



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

Government Response
to the Culture, Media and
Sport Committee Reports on the
Draft Heritage Protection Bill and
Draft Cultural Property
(Armed Conflicts) Bill

*Presented to Parliament by the
Secretary of State for Culture, Media and Sport
by Command of Her Majesty
October 2008*



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Chapter One: Executive Summary

Overview

1. This year the Government published a draft Cultural Property (Armed Conflicts) Bill (January 2008) and a draft Heritage Protection Bill (April 2008) for pre-legislative scrutiny and public consultation. This document sets out how the UK Government intends to take forward the measures set out in those two draft Bills, in light of the issues raised in the public consultation and the recommendations that emerged from pre-legislative scrutiny conducted by the Culture, Media and Sport Committee.

Context

2. The draft Heritage Protection Bill sets out in legislation the proposals first published in the Heritage Protection White Paper – *Heritage Protection for the 21st Century* – which were widely welcomed. The draft Heritage Protection Bill, which covers England and Wales, sets out a framework to unify heritage protection regimes, allow greater public involvement in decision-making and place heritage at the heart of the planning system, thereby making the system more transparent and making heritage protection easier to understand and manage. The draft Cultural Property (Armed Conflicts) Bill is designed to allow the UK to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and accede to its two protocols (1954 and 1999).

Pre-legislative scrutiny and the public consultation

3. Pre-legislative scrutiny of both draft Bills was completed by the Culture, Media and Sport (CMS) Select Committee. The Committee received written evidence from 68 respondents and made 11 recommendations to the Government in relation to the draft Heritage Protection Bill. The Committee received written evidence from 9 respondents and made 13 comments and recommendations to the Government in relation to the draft Cultural Property (Armed Conflicts) Bill.

4. DCMS also conducted a parallel public consultation on both draft Bills via its website. The draft Heritage Protection Bill generated 100 written responses from individuals and organisations sent directly to the Department, some of which duplicated responses sent to the CMS Committee, or expanded upon separate responses to the Committee. Similarly, the draft Cultural Property (Armed Conflicts) Bill generated 5 written responses from individuals and organisations, which were largely duplicated in written evidence sent to the CMS Committee.

5. The overwhelming majority of the responses to the Committee and the Department welcomed both the draft Heritage Protection Bill and the draft Cultural Property (Armed Conflicts) Bill and looked forward to their introduction to Parliament.

6. This document sets out the Government's response to each of the Committee's recommendations on both the draft Heritage Protection Bill and the draft Cultural Property (Armed Conflicts) Bill. It does not contain either an analysis of, or a response to, each individual point made via the public consultation. Instead it sets out those points arising from the public consultation which we propose to take forward through amendments to the draft Bills, which have not already been addressed in the response to the Committee's recommendations.

Next Steps

7. The Government published a green paper on 14 May 2008 which detailed the draft legislative programme for the next session, 2008-09. The Heritage Protection Bill, incorporating the provisions of the Cultural Property (Armed Conflicts) Bill, was included in this draft legislative programme. Government will continue with its plans to introduce a Heritage Protection Bill, subject to the availability of Parliamentary time.

Chapter Two: Introduction

Heritage Protection Bill

8. The draft Heritage Protection Bill was published on 2 April 2008. This was a major step towards the legislative reform needed to bring about the changes to the heritage protection system that were put forward in the White Paper *Heritage Protection for the 21st Century*, published in March 2007. The White Paper followed years of consultation and dialogue with a range of stakeholders, going back to English Heritage's review of all policies relating to the historic environment, *Power of Place* (2000) and Government's response, *A Force for Our Future* (2001).

9. The draft Heritage Protection Bill contained provisions to:

- **Develop a unified approach to the historic environment** that will be easy to understand and to use, by:
 - introducing a single registration (or designation) regime to replace listing, scheduling and registering;
 - devolving responsibility for the registration of land-based heritage assets in England from the Secretary of State to English Heritage;
- **Maximise opportunities for inclusion and involvement** by engaging the public in decisions on protection, through:
 - a new publicly accessible Heritage Register for England and for Wales;
 - new consultation and appeal processes and interim protection for land-based historic assets;
- **Deliver sustainable communities by putting the historic environment at the heart of an effective planning system**, through:
 - merging Listed Building Consent and Scheduled Monument Consent into a single Heritage Asset Consent, and merging Conservation Area Consent with planning permission;
 - introducing greater flexibility into the system through a new statutory framework for voluntary management agreements;
- **Increase capacity at local level to deliver these reforms**, by
 - improving access to information about the historic environment by introducing a statutory duty for local authorities to maintain or have access to Historic Environment Records;
- **Improve the system of marine heritage protection**, by:
 - broadening the range of marine heritage assets that can be protected;
 - improving information sharing on marine heritage assets;
 - introducing interim protection for marine heritage sites;
 - making the consent system more flexible, including an appeal system for marine licensing decisions.

10. Following the consultation on the draft Bill, it was evident that there was broad support from the sector for the new heritage protection framework set out in the draft Heritage Protection Bill, with particular emphasis on the value of unifying the system, providing for Heritage Partnership Agreements, and the new statutory duty on local authorities to maintain or have access to HERs.

Cultural Property (Armed Conflicts) Bill

11. The draft Cultural Property (Armed Conflicts) Bill was published on 7 January 2008 and represents a major milestone on the path towards ratification of the 1954 Hague Convention. The draft legislation takes into account the responses to the public consultation on implementation of the Hague Convention launched on 6 September 2005.

12. The draft Cultural Property (Armed Conflicts) Bill contained provisions to enable the UK government to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention), which will, in turn:

- protect the nation's most important cultural property from damage in the event of armed conflict;
- send a signal to the international community that the UK takes seriously its obligations under international humanitarian law to respect and safeguard the cultural property of other nations during times of armed conflict.

Pre-legislative scrutiny

13. The Culture, Media and Sport Committee conducted separate investigations into the draft Cultural Property (Armed Conflicts) and Heritage Protection Bills but, being aware that it was Government's intention to join these two draft Bills with the aim of introducing a single Bill in the Fourth Session, the Minister's oral hearing on the Heritage Protection Bill involved taking questions on the Cultural Property (Armed Conflicts) Bill.

14. The Culture, Media and Sport Committee announced its inquiry into the draft Heritage Protection Bill on 1 May 2008, inviting evidence on:

- the overall aims and scope of the draft Bill;
- the estimates of costs and benefits set out in the Impact Assessment published alongside the draft Bill; and
- the staffing and skill levels needed for effective implementation of the provisions in the draft Bill.

15. The Committee received nearly seventy written submissions, and it held two oral evidence sessions, the first of which took evidence from representatives of local government interests, the historic environment sector and those responsible for managing heritage assets on a day-to-day basis, and the second of which involved the Minister for Culture, the Rt Hon Margaret Hodge, and Dr Simon Thurley, Chief Executive of English Heritage. The Committee published its report on the draft Heritage Protection Bill and accompanying Impact Assessment on 30 July 2008.

16. The Culture, Media and Sport Committee announced its inquiry into the draft Cultural Property (Armed Conflicts) Bill on 31 January 2008, the terms of reference of which were to seek views on the overall aims of the draft Bill and on whether the Bill was structured and drafted in a way which enabled those aims to be met. It received written evidence from 9 respondents and held a single oral evidence session, on 10 June 2008. The Committee published its report on the draft Cultural Property (Armed Conflicts) Bill on 22 July 2008.

17. The Government is grateful to the CMS Committee, its members and those who provided evidence for their efforts and contribution to both draft Bills. We are pleased the Committee was supportive in principle of the draft Heritage Protection Bill, and welcome their endorsement of Government's vision of the new legislation and its aim to reform, modernise, and streamline the present heritage protection system.

18. The Government is also grateful to the Committee for taking the unusual step of publishing its report on the Heritage Protection Bill during Summer Recess, as this has allowed the Committee's comments and recommendations to be taken on board while work on the Bill continued over the Summer.

19. Our response to each of the recommendations on both draft Bills is set out in the following chapters of this report.

Public Consultation

20. In addition to the Select Committee's call for written evidence following the publication of both draft Bills, the Department for Culture, Media and Sport also invited comments in a parallel consultation exercise. One hundred further responses were received by the Department on the draft Heritage Protection Bill, a further five on the draft Cultural Property (Armed Conflicts) Bill, and twenty-eight on the draft Conservation Area clauses, and we would like to thank all the organisations, sectors and individuals who took time to submit responses to the consultation. A similar consultation on the draft Heritage Protection Bill was carried out in Wales by the Welsh Assembly Government. This report does not contain either an analysis of, or a response to, each individual point made via the public consultation. Many of the larger issues and individual points were raised by the Select Committee which are addressed in the responses set out below, some recommended minor adjustments to the drafting, which we have incorporated in further iterations of the draft Bill, and many raised issues which have already been considered prior to the White Paper and its associated consultation exercise and upon which conclusions have been reached following those previous consultation exercises. Instead we have highlighted those points arising from the public consultation which we propose to take forward through amendments to the draft Bills.

21. In order to inform the scrutiny and public understanding of the draft Heritage Protection Bill, DCMS and the Welsh Assembly Government also published a draft statutory instrument, code of practice and guidance on the Ecclesiastical Exemption (a mechanism which provides for certain denominations to be exempted from the need to obtain Heritage Asset Consent when undertaking works or making repairs to registered ecclesiastical assets in ecclesiastical use, e.g., registered churches, registered tombs in churchyards), and also draft guidance on the operation of Historic Environment Records in England. We received a number of helpful responses to these documents, which we will take into account as we continue to draft the full range of statutory instruments and guidance that will come into force when the Heritage Protection Bill is implemented.

Chapter Three: Draft Heritage Protection Bill: Response to recommendations of the Committee and Public Consultation

22. The Committee made 11 specific conclusions and recommendations, the details of which are set out below, followed by Government's response.

Recommendation One

We welcome the provision of the long-awaited heritage legislation and support the Government in its aim to reform, modernise, and streamline the present system. We particularly welcome the intention to put “heritage at the heart of planning”, yet see little evidence to suggest that the Department for Communities and Local Government (DCLG) has had any significant involvement with the draft Bill thus far. The success of the proposed reforms will depend a great deal on additional planning guidance and funding from DCLG. The Government must therefore maintain its commitment to DCLG being an active participant in the passage of the new legislation.

Response

23. The Government is fully aware of the need for a joined-up approach to reforming the heritage protection system, which straddles the remits of a number of Departments, in particular DCMS, CLG, Defra and the Welsh Assembly Government. Many elements of the heritage protection regime, particularly the system for consents, sit within the planning system, which is the responsibility of CLG. DCMS has been working closely with colleagues at CLG throughout the process which led to the publication of the Heritage Protection White Paper, the draft Bill and beyond, but takes on board the point that, to external observers of the progress of the Bill and documents associated with the Bill, this closeness has not always been obvious. We are happy to reassure the Committee that the two Departments are working together, along with English Heritage, to create new legislation and guidance that will lead to effective reforms.

24. There are already many examples of CLG engagement with the Heritage Protection Reform Programme as a whole and the Bill in particular:

- since publication of the Heritage Protection White Paper in April 2007, CLG has published consultation documents on World Heritage Sites, taking forward a number of commitments made in the White Paper:
 - significant developments affecting World Heritage Sites will be subject to new notification and call-in procedures. CLG published a consultation document on this on 7 January 2008;
 - following a consultation exercise between May and August 2008, amendments to the Town and Country Planning (General Permitted Development) Order 1995 came into force on 1 October, which put World Heritage Sites on the same footing as National Parks, Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest, and conservation areas etc. This means that certain permitted development rights will be restricted in those World Heritage Sites that are not listed buildings or already in protected areas;
 - a draft Planning Circular, which was the result of close working between CLG, DCMS and English Heritage, is due to be published in the autumn. It sets out Government's commitment to protect the outstanding universal value of each of the World Heritage Sites in England within the current planning framework.

- DCMS chairs an official level Heritage Protection Reform Programme Board, which oversees the wider reform programme, including strands of work which cover the drafting of a new Planning Policy Statement (PPS) for the Historic Environment, the progress of the Heritage Protection Bill, and overlaps with related legislation (e.g., the draft Marine Bill and the Planning Bill). CLG is represented on the board at senior official level, as are Defra and English Heritage, as well external independent members.
- As announced by Baroness Andrews in June, a review of the heritage-related PPGs (PPG15 – Planning and the Historic Environment and PPG16 – Archaeology and Planning) is underway, and CLG, DCMS and English Heritage are working together with a view to publishing a new Planning Policy Statement for the Historic Environment in draft form by the end of 2008.
- CLG policy officials and lawyers continue to work with their DCMS counterparts as work on the Bill progresses.
- Ministers from both DCMS and CLG will be working together to support the parliamentary passage of the Heritage Protection Bill.

25. The Government believes it is right that DCMS should take the lead on this Bill (as opposed to having a CLG co-sponsored Bill) as heritage protection policy is DCMS' area of responsibility but we do, however, fully recognise the need for collaboration between the two Departments at all levels and continue to work together.

Recommendation Two

The Committee values the opportunity to undertake pre-legislative scrutiny of the draft Bill, yet the effectiveness of this process has been undermined by the incomplete nature of the legislation. We find it deeply disappointing that we have not had the opportunity to review the draft Bill in its entirety. The sector has been denied the opportunity to examine thoroughly all aspects of the proposed legislation, in what amounts to a fundamental modernisation of the heritage protection system. We recommend that a complete schedule of all further necessary legislation and guidance be published as soon as possible, together with a timetable and arrangements for appropriate consultation and implementation.

26. With regard to the timing of the publication of the draft Bill and subsequent publication of additional draft clauses and guidance documents, the Government's concern was to ensure as much draft legislation was placed in the public domain for comment as possible while still adhering to the Parliamentary timetable. The Committee will be aware that the clauses relating to Conservation Areas were published on 1 July and comments were invited and the twenty-eight that were received have been reviewed and have been used to inform ongoing work on the Bill. The Government has a genuine desire to maximise involvement and we will continue to publish as much guidance as possible in draft.

27. The draft Heritage Protection Bill, as published in April 2008, contains many order, regulation and direction making powers. We intend to publish the following Orders and Regulations in draft for illustrative purposes to assist Members and Peers in the process of scrutinising the heritage protection elements of the forthcoming legislation:

- an Order which specifies the national amenity society and related organisations which will be consulted prior to terrestrial entries on the register being included, amended or removed; on appeals to the Secretary of State on such decisions; and in relation to terrestrial CNIRs;
- a new Class Consents Order;
- a new Ecclesiastical Exemption Order;
- regulations on the form, content and availability to the public of the Heritage Register for England.

28. There is also a range of Orders and Regulations that we aim to publish in draft as part of the implementation process, the timing of which will be dependent upon the timing of introduction of the Bill. A full list of statutory instruments, which will be finalised when the drafting of the Bill itself has been finalised, will be published when the Heritage Protection Bill is introduced in Parliament.

29. In addition to the draft guidance on Historic Environment Records and the Ecclesiastical Exemption, published in May 2008, DCMS, CLG and English Heritage will also be publishing a range of guidance, from the point of introduction of the Bill up to its implementation. The first stage in this process will be a draft PPS for the Historic Environment, which will be published by the end of 2008.

Recommendation Three

The Government must prioritise the revision of PPGs 15 and 16 to ensure that the new guidance on planning policy can be implemented at the same time as the Bill. It would be unsatisfactory for the heritage sector to be consulted on the draft Bill without also being consulted on a draft of the revised planning guidance. The sector must have the opportunity to reflect upon the complete package of reforms.

30. It has always been Government's intention that new legislation should be accompanied by a revised and updated statement of planning policy which promotes informed conservation of our cultural heritage and the realisation of its socio-economic and environmental benefits. Mirroring the unified approach proposed for the statutory heritage protection system, it is intended that the policy elements of PPG15 (Planning and the Historic Environment) and PPG16 (Archaeology and Planning) will be reviewed and combined in a single Planning Policy Statement for the Historic Environment, and that this will be supported by a range of practitioner-oriented guidance. CLG, DCMS and English Heritage are working together with a view to publishing a draft of the new PPS by the end of 2008; further guidance will follow. Engagement with the heritage sector and other stakeholders is a key part of this process – we wish to capitalise on the lessons learned by those concerned with implementation of the longstanding policies set out in PPG15 and PPG16.

Recommendation Four

We recommend that the Government ensures that the role of statutory consultees such as the Theatres Trust is properly incorporated into the heritage protection reforms in addition to their existing role in the planning system.

31. The Government has welcomed comments received from organisations that have put forward a case for their greater involvement in the heritage protection system. In the case of the Theatres Trust, DCMS has been constructively engaged with them and we agree that there is scope for amendments to the Bill to enable the Theatres Trust to participate more fully in the heritage protection system. For example, a number of provisions will be redrafted to ensure that the Theatres Trust is capable of being included as a statutory consultee, in relation to processes and decisions affecting theatre buildings.

Recommendation Five

The Minister's claim that the Bill will be "pretty cost neutral" is not borne out by the evidence we received from those who will ultimately implement it. The decision taken by DCMS amongst others to review the current cost estimate casts further doubt on this claim. We strongly recommend that the Government ensures that the revised impact assessment gives a more realistic estimate of costs. The Government must heed the warnings from the sector that an inadequately resourced Bill could be a backwards step for heritage protection. It should proceed with the Bill, but only if it is fully aware of, and willing to meet, its full cost.

32. The Impact Assessment published alongside the draft Bill looked specifically at the financial and non-financial costs and benefits that those provisions would bring to different groups compared to the current situation (or ‘base case’). The final figure of £1.72 million over five years represents the estimated net financial cost which balances out new burdens on local authorities and National Park Authorities, additional investment by English Heritage, and savings made by DCMS and local planning authority historic environment services through a new streamlined heritage protection system. £1.72 million does not equate to the amount of investment that the Government and English Heritage intends to invest in ensuring the new system can be implemented effectively. This figure is much higher. The new burdens for local authorities and National Park Authorities identified in the current Impact Assessment, namely the unified consent regime and the new HER duties, amount to just over £4.34 million over 5 years, which Government is committed to funding. Furthermore, around £2 million is being invested by English Heritage for a training and capacity building programme, plus the £632,000 shown as a one-off transitional cost for implementing the new HER duties.

33. We are aware that a number of organisations challenged the cost estimate in the Impact Assessment, arguing that, for example, up to £100 million was needed for heritage. These estimates appear to be guided not by an analysis of the specific provisions of the Heritage Protection Bill itself (which falls within the scope of an Impact Assessment) but rather from an estimate of funds desired to raise the overall standard of excellence in the provision of services in the wider historic environment and local government sectors. On the other hand, organisations such as the Institute of Field Archaeologists were generally content with the figures quoted, stating in their response that “the IFA broadly agrees with the assumptions, sensitivities and evidence base set out in impact assessment and therefore has no reason to believe that the costs and benefits presented are inaccurate” and “we do not believe that the transfer to local authorities of responsibility for issuing consents for designated archaeological sites (representing less than 2% of the assets on Historic Environment Records) will present a substantial additional burden.”

34. Bearing in mind the range of views on the figures quoted in the draft Impact Assessment, the Government welcomed the opportunity to sit on a working group convened by the LGA to look at the figures published in the draft Impact Assessment and investigate their robustness with a view to seeing whether any further costs or savings could be identified and quantified. In addition to LGA and DCMS, the group comprised representatives from English Heritage, Communities and Local Government, the Association of Local Government Archaeological Officers and the Institute of Historic Building Conservation. The findings of this working group will be sent to the Select Committee and will feed in to the Impact Assessment that will accompany the Heritage Protection Bill on introduction.

35. The final version of the Heritage Protection Bill will contain clauses that were not published in the draft Bill, and clauses that will have been revised since publication of the draft, so the Impact Assessment will, of necessity, need to be revised. The costs and benefits of these new provisions will be explained and costed in the new Impact Assessment.

Recommendation Six

We find the comments by DCMS and English Heritage that there is unlikely to be a shortage of conservation officers in local government in future years astonishing. There is already a shortage of conservation officers in the country and, aside from English Heritage, the sector appears united in its recognition that there will be not be the staff with the necessary skills to replace existing conservation officers once they retire. The statistics provided by the IHBC would seem to support this finding. We urge the Government and English Heritage to reconsider their approach to this matter. Conservation officers, in sufficient numbers and with adequate training, will be critical to the successful implementation of the Bill. We recommend that the Government sets out a strategy for maintaining sufficient numbers of conservation officers with the necessary skills.

36. The heritage protection system set out in the draft Bill is built around the unification of two different statutory regimes for the protection and management of terrestrial heritage – the Listed Building regime, which is currently largely implemented at local level by Conservation Officers, and the Scheduled Ancient Monument regime, which is largely managed by DCMS and English Heritage (although the protection and management of non-scheduled, but nationally important, archaeology is implemented at local level by Archaeological Officers); planners, too, are involved in the management of heritage protection at local level. When the new legislation is implemented, there will be a need for greater integration of separate professions and cross-fertilisation of skills and new ways of working to ensure successful delivery on the ground. That is why English Heritage is rolling out a programme of training and capacity building so that there will be sufficient skills at local level, for Conservation Officers, Archaeological Officers and planners. Government and English Heritage are continuing to work with all professional bodies to ensure local planning authorities will be ready to implement the new heritage protection regime.

37. With regard to the specific points raised about the loss of Conservation Officers, it remains Government's view that information about the number of historic environment professionals employed by local planning authorities is limited and does not enable long term trends to be identified. While the annual rise in archaeological staff in local planning authorities is tracked by survey data, with the exception of the Quantifying Local Authority Conservation staffing survey undertaken in 2006, similar detailed figures on the numbers of conservation officers is difficult to find.

38. Government understands that recent figures from the Institute of Historic Building Conservation indicate that there is broadly the same number of members in the 40-45 age range as there is for each of the five cohorts up to the 60-65 range, after which it tails off. This would seem to imply a stable situation for the next 20+ years, but it is an imprecise indicator as not all local authority staff employed in buildings conservation are members of the IHBC, while IHBC membership also includes people employed outside local authorities and in non-conservation specialisms. We believe the data to undertake analyses of the staff resource is currently not sufficiently robust to allow for meaningful results to be forthcoming or conclusions to be drawn.

39. To ensure that data is up to date and directly comparable, English Heritage is commissioning updated figures for local authority conservation and archaeological staff, so that decisions about the level of need, and any capacity-building which may arise, can be taken in the light of more robust data. These data will provide a baseline from which changes during and after the implementation of HPR can be measured. The figures will be available this Autumn. Government will review its position when this information becomes available.

Recommendation Seven

We recommend that the Impact Assessment is revised to provide greater clarity on who will receive training, and by whom, as part of the reforms to be introduced by the Bill.

40. The Impact Assessment referred to English Heritage's commitment to cover the cost of a training and capacity building programme to ensure that the sector had the right skills, capacity and knowledge of the new system so that a smooth transition could be made from current regime to new ways of working. In their submission to the Select Committee, English Heritage was in a position to state that £2.2million had been allocated to this programme, which breaks down as follows:

	2008/09 £k	2009/10 £k	2010/11 £k
4 Pilot Training Courses for LPA.s and the sector	50		
1000 x 5 basic training days for LPA and the Sector		300	200
1000 x 2–4 advanced training days for LPA and sector			800
Development of e-learning packages @10K	20	50	60
Website System enhancement	10	20	100
Commissioning Training Needs Assessment	60		
Support costs – leaflets, seminars, literature etc.	20	30	40
Redeployment of specialist staff resource to support training programme	100	170	170
Totals:	260	570	1,370
Total over three years		£2.2M	

Recommendation Eight

We recognise that Heritage Partnership Agreements (HPAs) have, in a limited number of cases, offered significant cost savings. However, we are not convinced that a robust business case for the widespread introduction of HPAs has yet been demonstrated. We therefore recommend that the number of HPAs is restricted until there is more consistent evidence to justify their wider implementation. We welcome the statement from English Heritage that HPAs may only be introduced with the agreement of the relevant local authority. Nevertheless, the Government will need to define very tightly the type of estates which may be considered for HPAs to ensure that inappropriate applications are not an unnecessary drain on local authority resources.

41. Heritage Partnership Agreements (HPAs) are voluntary in nature – the Heritage Protection Bill does not contain any provisions that compel parties to adopt a partnership agreement. What the Bill does is to provide a statutory framework for such agreements and a means by which specified works can be dealt with under the class consent system. This will ensure that repeat Heritage Asset Consent applications for works specified in an agreement need not be made, thereby reducing the burden on local planning authorities and enabling better management of heritage assets (see also Issue Eight below).

42. Because of the voluntary nature of HPAs and the need for initial investment (as described in the evidence submitted to the Committee) we believe that, to a certain degree, they will be self-limiting and accordingly there will not be any need to restrict their adoption. There will, however, be a need for best practice guidance and training for those wishing to participate in HPAs. As stated in the Heritage Protection White Paper, English Heritage will publish guidance on developing and managing HPAs for owners, local planning authorities and other interested parties, before the legislation is implemented. English Heritage has also recently conducted the first training workshop on Heritage Partnership Agreements, and a series of four more are planned for January and February 2009.

43. While many respondents to consultation on the draft Bill clearly welcomed the introduction of HPAs and Government is firmly of the view that they are capable of delivering significant benefits in terms of improved understanding and management of heritage assets as well as monetary savings, we acknowledge the concerns of the Committee with regard to presenting a clearer business case for the benefits of HPAs. We will continue to review the cost/benefit estimates of HPAs using data from the first round of English Heritage HPA pilots, and look forward to receiving further information on the next tranche of pilots.

44. 17 new pilots have been started this year, due to be completed by the end of 2008/09. They seek to test aspects of new approaches to new designation and the management regimes and issues arising from it, in particular the application of HPAs in a wide range of situations. Outcomes are expected to include examples of best practice with wider applicability; tested models for effective partnership-based management of the Historic Environment; and quantified examples of more effective focusing of resources. All completed HPA pilots will include an evaluation of baseline costs and resultant savings, both monetary and in time spent.

The full list is:

North East	Belsay Hall, Northumberland (EH property) Byker Estate, Newcastle
North West	Goodshaw Chapel, Lancashire (EH property) Lancaster Canal
Yorkshire and Humberside	Roche Abbey, Yorkshire (EH property) Pocklington Canal, East Yorkshire
East of England	Burgh Castle, Norfolk (EH Property) Orfordness, Suffolk
East Midlands	Bolsover Castle, Derbyshire (EH Property) Lincoln Castle
South East	Portchester Castle, Hampshire (EH Property) Canterbury Cathedral, Kent
London	London Fire Brigades
West Midlands	Wroxeter, Shropshire (EH Property) Sutton Park, Birmingham
South West	Old Sarum, Wiltshire (EH Property) Guildhall, Bath

Recommendation Nine

Neither DCMS nor English Heritage presented any evidence that they have reviewed the operation or effectiveness of current enforcement powers. Nor do they appear to have considered any amendments to the legislation which would improve the operation or effectiveness of these powers or reinforce the guidance published by DCLG. We consider that such a review should be conducted as a matter of urgency and the results published with a view to improving the operation of the legislation.

45. The draft Heritage Protection Bill maintains the current levels of protection for designated heritage assets and the current mechanisms for addressing wilful negligence and illegal works – enforcement notices, repairs notices, and compulsory purchase. We acknowledge the Committee’s concerns regarding heritage at risk and whether the enforcement regime is sufficiently robust and well-used as to address that risk. As Baroness Andrews noted in her introduction to the Department for Communities and Local Government’s *Best Practice Guidance on Listed Building Prosecutions* (December 2006), “evidence suggests that whilst the mechanisms are in place for listed building enforcement, they are not widely used”. However, while it may be the case that existing enforcement powers are not widely used, we believe that they are the right powers. Government wants to keep the right balance between enabling protection and punishing illegality and wilful neglect – the provisions in the Bill reflect that balance.

46. For example, there may be a number of reasons why a building may be at risk, some of which may be best addressed through enforcement, and some through other means. Wilful neglect or illegal works by the owner, for example, may be best addressed through enforcement or prosecution, but lack of knowledge as to how best to protect a building at risk or maintain a building so that it does not fall into the “at risk” category, may be best addressed through education and access to guidance and advice from organisations like English Heritage. Government believes that some of the Bill’s provisions – like HPAs – and the general ethos of the heritage protection reform programme with its focus on pre-application discussion and greater partnership, should lead to fewer problems that need to be resolved through enforcement. In addition, it is intended that on introduction, the Bill will provide powers to implement a civil sanctions regime, in line with the provisions of the Regulatory Enforcement and Sanctions Act 2008. This will provide regulators with increased flexibility and proportionality in dealing with cases where offences have been committed.

47. We recognise that enforcement powers will, however, need to be reinforced by guidance. As indicated in paragraph 45 above, guidance to local authorities on how and when to exercise their enforcement powers was last published by CLG in December 2006. Prior to the implementation of the Heritage Protection Bill, this will need to be revisited to take account of the terminology and structure of the new regime. Government will take the opportunity, as part of consultation on this new draft guidance, to review the operation of the current enforcement powers and how well they are understood at local authority level.

Recommendation Ten

We take the view that this additional stage of consultation would be likely to render the enforcement powers even less effective than at present and recommend that this requirement be removed.

48. We are grateful to the Committee for pointing out that the requirement in Clause 130 that in England the local planning authority must consult English Heritage and in Wales, Welsh Ministers, before issuing an Historic Asset Enforcement Notice is an unnecessary stage in enforcement proceedings, which is likely to delay matters. Accordingly, it will be removed from the Bill prior to its introduction.

Recommendation Eleven

The Bill represents a significant opportunity for reform, but its incompleteness and the absence of the associated secondary legislation has left the Committee guessing about whether important issues may have been missed by DCMS and DCLG which might otherwise not be evaluated again for many years. We therefore recommend that the two departments review a number of issues brought to our attention in the submissions, but not referred to elsewhere in this report.

49. Paragraph 44 of the Report lists fifteen further issues chosen by the Select Committee from the evidence received. The Government will respond to these individually as set out below:

Issue One

Examination of the potential to incorporate clauses within the Bill fostering the role of preventative maintenance of heritage assets before their condition requires statutory intervention to prompt repair.

50. The Heritage Protection Bill does not contain provisions imposing a duty of care, or a requirement for preventative maintenance, on those responsible for registered heritage assets, and we do not intend to make any changes to include such provisions. The Bill does, however, clearly set out the responsibilities of those involved in managing the historic environment, and the penalties involved for those who fail to adhere to their responsibilities. A requirement to undertake preventative maintenance would not bring any additional benefits, as a failure to undertake this requirement could only be addressed through identification of neglect, which is covered by the provisions for repairs notices. Government believes that we need to strike a balance between imposing burdens on public bodies and private individuals, and making sure that we protect and manage our heritage in a way that enables us to pass it on to future generations, through legislation, guidance, training and education. The Heritage Protection Bill strikes that balance through its provisions for consent and enforcement, and new online Registers, which will provide owners with a greater degree of information on what constitutes the special interest of individual assets.

Issue Two

Establishment of a clearer context for the involvement of the national museums and the voluntary sector (including local civic and amenity societies, historical and archaeological groups) by incorporating the word “organisations” – as well as individuals – into the category of those with special knowledge or interest to assist heritage authorities.

51. Clause 9 of the draft Bill sets out those categories of individual and organisation which should be formally consulted by English Heritage (in England) and Welsh Ministers (in Wales) before including, amending or removing a register entry. As drafted, the Bill allows for specialised historical and archaeological groups to be represented through the National Amenity Societies, which include, among others, the Civic Trust (which represents 700 smaller voluntary organisations), the Council for British Archaeology, the Georgian Group, the Victorian Society and the Twentieth Century Society. Furthermore, the use of the word ‘person’ in subsection (3)(e) enjoys its usual wide legislative meaning of individual and body, both corporate and unincorporated, which includes voluntary organisations of the kind referred to by respondents. There is therefore no need to amend the drafting.

Issue Three

In the absence of detail about local designation in the draft Bill; review of the case for a statutory duty upon local authorities to develop and maintain local lists of heritage assets.

52. The Bill contains provisions to introduce a statutory basis for the identification of heritage structures and open spaces with ‘*special local interest*’ (i.e. special local historic, archaeological, architectural or artistic interest), but it does not impose a statutory duty on local planning authorities to develop and maintain local lists. Local designation provides communities with an opportunity to identify and manage those aspects of their heritage that are important to them, and we believe that it is appropriate that the use of local designation powers will be at the discretion of local planning authorities who are aware of and responsive to their local communities rather than as a centrally imposed statutory duty.

53. By placing local designation on a statutory basis we recognise that we are introducing formal stages to the local designation process, but these steps will help to ensure that the identification and management of assets with local special interest takes place with a degree of transparency that is proportionate to the additional controls being introduced.

Issue Four

Review of the role of the National Amenity Societies to ensure they are notified about applications to demolish heritage structures, not just in cases of new designations.

54. Clause 103 of the draft Bill gives the Secretary of State and Welsh Ministers the power to make regulations governing the procedure for dealing with Heritage Asset Consent applications, and clause 86 requires that any works resulting in the demolition or destruction of a registered heritage structure (amongst other things) will require such consent. The regulation-making power in clause 103 essentially replicates the current direction under s15(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The direction under the 1990 Act in Circular 01/2001 as amended by 09/2005 (DCMS 01/2005)), requires local planning authorities to notify the national amenity societies of certain descriptions of applications for listed building consent; regulations under Heritage Protection legislation will continue the effect of the current provision.

Issue Five

Greater clarity about the role of the National Amenity Societies in the scrutiny of Heritage Partnership Agreements.

55. There are already provisions in the draft Bill for National Amenity Societies to be involved in the scrutiny of Heritage Partnership Agreements through clause 159(3)(a) which enables them to be consulted prior to the making or varying of a Heritage Partnership Agreement where appropriate, and the regulation-making powers in clause 159(4)(a) which enables people and organisations to be specified as required consultees.

Issue Six

The incorporation of appropriate recognition (rather than the abolition of) Areas of Archaeological Importance (AAIs).

56. Government is grateful for the respondents to both the Select Committee and the Department who have highlighted the potential loss of protection for those nationally designated Areas of Archaeological Interest under the proposal, set out in the White Paper, to revoke that particular designation. We have explored whether it would be possible to maintain the levels of protection if the AAI designation were removed, and do not believe it would. Government is committed to retaining current levels of protection, and is continuing to work with English Heritage to find the best solution.

Issue Seven

Revocation of the current Class Consents Order as outlined in the Heritage White Paper for Class 1 consents relating to agricultural, horticultural and forestry operations on (former) scheduled ancient monuments.

57. The 'Class Consents' system currently applies only to Scheduled Ancient Monuments. It gives consent for certain categories of works to be undertaken and so, for those categories of works, removes the need to apply for Scheduled Monument Consent on a case by case basis. The Heritage Protection White Paper included a commitment to revoke the class consent for agriculture (CC1), acknowledging that it permits the destruction of nationally important archaeological sites – typically through ploughing and subsoiling.

58. The Bill provides for an order making power for the Secretary of State and the Welsh Ministers to grant, vary and revoke class consents in relation to the new Heritage Asset Consent (HAC) which merges Scheduled Monument Consent with Listed Building Consent. Government does not propose to introduce a Class Consent for agriculture in relation to assets designated following commencement of the Bill, but recognises that there is a transitional issue concerning

former Scheduled Ancient Monuments that are currently subject to cultivation under the terms of CC1. As part of its Heritage at Risk initiative, English Heritage will therefore initiate a rolling programme to identify those assets likely to benefit most from prioritised withdrawal from CC1, and will seek to negotiate alternative management solutions with their owners (such as an Environmental Stewardship scheme or a Heritage Partnership Agreement), as an alternative to returning such assets to the standard consents regime.

Issue Eight

Consideration of a Class Consents procedure within the Bill's provision for Heritage Partnership Agreements.

59. Clauses 157-160 of the draft Bill make provision for statutory management agreements, to be known as Heritage Partnership Agreements (HPAs). Where HPAs contain provisions relating to specified works to registered heritage structures, it is intended that these works will have HAC (for the parties to the HPA) by way of a class consent order made under clause 93. The Bill is currently drafted to enable HPAs to operate by way of a class consents procedure.

Issue Nine

Review of the registration of open spaces as heritage assets in England to accord with the wider definition in Wales.

60. Government is committed to maintaining current levels of protection through the replacement of existing legislation with the new Heritage Protection Bill. Accordingly, as at present, the Heritage Protection Bill will recognise and protect those designed landscapes of special interest by including them in the Heritage Register and making the desirability of preserving the registered heritage structure or open space and its setting a material consideration in planning decisions.

61. Since this would be a Bill for England and Wales, it therefore makes provisions for Landscapes of Historic Interest in Wales which are currently registered to remain registered under the new regime. The Register of Landscapes of Historic Interest in Wales already exists and comes in two volumes describing 58 landscapes in Wales that are of outstanding or special historic interest. These historic landscapes are inseparable from natural scenic landscapes but they serve to highlight the physical evidence of past ages of all periods.

Issue Ten

Review of the role of the DCMS National Historic Ships Unit in relation to the assignment of responsibility for designating marine assets to English Heritage.

62. The draft Heritage Protection Bill does not contain provisions to assign responsibility for designating marine assets to English Heritage. As at present registration decisions will be taken by the Secretary of State, and will remain discretionary. The Bill also contains provisions for English Heritage (in most cases) to issue licences authorising activities in a registered marine heritage site that would otherwise be prohibited.

63. The draft Bill integrates the protection of marine heritage sites with the terrestrial heritage protection system in a unified register. The protection currently available under the Protection of Wrecks Act 1973 is limited to vessels lying wrecked on or in the seabed in UK territorial waters. The new marine regime will apply to UK territorial waters adjacent to England and Wales and will enable a broader range of assets to be registered, from submerged lithic scatters to wrecked aircraft, as well as continuing protection for designated wrecked vessels.

64. National Historic Ships is an Advisory Non Departmental Public Body advising the Secretary of State for Culture, Media and Sport on national historic ship preservation and funding priorities. It advises the Heritage Lottery Fund and other public funding bodies on preservation priorities and individual applications. It also acts as a focus for advice on aspects of the preservation of

historic vessels and maintains the National Register of Historic Vessels database. It does not have the expertise or resources to undertake the registration of marine heritage sites, which extend protection to a broad range of assets that is wider than just vessels, or to administer the associated licensing arrangements.

65. We have no plans to review the role of National Historic Ships with regard to the operation of provisions for the protection of registered marine heritage sites under the Heritage Protection Bill, but we do recognise that there are unresolved issues with regard to ships on the National Register of Historic Vessels and are happy to continue our ongoing and productive dialogue with the Advisory Committee, National Historic Ships with a view to assessing the specific needs of these assets and developing an appropriate and practicable regime for their protection.

Issue Eleven

Greater clarity to statutory definitions including those related to “national importance” rather than “special archaeological importance”; “fixtures and fittings” rather than definition by case law; “special interest” for historic assets of both national and local interest; and terminology relating to earthworks, archaeological remains and battlefields so that metal-detector users can better understand their legal obligations (e.g. under the Portable Antiquities Scheme).

66. Under the provisions of the Bill, English Heritage and Welsh Ministers are required to publish criteria by reference to which they will decide whether an asset is of special architectural, archaeological, historic or artistic interest, and they will also publish guidance for local authorities on determining criteria for special local architectural, archaeological, historic and artistic interest. English Heritage are also working on a series of Selection Guides for a range of asset types, which will help to inform the wider public. English Heritage and DCMS have already begun work on guidance for metal detectorists, building on *Our Portable Past*, which will help them to understand their obligations under the new heritage protection legislation. These publications on special interest and metal detecting will be issued before the Heritage Protection Bill comes into force.

67. Definitions in legislation will always be subject to interpretation by the courts, and therefore informed by case law. The current understanding of whether an object is a fixture or fitting is determined on a case-by-case basis, in the light of existing case law – we have no plans to move towards a more rigid or broad definition through amendments to the Heritage Protection Bill.

Issue Twelve

Review of appropriate buffer zones for World Heritage Sites in circumstances where conservation area designation is not appropriate or likely to be an ineffective means of planning control and where DCLG needs to provide context for this through Local Development Frameworks.

68. A consultation document on a joint CLG/DCMS draft Circular on World Heritage Sites was issued in May and ran until 22 August 2008. The Circular meets a commitment in the Heritage Protection White Paper to “*recognise in national policy the need to protect World Heritage Sites as sites of outstanding universal value, and – make more prominent the need to create a management plan for each WHS, including, where needed, the delineation of a buffer zone around it.*”

69. The Consultation Paper also set out proposals to amend the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). This change would put WHS on the same footing as other protected areas such as conservation areas and areas of outstanding natural beauty. The amendment of the GPDO will curtail permitted development rights for development in WHS and aims to protect WHS from adverse cumulative effects of smaller-scale development. The amendment came into effect on 1 October.

70. CLG intends to publish the Circular (taking into account responses received) in the autumn and will publish an analysis of the consultation responses by the end of the year.

71. In the light of responses submitted to the DCMS during pre-legislative scrutiny, the Report of the Committee, and respondents to the joint DCMS/CLG consultation referred to above, Government also intends to amend Clause 155 of the published draft of the Bill so that the duty on local planning authorities to take registered structures and registered open spaces and their settings into account when determining planning applications will be extended to include World Heritage Sites. We believe this will introduce an appropriate level of consideration of World Heritage Sites, and their settings, in planning decisions, and is in line with the existing advice in Planning Policy Guidance Note 15. We, and English Heritage, will be discussing the implications of this decision further with the relevant LPAs prior to implementation of the legislation.

Issue Thirteen

Recognition under the criteria for justifying the designation heritage assets of the “technical interest” (of engineering structures) in the same way that “architectural interest” recognises the separate built-environment disciplines of architecture from engineering.

72. The Heritage Protection Bill sets out four statutory criteria for use in determining whether heritage structures or heritage open spaces should be registered: special historic, archaeological, architectural or artistic interest. These are the only criteria on which a decision on whether to register can be made, and we have no plans to add to them.

73. In the same way that Principles of Selection under PPG15 currently provide further detail on what may constitute that ‘special’ interest under the Planning (Listed Buildings and Conservation Areas) Act 1990 and Annex 4 of PPG16 does likewise in relation to the Ancient Monuments and Archaeological Areas Act 1979, so replacement guidance will be issued to support the criteria under the Heritage Protection Bill. Since a registrable structure specifically includes machinery, we anticipate that the guidance will cover special historic, archaeological, architectural or artistic interest as it pertains to machinery.

74. English Heritage has already published selection guides on Industrial Buildings, Transport Buildings, and Utilities and Communications Buildings, amongst other building types, in order to develop understanding of designated buildings and structures in an engineering context, and to offer insight into designation decision and where ‘special interest’ may lie.

Issue Fourteen

Further consideration of the designation of Ancient Trees as heritage assets as outlined by arboricultural organisations on the basis of their age and close association with people and events; and identification of responsibility within central government for the establishment of a national record of these assets.

75. The Heritage Protection Bill does not contain any specific provisions to register and protect veteran trees and we have no plans to change this.

76. Under current legislation, trees of special historic interest may be recognised within the heritage protection system when they form part of registered parks or gardens or conservation areas. Furthermore, trees of special historic interest within SSSIs can be protected through consultation and regulation of site management. The SSSI series includes the majority (if not all) the most important concentrations of veteran trees (e.g. the New Forest, Windsor, Sherwood, Epping etc). Trees can also be protected through Tree Preservation Orders.

77. The contributions that individual trees, hedgerows made up of trees, areas of ancient woodland etc. make to the historic character of landscape are already taken into account in the process known as Historic Landscape Characterisation (HLC). HLC is sponsored by English

Heritage and is currently in the final stage of being rolled out across England. Its applications include informing spatial planning and land management strategies.

78. We believe that trees of special historic interest are appropriately protected through planning, heritage protection and environmental protection regimes and an additional register of trees of special historic interest with an additional level of statutory protection through a consents or licensing regime (as for registered heritage structures and marine heritage sites) in the Heritage Protection Bill is not required. The introduction of a separate national register of trees of special interest, based on such wide-ranging criteria as ancient, cultural, historical, champion and rare, is not something for the Heritage Protection Bill, but is something better considered by areas of Government responsible for the natural environment and local authorities. The first stage in developing a strategy for the future development of LA tree management in England *Trees in Towns II* was recently published by CLG (February 2008). Local planning authorities can also draw on resources such as the Ancient Tree Hunt database compiled by the Woodland Trust with the help of HLF funding (see <http://www.ancient-tree-hunt.org.uk/project/hunt/>), and the range of advice and information provided by the Forestry Commission (see <http://www.forestry.gov.uk/>).

Issue Fifteen

Further review of marine designations in relation to the transfer of the registration of marine designations to English Heritage from the Secretary of State; the identification of appropriate expertise; the reforms of Salvage Law; the relationship to the Receiver of Wrecks; the protection of inter-tidal sites; the encouragement of reporting of marine discoveries to archaeologists; the introduction of Class Consents to obviate the provision for “unintrusive diving”; the introduction of better management through marine HPAs; and recognition of the Maritime Management Organisation as a “relevant” authority with a duty to have regard for registered assets.

79. The marine sections of the draft Heritage Protection Bill arise from years of public consultation. In 2004, DCMS published a marine-specific consultation document *Protecting our Marine Historic Environment: Making the System Work Better*, to which there were 122 responses. Following detailed consideration of the results of that consultation the Heritage Protection White Paper set out Government’s position on marine heritage protection. Bearing in mind the operation of the devolution settlement (responsibility for the historic environment, including out to the 12 nautical mile limit of territorial waters adjacent to Northern Ireland, Scotland and Wales, is a devolved matter) the draft Heritage Protection Bill takes forward the position set out in the White Paper, including the decision not to proceed with a wholesale revision of salvage law.

80. We consider that our provisions to reform the marine heritage protection regime in England and Wales offer the best way of protecting marine heritage assets. The Bill contains provisions to:

- broaden the range of marine heritage assets that can be protected;
- bring greater flexibility to the licensing system;
- place a new duty on the Receiver of Wreck to report information relating to marine heritage to heritage authorities.

81. As mentioned above, the draft Heritage Protection Bill does not contain provisions to assign responsibility for designating marine assets to English Heritage. As at present registration decisions will be taken by the Secretary of State, and will remain discretionary. In general, English Heritage will issue marine heritage licences. We believe these reforms establish the right balance between protecting heritage, promoting good practice among sea-users, and not imposing undue burdens on sea-users.

82. The licensing provisions contained in the Bill are sufficiently broad to deliver the aims of management agreements without the need for a separate statutory framework just for marine heritage partnership agreements. The provision in Clause 198 which enables the Secretary of State

to designate particular marine heritage sites as suitable for unintrusive diving activities will reduce numbers of licence applications and will recognise that some marine heritage sites will be less vulnerable than others. We see no benefit in replacing this power with a Class Consent Order.

83. The Bill clarifies the relationship of the marine and terrestrial registration regimes for heritage assets in the intertidal zone in clauses 71-73. Sites comprising marine assets which are wholly or partly in the intertidal zone, being the area of the foreshore between the high and low water marks of ordinary spring tides, can be registered under either the marine or terrestrial regimes. If the Secretary of State decides not to register the site of such an asset under the marine regime, the asset will be capable of registration under the terrestrial regime. The Bill prevents the Secretary of State from applying the marine regime to a heritage structure registered as part of the terrestrial regime in the intertidal zone. This framework ensures sufficient flexibility in the protection regime so that designation decisions can take into account the most appropriate management regime for a particular marine heritage asset.

84. DCMS is working closely with colleagues in Defra to ensure that the marine provisions in the Heritage Protection Bill and the provisions in the Marine Bill which have a heritage dimension complement each other effectively. Each Bill contains provisions for complementary site specific designations (Marine Heritage Sites and Marine Conservation Zones). These have been designed to allow the most effective management of the asset, be it an historic site or a natural feature. It has always been the intention to operate parallel regimes to protect heritage and natural marine features. Both designation regimes will take account of each other where appropriate.

85. While the draft Marine Bill does not contain proposals specific to the management of marine heritage sites, marine heritage issues will be taken into account in the use and management of our seas under the Marine Bill, e.g.:

- the marine planning proposals will ensure that heritage and cultural considerations will be incorporated into the Marine Policy Statement and marine plans from the start;
- marine plans will be drafted in the light of wide consultation, and relevant authorities such as English Heritage will be involved in marine planning.

86. We do not believe a further review of marine heritage protection is necessary before the introduction of the Heritage Protection Bill.

Issues arising from Public Consultation

87. Many of the points raised in the responses submitted to DCMS during the public consultation on the draft Bill have been covered by the Select Committee and addressed in the responses above, or in the analysis of response to the White Paper consultation. Some, however, we have decided to address through changes to the legislation prior to introduction.

List or Register?

88. Respondents noted their dissatisfaction with the terminology used in the draft Bill. While the language has arisen as a result of the drafting process, to reflect both the breadth and the detail of the concepts and processes we are introducing, the loss of one term in particular has proved particularly unpopular. Recognising that the term 'list' has a long life in our collective memory and has currency amongst the general population in relation to protected heritage, we will replace the term 'register' in the Heritage Protection Bill with 'list'.

Conservation Areas

89. DCMS published draft clauses on conservation areas on 1 July 2008 as a separate consultation exercise and received twenty-eight responses. Many of the responses to consultation highlighted concerns that the proposed consultation arrangements – which are adapted from the Planning (Listed Buildings and Conservation Areas) Act 1990 and refer to the publication of notices and the holding of public meetings – are outdated. We are therefore proposing to incorporate more modern consultation processes in our legislation.

Chapter Four: Draft Cultural Property (Armed Conflicts) Bill: Response to recommendations of the Committee and Public Consultation

90. The Committee made 13 specific conclusions and recommendations, the details of which are set out below, followed by Government's response.

One

We welcome the draft Bill, which was strongly supported in evidence. We believe that it would, if enacted: strengthen the procedures used by the Ministry of Defence when training personnel in respect for cultural property and taking cultural sites into account when planning operations; respond to criticisms that Coalition troops in Iraq did not always follow high standards of behaviour in treatment of cultural property; and encourage more Commonwealth states to sign up to the Convention and the two Protocols.

91. Government is grateful for the support of the Committee for the draft Cultural Property (Armed Conflicts) Bill.

Two

We were struck by the willingness of the Ministry of Defence to embrace the principles of the Convention and its two Protocols. It may well be that the Ministry of Defence harbours reservations about the practicality of observing those principles in time of war; but we note that UK forces already operate in conformity with the Convention and its Protocols. We admire the decision of the Ministry of Defence to formalise its practice and accept commitments under domestic law in relation to respect for cultural property.

92. The Government is grateful for the Committee's comments.

Three

There may be scope for argument as to whether the definition of an ancillary offence in the Bill as drafted would enable the UK to satisfy its obligation under Article 15 of the Second Protocol to comply with general principles of law and international law when establishing criminal offences within domestic law. The Department should either satisfy itself that the present drafting is tight enough or it should draw up new wording corresponding to that used in the International Criminal Court Act 2001.

93. The government is considering the points made and will ensure that the Bill will enable the UK to satisfy its obligation under Article 15 of the Second Protocol.

Four

We believe that clause 5 of the draft Bill should recognise the concept of being "art and part" in the commission of an offence, so as to render it applicable under Scots law.

94. The Department, in consultation with the Office of the Solicitor to the Advocate General, has reviewed the drafting of clause 5 and will amend the clause to include appropriate reference to a person being "art and part" in the commission of an offence.

Five

We believe that the omission of any requirement for authority to use the cultural emblem to identify cultural property undergoing protected transportation was an oversight of drafting which should be rectified. We recommend that the draft Bill should be duly amended.

95. We thank the Committee for their point regarding authority for use of the cultural emblem. In evidence to the Committee the British Red Cross expressed concern that clause 12 would enable a person transporting moveable cultural property to use the emblem without obtaining specific permission. Clause 11 (3) provides for the national authority to grant permission that may be either general or specific. To impose a requirement for a specific permission in every case where cultural property is undergoing protected transportation would be administratively burdensome and may not be practicable in the event of armed conflict. A general permission may be given for particular kinds of use. Where a person wishes to rely on a general permission that person will need to ensure that the use of the emblem is in accordance with the terms of the general permission. Responsibility for authorising the use of the cultural emblem rests with the appropriate national authority.

Six

We draw the attention of the Department to ambiguities and minor inconsistencies in drafting identified by Dr O’Keefe and by the British Red Cross, and published in the evidence accompanying this Report.

96. We thank Dr O’Keefe and the British Red Cross for their comments which will be taken into consideration and where necessary minor amendments will be made.

Seven

We do not see why dealers should be exposed to the risk of prosecution for dealing in property exported unlawfully from an occupied territory when there is no certainty about which territories qualify as “occupied”. We recommend that the Bill should include a requirement upon the Secretary of State to draw up a list of territories occupied since 1954, with periods of occupation defined.

97. An occupied territory is defined in the draft Bill by reference to Article 42 of the Regulations respecting the Laws and Customs of War on Land annexed to the 1907 Hague Convention.

98. To commit the offence a person must be shown by the prosecution to know or have reason to suspect that the cultural property has been unlawfully exported. The burden of proof rests with the prosecution. The proposed legislation does not impose on dealers in cultural property any requirement to carry out checks beyond the normal due diligence that they should undertake for any piece of cultural property that they wish to buy or sell, for example, the Code of Practice for the Control of International Trading in Works of Art. Any dealer who carried out proper due diligence checks would be unlikely to have the necessary mental element to be convicted of a criminal offence.

99. The Government is not aware of any of the 120 States Parties to the Convention that has produced a list of territories that they consider to have been occupied since 1954.

Eight

We believe that it would be wrong for dealers to run the risk of prosecution every time that they accepted an item of cultural property exported from an occupied territory, merely because it was unclear at the time of acceptance whether or not export had been legal. Our preferred solution would be for the draft Bill to be amended so as to adopt the wording used in the Dealing in Cultural Objects (Offences) Act 2003, which requires an element of dishonesty in the dealing if an offence is to have been committed. This would have the merit of consistency with domestic law. However, we acknowledge that the Department doubts whether this could be achieved by a simple amendment to the draft Bill as it stands. We recommend that the Department should make a definitive statement on whether there is any way that a requirement for a dealer to have shown dishonesty could be introduced into

the offence of dealing in unlawfully exported cultural property set out in clause 18 of the draft Bill, whether through a simple amendment to the draft Bill as it stands or through the revision suggested by the British Art Market Federation.

100. The Committee recommended that, to be committed, an offence under clause 18 of the Bill should require an element of dishonesty on the part of the person dealing in cultural property. The Government has taken this suggestion and the concerns of the British Art Market Federation and others into account. The Government notes that the current drafting of clause 18 states that the criminal offence can only be committed by a person who “know[s] or [has] reason to suspect that [cultural property] has been unlawfully exported”. The Government considers this describes the mens rea of the offence and there is no reason to add a specific reference to dishonesty. Therefore, upon careful consideration, the Government believes that the current draft of the Bill should stand.

Nine

If it proves impossible to introduce a requirement for dishonesty in dealing, for an offence to have been committed under clause 18 of the draft Bill, we recommend that the Department should examine whether the definition of “acquires” in the draft Bill could be tightened, to exclude acceptance of a cultural object for the purpose of performing due diligence.

101. The Committee suggested that the definition of “acquires” in Clause 18 of the Bill should be narrowed to exclude acceptance of a cultural object for the specific purpose of conducting due diligence. The government remains unconvinced by the argument that due diligence checks cannot be effectively carried out unless an object has been acquired. The Code for Crown Prosecutors requires the prosecutor to consider whether prosecution would be in the public interest. Generally, it is unlikely to be in the public interest to discourage a person from reporting the matter where that person has acquired an object in good faith and subsequently discovers it has been or has reason to suspect it may have been unlawfully exported.

Ten

We welcome the steps being taken by the Ministry of Defence to ensure that areas of cultural significance are taken account sooner when planning operations. We recommend that the Ministry of Defence should undertake a benchmarking exercise to take note of good practice by other states’ armed forces in taking cultural property and sites into account. We also urge the Ministry of Defence, in the light of the continuing damage to Iraq’s cultural heritage since the invasion, to bear in mind the need to provide adequate protection for cultural sites in the aftermath of any military operation, not least from the local population.

102. The Government accepts the Committee’s recommendation to conduct a benchmarking exercise on other States’ practices. Following ratification, the UK will be under legal obligations in relation to cultural sites, as set out in the Convention and Protocols, when it is a party to a non-international armed conflict or an international armed conflict, and during any period of occupation thereafter (assuming the other State is also a party to the Convention). Currently in Iraq none of these circumstances exist (the UK is not a party to the non-international armed conflict there). In the current circumstances in Iraq, the UK would not therefore have any legal obligations under the Convention (even if the UK had already ratified the Convention). However, as a matter of policy, UK may assist the new Iraqi Government in steps it may wish to take in protecting cultural sites where appropriate and where resources allow.

Eleven

We query the ten-year delay in drawing up guidelines for implementation of a Protocol adopted in 1999, and we recommend that the UK Government and English Heritage should play a more active part in the preparation of those guidelines.

103. The Second Protocol did not enter into force until March 2004, and UNESCO then convened a meeting to draw up guidelines for its implementation. Under UNESCO procedures, only states which are party to the Convention and to the Second Protocol are allowed to participate in such meetings. Officials from DCMS and English Heritage have attended these meetings as observers and have stressed the importance of producing the guidelines rapidly, but have no formal powers to influence proceedings.

Twelve

We believe that a list of cultural property worthy of “general” protection should be drawn up. However, we believe that to include all Grade 2* listed buildings and historic city centres, as some have suggested, would risk significantly diluting its credibility.

104. The government has already published the list of categories of UK cultural property that it considers as worthy of general protection under the convention and does not intend to draw up a list of specific cultural property within those categories. The categories were set out in the Government response, published in October 2006, to the earlier public consultation on the 1954 Hague Convention and comprise the following:

- a. Listed buildings of Grade I status (Category A in Scotland and Northern Ireland)
- b. In England, listed historic parks and gardens of Grade I status
- c. The collections of those museums and galleries that are directly sponsored or funded by government and
- d. The museums, galleries and universities in England with designated collections and, in Scotland, with important collections

105. We agree with the Committee’s view that Grade 2* listed buildings should not be added as a category. It is a simple matter to determine whether any given item of cultural property falls within the stated categories. Drawing up a comprehensive list of specific cultural property is therefore unnecessary and would not be an effective use of resources. A list is not required by the convention and would not be binding on any court.

Thirteen

We recommend that the Government should not bring before Parliament legislation to ratify the 1954 Hague Convention and its two Protocols until:

- i) it is able to present a clear statement on whether it intends to draw up a list of cultural property deemed to be entitled to general protection and, if so, which cultural property will be included in that list; and**
- ii) what the implications for publicly funded bodies are likely to be.**

106. As set out in our answer at paragraph 104 above the Government does not intend to draw up a list of cultural property deemed to be entitled to general protection. The Government’s proposals for categories of UK cultural property were set out in the September 2005 Consultation paper on The 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999.

107. As it is not the Government’s intention to draw up a list of cultural property deemed worthy of general protection there will be no implications for publicly funded bodies in drawing up such a list.

108. In general terms any extra costs incurred by publicly funded bodies (as owners of cultural property) in peace time will be entirely voluntary – such as, for example, if they decide to affix the Blue Shield emblem to their property. There may be some additional costs for a small number of

owners in the event of armed conflict in the UK. It is not, however, possible to quantify the scale of these at present time, as the threat of armed conflict taking place in the UK in the near future is negligible.

Public Consultation

109. DCMS received 5 written responses on the draft Cultural Property (Armed Conflicts) Bill from individuals and organisations (list at Annex B). These were largely duplicated in written evidence sent to the CMS Committee, and have therefore been covered in the responses to the points raised by the Committee.

Annex A: List of respondents to consultation on draft Heritage Protection Bill *

ALGAO
Bath Preservation Trust
Battlefields Trust
Brereton and Ravenhill Heritage Committee
British Institute of Organ Studies
British Property Federation
British Sub Aqua Club
Cambridgeshire County Council
Campaign to Protect Rural England
Cheshire County Council
Christopher McCoy
Church in Wales
City of Durham Council
City of London
Civic Trust
Clark & Willcocks Ltd
Chartered Surveyors
Coseley Civic Trust
Council for British Archaeology
Country Land & Business Association
County Archaeological Service of Oxfordshire County Council
Dartmoor National Park Authority
David Robins
Department for Transport
Derbyshire County Council
Devon Buildings Group
Devon County Council
Dorset County Council (Jurassic Coast Mgt Team)
Dr Mike Hodder
Durham County Council
East Sussex County Council
English National Park Authorities Association
Essex County Council
Friends of Lewes Society
Greater London Authority
Greenwich Foundation for the Old Royal Naval College
Hampshire County Council
Harrogate Borough Council
Hastings Borough Council
Hertfordshire County Council
Historic Houses Association (1)
Historic Houses Association (2)
Hugh Bayley MP
Hull City Council
ICOMOS-UK
Institute of Field Archaeologists (HERs)
Institute of Field Archaeologists (Ecclesiastical Exemption)
Jewish Heritage
Joint Committee of National Amenity Societies
Joint Nautical Archaeology Policy Committee

Joint Response (IHBC, RTPI, RICS, RIBA, POS, CIOB)
Kent Archaeological Rescue Unit
Kent County Council
Lancashire County Council
Lewes District Council
Lichfield District Council
Local Authority World Heritage Forum
London Diocesan Fund
Lord and Lady Kennet
Maldon Conservation Service
Martineau
Mid Suffolk District Council
Montagu Evans LLP
National Council for Metal Detecting
National Federation of Cemetery Friends
National Historic Ships
Network Rail
Norfolk Churches Trust
Office of Public Sector Information
Oil & Gas UK
Peter Pickering
Port of London Authority
Portsmouth City Council
Professional Association of Diving Instructors
Reigate and Banstead Borough Council
Renewable Energy Association
RESCUE
Royal Institute of British Architects
Savills (L&P) Ltd
Sergeant Kemp – Kent Police
Society for the Protection of Ancient Buildings
Somerset County Council
South Downs Joint Committee
Staffordshire Gardens & Parks
Surrey County Council
The Crown Estate
The Law Society
Theatres Trust
Thoroton Society of Notts
Tony Robinson
Transport for London
Trevor Cooper
Twentieth Century Society
UK Association of Preservation Trusts
United Kingdom Cable Protection Committee
Wessex Archaeology (1)
Wessex Archaeology (2)
West Berkshire Council
Woodland Trust/ATF/Tree Council
Worcestershire County Council
Writtle Heritage

*This list does not mention those submissions that were sent to the Committee and copied to DCMS, which have also been considered by officials. A full list of all submissions received by the Committee is published in their Report.

Annex B: List of respondents to consultation on draft Cultural Property (Armed Conflicts) Bill

The British Art Market Federation (BAMF)

The British Red Cross (BRC)

Kevin Chamberlain

The National Council on Archives (NCA)

UK National Commission (UKNC) for UNESCO

Annex C: List of respondents to consultation on draft Conservation Area Clauses

Association of Small Historic Towns and Villages
British Property Federation
British Waterways
British Waterways (II)
Campaign to Protect Rural England
Civic Trust
Country Land & Business Association
English Historic Towns Forum
Grosvenor Estate
Hastings Borough Council
Heritage Link
Historic Houses Association
Institute of Field Archaeologists
Joint Response – RTPI, IHBC, RICS, RIBA, POS and CIOB
Law Society – Planning & Environmental Law Committees
London Borough of Richmond Upon Thames
Natural England
Network Rail
Peak District National Park Authority’s Conservation Officers
Peter Pickering
Planning Inspectorate
Primrose Hill Conservation Area Advisory Committee RIBA (part of Joint Response)
Society for the Protection of Ancient Buildings (SPAB) TfL
Theatres Trust
Wiltshire Archaeological and Natural History Society (HERs Response)
Wiltshire Archaeological and Natural History Society & Campaign to Protect Rural England (Wiltshire Branch)



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