A.4 National heritage legislative and policy framework

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A.4 National heritage legislative and policy framework#

HERs operate within a complex framework of legislation and government policy guidance, which together provide for the protection and management of the historic environment and its presentation to the public. A summary of key legislation is given in Panel 1. The Ancient Monuments and Archaeological Areas Act 1979, is a UK-wide Act, although part II relating to archaeological areas was never introduced in Wales or Scotland. This Act was augmented in Wales in 2016 by the introduction of the Historic Environment (Wales) Act. Other legislation and guidance is more nation-specific. (see Panel 1).

- In England Historic England is responsible for the scheduling of monuments and the listing of historic buildings on behalf of the Secretary of State for Culture Media and Sport in accordance with the primary legislation The listing of buildings was transferred to Historic England (then part of English Heritage) from the Department for Culture, Media and Sport (DCMS) in April 2005. Other changes will be introduced as a result of the Government's consultation The Review of Heritage Protection: The Way Forward (DCMS 2004).
- In Scotland where there is devolved government, culture is a devolved matter and Scottish Ministers are responsible for scheduling and listing. Historic Environment Scotland, a Non Departmental Public Body, advises Scottish Ministers on historic environment matters.
- In Wales responsibility for the heritage is devolved to the Welsh Government (WG) who are responsible for scheduling and listing. Cadw, the historic environment service of the WG, are responsible for advising Welsh Ministers on such matters and for the day to day operation of heritage legislation.

World Heritage Sites#

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Convention provides for the identification, protection and presentation of cultural and natural sites of outstanding universal value. Currently there are 26 sites in Britain (16 in England, 6 in Scotland, 3 in Wales and 1 in Northern Ireland). Although there is no special legislation, impact on a World Heritage Site is a material consideration in the planning process as set out in planning guidance (NPPF (England), Planning Policy Wales (Wales) and Scottish Planning Policy 2014 (SPP) (para. 147).

Scheduled monuments#

Central government (DCMS in England, Historic Environment Scotland in Scotland, Welsh Government in Wales) has sole responsibility for enforcing legislation on scheduled monuments. With the exception of works defined in the Ancient Monuments (Class Consents) Order 1994, scheduled-

monument consent must be granted by the relevant Ministers in the national countries for all works, including archaeological excavations. For England, Historic England maintains a Register of Heritage at Risk, which as well as covering Scheduled Monuments, also includes Grade I and II* Listed Buildings, Registered Parks and Gardens and Conservation Areas).

Listed buildings#

Local planning authorities are responsible for granting and refusing consent to alter or demolish a listed building in consultation with the relevant national agencies and the statutory amenity societies. There is a right of appeal to the relevant Ministers advised by the respective national agencies body (Historic England, Historic Environment Scotland, Cadw). In Scotland at Buildings at Risk Register is maintained by Historic Environment Scotland(see www.buildingsatrisk.org.uk/). Some local authorities also maintain a list of locally important buildings which will be taken into account in the planning process.

Conservation areas#

Local planning authorities are responsible for granting conservation-area consent for new developments and the demolition of any building within conservation areas.

Registered parks, gardens and battlefields#

Historic England has assembled a Register of Parks and Gardens of special historic interest and another for historic battlefields in England. These registers are used to alert owners and others to the significance of an area of land. Although no additional statutory controls are available, planning authorities are recommended to take account of these sites in preparing development plans (NPPF (England)). Parks and gardens registers exist under similar circumstances in Wales. Since 1998 Registers of Landscapes of Outstanding and Special Historic Interest have been published for Wales, and while these are also non-statutory, planning authorities are advised to take account of registered historic landscapes when preparing development plans and under certain circumstances when considering planning permissions. No battlefields register exists for Wales, although an inventory of battlefields is now in preparation by the RCAHMW. In Scotland there is an Inventory of Gardens and Designed Landscapes and an Inventory of Historic Battlefields maintained by Historic Environment Scotland. Consultation must take place with Historic Environment Scotland in respect of any planning applications affecting an Inventory site under The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

Heritage designations at sea#

Several forms of designation can apply at sea as the 'land based' regimes continue to apply as well as some specific marine forms of designation. Scheduling has been used to protect a variety of monuments in intertidal and fully marine contexts around the UK, including the remains of ships. Examples include elements of D-Day infrastructure that have been scheduled off the coast of Essex and Kent. There are also some Listed Buildings in the sea, such as the sea forts of the Humber Estuary and the Solent, and Beachy Head lighthouse. A much wider range of Listed Buildings are connected to the shore but have their foundations in the sea - especially harbour walls and piers.

At present, the principle form of heritage designation used at sea in English waters is the Protection of Wrecks Act 1973. As its title implies, this act can only be used to designate the remains of wrecks, including their former contents such as cargo. The Protection of Wrecks Act 1973 is used to designate an area within which a wreck lies; various activities within the designated area are restricted and can only take place under the authority of a licence. Designation can apply to the limit of the Territorial Sea (12 nautical miles; about 22 km) and in all tidal waters, including intertidal areas and estuarine waters that may be far upstream but still within the tidal limit.

The Protection of Wrecks Act 1973 is used in Wales and Northern Ireland as well as England, but it has been superseded in Scotland by the designation of Historic Marine Protected Areas (HMPAs) under the Marine (Scotland) Act 2010. HMPAs can be used to designate a very wide range of heritage assets, whilst in England recourse must be had to scheduling at sea if the heritage asset in need of protection is not a wreck.

In England, designation and licencing under the Protection of Wrecks Act 1973 are the responsibility of the Secretary of State for Culture Media and Sport, administered on behalf of DCMS by Historic England.

A further form of designation that affects heritage assets is provided by the Protection of Military Remains Act 1986. This act can be used to protect wrecks by designating an area, or by adding the name of the wreck to a list - even if the location of the wreck is not known. Air crash sites are automatically protected under the Protection of Military Remains Act 1986. The Protection of Military Remains Act 1986 also requires that a licence be obtained before excavating any place in search of military remains.

Portable heritage#

Portable objects are covered by various protection measures. The Treasure Act 1996 (applies in England, Wales and Northern Ireland) which came into effect in September 1997 defines 4 categories of treasure. A revised code of practice was issued in 2002. Objects covered by the Act must be reported to local coroners, and to encourage the reporting of objects classed as treasure, the market value of the find is paid to finders or landowners. Finders of metal objects not considered treasure and other archaeological objects from non-scheduled sites are encouraged to report their finds under a voluntary scheme, the Portable Antiquities Scheme. This has established a national network of Finds Liaison Officers (FLOs) in England and Wales, based in museums or HERs (www.finds.org.uk). FLOs provide a point of contact for finders in each area, as well as liaising with metal detectorists and HERs. Objects that are fixed to listed buildings are also protected under the legislation for listed buildings. English Heritage has published guidance on portable antiquities in relation to its own sites, funded projects and scheduled monuments Our Portable Past (English Heritage 2006).

Scotland is subject to separate Treasure Trove law which differs significantly from that obtaining in England and Wales. It encompasses two categories of material, Treasure Trove (sensu stricto) which is restricted to precious items and associated objects which have been concealed; and bona vacantia which covers all objects (made of any material) whose original owner or rightful heir cannot be traced, irrespective of the circumstances of deposition. All such finds must be reported to the Crown Office, although if the Crown exercises its rights to ownership and claims an object, the finder is normally eligible for a reward equivalent to its market value. Claimed finds are allocated to an appropriate museum. Unclaimed finds are returned to the finder.

Portable heritage in tidal waters counts as 'wreck' if it has come from a ship and is subject to the Merchant Shipping Act 1995. Anybody who finds 'wreck' or brings it within UK territorial waters must notify the Receiver of Wreck, who will try to establish the original owner. The finder is entitled to a salvage award. If no legitimate owner makes a claim within a year then generally the wreck becomes the property of the Crown, though in practice the find will often be granted to the finder in place of a salvage award. Although the Treasure Act 1996 also applies to the foreshore above low water, if an item is 'wreck' then it is not 'treasure'. Other than finds that fall within the definition of 'treasure' (above low water) and 'wreck', there is no general provision for portable heritage found in tidal waters. However, a number of protocols are in place to encourage the reporting of all types of archaeological material discovered at sea by the marine aggregate industry and the offshore renewables sector.

Ecclesiastical buildings#

Churches and other religious buildings may be listed but alterations or building works may also be controlled by special codes of practice. For example, the Church of England and the Church in Wales require the issuing of a Faculty by the Chancellor of the Diocese for alterations to a church, churchyard or church furnishings. Advice to the diocese is given by diocesan archaeologists who are normally in contact with their local HERs. DAC advisors are sometimes a member of staff within a local authority historic environment service. Other denominations have similar schemes. In Scotland internal alterations to listed churches are exempt from the need to obtain listed building consent, although external alterations still require consent. The Church of Scotland refers decisions about internal alterations to its Committee of Artistic Matters, the Scottish Episcopal Church refers internal alterations to its Diocesan Advisory Committee, and internal alterations to Catholic churches are the responsibility of individual priests. Many Scottish churches were built after the Reformation on new sites, off the sites of the pre-Reformation churches and cemeteries. Most pre-Reformation cemeteries are maintained by the local authorities, but the law is complex regarding ownership of these cemeteries. Some of the pre-Reformation church and cemetery sites are scheduled ancient monuments.

Heritage Protection Review#

In England changes are anticipated following the Government's consultation *The Review of Heritage Protection: The Way Forward (DCMS 2004)* which included proposals for a unified list combining listed buildings, scheduled monuments, registered parks and gardens, registered battlefields and for devolving consent procedures to local authorities.

In Wales the *Protection of historical assets in Wales: a consultation paper (National Assembly for Wales: Welsh Assembly Government 2003)* and further consultations have resulted in the introduction of the *Historic Environment (Wales) Act 2016*.

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Primary legislation

Ancient Monuments and Archaeological Areas Act 1979: [Applies to UK (although Part II pertaining to archaeological areas was never introduced in Wales or Scotland)]. Consolidates earlier legislation on the definition and protection of scheduled monuments and authorisation of works affecting scheduled monuments. Also provides for rescue excavation in designated areas of archaeological importance.

Planning (Listed Buildings and Conservation Areas) Act 1990: (England and Wales) Covers the designation of listed buildings and conservation areas and the authorisation of works by local planning authorities.

Historic Environment (Wales) Act 2016 augments the *Ancient Monuments and Archaeological Areas Act 1979* and the *Planning (Listed Buildings and Conservation Areas) Act 1990* and gives Welsh Ministers certain additional powers in relation to Scheduled Monuments and Listed Buildings. It also places a statutory duty on Welsh Ministers to maintain Welsh HERs.

Planning (Listed Buildings and Conservation Areas) Scotland Act 1997: (Scotland) Covers the designation of buildings of special architectural or historic interest ?with a view to the guidance of planning authorities in the performance of their functions under this Act'.

Protection of Military Remains Act 1986: (UK) Enables the designation and licensing of vessels lost in military service. Also requires a licence to be obtained to disturb the remains of all crashed military aircraft, both on land and at sea.

Protection of Wrecks Act 1973: (England, Wales and Northern Ireland) Covers the designation and licensing of wrecks of historical, archaeological or artistic importance in territorial waters. Section 2 covers dangerous cargoes.

Marine (Scotland) Act 2010: (Scotland) Part 5 applies to the designation and licensing of Historic Marine Protected Areas (HMPAs).

National Heritage Act 1983, 2002: (England) The 1983 Act established the Historic Buildings and Monuments Commission (known as English Heritage) and delegated the functions of scheduling of ancient monuments and listing of historic buildings. The National Heritage Act 2002, took effect on 1 July 2002, and broadened the powers of English Heritage in two ways. It allowed English Heritage to become involved in underwater archaeology in English territorial water and to trade in overseas countries. These powers have now been transferred to Historic England.

- Historic Environment Scotland (HES) was created in 2015 by merging Historic Scotland with RCAHMS. HES is a Non Departmental Public Body and has charitable status, and gives advice to Scottish Government on historic environment matters. The Historic Environment Scotland Act 2014 sets out HES?s role and legal status.
- Cadw, created in 1984, is an historic environment service with the complete range of responsibilities for the conservation, presentation, and promotion of the built heritage of Wales on behalf of the Welsh Government. It is a part of the Welsh Government and hence part of the devolved powers of the government of the principality.

Town and Country Planning Act 1990: [England and Wales] The principal instrument of town and country planning law, setting out the requirement for local authorities to prepare development plans.

Town and Country Planning (Scotland) Act 1997: (Scotland) The principal instrument of town and country planning law, setting out the requirement for local authorities to prepare development plans. Parts of the act were amended by the **Planning etc (Scotland) Act 2006**.

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013: Legislation and guidance on procedures for dealing with planning permission applications that affect a: scheduled monument or its setting, category A listed building or its setting, garden or designed landscape, battlefield site, or World Heritage Site.

Treasure Act 1996: [England and Wales]: Replaced the common law of treasure trove and defines treasure and the reporting procedures. It introduced the voluntary recording of archaeological finds not defined as treasure. The Treasure Act 1996 Code of Practice (Revised) 2002 (England and Wales) updates the Code of Practice first issued in 1997. The Code sets out the guidelines to be followed by the Secretary of State when considering whether or not treasure should be offered to a museum or to the finder or to any other person, when determining a reward and when deciding whether to disclaim the Crown's title to treasure. It also provides guidance for finders, museums, coroners and others who are concerned with treasure.

The Act does not apply to Scotland. Under the regalia minora common law rights of the Crown in Scotland, it is the prerogative of the Crown to receive all lost and abandoned property which is not otherwise owned. There is a narrow definition of treasure trove per se, involving precious items which have lain concealed, but in practice this is overridden by and subsumed within the wider legal concept of bona vacantia (or ownerless goods). The Crown Office in Scotland has the duty, overseen by the Scottish Executive, to claim bona vacantia on behalf of the nation.

Merchant Shipping Act 1995: [UK] Applies to the reporting and ownership of wreck.

Statutory Instruments

Town and Country Planning (General Permitted Development) Order 1995: [England and Wales] Defines a site of archaeological interest as a site registered in an SMR adopted by a local authority.

Town and Country Planning (General Permitted Development) (Scotland) Order 1992: Defines a site of archaeological interest as a site which has been included in a Sites and Monuments Record held by any local authority before the coming into force of this Order;

Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994: [England and Wales] Exempts buildings in use for religious purposes by specific denominations from the local authority planning process where acceptable procedures for controlling works are in place.

Ancient Monuments (Class Consents) Order 1994: [UK] and Ancient Monuments (Class Consents) (Scotland) Order 1996: Permit specific works to scheduled monuments.

Hedgerow Regulations 1997: [England and Wales] Aims to control the removal of important hedgerows through a system of prior notification. This specifically mentions hedgrows included in the local SMR.

England: Planning guidance issued by Ministry of Housing, Communities and Local Government (MHCLG)

NPPF 2018: (England). The National Planning Policy Framework sets out the Government?s planning policies for England and how these are expected to be applied. It sets out the Government?s requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so. It provides a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities. The NPPF is supported by Planning Practice Guidance.

Planning Practice Guidance 2018: (England) adds further context to the National Planning Policy Framework (NPPF) and it is intended that the two documents should be read together. There are 42 pieces of guidance, with key topics including what should be included in Local Plans, renewable and low carbon energy and on Conserving and Enhancing the Historic Environment.

Scotland: planning guidance issued by the Scottish Government

Scottish Planning Policy 2014 (SPP): the statement of the Scottish Government?s policy on nationally important land use planning matters.

National Planning Framework 2014 (NPF): the Scottish Government?s strategy for Scotland?s long term spatial development.

Planning Advice Note 2/2011: Planning and Archaeology (PAN): provides advice to planning authorities and developers on dealing with archaeological remains.

Historic Environment Scotland Policy Statement 2016: guides the operation of decision making in the Scottish planning system. It sets out how Historic Environment Scotland fulfils its regulatory and advisory roles and how it expects others to interpret and implement Scottish Planning Policy.

Our Place in Time - The Historic Environment Strategy for Scotland

Wales: planning guidance issued by the Welsh Government (formerly The Welsh Office)

'Planning Policy Wales', Edition 8, January 2016: [Wales] provides the strategic policy framework for the effective preparation of local planning authorities' development plans. (Chapter 6 relates to the

historic environment encompassing UDPs, Conservation Areas, development control, World Heritage Sites and historic parks and gardens). This is supplemented by 23 topic based Technical Advice Notes (Wales). Procedural guidance for the historic environment is given in Welsh Office / National Assembly for Wales circulars.

Welsh Office Circular 60/96: Planning and the Historic Environment: Archaeology: Provides advice on the handling of archaeological matters within the planning system. It supplements guidance in Planning Guidance (Wales): Planning Policy 1996 and Planning Policy Wales 2016. (This Circular is due to be replaced by TAN24 during 2016-17).

Welsh Office Circular 61/96: Planning and the Historic Environment: Historic Buildings and Conservation Areas as amended by Welsh Office Circular 1/98, Planning and the Historic Environment: Directions by the Secretary of State for Wales Sets out the latest available policy guidance which relates to the built heritage. (This Circular is due to be replaced by TAN24 during 2016-17).

Voluntary Codes of Practice

Code of Practice for Treasure Act, DCMS, 1996: (England and Wales) A voluntary programme to record archaeological objects not covered by the provisions of the Treasure Act.