

# PROTECTING OUR HISTORIC ENVIRONMENT: MAKING THE SYSTEM WORK BETTER

## PARTIAL REGULATORY IMPACT ASSESSMENT

### 1. Title of proposal

'Protecting our historic environment: making the system work better'.

### 2. Purpose and intended effect of measure

#### (i) The objective

To update and improve historic environment legislation and make it fit for purpose in the 21<sup>st</sup> century; specifically, to produce:

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

#### Effects of the proposal

The exact form and therefore effects of the proposal will depend on the results of consultation. At this stage the Government is committed to no specific action and is using this consultation to suggest proposals for improving the way in which the system operates, for the benefit of all those involved in the system. The consultation paper seeks views on how best to simplify the existing, piecemeal protection legislation; to make the decision-making process more transparent and remove uncertainty for all those involved in the system; to make the decision-making process more streamlined and efficient; to increase flexibility of management of the historic environment and to ensure rigour in designation decisions.

The effects on individual stakeholders cannot be quantified until the Government decides what action to take post-consultation, but in general we expect to see the following benefits:

- Owners of historic environment assets/applicants for designation: greater transparency and better understanding of why their asset is designated; improved speed of decision-making; more flexible consents suite following designation; formalised appeal process
- Developers, architects etc: greater certainty against which to make business decisions; greater transparency and better understanding of what is important about a particular designated asset; formalised appeal process
- Local authority planners and conservation officers: greater transparency and better understanding of what is important about a particular designated asset; more appropriate consents suite following designation; formalised appeal process; local management of historic assets

## Devolution:

The historic environment is a devolved matter, although England and Wales share some legislation. The Welsh Assembly Government is a partner in the Review, and both it and Historic Scotland have been consulted throughout. The Northern Ireland Office has also been kept informed.

## (ii) The background

The review has identified four major areas for improvement:

- Simplification: The protection systems are complex. New protections have been added in a piecemeal fashion. Few people have a grasp of all parts of the legislation. There are overlaps. Unsurprisingly there are inconsistencies in interpretation. Where there are complex sites, such as a large military establishment, every structure on the site has to be laboriously listed or scheduled individually.
- Openness: Processes are often inaccessible, even secretive. The reasons for listing a particular building are not made clear. There is little encouragement to owners to feel involved.
- Flexibility: Restrictions are placed on owners of protected assets which sometimes serve to alienate them rather than to engage their enthusiasm for looking after their properties. Opportunities for positive dialogue and good planning can be lost. There are lessons from the management of the natural environment and advances in thinking about land use planning and community involvement which have not fully fed through into heritage protection.
- Rigour: In 1970 there were some 90,000 listed buildings and scheduled monuments. There are now about half a million. This is a rich inheritance but a huge stock to manage. Looking ahead we know that only some 3% of the total of listed buildings are from the twentieth century yet about 80% of the nation's stock is post 1900. The system must be robust enough to conserve the best and to continue to take on board changes in what people value without devaluing the currency.

(iii) Risk Assessment

It is not currently possible to quantify numerically the effect of proposals, as the extent of each suggestion is open to debate as part of the consultation process. The Government will take a view following analysis of responses.

<b>Risk</b>	<b>Probability</b>	<b>Effect</b>
Complex and anomalous legislation causes uncertainty about what protections and procedures apply - system unnecessarily confusing for stakeholders	High	Legislation simplified and brought together under one designation regime
Strict criteria for listing limits flexibility to balance the differing needs of stakeholders	Medium	Allowing more discretion and discernment in designation decisions
Overlap of resources and delay in decision making as a result of casehandling in both DCMS and EH	Medium	EH to make designation decisions subject to ministerial oversight (a power to call in most important decisions) and a formal appeal process
Lack of clarity about significant features creates uncertainty about what consents will be granted and how controls will be enforced	High	Statements of significance to identify reasons for designation. Clarity for owners, planners, conservation officers and developers.
Lack of information about decisions not to designate can lead to lack of certainty about how criteria are applied could lead to loss of confidence in the system	Medium	Provision of statement of reasons not to designate
Lack of clarity for owners/tenants about significant features creates uncertainty about what consents will be granted and how controls will be enforced	High	Government to supply owners with comprehensive pack explaining designation and how to maintain

Lack of clarity about exact area included in listing creates uncertainty about what consents will be granted and how controls will be enforced	Medium	List entry to include lines on map showing exact area designated.  Clarity for owners, planners and developers.
Lack of information about applications to designate – - decisions are made without proper consultation with those affected by the decision.	High	Open process with owners (and wider community where appropriate) consulted on applications for designation. Automatic protection applies to feature from receipt of application to ensure it is protected during application process.
Lack of formal appeal process – unclear to stakeholders how to challenge a decision in order to rectify a mistake	Medium	Provision of new right of appeal. Details open to consultation
Anomaly - no statutory provision for owners to enter into management agreements for listed sites (as exists for monuments) opportunity may be lost to introduce a system which would best protect the asset whilst balancing an owners needs	High	Provide statutory power for owners to enter into management agreement for future and maintenance of site. Reduce need for multiple consent applications
Loss of opportunity to protect heritage assets by combining environmental and heritage protection regimes on same land	Medium	Tie-in with DEFRA environmental protection schemes and provide explicitly in statute for joint agreements
Damage to archaeology below ground level as a result of new agricultural processes	High	Tie-in with DEFRA environmental protection schemes
Historic environment not given sufficient weight in developing regional spatial strategies and local development frameworks	High	Provision that regional planning bodies and district/unitary authorities include historic environment issues in drawing up plans

Demand-led development control workload on conservation officers overwhelming	High	Creation of pooled workload of sub-regional level to share knowledge and experience
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### 3. Options

This document is still at consultation stage. The extent of each suggestion is open to debate as part of the consultation process. The Government will take a view on specific proposals, their impact and the suite of options it is minded to take following analysis of responses. It is not possible to calculate specific benefits at this stage, or compare options.

## SUMMARY OF MAIN SUGGESTIONS FOR CHANGE

### Simplifying

1. Single List of Historic Sites and Buildings of England
  - creation of a single List and a single consents process to replace the separate regimes for scheduled monuments, listed buildings, parks and gardens, battlefields, and to include historic areas such as World Heritage Sites. Conservation areas and local lists could form a local section of the List
2. Responsibility for designation
  - Responsibility to pass from the Secretary of State to English Heritage with 4 safeguards: policy and criteria set by the Secretary of State; a call-in power for the Secretary of State; right of appeal; and an annual stewardship account

### Openness

3. Consultation
  - Owners, local authorities, amenity societies, parish councils to be consulted when an item is being considered for listing. Protection to be applied during the consideration period to prevent demolition or damage.
4. Information
  - More comprehensive information for owners of listed property to help them appreciate and maintain their property.
5. Appeal
  - -Opening up decisions to challenge by providing a right of appeal for owners and perhaps others

### Flexibility

6. Criteria and discretion
  - Enabling English Heritage to have some discretion, as they have now for scheduled monuments, to decide whether to list an item

- Enabling English Heritage to consider first whether an item should be recorded rather than listed
7. Management agreements
- Providing in statute the option of a management agreement in place of the consents regime for some owners
  - Providing in statute for joint agreements to cover the natural and the historic environment

### Rigour

8. Statements of significance
- Producing reasons for listing on the face of the listing document and a clear map of what the listing covers; perhaps indicate at listing stage what works would and would not need consent
- 9.
- Ensuring regional and local planning strategies cover the historic environment appropriately
  - Encouraging appraisal and enhancement of conservation areas and community involvement

### Resources

- 10.
- Pooling local resources into sub-regional teams
  - Animating a debate about the skills, knowledge and experience needed to achieve improvements

## **4. Benefits**

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Measure	Benefits
Legislation simplified and brought together under one designation regime	Transparency of system benefitting all affected by it
Allow discretion and discernment in designating	Will enable decision maker to make decision which provides most appropriate solution for an asset. Provides some flexibility to balance the needs of different stakeholders
EH to make the designation decision except for the most sensitive decisions	No "double-handling" of cases – DCMS to concentrate on most sensitive cases only.
Statements of significance to identify	Clarity for owners, planners,

reasons for designation.	conservation officers and developers.
Provision of statement of reasons not to designate	Clarity for owners, planners, conservation officers and developers.  Decisions open to challenge.
Government to supply owners with comprehensive pack explaining designation and how to maintain	Clarity for owners/tenants.
List entry to include lines on map showing exact area designated.	Clarity for owners, planners, conservation officers and developers.
Automatic protection applies to feature from receipt of application. Designation process becomes open with owners/community etc. informed/involved.	Opening up of system to all.  Increased local/community engagement with historic environment.  Greater certainty for business decisions.
Provision of new right of appeal. Details open to consultation	Clarity for owners/tenants.
Establishment of single flexible consent regime, applied at designation point from suite of choices	Increased, flexible system allowing change as appropriate to individual asset.  Increased efficiency of system when future change considered.  Clarity for owners, planners, conservation officers and developers.
Opportunity for owners to enter into management agreement for future and maintenance of site.	Reduction of need for multiple consent applications.  Increased efficiency  More commitment from owners to heritage protection through better understanding of their asset and encouragement of partnership working approach between owners and planners/ conservation officers
Statute providing for joint agreements on environmental and heritage protection regimes on same land	More commitment from owners to heritage protection through better understanding of their asset and joined-up approach to land management and future planning
Tie-in with DEFRA Entry Level scheme to improve protection of archaeology	Reduction of damage to archaeology beneath the ground

beneath the ground.	Clarity to farmers about future management of land.
Provision that regional planning bodies and district/unitary authorities include historic environment issues in drawing up plans	Embedding of historic environment in local/regional strategies.
Creation of pooled workload of sub-regional level to share knowledge and experience	Relieve pressure on staff at local level and offer specialised skills and expertise on which to draw.  Clarity for owners, planners, conservation officers and developers

#### Business sectors affected

Measure	Sector affected
Legislation simplified and brought together under one designation regime	Developers, architects; farming and construction industry;  Local authorities; Non-Departmental Public Bodies (NDPBs); voluntary sector and Non Governmental Organisations (NGOs)  Various sizes
Allow discretion and discernment in designating	Developers, architects; farming and construction industry;  Local authorities; NDPBs; voluntary sector and NGOs  Various sizes
EH to carry out designation	DCMS and EH
Statements of significance to identify reasons for designation.	Developers, architects; farming and construction industry;  Local authorities; NDPBs; voluntary sector; NGOs; owners/tenants  Various sizes
Provision of statement of reasons not to designate	Developers, architects; farming and construction industry;  Local authorities; NDPBs; voluntary sector; NGOs; owners/tenants

	<p>Various sizes</p>
<p>Government to supply owners with comprehensive pack explaining designation and how to maintain</p>	<p>Developers, architects; farming and construction industry;</p> <p>Local authorities; NDPBs; voluntary sector; NGOs; owners/tenants</p> <p>Various sizes</p>
<p>List entry to include lines on map showing exact area designated.</p>	<p>Developers, architects; farming and construction industry;</p> <p>Local authorities; NDPBs; voluntary sector; NGOs; owners/tenants</p> <p>Various sizes</p>
<p>Automatic protection applies to feature from receipt of application. Designation process becomes open with owners/community etc. informed/involved.</p>	<p>Developers, architects; farming and construction industry;</p> <p>Local authorities; NDPBs; voluntary sector; NGOs; owners/tenants; local communities</p> <p>Various sizes</p>
<p>Provision of new right of appeal. Details open to consultation</p>	<p>Developers, architects and construction industry;</p> <p>Local authorities; NDPBs; voluntary sector; NGOs; owners/tenants</p> <p>Various sizes</p>
<p>Establishment of single flexible consent regime, applied at designation point from suite of choices</p>	<p>Developers, architects; farming and construction industry;</p> <p>Local authorities; NDPBs; voluntary sector; NGOs; owners/tenants</p> <p>Various sizes</p>
<p>Opportunity for owners to enter into management agreement for future and maintenance of site.</p>	<p>Developers, architects; farming and construction industry;</p> <p>Local authorities; NDPBs; owners/tenants</p> <p>Various sizes</p>

Statute providing for joint agreements on environmental and heritage protection regimes on same land	Developers, architects; farming and construction industry;  Local authorities; NDPBs; voluntary sector; NGOs; owners/tenants  Various sizes
Tie-in with DEFRA Entry Level scheme to improve protection of archaeology beneath the ground.	Farming industry  Local authorities; NDPBs; voluntary sector; NGOs; owners/tenants  Various sizes
Provision that regional planning bodies and district/unitary authorities include historic environment issues in drawing up plans	Local authorities; Regional Development Agencies (RDAs); NDPBs; voluntary sector; NGOs; Various sizes
Creation of pooled workload of sub-regional level to share knowledge and experience	Local authorities; NDPBs; voluntary sector; Various sizes

### Issues of equity and fairness

Measure	Equity/fairness
Legislation simplified and brought together under one designation regime	Correcting inequalities between different designation systems and the consent regimes flowing from them.
Allow discretion and discernment in designating	Allows more balance between protection of assets and needs of stakeholders.
EH to make decision	Decision made by experts in heritage sector – but balanced by ministerial supervision, call-in powers and a formal right of appeal.
Statements of significance to identify reasons for designation.	Makes system more transparent – more information makes process fairer and makes it easier for owners/businesses to challenge decisions made by the authorities
Provision of statement of reasons not to designate	Makes system more transparent – more information makes process fairer and makes it easier for owners/businesses to challenge decisions made by the

	authorities
Government to supply owners with comprehensive pack explaining designation and how to maintain	Makes system more transparent – more information makes process fairer and makes it easier for owners/businesses to challenge decisions made by the authorities
List entry to include lines on map showing exact area designated.	Makes system more transparent – more information makes process fairer and makes it easier for owners/businesses to challenge decisions made by the authorities
Automatic protection applies to feature from receipt of application (with time limits within which decision must be made). Designation process becomes open with owners/community etc. informed/involved.	<p>Owners have the burden of restrictions placed on their use of buildings before a decision made that they are worthy of protection. But this is balanced by the benefits of more consultation about decision-making, and certainty about time within which decision will be made.</p> <p>Overall this makes system more transparent – more information makes process fairer and makes it easier for owners/businesses to challenge decisions made by the authorities</p>
Provision of new right of appeal. Details open to consultation	A clear procedure for appeals is fairer to those affected by designations making system more transparent. Correcting an inequality which currently favours the decision-making authority.
Establishment of single flexible consent regime, applied at designation point from suite of choices	Correcting inequality where consent regime flowed from category of asset, rather than most appropriate future care.
Opportunity for owners to enter into management agreement for future and maintenance of site.	A fairer system which gives owners more involvement and influence in the management of their own asset.
Statute providing for joint agreements on environmental and heritage protection regimes on same land	A fairer system which gives owners more involvement and influence in the management of their own asset.
Tie-in with DEFRA Entry Level scheme to improve protection of archaeology beneath the ground.	A fairer system which gives owners more involvement and influence in the management of their own asset.

Provision that regional planning bodies and district/unitary authorities include historic environment issues in drawing up plans	Where there is inequality of resources for heritage matters in a local region this proposal ensures that heritage sector has a voice in local planning strategies.
Creation of pooled workload of sub-regional level to share knowledge and experience	Not specific equality issue.

## 5. Costs

### (i) Compliance costs

This document is still at consultation stage. The extent of each suggestion is open to debate as part of the consultation process. The Government will take a view on specific proposals, their impact and the suite of options it is minded to take following analysis of responses. As proposals are wide-ranging it is not possible to calculate specific costs at this stage, or compare options.

### (ii) Other costs

This document is still at consultation stage. The extent of each suggestion is open to debate as part of the consultation process. The Government will take a view on specific proposals, their impact and the suite of options it is minded to take following analysis of responses. It is not possible to calculate specific costs at this stage, or compare options.

### (iii) Costs for a typical business

This document is still at consultation stage. The extent of each suggestion is open to debate as part of the consultation process. The Government will take a view on specific proposals, their impact and the suite of options it is minded to take following analysis of responses. It is not possible to recommend a specific option at this stage.

## 6. Consultation with small business: The Small Firms Impact Test

## 7. Competition Assessment

At this stage, proposals are unlikely to have a significant detrimental effect on competition. However, proposals are still at an early stage and the extent of each suggestion is open to debate as part of the consultation process. The competition assessment will be repeated in the light of responses to consultation and more specific proposals.

## **8. Enforcement and sanctions**

The consultation seeks views about the proposed right of appeal and control mechanisms. The extent of these and to whom they should apply is open to debate as part of the consultation process. The Government will take a view on proposals, their impact and the suite of options it is minded to take following analysis of responses. It is not possible to calculate specific benefits at this stage, or compare options.

## **9. Monitoring and review**

### **10. Consultation**

#### **(i) within Government**

Departments with a major interest consulted include the Office of the Deputy Prime Minister; Department for the Environment, Food and Rural Affairs; Her Majesty's Treasury; Home Office; LCD; Department for Transport and Ministry of Defence. Others have with an interest in domestic affairs have also been consulted.

Agencies consulted include English Heritage; English Nature; Planning Inspectorate

#### **(ii) Public consultation**

Pre-consultation: interviews and focus groups totalling some 300 stakeholders across all sectors

Formal consultation paper widely disseminated in paper and electronic formats. Minimum of 12 weeks consultation period.

## **11. Summary and recommendation**

This document is still at consultation stage. The extent of each suggestion is open to debate as part of the consultation process. The Government will take a view on specific proposals, their impact and the suite of options it is minded to take following analysis of responses. It is not possible to recommend a specific option at this stage.

## **12. Declaration**

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

Signed \_\_\_\_\_

Date