

# NATIONAL HERITAGE BILL 2001

## REGULATORY IMPACT ASSESSMENT

### 1. Purpose and Intended Effect of Bill

1.1 The Bill will broaden the powers of English Heritage in two ways. It will allow English Heritage to trade in overseas countries and it will allow English Heritage to become involved in underwater archaeology in territorial waters adjacent to England.

1.2 Overseas Trading. English Heritage (EH) was established by the National Heritage Act 1983 (NHA 1983). That Act restricts the activities of EH and companies formed by EH exclusively to ancient monuments and historic buildings situated in England, even though there is a demand for EH's expertise, goods and services outside England. Allowing EH and companies formed by EH to undertake these functions in other countries will not only permit those countries access to EH's expertise, but also create the opportunity for EH to generate additional income, and create export opportunities for other suppliers and contractors in the heritage field.

1.3 However, this Bill does not give EH and companies formed by EH, powers to undertake these activities in Scotland, Wales or Northern Ireland. These countries are serviced by their own heritage bodies.

1.4 Underwater Archaeology. The NHA 1983 and the Ancient Monuments and Archaeological Areas Act 1979 (AM&AAA 1979) do not give EH any powers to act below the mean low water mark. This means that EH cannot perform the functions for underwater archaeology that they can for land-based archaeology e.g. providing educational facilities and services, public information and advice; contributing towards the costs of research; giving grants; and entering into certain agreements. It is also not possible for the Secretary of State to direct EH to exercise certain administrative functions in relation to underwater archaeology (in particular, to run the Secretariat for the Advisory Committee on Historic Wreck Sites).

1.5 The Government's Comprehensive Spending Review in 1998 led to the merger of the Royal Commission on Historical Monuments of England with EH. Although the merger has mostly taken place in practice, the assumption of powers to undertake underwater archaeology by EH remains one of the outstanding issues because it requires primary legislation.

### 2. Risks

2.1 Overseas Trading. The most likely way in which EH's skills and expertise would be used in overseas countries would be through consultancy-type projects for either conservation work or information material. There is therefore a risk of EH not being paid either through failure or bad practice by its customers or by its customers being affected by wider circumstances which prevent payment. Mostly these are normal commercial risks which EH faces regularly and is able to guard against so far as it can.

2.2 There is also a risk that, through its size and influence, EH will dominate opportunities and prevent smaller, private-sector organisations from being able to compete satisfactorily and win appropriate contracts. However, the smaller, private-sector organisations presently find it difficult to penetrate overseas markets without a leading organisation to gain entry. Consequently, they would not be competing with EH so much as benefiting as sub-contractors or from follow-up orders. EH already serves on the heritage/museum/tourism sub-group of the Creative Industries Export Promotion Advisory Group (CIEPAG) as the lead body for the sector, and provides support for all organisations wishing to work overseas. We recognise there is a chance that this relationship with private-sector organisations may change as time passes and trade becomes more established.

2.3 A third risk comes from EH diverting resources to lucrative overseas contracts at the expense of work on their English properties or grants to English properties owned by others. Most overseas trading will be self-financing so will not create any financial drain on work in England. EH will continue to receive grant-in-aid from Government as well as self-generated revenue such as admission charges to support its English work. Profit from overseas trading will create additional resources to plough back into work in England.

2.4 A final potential risk to overseas trading comes from exchange rate risk but this can be mitigated by appropriate hedging contracts.

2.5 Underwater Archaeology. There are no additional risks stemming from transferring the administrative functions such as the secretariat for the Advisory Committee from DCMS to EH. DCMS would retain oversight and would retain the ultimate decision-making for the designation of wrecks.

2.6 The risks from EH providing grants, advice and information to underwater archaeology are no different to those it faces in providing such services to land-based archaeology.

### 3 Benefits

3.1 Overseas Trading. EH is a brand respected throughout the world for its expertise, skills and experience in the management, conservation and restoration of the historic environment. EH presently has to turn away requests for its

services outside of England as its legislative powers do not allow it to operate outside England. These new powers would allow it to respond positively to such requests.

3.2 Estimating the number of private-sector companies which would be able to benefit from EH's lead, and the extra business they would stand to make, is extremely difficult. Companies would be drawn from a wide field including, for example, the construction sector, conservation activity, museum services and related suppliers, and tourism related consultancies. Such a broad spectrum makes any assessment or survey unwieldy and disproportionate in cost. Volume of trade is difficult to judge in the current vacuum - only when trading gets underway will a reasonable indication emerge of its potential size. However, it is known through CIEPAG and through consultation exercises (see section 5) that companies are strongly in favour of the move. Furthermore, there is no representative body (eg trade association) for the heritage companies and EH may fill this void to some extent in providing a lead in this work, including being able to bid for European grants for which private companies are excluded from applying.

3.3 Underwater Archaeology. The provisions rectify an anomaly that presently deny those undertaking underwater archaeology from being able to benefit from EH's educational facilities and services, public information, advice, contributions towards the costs of research, and grants. These are all available to land-based archaeology. Those undertaking underwater archaeology include certain universities, individuals doing so on an avocational basis, and a handful of other organisations such as Wessex Archaeology (a company) and the Mary Rose Trust.

3.4 It would also be of benefit if EH had to power to accept a direction from the Secretary of State to exercise certain administrative functions in relation to underwater archaeology (in particular, to run the Secretariat for the Advisory Committee on Historic Wreck Sites and operate the contract to provide diving services on designated wreck sites). The responsibilities of the parallel organisations in Scotland, Wales and Northern Ireland already include underwater work. In England, site designation functions have to rest with DCMS itself; delegation of the supporting administrative functions to EH would permit more expertise to enter the decision-making process and the management of protected wreck sites.

3.5 The Government's Comprehensive Spending Review 1998 led to the merger of EH with the Royal Commission on Historic Monuments of England (RCHME) to create a single organisation capable of acting as the lead body for the historic environment in England. This would cover both the terrestrial and marine environments. Although the two bodies have merged in practice, two issues prevent their full legal amalgamation. One is the powers to undertake underwater archaeology. (The other is the transfer of EH staff in to the Principal Civil Service Pension Scheme.)

#### 4 Costs

4.1 Administrative functions relating to underwater archaeology are currently carried out by DCMS. If EH gained the necessary legislative powers, the work could be passed across together with funding for carrying it out. Thus £340,000 per annum would be transferred to their grant-in-aid allocation (of £110 million this year) from the DCMS baseline. The £340,000 represents the secretariat costs of running the Advisory Committee and the cost of the contract for the provision of diving services which DCMS presently bears. Any grants and other services for underwater archaeology projects would have to come from EH's existing budget. For 2000/01 EH spent £10.6 million on land-based archaeological activity. Its total budget (for all its activities) for 2001/02 is £143 million.

4.2 EH are permitted to retain receipts from the provision of services, the admission to buildings and the sale of souvenirs and to use the money as they wish. Consequently, they would be able to retain receipts from overseas trading activities and retain any profits they achieve. Like other receipts, these must be included in annual estimates and in the statements supporting monthly grant-in-aid claims. Consequently, this activity will not be a cost to the taxpayer: it may provide EH with some additional income to benefit its overall activities.

#### 5 Consultation

5.1 The provisions on Underwater Archaeology have been included in several consultation exercises. The Environment White Paper 1990 said that maritime and land-based archaeology should be treated on an equal footing. This was reaffirmed in the 1996 DNH consultation document on the built heritage, *Protecting Our Heritage*, which received a very positive response from consultees. Finally, it was mentioned in the 1998 consultation on the DCMS proposals for the Government's Comprehensive Spending Review and again received a very positive response.

5.2 Overseas Trading was also included in the 1996 DNH consultation document and the 1998 DCMS Comprehensive Spending Review consultation. In both exercises, the majority of responses were in favour although a few expressed concern that EH should not undertake overseas work at the expense of activities in England, especially funding activities.

#### 6 Monitoring, Evaluation and Compliance

6.1 The Department manages its funding of EH through a Funding Agreement. This contains detailed objectives and targets for its activities in the coming three years in return for the public funding it receives. EH's performance against these is carefully monitored both through the year and at its end.

6.2 There are no new regulations or sanctions to enforce.

#### 7 Summary and Conclusion

7.1 The Bill will give significant new powers to EH and lead to clear potential benefits. It will allow other countries access to EH's acknowledged expertise and skill and lead to valuable export opportunities for British companies. It will remove unnecessary anomalies in the treatment of underwater archaeology and allow underwater archaeology access to the services that EH currently performs for land-based archaeology. It also allows EH to assume certain functions from DCMS and bring its greater expertise to bear on those functions.

7.2 The risks to EH from these new powers are small and there is no cost to the taxpayer. Indeed, the powers may provide EH with additional income to benefit its overall activities. Consultation has shown strong support for these measures. Thus, the overall conclusion is that the potential benefits from the Bill's provisions considerably exceed the likely costs.

## **8 Declaration**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed:

Tessa Blackstone  
Minister for the Arts

Date: 27 November 2001

Contact: Graham Lyndsell  
Department for Culture, Media and Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

Telephone: 020 7211 6933

Email: [graham.lyndsell@culture.gsi.gov.uk](mailto:graham.lyndsell@culture.gsi.gov.uk)