

## **Designations and other reviews – a National Heritage Act for the 21st century??**

Following a series of high-level policy statements (*Power of Place*, *A Force for our Future*, and most recently the All Party Parliamentary Archaeology Group's report), we are at the beginning of the biggest potential shake-up of the legal framework for heritage conservation that there has ever been. And although focused on England, much of it inevitably affects other parts of the UK.

There is a general review of designations—including maritime heritage—and another on consent procedures. In addition to a major planning bill, key areas of planning policy guidance (not just PPGs 15 and 16 on historic buildings and archaeology, but several others that are relevant) are being rewritten. There is also a major review of agri-environment provisions, and another of maritime environmental management. There are various reviews of policy on cemeteries and the treatment of human remains. Last, but not least, the Treasure Act was reviewed last year and the Scottish Treasure regime is now under scrutiny, while legislation on illicit trade is in progress.

All these initiatives need to be pursued according to accepted principles for managing the historic environment—many of which are encapsulated in international obligations that the UK has either ratified or is committed to. Designation remains an essential means of giving special recognition to heritage assets that are especially sensitive to change, while planning and other consents provide more general-purpose controls.

But we also need a much broader framework of legislation if we are to protect the historic environment for the benefit of posterity. The responsibilities that all Government departments, agencies and local authorities have towards our cultural heritage should be put on a statutory basis. Greater use of characterisation approaches, and more fiscal and other incentives for positive management would encourage more pro-active conservation.

Our key heritage legislation was built up piecemeal, and it is now 25 or 30 years since most of it was seriously updated. It reflects a far more fragmented notion of the historic environment than we have now, and has become such a rabbit warren of complexity that it is doubtful whether anyone fully understands all of it. Numerous anomalies in existing legislation, unnecessary duplications and out-dated exemptions, ranging from Crown immunity to the infamous 'class consent' for ploughing scheduled monuments, need to be rectified.

The UK is unusual in having such a cat's cradle of cross-cutting strands of regulation through which heritage policy is implemented. Different parliamentary Acts cover planning, listed buildings, ancient monuments, burials, portable antiquities and ecclesiastical heritage. Several more deal with the underwater cultural heritage. In addition there is the legislation concerning wildlife, hedgerows, landscape, agriculture, building standards and contaminated ground, all with significant implications for archaeological conservation. On top of all this complexity, some provisions cover the whole of Britain, others differ across the country.

The current reviews have been thought of as separate initiatives—and are being conducted with a bit of *post hoc* liaison but no visible overarching co-ordination or vision. The reviews are NOT being undertaken in the logical order. Having rather fortuitously arrived at this unprecedented breadth of legislative and policy review for the historic environment, there could be a real opportunity for sensible rationalisation and updating—but the timetables for review leave little scope for this unless they step back and embrace a wider vision.

Other countries have more integrated heritage legislation: is this the opportunity to push for an overarching National Heritage Act worthy of the 21st century?

## SOME ISSUES FOR REFORM OF HERITAGE LEGISLATION

**Who** is heritage legislation for? Essentially posterity and whole of present society with wide-ranging—and not always compatible—stakeholder interests

**Who** is responsible for the heritage?—the historic environment is a common inheritance for which the whole of society is responsible to future generations

**What** needs to be covered?—terrestrial and maritime; above and below ground; movable and immovable; artificial and natural; locations and associations; individual features and cumulative character

**Where** should it apply?—UK and home countries; maritime as well as terrestrial; international as well as national. There is a need to balance geographical and environmental diversity with the desirability of greater clarity and coherence of provision

**What values** apply?—eg international definitions and standards; range—and diversity—of existing criteria; relationship to other criteria—eg nature conservation; relationship between national and local perspectives (National recognition that local values matter); how values change—especially as aspects of the physical environment come to be recognised as having historical value

**How far** should the *What*, *Where* and *What Value* issues be determined by the *Who* issues? - what responsibility do we have towards the UK population's multi-cultural background in the context of the legacy of British empire and the implications of international business and Overseas Aid?

**How and what** management of the heritage needs to be provided for?

- Identification
- Provision of information
- Protection from unwarranted change
- Positive management to safeguard historic fabric and integrity
- Maintenance of economic viability—including sustainable change
- Promotion of understanding, appreciation and enjoyment
- Generation of economic prosperity—eg through sustainable tourism

**What characteristics** are desirable in heritage legislation?

- Needs to allow common recognition of what is valued locally as well as nationally
- But also needs to allow for emergence of new perceptions of what is valuable, recognising future values as 'heritage' comes over the horizon (as industrial archaeology did in the 1950s and 20<sup>th</sup> century architecture and military remains are now)
- Should recognise that what we value is the product of change and that its conservation continues to be a matter of balancing competing interests
- Needs to provide an integrated approach that can cope with different scales and geographical concepts of the historic environment
- Should be based on principles of informed conservation, the precautionary principle and sustainability
- To be effective, fair and efficient procedures need to be commensurate with the scale and sensitivity of the heritage they cover
- Needs to provide a wide ranging and flexible suite of mechanisms that can both encourage proactively beneficial management and can prevent unsustainable change
- Needs to be clear and coherent and accountable to the public
- Needs straightforward, accountable decision making processes working to broadly common principles and criteria.

**What kind of controls/ incentives** are needed?

- *Designation*—to allow for:
  - Public recognition of especially valued places and features

- Recognition of evolving historic environment—history in the making
- Extra control for places especially sensitive to change
- Extra mechanisms to promote positive management
- Prioritisation of resources towards features and places that we can least afford to lose
- Public physical and intellectual access and enjoyment where appropriate

Currently highly complicated and riddled with weaknesses (see below)

- *General regulation of change*—mainly planning, but also built into other regulatory areas (eg hedgerows; building regulations; contaminated land regime); currently well recognised in planning and hedgerows, but very little in other regulations controlling change
- *Statutory provision of services*—eg state agencies; currently doesn't apply to local government as key providers of information, advisory and outreach/museum services
- *Broad statutory responsibility of key bodies*—eg DEFRA, statutory undertakers; currently patchy and insufficiently linked to international and national policy drivers
- *Policy guidance for landuse change*—eg planning policy statements and guidance, but also approved Codes of practice (eg water industry, treasure); currently insufficient across all responsibilities
- *Legal obligations and policy for education*—eg issues of status of history and archaeology in the curricula; currently very little coherence in this area
- *Financial support*—polluter pays principle established in development control (PPG16 less PPG15) but not in strategic national programmes; agri-environment support; management agreements; grants from national and local government and non-government bodies. Overall present provision is not consistent with scope of different bodies' responsibilities
- *Fiscal incentives*—inheritance tax, VAT, green taxes, Gift Aid etc; currently growing but piecemeal and with illogicalities

**How do different controls/ incentives interrelate?** Almost all the mechanisms above are closely interrelated in terms of how they support or complement each other—they cannot be looked at in isolation if serious improvements to the heritage legislation framework are to be made.

#### **Other key Issues**

- Need to mesh in with international obligations and standards
- Need to tackle devolution issue—especially significant for any change to UK Ancient Monuments Legislation and maritime heritage in territorial waters: adding to complexity or reducing it?

#### **What current weaknesses in designation procedures need to be tackled?**

- Complexity
- Duplication of decision-making procedures
- Exemptions
- Out-datedness in relation to modern concepts of historic environment
- Inefficiency of process
- Lack of clarity
- Technical anomalies
- Inconsistency of criteria and principles of management for different regimes
- Quality control
- Accountability and community values, rights of appeal etc
- Weakness in relation to promoting public access and education