

Title: ENTERPRISE AND REGULATORY REFORM BILL: HERITAGE RELATED PROPOSALS IA No: DCMS048 Lead department or agency: DCMS Other departments or agencies: English Heritage	Impact Assessment (IA)		
	Date: 09/05/2012		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Elizabeth Ager 0207 211 2371			

Summary: Intervention and Options **RPC Opinion:** RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0.58m	£0.36m	£-0.04m	Yes OUT

What is the problem under consideration? Why is government intervention necessary?

- i) Implementing commitments to legislative reform made in Government's response to the Penfold Review of Non-Planning Consents through the Enterprise and Regulatory Reform Bill. Actions A1- A4 of the action plan set out in 'Implementation of the Penfold Review' (BIS, November 2011) relate specifically to targeted reform of the statutory heritage protection system in England.
- ii) Utilising the opportunity presented by the Enterprise and Regulatory Reform Bill to implement an additional legislative reform that will remove unnecessary regulation.

What are the policy objectives and the intended effects?

(1) To reduce regulatory burdens by scrapping Conservation Area Consent, and by improving the operation of other heritage consent regimes, without reducing protection for important heritage sites and buildings. (2) To remove unnecessary regulation relating to the management by English Heritage of Osborne House on the Isle of Wight.

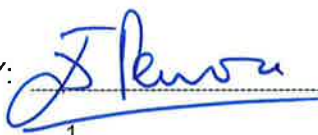
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1. Do nothing.
Option 2. Implement Penfold-related heritage protection-related reforms only.
Option 3. Implement Penfold-related heritage protection-related reforms + remove unnecessary regulation relating to the management of Osborne House by English Heritage.
The first option would represent a considerable missed opportunity to encourage economic growth through reducing regulatory burdens without compromising heritage protection. The second option would grasp these opportunities. The third option would do likewise, but would also deliver additional public benefits. The preferred option is Option 3.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/a	Non-traded: N/a	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY:  Date: 14th May 2012

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

None

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

None

Other key non-monetised benefits by 'main affected groups'

None

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

It is assumed that DCMS, English Heritage and LPAs will be resourced to carry out administrative duties effectively and efficiently.

It is assumed that the number of proposals generating applications for heritage consents (LBC and SMC) in the future does not deviate from current trends.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	Zero net cost

Summary: Analysis & Evidence

Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 0.58

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	6N/A	0	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	0		0	0

Description and scale of key monetised costs by 'main affected groups'

None

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	0	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	0		0.1	0.6

Description and scale of key monetised benefits by 'main affected groups'

Savings for owners / developers of Listed Buildings and LPAs from having to make / determine fewer applications for LBC due to more definitive list entries (see 2.1).

Other key non-monetised benefits by 'main affected groups'

Savings for property owners / developers from increased use of COIs from listing (see 2.2).
Savings for owners / occupiers of Listed Buildings / Scheduled Monuments, English Heritage and LPAs from increased use of statutory management agreements (see 2.3).
Public benefits from better management of Listed Buildings / Scheduled Monuments (see 2.3).

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

It is assumed that DCMS, English Heritage and LPAs will be resourced to carry out administrative duties effectively and efficiently.

It is assumed that the number of proposals generating applications for heritage consents (LBC and SMC) in the future does not deviate from current trends.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	OUT

Summary: Analysis & Evidence

Policy Option 3

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: N/A	High: N/A	Best Estimate: 0.58	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	N/A		N/A		N/A	
High	N/A		N/A		N/A	
Best Estimate	0		0		0	
Description and scale of key monetised costs by 'main affected groups'						
None						
Other key non-monetised costs by 'main affected groups'						
None						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	N/A		N/A		N/A	
High	N/A		N/A		N/A	
Best Estimate	0		0.1		0.6	
Description and scale of key monetised benefits by 'main affected groups'						
Savings for owners / developers of Listed Buildings and LPAs from having to make / determine fewer applications for LBC due to more definitive list entries (see 2.1). Savings for English Heritage of £60k p.a. by being able to generate the income needed to maintain Osborne House (see 3.3).						
Other key non-monetised benefits by 'main affected groups'						
Savings for property owners / developers from increased use of COIs from listing (see 2.2). Savings for owners / occupiers of Listed Buildings / Scheduled Monuments, English Heritage and LPAs from increased use of statutory management agreements (see 2.3).						
Key assumptions/sensitivities/risks					Discount rate (%)	3.5
It is assumed that DCMS, English Heritage and LPAs will be resourced to carry out administrative duties effectively and efficiently. It is assumed that the number of proposals generating applications for heritage consents (LBC and SMC) in the future does not deviate from current trends.						

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	OUT

Evidence Base (for summary sheets)

Note on figures quoted in the summary sheets for policy options 1-3

While the business cost / benefits are shown as zero, the net impact is positive, but is negligible when looked at annually.

The Penfold Review of Non-Planning Consents

The introduction to ['Implementation of the Penfold Review'](#) (BIS, November 2011) notes that:

The Autumn Statement set out the action that the Government is taking to promote economic growth and enhance the competitiveness of the business environment in the UK.

An important part of this agenda is reforming the planning system. The Government has already made substantial progress through the Localism Act and the publication of the draft National Planning Policy Framework, which sets out a presumption in favour of sustainable development.

In addition to the planning system, there are several consent regimes that businesses must apply for, depending on how [and where] they wish to develop or operate properties. These 'development consents' deliver significant economic, social and environmental benefits – such as [conserving] our heritage, tackling climate change, and ensuring a well-functioning road network. However, the Penfold Review found these consents to be “numerous and complex”, and that they could create delay, uncertainty and costs to business.

The Government's aim is to support growth and competitiveness by ensuring these regimes operate in the most flexible and simplified way possible, whilst delivering the benefits they were established to achieve. The Government has therefore announced a further programme to:

- *scrap unnecessary development consents and simplify others;*
- *reform the remits and working practices of the public bodies granting or advising on development consents;*
- *set a clear timescale for deciding development consent applications; and*
- *make it easier to apply for development consents.*

Taken together, the measures in this programme will reduce costs and bureaucracy, speed the process up and increase certainty; and ensure the regulatory benefits delivered by development consents are achieved with the minimum of burden.

The first four measures in the programme of actions set out in *Implementation of the Penfold Review* commit Government to legislative reform of the heritage protection system in England:

A1: Enable the extent of a listed building's special interest to be legally defined.

A2: Enable developers to seek a Certificate of Immunity from designation or listing at any time.

A3: Allow owners of listed buildings and local authorities to enter into Statutory Management Agreements.

A4: Remove the requirement for Conservation Area Consent when demolishing unlisted buildings.

These measures would be implemented by both Option 2 and Option 3.

The heritage protection system

The Government's [Statement on the Historic Environment for England](#) (DCMS, 2010) indicates that:

The Government believes that the historic environment is an asset of enormous cultural, social, economic and environmental value. It makes a very real contribution to our quality of life and the quality of our places. We recognise that while some of today's achievements may become tomorrow's heritage our existing heritage assets are also simply irreplaceable.

We realise the importance of understanding, conserving, and where appropriate, enhancing the markers of our past. We believe in encouraging a wider involvement in our heritage, in order to ensure that everyone, both today and in the future, has an opportunity to discover their connection to those who have come before.

Aside from its inherent cultural value, the historic environment also has an important role to play in helping Government to achieve many of its broader goals. It can be a powerful driver for economic growth, attracting investment and tourism, and providing a focus for successful regeneration. Alongside the best in new design, it is an essential element in creating distinctive, enjoyable and successful places in which to live and work. Heritage can be a significant focus for the local community, helping to bring people together, to define local identities and to foster a new understanding of ourselves and those around us.

The historic environment even has a role to play in assisting us to meet one of the greatest challenges we face for the future. By promoting the inherent sustainability of historic buildings and their surroundings and by learning from them and the other types of evidence left by the low carbon economies of the past, we can make real progress in helping to mitigate and adapt to climate change.

To fully realise all this potential, however, it is vital not only that those who actively manage the historic environment, but also all those who have the potential to impact on it, recognise the contribution it can make to our collective aims.

At the same time we must recognise that change is inevitable. While it is right to provide protection and support for our past, this must be managed intelligently, with an appropriate balance of priorities and an understanding of what could be gained or lost.

For Government this work starts, but does not end, with our statutory responsibilities for heritage protection; the designation and consent systems for heritage assets, and the management of the planning process. In shaping places, Government at all levels must give priority to creating high quality environments for those who use them, developing and implementing policies which seek to retain local distinctiveness and give due weight to the obligation to protect, enhance and promote the historic environment.

The second of the six strategic aims for Government set out in this statement is to "ensure that all heritage assets are afforded an appropriate and effective level of protection, while allowing, where appropriate, for well managed and intelligent change". This is reflected in the priorities outlined in the DCMS Business Plan for 2011-2015.

In relation to terrestrial heritage assets in England, the key elements of the statutory heritage protection system are set out it:

- The [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#), which provides for the designation of buildings and areas of special historic or architectural interest as Listed Buildings and Conservation Areas, respectively (and establishes the Listed Building Consent (LBC) and Conservation Area Consent (CAC) regimes to control works to them).
- The [Ancient Monuments and Archaeological Areas Act 1979](#), which provides for the designation of nationally important archaeological sites and monuments as Scheduled Monuments (and establishes the Scheduled Monument Consent (SMC) regime to control works to them).

	No. designated heritage assets	No. non-planning consent applications p.a.
Listed Buildings	c375,000	c30,000 [LBC]
Conservation Areas	c9,800	c3,500 [CAC]
Scheduled Monuments	c20,000	c1,000 [SMC]

In addition to implementing the four Penfold-related commitments, Option 3 (the preferred option) would improve operation of the heritage protection system by:

- removing restrictions on the management of Osborne House on the Isle of Wight that limit the ability of English Heritage to generate the income necessary for its conservation.

Pre-legislative scrutiny / public consultation

The measures proposed under Options 2 and 3 were subject to pre-legislative scrutiny by the Culture, Media and Sport Select Committee in 2008 as part of a draft Heritage Protection Bill. The Committee published its [report](#) on 30 July 2008. The main references made in the report to the measures now being proposed are: to note that statutory management agreements will not be viable for all heritage assets (something that is readily acknowledged in section 2.3 below) and to recommend that steps be taken to prevent inappropriate applications becoming an unnecessary drain on local authority resources; and to express regret that draft provisions relating to Conservation Areas had been published too late for detailed scrutiny.

Two of the measures proposed – those relating to the ‘merger’ of Conservation Area Consent (CAC) with planning permission, and to enabling Certificates of Immunity (Colts) from listing to be applied for at any time – were also subject to public consultation in the preceding white paper, [Heritage Protection for the 21st Century](#) (DCMS, 2007). An [analysis of consultation responses](#) was published by DCMS on 29 November 2007. This indicates that:

- 68% of all respondents to the 2007 consultation answered the question about CAC. Of those that did, the majority (68%) agreed that CAC should be merged with planning permission. These respondents indicated that this proposal would streamline the consent process and would hopefully lead to decisions being made more quickly. However, a number of respondents (25%) only agreed with this proposal if it was made explicit that conservation expertise must be sought prior to taking this planning decision.
- 66% of all respondents to the 2007 consultation answered the question about Colts from listing. Of those that did, the majority (56%) agreed that applications for Colts should be able to be made at any time rather than only if planning permission is being sought or has been granted in respect of the building concerned (as is presently the case).

Micro businesses exemption

It is proposed that micro businesses should not be exempt from the proposed reforms. The proposals are deregulatory in nature and/or optional.

Taken as a whole, the reform package is deregulatory (as noted in the ‘One In One Out’ assessment).

Option 1 – ‘Do nothing’ scenario

There would be no additional costs or benefits from not implementing the proposals outlined in Options 2 and 3. However, potential efficiency savings for the owners and managers of heritage assets, for local planning authorities and for business (particularly developers) would not be realised – nor would the wider public benefits of a more inclusive, but better targeted heritage protection system. Government would also be seen to be failing to implement measures that it has already announced.

Option 2

2.1 Legally defining the extent of a listed building’s special interest

Objective

It is proposed that Section 1 of the [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) be amended to enable the extent of a Listed Building’s special architectural or historic interest to be legally defined by its list entry, thereby permitting those parts of a building that are not of special architectural or historic interest to be identified, and enabling clarity on the status of curtilage buildings and attached structures.

This would improve the current situation whereby the only statutory elements of a list entry are the name and address of the building concerned. Consequently, it is the responsibility of owners and developers to interpret the extent of a building’s special interest when determining whether Listed Building Consent (LBC) is required for proposed works, and of local planning authorities (LPAs) to do so when determining whether applications for LBC should be granted. They are guided in this process by the non-statutory descriptive elements of a list entry.

Costs and benefits

The effect of the proposed power, which would initially be utilised only in relation to new additions to the list, and to revisions of existing list entries as and when they occur, would be to reduce the number of ‘unnecessary’ applications for LBC for works to such buildings, including associated curtilage buildings and attached structures, since all parties would be clearer about when consent is, and is not, required.

	2007-08	2008-09	2009-10	2010-11	2011-12
No. additions to the statutory list	488	450	492	787*	413
No. revisions to entries in the statutory list	541	524	650	3220*	559

* These outlying figures are explained by the publication of a revised list of buildings of special historic or architectural interest in Bath

The degree of confusion as to what is protected and the inefficiency that results is evidenced by a search of case law. A very small percentage of disputes end up with court proceedings and even fewer end up in reported court decisions, yet a search of the English law reports shows over 100 cases involving the curtilage of listed buildings. That is aside from disputes that arise concerning attached structures. English Heritage’s legal team reports that the extent of listing is the most common query it deals with.

Estimated saving per LBC application avoided

There is no research relating to the cost of making an application for LBC. However, research for DCLG in 2009¹ shows that the average cost of making a householder planning or change of use application was around £1,200 (including the fee of at least £150). For single house construction or conversion the cost was £18,000 (although the median cost was £8,600 suggesting that a few applications are very costly to make). The majority of LBC applications are likely to be closer to householder applications than other planning application types that involve a much larger scale of new

¹ Benchmarking the costs to applicants of submitting a planning application. Arup for DCLG, 2009

development. More complex heritage cases are much more likely to require planning permission and preparation costs will be covered in large part by the requirements of the planning application, so, given that LBC does not incur a fee, the average marginal cost of making an LBC application might well be around £1,000.

Research for DCLG in 2010² shows that the average cost of determining planning applications was £619. Data from an ODPM report in 2003 showed that, on average, LBC applications cost 5% more than planning applications to deal with (i.e. £650).

The saving per LBC application avoided is therefore estimated to be £1,650 (£1,000 + £650).

There are currently c30,000 applications for LBC p.a.

Assuming that such applications relate to different buildings, this equates to applications relating to roughly 8% of the 375,000 entries in the list.

If 'enhanced' list entries were to be produced for the c1,000 new and amended entries to the list p.a., it is reasonable to assume that 80 (i.e. 8%) of these buildings will be subject to applications for works that may require LBC in any given year.

If, as English Heritage advises, it is reasonable to assume that enhanced list entries would result in a 10% reduction in the number of LBC applications p.a., then this would result in a saving of 8 x £1,650 = £13,600 in year one. Potential benefits over five years are illustrated below (these could be expected to continue growing at the same rate until all 375,000 list entries had been 'enhanced').

(2009 prices)	Year 0	Year 1	Year 2	Year 3	Year 4
No. Listed Buildings with 'enhanced' list entries	1,000	2,000	3,000	4,000	5,000
No. LBC applications avoided	8	16	24	32	40
Estimated saving [split by applicants / local planning authorities]	£13,800 [£8,500 / £5,300]	£27,700 [£17,000 / £10,700]	£41,500 [£25,400 / £16,010]	£55,300 [£33,900 / £21,400]	£69,200 [£42,400 / £26,800]

It is probable that greater clarity and certainty about the extent of a Listed Building's special architectural or historic interest would also reduce costs and uncertainties around applying for LBC. This is assumed to increase the likelihood that investment in, and improvements to, listed buildings will go ahead more frequently in future. **These costs and benefits have not been monetised.**

The cost of better specifying the extent of the special interest of a building when it is listed would fall on English Heritage, but is not expected to result in an additional burden: designation activity is likely to be funded from within existing National Heritage Protection Plan (NHPP) budgets. English Heritage could also expect to benefit from marginal savings in its role as a statutory consultee on LBC applications by having fewer applications to consider. **These costs and benefits have not been monetised.**

Distribution of costs and benefits (where list entries are enhanced)			
Costs		Benefits	
DCMS	No	DCMS	No
EH	No	EH	Negligible
LPAs	No	LPAs	Yes
Developers / owners	No	Developers / owners	Yes

Risks and assumptions

There is a risk that giving legal status to the descriptive content of list entries may lead to more home owners considering it necessary to seek legal advice when consulted by English Heritage on the draft list entry relating to their property. However, given that many owners already seek such advice, this risk is considered to be small.

² Planning Costs and Fees, Ove Arup and Partners for DCLG, 2010

It is not considered feasible to revise all 375,000 current list entries due to the administrative burden this would impose on English Heritage. However, as indicated in 'Implementation of the Penfold Review' (BIS, November 2011), English Heritage is undertaking a prioritised programme to enhance the list entries of those categories of Listed Building that are subject to regular applications for LBC by businesses – starting with C20th commercial buildings. The proposed legislative reform would add value to this investment.

There is no need to introduce a similar provision in relation to Scheduled Monuments as the Ancient Monuments and Archaeological Areas Act 1979 already permits Schedule entries to exclude those parts of a monument that do not contribute to its national importance.

2.2 Certificates of Immunity from listing

Objective

A Certificate of Immunity (COI) from listing is a legal guarantee that the building or buildings named in it will not be designated as a Listed Building by the Secretary of State during the five years from the date on which the certificate is signed.

COIs are a useful tool where development is intended that would impact on a building that may be eligible for listing. They give greater certainty to owners and / or developers and planners by removing the risk of a building being listed at a late stage in the preparation of planning proposals, thereby causing delay and other hardships to owners, and even the abandonment of redevelopment schemes.

In determining applications, the Secretary of State has regard to advice provided by English Heritage on whether the building in question meets the statutory criteria for listing. If the information provided by the applicant is sufficient to indicate that it does not, the Secretary of State will grant a COI.

It is proposed that Section 6(1) of the [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) be revised to enable COIs from listing to be applied for at any time, rather than only if planning permission is being sought or has been granted in respect of the building concerned (as is presently the case).

Costs and benefits

The number of COIs from listing that have been applied for and issued over the past five years is illustrated below.

	2007-08	2008-09	2009-10	2010-11	2011-12
No. COI applications	9	2	12	22	21
No. COIs issued*	15	16	15	91	12
No. COIs refused and the building(s) listed	4	2	4	1	0

* The larger numbers of COIs issued compared to applications received is partly a product of applications for a single site producing a number of outcomes, and partly one of carry-over from previous years.

The benefits of securing a COI have not been monetised, but are assumed to include an increased likelihood that development schemes will go ahead to time and budget due to increased certainty about the status of a building. Securing a COI may increase the market value of certain buildings but there is no evidence available to quantify this. Any benefit of this sort would depend on the building in question and any development plans in relation to it. The vast majority of buildings are not listable (listed buildings represent only 2% of England's total building stock). It is also known that some developers currently go to the effort of making a small-scale planning application relating to a building (for example, for a flagpole) in order to allow them to apply for a COI. The proposed reform would remove the need for such applications.

English Heritage considers that there would probably only be a modest increase in the number of COIs from listing sought by owners and developers, should they be able to apply at any time.

Distribution of costs and benefits (where a COI from listing / scheduling is applied for and obtained)			
Costs		Benefits	
DCMS	No	DCMS	No
EH	No	EH	No
LPAs	No	LPAs	Negligible
Developers / owners	Yes	Developers / owners	Yes

Risks and assumptions

Increased COI activity is unlikely to increase burdens on DCMS, English Heritage, the national amenity societies and local planning authorities because activity is likely to be switched from other designation activity, particularly 'spot designation', rather than generating new activity.

The likelihood of recurring applications on a five year cycle will depend on how buoyant development activity is. If a COI is granted, and the asset is removed within five years there will be no recurring issue; if sites lie undeveloped for many years, then repeat applications will be needed. However, it is expected that numbers will remain relatively low.

2.3 Statutory management agreements

Objective

Provision exists under Section 17 of the [Ancient Monuments and Archaeological Areas Act 1979](#) for the Secretary of State, English Heritage, local authorities and National Park Authorities to enter into a legal agreement with the occupier of an ancient monument (or of any land adjoining or in the vicinity of a monument) to secure the adoption of a positive management regime. Works to Scheduled Monuments carried out under 'Section 17 agreements' made with the Secretary of State or English Heritage are deemed to have Scheduled Monument Consent (SMC) under the terms of the [Ancient Monuments \(Class Consents\) Order 1994](#) and thus do not require separate applications.

c300 Scheduled Monuments in England are currently managed under Section 17 agreements

It is proposed that:

- Section 17 of the 1979 Act should be revised so that the owner of the monument concerned (if he is not its occupier), people involved in the management of the monument concerned, and people having an interest in the monument concerned can also be principal signatories of such agreements – thereby increasing the scope for local engagement in the management of Scheduled Monuments.
- New provisions should be inserted into the Planning (Listed Buildings and Conservation Areas) Act 1990 to enable the owners of Listed Buildings to enter into legally binding management agreements with their local planning authority and other parties (such as English Heritage). The scope of such agreements would be similar to those made under Section 17 of the 1979 Act. Where they contain provisions relating to specified works, these works would be deemed to have Listed Building Consent (LBC) and would not require the owner to make separate applications.

Costs and benefits

Due to the variety of ways in which statutory management agreements could be deployed – for example, in relation to individual heritage assets or to groups of heritage assets in single ownership (whether located on a single site or several), and with or without grant-aid – it is difficult to derive generalised estimates of their potential costs and benefits: each agreement would be different.

Given that entry into statutory management agreements is purely voluntary, it is also difficult to predict future take up. However, English Heritage piloted their use in a range of scenarios prior to the publication of the draft Heritage Protection Bill in 2008. These pilots suggested that the greatest

potential for regulatory savings is likely to arise from agreements relating to property portfolios that currently generate large numbers of applications for LBC and / or SMC, including:

- Listed Building complexes that are large or expansive.
- Large modern Listed Buildings.
- Estates containing complex and / or multiple Listed Buildings and / or Scheduled Monuments.
- Estates containing multiple Listed Buildings and / or Scheduled Monuments in different locations, but under single ownership or management.

For these reasons, the costs and benefits of this proposal have not been monetised, although a worked example based on one of the 2008 pilot studies is summarised below.

Cornish Bridges, Crosses and Milestones pilot

The subject of the pilot was a set of three types of standing structures – bridges, milestones and wayside crosses – on several sites in a group of nine adjoining parishes in North Cornwall. All of the structures were owned by Cornwall County Council (now Cornwall Council).

Of 27 bridges, all were listed and nine were also scheduled. Of six wayside crosses, five were listed, one was scheduled and two enjoyed both designations. Of 22 milestones, all were listed.

Over the three years prior to commencement of the pilot, these assets had generated an average of nine applications for heritage consents (LBC or SMC) p.a.

One-off costs:

The cost of setting up the management agreement (based on the staff time invested by English Heritage, Cornwall County Council, and North Cornwall District Council) was estimated to be £4,464.

Annual costs / savings:

The benefits generated by the management agreement (in terms of staff time saved by the local authorities involved, English Heritage and DCMS from a significantly reduced need to make / process applications for LBC or SMC) were estimated to be £2,558 p.a.

Projected Cost/Savings over five years

	Year 1	Year 2	Year 3	Year 4	Year 5
Cost	£4,464	£0	£0	£0	£0
Benefit	£2,558	£2,558	£2,558	£2,558	£2,558
Cumulative saving	-£1,906	£652	£3,210	£5,768	£8,326

This management agreement was regarded as having considerable scope for simplifying and improving the management of routine works and maintenance on publicly owned historic assets. (Further details of this pilot, including a detailed rationale for the figures quoted above, can be found in Annex D of the impact assessment of the draft Heritage Protection Bill published by DCMS in 2008.)

If the proposed reforms were implemented, such an agreement could be delivered through parallel negotiation of a statutory management agreement (for the Listed Buildings) and a Section 17 agreement (for the Scheduled Monuments).

In other cases it will be desirable to continue to promote the take-up of management agreements even when the benefits cannot be monetised (such as the majority of the c300 current Section 17 agreements, where the outcome is the public benefit of securing improved preservation and management of nationally important ancient monuments, rather than efficiency savings for their owners or occupiers).

Distribution of costs and benefits (where a management agreement is sought and obtained in relation to Listed Buildings)			
Costs		Benefits	
DCMS	No	DCMS	No
EH	Yes	EH	Yes
LPAs	Yes	LPAs	Yes*
Developers	No**	Developers	No**
Owners / occupiers	Yes	Owners / occupiers	Yes*

* Depending on the number of LBC applications generated by the buildings covered by the agreement.

** Management agreements are likely to be best suited to minor works and repairs rather than development.

Distribution of costs and benefits (where a S17 management agreement is sought and obtained in relation to Scheduled Monuments)			
Costs		Benefits	
DCMS	No	DCMS	Negligible*
EH	Yes**	EH	Yes
LPAs	No	LPAs	No
Developers	No	Developers	No
Owners / occupiers	Yes	Owners / occupiers	Yes***
		Public benefits	Yes

* Savings due to having to determine marginally fewer SMC applications.

** May include grant-aid.

*** Depending on the number of SMC applications generated by the monuments covered by the agreement.

2.4 Conservation Area Consent

The proposed reform would remove the current requirement under Sections 74 and 75 of [the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) for owners / developers to obtain Conservation Area Consent (CAC) in order to demolish an unlisted building in a conservation area, and require planning permission to be obtained instead. This would involve amending:

- the Town and Country Planning (General Permitted Development) Order 1995 in order to make an exception to the general rule that demolition of unlisted buildings is 'permitted development' that does not require planning permission; and
- the [Town and Country Planning Act 1990](#) in order to create a new offence relating to the failure to obtain such consent (thereby ensuring that the level of protection afforded to such buildings is not reduced from current levels).

Costs and benefits

There are some 9,800 Conservation Areas in England (Heritage Counts 2011). Figures for the numbers of CAC applications determined by local planning authorities are collated by DCLG and show that the numbers remained steady at about 3,500 per annum until 2009 and then dipped before rising again:

	2007-08	2008-09	2009-10	2010-11
No. CAC decisions	3,626	3,500	2,927	3,210

Given that demolition will usually be followed by replacement development, it is reasonable to assume that most applications for CAC will already be submitted to local planning authorities (LPAs) in parallel with a redevelopment proposal, or will be followed by a planning application in due course.

By reducing the number of non-planning consent regimes, this proposal is in line with the recommendations of the Penfold Review of Non Planning Consents, but is considered unlikely to result in significant savings for property owners, developers or local planning authorities. Following recent streamlining of the planning application process, applications for planning permission and CAC are submitted to LPAs using the same application form, 1App. Applicants apply for both consents on a single form so there would be no saving in terms of no longer having to fill out two separate forms. In addition,

applicants would still need to demonstrate in the planning application the lack of heritage interest of the building proposed for demolition, quite apart from the work needed to demonstrate the acceptability of the proposed new-build. (LPAs have a duty to preserve or enhance the character or appearance of conservation areas.)

English Heritage has collated anecdotal evidence which suggests that a significant proportion of current CAC applications are for works that do not actually require CAC, and are therefore not determined by LPAs (suggesting that the scope of CAC is commonly perceived to be wider than it actually is). It is possible that the replacement of CAC with the more widely understood planning regime may lead to a reduction in the number of unnecessary applications, thereby delivering savings for applicants.

These benefits have not been monetised.

Distribution of costs and benefits			
Costs		Benefits	
DCMS	No	DCMS	No
EH	No	EH	No
LPAs	No	LPAs	Yes
Developers / owners	No	Developers / owners	Yes

Risks and assumptions

It is assumed that the familiarity of LPA officers with the planning system will obviate the need for any formal training in the operation of the new arrangements.

Option 3 – Preferred option

The option includes the proposals outlined in Option 2, but with one additional measure.

3.1 Osborne House

Objective

It is proposed that parts of Section 1(3) and 1(4) of the Osborne Estate Act 1902 and the entirety of the Osborne Estate Act 1914 (and any Orders made under it) be repealed.

This would remove the current restrictions on how English Heritage can use a wing of Osborne House, the former residence of Queen Victoria on the Isle of Wight. Currently it can only be used as a convalescent home for members of the armed forces and civil service, which means that, since closure, the building remains empty. (It would also repeal obsolete provisions relating to Barton House, which was sold to a private purchaser in 1922; and amend the Secretary of State's powers and duties in respect of managing Osborne House so that they are governed by section 21 (suitable for property) rather than section 22 (suitable for parks and gardens) of the Crown Lands Act 1851.)

Costs and benefits

To prevent deterioration to the fabric of the building, English Heritage currently spends £60,000 p.a. on basic maintenance and damp prevention in the empty wing.

By making these repeals, the wing could be utilised to generate enough income to cover these costs, thereby reducing the drain on English Heritage's resources and providing opportunities for businesses and jobs in the local area. The Secretary of State's management duties in respect of Osborne House would also be more appropriate.

The former convalescent home contains rooms of some historical significance, including those that were used by the children of Queen Victoria and Prince Albert, visiting members of British and European royal families and by John Brown. No decision has been made as to how the space will be used, but this could include temporary exhibitions, educational use meetings and seminars. All of these activities would involve modest investment.

Distribution of costs and benefits			
Costs		Benefits	
DCMS	No	DCMS	No
EH	No	EH	Yes
LPAAs	No	LPAAs	No
Developers / owners	No	Developers / owners	No

Risks and assumptions

It is assumed that the building is in a good state of repair and that any works needed to accommodate the proposed new use would be deliverable at minimal cost. It is also assumed that a market exists for exhibitions, meetings and seminars which would cover the annual running costs (indications are that this is the case) and that any educational use would be on a cost recovery basis only.

In terms of risks, they are that (1) the assumptions outlined above are not met, and that (2) there may be objections by a small number of people on the Isle of Wight who believe that the building should revert to its use as a convalescent home. However this risk has been mitigated by two public meetings chaired by the local MP (Andrew Turner), at the second of which, it was agreed that the Act be repealed.

One In One Out:

Overall, the policies set out in Option 3 are deregulatory and have the potential to deliver savings for businesses (for example, by reducing the range and frequency of heritage-related consent applications). They are therefore classified as an OUT for One In One Out purposes.

There are no direct costs to businesses or civil society organisations.

Policy	Benefits to businesses or civil society organisations?	Costs to businesses or civil society organisations?
List entries	Yes	No
Certificates of Immunity	Yes	No*
Management agreements	Yes	No*
Conservation Area Consent	Yes	No
Osborne House	No	No

* Upfront costs incurred in the preparation of COI applications / management agreements would be exceeded by longer term savings. In addition, both COIs and management agreements are optional.

Wider impacts

Statutory Equalities Duties

We have considered equalities impacts and reviewed the assessment produced alongside the draft Heritage Protection Bill in 2008 (from which most of the proposed reforms are drawn) and have not identified any adverse impacts on equalities.

Competition

The heritage protection system impacts directly on several markets – notably construction, but also farming and forestry. Within these sectors, we do not anticipate that particular types of firm will be disadvantaged by these proposals.

- Will the proposals directly limit the number or range of suppliers? **No**

- Will the proposals indirectly limit the number or range of suppliers? **No**
- Will the proposals limit the ability of suppliers to compete? **No**
- Will the proposals reduce suppliers' incentives to compete vigorously? **No**

Small Firms

We have not identified any impacts that are specific to small businesses, or that would disproportionately affect small businesses. The reforms being proposed are de-regulatory in nature and/or relate to permissive measures.

Wider Environmental Issues

- Will the proposals be vulnerable to the predicted effects of climate change? **No**
- Will the proposals lead to a change in the financial costs or the environmental and health impacts of waste management? **No**
- Will the proposals impact significantly on air quality? **No**
- Will the proposals involve any material change to the appearance of the landscape or townscape? **No – the proposed reforms would support more effective and efficient conservation and enhancement of heritage assets (and of their contribution to the character of our landscapes, seascapes and townscapes).**
- Will the proposals change 1) the degree of water pollution, 2) levels of abstraction of water or 3) exposure to flood risk? **No**
- Will the proposals change 1) the amount or variety of living species, 2) the amount, variety or quality of ecosystems? **No**
- Will the proposals affect the number of people exposed to noise or the levels to which they're exposed? **No**

Health and Well-being

Having considered the relevant screening questions, we do not think that a health impact assessment is necessary. The proposed reforms will not have a significant impact on health, lifestyles or health and social care services.

Human Rights

Legal analysis of the draft heritage proposals for inclusion in the Enterprise, Employment, Regulatory Reform and Repeals has identified that a number of its provisions engage rights under the European Convention on Human Rights. This analysis however indicates that, on balance, the provisions are compatible with the Convention rights.

Justice System

We have undertaken a justice impact test and are have obtained clearance from the Ministry of Justice that there are no justice impacts arising from these proposals.

Rural Proofing

- Will the proposals affect the availability of public and private services? **No**
- Are the proposals to be delivered through existing service outlets, such as schools, banks and GP surgeries? **No**
- Will the cost of delivery be higher in rural areas where clients are more widely dispersed or economies of scale are harder to achieve? **No**
- Will the proposals affect the availability of public and private services? **No**
- Do the proposals rely on communicating information to clients? **Yes**
- Are the proposals to be delivered by the private sector or through a public-private partnership? **No**
- Do the proposals rely on infrastructure (e.g. broadband, main roads, utilities) for delivery? **No**
- Will the proposals impact on rural businesses, including the self-employed? **No**

- Will the proposals have a particular impact on land-based industries and, therefore, on rural economies and environments? **No**
- Will the proposals affect those on low wages or in part-time seasonal employment? **No**
- Are the proposals to be targeted at the disadvantaged? **No**
- Will the proposals rely on local institutions for delivery? **No**
- Do the proposals depend on new buildings or development sites? **No**
- Are the proposals likely to impact on the quality and character of the natural and built rural landscape? **Yes - the proposed reforms will support more effective and efficient conservation and enhancement of the historic environment. Many heritage assets are located in rural areas, positively contributing to their character and – through tourism – to their economic vitality.**
- Will the proposals impact on people wishing to reach and use the countryside as a place for recreation? **No**

Sustainable Development

A sustainable development impact test is attached at **Annex 1**.

Implementation

If these proposals are adopted, legislative reforms would be made through the Enterprise, Employment, Regulatory Reform and Repeals Bill.

Monitoring

'Heritage Counts' is an annual survey of the state of England's historic environment. It is produced on behalf of the Historic Environment Forum (HEF) by English Heritage. The report summarises policy changes from the preceding year and uses indicators to explore data trends at national, regional and local levels. The current 'Heritage Counts' indicator set includes several relevant to the proposed reforms, including: the number of LBC applications determined by LPAs; the number of Scheduled Monuments; and the percentages of Listed Buildings and/ Scheduled Monuments deemed to be 'at risk'.

Annex 1: Sustainable development impact test

Stage 1

1. Environmental Standards

1a. Are there any significant environmental impacts of your policy proposal (see Wider Environment Specific Impact Test)?

No

If the answer is 'yes' make a brief note of the impacts below:

N/a

1b. If you answered 'yes' to 1a., are the significant environmental impacts relevant to any of the legal and regulatory standards identified?

N/a

If the answer is 'yes' make a brief note of the relevant standards below:

N/a

If you answered 'yes' to 1b, have you:

1c. Notified the Government Department which has legal responsibility for the threshold and confirmed with them how to include the impacts appropriately in the analysis of costs and benefits?

N/a

1d. Informed ministers where necessary?

N/a

1e. Agreed mitigating or compensatory actions where appropriate?

N/a

2. Intergenerational impacts

2a. Have you assessed the distribution over time of the key monetised and non-monetised costs and benefits of your proposal? This assessment can be included in your Evidence Base or put in an annex.

No

2b. Have you identified any significant impacts which may disproportionately fall on future generations? If so, describe them briefly.

No

If you answered 'yes' to 2b., have you:

2c. Informed ministers where necessary? If so, provide details.

N/a

2d. Agreed mitigating or compensatory actions where appropriate? Provide details.

N/a

Stage 2

3. The purpose of the second stage is to bring together the results from the impact assessment with those from the first stage of the SD test. The following questions are intended to reflect the uncertainties in the cost benefit analysis and help you consider how to proceed in the light of further evidence from the first stage of the SD test.

3a. Indicate in the appropriate box whether the balance of monetised costs and benefits is:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
	X			

3b. Indicate in the appropriate box whether the balance of non-monetised costs and benefits is likely to be:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
	X			

3c. Indicate in the appropriate box whether the results of the SD questions 1-3 are, on balance, likely to be:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
		X		

3d. Indicate in the appropriate box whether, overall, the balance of the monetised and non-monetised costs and benefits and the sustainability issues is considered to be:				
Strongly positive	Moderately positive	Roughly neutral / finely balanced	Moderately negative	Strongly negative
	X			

3e. Provide an explanation of the final result from 3d, explaining, for example, how you have compared monetised and non-monetised costs and benefits and how you have resolved any conflicts between the cost-benefit results and the SD results.

The proposed reforms are generally deregulatory in nature, and several are permissive powers. They have the potential to realise savings for the owners, managers and developers of heritage assets, and for local planning authorities. They will also support more effective protection and management of the historic environment in urban and rural areas, and realisation of the public benefits this brings for current and future generations.