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## INFORMATION NOTE

### Built heritage conservation policy in the United Kingdom

#### 1. Background

1.1 In the United Kingdom (UK), the concern over the need to protect the historic environment was first voiced in the late 1800s. Much of this was associated with the foundation of the first national amenity society – the Society for the Protection of Ancient Buildings – in 1877 to preserve the integrity of historic buildings by preventing unnecessary repairs and additions conducted to them. Also lending support was the emergence of "Romanticism" that inspired a heightened appreciation of the relics of the past, including picturesque qualities of historic ruins and natural landscapes.

1.2 The first legislation to protect the historic environment was enacted in 1882 when the Ancient Monuments Protection Act was passed to protect a small number of designated ancient monuments<sup>1</sup>. More statutory measures came into force in the ensuing years, but it was the passage of the Ancient Monuments Consolidation and Amendment Act in 1913 that set out a more comprehensive legislative framework for the protection of ancient monuments.

1.3 In 1932, the enactment of the Town and Country Planning Act set the precedent for extending statutory protection to outstanding buildings other than ancient monuments. The Act empowered a local authority to make preservation orders for buildings of special architectural or historic interest, whereby the demolition of these buildings could not proceed without its consent. Subsequent amendments were made to the Town and Country Planning Act; for example, in 1944, the Act was amended to incorporate a system of identifying and listing buildings of architectural or historic importance to the nation. Nevertheless, it was the enactment of the Town and Country Planning Act 1968 that set out the development controls over outstanding buildings in more or less the same form that exists today.

1.4 The Town and Country Planning Act 1968 widened the scope of control to buildings of special architectural or historic interest by providing that consent was *automatically* required for works to be carried out to any buildings included in the list produced by the Minister, without the need for the issuance of a building preservation order by a local authority in the first place.

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<sup>1</sup> The Ancient Monuments Protection Act 1882 applied solely to "ancient monuments", which were defined as the monuments listed in the Schedule to the Act, and "other monuments of a like character of which the Commissioners may consent to become the guardian", together with adjacent land required for the preservation of and access to the monuments. The Schedule of the Act listed some 26 monuments in England, 22 in Scotland, 18 in Ireland and three in Wales. All of them were unoccupied prehistoric structures, such as dolmens, stone circles, barrows and pillars. See Mynors (2006).

1.5 The threat of wide-scale demolition to historic town centres during the 1960s precipitated the community concerns over the need for introducing legislative measures to protect historic areas as well as individual monuments and buildings. In 1967, the Civic Amenities Act was passed to embody the concept of the "conservation area" in heritage conservation. The Act required local authorities to identify and designate areas of "special architectural or historic interest" which, in their opinion, were desirable to preserve or enhance, and to give these areas "special attention" when making development control decisions. However, there was no control over demolitions in the conservation areas until when the Town and Country Amenities Act passed in 1974 to stipulate the requirement for the application for conservation area consents to demolish any buildings in a conservation area.

1.6 The existence of separate systems for designating and protecting different types of historic environment, such as ancient monuments, outstanding buildings and conservation areas, has been perceived as complicated and hard to understand<sup>2</sup>. As such, the UK government has conducted a number of consultation exercises during the recent years to review its heritage conservation policy<sup>3</sup>. The most recent one was the publication of the White Paper – *Heritage Protection for the 21st Century* – in March 2007 to solicit views from the public and interested parties on, among other things, the introduction of a unified and simpler heritage protection system with more opportunities for public involvement and community engagement (see paragraphs 9.1-9.8 below). The consultation ended on 1 June 2007, and a draft heritage protection bill based on the proposals set out in the White Paper was published in April 2008 for pre-legislative scrutiny.

## **2. Institutional arrangements for heritage conservation<sup>4</sup>**

2.1 The UK has established comprehensive institutional arrangements for the conservation of historic environment, with the involvement of central government departments, executive non-departmental public bodies and local authorities.

### Central government departments

2.2 In the UK, the Department for Culture, Media and Sport and the Department for Communities and Local Government are the principal central government authorities responsible for heritage conservation in the country.

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<sup>2</sup> See Department for Culture, Media and Sport (2007).

<sup>3</sup> The UK government issued the first consultation paper – *Protecting our Heritage* – in 1996, followed by the releases of *Power of Place* (2000), *The Historic Environment: A Force for Our Future* (2001), *Protecting our Historic Environment: Making the System Work Better* (2003), and *Revisions to Principles of Selection for Listed Buildings* (2005) in the ensuing years.

<sup>4</sup> The discussion throughout this information note will be confined to the build heritage conservation policy in England.

*Department for Culture, Media and Sport*

2.3 Established in 1997, the Department for Culture, Media and Sport is responsible for heritage legislation and the identification, conservation and enhancement of the historic environment in the UK. Its functions include providing grants to heritage-related bodies and dealing with urgent work notices, repair notices and associated land acquisition in relation to historic buildings. In addition, the Secretary of State for Culture, Media and Sport is required to compile a list of buildings of special architectural or historic interest. Listing protects outstanding buildings against unauthorized demolition, alteration or extension, and ensures that the special interest of listed buildings is taken into account when approving the development proposals which might affect their character or appearance.

2.4 The Secretary of State for Culture, Media and Sport also performs the statutory duty of compiling the schedule of monuments of national importance, under which scheduled monuments are given statutory protection through the planning control system. In particular, scheduled monument consents are required for conducting any works to the monuments included in the statutory schedule. The Department for Culture, Media and Sport processes about 1 000 applications for scheduled monument consents each year.

*Department for Communities and Local Government*

2.5 The Department for Communities and Local Government was set up in May 2006, entrusted with a wide range of responsibilities including urban regeneration, housing, local government, conservation planning, and community cohesion and equality.

2.6 As to conservation planning, the Department is responsible for protecting the historic environment through the enforcement of planning and development control regime. In addition, it has issued a number of planning policy guidance to set out the government's policy on the identification and protection of historic buildings, conservation areas, and other elements of the historic environment.

Executive non-departmental public bodies

2.7 In the UK, executive non-departmental public bodies have been established by relevant Ministers to carry out a service or function on behalf of the government where operational independence from Ministers is either necessary or desirable. These public bodies are not an integral part of any government department and they carry out their work at arm's length from Ministers. Nevertheless, Ministers are ultimately responsible to Parliament for the activities of bodies sponsored by their departments.

2.8 The Department for Culture, Media and Sport sponsors a number of executive non-departmental public bodies, of which English Heritage, the National Heritage Memorial Fund and the Heritage Lottery Fund are actively involved in the preservation of the historic environment in the UK.

### *English Heritage*

2.9 English Heritage, formally known as the Historic Buildings and Monuments Commission for England, was established under the National Heritage Act 1983. It performs the functions of:

- (a) giving advice in relation to the historic environment, including advice to the Secretary of State for Culture, Media and Sport on the inclusion of outstanding buildings on the statutory list of buildings of special architectural or historic interest and the scheduling of ancient monuments;
- (b) making grants and loans for the conservation of historic buildings, monuments and landscapes;
- (c) compiling registers of parks and gardens of special historic interest, and of historic battlefields, and sponsoring surveys of listed buildings at risk;
- (d) acquiring historic buildings, land or gardens, and acquiring or becoming the guardian of ancient monuments, subject to the consent of the Secretary of State for Culture, Media and Sport. At present, English Heritage manages more than 400 historic properties in the care of the state, which are made accessible to the broadest possible public audience;
- (e) giving advice to local planning authorities on listed building consent applications; and
- (f) providing educational facilities and services, instructions and information to the public.

2.10 English Heritage is financed mainly by government funding, supplemented by the revenue earned from its historic properties and other services. In 2007-2008, government grant-in-aid accounted for £129.4 million (HK\$2.0 billion<sup>5</sup>) or 72% of the total income received by English Heritage. English Heritage also derived income from other sources during the year, such as membership fee (8% of the total income), admission (6%), retailing and catering (6%), donations and grants (4%) and other income (4%).

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<sup>5</sup> The calculation was based on the average rate of HK\$15.62 per British pound in 2007.

### *National Heritage Memorial Fund*

2.11 The National Heritage Memorial Fund was established by the National Heritage Act 1980. It acts as a fund of last resort to provide financial assistance to organizations based in the UK for their acquisition, preservation and maintenance of land, buildings or structures which are of outstanding interest and importance to the national heritage.

2.12 The National Heritage Memorial Fund is financed mainly by government funding, which involves an annual grant-in-aid of £10 million (HK\$156 million) from the Department for Culture, Media and Sport. Private donations also account for a small percentage of the revenue received by the National Heritage Memorial Fund.

### *Heritage Lottery Fund*

2.13 The Heritage Lottery Fund provides financial support to projects which safeguard and improve access to the national heritage of the UK. The Fund was set up in 1994 by Parliament as one of the recipients of the proceeds from the sale of the National Lottery tickets. Under the National Lottery Act 1993, the licensee running the National Lottery is required to allocate 28% of ticket proceeds to the National Lottery Distribution Fund for "good causes". The National Lottery Distribution Fund is managed by the Secretary of State for Culture, Media and Sport, who in turn allocates 16.67% of the Fund to the Heritage Lottery Fund for "expenditure on or connected with the national heritage".

2.14 In 2007-2008, the Heritage Lottery Fund received £200 million (HK\$3.1 billion) or 92% of its total revenue from the National Lottery. Investment income and other revenue accounted for the remaining 8% of the total revenue received.

### Local authorities

2.15 In the UK, local planning authorities (primarily district and borough councils) have played an active role in securing the conservation of the historic environment within their jurisdictions since the 1970s. In general, they are responsible for:

- (a) integrating the conservation policy with wider planning policy for their areas;
- (b) designating areas of "special architectural or historic interest" as conservation areas;
- (c) determining applications for planning permission, listed building consent and conservation area consent;

- (d) exercising powers to secure the repair of listed buildings which have been allowed to fall into disrepair; and
- (e) making grants and loans towards the cost of repairing historic buildings.

### **3. Legal framework**

3.1 The principal legislation governing heritage conservation in the UK includes the Ancient Monuments and Archaeological Areas Act 1979, the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990.

#### Ancient Monuments and Archaeological Areas Act 1979

3.2 The Ancient Monuments and Archaeological Areas Act 1979 sets out the statutory framework under which a schedule of archaeological and historical monuments deemed to be of national importance is established and maintained by the Department for Culture, Media and Sport. The Act also provides for the protection of scheduled monuments and controlling works conducted to them through the granting of scheduled monument consents.

#### Town and Country Planning Act 1990

3.3 The Town and Country Planning Act 1990 deals with the exercising of planning controls, such as the need for planning permission from local planning authorities to carry development<sup>6</sup> to historic buildings that are listed or in a conservation area. In determining applications for planning permission, local planning authorities will consider the effect of development on the setting of a listed building and on the character or appearance of a conservation area.

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<sup>6</sup> According to Section 55(1) of the Town and Country Planning Act 1990, development is defined as "carrying out of building, engineering, mining, or other operation in, on, over or under land, or the making of any material change in the use of any buildings or other land". See Office of Public Sector Information (1990b).

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## Planning (Listed Buildings and Conservation Areas) Act 1990

3.4 The Planning (Listed Buildings and Conservation Areas) Act 1990 consolidates the provisions of the earlier legislation relating to listed buildings and conservation areas. The Act makes provisions for outstanding buildings of special historic or architectural interest to be added to the statutory list compiled by the Secretary of State for Culture, Media and Sport. Any proposal to alter or demolish a listed building requires the application for listed building consent to be issued by the relevant government authorities. Unauthorized works are regarded as criminal offences and would incur fines. The Act also stipulates that local authorities are empowered to designate conservation areas and decide whether to approve the consent for demolitions of buildings in the conservation areas.

### **4. Heritage protection system in the United Kingdom**

4.1 In the UK, the historic environment is primarily categorized into three major groups, namely scheduled monuments, listed buildings and conservation areas.

#### Scheduled monuments

4.2 Scheduled monuments are sites, structures and buildings of historic, architectural, traditional or archaeological interest that are included in the schedule of monuments compiled by the Secretary of State for Culture, Media and Sport, pursuant to Section 1 of the Ancient Monuments and Archeological Areas Act 1979.

#### *Criteria for scheduling monuments*

4.3 In compiling the schedule of monuments, the Secretary of State for Culture, Media and Sport is required under the Ancient Monuments and Archeological Areas Act 1979 to include monuments which appear to be of national importance. This provision gives him or her a broad discretion as to what to be included in the schedule. The Secretary of State has made use of non-statutory criteria set out in the Planning Policy Guidance 16 for assessing the importance of a monument and whether scheduling is appropriate. These criteria include:

- (a) representation – whether the monument characterizes a particular category or period;
- (b) rarity – whether the category of monument is regionally or nationally rare;
- (c) availability of related documentation (e.g. existence of records of previous investigation);

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- (d) group value with other monuments – the association of this monument with related contemporary monuments or with monuments of different periods;
  - (e) the extent of surviving features and present condition – how much of the original fabric of the monument remains and what condition it is in;
  - (f) fragility/vulnerability – whether the monument is particularly fragile or vulnerable;
  - (g) diversity – whether the monument possesses a number of features of interest; and
  - (h) potential for further discoveries<sup>7</sup>.

#### *Protection of scheduled monuments*

4.4 Any works affecting scheduled monuments would require the approval of the Secretary of State for Culture, Media and Sport, who receives advice from English Heritage and other advisory bodies. Such approval is known as scheduled monument consent. Where consent is refused, compensation is payable (under certain limited circumstances) if the owners thereby suffer a loss. In practice, the great majority of applications for consent are approved, often with conditions attached to protect the monument in question.

#### Listed buildings

4.5 Section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty on the Secretary of State for Culture, Media and Sport to compile a list or lists of buildings of special architectural or historic interest as a guide to the planning authorities when carrying out their planning functions<sup>8</sup>. The Secretary of State is obliged to consider advice from English Heritage when making the listing decisions.

4.6 Buildings on the statutory list are generally graded to reflect their relative architectural and historic interest. They are primarily categorized as follows:

- (a) Grade I buildings of exceptional interest;

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<sup>7</sup> As at April 2007, there were 19 711 scheduled monuments in England. See English Heritage (2007).

<sup>8</sup> There are cases where a building is both listed and scheduled. In those cases, the ancient monument legislation takes precedence and listed building legislation does not apply. See Pavilions of Splendour (2008).

- (b) Grade II\* buildings of more than special interest; and
- (c) Grade II buildings of special interest<sup>9</sup>.

#### *Criteria for selecting listed building*

4.7 Planning Policy Guidance 15<sup>10</sup> (PPG 15) prescribes the criteria whereby the Secretary of State for Culture, Media and Sport will follow when assessing whether a building is of special architectural or historic interest should be added to the statutory list. To be of special architectural interest, a building must be of importance in its architectural design, decoration or craftsmanship. Special architectural interest may also apply to nationally important examples of particular building types and techniques (e.g. buildings displaying technological innovation or virtuosity) and significant plan forms. For a building of special historic interest, it must illustrate important aspects of the nation's social, economic, cultural, or military history and/or has close historical associations with nationally important people.

4.8 PPG 15 also highlights specific features of the building that the Secretary of State may (but not must) take into account when making the listing decisions. These include:

- (a) any respect in which the exterior contributes to the architectural or history interest of any group of buildings of which it forms parts, i.e. the so-called group value of the building;
- (b) the architectural or historic interest of any feature of the building containing a man-made object or structure fixed to the building or forming part of the land and comprised within the cartilage of the building; and
- (c) other considerations, such as age and rarity, for deciding whether the building meets the test of special interest. The older the building is, and the fewer the surviving examples of its kind, the more likely it is to have special interest<sup>11</sup>.

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<sup>9</sup> There were 9 133 Grade I buildings in England as at April 2007. The corresponding figures for Grade II\* and Grade II buildings were 20 984 and 341 783 respectively. See English Heritage (2007).

<sup>10</sup> See Department for Communities and Local Government (1994).

<sup>11</sup> According to PPG 15, all buildings built before 1700 which survive in anything like their original condition are listed, as are most buildings built between 1700 and 1840. After that date, the criteria become tighter with time, because of the increased number of buildings erected and the much larger numbers which have survived. Buildings less than 30 years old are listed only if they are of outstanding quality and under threat.

### *Protection of listed buildings*

4.9 Buildings included in the statutory list are subject to planning controls set out in various planning legislation, particularly the Planning (Listed Buildings and Conservation Areas) Act 1990. These planning controls include:

#### Listed building consent

4.9.1 Anyone who wants to demolish, alter or extend a listed building which may affect its character is required to obtain listed building consent from the relevant government authorities. Unauthorized works could carry a fine of unlimited amount or up to twelve months' imprisonment, or both.

#### Listed building enforcement notice

4.9.2 Listed building enforcement notices may be used in conjunction with, or instead of, prosecutions for unauthorized works. The notice requires an owner to return his or her building to its former state or, if that is not practicable, to undertake works to alleviate the effect of works carried out without consent.

#### Planning permission

4.9.3 Planning permission is required for any alternations or extensions to the exterior of a listed building that materially affect the external appearance of the building. Planning permission is also needed to change the use of a listed building, and for building works and changes of use affecting its setting.

#### Urgent repairs notice

4.9.4 Local authorities are empowered to serve a repairs notice on the owner of a listed building where reasonable steps are not being taken for properly preserving it. If at the end of two months those reasonable steps have not been taken, the authority, can, with the consent of the Secretary of State for Culture, Media and Sport, acquire the building compulsorily with minimum compensation, i.e. compensation being restricted to the market value of the building as it stands with no account being taken of possible development value.

### Building preservation notice

4.9.5 It is possible that a building of merit may have been overlooked and excluded from the statutory list prepared by the Secretary of State for Culture, Media and Sport. To help address this issue, local planning authorities have the power to serve building preservation notices in respect of buildings which are not listed, but which they consider are of special architectural or historic interest and are in danger of demolition or alteration in such a way as to affect their character as buildings of such interest. In general, a building preservation notice applies to the building all the protection given to listed buildings under the planning legislation. The building preservation notice remains in force for a period of up to six months, during which the Secretary of State will consider whether to add the building concerned to the statutory list.

### Conservation areas

4.10 As stipulated under Section 69 of the Planning (Listed Buildings and Conservation Areas) 1990 Act, local planning authorities have a duty to designate areas of special architectural or historic interest as conservation areas<sup>12</sup>.

### *Criteria for designating conservation areas*

4.11 The criteria adopted for designating conservation areas vary among the local planning authorities. However, no attempts have been made at the national level to prescribe criteria for which areas are suitable beyond the statutory definition of "areas of special architectural or historic interest the character of which it is desirable to preserve or enhance".

### *Protection of conservation areas*

4.12 Anyone intending to demolish an unlisted building within a conservation area is required to apply for conservation area consent from the relevant local planning authorities. For listed buildings within a conservation area, they are protected by listed building consents.

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<sup>12</sup> According to the Department for Culture, Media and Sport (2008b), there are currently about 9 300 conservation areas in England.

4.13 It is also possible for local authorities to introduce greater protection for buildings in conservation areas by issuing Article 4 Direction, under which planning permission is required for works which would otherwise have constituted permitted development. In the UK, property owners within a conservation area can carry out permitted development, normally involving small-scale extensions and/or alterations, without the need for planning permission. The issue of Article 4 Direction serves to prevent piecemeal erosion of the character of an area through the cumulative effects of numerous small changes.

## **5. Approach adopted for heritage conservation**

5.1 The UK government has adopted a multi-pronged strategy for the conservation of historic properties, in terms of a holistic approach for heritage conservation, maximum retention of historic buildings, adaptive re-use of listed buildings, integration of conservation with town and country planning, broad engagement with the voluntary and community sector, and provision of tax incentives for heritage conservation.

### Holistic approach for heritage conservation

5.2 The UK government has adopted a holistic approach for its heritage conservation policy. It conserves not only the heritage value of individual buildings, but also the collective value of the site as a whole. As such, the existing heritage conservation regime has designated conservation areas as a distinct historic asset subject to the protection and management by the relevant government authorities. In particular, specific statutory measures and funding mechanisms have been put in place to preserve conservation areas throughout the country.

### Maximum retention of historic buildings

5.3 The UK government emphasizes a general presumption in favour of the retention of historic buildings, as evidenced by the strict criteria set out in PPG 15 for assessing those applications involving demolition or substantial alternation of listed buildings. For example, listed building consent will not be granted for demolition of a listed building unless all reasonable efforts have been made without success to continue the present use or to find compatible alternative uses for the building. Furthermore, the consent for demolition will not be given simply because redevelopment is economically attractive to the developers than repair and re-use of a historic building.

### Adaptive re-use of listed buildings

5.4 Notwithstanding the preference of maximum retention of historic buildings, the UK government has considered keeping these buildings in active use as generally the best way of securing their future<sup>13</sup>. As such, it has adopted a flexible approach, where necessary, for assessing development proposals involving the change of use of a listed building in order to secure the future of the building. Indeed, the UK has seen many examples of adaptive re-use of historic buildings. For example, the Tate Modern Building, the national museum of international modern art, is described as one of the best examples of adaptive re-use in the UK<sup>14</sup>. Housed in a former power station, Tate Modern is a landmark building in London displaying the collection of international modern art from 1900 to the present day.

### Integration of conservation with town and country planning

5.5 The UK system of heritage protection has developed a high degree of integration with the system of town and country planning. In particular, heritage conservation has increasingly associated with economic development and urban regeneration. For example, areas of well-maintained historic buildings are used as the basis for promoting heritage tourism. In addition, conservation itself plays a key part in fostering economic development by enhancing the distinct image and quality of life of a place, thereby helping to attract and retain economic activities. Furthermore, areas of run-down listed buildings may form the focus for implementing regeneration schemes. An example of such heritage-led regeneration schemes is the Townscape Heritage Initiative funded by the Heritage Lottery Fund.

5.6 The Townscape Heritage Initiative has been put in place since 1998 to help regenerate the historic environment in urban areas across the UK, thereby improving the quality of life and encouraging sustainable investment in these areas. The regeneration programme involves providing funding for various works that will have a positive impact on the conservation and regeneration of the historic environment, including repair of historic buildings which are in occupation, and adaptive re-uses of empty historic buildings.

### Broad engagement with the voluntary and community sector

5.7 The UK government actively engages the voluntary and community sector in heritage protection. In particular, the national amenity societies and heritage trusts have featured prominently in managing and preserving the historic environment. In addition, it is the general public which buys the Lottery tickets and contributes to the Heritage Lottery Fund used for, among other things, financing heritage-related projects in the UK.

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<sup>13</sup> See paragraph 3.10 of PPG 15.

<sup>14</sup> See McIntyre (2006).

### *National amenity societies*

5.8 In the UK, the national amenity societies are voluntary societies established over the last century or more with the express purpose of preserving the art and architecture of past centuries, as well as promoting the appreciation of historic buildings and the culture that produced them<sup>15</sup>. The membership of such societies covers a wide range of people, from people with a general interest and enthusiasm in heritage conservation to those with expert knowledge.

5.9 The heritage conservation legislation requires local planning authorities to notify and consult the relevant national amenity societies<sup>16</sup> of any application for listed building consent which involves demolition or alternation of a listed building. In so doing, these amenity societies are afforded the opportunity to comment on the development proposals and assist both the applicants and local planning authorities.

### *Heritage trusts*

5.10 Heritage trusts are private trust-type organizations established to manage historic properties, lobby on heritage preservation policies, organize conservation activities and provide funding for conservation work. These heritage organizations are funded largely by subscriptions, private donations and entrance fees, and many of them receive government support as well. The notable examples of these trust-type organizations are the National Trust, the Landmark Trust and building preservation trusts (BPTs).

#### National Trust

5.10.1 The National Trust was founded in 1895 as a registered charity to own and look after places of historic interest or natural beauty permanently for the benefit of the nation across England, Wales and Northern Ireland. It protects and opens to the public over 300 historic houses and gardens and 49 industrial monuments and mills.

5.10.2 The National Trust is the largest conservation body in the UK, with a membership of about 3.5 million. It is independent of the UK government and does not receive any direct state grant or subsidy for its daily operation. It derives its income from a range of income sources, such as membership fees, donations and legacies, as well as revenue earned from its commercial operations such as restaurants, shops and holiday cottages.

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<sup>15</sup> The oldest of these societies is the Society for the Protection of Ancient Buildings founded in 1877, while the youngest is the Twentieth Century Society set up in 1979.

<sup>16</sup> These societies are the Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society and the Twentieth Century Society.

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## Landmark Trust

5.10.3 The Landmark Trust is an independent building preservation charity founded in 1965 to rescue worthwhile historic buildings from neglect, and to restore and let them for holiday use. The income from letting contributes to the maintenance of these buildings. So far, the Landmark Trust has rescued more than 180 buildings at risk by assuring their future use and maintenance as holiday accommodation.

5.10.4 As a charity, the Landmark Trust relies on voluntary sources of income to finance new acquisitions and restoration of historic buildings. As such, it is wholly dependent on the donations received from individuals, grant-giving trusts and other funding bodies such as English Heritage and the Heritage Lottery Fund.

## Building preservation trusts

5.10.5 A BPT is a charity whose main aim is to secure the future of historic buildings, maintain ownership by and access for local communities. There are about 260 BPTs in the UK, with the majority being rooted in the local communities. In general, there are two main types of BPT – Revolving Fund BPTs and Single Project BPTs. A Revolving Fund BPT is established with the aim of undertaking a rolling programme of projects by acquiring, repairing and disposing properties and applying the proceeds of one project to the working capital required for the next. A Single Project BPT is set up not only for restoring a single building, but also for owning and maintaining it in perpetuity. Due to their charitable status, no BPT is allowed to make commercial profits, and proceeds from the projects can only cover their administration and management costs.

## Provision of tax incentives for heritage conservation

5.11 The UK government has put in place a tax scheme to help maintain and repair privately-owned historic assets. The details of the tax incentives so provided are to be discussed in paragraphs 6.1-6.6.

## **6. Incentives available for heritage conservation**

6.1 In the UK, economic incentives are delivered through the provision of various tax concessions to entice the public to share the government's burden of heritage preservation. In addition, planning incentives are also provided for encouraging private participation in heritage conservation.

## Economic incentives

### *Value-added tax*

6.2 In the UK, listed buildings enjoy a more favourable tax treatment on the payment of value-added tax on works than unlisted buildings. Repairs and alterations to unlisted buildings are subject to value-added tax at the standard rate (currently at 17.5%). Where works are carried out to listed buildings that are in residential use or occupied by a charity, value-added tax is not payable provided that those works have already obtained listed building consents. The same tax concession applies to approved works for scheduled monuments.

### *Inheritance and capital gains taxes*

6.3 In the UK, inheritance tax and/or capital gains tax is not paid when a building of outstanding historic or architectural interest passes to a new owner on death or as a gift. In order to obtain the exemption, the new owner must give an undertaking that the building will be properly maintained and reasonable public access will be provided for it. If the owner fails to fulfill the undertaking, the exemption is withdrawn and tax is payable.

6.4 Neither inheritance tax nor capital gains tax will be payable on property transferred into an approved trust fund established for the maintenance of a qualifying heritage building. Such tax exemption depends again upon the provision of certain undertakings, which include public access to the exempted property and a maintenance agreement.

### *Tax incentives for heritage trusts*

6.5 Apart from the exemption of inheritance and capital gain taxes, the charitable status of heritage trusts confers additional tax advantages, such as a remission of at least 80% on the Uniform Business Rate<sup>17</sup> and extra funds received under the "gift aid" scheme. In the UK, "gift aid" is a tax incentive scheme under which any cash donations that the taxpayer makes to a charity are treated as being made after deduction of income tax at the basic rate (20% in 2008-2009), and the charity can reclaim this income tax from the HM Revenue and Customs (about 25 pence for every £1 donated)<sup>18</sup>.

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<sup>17</sup> The Uniform Business Rate is a tax paid by occupiers and owners of commercial and industrial properties to a local authority, but at a rate set by the central government.

<sup>18</sup> When the charity takes the donation, it can reclaim on its "gross" equivalent (i.e. its value before tax was deducted) at the basic tax rate of 20%. For example, for every £1 donated, its "gross" equivalent should be £1.25 (= £1/(1-0.2)). The charities can reclaim 25 pence (i.e. the income tax paid by the donor or the difference between the £1 donated and its "gross" equivalent) from the HM Revenue and Customs.

### Planning incentives

6.6 In the UK, enabling development has been adopted as a planning incentive to secure the future of a historic building. Enabling development means the granting of planning permission for a development proposal which would not normally be allowable, but is entertained on the basis that it would bring benefit to a historic property. In particular, the profits from the development could cross-subsidize the repair or restoration of the historic property. An example is the granting of planning permission for new housing development within the grounds of a historic building, on the basis that the profits on the subsequent sale of the new houses will be used to secure the future of that historic building.

## **7. Funding mechanism available for heritage conservation**

7.1 The UK's heritage conservation system is characterized by the availability of a wide range of funding sources to help protect, maintain and manage the historic environment. These sources include the funding provided by the central and local governments and the Architectural Heritage Fund.

### State funding

#### *Heritage Lottery Fund*

7.2 Grants schemes are the most common form of financial assistance provided for heritage conservation by the UK government. The Heritage Lottery Fund is the main source of government grants for conservation of historic heritage in the UK, which includes the historic environment, natural heritage, museums and archives, and intangible heritage. From its establishment in 1995 to 2006-2007, the Heritage Lottery Fund granted 29 085 awards, totalling nearly £3.6 billion (HK\$56.2 billion). About one-third of its heritage grants were channelled to historic buildings and monuments<sup>19</sup>.

#### *Funding from Department for Culture, Media and Sport*

7.3 The Department for Culture, Media and Sport, together with its agencies, are another key source of public funding for heritage conservation. In 2007-2008, the Department allocated a total of about £194.4 million (HK\$3 billion) for expenditure relating to architecture and the historic environment. Some of the expenditure was for heritage-related functions performed by the department itself, but most of it was for the sponsorship of English Heritage.

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<sup>19</sup> See English Heritage (2007).

### Funding from English Heritage

7.3.1 English Heritage is the largest source of non-lottery grant funding for heritage conservation in the UK. In 2007-2008, English Heritage incurred a total expenditure of £172.5 million (HK\$2.7 billion), of which £90 million (HK\$1.4 billion) was spent on managing and maintaining the historic environment and properties. It also set aside £32.6 million (HK\$509.2 million) for grants payable to heritage-related projects over the same period.

7.3.2 English Heritage operates a number of grant schemes designed for the protection and promotion of the historic environment, including:

- (a) grants for repair and conservation of some of the most significant historic buildings, monuments and designed landscapes;
- (b) grants to support local authorities to finance their costs incurred in employing conservation officers, carrying out urgent repairs to historic building, and acquiring listed buildings in need of repair;
- (c) *Partnership Schemes in Conservation Areas*, a conservation-led regeneration scheme to provide funding for the preservation and enhancement of conservation areas. The schemes are based on partnerships between English Heritage, local authorities (lead partner) and other funding partners, where applicable; and
- (d) grants to national and local voluntary organizations for projects that promote the conservation, understanding and enjoyment of the historic environment.

### Funding from local authorities

7.4 A local authority may make a grant under Section 57 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to contribute towards the costs of the repair or maintenance of: (a) any listed building in or in the vicinity of its areas, and (b) any other (unlisted) building of architectural or historic interest in its areas. As an alternative to making a grant, a local authority may offer low-interest or interest-free loans for the same purposes.

7.5 Furthermore, a local authority may, under Section 24 of the Ancient Monuments and Archaeological Areas Act 1979, defray or contribute towards the cost of the preservation, maintenance and management of any ancient monuments – whether or not scheduled – or may undertake all or part of the works itself.

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### Architectural Heritage Fund

7.6 In the UK, there are a number of BPTs involved in the repair, maintenance and restoration of historic buildings. These heritage trusts are supported by a wide range of funding sources, noticeably the Architectural Heritage Fund.

7.7 The Architectural Heritage Fund is a registered charity founded in 1976 to promote the conservation of historic buildings in the UK. It does so through providing advice, information, and financial assistance in the form of grants and low-interest working capital loans for projects undertaken by BPTs and other charities throughout the UK. Since its establishment in 1976, the Architectural Heritage Fund has offered loans totalling over £100 million (HK\$1.6 billion) to help restore and bring new life to more than 1 000 historic buildings throughout the UK.

## **8. Public participation in heritage conservation**

8.1 In addition to the voluntary and community organizations involved in heritage conservation (see paragraphs 5.7-5.10.5), the following channels are also available for public participation in heritage conservation:

### Heritage Lottery Fund

8.2 The Heritage Lottery Fund delegates power to its regional and country committees to decide on grants between £50,000 (HK\$781,000) and £2 million (HK\$31.2 million). These committees are composed of local people recruited through open advertisement and supported by expert advice. The Fund has also undertaken public consultations, particularly through citizens' juries to explore public views on heritage and its funded projects<sup>20</sup>.

### Local authorities

8.3 Section 71 of the Planning (Listed Buildings and Conservation Areas) Act 1990 confers a duty on local planning authorities to formulate and publish, from time to time, proposals for the preservation and enhancement of their conservation areas. Such proposals should be submitted for discussion at a public meeting, and the local planning authorities should have regard to any views concerning the proposals expressed by people attending the meeting.

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<sup>20</sup> A citizens' jury is a small group of randomly selected people who are brought together to consider a particular issue. The jurors are given the opportunity to express their views on the issue according to their own principles, informed by expert information and opinion. They can cross-examine experts and stakeholders. The process may last up to several days, at the end of which a report is prepared setting out the views of the jury, including any differences in opinion. Typically, the sponsoring body is required to respond, either by acting on the report or explaining why it disagrees with the report.

8.4 In addition, all planning applications relating to listed buildings or development in conservation areas are advertised on site and in the local press. Such arrangement is to enhance the transparency of the planning decisions, thereby facilitating the public to make its views known to local planning authorities before a decision is made.

8.5 While there is no statutory requirement for conducting any consultation exercise prior to the designation of conservation areas, PPG 15 calls on local planning authorities to set up conservation area advisory committees. The role of a conservation area advisory committee is to:

- (a) advise on applications for planning permission, listed building consent and conservation area consent which could affect the conservation area(s) in question; and
- (b) comment on other issues that may affect the conservation area (such as traffic management schemes), and help formulate positive proposals for its enhancement.

8.6 The composition of a conservation area advisory committee varies among the localities. In general, it is made up of a cross-section of local people with an interest in the future of the conservation area, including representatives of local residents or business interests, amenity societies or other individuals who can assist in providing advice for development proposals affecting the conservation area.

#### Educational and promotion programmes

8.7 In the UK, there are educational and promotion programmes carried out by various parties to enhance the public interest in and awareness of heritage conservation. For instance, the Heritage Lottery Fund operates the Young Roots grant programme to increase the involvement of young people aged 13-25 in understanding, protecting and enjoying heritage. Grants of between £3,000 (HK\$46,860) and £25,000 (HK\$390,500) are available for organizations to develop projects which enable young people to become actively involved in the heritage issues. In addition, the Civic Trust and English Heritage jointly organize the annual event – Heritage Open Days – featuring free access to properties that are usually closed to the public or normally charged for admission.

8.8 Furthermore, the UK government introduced the policy initiative – *Learning Outside the Classroom* – in November 2006 to encourage the use of places other than the classroom for learning. Visits by schools to heritage sites have been employed as an avenue for fostering learning outside the classroom. In 2006-2007, the number of education visits to the English Heritage and National Trusts sites amounted to 424 793 and 475 271 respectively<sup>21</sup>.

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<sup>21</sup> See English Heritage (2007).

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## 9. Reform of the existing heritage protection system

9.1 In March 2007, the UK government published the White Paper – *Heritage Protection for the 21st Century* – to set out the blueprint for reforming the existing heritage protection system. A draft heritage protection bill was subsequently published in April 2008 to implement the proposals set out in the White Paper. The key reform measures proposed in the White Paper and the draft bill are summarized as follows:

### White Paper

#### *New unified "historic asset" designation*

9.2 At present, there are separate systems for dealing with different aspects of the historic environment. The Secretary of State for Culture, Media and Sport is responsible for listing outstanding buildings and scheduling ancient monuments, and he or she is obliged to consider advice from English Heritage. At the same time, English Heritage compiles registers of historic battlefields and registers of parks and gardens of special historic interest on its own.

9.3 The White Paper proposes the creation of a new and single system of designating "historic assets" to replace the existing listing, scheduling and registering regimes. "Historic assets" would incorporate historic buildings and archaeological sites (listed buildings and scheduled monuments) and historic sites (registered parks, gardens and battlefields). Statutory responsibility for the designation of "historic assets" would be centralized in English Heritage<sup>22</sup>. Every designated "historic asset" would be recorded in the new Register, which would replace all existing lists, schedules and registers. In addition, the existing designation grades of Grade I, Grade II and Grade II\* would be extended to all nationally designated "historic assets".

#### *Criteria for making the designation decisions*

9.4 Current designation regimes use different criteria to identify what are suitable for protection. Buildings are listed on the basis of "special architectural or historic interest", and monuments are selected on the basis of "national importance".

9.5 The White Paper proposes to make all national designation decisions based on a unified basis of "special architectural, historic or archaeological interest". New non-statutory criteria would be issued to give guidance on what assets should be designated and the grading to apply. The new criteria are expected to follow the principles of selection for listed buildings set out in PPG 15.

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<sup>22</sup> Under the proposed heritage protection system, local planning authorities would continue to have a statutory duty to designate conservation areas.

*Process for designation*

9.6 Current designation regimes have been described as secretive and unfair, characterized by the absence of statutory rights against the designation decisions and limited opportunities for public consultation<sup>23</sup>. Under the proposed new heritage conservation regime, English Heritage would be required to adopt a more proactive and formal approach when making new designations of historic assets. Any individual, community or group would be allowed to submit an application for designation under a new process formalized for such application<sup>24</sup>. The formalized process would involve:

- (a) submission of the designation application from the general public through a standard on-line application form;
- (b) formal consultation with the owner of the asset concerned, local planning authorities and interest groups on the application;
- (c) the right of appeal to the Secretary of State for Culture, Media and Sport on the designation decision made by English Heritage. Appellants will have 28 days to appeal after the decision is made, and the appeals would be considered by an independent panel; and
- (d) interim protection against damage or hasty demolition would be given to the potential "historic asset" whilst the application is being considered<sup>25</sup>.

*Developments involving historic assets*

9.7 The White Paper proposes to streamline the current heritage consent regime with a unified approach for dealing developments involving "historic assets". A new single "historic asset consent" would be introduced to replace the current systems of listed building consent and scheduled monument consent. Local planning authorities would be responsible for determining the applications for "historic asset consents", with involvement from the Secretary of State for Communities and Local Government and English Heritage as appropriate.

9.8 In addition, the White Paper also proposes that conservation area consent should merge with planning permission so that development that currently requires both planning permission and conservation area consent would only require one application. The Department for Culture, Media and Sport would consult the public on this proposed merger.

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<sup>23</sup> See Department for Culture, Media and Sport (2007).

<sup>24</sup> See Clifford Chance (2007).

<sup>25</sup> According to the White Paper, interim protection will replace the current system of building preservation notices.

### Draft heritage protection bill

9.9 The draft heritage protection bill sets out, among other things, the following policy proposals for the management of heritage assets in the UK:

#### *Register of heritage assets*

9.10 A new unified register of heritage assets would be created to record buildings and structures, archaeology, parks, gardens, battlefields, marine heritage assets and World Heritage sites. English Heritage would be required to publish and maintain an online register of all designated heritage assets.

#### *Designation of heritage assets*

9.11 A new designation of "heritage structures" would be introduced to replace the existing listed buildings, scheduled ancient monuments and marine assets. A heritage structure could only be registered if it holds special architectural, historic, archaeological or artistic interest. In addition, registered parks, gardens and battlefields would be given formal statutory protection for the first time as "heritage open spaces".

#### *Responsibility for designation of heritage assets*

9.12 The draft bill proposes to transfer responsibility for designating terrestrial heritage assets from the Secretary of State for Culture, Media and Sport to English Heritage.

#### *Developments involving heritage assets*

9.13 A new "heritage asset consent" would be introduced for "heritage structures", replacing the existing scheduled monument and listed building consents. Power to grant the consents would lie with the local authorities. In addition, the conservation area consent would be abolished and merged with the planning permission.

#### *Interim registering*

9.14 The draft bill proposes to introduce a system for provisional registration to protect heritage assets when they are being considered for designation by English Heritage. Owners are required to apply for consent to alter or demolish the assets during the interim period.

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