

## Appendix 2

### Summary of Specific Heritage Crime Offences for Designated Heritage Assets

#### Listed Buildings

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

Listed Buildings are buildings of special architectural or historic interest which appear on lists compiled or approved by the Secretary of State. A listed building includes the building which appears in the list and any object or structure fixed to the building, and any object or structure within the curtilage of the building that although not fixed to the building has formed part of the land since before 1st July 1948 (see section 1).

Listed buildings are graded to reflect their relative architectural and historic importance as follows: Grade I (exceptional quality), Grade II\* (particularly important buildings of more than special interest and Grade II (buildings of special interest warranting every effort to preserve them).

##### **Control of works affecting listed buildings:**

Section 9(1) execute or cause to be executed the demolition of a listed building or works to alter or extend a listed building which affect its special interest, without listed building consent.

Section 9(2) failure to comply with a condition attached to a listed building consent.

The above offences also apply to a building which is the subject of a building preservation notice issued under section 3 of the 1990 Act.

The offences under section 9 are triable eitherway. A person convicted of an offence under section 9 is liable:

- (a) on summary conviction to a fine not exceeding £20,000 (or to an unlimited fine in respect of an offence committed after 12<sup>th</sup> March 2015\*) or a maximum of 6 months imprisonment or both; or
- (b) on indictment to a fine or a maximum of 2 years imprisonment or both.

(see section 9(4))

\*Section 85(1), (2) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Both notifiable offences - Home Office Code 94 Planning Laws.

**Failure to comply with a listed building enforcement notice:**

Section 43(2) failure to comply with the steps required by a listed building enforcement notice following expiration of the compliance period, the current owner of the land in question is liable. The owner may be convicted of second and subsequent offences if there is continued failure to comply.

The offence under section 43(2) is triable eitherway. A person convicted of an offence under this section is liable:

- (a) on summary conviction to a fine not exceeding £20,000 (or to an unlimited fine in respect of an offence committed after 12<sup>th</sup> March 2015\*); or
- (b) on indictment to a fine.

(see section 43(5)).

\*Section 85(1), (2) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Notifiable offence – Home Office Code 94 Planning Laws.

**Damage to a listed building:**

Section 59(1) with the intention of causing damage to a listed building, a relevant person does or permits the doing of any act which causes or is likely to result in damage to the building.

'Relevant person' is someone who but for the provision would be permitted to do or permit the act in question i.e. an owner or occupier of the listed building.

The offence under section 59(1) is summary only. On conviction a person is liable to a fine not exceeding level 3.

Section 59(4) if having been convicted under section 59(1) a person fails to take such reasonable steps as may be necessary to prevent any damage or further damage resulting from the offence he shall be guilty of a further offence under this subsection.

The offence under section 59(4) is again summary only. On conviction a person is liable to a fine not exceeding one tenth of level 3 for each day on which the failure continues.

Not notifiable. Record as an incident.

## **Conservation Areas**

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

Conservation areas are designated usually by the local planning authority as areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance (see section 69).

It is not an offence to carry out works affecting the character or appearance of an unlisted building in a conservation area without consent. However it is an offence to demolish an unlisted building in a conservation area without planning permission.

It is worth noting that demolition of an unlisted building in a conservation before 1st October 2013 required 'conservation area consent' and failure to obtain that consent was a criminal offence under section 9(1) of the Planning (Listed Building and Conservation Areas) Act 1990. However following amendments made by the Enterprise and Regulatory Reform Act 2013, from 1st October 2013 conservation area consent is no longer required in England, instead it has been replaced with the need to obtain planning permission under section 196D of the Town and Country Planning Act 1990 (as amended) for 'relevant demolition'. In summary this means that if you needed 'conservation area consent' to demolish a building in a conservation area under the Planning (Listed Buildings and Conservation Areas) Act 1990 then now you'll need planning permission instead to demolish it.

### **Demolition of unlisted buildings in Conservation Areas without planning permission:**

Section 196D(1) of the Town and Country Planning Act 1990 provides that it is an offence for a person to carry out or cause or permit to be carried out relevant demolition without the required planning permission.

Under section 196D(5) a person guilty of an offence under section 196D(1) is liable--

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine [see below for the level] or both;
- (b) on conviction on indictment, to imprisonment for a term not

exceeding 2 years or a fine or both.

(6) In relation to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003, subsection (5)(a) has effect as if the reference to 12 months were to 6 months.

\* (7) In relation to an offence committed before the coming into force of section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, subsection (5)(a) has effect as if the reference to a fine were a reference to a fine not exceeding £20,000.

(8) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

\*NB. That in relation to subsection (7), section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is now in force for offences committed after 12<sup>th</sup> March 2015, in respect of which an unlimited fine may be imposed on summary conviction.

Notifiable offences – Home Office Code 94 Planning Laws.

### **Failure to comply with a condition attached to a planning permission for demolition of an unlisted building in a Conservation Area**

Under section 196D(2) it is an offence for a person to fail to comply with any condition or limitation subject to which planning permission for relevant demolition is granted.

The maximum penalties are the same as set out above.

Notifiable offences – Home Office Code 94 Planning Laws.

### **Scheduled Monuments**

#### **Ancient Monuments and Archaeological Areas Act 1979 –**

Scheduled monuments are sites designated by the Secretary of State as archaeological sites of national importance. The Secretary of State is responsible for compiling and maintaining the schedule of monuments (see section 1).

### **Control of works affecting scheduled monuments:**

Section 2(1) – to execute, cause or permit to be executed works to a scheduled monument without scheduled monument consent (granted by the Secretary of State)

Section 2(6) – failure to comply with a condition attached to scheduled monument consent

An offence under section 2 is triable eitherway. A person convicted of an offence under this section is liable on:

- (a) summary conviction to a fine not exceeding the statutory maximum (or to an unlimited fine in respect of an offence committed after 12<sup>th</sup> March 2015\*); or
- (b) on indictment to a fine.

(see section 2(10))

\*Section 85(1), (2) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Both offences are notifiable – Home Office Code 98/99 other notifiable applies to an offence under section 2(1) and 98/65 other notifiable for an offence under section 2(6).

### **Offence of damaging certain ancient monuments:**

Section 28(1) intentionally or recklessly destroying or damaging a ‘protected monument’ without lawful excuse

‘Protected monument’ is defined as a scheduled monument and any monument under the ownership or guardianship of the Secretary of State, English Heritage or a local authority by virtue of the 1979 Act.

An offence under section 28(1) is triable eitherway. A person convicted of an offence under this section is liable:

- (a) on summary conviction to a fine not exceeding the statutory maximum (or to an unlimited fine in respect of offences committed after 12<sup>th</sup> March 2015\*) or to a maximum of 6 months imprisonment or both; or
- (b) on indictment to a fine or a maximum of 2 years imprisonment.

(see section 28(4)).

\*Section 85(1), (2) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Notifiable offence – Home Office Code 149/58D other damage.

### **Restrictions on the use of metal detectors:**

Section 42(1) using a metal detector in a 'protected place' without the written consent of English Heritage

An offence under this sub-section is summary only. On conviction a person is liable to fine not exceeding level 3.

Section 42(3) removal of an object of archaeological or historical interest which is discovered by the use of a metal detector in a 'protected place' without the written consent of English Heritage

An offence under this sub-section is triable eitherway. A person convicted of an offence is liable:

- (a) on summary conviction to a fine not exceeding the statutory maximum (or to an unlimited fine for offences committed after 12<sup>th</sup> March 2015\*); or
- (b) on indictment to a fine.

\*Section 85(1), (2) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Section 42(5) –

- (a) using a metal detector in a 'protected place' in accordance with a consent granted by English Heritage and failing to comply with a condition attached to it;
- (b) removing or otherwise dealing with any object which is discovered by the use of a metal detector in a 'protected place' in accordance with a consent granted by English Heritage and failing to comply with a condition attached to it.

An offence under section 42(5)(a) is summary only. The penalty is the same as for an offence under section 42(1).

An offence under section 42(5)(b) is triable eitherway. The penalty is the same as for an offence under section 42(3).

'Protected place' means a scheduled monument or any monument under the ownership or guardianship of the Secretary of State, English Heritage or a local authority by virtue of the 1979 Act, or situated in an Area of Archaeological Importance (designated under the 1979 Act, Part II).

The offence under section 42(3) is notifiable – Home Office Code 99/99 other notifiable. Other offences under section 42 are not notifiable. Record as an incident.

## **Protected Marine Wreck Sites**

### **Protection of Wrecks Act 1973-**

#### **Restricted areas:**

A restricted area is an area in UK waters designated by the Secretary of State around the site of a vessel (or likely to contain a vessel) lying wrecked on or in the sea bed and on account of the historical, archaeological or artistic importance of the vessel or of any objects contained or formerly contained in it the site ought to be protected from unauthorised interference (see section 1(1)).

Section 1(3) the carrying out or causing or permitting others to carry out certain specified activities in a 'restricted area' without a licence granted by the Secretary of State, including tampering, damaging or removing part of a vessel and exploration. Anything done in contravention of a condition or restriction on a licence is treated as a breach of this section.

Section 1(6) obstruct or cause or permit the obstruction of a person doing anything authorised by a licence to carry out diving or salvage operations granted by the Secretary of State.

Offences under section 1 are triable eitherway. A person convicted of an offence under section 1 is liable:

(a) on summary conviction to a fine of not more than the prescribed sum [£5,000] (or to an unlimited fine in respect of offences committed after 12<sup>th</sup> March 2015\*);  
or

(b) on indictment to a fine.

(see section 3(4)).

\*Section 85(1), (2) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Both offences are notifiable – Home Office Code 98/65 other notifiable.

### **Prohibited areas:**

A prohibited area is an area designated by the Secretary of State round a vessel lying wrecked in UK waters that because of anything contained in it the vessel is in a condition which makes it a potential danger to life or property and on that account it ought to be protected from unauthorised interference (see section 2(1)).

Section 2(3) Entering a prohibited area whether on the surface or under water without authority in writing from the Secretary of State.

The offence under section 2 is triable eitherway. A person convicted of an offence under this section is liable:

(c) on summary conviction to a fine of not more than the prescribed sum [£5,000]  
(or to an unlimited fine in respect of offences committed after 12<sup>th</sup> March 2015\*);  
or

(d) on indictment to a fine.

(see section 3(4)).

\*Section 85(1), (2) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Notifiable offence – Home Office Code 98/65 other notifiable

### **Protection of Military Remains**

#### **Protection of Military Remains Act 1986-**

This act gives protection to the wreckage of crashed military aircraft and designated wreckage of military vessels. There are two types of protection under the act given (a) Protected places (see section 1(6)); and (b) Controlled sites (see section 1).

## **Protected Places:**

Military aircraft (UK or other nations) that crashed in the UK, UK territorial waters or in UK controlled waters are automatically protected under the act. Wreckage of UK military aircraft is also protected under the act if elsewhere in the world.

Shipwrecks (vessels) require specific designation under the act in order to be a protected place. This applies only to vessels that sank after 14<sup>th</sup> August 1914. These are designated by order of the Secretary of State made by statutory instrument.

Section 2(1)(b) in relation to a protected place, it is an offence for a person to tamper with, damage, move or unearth remains; enter any hatch or other opening in any of the remains which enclose any part of the interior of an aircraft or vessel (or cause or permit another to do so) (see subsection (2)). The person must believe or have reasonable grounds for suspecting that the place comprises the remains of an aircraft or vessel which has crashed, sunk or been stranded while in military service.

Section 2(1)(c) in relation to a protected place, it is an offence to knowingly take part in, or cause or permit another person to take part in, the carrying out of any excavation or diving or salvage operation prohibited by subsection (3)(b) and (c). That is, (b) if it is carried out for the purpose of doing something that constitutes or is likely to involve a contravention of subsection (2) (see above); and (c) in the case of an excavation, if it is carried out for the purpose of discovering whether any place in the UK or UK waters comprises any remains of an aircraft or vessel which has crashed sunk or been stranded while in military service.

Section 2(1)(d) it is also an offence to knowingly use, or cause or permit others to use any equipment in connection with the carrying out of any such excavation or operation.

The Secretary of State has the power to grant a license permitting these prohibited acts (section 4).

## **Controlled sites:**

Controlled sites require specific designation by the Secretary of State by location. They are sites (within the UK, UK territorial or international waters) which appears to him to contain the remains of any crashed military aircraft or vessel (UK or other) which has sunk or been stranded within the last 200 years. It is only the wreckage of UK military aircraft and vessels that can be designated as a controlled site if in international waters.

Section 2(1)(a) in relation to a controlled site, it is an offence to tamper with, damage, move or unearth remains; enter any hatch or other opening in any of the remains which enclose any part of the interior of an aircraft or vessel (or cause or permit another to do so) (see subsection (2)).

Section 2(1)(c) in relation to a controlled site, it is an offence for a person to knowingly take part in, or cause or permit another to take part in, the carrying out of an excavation or diving or salvage operation which is prohibited by subsection (3)(a) and (c). That is (a) if it is carried out at a controlled site for the purpose of investigating or recording details of any

remains of an aircraft or vessel in that place; and (c) in the case of an excavation, if it is carried out for the purpose of discovering whether any place in the UK or UK waters comprises any remains of an aircraft or vessel which has crashed sunk or been stranded while in military service.

Section 2(1)(d) it is also an offence in a controlled site to knowingly use, or cause or permit another to use, any equipment in connection with the carrying out of any such excavation or operation.

The Secretary of State has the power to grant a license permitting these prohibited acts (section 4).

An offence under section 2 is triable eitherway. A person convicted of any offence under section is liable:

(a) on summary conviction to a fine not exceeding the statutory maximum (or to an unlimited fine in respect of offences committed after 12<sup>th</sup> March 2015\*); or

(b) on indictment to a fine

(see section 2(7)).

\*Section 85(1), (2) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

All notifiable offences – Home Office Code 99/99 other notifiable.

## **Other specific heritage crime offences not related to particular designations**

### **Merchant Shipping Act 1995**

The main task of the Receiver of Wreck is to process incoming reports of wreck in the interest of both the salvor and the owner. This involves researching ownership, liaising with the finder and the owner and other interested parties such as archaeologists and museums.

Any wreck material found in UK territorial waters or outside the UK but brought within UK territorial waters must be reported to the Receiver of Wreck under section 236 of the Merchant Shipping Act 1995. All wreck material must be reported however small or seemingly insignificant. The type of material reported can include for example portholes, bells, plates, fixtures and fittings, bundles of wood, hatch covers and archaeological material such as medieval pots, gold coins, cannon etc often recovered from ship wrecks.

Section 236(1) provides that if any person finds or takes possession of any wreck in UK waters or outside UK waters and brings it within those waters he must –

- (a) if he is the owner of it give notice to the receiver stating that he has found or taken possession of it and describing the marks by which it may be recognised;
- (b) if he is not the owner of it, give notice to the receiver that he has found or taken possession of it, and as directed by the receiver, either hold it to the receivers order or deliver it to the receiver.

It is a criminal offence under section 236(2) to fail to comply with this duty to give notice and a person convicted of an offence under this section is liable on summary conviction to fine not exceeding level 4 on the standard scale. Further if he is not the owner of the wreck he must forfeit any claim to it and be liable to pay twice the value of the wreck to the owner, if it is claimed, or to the person entitled to the wreck if unclaimed.

The Merchant Shipping Act 1995 together with the Protection of Wrecks Act 1973 and the Protection of Military Remains Act 1986 are the three main laws which apply to shipwrecks.

Not notifiable. Record as an incident.

### **Dealing in Cultural Objects (Offences) Act 2003-**

#### **The unauthorized removal and trade of objects of historical, architectural or archaeological interest from historic buildings or sites of archaeological interest:**

Section 1 dishonestly dealing in a tainted cultural object knowing or believing that the object is tainted

A 'cultural object' is defined as an object of historical, architectural or archaeological interest.

A cultural object is 'tainted' if a person removes (includes excavation) the object after (30<sup>th</sup> December 2003) from a building, structure or monument of historical, architectural or archaeological interest in the UK or elsewhere. The removal or excavation must constitute an offence either under UK or foreign law (see section 2).

A person 'deals' if he acquires, disposes of, imports or exports the object or makes arrangements for another to do those acts (see section 3).

An offence under section 1 is triable eitherway. A person convicted of an offence under this section is liable:

(a) on summary conviction to a fine not exceeding the statutory maximum (or to an unlimited fine in respect of offences committed after 12<sup>th</sup> March 2015\*), or to a maximum of 6 months imprisonment or to both; or

(b) on indictment to a fine, or to a maximum of 7 years imprisonment or to both.

(see section 1(3)).

\*Section 85(1), (2) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Notifiable offence – Home Office Code 98/99 other notifiable.

### **Treasure Act 1996 –**

Section 8(3) the finder of an object which he believes or has reasonable grounds for believing is treasure, fails to notify the coroner for the district within 14 days of the find.

'Treasure' is defined in section 1 of the Act.

An offence under section 8(3) is summary only. A person convicted of an offence under this section is liable to a fine not exceeding level 5 (or to an unlimited fine in respect of offences committed after 12<sup>th</sup> March 2015\*) or to a maximum term of imprisonment of 3 months or both.

\*Section 85(1), (2) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Not notifiable. Record as an incident.

### **Town and Country Planning Act 1990 –**

Where there has been a breach of planning control (development without planning permission) or contravention of a condition attached to a planning consent, the 1990 Act contains a number of enforcement provisions which are exercisable by the local planning authority to secure compliance.

It is worth noting here that these powers of enforcement might be applicable where a breach of heritage legislation is also a breach of planning control under the 1990 Act.

Further as mentioned under Conservation Areas, it is an offence under this Act to demolish an unlisted building in a conservation area without planning permission or to fail to comply with conditions attached to a grant of planning permission for such demolition.

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