



ENGLISH HERITAGE

Draft Heritage Protection Bill 2008

Commentary by English Heritage

This is intended only as a general introductory guide to the terms of the Draft Heritage Protection Bill 2008 published by the Department for Culture, Media and Sport on 2nd April 2008. A copy of the Bill and its explanatory notes are available on the Department's website at:

http://www.culture.gov.uk/Reference_library/Publications/archive_2008/pub_drafthpb.htm

Introduction

- I. The Heritage Protection Bill proposes a wholesale revision of the existing law that protects the historic environment. It will repeal the following Acts that to practitioners have become so familiar over the years:
 - a. The Ancient Monuments and Archaeological Areas Act 1979 - for Scheduled Monuments and Archaeological Areas
 - b. The Planning (Listed Buildings and Conservation Areas) Act 1990 - for Listed Buildings and Conservation Areas
 - c. The Historic Buildings and Ancient Monuments Act 1953 – for grant and acquisition powers
 - d. The Protection of Wrecks Act 1973 – for historic marine wrecks



2. Although such wholesale change looks radical on the face of it, it has been a fundamental principle of the drafting that protection levels are not up for change in substance and concepts that work well should not be tinkered with. There are therefore many familiar concepts within the Bill and indeed quite a lot of very familiar wording. Large parts of the 1990 Act in particular have been brought across with little but the necessary consequential changes.
3. The Bill is therefore a reassuring read.
4. It may, though, be a little puzzling in parts, not just because, like any piece of legislation, it is necessarily quite laborious in its language, but also because it leaves several unanswered questions. That is because the Bill is just one piece of the jigsaw that will deliver the reforms. The Bill only concerns itself with the matters that need to be dealt with at the level of primary legislation. Much of the reforms' substance will be delivered in Government regulation, new national policy statements and guidance.
5. The Bill is also incomplete. There simply was not the time to finish it off before publication for the select committee that will look at it in the summer. What it does not cover, but will cover by the time it is introduced into Parliament for formal debate, is:
 - Conservation areas;
 - Local Designation; and
 - English Heritage grant and loan making powers;
6. What does make the Bill essential reading is not just its effective implementation of the reforms, as promised in the White Paper, but also its package of improvements that the sector have long wanted to make should the opportunity to re-write the law arise. Some of these are apparent in this draft of the Bill. Others are in the areas not yet covered by the draughtsman.

7. One of the first things that is striking about the Bill is its language. The Bill uses some words and phrases that are unfamiliar. They may not be the best at conveying their everyday meaning to the public. The Bill's obvious primary aim is to make the law work. This Bill will sit in amongst many related Acts, some of which use similar words and concepts. This naturally places a restriction on vocabulary. Between now and the Bill being passed the phraseology still may change, but in any event the terms the Bill uses do not have to be adopted by policy and guidance. It is the latter that will really create the common currency of the future.

Core areas covered by the Bill

The Register

8. English Heritage will be responsible for maintaining a publicly available register of:
 - a. Heritage Structures;
 - b. Heritage Open Spaces;
 - c. World Heritage Sites; and,
 - d. Marine Heritage Sites.

The register will be made available online through the Heritage Gateway and perhaps will become the most publicly visible element of the reforms.

Heritage Structures

9. Current listed buildings and scheduled monuments will all be combined onto one register of "heritage structures". Nothing will drop off the current lists in the transfer to the new register.
10. In future English Heritage will be able to consider adding to the register: any building or other structure; an earthwork, field system or other work; a part of a building or a part of any other structure; a cave or excavation; a site

comprising any remains of a vehicle, vessel or aircraft; or a site comprising any thing or group of things that evidence previous human activity.

11. This is a comprehensive catalogue that is essentially a combination of what could previously be listed or scheduled with the addition of sites with loose matter on the surface that are of historic interest. All of these types of structure can appear in one single registration, giving rise to the potential of creating a seamless protected environment within which sits quite different elements.
12. The register entry for each structure or site can describe what is and what is not included in three dimensions. All new entries will use a plan to principally describe the extent of the asset in a top-down view. Words may be used to “cut out” from that plan-view bits of the structure or the land underneath that are not of special interest.
13. Subject to what the register says, whether fixtures and fittings are included in the registration will be determined just as it is now. Although deciding what is and what is not annexed to a building is not easy in all cases, there was no need to alter the principle and no better way of defining it.
14. Buildings within the curtilage of what are currently listed buildings will remain protected. New additions to the register will not automatically include curtilage buildings. The designation process will decide what buildings within the curtilage merit registration on the grounds of special interest. All such buildings will be explicitly included in the register. Nothing else within the curtilage will be protected.

Special Interest

15. A heritage structure can only be registered if and to the extent that it holds special architectural, historic, archaeological or artistic interest.

16. There is no definition within the Bill of what “special” means. Special interest will be defined by the Principles of Selection contained within national policy, as is currently the case for architectural and historic special interest, set out in PPG15. English Heritage will be consulting on these Principles shortly.
17. Special archaeological and artistic interests are new concepts. Artistic interest has a simple justification: it was considered that whilst architectural interest covers all design interest in buildings and structures, including what could be more purely described as engineering or industrial design, it did not so comfortably encompass the pure artistry of statues and other works of art.
18. Including artistic interest will not bring general cultural objects within the ambit of registration. The physical definition of what can be registered is not altered. So domestic scale works of art are quite unlikely to be registerable unless they form part of the building.
19. Special archaeological interest is an important new concept. There are two aspects worthy of close attention: What is archaeological interest per se and when is it sufficiently special to justify registration?
20. “Archaeological interest” will be given a narrow and, in some eyes possibly, an artificial definition in order to achieve a protection system that works for the relevant sites.
21. The definition does not appear in the Bill, but the intention is to define it in policy and guidance as “an interest in carrying out an expert investigation at some point in the future into what evidence the site or structure may contain of previous human activity”, or words to that effect. Whilst the principle is clear, the exact words used in the definition will be the subject of consultation on the new Principles of Selection.

22. When considering what protection an archaeological site requires, it has helped understanding to liken it to a crime scene. With a crime scene one knows not to touch anything that may yield evidence before the police arrive. But that is not to say that the police will necessarily find anything of interest.
23. So there can be archaeological interest in a site even if, in fact, there is nothing there. Where there is special archaeological interest in the soil right up to the surface, an unauthorised third party coming along and putting a spade in the ground will harm that special interest even if the spade reveals nothing but unadulterated topsoil.
24. For a site to be registerable on the grounds of “special archaeological interest” there must be good reason for believing that the site may contain evidence of previous human activity that is of special historic interest, or perhaps even of special architectural or artistic interest.
25. As detailed below, only those works that affect special interest require consent. Defining archaeological interest in this way is critical to the success of that consent regime. It will mean that even an expert well-planned archaeological investigation will affect the special interest and will require consent.
26. Whether a site holds special, as opposed to ordinary, archaeological interest will be found in a combination of factors: the degree of belief that the site will yield evidence of interest and the nature of the interest in that possible evidence. If an expert can justifiably claim with near certainty that there are the remains of a Roman villa buried in a site then it will pass the test of special interest as both the confidence in there being remains and the interest in the remains combine to make it clearly worthy of protection.
27. All current scheduled monuments will be said to hold special archaeological interest.

28. The boundary of a registered asset must be defined to go no further than the extent of special interest. There is a technical exception to that in relation to sites with remains. Land supporting the remains can also be included.

Registration Procedures for Heritage Structures

29. All current listed buildings and scheduled monuments will be placed on the new register as registered heritage structures, without any amendment of their physical extent and without any formal process.

30. From there on, anyone, including English Heritage, can seek to add or remove an entry or amend it.

31. English Heritage will have prime responsibility for receiving and deciding all such applications. To be valid an application will have to contain certain prescribed information. This will be set out in regulations produced by the Minister.

32. If the application is valid and has a prospect of successfully meeting the special interest test, then English Heritage will provisionally register the site and consult relevant parties before deciding the matter.

33. Provisional registration will provide full protection for the asset for so long as the registration stands. If, after consultation, English Heritage decides the asset should not be registered then the provisional registration ends and life goes on effectively as if provisional registration never existed. That said, anyone who contravened the requirement for consent during the provisional registration will still be guilty of an offence.

34. Once a decision by English Heritage has been made and published, interested parties have 28 days in which to appeal the decision to the Secretary of State. If the Secretary of State wants to consider reversing an English Heritage

decision then he will invite representations before making a decision. He will then consider the matter on paper only. There will be no hearing.

35. The Secretary of State's decision will be based on the same Principles of Selection as English Heritage is obliged to consider. His decision will be final, subject only to challenge on legal grounds.
36. The system for deciding what will go on the register, what will come off and whether something on it should be amended will thus be open, democratic and easy to use. That is an important and very welcome change. It allows the public to be a part of deciding what of our heritage deserves recognition and management.
37. It does not of itself, though, fundamentally change what type of assets will and will not be registered. The test of special interest as set out in the Principles of Selection will apply, whoever makes the decision. The Secretary of State is currently the only arbiter. He will become the final arbiter. Only in so far as there is a change in the Principles of Selection will there be any change in what should and should not be registered.

Certificates of No Intention to Register

38. Anyone may apply at any time to English Heritage for a certificate that will state that there is no intention to register any heritage structure or heritage open space in respect of a parcel of land. English Heritage alone will decide these applications after consultation with all the usual bodies. The certificate will last for five years.
39. This is similar to the current system of issuing certificates of immunity, but certificates of immunity can only be applied for if a planning application has been made.

40. English Heritage obviously must act fairly and reasonably in considering such applications. But that does not mean that any application for registration as a heritage structure or heritage open space that does not succeed will lead automatically to a certificate of no intention to register being issued. English Heritage may be unconvinced either way as to whether a site does or does not hold special interest, particularly if the information in support of the application is thin.

41. There is no right of appeal from English Heritage's decision on a certificate.

Offences for Carrying Out Works etc Without Consent

42. The Bill will make it an offence to carry out any of the following activities without consent:

- a. Works resulting in the demolition or destruction of a registered heritage structure
- b. Works resulting in any damage or disturbance of a registered heritage structure where the damage or disturbance affects the special interest
- c. Works for the purpose of removing or repairing a registered heritage structure or making any alterations or additions to it which affect the special interest
- d. Any flooding or tipping operations on or in a heritage structure.
- e. Removal of objects from a site that a person believes or could be expected to believe contribute to the special interest in the site. This applies only to sites with protected loose material (the Langdale-axe-factory-type site)
- f. Activities that deliberately or recklessly cause damage to an asset.

43. There are three fairly obvious points to note:

- a. Works that do not affect special interest do not require consent. This applies to archaeological sites just as it does to sites of the type that

are currently listed buildings. Hence the very careful and tight definition of what archaeological special interest is for the purposes of the Bill.

- b. Heritage asset consent, as it will be called, can be obtained for works even if they do affect the special interest.
- c. Flooding and tipping operations without consent are an offence even if they do not apparently affect the special interest.

44. This is broadly the approach currently taken under the 1990 Act in relation to listed buildings. Current scheduled monument controls are different but only in the sense that consent is required for all works. That consent will always be given if the works do not affect the special interest.

45. If an archaeological investigation reveals fabric or objects of historic interest then policies concerning whether the special interest is best served by preservation in situ or removal and recording will be considered in the same manner as they are now.

46. The protection levels for sites of archaeological interest are further enhanced by the offence being extended to include instances of “disturbance” and not just “damage”.

Defences

47. It is a defence for anyone who carries out unconsented works, demolition or removal to say:
- a. that they did not know that the site was a registered heritage structure; and, critically,
 - b. that they had taken all reasonable steps to ascertain whether it was a registered heritage structure.

The Register will be available online at all times. It is difficult to see how this defence may be successfully run by anyone who has reason to believe the asset maybe protected and has access to the Internet. So a builder carrying out works to a Georgian property will have little excuse.

48. It does, though, offer proper protection for members of the public who have no reason to believe that they are in a protected site. For example a rambler may happen across an area with a scatter of Neolithic items, such as axe-heads. It would be unjust to prosecute someone who idly picked up a sharp stone without any idea that it was man-made.
49. Defences are, of course, only relevant after the damage has been done. If a site needs protection against inadvertent damage then signs warning the public of the registered status of the site would be the practical way to prevent damage in the first place. Assuming the signs were prominent, they would most likely remove the prospect of a successful defence because they would give the rambler, in the above example, actual knowledge of the site's status.
50. There is no offence if the works carried out were urgently necessary in the interests of health and safety or for the preservation of the asset; provided those works were the minimum necessary and notice of them was provided to the local planning authority as soon as reasonably practicable. This is a replication of the current position for listed buildings.

Class Consents

51. The Secretary of State can direct that certain types of activity are permitted without consent being required. This is identical in operation to the Class consent system under the Scheduled Monument legislation. That said, although there is no draft of such class consents yet available, it is clear that many of the current class consents will not survive. Several of them were only necessary because otherwise consent would have to have been sought

for day-to-day activities that did not affect the special interest. This will no longer be necessary.

Heritage Asset Consent

52. Obviously this is the equivalent of listed building consent and scheduled monument consent. It will only be required for registered heritage structures.
53. Principally it will be obtained from the local planning authority. Regulations setting out what must accompany the application will be issued in draft shortly.
54. The Secretary of State can and will issue directions as to applications he may wish to deal with himself and decisions to grant consent that he may wish to consider before the local planning authority proceeds. This is a replication of the current listed building consent regime, in principle at least.
55. The Secretary of State can also direct the local planning authority to consult various bodies, and they will include English Heritage, of course. The types of application on which English Heritage will be consulted will be the subject of a draft regulation that is yet to be finalised.
56. In deciding a heritage asset consent application, the local planning authority must have special regard to the desirability of preserving the heritage structure or its setting or any features of special historic, archaeological, architectural or artistic interest it possesses.
57. Before making a decision the local planning authority must see if there is anything relevant in the local historic environment record. It must also take expert advice. You need to be an expert to fully appreciate special interest. That expert advice may come from the applicant, the consultees (including English Heritage) or the local planning authority itself.

58. Consent can be granted with conditions, of course, and one ever-present condition will be the requirement for the works to commence within 3 years of the issue of consent.
59. Appeal against a refusal of consent, non-determination or the imposition of onerous conditions is available in like manner to planning appeals now.
60. There is no provision for compensation in the event that consent is refused. Compensation is still available when consent is given, but later revoked.

Enforcement

61. Where there have been illegal works (that is works without consent that do affect the special interest or works that have been consented to but carried out in breach of a condition on that consent) English Heritage, the Secretary of State and all local planning authorities will have the power to issue an enforcement notice. Local planning authorities and the Secretary of State must consult English Heritage before they do so. The notice may require:
 - a. restoration
 - b. where restoration is not practicable, different works to alleviate the effect of the illegal works; or,
 - c. steps to put the structure in the state it would have been in had conditions on a consent been properly adhered to.
62. The notice can be appealed, but failing that, if it is not adhered to, the owner of the land commits an offence. Further, the local planning authority or English Heritage will be able to take matters into their own hands and carry out the works themselves and then seek to recover the costs.
63. These powers have always been available to local planning authorities in respect of buildings, but this is new to English Heritage outside of London and new to archaeology.

64. Obtaining a court injunction can prevent an actual or feared breach of the requirement for consent or a breach of condition of a consent. English Heritage and local planning authorities will have the power to seek such injunctions.

Ecclesiastical Exemption from the Consent Regime

65. The ecclesiastical exemption is maintained for the currently exempt denominations. So most churches will continue to apply for consent from their own body.

66. The exemption will apply to all heritage asset types provided they are in ecclesiastical use. So for the first time the churchyard and church can be managed under the same regime covering all special interests.

Accounting for Heritage Structures in Planning Applications

67. In considering any planning application that affects a heritage structure directly or that affects its setting, the local planning authority must have special regard to the desirability of preserving the asset, any features of special interest it has and its setting. This is broadly the same as it is now, although planning protection for the setting of scheduled monuments has not been on a statutory footing before.

68. Of course works that directly affect the asset will also require heritage asset consent if they affect its special interest.

69. Works that do not physically affect the asset but are within its setting may be permitted without having to apply for planning permission, as a matter of pure planning law. Current permitted development rights in the curtilage of listed buildings are more limited than normal permitted development rights and this will be the case for all registered heritage structures. This will

provide the all important protection against damaging development in the setting of historic buildings and places. English Heritage is currently working on further guidance on the assessment and management of setting.

Heritage Open Spaces

70. As well as containing all registered heritage structures, the register will have a separate category called heritage open spaces. This is perhaps the least instinctive of the Bill's new phrases. However, there is nothing unfamiliar about the assets that will be registered under this heading.
71. All of the currently registered parks, gardens and battlefields will be moved onto the new register as registered heritage open spaces. Anyone can apply to include a new entry or remove or amend an existing entry in the same way as for heritage structures and on the same grounds – that is, special historic, archaeological, architectural or artistic interest.
72. The mechanistic process of designation is the same as for heritage structures. English Heritage will be responsible for receiving and deciding designation applications for open spaces, as well as designating itself. There will be a right of appeal to the Secretary of State.
73. However, the effect of registration is quite different. There is no requirement for consent to carry out works to registered heritage open spaces over and above any requirement to obtain planning permission. If planning permission is needed for any works then the local planning authority will have to have special regard to the desirability of preserving the asset, any feature of special interest it has and its setting.
74. Currently the list of parks and gardens has a statutory basis, but the list of battlefields does not. PPG 15 states that the fact that a park, garden or battlefield is listed is a material consideration in planning applications.

75. The Bill gives these open spaces the best possible positioning in planning terms by putting the list on a statutory basis and making it clear in law that their special interest and their setting is a high priority, not just a material consideration. That does not mean, of course, that such considerations trump others automatically, but their importance could not be more clearly indicated by Government.
76. There will of course be some heritage open spaces that at least in part can be also registered as heritage structures. But simply because the test for registration in each case is “special interest” does not mean that if the asset appears in one category, and is at least capable of appearing in the other, that it will automatically be registered in both. Principles of Selection for heritage open spaces will define its own test of special interest independently of the definition of special interest for heritage structures. There may be overlap, but they will not be the same.
77. In practice, of course, heritage open spaces are likely to have heritage structures within them or adjoining them.

World Heritage Sites

78. World Heritage Sites will all be shown on the central register. This is the first time World Heritage Site have been given statutory recognition. Of course their outstanding universal value as recognised by UNESCO demands separate recognition on the register.
79. World Heritage Sites encompass heritage structures and heritage open spaces and the protection afforded to those components will be the backbone of protection to World Heritage Sites. There are no additional measures within the Bill for World Heritage Sites alone, but away from the Bill there will be two substantive changes:

- a. The Secretary of State will issue a direction to local planning authorities as to planning applications affecting World Heritage Sites he wishes to see referred to him so that he can consider if he might call-in the application for a public inquiry.
- b. Permitted development rights will be limited within World Heritage Sites – technically speaking they will become article 1(5) Land alongside conservation areas, National Parks and Areas of Outstanding Natural Beauty.

80. More generally, updated policy and guidance on the significance and management of World Heritage Sites will be published for consultation shortly in the form of a draft planning circular.

Marine Heritage Sites

81. The most important development within the sea environment is the ability to designate not just vessels and their contents, but also all types of heritage structures that are partly or wholly below the high water mark.

82. Designation will be based on special architectural, historic, archaeological or artistic interest. Principles of Selection will define what is “special” in the marine environment.

83. Obviously all existing wrecks protected under the 1973 Act will be added to the register immediately as Marine Heritage Sites.

84. In contrast to the procedure for designation of land-based things, the Secretary of State will be solely responsible for designation decisions after due consultation. English Heritage will be responsible for administration of applications and the publication of the register online.

85. Dealing with structures in the intertidal zone that are sometimes wet and sometimes dry requires consideration of the best management regime. So the

Secretary of State may consider first whether they should be registered as Marine Sites. The Secretary of State may reject the application, leaving it open to English Heritage to consider whether registration as a Heritage Structure should follow.

86. Certificates of no intention to register are available in the same manner and on the same basis as for dry land.
87. Activities around Marine Heritage Sites are controlled by the issue of licences rather than a Heritage Asset Consent. It is a criminal offence to carry out certain activities without a licence. Those activities include tampering with the asset, diving, salvage and the marine equivalent of tipping.
88. Licences are obtained from English Heritage.

Heritage Partnership Agreements

89. It has to be recognised that designation of a building or site creates a significant additional burden for the owner and the local planning authority. This is justified when the building or site holds special interest of course, but on many sites there can be significant changes that would not affect that special interest at all. This is particularly so on large and complex sites with many structures of varying age and interest.
90. In using a protection regime that only requires consent for works that affect special interest the Bill strikes the right balance. The effectiveness of that approach does depend, though, on the owner understanding what that special interest is and how it might be affected by works. Without that understanding the owner will err on the side of caution and apply to the local planning authority for consent, perhaps unnecessarily.
91. All new designations are already much more extensive in their description of the special interest in the site and this will assist owners and the local

planning authority to achieve effective and efficient management. Of course a better understanding of the special interest is likely to lead to better care of the asset generally and is not just important when considering alterations.

92. To further the understanding of special interest and ensure that heritage asset consent is not sought unnecessarily, any owner will in future be able to agree with the local planning authority what works can and cannot be carried out without consent. This agreement will be called a heritage partnership agreement. It will effectively confirm what works can be carried out without consent, provided they are carried out in accordance with the terms of the agreement.
93. The Secretary of State may limit what works can be covered by a heritage partnership agreement. A class consent will be issued in due course to clarify the operation of this important innovation.
94. There may be other things that the local planning authority and the owner may want to agree for the better management of the building, such as:
 - a. the payment of a grant
 - b. a maintenance schedule
 - c. immediate repairs
 - d. public access
 - e. use of the premises
95. So a heritage partnership agreement can cover all the matters that one would currently cover in a grant contract as well giving consent for certain works with conditions on how they might be carried out. Heritage partnership agreements will become the common currency of conservation agreements.
96. English Heritage will approve all heritage partnership agreements before they are entered into.

Metal Detectors

97. It will be an offence to use a metal detector in a Registered Heritage Structure or a Registered Heritage Open Space without a licence. English Heritage will issue licences and may issue a general licence for structures or open spaces of a particular type.

Historic Environment Records

98. It will be the duty of all local planning authorities to create and maintain an historic environment record, or delegate that role to another authority (likely to be county councils in two-tier regions). English Heritage will maintain the historic environment record for London.
99. An historic environment record must contain:
- a. A record of all registered heritage structures, open spaces and marine sites in the local planning authority's area.
 - b. Details of registerable (but not registered) structures and open spaces in the local planning authority's area that the record manager thinks are of special, but local, historic, architectural or archaeological interest.
 - c. Details of other sites of archaeological interest.
 - d. Information about the way in which the archaeological, architectural or historic development of the local planning authority's area has contributed to the present character and how that might be preserved.
 - e. Details of archaeological or historic environment investigations carried out in the area by the local planning authority or English Heritage.
100. Where the record includes information on a registerable (but not necessarily registered) heritage structure or heritage open space it must indicate if there is special archaeological interest. This provides the essential

flag for the application of PPG16, whose effect in relation planning applications will be maintained.

101. Before including something in the list as of special local interest, the record manager must consult the owner. He must also publish criteria against which heritage structures and open spaces will be considered for the tag of special local interest.

Local Designation

102. Buildings and structures of special local interest will form the basis of a planning regime under which their demolition may require planning permission if the local planning authority elects to invoke such a requirement. The precise details of this have not yet been drafted, but the basics are set out in the White Paper.

Conservation Areas

103. This key area is not covered in this draft of the Bill, but the notes to the Bill are clear on what the drafting will say by the time the Bill is introduced into Parliament.
104. The duty on local planning authorities to designate Conservation Areas will be the same as it is now except they will be able to designate additionally on the grounds of special archaeological and artistic interest.
105. Planning consent will be required for demolition of the whole or, critically, part of a building within a conservation area. This will put the law back to where it was thought to be, in terms of protection, before the case known as *Shimizu*. In short, that case insisted that only total demolition required consent. Practical protection for Conservation Areas has been seriously limited for many years by this case.

106. It will remain the duty of a local planning authority considering a planning application affecting a Conservation Area to pay special regard to the desirability of preserving or enhancing the area. But importantly this will be expressed as a duty to seek benefits for the area. The decision in the *South Lakeland* case that said that a local planning authority discharged its duty to preserve a Conservation Area if it simply maintained the status quo, “warts and all”, will effectively be circumvented.

Repairs and Compulsory Acquisition

107. Urgent works and repairs notices will now apply to all asset types.

108. There is no longer a requirement that the works are “urgently” necessary. The requirement for works to be urgently needed has caused many problems in the past when a building is only suffering slow but serious and irreversible decay.

109. Currently the local authority cannot carry out works to a property in use. Under the Bill works can be carried out to any property in use or out of use, save to the extent that works would interfere with any residential use.

110. English Heritage will have power to issue an urgent works notice on approval from the Secretary of State. This power will be exercised sparingly and in the most serious cases only.

111. Compulsory acquisition by local authorities and English Heritage of all asset types is permitted following service of a repairs notice. The process is much as it is now. The local authority will have the option of paying only minimum compensation. This is currently only payable where the owner has shown deliberate neglect for the purpose of seeing the building’s demolition. This is designed to prevent owners who refuse to carry out works of preservation from profiting from the development potential of their site.

English Heritage Grant Making Powers

112. Although not in the Bill, the explanatory notes say that English Heritage will be given revised grant and loan making powers that are a simplification to the many old and various provisions under which grants are currently given out. In essence, English Heritage will be able to give grants and loans in an unrestricted manner provided the grant or loan furthers the overarching purposes of English Heritage as set out in the National Heritage Act 1983.

Areas of Archaeological Interest

113. These have not survived the reforms. There were very few of them and their limited benefit for non-designated archaeology has been outclassed by the effective operation of the PPG 16 system.

Conclusion

114. To anyone coming to conservation afresh, the current systems may be perceived as disjointed, muddy and highly complex. They may be somewhat familiar to practitioners, but it is the public who live in and use these properties and it is their understanding of the property's intrinsic interest and what an owner can and cannot do that matters above all else.

115. If people understand what is expected of them, and why, they generally do it. The great benefit of re-writing the entire law of conservation and putting it under one roof with one overarching concept of special interest is that it has the potential to drift into the consciousness of the world at large and guide general activity.

116. The current law was first born in 1882. It has developed in a piecemeal fashion since. English Heritage believes the unified, simple and

therefore understandable system set out in the draft Bill should lead to a settled approach for at least another 126 years.

For further information of comment please contact the Heritage Protection Reform team on hpert@english-heritage.org.uk

English Heritage

April 2008