Written evidence submitted by the Heritage Alliance (GRB 07)

Executive Summary

- Existing levels of protection of the historic environment must be maintained by the Great Repeal Bill. However, the Alliance is identifying post ‘Brexit’ opportunities to amend existing legislation to better reflect UK circumstances;
- Secondary legislation and Henry VIII clauses are only suitable for making technical amendments to transfer existing EU law into UK law;
- Any substantive legal changes must have Parliamentary oversight;
- A sunset clause for Henry VIII powers is sensible.

1. The Heritage Alliance is England’s largest coalition of heritage interests, bringing together over 100 mainly national organisations which are in turn supported by over 7 million members, Friends, volunteers, trustees and staff. Together they own, manage and care for, the vast majority of England’s historic environment. Heritage contributes £21.7 billion or 2 per cent of national Gross Value Added1.

2. The Heritage Alliance welcomes this opportunity to respond to the Procedure Committee of the House of Commons’ inquiry into the delegated powers likely to be claimed by the Government in its proposed Great Repeal Bill. We endorse the response of The Archaeology Forum and make a number of further points.

3. European Law primarily impacts the heritage sector through environmental law. Examples include Environmental Impact Assessments and Sustainability Impact Assessment. The Environmental Directive specifically mentions the impact of environmental pollution on cultural heritage.

4. Over 95% of heritage assets 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 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.

5. It is crucial that existing levels of management and protection of the historic environment are maintained and not inadvertently eroded following the United Kingdom’s exit from the European Union. However, the Alliance is identifying post ‘Brexit’ opportunities to amend existing legislation to better reflect UK circumstances

6. The issues on which the Committee invites written evidence:

7. The adequacy of the present procedure for scrutiny of secondary legislation, and potential approaches for sifting the potential volume of legislation to be incorporated

8. The Alliance welcomes the 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. In practical terms many of these technical changes will need to be dealt with by the use of delegated powers without significant oversight from Parliament.

9. However, if substantive changes to environmental law are to be made, the present procedure for scrutiny of secondary legislation is inadequate to ensure that such changes are adequately considered. This is the case whether the negative or affirmative procedures are used as both involve limited or no parliamentary scrutiny and, in most if not all cases, no opportunity to revise provisions.

10. The changes (if any) desirable to Commons procedures related to the delegation of powers or secondary legislation to address the likely scale and volume of ‘Great Repeal Bill’ legislation

11. We do not suggest that changes to current procedures are necessary. Even technical amendments should be subject to the current negative or affirmative procedures. This will help any drafting errors etc. in the large volume of technical amendments to be spotted.

12. The powers likely to be necessary or justified in primary legislation to incorporate the existing body of EU legislation (the acquis communautaire or acquis) into domestic law upon repeal of the European Communities Act 1972 (ECA), including (but not necessarily limited to):

   - powers to ensure the continuation in UK law of the legal order in force upon repeal of the ECA, with only such amendments as are necessary to ensure that the law applicable in the UK continues with the same effect):

     As stated above, The Alliance appreciates that technical amendments will be necessary to ensure that UK law continues with the same effect. Such provisions should be tightly worded so that they cannot be used for substantive amendments.

   - powers to amend domestic primary and secondary legislation implementing EU obligations in line with Government policy objectives, following the cessation of those obligations and the repeal of the ECA):

     Any substantive change to the law relating to the historic environment should only be introduced through primary legislation allowing full parliamentary scrutiny. Recent parliamentary debates on the Housing and Planning Bill (now the Housing and Planning Act 2016) and the Neighbourhood Planning Bill have highlighted inadvertent, yet harmful, effects of proposals on the historic environment. The Alliance is concerned that, without such parliamentary scrutiny, similar harmful effects on the historic environment may not be identified and addressed.
• powers to amend, in line with Government policy objectives, provisions of EU law presently given direct effect in UK law by operation of the ECA, following the incorporation of those provisions into UK law

• Any substantive change to the law, including EU law given direct effect, relating to the historic environment should only be introduced through primary legislation allowing full parliamentary scrutiny. This ensures that there are not unintended negative consequences for the historic environment.

13. Whether so-called "Henry VIII" powers are likely to be necessary or justified in this respect; whether alternative drafting techniques may produce the same effect; and whether there are any areas of the acquis or existing domestic legislation which should be off limits to such powers

14. Henry VIII clauses are only 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.

15. Whether a time limit should be set upon the availability of any powers delegated for these purposes

16. A sunset clause for the use of Henry VIII powers would appear to be a sensible safeguard and provide finality. The period specified in a sunset clause should not be so short as to come into effect before any issues arising from changes made to transfer existing EU law become observable.

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