



department for
**culture, media
and sport**

1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its Two Protocols of 1954 and 1999

A Summary of Responses Received to the Government's
Consultation

October 2006

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the quality
of life for all

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

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Chapter 1: Introduction

1. On 6 September 2005 The Department for Culture, Media and Sport (DCMS) launched a consultation 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.
2. The consultation ran for 12 weeks and closed on 2 December 2005. A total of 54 organisations and individuals responded to the consultation. A breakdown of respondents both by the sector they represent and their geographical location within the United Kingdom is given at Annex A.
3. A copy of the full responses from each organisation can be accessed via the DCMS website at www.culture.gov.uk/cpu/hagueconsultresponses
4. We are extremely grateful to all the organisations and individuals who took the time to complete the questionnaire. The responses received have been invaluable in helping us to decide how to take the issues identified forward.

1.1 Summary of Consultation

5. The Hague Convention and its Protocols raise a number of interesting but complex questions concerning how best their obligations should best be put into practice in the UK. The purpose of the consultation was to allow key stakeholders to make their views known in order to influence the development of the UK's implementation plan for the Hague Convention and its two Protocols, prior to the UK Government ratifying the Convention and it, thus, entering UK law.
6. Six themes were highlighted for consultation:
 - the types of cultural property that should receive general protection under the Convention;
 - whether the protection offered by the Convention should be mandatory or voluntary;
 - who should be responsible for taking the peacetime safeguarding measures illustrated in the Convention and its two Protocols;
 - whether the affixing of a special emblem to protected property should be mandatory or voluntary;

- whether the UK should make use of the provisions for special protection; and
- the types of cultural property that should be given enhanced protection under the Second Protocol.

1.2 Next Steps

7. In general, the responses to the consultation show that there is a high degree of support for the Government's plans for implementation of the Hague Convention and its two Protocols.
8. Indeed, a large number of respondents specifically welcomed the Government's commitment to ratify the Convention and accede to its Protocols. Particular concerns were expressed, however, about:
 - the unequal treatment of libraries and archives compared to museums and immovable cultural property;
 - about the differences in practice and programmes across the Devolved Administrations; and
 - the proposal to make coverage of the Convention a voluntary matter.
9. As a result, we have amended our plans in these areas to address the concerns identified (details of these changes are given in the following analysis of responses).

Chapter 2: Analysis of Responses

10. This Chapter looks in detail at the responses received to the consultation and sets out the Government's reasoning for either accepting the recommendations made by consultees or for rejecting them.

2.1 Question 1

On the basis of the existing designation systems in place in the UK, do you agree that the general protection afforded by the Convention should be extended only to:

- **listed buildings of Grade I status (Category A in Scotland and Northern Ireland);**
- **in England, listed historic parks and gardens of Grade I status;**
- **the collections of those museums and galleries that are directly sponsored or funded by Government; and**
- **the museums, galleries and universities in England with designated collections and in Scotland with important collections.**

11. A total of 50 consultees responded to this question. Of these:

- 11 respondents (or 22%) were in full agreement with the Government's proposals;
- 38 respondents (or 76%) agreed with the proposal but wanted to see some extra categories added; and
- 1 respondent (or 2%) disagreed that the existing designation systems provide an adequate starting point for deciding what cultural property should receive general protection.

12. There were a large number of suggestions made by respondents for categories of cultural property to be added. The following list only contains those suggestions which were made by two or more organisations¹. Respondents called for the inclusion of the following in the general protection regime:

¹ The above list would be more than doubled if it included all the additional suggestions made by just one body alone.

Immovable heritage

- archaeology (scheduled ancient monuments);
- important historic city centres;
- Grade II* buildings;
- all parish churches and cathedrals;
- all sites managed by EH, Cadw, Historic Scotland, Historic Building Service (NI);
- conservation areas;
- sites nominated for World Heritage Status;
- gardens and designed landscapes in Scotland;

Movable heritage

- non-national pre-eminent collections in Wales and Northern Ireland (as there is no designation scheme in these two countries);
- designated library and archive collections;
- the National Film and Television Archive;
- all AIL collections and archives;
- all Local Authority Record Offices;
- all places of deposit for public records in England and Wales.

13. As can be seen from the above, this is a large list of cultural property to add to the property we currently intend to identify as being entitled to general protection under the Convention. Indeed, it would add many hundreds of thousands of properties to the UK's nominations for general protection.

14. As a result, it would be impractical to include all of the above. As explained in the consultation document, to protect too much would compromise our ability to defend ourselves and would encourage enemy commanders to use the justification of imperative military necessity in the conduct of their operations. Thus, to include such a long list of additional cultural property would, in reality, be likely to have the effect of reducing the protection given to each property, rather than as intended, to increase it.

15. The Government, therefore, proposes to respond to these suggestions as follows:

2.1.1 Immovable Cultural Property

2.1.1.1 Archaeology

16. Some 13 respondents (or 26%) expressed concern about the exclusion of archaeological sites from the Government's proposals for general protection. Some offered solutions for how this might be remedied (e.g. the inclusion of Archaeological Areas under the 1979 Act, monuments under Guardianship, those on the Monument Protection Plan etc). Others suggested that the

Government should establish a working group to discuss and identify the best of the UK's archaeological sites.

17. The Government does not consider these to be realistic options at the present time. As explained in the consultation document, the Heritage Protection Review is currently considering the lack of a grading system within archaeological sites. It would not be good practice, therefore, to set up a parallel mechanism to look at archaeology simply in the context of the Hague Convention. Although we believe it is important to provide protection for archaeological sites under the Convention, we believe that it is better to await the outcome of the Heritage Protection Review before making any final decisions on the way this will be done.
18. A common concern expressed by respondents is that if the Heritage Protection Review is not completed before the UK ratifies the Hague Convention then that will mean that archaeology is omitted from the UK's nominations for general protection and there is no mechanism for its future inclusion. This is an unfounded concern. It is possible for Parties to supplement the information they have provided to UNESCO about cultural property within their territories at any stage. It will be perfectly acceptable, therefore, for the UK to inform UNESCO of the location of archaeological sites which are considered to be entitled to protection once the Heritage Protection Review is complete, irrespective of whether that is before or after the UK ratifies the Convention.
19. An issue that is of concern, however, is that the Heritage Protection Review only covers England and Wales. We will, therefore, be holding further discussions with the Scottish Executive and the authorities in Northern Ireland to discuss how archaeology should best be covered in those Administrations.

2.1.1.2 Important Historic City Centres

20. Some 10 respondents (or 20%) expressed concern about the lack of protection for historic city centres (the towns of Oxford, Cambridge and York being those most frequently mentioned). These respondents point out that such a designation is allowed under the Convention and that this would be in line with the practice for designating World Heritage Sites.
21. It is true that the definition in the Convention of cultural property suitable for general protection includes the phrase "centres containing a large amount of cultural property as defined in (a) and (b)". However, it should be noted that in the 50 years since the Convention came into force only one State Party (the Holy See) has nominated a centre containing monuments (the Vatican City) for general protection. This clause has not, therefore, been widely used by other State Parties.
22. It is also true that the World Heritage Sites (WHS) designated for the UK include the city of Bath and Edinburgh Old and New Towns. However, we have proposed that WHS should receive **enhanced protection** because of

their designation as places of world importance, which applies to all parts of the site. For **general protection** we need to identify only that property which fits the definition offered in the Convention. A blanket protection which covers buildings that have the lowest form of designation or even no heritage designation at all would not be consistent with the Convention.

2.1.1.3 Grade II* Buildings

23. Some 7 (or 14%) of respondents expressed concern about the exclusion of Grade II* buildings from the Government's plans for general protection.
24. Once again, however, the Heritage Protection Review is considering the issue of Grade II* buildings and so we believe that it would be most appropriate to await the outcome of that Review before taking any final decisions in relation to Grade II* buildings and the Hague Convention.
25. This is not an issue that affects Scotland and Northern Ireland as the designation of Grade II* is unique to England and Wales.

2.1.1.4 Cathedrals and Parish Churches

26. 5 respondents (or 10%) asked that either all parish churches or all cathedrals and their precincts or both be given general protection.
27. There are only twelve cathedrals in England that are not listed as Grade I. Thus, the vast majority of cathedrals will already be identified as entitled to general protection under the Government's proposals.
28. There are greater difficulties, however, with the proposal to protect all parish churches as the numbers involved are too great.
29. There are 16,000 parish churches across the UK; which would more than double the amount of cultural property which the UK is identifying as cultural property entitled to general protection at a single stroke. Many of these churches are listed Grade I but more are not and, indeed, only 12,000 of them are listed at all.
30. Instead of nominating cultural property on the basis of its current function, we believe it is more appropriate to nominate property in view of its intrinsic cultural importance to the heritage of every people. Once again, we believe this is best reflected in the designation of a property (in this case, a church) as being Grade I.

2.1.1.5 Sites Managed by EH, Cadw, Historic Scotland and Historic Environment Service (NI)

31. 4 respondents (or 8%) asked that all properties or monuments under guardianship (i.e. owned or managed by English Heritage, Cadw, Historic Scotland, Historic Building Service (NI)) receive general protection².
32. In the case of English Heritage (EH), the majority of the 400 sites under their guardianship are scheduled monuments rather than listed buildings. Difficulties with the scheduling system have been discussed in the section on archaeology above (para 15.1) and we have taken the view that it would be more appropriate to await the outcome of the Heritage Protection Review before deciding how to proceed with scheduled monuments under the Hague Convention. It is also the case that, whilst many of the properties under EH guardianship are listed Grade I, not all have this highest level of designation. In addition, the domestic law criteria for guardianship are not the same as those in the Convention. The fact that a site is under guardianship should not, therefore, guarantee that it is entitled to protection under the Convention.
33. We recognise, however, that the Heritage Protection Review only covers England and Wales and so some of the anomalies, concerning areas like archaeology, may remain in Scotland and Northern Ireland. We, therefore, recognise that a pragmatic approach is needed and, in those administrations it may be necessary to apply a slightly different approach. We will continue to discuss this in detail with the Administrations in question to devise a solution that is most suited to their circumstances.

2.1.1.6 Conservation Areas

34. 3 respondents (or 6%) asked that all conservation areas receive general protection.
35. The arguments against giving such protection are similar to those for blanket protection of historic town centres – the sheer volume of cultural property involved makes it impractical.
36. There are over 8,500 conservation areas in England alone. Each of these can contain many hundreds of buildings. Most of the buildings in conservation areas, however, are of Grade II (the lowest designation in terms of importance) and do not fit well with the definition of cultural property as set out in the Convention.
37. To protect all conservation areas would, therefore, be disproportionate. It would put the UK out of step with practice in other State Parties; it would

² This suggestion was not made by any of the four heritage bodies named.

compromise our own ability to be able to defend ourselves; and it would make it easier for an enemy commander to be able to use the justification of imperative military necessity.

2.1.1.7 Sites Nominated for World Heritage Status

38. 3 respondents (or 6%) suggested that, because sites that are designated as World Heritage Sites will be nominated for enhanced protection, then those sites that have been identified as potential future sites for WHS designation should receive general protection. Potential sites are included in the Tentative List of the United Kingdom of Great Britain and Northern Ireland, published in 1999, and known as the UK Tentative List.
39. The Government is proposing to undertake a major review of the UK Tentative List which will look afresh at the remaining sites on the list and any new prospective sites. We do not think it appropriate, therefore, at this stage to give protection to those sites on the current Tentative List.

2.1.1.8 Gardens and Designed Landscapes in Scotland

40. 2 respondents (or 4%) expressed concern that the Government's proposals do not include any coverage for historic gardens and designed landscapes in Scotland.
41. Both respondents requested that all entries on the Scottish Inventory of Historic Gardens and Designed Landscapes receive general protection. This would cover some 330 gardens and designed landscapes.
42. We do not think it would be appropriate to include all entries on the Inventory as it does not include a grading system. However, this is currently under review and Historic Scotland is assessing responses to its recent consultation – Scottish Historic Environmental Policy 3 (Gardens and Designed Landscapes). We will, therefore, await the outcome of Historic Scotland's review before taking any final decisions concerning gardens and designed landscapes in Scotland.

2.1.2 Moveable Cultural Property

2.1.2.1 Museums

43. The consultation document acknowledged that, although the designation scheme does not cover Scotland, the Scottish Executive is developing a Significance Recognition Scheme for museums and galleries. Both the Welsh Assembly Government and the Northern Ireland Museums Council pointed out that the designation system for museums does not currently cover either Wales or Northern Ireland. Thus, we will be holding further

discussions with all three Administrations to identify the pre-eminent collections in those countries.

44. A small number of other organisations (3) expressed some doubts about the suitability of using the designation system as the basis for general protection of museums. These doubts seem to centre around the concern that the designation system is relatively new and, therefore, does not fully capture all the non-national museums with important national collections.
45. The designation scheme, however, is not a closed book. It is open to other applicants and, thus, will, over time, improve its coverage. Thus, we do not propose to set up a parallel system in the context of the Hague Convention to try to capture those museums that have not yet applied for designation. Instead, we intend to proceed with our original suggestion of using the designation system in England to identify those museums which we consider to be entitled to general protection and will provide UNESCO with updated lists of the identified museums at least every four years.

2.1.2.2 Libraries

46. 12 organisations (or 24%) expressed concern that the Government's proposal in relation to libraries (i.e. to give enhanced protection only to the five legal deposit libraries) was too restrictive. All of these respondents pointed out that the MLA has recently introduced a designation scheme for libraries and so, if designated museums are to receive general protection, then designated libraries should similarly receive general protection.
47. We accept that this was an oversight in our proposals and are happy to confirm that we will also extend general protection to include designated libraries.

2.1.2.3 Archives

48. 16 organisations (or 32%) expressed the view that the Government's proposals in relation to archives give inadequate protection to these valuable sources of cultural record. There were a wide number of suggestions for how this should be rectified but there was one suggestion which achieved a high degree of consensus.
49. 15 out of the 16 organisations that commented on archives asked that the newly designated archives should also be offered general protection. Once again, we are happy to confirm that the omission of designated archives was an oversight. As we have already proposed that designated museum and library collections should be identified as entitled to receive general protection then it is appropriate that this protection should also be extended to include designated archive collections.

2.1.3 Summary

50. Thus, in response to the representations received the Government is proposing to amend its approach to implementation of the general protection clauses of the Hague Convention and its Two Protocols in the following ways:

- i. we will await the outcome of the Heritage Protection Review before taking any firm decisions on the treatment of archaeology and Grade II* buildings in England and Wales;
- ii. we will discuss with Scotland and Northern Ireland how best to deal with archaeology in their administrations;
- iii. we will await the outcome of Historic Scotland's review of gardens and designed landscapes before taking any firm decisions on the treatment of gardens and designed landscapes in Scotland;
- iv. we will identify both designated libraries and designated archives in England as being entitled to general protection; and
- v. we will discuss with Scotland, Wales and Northern Ireland how best to identify their nationally important collections of museums, galleries, libraries and archives in the absence of a designation scheme in those administrations.

2.2 Question 2

Do you agree that the decision on whether any particular cultural property should be protected by the Convention should be left to the individual choice of the property's owners, guardians or trustees?

51. A total of 46 consultees responded to this question. Of these:

- 19 (or 41%) were in full agreement with the Government's proposals;
- 4 respondents (or 9%) agreed with the proposal but had some concerns; and
- 23 respondents (or 50%) disagreed and felt that property identified as worthy of general protection should have a mandatory obligation to be covered.

52. This question produced the highest level of dissatisfaction with the Government's six proposals. Those opposed argued that a voluntary system would lead to inconsistent coverage (particularly where ownership of cultural property is shared between a number of people); and protection under the Convention should not depend on the whim of individual owners. It was also noted that only the government is in a position to ensure that the criteria for

protection are consistently applied in the whole country, and that the Government has a duty to protect our cultural property for future generations.

53. Those respondents who supported the Government's proposals felt that it was not appropriate to compel owners to accept protection under the Convention. Some respondents suggested that it was unlikely in practice that owners would wish to opt-out of the Convention; others stressed the need for measures encouraging owners to seek protection under the Convention.
54. The main concerns expressed by organisations that gave qualified support (and by some of those who were opposed) centred around (i) the extra costs that might be imposed on owners and (ii) the administrative difficulties associated with contacting all the owners of property identified as suitable for protection to ascertain whether they wished to be covered by the Convention and keeping accurate records of properties covered by the Convention, notwithstanding subsequent changes in ownership.
55. In the light of the concerns expressed by those respondents favouring mandatory protection and the difficulties identified with implementing a system of voluntary protection, we have decided that, contrary to our original proposals, if a particular piece of cultural property in the UK meets the definition of cultural property to be protected by the Convention (as set out in Article 1) then that property should automatically be included on the UK's list of protected property.
56. We acknowledge the concerns expressed that owners of protected property should not be subjected to unfair financial burdens. As set out further below in Question 3, this will be an important consideration in our assessment of what, if any, safeguarding measures should be required of owners. As a result, we do not believe that identification of a particular property as being eligible for protection under the Convention will subject the owners of that property to an unfair financial burden.
57. In addition, some owners of cultural property may be concerned that automatically placing their property on the list of protected cultural property to be supplied to UNESCO may make them vulnerable, for example, to terrorist threats. However, for the reasons explained in the section below on Question 4, we do not intend to make the list of protected properties provided to UNESCO available for public inspection.

2.2.1 Summary

58. We accept that our original proposal caused significant concern to a majority of stakeholders and are, therefore, happy to reconsider our position. At the same time, we accept that those who were in favour of our original approach have legitimate concerns about the rights of private owners. We note the importance of ensuring, in particular, that the private owners of protected property are not subjected to unfair financial burden as a result of the

identification of their property as being eligible for protection under the Convention.

2.3 Question 3

Do you agree that the most appropriate body to undertake the peace-time safeguarding measures set out in article 5 of the Second Protocol is the existing owner, guardian or trustees of a cultural property?

59. A total of 46 consultees responded to this question. Of these:

- 28 (or 61%) were in full agreement with the Government's proposals;
- 16 respondents (or 35%) agreed with the proposal but had some concerns;
- 2 respondents (or 4%) disagreed and felt that the implementation of safeguarding measures should be carried out by a central authority.

60. The main concerns expressed by those in partial agreement were related to the potential costs of having to implement the safeguarding measures and the need for better guidance for owners of cultural property on what measures they need to take. Some respondents were concerned that the costs involved could be potentially onerous for owners and urged the Government to make new grants available to help meet these costs.

2.3.1 Safeguarding Measures

61. The Convention requires that appropriate preparatory measures be taken in times of peace to safeguard cultural property against the foreseeable effects of armed conflict. The Second Protocol then illustrates the kind of measures that might be considered appropriate. These include:

- the preparation of inventories;
- the planning of emergency measures for protection against fire or structural collapse; and
- the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property.

62. In the case of museums these measures are already covered by the requirements of the Museum, Libraries and Archives (MLA) Council's Accreditation scheme. The Accreditation Scheme contains requirements to demonstrate adequate emergency planning in order to receive Accreditation. For example, it requires that emergency plans must include:

- (a) arrangements for collections and buildings;
 - (b) a risk assessment of threats such as fire, water, theft and vandalism;
- and

(c) procedures to be followed by staff on discovery of an emergency.

63. Accreditation is a prerequisite to Designation and it is only Designated museums that the Government has proposed should receive general protection. Similarly, the Designation Schemes for archives and for libraries both also require adequate emergency plans. Thus, the peacetime safeguarding measures required by the Hague Convention should not impose any new burden on owners of movable cultural property.
64. In the case of immovable cultural property that does not contain any collections the only obligation that applies is the obligation to plan emergency measures for protection against fire or structural collapse.
65. In some cases, Grade I buildings will already have taken measures to protect against fire under existing legislation. The Regulatory Reform (Fire Safety) Order 2005 already places a duty on the responsible person to take general fire precautions necessary to ensure the safety of his employees, or where others may lawfully be on his premises, the precautions reasonably necessary to ensure the safety of the building.³ If a Grade I listed building has a drinks or entertainment licence or employs either staff or volunteers then it will be covered by this Order. If the requirements of this Order (and previous legislation on fire precautions) have been implemented, it should be unnecessary for the owners of the building to take further measures to safeguard against fire.
66. Where properties are not subject to such legislation, it may be necessary for further safeguarding measures to be taken, whether to increase a building's protection against fire or against structural collapse. However, the appropriate safeguarding measures will depend on the nature of the property concerned, its location and the degree of risk to the property.
67. What measures are needed will also depend to a large extent on the type of armed conflict that is expected. For example, if it is anticipated that the main threat from an opponent is the use of chemical or biological agents then the risk to property is reduced. Accordingly, the safeguarding measures, if any, necessary for a particular property are best be assessed when the threat and nature of armed conflict becomes clearer. Thus, we do not intend to require owners of cultural property to take particular safeguarding measures at the present time. We will, however, work with the appropriate heritage agencies to make available more guidance to owners of listed buildings on possible safeguarding measures.

³ The Regulatory Reform (Fire Safety) Order 2005 applies to England and Wales. The Fire Precautions (Workplace) Regulations 1997, which still apply to Scotland, place a duty on employers to take measures for fire fighting in the workplace where this is necessary to ensure the safety of employees (adapted to the nature of the activities carried out there).

68. There is, however, one important qualification to this approach. English Heritage compile an annual Buildings At Risk Register (BARR) which identifies those Grade I and II* buildings that have been neglected and are considered at risk through neglect and decay or are vulnerable to becoming so. In these cases, we know that the building is not being safeguarded and so we cannot nominate these buildings for general protection. Thus, the UK's national list of buildings to receive general protection will not include those Grade I buildings on the BARR.

2.3.2 Summary

69. We believe that it is most appropriate that the owners of cultural property should be responsible for the implementation of appropriate safeguarding measures. They will be in the best position to assess what is necessary for their property. We do not intend to require owners to take particular safeguarding measures at this time. In many cases, cultural property will already be adequately safeguarded. More guidance will be made available to owners of cultural property on possible safeguarding measures.

2.4 Question 4

Do you agree that the UK should leave the decision to affix the special emblem to a particular cultural property to the owner, guardian or trustees of the property or objects in question?

70. A total of 45 consultees responded to this question. Of these:

- 27 (or 60%) were in agreement with the Government's proposals,
- 14 (or 31%) were in partial agreement; and
- 4 (or 9%) disagreed and felt that the use of the emblem should be mandatory.

71. The main concerns of those in partial agreement were twofold. Firstly, 9 out of the 14 respondents in partial agreement felt there was a case for voluntary use of the emblem during periods of peacetime but mandatory use during times of armed conflict. Secondly, 3 respondents were concerned that a voluntary system would lead to confusion in that some buildings would display the emblem while others would not. These respondents argued that there should be no use of the emblem at all.

72. At the time of publication of the consultation document we had not finalised our plans for how the UK would provide a list of cultural property to UNESCO. We have now held further discussions with the military and, as a result, we are investigating the options for making use of the latest electronic mapping and GPS technology to provide UNESCO with detailed electronic maps of the whole country. The maps would show the location of all property under both general and enhanced protection and these would be marked on the map with a special symbol (the blue emblem) and give the relevant GPS co-ordinates.

73. Some concern has been expressed, however, that by putting together such a list (or maps) of important cultural property we would be providing terrorists with a free target list. In order to avoid this, any maps provided to UNESCO would not be available for access by the public and would be password protected. We would, however, provide aggregate data such as the number and type of properties that have been notified to UNESCO.
74. The use of electronic mapping and GPS technology would place the UK at the forefront of implementation of the Hague Convention (although, at least two other countries – Switzerland and Norway – are actively considering moving to a GPS based system also).
75. In the age of modern warfare the use of a physical symbol on a building is not considered an effective mechanism for allowing commanders to identify protected cultural property. Modern warfare is characterised both by the use of air strikes and by long range bombardment (either by missile or by artillery). A physical emblem would be of no value in deterring attacks against cultural property from these two methods of attack. Targeting technology for modern ordnance (both air and land based systems) is, however, based on GPS technology.

2.4.1 Summary

76. Thus, we do not intend to make affixing the emblem mandatory (either in peacetime or in times of armed conflict) nor do we intend to encourage owners to display the emblem. Indeed, we do not believe a physical emblem to be an effective means to identify protected cultural property and we will advise owners accordingly. As stated in the consultation document we do not have the powers to stop an owner affixing the emblem if they wish to do so but we will not encourage it, nor will we produce guidance on how this should be done nor will we pay for it. We will, however, be seeking new powers to stop owners abusing the use of the emblem.

2.5 Question 5

Do you agree that the UK should not nominate any of its cultural property for special protection but instead make use of the provisions for enhanced protection contained in the Second Protocol?

77. A total of 45 consultees responded to this question. Of these:

- 45 (or 100%) were in full agreement with the Government's proposal.

78. The Government, therefore, does not intend to make use of the provisions for special protection. Instead we will make use of the provisions for enhanced protection contained in the Second Protocol.

2.6 Question 6

Do you agree that the UK should request enhanced protection only for those World Heritage Sites designated as cultural sites, for the collections of the museums and galleries that are NDPBs or ASPBs; for the National Archive Bodies and the five legal deposit libraries?

79. A total of 47 consultees responded to this question. Of these:

- 14 (or 30%) were in full agreement with the Government's proposals,
- 25 (or 53%) were in partial agreement; and
- 8 (or 17%) disagreed that the existing designation systems provide an adequate basis on which to draw up a list of institutions deserving of enhanced protection.

80. Of those who were in partial agreement, their main concern was at the omission of a particular building or collection or group of buildings. Indeed, as in the case of general protection, respondents collectively put forward a long list of additions to the list for enhanced protection.

81. The system of enhanced protection was introduced by the Second Protocol in 1999. One of the advantages of the system of enhanced protection is that it takes the decision about which properties should receive such protection away from political interference and places it in the hands of an expert Committee – the Committee for the Determination of Cultural Property under Enhanced Protection. This Committee was formally established in 2005 but has yet to invite applications for enhanced protection and so has not yet designated any property as qualifying for enhanced protection. Thus, there is no international practice as yet to fall back on as a guide to how we should approach this issue in the UK.

82. However, the Committee has indicated that the use of the World Heritage Site list will provide a useful starting point for its deliberations and that it will be seeking to apply its remit tightly – that is, to provide enhanced protection to only that cultural property of the greatest importance for humanity.

83. Thus, in the case of immovable cultural property the Government intends to proceed at present with its proposal to consider only the UK's World Heritage Sites for nomination (whether a particular site is actually nominated will depend on whether it is possible to say that it will never be used for military purposes. We will be discussing this with the Ministry of Defence in relation to each site). We will, of course, monitor the Committee's decisions and if, in the future, it becomes clear that the Committee is taking a more generous view of what immovable cultural property should receive enhanced protection then we will look at our own nominations again.

84. In the case of movable cultural heritage there was some recognition among respondents that the Government's proposal to nominate only museums and galleries that are NDPBs or ASPBs is a practical solution. Nonetheless, many were unhappy that this approach did not capture fully all the collections of museums, libraries and archives that they feel are worthy of enhanced protection.
85. The only suggestion, however, that was made for how this might be done in a different way was that a steering group of experts should be set up to determine what cultural property should qualify.
86. The Government is not attracted to the idea of a steering group of experts. We believe that any attempt to appoint a group of experts would generate much debate about the suitability of the experts chosen and the criteria used to pick them and would, thus, divert the DCMS's limited resources from the business of developing the UK's implementation plan and taking forward the process of ratification.
87. Thus, until a body of evidence has been established showing how the Committee is approaching this question, the Government intends to proceed with its original proposal to consider for nomination only those museums and galleries that are NDPBs or ASPBs, the National Archive and the five legal deposit libraries (again, whether it is actually possible to nominate particular cultural property in this category will depend on our discussions with the Ministry of Defence).

Chapter 3: Other Issues

88. Two other major issues that arise from the consultation responses are:
- (a) the question of what impact the proximity of a military site or military objective would have on the protection that could be offered to a particular cultural property. For example, respondents asked how far a cultural property needed to be away from a military site or objective before it could be deemed “safe”; and
 - (b) the need to ensure that the UK’s ratification is backed up by strong criminal sanctions for failure to comply with the Convention.

3.1 Military sites

89. The system of general protection means that a State Party must agree to “refrain from any use of the property and its immediate surroundings...for purposes which are likely to expose it to destruction or damage in the event of armed conflict”. The system of enhanced protection means that the State Party must sign a declaration to the effect that the cultural property in question “is not used for military purposes or to shield military sites.”
90. The Convention does not offer any further guidance on what is “a military purpose” or what “immediate surroundings” mean in terms of actual distance.
91. It is clear that cultural property that is located on an active military base cannot be nominated for general or enhanced protection. The UK’s list of cultural property receiving general protection will not, therefore, contain any Grade I or Grade A listed buildings or designated museums, libraries or archives that are on military bases and we will not nominate any World Heritage Sites or national museums, galleries, libraries or archives that are on military bases for enhanced protection.
92. In the case of cultural property that is in the immediate surroundings of a military target the situation is less straightforward. In the case of cultural property under enhanced protection the nominating country must sign a declaration in advance to say that each nominated site will not be used for military purposes or to shield military sites. As mentioned above, it will be necessary, therefore, for the DCMS to hold detailed discussions with the

MoD concerning each cultural property being considered for enhanced protection before it is nominated.

93. General protection, however, does not require the UK to determine in advance of ratifying the Convention which of its sites are in the immediate surroundings of military objectives. The obligation on the defender for general protection is not to use protected sites for military purposes during periods of armed conflict. This is helpful because what constitutes a military target or objective is not a fixed thing. It will depend very much on the type of campaign that the attacker and the defender intends to conduct, the geographical location of the campaign and the strategic and tactical objectives of the campaign in question. It is impossible, in advance, to second guess what the answer to any of these questions will be for a campaign to be held in the future.
94. Thus, should the UK find itself in the unfortunate situation of needing to defend its home territory at some stage in the future, we would then ensure that the MoD's planners were aware of both the location of all property protected under the Convention and our obligations within it. Military planners would then be able to draw up their defence plans accordingly. This might require that general protection would need to be removed from certain cultural property because it is in a strategically important location. Military planners will, however, be aware of the Convention and will only seek to remove general protection if it is absolutely imperative for the defence of the nation that they do so.

3.2 Criminal Sanctions

95. The Convention places various obligations on States Parties to ensure that criminal sanctions are in place to prohibit a range of actions that could either directly or indirectly lead to damage or destruction of protected cultural property.
96. To ensure that the UK can meet these obligations we shall be bringing forward legislation at the earliest available opportunity.

Appendix A: Analysis of Respondents

A.1 Sector represented

Immovable cultural property (14)

English Heritage
Wessex Archaeology
Armagh Observatory
Institute of Field Archaeologists
Churches Conservation Trust
Cathedral Architects Association
International Council on Monuments & Sites UK
Council for British Archaeology
The Archaeology Forum
The Garden History Society in Scotland
Historic Environment Advisory Council for Scotland
University of Cambridge
City of Durham
Stonehenge and Avebury World Heritage Site

Museums and Galleries (7)

Tyne and Wear Museum
Northern Ireland Museums Council
National Museum of Science and Industry
Manchester Museum, University of Manchester
National Gallery
National Portrait Gallery
Museums Association

Libraries (6)

Joint response from Chartered Institute of Library Professionals and Society of College, National and University Libraries

Consortium of Research Libraries

British Library

John Rylands University Library

National Library of Wales

Committee of College Librarians of the University of Oxford

Archives (6)

The National Archive

National Archives of Scotland

Society of Archivists

Association of Chief Archivists in Local Government

National Preservation Office

The National Council on Archives

Bodies representing more than one sector covered by the Convention (9)

UK and Ireland Blue Shield Committee

National Trust for Scotland

Institute of Conservation

UK National Commission for UNESCO

Museums, Libraries and Archives Council

University of Oxford

South East Museums, Library and Archive Council

Society of Antiquaries of London

Society of Museum Archaeologists

Central and Local Government (9)

Bailiff of Jersey
Welsh Assembly Government
Local Authority World Heritage Forum
Bath & North East Somerset Council
Department of Culture, Arts and Leisure
Brighton and Hove City Council
Foreign and Commonwealth Office
City of Westminster Council
Ministry of Defence

Other (2)

British Red Cross
Ship Info Group

Individuals (1)

Trevor Reynolds

Total = 54

A.2 Geographical location

Scotland (4)

National Trust for Scotland

National Archives of Scotland

The Garden History Society in Scotland

Historic Environment Advisory Council for Scotland

Wales (2)

Welsh Assembly Government

National Library of Wales

Northern Ireland (3)

Armagh Observatory

Department of Culture, Arts and Leisure

Northern Ireland Museums Council

England (38)

English Heritage

Local Authority World Heritage Forum

Tyne and Wear Museum

Bath & North East Somerset Council

Wessex Archaeology

Joint response from Chartered Institute of Library Professionals and Society of
College, National and University Libraries

Brighton and Hove City Council

Institute of Conservation

The National Archive

Institute of Field Archaeologists

National Museum of Science and Industry
Consortium of Research Libraries
Society of Archivists
Manchester Museum, University of Manchester
Association of Chief Archivists in Local Government
National Preservation Office
Churches Conservation Trust
Museums, Libraries and Archives Council
National Gallery
University of Oxford
Ship Info Group
National Portrait Gallery
Cathedral Architects Association
Museums Association
The National Council on Archives
City of Westminster Council
South East Museums, Library and Archive Council
Society of Antiquaries of London
Society of Museum Archaeologists
John Rylands University Library
Council for British Archaeology
The Archaeology Forum
Trevor Reynolds
University of Cambridge
City of Durham
Stonehenge and Avebury World Heritage Site
Committee of College Librarians of the University of Oxford

UK/British (7)

UK and Ireland Blue Shield Committee
British Red Cross
British Library
UK National Commission for UNESCO
Foreign and Commonwealth Office
International Council on Monuments & Sites UK
Ministry of Defence

Crown Dependency (1)

Jersey

Total = 54

