



department for  
culture, media  
and sport

# Heritage Protection for the 21st Century Regulatory Impact Assessment

March 2007

improving  
the quality  
of life for all

# Heritage Protection for the 21st Century Regulatory Impact Assessment

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## TITLE OF PROPOSAL

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

## PURPOSE AND INTENDED EFFECT

### Objectives

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

### Background

4. The heritage protection system in England comprises the systems of listing buildings, scheduling ancient monuments, designating historic wrecks<sup>1</sup> and registering historic parks, gardens and battlefields. The heritage protection system in Wales comprises the systems of listing buildings, scheduling ancient monuments, designating historic wrecks and registering parks, gardens and landscapes.
5. There are over half a million designated assets in England and around 35,000 in Wales, most of which are listed buildings. In addition to these formally designated assets, there are substantial numbers of historic assets that have been identified and recorded and which affect planning decisions.

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

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<sup>1</sup> This is a UK-wide designation system. In this assessment we are referring to the design of a new UK-wide system to protect marine historic assets, not just those in England and Wales.

of State for Communities and Local Government and the Welsh Assembly Government. In England SMC applications are determined by the Secretary of State for Culture, Media and Sport, and in Wales, the Welsh Assembly Government.

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

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

#### Rationale for government intervention

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

13. There is broad consensus that current legislation and policy relating to the protection of the historic environment needs reform. In 2002, the Department for Culture, Media and Sport (DCMS) held consultation seminars with over 100 stakeholders from the sector on the operation of the current heritage protection system. This consultation exercise identified four areas for improvement:
- **Simplifying** – the protection systems were felt to be too complex. New protections have been added in a piecemeal fashion. Few people have a grasp of all parts of the legislation. There are overlaps and inconsistencies in interpretation.
  - **Openness** – processes can be inaccessible. The reasons for designating a particular site or building are not always clear. There is insufficient encouragement to owners to feel involved. Restrictions are placed on owners of protected assets, which can sometimes serve to alienate them rather than to engage their enthusiasm for looking after their properties. Opportunities for positive dialogue, community involvement and good planning can be improved.
  - **Flexibility** – The present systems require individual designations for each structure and individual consents for each alteration. Where there are complex sites this can be laborious. There are lessons to be learnt from the more flexible regimes for managing the natural environment.
  - **Rigour** – England and Wales have a rich historic environment and significant individual assets to manage. The system must be robust enough to conserve the best and to continue to take on board changes in what people value without devaluing the currency.
14. Public consultation in 2003 confirmed these findings. Over 500 responses were received to *Protecting our Historic Environment: Making the System Work Better*. A parallel consultation in Wales, *Review of the Historic Environment in Wales*, generated 90 responses. The consultations in England and Wales indicated broad support for the following proposals for change:
- **Designation** – making the designation system more streamlined by unifying the currently separate systems of listing, scheduling and registering, and in England by transferring powers of designation to English Heritage. Making the system more understandable by improving the quality of designation information and publishing clear designation criteria. Making the system more open by introducing greater consultation and a right of appeal. Reviewing the issue of spot-listing in relation to development.
  - **Consents** – making the consents process more streamlined by unifying the separate systems of Scheduled Monument Consent and Listed Building Consent. Reviewing the current protection regimes for archaeological sites on land under cultivation and the link with environmental management schemes. Reviewing the current protection regimes for locally designated historic assets, including the management of Conservation Areas.
  - **Management** – encouraging the greater use of management agreements as an alternative to statutory consents.
  - **Delivery** – considering the scope for more pooling of resources between local authorities, and introducing a new statutory requirement for local authorities to maintain access to Historic Environment Records to guide and inform decision making.

## CONSULTATION

### Within Government

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

### Public consultation

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

- In 2005 an England-only public consultation was carried out on proposed revisions to the principles of selection used when selecting buildings for listing. Over 100 responses were received to this consultation. No comparable consultation occurred in Wales as that year saw the completion of the national listing resurvey.
18. In addition to these formal consultations, DCMS has taken part in a series of stakeholder seminars run by English Heritage that reached over 500 heritage sector professionals, including local authority representatives. The Culture, Media and Sport Committee also invited interested parties to comment on the proposed reform programme as part of its wide-ranging 2005/06 inquiry on *Protecting and Preserving our Heritage*. In Wales, the Welsh Assembly Government held a similar stakeholder seminar and consulted widely on its findings. The Assembly Culture Committee also considered the proposals at meetings in 2003 and November 2006.

## OPTIONS

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

### **Option 1 – Do nothing**

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

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

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

### Risks

23. Without changes to primary legislation, the heritage protection system remains fragmented. Current inconsistencies and overlaps are not addressed and the system becomes increasingly out of step with a renewed and reformed planning system based on the principles of sustainable development, community engagement and good regulatory practice. As a consequence, the priority given to

historic environment issues at local level may decline. Without the impetus provided by changes to primary legislation, there is a risk of delay to the development of new planning policy.

24. Reform of the marine heritage protection system to enable protection to be given to a broader range of historic assets would not be possible without primary legislation.

### Compliance and enforcement

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

### Unintended consequences

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

### *Implementation and delivery*

27. Planning policy is the responsibility of CLG and the Welsh Assembly Government. The forthcoming Planning White Paper will set out the Government's intentions for the future revision of planning policy in England.
28. English Heritage would be responsible for developing standards and guidance, and the delivery of capacity building programmes, in consultation with DCMS and CLG. DCMS and English Heritage would be responsible for improvements to the designation and consent systems in England and the Welsh Assembly Government would have similar responsibilities in Wales. All of these measures could be introduced from 2010/11.
29. In England local planning authorities (LPAs) would be responsible for operating a new heritage protection system at local level, although changes made through secondary legislation and new planning policy would not substantially change their current responsibilities. Clear planning policy encompassing the whole historic environment is likely to be welcomed by LPAs and may improve implementation and delivery of services.

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

30. In addition to the secondary legislation and new planning policy discussed in Option 2, primary legislation would be required to make more radical changes to the heritage protection system, including:
  - a unified designation system based on harmonised definitions and selection criteria;

- in England, transfer of responsibility for designation to English Heritage;
- a new statutory appeal system relating to designation decisions;
- interim protection for historic assets under consideration for designation;
- a new designation system for marine historic assets;
- a unified consents system for delivery by local planning authorities;
- a new, flexible system of consents for designated marine historic assets;
- merger of Conservation Area Consent (CAC) with planning permission;
- Heritage Partnership Agreements (HPAs); and
- a new statutory duty for local authorities to maintain or have access to a Historic Environment Record (HER).

### *Risks*

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

*Compliance and enforcement*

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

*Unintended consequences*

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

*Implementation and delivery*

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

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



## **BENEFITS**

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

### **Option 1 – Do nothing**

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

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

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

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

45. For developers this option would deliver economic benefits by reducing the impact of late designations on large-scale development, and by providing improved access to information and advice about historic assets at the pre-application stage (through the Heritage Gateway and the Planning Portal).

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

48. It would also deliver clear benefits for sea-users by removing double handling in the licensing system relating to historic wrecks, and by introducing voluntary HPAs for marine historic assets (which could further reduce the need for individual licence applications and amendments).
49. For central Government this option would deliver economic benefits through the transfer of responsibility for the designation of historic assets to English Heritage and the devolution of monument consent to LPAs in England. There is no comparable proposal in Wales.

## **COSTS**

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

### **Option 1 – Do nothing**

51. Not applicable.

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

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

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

53. The devolution of responsibility for Scheduled Monument Consent to LPAs in England as part of a new unified 'Historic Asset Consent' (HAC) would result in costs totalling c£400,000 p.a. from 2010/11, assuming the use by LPAs of in-house and outsourced conservation and archaeological expertise and the continued provision of advice by English Heritage. There is no comparable proposal in Wales.
54. Future thematic reviews may raise the number of designated historic assets and lead to progressive increases in costs – for example, the current Government target is that the number of registered monuments will eventually rise to c30,000 in England, and in Wales the better known monuments will be scheduled, by 2010. However in England this may change following the definition of new selection criteria. Any increases would be phased over a number of years. In the event that HPAs cannot be agreed for archaeological sites under cultivation following the removal of Class Consent No.1, the number of HAC applications may also rise slightly in rural areas (see below).
55. In contrast, the merger of conservation area consent with planning permission would result in operational efficiencies for LPAs from 2010/11, but may increase the costs incurred by applicants through planning fees.
56. HPAs would be developed as a new management option for historic assets, but their uptake would be dependent on all parties (the owner, the LPA and English Heritage or the Welsh Assembly Government) agreeing this as the best way forward. Costs arising from their negotiation and monitoring would therefore

not be considered a new burden. The exception would be in relation to scheduled monuments under cultivation and currently covered by Class Consent No.1. Following removal of this, it is estimated that negotiation of an additional 350 HPAs would be required in England, resulting in cumulative costs of c£80,000. In practice, we would expect these costs to be reduced due to the availability of alternative management options such as Environmental Stewardship. The latter is also applicable to Wales and it is anticipated that HPAs can be negotiated within existing budgets.

57. The number of HERs is expected to remain stable. Our expectation would be that self-imposed pressure on local authorities as a consequence of increased public access to their data services via the Heritage Gateway and the Planning Portal, together with their integration into ongoing programmes to implement local e-government, will stimulate improvement in HER provision and performance. Fees applicable to commercial use of HER resources would remain discretionary, as would the inclusion of information on marine historic assets in adjacent UK territorial waters.
58. Costs arising from reform of the marine heritage protection system are expected to be negligible.

## SMALL FIRMS IMPACT TEST

59. Small firms have been consulted on these proposals as part of wider consultation processes (see Section 3).
60. Representatives of the Country Land & Business Association and organisations involved in property investment, architecture and the delivery of sustainable communities have acted as members of the HPR Steering Committee.
61. The Institute of Field Archaeologists and the Institute of Historic Building Conservation – the professional institutes whose members will often be responsible for the delivery of local archaeological and conservation services, either as part of a local authority unit or a commercial service provider – have also been closely involved in the preparation of these proposals.
62. Representatives of diving and salvage organisations, licensees and other sea-users were represented on the working groups convened as part of the marine review.
63. The recommendations in *Heritage Protection for the 21st Century* are unlikely to have a significant detrimental effect on small business. Small businesses are likely to benefit from a clearer designation process, from quicker decision times on designation cases, and from a clearer and more consistent heritage consent process. Potential implications for farmers are discussed, where appropriate, in Sections 5 & 6.

## COMPETITION ASSESSMENT

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

## ENFORCEMENT, SANCTIONS AND MONITORING

### Enforcement

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

69. Enforcement of Option 3 would be based on revised primary legislation, but enforcement mechanisms would be broadly the same. The only significant change would be that enforcement relating to designated monuments in England would pass from the Secretary of State for Culture, Media and Sport to local planning authorities as part of the unification of heritage protection systems governing buildings and monuments.

### Sanctions

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

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

71. Under Option 3, these sanctions would be incorporated into new primary legislation.

### Monitoring

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

### Inspections

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

### Reducing the burden of forms

77. Option 1 would maintain the current forms used within the heritage protection systems.
78. Options 2 would, in England, introduce a new standard application form for listing requests as a means of helping to speed up decision times. There is no comparable proposal in Wales.
79. Option 3 would remove the need in England for separate forms for LBC and SMC by combining the two consents, and potentially by including applications as part of the planning standard application form. It would also introduce a single designation application form in England. A new standard application form will also be introduced for the designation and associated licensing of activities on marine historic assets. In Wales, designation requests will be accepted through all modes of communication but no application form is considered necessary.
80. The new forms referred to in Options 2 & 3 would be designed to simplify the submission of necessary information. Where appropriate, they would also be made available for completion online.

## **IMPLEMENTATION AND DELIVERY PLAN**

81. DCMS (in partnership with the devolved administrations) plans to bid for new heritage protection legislation at the earliest opportunity. If a bid for legislation in the 2008/09 session were to be successful, reforms would be implemented from 2010/11.

82. In advance of new legislation, or if new legislation is not sought, central Government, English Heritage and the Welsh Assembly Government will develop and publish guidance designed to help local authorities, owners / managers of historic assets, heritage organisations and other stakeholders prepare for the new system.

## POST-IMPLEMENTATION REVIEW

83. Implementation of a new heritage protection system in England will be monitored by English Heritage through its annual *Heritage Counts* publication.

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

85. In Wales, it will be monitored by the Welsh Assembly Government through its annual *Welsh Historic Environment – Position Statement* reports.

## SUMMARY AND RECOMMENDATION

86. On the basis of the analysis in this RIA, the preferred option for reform of the heritage protection system in England and Wales is Option 3 – reform of the legislative framework for heritage protection.

87. Option 3 carries the highest costs, especially for English Heritage. In particular, there are costs associated with the training and capacity building needed to ensure familiarisation with a new heritage protection system. However, these costs are balanced against the substantial benefits for local stakeholders of a more inclusive and efficient approach to the designation and management of historic assets. In England, DCMS will meet the cost of any additional burdens to local authorities. In Wales, no additional costs are expected to be borne by local authorities. Any additional central Government costs will be met from existing budgets.

- Option 1 – do nothing has been rejected on the basis of the drawbacks and inefficiencies of the current heritage protection system, alongside the clear appetite for change identified by extensive public consultation.
- Option 2 – Reform of heritage protection policy without changes to legislation has also been rejected. This option carries considerable costs, especially for English Heritage in delivering change and for local planning authorities, customers and heritage organisations in terms of familiarisation with a new system. Despite these costs, it does not carry the substantial benefits in terms of a more efficient and understandable system, and subsequent improved decision-making and management, made possible through legislative reform.

88. Neither option 1 nor option 2 could deliver the necessary changes for an adequate UK-wide protection system for the marine environment.

## DECLARATION AND PUBLICATION

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Signed**



**David Lammy, Minister for Culture,  
Department for Culture, Media and Sport**



**Alun Pugh AM, Minister for Culture,  
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Welsh Assembly Government**

**8 March 2007**

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