

THE ARCHAEOLOGY FORUM

a grouping of independent bodies concerned with archaeology

Procedure Committee
Journal Office
House of Commons
London SW1 A 0AA
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24 February 2017

Dear Sir / Madam,

Delegated Powers in the 'Great Repeal Bill' Inquiry

This evidence

Thank you for the opportunity to provide evidence to this inquiry. Written evidence submitted on behalf of The Archaeology Forum (TAF) is attached.

The Archaeology Forum

The Archaeology Forum (TAF) is a grouping of the key, non-governmental organisations concerned with archaeology in the UK. Its members are listed at the end of this letter.

Yours sincerely



Peter Hinton BA MCIfA FRSA FSA FIAM FSA Scot
Convenor

The Archaeology Forum's members who have endorsed this evidence are:

Archaeology Scotland

The Association of Local Government Archaeological Officers UK

The Chartered Institute for Archaeologists

The Council for British Archaeology

Dyfed Archaeological Trust

The Federation of Archaeological Managers and Employers

The National Trust

Rescue: the British Archaeological Trust

The Society of Antiquaries of London

The Society of Antiquaries of Scotland

The Society of Museum Archaeologists

Procedure Committee's Inquiry into Delegated Powers in the 'Great Repeal Bill'

Evidence of The Archaeology Forum (TAF)

Executive summary

1. Much UK environmental law is underpinned by European Union law, most notably, in relation to the historic environment, through the operation of the Environmental Impact Directive and related legislation.
2. It is crucial that levels of management and protection of the historic environment and contribution of heritage to the economy are maintained following the United Kingdom's exit from the European Union.
3. If substantive changes to UK environmental law are pursued through secondary legislation, the present procedure for scrutiny of such legislation (involving limited or no parliamentary scrutiny and, in most cases, no opportunity to revise provisions) will be inadequate to ensure that such changes are adequately considered. This will be particularly concerning where responsibility for legislative scrutiny would normally be devolved to Parliaments in Scotland and Wales, and the Northern Ireland Assembly.
4. Although Henry VIII clauses may be appropriate to effect purely technical changes, any substantive change to the law relating to the historic environment should only be introduced through primary legislation allowing full parliamentary scrutiny.

Introduction

5. TAF has read and endorses the submission of the Wildlife and Countryside Link¹ to this Inquiry setting out serious concerns as regards environmental protection in the wake of the United Kingdom's exit from the European Union. This evidence supplements that submission specifically in relation to the historic environment and environmental impact assessment.

Management and protection of the historic environment

6. Over 95% of historic assets² in the United Kingdom (including, in some cases, assets of national importance) are not protected by any specific designation such as scheduling or listing. The planning system provides the only effective way of understanding the impact of proposals for change and ensure adequate protection for most of those undesignated assets, supplemented in appropriate cases by environmental impact assessment (EIA). With administrations throughout the United Kingdom increasingly looking to deregulate the planning process in an effort to 'free up' development, the importance of EIA for the historic environment is, if anything, increasing.
7. If the 'Great Reform Bill' or any subsequent legislation were in any way to undermine the operation of EIA in relation to the historic environment, this would have the

¹ One of TAF's constituent bodies, the Council for British Archaeology (CBA), is also a member of the Wildlife and Countryside Link and is a signatory to the Link's submission

² In England known as 'heritage assets'

potential significantly to reduce protection for the historic environment and leave historic assets (and their significance) vulnerable to damage or destruction.

8. A range of other directives and regulations also contribute to protections for the historic environment. It is thus important that all directives and regulations are taken into UK law and then built upon through future legislation, which will be required to replace EU monitoring and enforcement.

Delegated Powers in the 'Great Repeal Bill'

9. TAF welcomes Government's stated approach to the 'Great Repeal Bill' to '*preserve the rights and obligations that already exist in the UK under EU law*'. Notwithstanding that approach, we appreciate that there will be a plethora of purely technical amendments to current laws to reflect changed circumstances following Brexit. It is not only desirable, but also necessary, for these to be dealt with by the use of delegated powers without significant oversight from Parliament.
10. However, if substantive changes to environmental law are to be made, the present procedure for scrutiny of secondary legislation will be inadequate to ensure that such changes are adequately considered. Whether negative or affirmative procedures are utilised in any given case, these will involve limited or no parliamentary scrutiny and, in most if not all cases, no opportunity to revise provisions.
11. Recent parliamentary debates on the Housing and Planning Bill³ (now the Housing and Planning Act 2016) and the Neighbourhood Planning Bill⁴ have highlighted harmful effects of proposals on the historic environment. TAF is concerned that, without such parliamentary scrutiny, similar harmful effects on the historic environment may not be identified and addressed.
12. Consequently, any substantive change to the law relating to the historic environment should only be introduced through primary legislation allowing full parliamentary scrutiny. Other approaches advocated by the Wildlife and Countryside Link in its evidence may be necessary in specific cases, but the key is to maintain appropriate parliamentary oversight of substantive changes to the law.

24 February, 2017

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³ <https://hansard.parliament.uk/lords/2016-04-20/debates/16042041000833/HousingAndPlanningBill> - See, for instance, the comments of Baroness Andrews at column 690

⁴ <https://hansard.parliament.uk/lords/2017-01-17/debates/B3476309-4DD3-4868-8F05-3F6E89B4AD35/NeighbourhoodPlanningBill> - See, for instance, the comments of Baroness Parminter at column 174