



department for
**culture, media
and sport**

Equality Impact Assessment

Draft Heritage Protection Bill and White Paper: Heritage
Protection for the 21st Century

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Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Equality Impact Assessment

1. INTRODUCTION

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

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

2. POLICY

AIMS AND PROJECTED OUTCOMES OF THE POLICY

Aims

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

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

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

Background

The heritage protection system in England comprises the systems of listing buildings, scheduling ancient monuments, designating historic wrecks¹ and registering historic parks, gardens and battlefields.

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

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

¹ This is a UK-wide designation system. In this assessment we are referring to the design of a system to protect marine historic assets in England, Wales and Northern Ireland. The Scottish Government is pursuing its own approach to protecting marine historic assets in Scottish waters.

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

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

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

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

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

In England, the Government's statutory adviser on the historic environment is English Heritage. In addition to advising the Secretary of State for Culture, Media and Sport and the Secretary of State for Communities and Local Government, English Heritage works directly with local planning authorities on planning cases affecting designated historic assets. It also advises the Secretary of State for Environment, Food and Rural Affairs and works with Natural England on management of the historic environment outside the planning system, including through Environmental Stewardship schemes. Since 2002, English Heritage has also had responsibility for advising Government and other

organisations (including licensing bodies, aggregate dredgers and developers) on issues and best practice relating to the marine historic environment within English territorial waters.

Outcomes

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

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

- **Simplifying** – the protection systems were felt to be too complex. New protections had been added in a piecemeal fashion. Few people have a grasp of all parts of the legislation. There were overlaps and inconsistencies in interpretation.
- **Openness** – processes can be inaccessible. The reasons for designating a particular site or building were not always clear. There is insufficient encouragement to owners to feel involved. Restrictions are placed on owners of protected assets, which can sometimes serve to alienate them rather than to engage their enthusiasm for looking after their properties. Opportunities for positive dialogue, community involvement and good planning can be improved.
- **Flexibility** – The present systems require individual designations for each structure and individual consents for each alteration. Where there are complex sites this can be laborious. There are lessons to be learnt from the more flexible regimes for managing the natural environment.
- **Rigour** – England and Wales have a rich historic environment and significant individual assets to manage. The system must be robust enough to conserve the best and to continue to take on board changes in what people value without devaluing the currency.

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

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

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

MEASURING SUCCESS OF THE REFORMS

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

English Heritage will have targets for how quickly historic assets are designated and how quickly consent applications are processed. These targets will be measured and reported on by English Heritage. English Heritage will also monitor the system through their annual Heritage Counts publication. In addition, English Heritage will define an outcomes framework for local authority historic environment services. Regular monitoring of associated indicators (pre- and post-implementation), together with consideration of priorities identified in individual local area agreements and local development frameworks, will help it to target support aimed at stimulating and sustaining improvements in local service delivery.

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

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

3. EVIDENCE

WHAT RELEVANT DATA HAS BEEN CONSIDERED?

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

Participation data

The 'Taking Part' survey was commissioned by the Department for Culture, Media and Sport and its partner Non-Departmental Public Bodies (NDPBs): Arts Council England, English Heritage, the Museums, Libraries and Archives Council, and Sport England². The survey was launched in mid-July 2005 to look at participation in cultural and sporting activities, and is a continual national survey, running for three years in the first instance.

The survey compares take up in cultural and sporting activities by adults of different gender, different religion, different ethnicity, and different age, against take-up of all adults. It found that 70% of all adults attended a historic site in the last year. When this result is looked at in further detail there are significant variations between different groups.

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

² 'Taking Part: The National Survey of Culture, Leisure and Sport', Annual Report 2005/2006, DCMS and ONS, 10 May 2007.

backgrounds had 55.4% attendance; those from Asian backgrounds had 48.3% attendance and those from Black backgrounds had 41.5% attendance.

- **Religion:** Those who registered as no religion or Christian had the highest attendance 71% and 70.9% respectively. Those who registered as Hindus had 53.1% attendance and those who registered as Muslim had 41.3% attendance.

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

Heritage Protection Reform Consultation

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

- *The Historic Environment: A Force for our Future*, December 2001.
- *Protecting our Historic Environment: Making the system work better*, July 2003.
- *The Future of the Ecclesiastical Exemption: A Consultation Paper for England*, February 2004
- *Protecting our Marine Historic Environment: Making the system work better*, March 2004.
- *Review of Heritage Protection: The Way Forward*, June 2004.
- *The Ecclesiastical Exemption: The Way Forward*, July 2005.
- *Revisions to the Principles of Selection for Listed Buildings: Planning Policy Guidance Note 15: Consultation document*, July 2005.
- *Implementing the Heritage Protection Review: Evaluating the impact on local delivery of historic environment services*, August 2005.
- *New principles of selection for listed buildings: an analysis of consultation responses*, March 2007.
- *Heritage Protection for the 21st Century*, White Paper, March 2007.
- *Heritage Protection for the 21st Century: Regulatory Impact Assessment*, March 2007.³

The consultation documents published prior to the White Paper concentrated on identifying the problems in the current heritage protection system and finding

³ All documents are published in full on the DCMS website, www.culture.gov.uk.

the best solutions to these problems. This was done through a mixture of formal written consultation and more informal workshops involving those that work in or use the current heritage protection system.

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

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

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

Ecclesiastical Exemption

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

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

what denominations could be included. The questions and responses are replicated below:

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

- *Question 6: Do you agree that it would be appropriate to allow those denominations and faith groups which lost the right to exemption following the 1994 Order to become entitled again to operate the exemption under management agreements entered into with the designated body?*
 - 106 respondents commented on this question. There were no responses from denominations or faith groups that do not currently operate an exemption. 74 respondents agreed with this proposal (70% of those that commented, 49% of all respondents). 14 disagreed (13% of those that commented, 9% of all respondents) 19 made other comments (18% of those that commented, 13% of all respondents).
 - Key themes in consultation responses to this question were:
 - Respondents who were not in favour of retaining the Exemption were also not in favour of increasing its coverage to any extent.⁵

As a result of this consultation the White Paper proposes to continue the Ecclesiastical Exemption under the new system. It also states that 'the Exemption will not be extended to other ecclesiastical assets or denominations'.⁶

⁴ 'The Ecclesiastical Exemption: The Way Forward', July 2005, 17.

⁵ 'The Ecclesiastical Exemption: The Way Forward', July 2005, 17-18.

⁶ 'Heritage Protection for the 21st Century', March 2007, 23.

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

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

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

IDENTIFYING DATA AND INFORMATION GAPS IN DATA

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

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

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

COMMISSIONING RESEARCH

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

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

4. ASSESSING THE IMPACT OF THE POLICY

IDENTIFYING THE POTENTIAL FOR DIFFERENTIAL / ADVERSE IMPACT

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

Participation

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

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

Religion

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

INTENTIONAL IMPACT

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

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

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

5. CONSIDERING ALTERNATIVES

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

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

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

6. CONSULTING FORMALLY

THE CONSULTATION PROCESS.

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

7. ADOPTING THE POLICY

THE IMPACT ASSESSMENT PROCESS.

Ecclesiastical Exemption

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

8. MONITORING ARRANGEMENTS

PILOTING THE POLICY

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

MONITORING

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



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