RESPONSE TO
THE DRAFT HERITAGE PROTECTION BILL

Incorporating views from
the Royal Town Planning Institute (RTPI),
the Institute of Historic Building Conservation (IHBC),
the Royal Institution of Chartered Surveyors (RICS),
the Royal Institute of British Architects (RIBA), and
the Planning Officers Society (POS), and
the Chartered Institute of Building (CIOB)

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1. Introduction

Heritage is an important topic that falls within the responsibility of several departments of government. Successful reform requires joined-up government. What is true for government is equally true for the professional institutions whose members provide a broad range of heritage advice and services. This response to the Draft Heritage Protection Bill builds on joint working undertaken in 2007 to ensure a joined-up professional response to the Heritage White paper[1]. It unites six professional and corporate bodies that together account for nearly 250,000 members[2], and includes the great majority of the many and diverse practitioners that together shape, manage and enhance the historic environment.

The Royal Town Planning Institute (RTPI) is the leading chartered professional body for spatial planners in the United Kingdom. It is a charity with the purpose to develop the art and science of town planning for the benefit of the public as a whole. It has over 21,000 members who serve in government, local government and as advisors in the private sector. Many spatial planners are closely involved in the development of policy for and the management of the historic built environment. Corporate Membership (MRTPI) is the peak mark of professionalism for town planning professionals, with Associate Membership and the capacity to participate in a wide range of built environment related networks available to a broader range of professionals.

The Institute of Historic Building Conservation (IHBC) is the professional body for building conservation practitioners and historic environment experts working in the United Kingdom. It exists to establish, develop and maintain the highest standards of historic built environment conservation practice, to support the effective protection and enhancement of the historic built assets, and to promote heritage-led regeneration and access to the historic environment for all. Many members are spatial planners, surveyors, architects and/or other specialists with conservation expertise, while a significant body have the IHBC as their main professional affiliation.

The Royal Institution of Chartered Surveyors (RICS) is the world's leading professional body dealing with land, property and construction issues. It has 130,000 members world wide, working in both the public and private sectors and in large and small organisations. Under the terms of the Royal Charter RICS is obliged to act in the public interest in all aspects of its work. RICS firmly believes that it is vital to make the historic environment accessible to all, but that it is equally important to ensure that the built and natural heritage is protected. More specifically, RICS has a Building Conservation Forum dedicated to dealing with conservation issues.

The Royal Institute of British Architects (RIBA) is one of the most influential architectural institutions in the world, and has been promoting architecture and architects since being awarded its Royal Charter in 1837. The Institute represents 85% of registered architects in the UK through its regional structure and has 40,000 members. The RIBA has a Conservation Architecture Group who specialise in conservation architecture; whilst the majority of the RIBA's members have professional experience in designing within and around the historic built

[1] Heritage Protection for the 21st Century - White Paper. Incorporating views from the Royal Town Planning Institute (RTPI) the Royal Institution of Chartered Surveyors (RICS) and The Institute of Historic Buildings Conservation (IHBC).
http://www.rtpi.org.uk/download/1647/P20070601-1-IHBC-RTPI-RICS-HWP-040607-Final.pdf
http://www.ihbc.org.uk/consultations/docs/PDF/her_white_papers/IHBC_RTPI_RICS_HWP%20040607.pdf
[2] Current membership numbers are RTPI: 21,000; IHBC: 1800; RICS: 140,000; RIBA: 40,000; POS: 500; CIOB: 40,000.

environment. The architecture profession's knowledge is vital in understanding historic buildings and how they can successfully be preserved and utilised.

The Planning Officers Society (POS) represents the most senior professionals and managers of planning functions in the English Local Authorities. It sets out to:

- act as an advocate and promoter of Local Government planning;
- assist and advise the Government and the Local Government Association on planning matters and related issues;
- act as a centre of excellence, undertake research and promote best practice in planning matters; and
- promote all aspects of the built and green environment by working closely with other organisations and professions.

The Society's aim is to ensure that planning makes a major contribution to achieving sustainable developments, from national to local level, in ways which are fair and equitable and achieve the social economic and environmental aspirations of all sectors of the community.

The Chartered Institute of Building (CIOB) represents, on behalf of the public, the most diverse set of professionals in the construction industry. Its role is to:

- promote the importance of the built environment;
- lead the industry to create a sustainable future worldwide;
- encourage leadership potential;
- promote the highest standards in quality, safety and qualification; and
- create an industry where excellence prospers.

CIOB has over 40,000 members around the world, and are considered to be the international voice of the building professional, representing an unequalled body of knowledge concerning the management of the total building process. CIOB members are skilled professionals with a common commitment to achieving and maintaining the highest possible standards. Chartered Member status, represented by the designations MCIOB and FCIOB, is recognised internationally as the mark of a true professional in the construction industry.

This document represents a joint response to the Heritage White Paper from the heritage and built environment professions, working together. The response has been formed drawing together internal and consultations and the results of meetings with members and stakeholders.

The response has three main parts:

- a statement of our collective strategic support for the draft Bill;
- identification of major issues attached to the development of the draft; and
- detailed commentary on the content of the draft including those items which remain outstanding in the current Bill.

2. Collective Support for the Draft Bill

The joint historic built environment professions' response to the 2007 Heritage White Paper from the IHBC, RTPI and RICS set the scene for how government could capitalise on the opportunities arising from the proposed legislative changes.[3]

As that response itself noted, it was 'not only a response to the government's stated intentions; [but also] a working tool to guide government on the details of the White Paper and its implications, and a plan to lead the future strategies of our institutions.' While we do not intend to re-visit its contents here, that joint paper underpins this response to the draft Bill.

Historic environment conservation has a proven capacity to support and drive improvements in communities, bringing economic, environmental, social and cultural benefits to all. Our collective support for the draft Heritage Bill reflects our awareness that the historic environment, properly supported and managed, encourages the growth of successful communities and secures extensive sustainable benefits. Adopting conservation approaches when managing change in historic places can:

- address economic and fiscal aspirations across society, from supporting sustainable SMEs to enabling heritage led regeneration;
- mitigate environmental pressures, through promoting low-waste practices, conserving embodied energy in existing structures and encouraging traditional, low carbon footprint design materials; and
- resolve social pressures, through embracing diversity, inclusion, quality of life indicators and associated cultural values.

We warmly welcome the changes that the Bill will bring about. Subject to effective implementation, these changes will help re-cast common perceptions of conservation as a risk-averse, narrow, and bureaucratic culture. Conservation management should be seen to operate at the cutting-edge of modern place-making, appreciated for its environmentally aware, quality-assured and socially inclusive credentials.

We welcome in particular the following key features of the Bill as drafted:

- the creation of a simplified, accessible, accountable and responsive management system for the historic environment strongly integrated into the planning system, and reaching across terrestrial and marine domains;
- the associated guarantees to retain or improve current levels of heritage protection, including in particular the commitment from DCMS to underwrite new demands on capacity generated by the proposed changes in England;
- the clarity and accessibility of the new process arising from the broad adoption of terms and definitions from existing statute and case law, including the duty to have 'special regard' to the 'special interest' of heritage assets;

[3] Heritage Protection for the 21st Century - White Paper. Incorporating views from the Royal Town Planning Institute (RTPI) the Royal Institution of Chartered Surveyors (RICS) and The Institute of Historic Buildings Conservation (IHBC).
http://www.rtpi.org.uk/download/1647/P20070601-1-IHBC-RTPI-RICS-HWP-040607-Final.pdf
http://www.ihbc.org.uk/consultations/docs/PDF/her_white_papers/IHBC_RTPI_RICS_HWP%20040607.pdf

- the inclusion of the whole of the historic environment, including designated archaeological sites, into mainstream place management through the planning system;
- the outlining of a more inclusive, accessible and transparent management process distinguished by:
  - integrating the entire system of heritage management by allowing for the application of a single consideration of 'special interest' from designation to consent, and applying this same consideration across all designated assets;
  - creating a single list of designated assets;
  - making details of designated assets accessible online with an explanation of their special interest (all subject to privacy and security considerations);
  - reducing duplication of roles between English Heritage and government in England;
  - consulting owners and key stakeholders on proposed designations;
  - introducing an independent right of appeal (in England) against designation decisions;
  - introducing interim legal protection for sites being considered for designation; and
  - introducing Historic Asset Consent to replace existing forms of consent;
- the requirement for planning authorities to secure and take into account specialist advice and guidance using appropriate expertise, thereby helping communities achieve the full potential of the historic environment (clause 106, and associated comments); and
- the integration of ecclesiastical exemption as a step towards standardising planning procedure there.

Our institutes believe that these changes will enhance historic environment conservation by:

- maintaining a necessary continuity with a known and proven body of statutory and regulatory concepts, building upon by legal precedent;
- encouraging the inclusion of communities in the protection, management and the improvement of our historic places;
- through such inclusion, promoting best practice in conservation, repair, maintenance and improvement (CRMI); and
- promoting greater partnership across the professional interests responsible for our historic places.

Proper implementation of the proposed legislation will represent a turning point in how we realise the potential of our historic places.

Successful execution will require un-precedented close co-operation between the responsible authorities in England and Wales. In England, in particular, it demands integrated implementation to bring together distinct departmental interests at DCMS, DCLG and DEFRA, as well as key bodies in heritage, design and managment, notably English Heritage, CABE and Natural England. In Wales, there is a comparable responsibility on the Welsh Assembly Government to integrate implementation through Cadw, the Planning Division and the Design Commission for Wales. The signatories to this joint response hope that our consolidated support for the Draft Heritage Bill will set a new standard for such co-operation in historic environment conservation in England and Wales, as well as across the United Kingdom as a whole.

3. Major Issues

3.1 Resources & capacity

The Heritage White Paper, and the draft Bill, both recognise that local planning authorities are the primary vehicle for managing historic environment conservation, and for the successful implementation of the new regime. It is impossible to quantify precisely the impact of the proposed legislative changes, as the Impact Assessment notes at various points. However, we warmly welcome the formal commitment by DCMS to underwrite capacity needs in England arising from any changes. We look forward to substantial assessments and comparable commitments from the Welsh Assembly Government through appropriate bodies such as Cadw and the Planning Division as well as the Design Commission for Wales.

In England, in the context of significant and potentially competing CMS capital and revenue commitments, it is critical that this commitment is maintained. For our part, we will help monitor the developing impact of the changes, and we are keen to have positive and pro-active discussion with the relevant departments in England – DCLG in particular, as well as DCMS and English Heritage – and in Wales, about the evolving needs under the new system, especially as we get a better understanding of its impacts.

In particular, Planning Authorities (and other planning decision-makers created under the Planning Bill[4] and the Housing and Regeneration Bill[5] currently before Parliament) must have appropriate access to properly skilled professional advice to secure the widest sustainable benefits of our historic places. Such capacity, operating within the corporate objectives of the Planning Authority, or otherwise regularly and readily available to the decision-maker, is essential if we are to ensure a competent service. Securing this service standard and provision is a central priority for all of our members.

The wide-ranging skills needs and activities in Historic Environment Conservation Services are outlined in the IHBC's consultation document on skills and services, 'Caring for Places and People: Towards a common standard in historic environment conservation services and skills', a consolidation of recent practice-based research[6]. A satisfactory standard of conservation service must be agreed for providers and users, and this can only be secured by integrating expert and informed advice and skills within the planning service. Given the urgent need to focus on service definition and standards, we are especially pleased to see that the Bill goes some way towards ensuring that adequate specialist direction is integrated into the management process by requiring expert advice to be received and to be taken into account (Clause 106).

However we are very concerned that details in Clause 106 imply that an appropriate level of service can be provided simply by inviting representations from interested parties (Clause 106(5)a). Whilst input from amenity societies and other expert bodies is essential, there must be more clarity on the local authorities' responsibilities to take, apply, and adhere to, such advice, using the guidance of conservation, planning and design professionals, as indicated in

[4] The Infrastructure Planning Commission

[5] The proposed Homes and Communities Agency undertaking one or more of the functions of the Planning Authority

[6] See http://www.ihbc.org.uk/news/docs/Historic%20Environment%20Conservation%20Research%20Launched%20-%2020080430-1.pdf

the Bill's accompanying (non-statutory) notes. As a simple measure, to address this anomaly, would encourage the deletion of the comment in parenthesis at Clause 106(5)a ('whether as a result of inviting representations under regulations under Clause 103, or otherwise').

We recommend further that consideration be given to providing more clarity within the primary legislation on how advice on 'special interest' might be taken 'into account' (Clause 106(5)b). Properly skilled conservation professionals working within local authorities bring a holistic perspective to how 'special interest' can be taken into account, informed by the multi-disciplinary awareness that underpins their skills.

We understand that all those responding to the draft Bill will raise concerns about resources and capacity in local authorities. However we are encouraged that DCMS commits to meet the additional burdens to local authorities in England (Impact Assessment paragraphs 8 & 44). In this context, and given the huge pressures under which the current system operates – on which the IHBC hopes to report further in the near future, as information becomes available – we would urge that resources are dedicated to improving the current situation. In 2006 the IHBC carried out research, supported by English Heritage, into local authority historic environment conservation services (excluding counties) in England. This revealed that more than 20% of planning authorities had no internal specialist conservation service with skilled and experienced conservation professionals, more than 10% had no internal conservation service of any type, and about 2% took no conservation advice of any form[7]. We expect more recent research in this area to reveal a deteriorating resource and capacity. Clearly we cannot refine a historic environment conservation service in line with the current proposals if that service does not actually exist.

The poor salary structures offered to conservation staff significantly affect recruitment and retention. The IHBC has built up an evidence base for salary trends in local authority which has shown a steady rise in advertised local authority conservation posts until 2004-5 and a steady decline since. Should this represent a long-term trend it will have significant impact on the implementation of the reforms. Ongoing RTPI research identifies growing concerns associated with the job evaluation and terms and conditions of those employed more broadly providing professional planning and built environment services in local government: recruitment and retention rates are not what they could be. Coupled with this is the ageing profile at the upper end of the conservation profession that will see large numbers of experienced officers retiring just as the reforms come into place. We are concerned that, when there is a clear and worsening downward trend in core conservation staffing, the Impact Assessment states "the number of people working within…the heritage protection system in the future will not deviate from current trends". We are also concerned that, without specific targeted investment and skills development in the short term, conservation services will continue to be cut through corporate priority budgeting irrespective of the heritage reforms proposed.

At the very least, there is an urgent need for immediate capacity building in conservation services to ensure that by the time the reforms begin there is a baseline capacity in each local planning authority. All parties to this response are keen to help in providing guidance and advice to secure best value from such investment.

Conservation officers should be at the heart of the planning system and should therefore be consistently integrated within planning departments. There are important issues about

[7] Quantifying local planning authority conservation staffing', IHBC 2006, http://www.ihbc.org.uk/recent_papers/docs/quantifying_lpa_conservation_staffing.pdf

clarifying the precise roles, duties and even titles, to help people understand the precise contribution of specialist historic environment advice within the planning service, and these will need to be addressed in the context of the developing guidance.

In order to provide appropriate specialist advice to local authorities and others we would urge that English Heritage reinstates a Chief Architect as head of profession for English Heritage professional and technical staff and ensures that there are a significant number of architects working for the organisation as most decisions taken on the impacts of change to heritage assets involve design aesthetics, technical treatments and changes relating to other regulations such as Building Control.

3.2 Conservation Areas, Local lists and Area Designation

The central importance of the Conservation Area in community-based heritage management ('local delivery') was identified in the heritage professions' response to the Heritage White Paper. The Conservation Area is the historic 'place' to which most people relate, in which they live, work and play and where they want to see clear, logical and easily understood controls. Conservation area grant schemes have delivered substantial social and economic benefits, especially in under-performing areas. However, the draft Bill does not cover this area substantially.

Variations in Conservation Area controls from area to area, and even street to street do not help the image or reality of conservation and undermine public confidence in the system. The standard Conservation Area controls do not adequately provide for the management of areas in the public interest, and so widespread use has to be made of special controls: Article 4 Directions. That being said, the public do not easily understand Article 4 Directions and for local authority conservation professionals they are complex, time consuming and highly political to develop and manage. There is a pressing need to make Conservation Areas simpler, more consistent, more open, and understandable and for Conservation Area designations to give the kind of protection expected by the public, in line with the principles acknowledged in the Heritage White Paper. The initial designation of a Conservation Area should remove certain kinds of permitted development as a matter of course, without the need for additional designations. We urge that this matter is given further consideration.

There is considerable interest in the heritage professions in the benefits to be obtained from simplifying and clarifying Conservation Area powers. This would supplant the widespread use of Article 4 Directions, which practitioners and applicants alike view as unduly complex and un-transparent. They could also be supported by long-overdue new guidance (replacing parts of PPG15) making clear how local planning authorities should use their conservation powers and the levels of expertise necessary to underpin these.

If in the interests of better integrating Conservation Area reform with the planning, the Bill does not deal with Conservation Area reform as described above, there should be a clear parallel explanation by government of how GPDO and related planning system reform will deliver the future for Conservation Areas envisaged in the White Paper and supported by the heritage professions. To give effect to changes of this type, it will be essential to amend the Town and County Planning (General Permitted Development) Order 1995 (the GPDO) to ensure that an appropriate suite of conservation development rights are established. Clearly, such an approach would suggest that the keystone of Conservation Area reform would be found outside the draft Bill rather than within it. This in turn underpins the relative lack of

Conservation Area content in the Bill. In the absence of such an explanation, it may be that the draft Bill should be amended to deliver a strong vision for the future of Conservation Areas. Whilst not preferred by the heritage professions, such an approach would be preferable to circumstances in which the Bill passes to law in circumstances where the necessary parallel planning system reforms had not yet been explained in policy terms, let alone implemented.

The proposal to subsume Conservation Area Consent into Planning Permission would, if an appropriate adjustment of the penalties is not made, be contrary to a key principle of the new system, in that it will result in a lessening of protection. Demolition will transfer from being a criminal to a civil offence and appropriate penalties should be written into the drafting of any amendments to the planning legislation to ensure that loss of protection does not occur.

Clearly, as a local designation, conservation area reform should also be examined in parallel with a more substantial consideration of local listing. Both are recognitions of the importance to communities of local and regional heritage, which is often held in greater affection and regard by the public than some nationally protected assets. The current lamentable lack of controls over local list entries (notably demolition) together with poor quality window and door replacements within conservation areas, has badly damaged public confidence in heritage protection and must be addressed. A building on a Local List may be of higher architectural or historic merit and special interest than any individual building within an adjacent conservation area yet, under the present system, is vulnerable to uncontrolled demolition and alteration. We can see no logical reason why both forms of local heritage designation should not enjoy equal levels of protection under the proposed Act. We welcome the provision under section 215 requiring Local Authorities to compile lists of assets of special local interest but consider that without appropriate controls on demolition, extension and external alterations each subsequent loss or damage will further erode public confidence in heritage protection. We strongly recommend, therefore, that following consultation with relevant owners and stakeholders, of both conservation areas and assets with special local interest, all relevant permitted development rights should automatically be withdrawn. This will ensure that any proposals to demolish or alter such local heritage assets will require a planning application, which in turn will allow proper public consultation, and scrutiny of the proposals before a decision is taken about its future. The rights of both owners and the wider public are thus upheld.

We urge that this matter is given further consideration.

4. The Details

4.1 General: The Nature of the Draft Bill

Our response is necessarily limited by the incomplete nature of the draft Bill. We do recognise the challenging timetable adopted for the development of the Bill, but it is impossible to address substantially many of the core issues due to the lack of information. Many comments here must be regarded as provisional until further detail is brought forward, a process that we anticipate will involve further consultations.

In particular, additional detail and guidance is needed in the following areas:

1. The structure, roles and duties of historic environment conservation services in local government.

2. Revisions and updates of PPGs 15 and 16, as a PPS, are urgently needed to ensure harmonisation with the introduction of the Heritage Bill and to avoid confusion between the two separate but related systems. Already Local Development Frameworks are being produced by Local Authorities and refer to policies, concepts and terminologies embodied in PPG 15/16 rather than those presaged by the new Bill.

3. Conservation Areas, especially given the current limitations discussed above.

4. More detailed definition of the proposed consultations processes and procedures (Clause 9(d) & (e)).

5. Clarification on the strategy for 'migrating' existing lists and designations into the new register without either diminishing the standard of protection under the existing system, or the standard of inclusive consultation that will be the benchmark for the new. The changes proposed through the new system should not add another layer of process or terminology to the existing systems and we urge that sensible, transparent and accessible transitional arrangements are uppermost in considerations. A suitable framework for managing the old and new systems must be devised and agreed with stakeholders as part of the implementation of the Bill, one recognising the need for the new system to be introduced only when complete, and not on a stage by stage basis.

6. Guidance on the form and content of heritage applications (Clause 96).

7. While we welcome the proposal to clarify the extent of assets (Clause 79) we assume that the introduction of map-based asset definition is the long-term ambition for the reforms. However there will still be a large number of existing entries that will not be updated for a considerable time. These assets, where they are buildings, will continue to be defined using the curtilage rules, set out in Clause 222, subsection a, rather than by a detailed explanation of what is actually intended to be protected. We acknowledge that there will undoubtedly be a period of transition, but are concerned that this situation may become confusing in practice.

8. The nature, content and service of the Historic Environment Record (beyond the additional guidance already released following the publication of the draft, observations on which are noted further below).

9. Procedures for addressing unseen assets in the context of the Certificate of no Intention to Register (Clause 39 and after). In principle, these should be limited to the extent of reasonably foreseeable special interest.

10. The impact of including 'artistic' as the context for determining interest. While a valuable clarification in some areas, it could broaden the frame of reference to be addressed by the consent process, and can lead to anomalies. For example in Clause 220.1.b, a find cannot be treated or preserved on the basis of its 'artistic' interest (or indeed its architectural interest).

11. Variations in the application of standards and terms across the historic environment, which could undermine the core aspiration to integrate process. These include for example the different controls attached to the distinction between open space, which has a specific character to its controls, and structure, which we understand should be taken to include flint scatters. These are already finding their way into the creation of anomalies in draft statutory guidance, such as the unhelpful proposal for 'archaeology' to be the base-line for undesignated assets in Historic Environment Records, itself reflecting a failure to adopt a key principle of the legislation. The matter is discussed further below.

12. Clarification of the new consent criteria of removal and repair (Clauses 86.2.c.i & ii and Clause 87).

13. Public participation in heritage asset designation and in later heritage asset management decisions is highly desirable if the system is to have public acceptance. However, this should not add further delay or frustration to the planning process. The appropriate time for public participation should be at the outset, so the decisions that are made by appropriate experts taking public input into account. National and local amenity societies that have the necessary understanding of the issues can help individuals and communities reach a consensus on heritage concerns.

14. Sustainability - social as well as environmental sustainability - cannot be divorced from heritage protection. In this context the joint professions' statement in the response to the Heritage White Paper of 2007 is worth re-iterating: *'The retention and re-use of historic buildings can contribute to targets and aims for sustainable development. There is still often a lack of awareness of the energy required to manufacture materials and construct new buildings. The destruction of buildings represents the loss of their embodied energy and necessitates a new investment of energy to construct the replacement. Demolition can also contribute to landfill, compounding environmental problems. Conservation can be a wholly sustainable economic activity, maximising the use of existing built fabric, promoting the use of natural materials and minimising the use of new non-renewable materials. In addition, historic buildings and areas have a key role in supporting mixed use and tenure, pedestrian-friendly environments and more sustainable urban grains and structures. Generic guidance on making historic properties more energy-efficient without damage to their special interest should be provided.*

4.2 Specific: Details in the Draft Bill

1. Nomenclature (Clause 1 and after)

Consideration should be given to the 'brand' or image for terms such as 'heritage asset', as these will be unfamiliar to the public who have a good understanding of current terms such as 'listed building'. This should be addressed in future policy and guidance.

2. Special Interest & 'character' (Clause 4)

We are delighted to note that designation decisions will be made based on special historic, archaeological, architectural or artistic interest and that both the need for consent and the decision criteria on applications are based upon consideration of the effect upon that 'special interest' (Clause 4). Clearly it is essential that the new terms are supported by relevant and agreed guidance, which we expect will involve significant consultation with informed bodies such as ourselves, in particular in determining new areas such as 'archaeological' and 'artistic' interest.

For example, the removal of the requirement to consider impacts on 'character' could be, potentially, a matter of concern. The situation may be compared to the existing 1990 Act which states that 'no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised'. This could be seen to lessen protection levels rather than, as the Heritage White Paper assured us, tighten or clarify them.

To address this potentially damaging diminution of protection, secondary legislation and statutory guidance must specifically include 'character' as an aspect of 'special interest'. This would anticipate any problems arising from the fact that case law did not need to address 'character' as an aspect of 'special interest' as character was identified separately in statute.

3. Migrating existing designations (Clause 5.1)

Under the procedures for inclusion in the register, a heritage authority must not include a structure or open space in its heritage register unless consultation has been carried out as specified in the Bill (Clause 5.1). The unified heritage register is a new entity and, by implication, migration of lists will require existing designated heritage assets to be added as entries to this register. It is not clear how this can be done within the terms of this Bill without undermining the transparency of the new register, devaluing the current lists, or consulting on all the existing listings. None of these would seem to be acceptable options, but we are keen to advise positively on any proposals that can address these contrary aspirations. It would seem that there is a need for a system or process that recognises that existing designations will be migrated to the register without the requisite consultation.

4. Provisional registration (Clauses 14-18)

We welcome the introduction of a scheme of provisional registration to protect buildings that are being considered for permanent addition to the register (Clauses 14-18). The interim protection extends to a requirement for consent and an opportunity for enforcement against unauthorised work.

We recognize the importance of a preliminary sift procedure to confirm the validity of provisional registration but, since the immediate interim protection provided through a 'Building Preservation Notice'' (BPN) will no longer exist under the new Act, there may be circumstances where a building could be lost during the 'sift' period, especially if a site is at imminent risk. If the same level of protection for designated assets is to be maintained under the new legislation, it is essential that the 'sift' be sufficiently quick and light-handed to allow it to match the timeliness of serving of a BPN.

We also note that both consent and enforcement notices will lapse if the structure is not permanently added to the register. We would ask for consideration of an extended period in which any outstanding enforcement action should be maintained after the remaining protection ceases. Without this it would be possible for developers and owners to gamble on carrying out unauthorized works in the hope that the asset would not be registered. Indeed this gamble would be felt to pay off if the asset is then not added to the register as a result of a loss of significance taking place during the provisional registration period and no further action taken. Similarly, should any party wish to appeal under Clause 25 against the failure to register the asset, then an extension of time of the provisional registration together with any consents, conditions and Enforcement Notices will be necessary to protect the asset pending the outcome of the appeal.

5. Appeal against designations (Clauses 25 & 31)

We welcome the introduction of a formal appeal system against decisions to register in England (Clause 25). We are also supportive of the opportunity for appeals against failure to register, which will allow amenity societies and local communities to pursue the protection of their heritage. We are concerned however that there will be no similar independent provision in Wales. Nor do we consider that the Welsh Ministers will be adopting an open or clear process to take advice on appeals as that advice need come only from any person they consider appropriate (Clause 31(7)).

6. Certificate of no intention to register (Clause 39)

We welcome the additional certainty that extending the powers of the current 'certificate of immunity from listing' to other heritage assets and, particularly, expanding it outside the restrictions of applying only when a planning application is submitted, will bring to owners and developers (Clause 39). However we have some concern over how it might operate with respect to unseen or underground assets.

7. World Heritage Sites (Clause 45)

The White Paper stated that government 'will clarify and strengthen protections for World Heritage Sites' (England) and 'will strengthen protection and provide more planning policy guidance for World Heritage Sites' (Wales). However we note that the Bill only includes provisions for adding World Heritage Sites onto the register (Clauses 45 and 1), and states in the explanatory notes that no additional protection is conferred.

The inclusion of World Heritage Sites in the register could add to confusion and complexity by introducing to the register an asset class with, potentially, quite varied needs in terms of control. It is essential that management processes, in line with the Heritage White Paper, should be operated under appropriate and recognised tiers of policy and management plans.

Fundamentally, the designation of a World Heritage Site is a treaty obligation that can bear on a nation state's obligations in respect of its natural as well as its cultural heritage. There will never be one (essentially) built heritage tool that will deliver the domestic means whereby a nation state can respond to its obligations emerging from the designation of a World Heritage Site. A portfolio of tools ranging from SSSI and National Nature Reserve Designation, through AoNBs and National Park, Conservation Area and heritage asset designation will always be required, and this should be recognised in the draft bill.

8. Marine Heritage Assets (Clause 47(2)a)

We welcome the revision to the White Paper's original proposals to limit the terms of reference for marine designation to archaeology, recognising the benefits of extending common standards and terms across as wide a range of the historic environment as is practicable.

9. Requirement for Heritage Asset Consent (Clause 86)

The proposed regime has addressed the difficult and potentially complex problem of how to define which works need consent across the variety of different heritage assets the register will bring together. The requirement of consent for all works of demolition, flooding and tipping coupled with the test for consent on other works affecting the 'special interest' appears to maintain adequate levels of protection subject to our comments above on the need to include 'character' within the terms of 'special interest'.

10. Requirement for New Consents for Repair and Removal (Clauses 86(2)c & 87(1))

It should be noted that particular care needs to be given to the matter of consent for repair (Clause 86(2)c(i) and (ii)) and consent for removal (Clause 87(1)). In each of these cases an appropriate and measured tightening of control is welcomed, though the impact of these specific references to repair and removal will introduce new considerations for conservation professionals. Indeed there can be little doubt that in the short term they will give rise to additional demands on the planning authority.

11. Consents subject to the current Planning Bill/Planning Act 2008 (Clause 86(5))

We recognise the principle of writing the draft Heritage Bill in terms of the Planning Bill. However, if we are to ensure that the government's commitment to maintaining protection for the historic environment is maintained in the current legislation, there must be clarity, understanding and agreement on the procedures that will be in place under that Act to ensure appropriate advice and consideration of historic assets within that process – for example the Infrastructure Planning Commission.

12. Removal of objects from registered heritage structures (Clause 87)

We would urge further clarity in the test of knowledge proposed to be applied to an applicant who removes objects from an asset that s/he "reasonably believes or could reasonably be expected to believe, contributes to the special historic, archaeological, architectural, or artistic interest of the registered site" (Clause 87). The potential for legal argument over a 'reasonableness' test should be avoided, in particular given the long delays expected before more complete statements of significance are provided.

13. Offence of contravening Clause 86 (Clause 89)

We are concerned by the introduction of ignorance of designation as a defence for those accused of an offence in contravention of Clause 86 (Clause 89(2)). The current listed

building legislation includes the other defences given in Clause 89(4) but does not allow for ignorance as a defence.

At present, offences are ones of 'strict liability', in our view the only appropriate legal position where offences can be 'fatal' or irreversible to the cultural or heritage importance to the nation of the particular asset. Given the vulnerability of heritage assets, it is vital that all those involved in them are personally responsible for their actions and, therefore, the level of knowledge and information they gather that informs those actions. The defined defence in Section 89(4) – the common law defence of 'urgent necessity' - is sufficient to recognise that there are occasionally exceptional circumstances that require action prior to receiving consent. The introduction of this 'ignorance' defence will, in our view, undermine public confidence in heritage protection, weaken enforcement and lead to more time-consuming, wasteful and costly legal debate with owners, agents and builders who will undoubtedly grasp at this defence and endeavour to prove they did not know about the designation. To seek to avoid the scenario all existing entries would need to be re-notified, adding considerable administrative costs.

This problem would be particularly likely to arise with some of the early listed building lists from the 1970's where owners may not have been notified of the buildings status other than through local authority searches. However, the responsibility will still be vested in the owner to inform their agents and any contracted builders, which, of course, can never be guaranteed. Equally, in areas of the country where properties change hands regularly or tenancies are short, Local Authorities, unable to rely on solicitors informing their clients, would be in the position of having to re-notify owners and occupants on a regular (possibly even annual) basis. In law, in terms of good efficient government and in every day practice the introduction of a defence of ignorance would displace duty and responsibility from where it must be vested.

14. Penalties (Clause 91)

We are disappointed that more opportunity has not been taken to increase penalties for unauthorized works to a reasonable and market appropriate level. The derisory penalties incurred at present are not sufficient deterrent against carrying out work. For example the fines in the 2005 Greenside case of £15,000 plus £10,000 costs bore no relevance to the financial benefits the owner will have made by demolishing the building and obtaining a cleared site. Such penalties can form a manageable development cost within a large project and thus exert no deterrent effect against unauthorised works that are not in the public interest.

15. Class consents (Clause 93)

We note with interest that powers are proposed for class consent orders to be made for heritage assets, thus extending the current archaeological provisions to other assets (Clause 93). We are not yet clear how this might be applied to current Listed Buildings and what impact this might have. In particular, these are not likely to be workable for buildings unless effective provision is made for integration with the Building Regulations. Subject to recognition that Conservation Area Consent reform is likely to take place under the Planning Acts, we do also consider that a Conservation Area class consent, or a Conservation Area Local Development Order may also warrant investigation.

16. Applications for consent to whom made (Clause 95)

We welcome the opportunity for clarifying the processes for application for consent by

local planning authorities (Clause 95). The current processes are not always alike across authorities and we feel that both the process and decisions should be taken out of the hands of the owning authority. We see this as the opportunity for making the process more transparent and enhancing public trust.

17. LPAs to notify authority of applications they intend to grant (Clause 101)

The requirement for the LPA to notify the National Authority of applications they intend to grant could, if not restricted by direction, become very bureaucratic and slow down the handling process. We welcome, therefore, Clause 101 which will allow for exemptions reflecting the current situation.

18. Grant or refusal of consent (Clause 106)

We are pleased to see that Clause 106 of the Bill goes some way towards ensuring that planning authorities seek and take account of specialist advice and using appropriate expertise. We are however very concerned by the implication in the primary legislation that this advice can be secured simply by inviting representations. Whilst inviting representations is clearly of great value for input from amenity societies and other expert bodies, there must be more clarity on the local authorities requirement to take advice from a conservation officer and/or archaeologist, as stated in the accompanying notes.

Advice received through a representation, whether from an amenity society or any other external body, may weight issues that are important to those making the representation but are not matters that the final decision maker should significantly weight in the public interest. Clearly there is no substitute for the decision-maker having access to its own skilled professional advice. Consequently, we would ask for the deletion of the comment in parenthesis at Clause 106, which suggests a wholly inappropriate minimum level of expertise ('whether as a result of inviting representations under regulations under Clause 103, or otherwise').

In addition, it is also worth noting that the Bill, and the draft comments, relate only to the grant or refusal of consent. Post-consent negotiations and resolution of regulatory conflicts require in-house professional advice which could not be provided by an amenity society or other external body.

19. Grant of consent: persons for whose benefit consent has effect (Clause 107)

We would welcome further clarification of the terms and intentions of Clause 107.

20. Other conditions (Clause 110)

We are interested to see within the list of conditions that may be attached to heritage asset consent (Clause 110(1)e & f) and that these include the ability to determine who may carry out 'works or a removal', 'inspect or record' and 'carry out archaeological work'. Of course these and related restrictions should not be limited by the present implicit application to 'archaeological' terms (Clause 110(1)g). This is crucial not least given all the ambiguity that such exclusivity entails. The drafting must present an inclusive regard for the best interests of the historic environment, an interest that, it goes without saying, is not always or exclusively archaeological. A simple re-phrasing of archaeological as 'historical' would help address this particular anomaly in the drafting. In general, this clause can be warmly welcomed provided it is re-cast to apply appropriately to include historic environment conservation professionals, and allows

conditions to be imposed requiring persons with appropriate skills to be used to safeguard the special interest of the asset.

At the same time, requirements to create historical records should not be presumed to be simply or exclusively the responsibility of the owner or, indeed the developer. The vast majority of our heritage is maintained by private holders of our building stock, the stockholder. It is essential that the new system - including the promotion of historical documentation – recognises the needs of the private stockholder. As such, duties to create historical records, arising from appropriate maintenance and improvements, should not be simply passed to the stockholder without regard to the conservation benefits accruing from their investment in our heritage.

21. Determination of heritage asset consent applications by officers (Clause 113)

We are happy that certain decisions on applications will be delegated to officers. However directions under Clause 113 should include a requirement for heritage asset consent procedures to make use of the appropriate skills. This is in accordance with 113(5)b which allows for 'prescribing directions of officers who are permitted and descriptions of officers who are not permitted to be authorized to determine heritage asset consent'. We consider that this should specify a requirement for appropriately skilled conservation professionals to have direct input into dealing with conservation applications.

22. Review of officer's decision (Clauses 113, 115, 116, &119)

We are extremely concerned by the proposal at Clause 115 to introduce an additional level of review between the local authorities decision through delegated powers and the appeal to the Secretary of State. We are worried that this could lead to decisions made on grounds other than the conservation of the asset. Current systems of delegation usually involve referral to committee in certain cases, such as on receipt of objections, and this would appear an adequate check and balance on delegated decisions. If applicants are concerned about the decision, the current planning appeal system is the appropriate forum for action and response.

Clauses 113 to 116, taken with Clause 119, amount to the establishment of a Local Member Review Body system for the determination of most appeals by a Council in circumstances where the original decision was taken on delegation. This will remove the right to an expert review by the relevant national body. There are strong arguments against the development of an appeal route for any planning or planning related decision that leaves the appeal decision in the hands of the same body that made the original decision. The RTPI, RIBA and RICS have been campaigning strongly against similar provisions in the Planning Bill, currently before Parliament. In the case of heritage appeals, there would also appear to be a strong argument against the local planning authority being able to review its own decisions on delegation. In addition, there is a concern that there is no requirement for the appeal body to have technical competence in relation to heritage assets.

To ensure that fewer appeals are taken to the Secretary of State two intermediate options could be available:

- appeal to English Heritage for informal arbitration, and
- local panels of conservation experts available for informal consultation.

23. Consultation before issuing enforcement notice (Clause 130)

We are extremely concerned that Clause 130 requires consultation with English Heritage and the Welsh Ministers before issuing a heritage asset enforcement notice. This will delay the process substantially at a time when urgent action is required. Where a breach has taken place, we do not feel that such consultation should be necessary if the local authority has taken the advice of appropriately skilled historic environment conservation professional.

24. Appeals against enforcement notices (Clause 133)

We welcome the removal of the judgement of an asset's special interest as a ground for appeal against enforcement (Clause 133). In our experience, this principle has diverted atntion from the works towards a debate about the interest of the asset. It is quite possible for the special interest of the asset to be re-considered through a request to remove it form the register.

25. Offence where heritage asset enforcement notice not complied with (Clause 139)

We are concerned by the introduction of ignorance of designation as a defence for those accused failing to comply with an enforcement notice (Clause 139). The introduction of this defence will, in our view, weaken the power of the enforcement notice and lead to more time consuming and costly legal debate with owners endeavouring to prove they did not know about the notice.

26. Exemptions for ecclesiastical buildings *etc*. (Clause 153)

If ecclesiastical exemption is to continue, it is arguable, in our multicultural society, that all religions and denominations are given the opportunity to demonstrate their ability to deal with heritage assets using acceptable internal procedures (Clause 153). We will be interested to see if any further denominations and religions will be added to the current exempt denominations but understand the Heritage White Paper had stated that 'the Exemption will not be extended to other ecclesiastical assets or to other denominations'. On balance, we consider that the exemptions system should not be extended and that further steps should be taken to bring the existing ecclesiastical exemption into a unified heritage asset regime.

27. Heritage Partnership agreements (Clause 157 and after)

We welcome the progress made with the Heritage Partnership Agreements, while recognising that there is much to be done in developing them as a viable and cost-effective mechanism (Clause 157 and after). In particular we note that the adoption of a contractual agreement as a mechanism for management under HPAs is quite distinct from the wider civic duties attached to the management of designated assets under planning law.

The level of consultation proposed in Clause 159 is less specific and precise, and potentially weaker than that which would be carried out when a direct application for heritage asset consent is made. It is appropriate that in drawing up an agreement, the same level of consultation should be required to that which is a statutory duty when dealing with applications for heritage asset consent. In particular this should require consultation with local and national amenity societies.

The process of making and terminating HPAs do not appear compatible. HPAs are made

by local planning authorities in consultation with the heritage authority but can only be terminated by that heritage authority and not the originating planning authority (Clause 160).

28. Restrictions on use of metal detectors (Clause 161)

We support the decision to remove the restrictions on the use of metal detectors on certain assets through class consents. However we do consider that its definition should be very different from that suggested in the accompanying notes. The notes suggest that the class consent will be given to 'all registered heritage structures without archaeological interest' (paragraph 191). Whilst we understand what this would mean in common use and parlance, this should be avoided, as any building may have archaeological interest whilst not being an archaeological site of the type currently protected as a scheduled ancient monument.

29. Compulsory purchase of easements over neighbouring land (Clause 164)

We welcome the introduction of a power to acquire relevant easements over land to ensure that productive reuse of buildings at risk is not hampered by lack of access (Clause 164)

30. Issue of repairs notice before compulsory purchase of registered heritage structure (Clause 167)

We welcome the opportunity for compulsory purchase to be confirmed on a site where the heritage structure that was the subject of the compulsory purchase has been demolished (Clause 167).

31. Acquisition of historic object by agreement or gift (Clause 172)

We welcome the addition of objects that are gifted to the power of general acquisition by agreement (Clause 172).

32. Power to carry out preservation works to registered heritage structure (Clauses 174 & 175)

We are very pleased to see that the Bill introduces the ability to serve the equivalent of an 'Urgent Works Notice' on occupied structures (Clause 174). This will allow this important holding action to be carried out on more buildings and structures. Currently it is common for owners to claim that a structure is in use for storage or similar to prevent urgent works.

However we note that there is so far no provision covering urgent works to unregistered buildings in conservation areas that are included in the current legislation.

We are also extremely concerned by the introduction of a requirement that local authorities acting in default to carry out works following service of a notice under Clause 174(4) should consult English Heritage or the Welsh Ministers. Although we see that this referral may add weight to the process, and may be a consequence of the welcome re-definition of 'urgent' works as 'necessary works', it will undoubtedly hold up these processes where urgency can be of the utmost importance. Urgent works need to be both speedy and routine, while consulting with national bodies negates both these points. We note that under Clause 174(5) a direction can be made to limit this requirement and would hope that it is limited to all but the most important cases.

In addition, costs attached to urgent works carried out in default should be reinstated as a land charge rather than the current and proposed position where they become a civil debt (Clause 175 & commentary) and give the owner the opportunity to claim hardship to avoid repayment.

33. Dangerous structures orders in respect of registered heritage structures (Clause 176)

We are pleased to see the requirement to consider action on structures in need of repair through heritage legislation before considering the application of other legislation (Clause 176). This priority can be used to prevent demolition or alteration caused through a dangerous structure order that may make the building safe but does not consider the future use and restoration of the structure.

34. Public access (Clause 182)

We note with interest the obligations on public bodies to address access issues for registered structures under its ownership or care (Clause 182), though we have some concern that it may lead to additional resource requirements or, alternatively, militate against registration of such assets.

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35. Contributions by a local authority towards preservation (Clause 185)

While we welcome the provisions of Clause 185, it does not replicate the wording under Section 57 of the current Act. This makes provision for local authorities to make grants to buildings that are not listed but which appear to them to be of architectural or historic interest. This would cover buildings in conservation areas and local list buildings. The new Act should make similar powers available. Grant giving to buildings in Conservation Areas is an important aspect of both conservation-led regeneration and tackling buildings at risk.

36. Recovery of grants under Clause 185 (Clause 186)

We welcome the clarity conferred by Clause 186 on recovery of grants and in particular the explanation that recipients of property passed on by Will would not be subject to grant reclaim within the appropriate time scale. This offers some security to grant recipients and, potentially, their dependents, at a traumatic time.

37. Marine Heritage Licences (Part 4)

The proposals for a comprehensive system of marine asset registration and licensing are strongly welcome in principle. However, there would appear to be better opportunities to integrate marine asset planning and management with the marine spatial planning system proposed to be created under the draft Marine Bill, also to be introduced to Parliament in 2008-09. There is a significant argument in principle that a marine heritage register should be prepared in consultation with the marine planning authority (the Marine Management Organisation) and that that body should be able to determine marine licenses in consultation with or under delegation from the national heritage authority. Fundamentally, we have a choice to create marine planning authorities analogous to terrestrial authorities, which have a duty to consider heritage issues in an integrated manner, or alternatively, to develop a system of separate marine consenting, in which the marine planning authorities have little or no interest in integrated asset management. The latter would appear not to be a beneficial way forward, and indeed to be contrary to some of the fundamental tenets of the Heritage White Paper.

In practical terms, for example, close co-operation between the marine planning authority and the national heritage authority is likely to lead to better and more integrated planning policies for the marine environment, and to better planning decisions, taking account of the significance of heritage assets. For the applicant, it holds out the prospect of making applications to one body rather than two.

38. Historic Environment Records (Part 5, & supplementary statutory guidance)

There remains considerable concern over the structure and terms of reference of the Historic Environment Record (HER). Given that this is a new statutory duty for planning authorities, it is essential that it is defined in the primary legislation in a fashion that renders it fit for purpose within the planning process. Following the terms of the Heritage White Paper, its purpose should be to support processes attached to the planning system. In particular, given the more holistic management frameworks that the draft legislation embodies, it is essential that the service is an appropriate tool in the planning and management of development across the historic environment as a whole, including information on the visible features or known attributes of places.

In the same spirit, the information service operating under the banner of a HER must work within the principles, needs and timescales of the mainstream planning system's management of the built heritage. A holistic information service will recognise that, when dealing with historic environment planning matters, people are most concerned about the things they see and of which they are aware. As well as providing a proper standard of public service in information, the service must reflect local interests in the historic environment as a whole through the provision of information that is accessible locally and in a timely fashion. This role should be embodied in the primary legislation given the new burden this duty will place on planning authorities.

Such intentions for Historic Environment Records (Clause 210 and after) are wholly undermined by the specific and exclusive reference to what would be in effect a base-line of 'archaeological interest' for the service (Clause 210(2)c; alongside the associated guidance released for consultation after the publication of the Bill). This clause would negate the potential of the historic environment as an inclusive resource, and the credibility of the planning authority as a provider of the service. It relegates important needs of stakeholders to secondary considerations: specifically those relating to the historic, architectural and artistic interests in the historic environment. Clearly, these areas of interest reflect primary needs within communities, concerns manifested in the major roles played by the national amenity bodies within the planning system. Excluding non-archaeology interests from the core duties of the HER service effectively removes the service from a viable role in the wider planning system.

To avoid the potential damage such a restricted information standard would give rise to, Clause 210(2)c(i) should be deleted. Alternatively it could have 'archaeological' replaced with 'historic environment' or 'heritage' interest, or supplemented by 'historic, architectural, or artistic' interest, in line with the principles of the new legislation. This approach should be extended across the associated Sections in Part 5. Also reflecting this community interest in the proposed statutory service, it should be a statutory duty for the HER to include the boundaries of all Conservation Areas and all structures on any local lists.

In this context, information will need to be managed both at the local level and at the HER

(if at a higher tier), so there is a need to integrate two levels of management. Also it will need to be integrated with managed (and properly resourced) archiving and disposal of hard copy records, in accordance with wider local government guidelines, and in conjunction with the Archive Services. Here DCLG and DCMS need to give a lead on joining up systems which are currently incompatible

A planning service should provide a service capable of representing public and professional interests in the historic environment in a fair and balanced fashion, with clear standards that reflect an inclusive and diverse interest in the historic environment, and address stakeholder and planning needs regarding timely responses integrated with local management needs. Consequently the requirement for Historic Environment Record to have 'appropriate advice and assistance for the purposes and understanding information contained in the record' (Section 213) must ensure that the expertise encompasses dedicated professional skills sets that underpin the records, history and evaluation of the conservation of the historic built environment, including in particular architectural history, design and development.

Further, the requirement for Historic Environment Records to provide 'appropriate advice and assistance for the purposes and understanding information contained in the record' (Section 213) should reflect the above duties. Expertise must encompass dedicated and sector-recognised professional skills-sets that can inform the processes, underpinning the records, history and evaluation of the conservation of the entire historic environment, and include in particular its architectural history, design and development.

39. Special local interest

The White Paper proposed that 'We will provide local planning authorities with new tools to protect locally designated buildings from demolition' (England) and 'We will bring the demolition of locally important buildings within the sphere of development control. (Wales).' Whilst we had serious concerns at the time about the introduction of additional confusing and bureaucratic Article 4 Directions, and are glad this idea appears not (as yet) to have been carried through, we do support the principle of a simple protection given to all lists which are drawn up in accordance with a given procedure. However, the draft Bill does not appear to do that; obliging local authorities to draw up criteria for the list (Section 215) but seemingly not offering any measure of protection for structures included on them. Indeed we are also concerned that the Bill does not appear to make provision for interim protection for sites of local interest whilst undertaking the statutory consultation with owners and other interests.

We are also unclear which local authorities will be required to draw up the criteria for lists of special local interest. Sitting in part within the Historic Environment Record section (Part 5) it could be inferred that this role be taken by those authorities who manage the HER. However this would be an entirely inappropriate level for managing such a list – not least given the regional infrastructure anticipated in that service. The list is to assist the local planning authority and hence should be drawn up and maintained by the body that is the local planning authority, resulting from consultation at local level. This may be easily done for buildings of local interest but an integrated list of all heritage sites will need to ensure that archaeological criteria are included in district level selection criteria to ensure that all of the local interest sites are included.

Guidance on the appropriate criteria for designation should be drawn up and published by English Heritage or Cadw as appropriate. This will help avoid inconsistencies from one local authority to another.

We are further concerned at the presumption in the notes on Section 215 that 'It is likely that local planning authorities will hold separate informal lists of assets of special local interest in their area, but this will not be a legal requirement'. This undermines the Heritage White Paper's principles of accessibility, transparency, openness and completeness. We are of the view that the compilation of such a list (together with the appropriate criteria for inclusion) is essential so that local planning authorities can meet their obligations under section 215. The HER and local lists can happily co-exist and, no doubt, will usually be identical for the area in question. Indeed, in addition to local authorities drawing up local lists of assets for inclusion in the HER they should also be obliged to put in place local policies within the LDF for their protection. In summary, if it is to be a viable service under the new regime, the HER should provide a service that would carry all lists of all assets of national and local interest, thereby allowing public access to a comprehensive register of all heritage assets in the area, and have them managed at a suitably local level.

In tandem with these concerns, we are not convinced that stipulating that a HER is 'non-profit making' (Section 213) necessarily will produce optimum service under the terms required of the planning system within which it must operate. This issue should not be regulated through the primary legislation.

40. Warrants to enter land (Clause 217)

We support the power to obtain a warrant to enter land where access is urgent or has been refused (Clause 217).

41. Treatment and preservation of finds (Clause 220.2)

We feel that at Clause 220(2)a the qualification provided by the use of the word archaeological in "for the purpose of archaeological investigation or analysis" is superfluous and potentially limiting and confusing.

5. Conclusions

Our institutes and corporate bodies re-affirm our joint welcome to the proposals for reform embodied in the draft bill, sharing and supporting the principles underpinning these crucial changes.

We have identified the broad areas of concern that will need to be addressed within the development of the legislation and guidance. Without careful attention being given to these we fear the aspirations of the Heritage White Paper will not be achieved. They include:

- agreed implementation strategies based on consultation with stakeholder groups;
- appropriate planning processes and controls, not least for the management of conservation areas;
- agreed supporting legislation and guidance, including service descriptions and specifications; and
- clarification on investment in the current services, as well as on capacity and resourcing under the new legislation.

We have, additionally, identified a large number of more detailed but important areas that we feel will require further clarification, amendment or expansion for the legislation to achieve its ambitions for the historic environment and its conservation.

This is an ambitious programme and we hope that it will continue apace towards our mutual aim of creating a simplified, accessible, accountable and responsive management system for the historic environment which is strongly integrated into the planning system.