage 1

1. Environmental Standards

1a. Are there any significant environmental impacts of your policy proposal (see Wider Environment Specific Impact Test)?
No
If the answer is 'yes' make a brief note of the impacts below:
N/A

1b. If you answered 'yes' to 1a., are the significant environmental impacts relevant to any of the legal and regulatory standards identified?
N/A
If the answer is 'yes' make a brief note of the relevant standards below:
N/A

If you answered 'yes' to 1b, have you:
1c. Notified the Government Department which has legal responsibility for the threshold and confirmed with them how to include the impacts appropriately in the analysis of costs and benefits?
N/A
1d. Informed ministers where necessary?
N/A
1e. Agreed mitigating or compensatory actions where appropriate?
N/A

2. Intergenerational impacts

2a. Have you assessed the distribution over time of the key monetised and non-monetised costs and benefits of your proposal? This assessment can be included in your Evidence Base or put in an annex.
No

2b. Have you identified any significant impacts which may disproportionately fall on future generations? If so, describe them briefly.
No

If you answered 'yes' to 2b. , have you:
2c. Informed ministers where necessary? If so, provide details.
N/A
2d. Agreed mitigating or compensatory actions where appropriate? Provide details.
N/A

Stage 2

3. The purpose of the second stage is to bring together the results from the impact assessment with those from the first stage of the SD test. The following questions are intended to reflect the uncertainties in the cost benefit analysis and help you consider how to proceed in the light of further evidence from the first stage of the SD test.

3a. Indicate in the appropriate box whether the balance of monetised costs and benefits is:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
	X			

3b. Indicate in the appropriate box whether the balance of non-monetised costs and benefits is likely to be:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
	X			

3c. Indicate in the appropriate box whether the results of the SD questions 1-3 are, on balance, likely to be:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
	x			

3d. Indicate in the appropriate box whether, overall, the balance of the monetised and non-monetised costs and benefits and the sustainability issues is considered to be:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
	X			

3e. Provide an explanation of the final result from 3d, explaining, for example, how you have compared monetised and non-monetised costs and benefits and how you have resolved any conflicts between the cost-benefit results and the SD results.

The measures are general deregulatory in nature. They have the potential to realise savings for owners, managers and developers of heritage assets, and for local planning authorities. They will also support more effective protection and management of the historic environment in urban and rural areas, and realisation of the public benefits that this brings for current and future generations.

