



Historic England

# Interventions: Prosecution and Alternative Disposals



# Summary

This is a general guide to the range of interventions available to those agencies responsible for the enforcement of heritage crime. It looks in general terms at possible interventions from prosecution through to the many types of alternative disposal options, both formal and voluntary, including consideration of the restorative justice process.

This guide is part of the following suite of guides to help people reduce the threat of crime to England's historic buildings and sites. For more background on the general nature of heritage crime and national and local strategies for tackling it please see the [heritage crime](#) webpages of the Historic England website.

This document has been prepared by Mark Harrison and Joanne Fisher. It is one of a series of five documents on Heritage Crime. These documents fall into two categories: Heritage Crime: Prevention and Heritage Crime Law Enforcement

## Prevention



## Enforcing the Law



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Front cover: Reconstruction of a hearing in a Magistrates Court

# Contents

- Introduction ..... 1
- 1 What is Heritage Crime? ..... 2
- 2 The Need for Enforcement ..... 3
- 3 The Aims of Intervention ..... 4
- 4 Non-Prosecution Disposals in General ..... 5
- 5 Restorative Justice ..... 6
- 6 Available Interventions ..... 8
  - 6.1 Warning letters and meetings ..... 8
  - 6.2 Early intervention warnings – ASB ..... 8
  - 6.3 Acceptable behaviour agreements – ASB ..... 9
  - 6.4 Penalty notices for disorder ..... 10
  - 6.5 Adult caution (simple caution) ..... 11
  - 6.6 Conditional Caution ..... 12
  - 6.7 Juvenile Reprimands and final warnings ..... 15
  - 6.8 Youth conditional cautions ..... 15
  - 6.9 Supportive interventions for young people ..... 16
  - 6.10 Anti-Social Behaviour Order (ASBO) ..... 16
  - 6.11 Prosecution ..... 18
  - 6.12 Injunctions ..... 19

7	Proceeds of Crime Act 2002.....	21
8	Appendices .....	22
Appendix 1:	Heritage Crime Memorandum of Understanding.....	22
Appendix 2:	Summary of Specific Heritage Crime Offences for Designated Heritage Assets.....	22
Appendix 3:	Other specific heritage crime offences not related to particular designations.....	26

# Introduction

This is a general guide to the range of interventions available to those agencies responsible for the enforcement of heritage crime. It looks in general terms at possible interventions from prosecution through to the many types of alternative disposal options, both formal and voluntary, including consideration of the restorative justice process.

This guide is not an Enforcement Policy statement by Historic England, the Alliance to Reduce Crime against Heritage (ARCH) or any of the enforcement authorities within the Alliance.

‘Interventions’ is a collective name given to the different options available to an enforcement agency to deal with crimes. Apart from prosecution there are other interventions available which might include, for example, a caution or warning letter. The appropriate response to a crime is dependent on the circumstances of each case and is a matter for the enforcement agency to determine.

There is detailed guidance and codes of practice on prosecution, out of court disposals and Restorative Justice on the [Crown Prosecution \(CPS\)](#) website. Useful information can also be found on the [Criminal Justice System](#) and [Home Office](#) websites.

# 1 What is Heritage Crime?

Heritage crime is defined for the purposes of this guidance as ‘any offence which harms the value of England’s heritage assets and their settings to this and future generations.’

England’s heritage assets include:

- World Heritage Sites
- Scheduled monuments
- Listed Buildings; Protected Wreck Sites
- Conservation Areas
- Registered Parks and Gardens
- Registered Battlefields
- Protected military remains of aircraft and vessels of historic interest
- Undesignated but acknowledged buildings and sites of heritage significance

Some of these assets are designated (such as listed buildings and scheduled monuments) and there is a consent regime and specific offences in law to protect certain designated heritage assets against damage and unlicensed alteration. These offences are set out in the Heritage Crime Memorandum of Understanding at [Appendix 1](#) of this guidance.

There are however some designated heritage assets that have no separate consent regime and no specific regulatory offences which apply to them. These assets include Registered Parks and Gardens, Registered Battlefields and World Heritage Sites, although they may contain designated heritage assets that are themselves regulated eg listed buildings, scheduled monuments and conservation areas.

More general crimes such as theft, removal of objects of historic interest, criminal damage, arson and offences of anti-social behaviour to name but a few, can lead to harm to both designated and non-designated heritage assets.

It is essential when looking at a heritage crime to consider both the direct harm and the wider consequences for the historic environment. An impact statement from an expert setting out the harm as a consequence of the crime committed should be provided to the court on prosecution. Consideration should be given to the opportunity for the offender to put right the harm they have caused eg through reparation measures, as part of a restorative justice process (see further details in Section 6 Restorative Justice).

# 2 The Need for Enforcement

The key aims of any intervention are:

- To enable the individual to recognise the consequences of their behaviour
- To ensure that they change their behaviour
- To protect victims, witnesses and the community

Enforcement of heritage crime will be most successful if it aims to impact on the underlying issues and problems that may be hindering a long-term change in behaviour and the repetition of offending.

Victims of heritage crime can include the owner or occupier of a heritage asset, the community who value and enjoy the heritage asset and future generations who may be deprived of knowledge, understanding and enjoyment of heritage assets that have been irretrievably harmed or lost.

Since 1999 a range of legislative changes have sought to clarify, streamline and reinforce the interventions available to agencies and practitioners and the interventions now available present a range of options that are designed to be flexible and which can be used in varying combinations in order to deal with the specific problem.

There are a number of stages at which different levels of intervention and enforcement are appropriate and will vary according to the nature and scale of offending behaviour.

## **Co-operation between enforcement authorities**

There will often be more than one agency involved in enforcement. Any coordinated approach to deal with the offender should extend to a decision on the appropriate intervention. If one agency decides to take enforcement action or not and conveys that decision to the offender, this may prejudice any subsequent action by another agency against the offender for matters arising out of the same, or substantially the same, facts.

In order to avoid this there needs to be close liaison between enforcement agencies if they are involved jointly in an investigation or enforcement of a particular matter arising out of the same set of facts. In particular they need to agree how the matter is to be disposed of and how that is to be conveyed to the offender. No communication should be made by one enforcement agency to an offender without prior liaison with the others.

A [Heritage Crime Memorandum of Understanding](#) (MoU) has been signed by English Heritage (now Historic England), the Police (through the Association of Chief Police Officers) and the Crown Prosecution Service (CPS) which delineates responsibilities for tackling heritage crime between these three strategic partners. Local authorities are also being encouraged to join this coordinated effort and sign the MoU.

# 3 The Aims of Intervention

It is important for communities to set the standards of behaviour by which society expects people to live. If these standards are to be credible and respected, it must be clear to everyone that swift and effective action will be taken against unacceptable behaviour.

There are various stages at which different levels of intervention and enforcement are appropriate according to the persistence of the offending and the seriousness of the offence. Early warnings can sometimes be very effective in stopping people from offending, reserving law enforcement powers to be used against the minority who for example choose to ignore warnings.

It is important for local agencies to choose the appropriate approach so that local people understand the consequences of offending. Some of the most successful interventions are those that engage the individual in changing their own behaviour. By ensuring that individuals understand the impact of their behaviour on the community, whilst offering the necessary support for them to stop, it is possible to achieve long-term change.

Taking action against the first sign of crime and anti-social behaviour in the historic environment is crucial in building the trust of the community. Unless the community knows that agencies will respond when they make a complaint, they will not feel able to take a stand against this type of crime.

It should be made clear that if the problems reoccur the victim should contact the agency involved immediately. In some circumstances it may also be helpful to inform the wider community about work that has been undertaken to give warnings to offenders.

Advising the community that action has been taken will boost trust in the ability of those agencies to deliver.

# 4 Non-Prosecution Disposals in General

As explained above there are a range of interventions available to agencies responsible for the enforcement of heritage crime that are alternatives to prosecution. The term ‘out of court disposals’ is used to cover a range of formal disposals short of prosecution, including for example cautions, conditional cautions and reprimands and final warnings for youth offenders. However there are a range of other disposals available to agencies, other than prosecution, including for example non-citable warning letters these are set out in more detail in section 6 Restorative Justice.

## **Alternative disposals**

Alternative disposals (including formal out-of-court disposals) are used to deal with low- risk, low-level and mostly first-time offenders outside of the court system in appropriate circumstances. They are alternatives to prosecution that can be used to gain speedy reparation for victims and to rehabilitate or punish offenders.

Alternative disposals are not suitable for contested or more serious cases for example where there is serious loss or harm, even where it is an offender’s first offence. They would not normally be considered for those who offend repeatedly.

All serious offences should be considered for prosecution as only a court has the suitable powers to deal appropriately with such offending behaviour. The seriousness of an offence must always be the principal consideration in determining suitability for an alternative disposal. In determining whether an offence is low-risk or low-level agencies should consider the harm caused or intended and any aggravating or mitigating factors as well as the impact on the victim.

Before dealing with an offence by way of an alternative disposal there must be sufficient evidence to provide a realistic prospect of conviction for the offence in question and it must also be in the public interest to dispose of it in that way. If the use of an alternative disposal is governed by statute any conditions or limitations stipulated by that legislation must also be met.

The only formal disposals which fall short of prosecution are an adult caution (also referred to as a simple caution), a conditional caution for adult offenders, a reprimand and final warning for youth offenders, referred to as out of court disposals.

However a caution is not the only way to divert an individual from the criminal justice system. For example the CPS might suggest the police issue a Penalty Notice for Disorder (only the police have the power to issue these) or some other form of intervention might be appropriate such as a formal non-citable warning to the offender and/or voluntary agreement between the offender and victim.

Section 6 sets out some of the interventions, including out of court disposals, which may be utilised to take positive action against offenders who have committed crime or anti-social behaviour within the historic environment. In addition, the [CPS](#) has issued guidance on prosecution and alternative disposals which can be found on their website.

# 5 Restorative Justice

Before discussing in more detail the various interventions available to deal with heritage crime it is important to consider the restorative justice process as this can form part of any intervention where it is appropriate. It is particularly worth considering for crimes affecting heritage assets as it provides an opportunity for the offender to learn about the value of the asset or place affected and it might also be utilised to contribute to its repair.

Restorative justice gives everyone with a stake in a specific offence the opportunity to collectively resolve how to deal with the aftermath of the offence and its implications for the future. It provides an opportunity for victims to communicate the effect the crime had on them and what can be done to repair the harm.

The aims of restorative justice are commonly stated to be:

- **Victim satisfaction:** To reduce the fear of the victim and ensure they feel ‘paid back’ for the harm that has been done to them
- **Engagement with the perpetrator:** To ensure that they are aware of the consequences of their actions, have the opportunity to make reparation, and agree a plan for their restoration in the community
- **Creation of community capital:** To increase public confidence in the criminal justice system and other agencies with a responsibility for delivering a response to anti-social behaviour

Properly administered restorative justice processes should produce individually tailored solutions involving interaction between offenders, victims and the community. It can provide victims with answers to questions they might have about why they have been victimised that information or support cannot on their own provide. Victims are more likely to receive an apology through restorative justice process than at court.

The restorative justice process offers offenders a unique opportunity to face up to what they have done, take responsibility and make up for the harm that their offending has caused. This can involve restitution or reparative measures agreed between the offender and their victim.

Restorative justice can take place at any stage of the criminal justice process including after conviction and it can be an integral part of sentencing especially with youths. Currently it is more commonly used before a case comes to court for example where a case is considered suitable for an out of court disposal instead of prosecution. It can also be an effective and proportionate response to low level offending where the public interest does not require a formal disposal eg an informal warning or acceptable behaviour agreement.

For adult offenders prosecutors are most likely to come across restorative justice processes when considering conditional cautions. If it is decided that the offender is suitable for a conditional caution (rather than prosecution), restorative justice can take place either as a reparative condition of the offender’s conditional caution or alternatively the restorative justice process could be used to formulate the conditions of the caution (see further in section 6.6 below).

For youth offenders restorative justice is used more widely. It can for example be used as part of an order on conviction (Referral or Supervision Orders) and as part of a final warning or intervention programme (see further in section 6 below).

Restorative justice processes are always voluntary for everyone concerned (voluntary agreements).

There are various types of restorative justice in England which include:

- **Direct or indirect restorative justice processes:** Direct restorative justice is where the victim and offender guided by a facilitator have a direct face to face meeting. Indirect restorative justice is where the parties communicate via the facilitator acting as a 'go between'. An agreement is usually reached to decide how best to repair the harm caused and a rehabilitation programme may be agreed.
- **Community Conferencing:** This is a large scale conference that is particularly useful at resolving anti-social behaviour. In this approach the community as a whole is often the victim. Again if the process focuses on the harm caused and its resolution then it has the potential to be restorative.
- **Referral order panels:** Young people who receive a court Referral Order following conviction attend a panel meeting to discuss their offence and the factors that may have contributed to their offending behaviour. The panel is made up of Youth Offending Team staff and community volunteers. The victim, or their representative, may also attend so that their views may be put forward.
- **Mediation:** This is a process in which an impartial third party (the mediator) helps people in dispute to work out an agreement.

Restorative justice works best where the offender is committed to participating in a meaningful way rather than simply to avoid prosecution. Therefore prosecutors/enforcement agencies should look for evidence that the particular offender is considered suitable for a restorative justice based disposal and is likely to accept the anticipated outcome of that process.

The prosecutor/enforcement agency will also need an understanding of how onerous the restorative justice processes are for all taking part to ensure that overall it is proportionate to the gravity of the offence.

The [CPS](#) has produced a legal guidance note on Restorative Justice which can be found on their website.

# 6 Available Interventions

Below is a list of interventions available to agencies when dealing with heritage crime. As stated above when considering the appropriate intervention Restorative Justice should also be considered.

## 6.1 Warning letters and meetings

Early intervention, in the form of warnings, is often seen as an effective way to stop offenders from continuing or escalating their criminal behaviour. This can be either a warning letter or a meeting with the offender followed by a warning letter.

This type of intervention is most appropriate where there is perhaps either very little or no damage caused to the heritage asset, the offender was genuinely mistaken, they have no previous convictions and/or there is a genuine willingness to cooperate with the enforcement agency.

A warning letter could be sent to the owner of a scheduled monument who has carried out some minor works without consent and no or very minor damage has been caused for example.

In most cases it is very likely to be useful for the agency to arrange a meeting with the offender to explain the offence, the designation of the heritage asset and any procedures that should be followed in the future to avoid committing a further offence and to safeguard the asset. This should be followed up with a warning letter.

Where young offenders are concerned a warning interview might be held for example with the children and their parents where complaints have been received about their behaviour. A number of agencies such as the youth offending team, the police, and social services may be involved in such a warning interview.

Warning interviews/meetings and letters can be a very useful intervention for low-level, low-risk and first time offenders. It is good practice for agencies to keep a record of any warning given. Although a warning is non-citable, which means it cannot be referred to in later court proceedings before conviction, it can be used as evidence to support an assertion of an aggravating feature where in subsequent enforcement action the Court considers sentence. It can also be considered by the agency in determining what enforcement action to take in the future should the offender commit a further offence

## 6.2 Early intervention warnings – ASB

Early intervention warnings can be used in cases of anti-social behaviour. They generally describe the behaviour observed, inform the individual that the behaviour is anti-social and unacceptable, advise them that their behaviour is being monitored and warn that enforcement action may be necessary should the behaviour continue.

It is good practice for the police or local authority to explain to individuals, children and their parents what the problem is and the consequences of their behaviour. In many cases awareness of the impact of the behaviour on their neighbours, and the awareness of possible enforcement action, can be a sufficient deterrent for an individual to change their behaviour. Confirming a verbal warning in writing provides a record of the intervention and documentary evidence should enforcement action become necessary. Written or verbal warnings can be very effective in stopping people behaving anti-socially. By challenging all unacceptable behaviour immediately they

establish clear standards of behaviour and reinforce the message that anti-social behaviour will not be tolerated. They are intended to prevent a situation escalating.

### **6.3 Acceptable behaviour agreements – ASB**

Acceptable behaviour agreements are a model designed to engage an individual in acknowledging their anti-social behaviour and the effect it has on others with the aim of stopping that behaviour.

#### **Why use acceptable behaviour agreements as an early intervention tool?**

It is important for communities to set the standards of behaviour by which they expect people to live. Entering into formal, non-legal agreements or contracts or issuing warnings can be very effective as an early intervention approach, particularly if coupled with support and assistance to address identified needs or issues.

By ensuring that individuals understand the impact that their behaviour is having on the community, as well as offering the necessary support for them to stop that behaviour, it is possible to achieve long-term change.

#### **Who can make an acceptable behaviour agreement?**

Acceptable behaviour agreements are not set out in law, and any agency is able to use and adapt the model. An agreement can be made between the individual and their local authority, landlord, police etc.

Although acceptable behaviour agreements have often been made with young people, it is a tool that can be used for any age. Their informal, flexible-nature, means they can be used for a variety of anti-social behaviours.

#### **Involving partner agencies in drawing up an agreement**

It is important to involve other partner agencies when using agreements or contracts to determine whether the individual or their family is subject to any other investigations or support, or whether any such support may be required

Acceptable behaviour agreements are a model designed to engage an individual in acknowledging their anti-social behaviour and the effect it has on others with the aim of stopping that behaviour.

For example, the youth offending team, and social services and education welfare (if appropriate) should be informed when an agreement is agreed with a young person.

#### **What can be included in the agreement?**

An acceptable agreement is completely flexible and can be adapted for the particular local need. It can include conditions that the parties agree to keep. It may also contain the agreed consequences of a breach of the agreement.

The individual may agree to:

- Stop specific behaviour that has been causing disruption to the community.
- Positive requirements such as engaging in a community group, attending school regularly or attending a local youth diversion scheme.

The agency may also agree to provide support that will help the individual to keep to the terms of the agreement. It may also refer the person to agencies that are able to provide further intervention or support. Involving the individual in drawing up the agreement may help them to recognise the impact of their behaviour and take responsibility for their actions.

It is important that both parties sign and receive a copy of the agreement so that there is no doubt about what has been agreed. In the case of a child or young person, parents or guardians should be encouraged to attend the interview to agree the contract.

Acceptable behaviour agreements usually last for about 6 months, but can be renewed by agreement between both parties.

## Monitoring and non-compliance

Successful intervention through voluntary routes depends on the agencies involved giving very clear messages about the consequences of continuing with the anti-social behaviour. The threat of legal action provides an incentive to ensure adherence to the agreement and the consequences for non-compliance should be outlined in the agreement.

In order for an agreement to be taken seriously, it is essential that any breach is followed up with further action. This will normally begin with a meeting to discuss the non-compliance and further steps, including more formal enforcement action.

Actions following non-compliance should reflect those consequences spelt out when the agreement was signed. If these consequences are not actioned when socially unacceptable behaviour continues, trust and respect between the perpetrator and the agency creating the contract will break down.

Where an acceptable behaviour agreement has been unsuccessful it may be necessary to obtain an anti-social behaviour order (ASBO) (see below 6.10) or other court action to ensure that the behaviour stops.

Acceptable behaviour agreements are not legally binding but can be cited in court as evidence in ASBO applications or in eviction or possession proceedings.

An acceptable behaviour agreement does not have to be in place before an ASBO application is made. There will be cases where an immediate ASBO application is the more appropriate intervention.

## Outcomes for the perpetrator

A successful warning or agreement can result in bringing an end to the unacceptable behaviour. Establishing a clear approach to warnings and agreements means that the perpetrator is under no doubt about the enforcement action that will be taken against them for failing to engage and stop the behaviour.

It is important that consequences are consistent and that where there is a promise of action, it is delivered. Where warnings and agreements have been used, it is important to record every action taken. This can help support any subsequent enforcement action.

## 6.4 Penalty notices for disorder

[Penalty Notices for Disorder](#) is a statutory disposal introduced by the Criminal Justice and Police Act 2001. They can be the first stage of intervention for many forms of low-level disorder offences. They offer speedy and effective action that frees up police, local authority and court time. They also ensure that all unacceptable behaviour is challenged. The offender receives an immediate punishment (fine), which if paid, will not result in a criminal record.

### Who can be given a Penalty Notice for Disorder?

Penalty Notices for Disorder are targeted at low-level anti-social offending. They can be given either on the street or at the police station following arrest.

### What offences attract a Penalty Notice for Disorder?

Penalty Notices for Disorder are available for a specified range of minor disorder offences including: throwing fireworks, causing criminal damage and theft.

Penalties are fixed for each offence, set at either £90 or £60.

### Who can issue a Penalty Notice for Disorder?

The notices can be issued by the police and where designated, police community support officers. They are also available as part of a community safety accreditation scheme. Only a police officer may issue to 10 to 15 year olds.

Before one can be issued the officer must have reason to believe that an offence has been committed and it is an offence covered by the Penalty Notice for Disorder scheme. Further that there is sufficient evidence to support a successful prosecution in accordance with the Code for Crown Prosecutors and the suspect understands what is happening.

A Penalty Notice for Disorder will not be suitable where for example the suspect repeatedly offends, where there are aggravating factors to the offence, or where there is a second or subsequent offence that is known to overlap with the Penalty Notice for Disorder offence. These are just some of the factors which may prevent the use of a Penalty Notice for Disorder; there may of course be other relevant factors

### **What are the implications for the offender?**

By paying the penalty the offender discharges any liability to be convicted of the offence to which the Penalty Notice for Disorder relates. Payment involves neither a finding nor an acceptance of guilt and removes the possibility of being proceeded against or gaining a criminal conviction for the offence in question.

Penalty Notices for Disorder for recordable offences are recorded on the Police National Computer. It can be cited as evidence of bad character in subsequent criminal proceedings and may be relied on in court.

### **What are the implications for the victim?**

The victim is consulted on the issuing of a Penalty Notice for Disorder and whilst they cannot insist on the method of disposal a Penalty Notice for Disorder should not be issued where the victim is opposed to it.

A Penalty Notice for Disorder disposal removes the possibility of the criminal court awarding a compensation order in favour of a victim. However, it is possible as part of this process for the victim and offender (facilitated by the police) to reach a voluntary agreement for Restorative Justice which may include repair of damage caused to the heritage asset for example.

### **What happens if the penalty is not paid?**

Once issued the penalty must either be paid or a request for a hearing made within 21 days. If the penalty is not paid or a request for a hearing made within this period it is automatically registered as a fine at one and a half times the level of the penalty. Unpaid fines are enforced through the courts in the normal way. In exceptional circumstances the police may seek to bring a prosecution for the original offence instead.

### **Fixed penalty notices for environmental offences**

The Anti-Social Behaviour Act 2003 and Clean Neighbourhoods and Environment Act 2005 created fixed penalty notices for litter and dog fouling in the Environmental Protection Act 1990 as an alternative to prosecution.

Depending on the offence, fixed penalty notices for environmental offences can be issued mainly by local authority employees, police community support officers and by persons accredited under a community safety scheme.

If the penalty is not paid, the local authority can prosecute the perpetrator for the original offence.

## **6.5 Adult caution (simple caution)**

An Adult Caution is a formal warning given by or on the instructions of a senior police officer. It is a non-statutory disposal for an adult offender (over 18 years) designed for circumstances where the offender could have been charged or prosecuted for the offence but it is decided that it is in the public interest to issue a formal warning rather than prosecute (see CPS Code for Crown Prosecutors).

### **Who can be given an adult caution?**

The offender must be over 18 years and have made a clear and reliable admission to all elements of the offence and has not raised a defence. The offender must also give informed consent to the administering of the caution.

### **What offences can attract an adult caution?**

Adult cautions can be issued for any offence where there is a realistic prospect of conviction and it is in the public interest to do so, although they are generally used for first time low-level offences. The suitability of this disposal is determined according to its appropriateness to the offender and the offence and the likelihood of it reducing the risk of reoffending. Home office guidance states that a caution is not appropriate if the offence is serious, although there are exceptions.

As a general rule it is not appropriate to caution an offender more than once. There may however be exceptions to this where, for example, the new offence is trivial.

### **Who can issue an adult caution?**

Adult cautions are issued by the police on the instruction of a senior police officer and sometimes on the direction of the CPS. The decision to issue an adult caution for an indictable only offence (one that can only be heard in the Crown Court) must be made by the CPS although the occasions when this will arise are exceptional. There must be sufficient evidence for a realistic prospect of conviction and it must be clear it is in the public interest to issue a caution rather than prosecute the offender.

Other enforcement agencies can also issue adult cautions to offenders where this is an appropriate intervention in accordance with the guidelines on cautioning issued by the CPS which can be found on their website and also Home Office Circular 16/2008: Simple Cautioning – Adult Offenders.

If the offer of an adult caution is refused, a prosecution should follow for the original offence.

### **What are the implications for the offender?**

An adult caution is not a conviction, but if given for a recordable offence it will be entered on the police national computer. It may be cited in any subsequent court proceedings and forms part of the offender's criminal record. Accordingly it is important to consider whether a more informal intervention eg informal (non-citable) warning, is appropriate before issuing an adult caution.

### **What are the implications for the victim?**

The victim is consulted, but again cannot insist that the matter is disposed of in a particular way. The victim's views may be relevant to determining seriousness and it is important to consider the nature and extent of the harm caused and whether any form of compensation could be paid.

As with a Penalty Notice for Disorder, this disposal removes the possibility of the criminal court awarding a compensation order in favour of a victim and so it might be appropriate to consider a conditional caution where compensation is appropriate.

Alternatively it is possible as part of this intervention for the victim and offender (facilitated by the police or other agency) to reach a voluntary agreement for restorative justice, perhaps including repair of damage caused to the heritage asset.

Useful guidance on adult cautions can be found on the CPS website both in the [Code for Crown Prosecutors](#) and also their legal guidance pages on [Caution and Diversion](#). The Ministry of Justice - [Simple Caution for Adult Offender guidance](#) (MoJ Guidance) should also be followed.

## **6.6 Conditional Caution**

Conditional cautions are a statutory form of out of court disposal for adult offenders (18 years and older) introduced by Part 3, sections 22 – 27 of the Criminal Justice Act 2003 (as amended). They are a statutory development of the non-statutory adult caution (simple caution) which has been available for the discretionary use of the police and CPS for some time.

This disposal allows a 'relevant prosecutor' to offer a caution with conditions attached for certain specified offences. 'Relevant prosecutor' is defined by section 27 of the Criminal Justice Act 2003 as:

- the Attorney General
- the Director of Serious Fraud Office
- the Commissioners of the Inland Revenue; the Commissioners of Customs and Excise
- The Director of Public Prosecutions
- A Secretary of State
- A person specified as a relevant prosecutor in an Order made by the Secretary of State for the purpose of Part 3 of the Criminal Justice Act 2003.

Conditional cautions provide an opportunity to achieve an early positive response to low level offending for those persons willing to admit to their offending and comply with certain conditions and have the effect of suspending any criminal proceedings while the offender is given the opportunity to comply with the agreed conditions.

Conditional cautions:

- address the needs of both victims (which can sometimes be a community) and offenders
- deal with the offender's behaviour quickly and allow action to be taken to rehabilitate the offender or to repair the damage caused by the offence.

Just like an adult caution, a conditional caution is not a criminal conviction, but it will be recorded on the police database and may be considered in court if the person is tried for another offence.

The adult caution (see 6.5 above) remains available as a disposal and may be appropriate in cases where for example conditions would not be suitable.

### **When can a conditional caution be administered?**

There must be sufficient evidence to charge the offender with the offence. Secondly, the prosecutor must determine, having taken into account the victim's views, that it is in the suspect's, victim's or community's interest for the matter to be dealt with outside the court process.

Prosecutors must have regard to the Revised Code of Practice for Conditional Cautions – Adults laid before parliament pursuant to section 25 of the Criminal Justice Act 2003. This also provides that before exercising powers under Part 3 of the 2003 Act, a prosecutor must publish guidance to its prosecutors on the approach to be taken in deciding whether to offer a conditional caution for an offence. The Crown Prosecution service has issued relevant guidance.

A conditional caution can only be considered for an offence that is listed in the Director of Public Prosecution's Guidance. This is limited to summary offences (excluding motoring offences) and specified either way offences such as offences under the Theft Act 1968 including theft, removal of articles from places open to the public, going equipped to steal and some offences under the Criminal Damage Act 1971 including destroying or damaging property. This is not an exhaustive list (see [Annex A of the Director's Guidance on Adult Conditional Cautions](#)).

The Act imposes five requirements before a conditional caution can be given:

- The authorized person must have evidence that the offender has committed an offence.
- The prosecutor must determine that there is sufficient evidence to charge the offender with the offence. The prosecutor must also determine that a conditional caution should be given to the offender in respect of the offence.
- The offender must admit to the authorized person that he has committed the offence.
- The authorized person must explain the effect of the conditional caution and warn the offender that failure to comply with any of the conditions may result in prosecution for the original offence.
- The offender must sign a document containing details of the offence, the admission to the authorised person, consent to be given a conditional caution and details of the conditions attached.

Only the relevant prosecutor, as defined by section 27 of the Criminal Justice Act 2003 (see above), may decide whether a person is to be made the subject of a conditional caution. The offender must be 18 years or older.

Where an offender denies the offence or raises a defence an offer of a conditional caution cannot be made.

### **What conditions can be applied?**

The conditions that can be attached to a conditional caution must have one or more of the following objectives:

#### **Rehabilitation**

Conditions that help to change the behaviour of the offender, reduce the likelihood of them reoffending or help to reintegrate the offender into society for example attendance on an alcohol awareness programme or not to commit further offences for a defined period of time.

## Reparation

Conditions that aim to repair the damage done either directly or indirectly by the offender by for example, the payment of modest compensation to the victim (an individual or the community in the form of a payment to a charity), a letter of apology to the victim, repairing or otherwise making good damage caused (eg cleaning graffiti) or participating in a restorative justice process.

The conditions must always be appropriate and proportionate to the offence and achievable. The conditions should be aimed at changing the offender's behaviour and/or providing redress to the victim of the offence. Punitive conditions (in the pilot areas) should only be used where there are no appropriate reparative or rehabilitative conditions for a given case.

## Restorative Justice and conditional cautions

Restorative justice may be used as a process to inform the conditions of the caution. If used in this way the process will take place before the offender is given the conditional caution so that everyone affected by the crime can suggest suitable conditions. The prosecutor will consider suggested conditions and have the final say about whether the conditions agreed are appropriate and/or suggest alternative conditions.

Alternatively, participation in a restorative Justice process could be one of the conditions of the caution itself. This might for example be applied where a victim has suggested that a restorative justice process would help make good the harm caused by the offender. It could form one of a number of conditions. In such cases positive participation in the process is all that is legally required of the offender and any actions arising out of the restorative justice process will form a voluntary agreement between the offender and victim.

As stated above restorative justice processes may only be used where both the victim and the offender consent to take part. If the victim and offender want to agree to do things that cannot become formal conditions of the caution, they can still do this but those things will be the subject of a voluntary agreement between the victim and offender in addition to the conditional caution.

## Who can administer a conditional caution?

Only prosecutors eg crown prosecutor or other prosecuting enforcement agency who is a 'relevant prosecutor' can decide whether to authorize the offer of a conditional caution. It will then be before an 'authorized person' to administer the caution. An authorized person is:

- a constable
- a person designated as an investigating officer under section 38 of the Police Reform Act 2002
- a person authorised for the purpose by a relevant prosecutor

## What are the implications for the offender?

If the offender agrees to the conditional caution the prosecution will be suspended while the offender is given an opportunity to comply with the conditions. If the conditions are complied with the prosecution will not normally proceed. However if the offender does not comply with the conditions without reasonable excuse, they may be charged with the original offence and the case may therefore go to court.

If an offender refuses to agree the offer of a conditional caution then a prosecution must follow for the original offence.

A conditional caution is not a criminal conviction but if given for a recordable offence it will be entered on to the Police National Computer. Further, conditional cautions may be cited in subsequent court proceedings and it forms part of an offender's formal criminal record.

Conditional cautions now become spent after 3 months and offenders do not have to declare them.

## What are the implications for the victim?

The victim will be consulted on the disposal but cannot insist that the matter is disposed of in a particular way. However, the victim's views will be taken into account by the prosecutor and may be relevant to determining seriousness. If appropriate the victim can be awarded compensation or reparation and/or take part in a restorative justice process as outlined above. Sometimes the local community may be the victim particularly

where there is anti-social behaviour. Where possible a suitable representative of a community should be consulted when it is proposed that the offender makes good the harm caused.

### **Code of practice for conditional cautions**

The code of practice referred to above for conditional cautions governs the use of conditional cautions and includes reference to the use of Restorative Justice in this context.

The code provides that before exercising any powers under Part 3 of the Criminal Justice Act 2003 a prosecutor must publish guidance to its prosecutors on the approach to be taken in deciding whether to offer a conditional caution for an offence.

The CPS has issued its own codes of practice which can be found on their website along with the Director of Public Prosecutor's guidance issued under section 37A of the Police and Criminal Evidence Act 1984 which prescribes the offences and circumstances in which a conditional caution is permitted.

## **6.7 Juvenile Reprimands and final warnings**

Section 65-66 of the Crime and Disorder Act 1998 brought in a new system of pre- court actions aimed at diverting children and young people (10-17) from their offending behaviour before they entered the court system.

The final warning scheme replaced the police cautioning system for juveniles. The aim of the system is to end repeat cautioning and to provide progressive and effective interventions to prevent re-offending.

### **Reprimand**

A reprimand is a formal verbal warning given by a police officer to a young person who admits they are guilty of a minor first offence. Sometimes the young person can be referred to the Youth Offending Team (YOT) to take part in a voluntary programme to help them address their offending behaviour.

### **Final warning**

A final warning is a formal verbal warning given by a police officer to a young person who admits their guilt for a first or second offence. The final warning triggers an automatic referral to the YOT where the young person is assessed to determine the causes of their offending behaviour and a programme of activities is identified to address them.

Both the reprimand and final warning are designed to divert young people from the criminal justice system. If they do go to court for a further offence the court will take the reprimand and final warning into account when deciding on the appropriate sentence for the offence. The court may only in exceptional circumstances give a conditional discharge if a final warning has been given within the last two years.

Further guidance can be found in the CPS legal [guidance for Youth Offenders](#).

## **6.8 Youth conditional cautions**

Under section 65 of the Crime and Disorder Act 1998 as amended by section 48 and schedule 9 of the Criminal Justice and Immigrations Act 2008, youth conditional caution can be given to a youth provided they have no previous convictions and the following conditions are satisfied:

- the authorised person has evidence that the youth has committed an offence
- the prosecutor is satisfied that there is sufficient evidence to charge the youth and that a youth conditional caution should be given in respect of the offence
- the youth admits the offence to the authorised person
- the authorised person has explained the effect of the youth conditional caution to the youth and has warned him or her that failure to comply with any condition may result in prosecution. If the youth is 16 or under the caution must be done in the presence of an appropriate adult
- the youth signs a document that contains details of the offence, an admission and consent to the youth conditional caution.

Further guidance on youth conditional cautions can be found in the CPS legal guidance on [Youths](#) and also the [Director of Public Prosecutions guidance on Youth Conditional Cautions](#).

## 6.9 Supportive interventions for young people

Complex family circumstances, health or medical history can give rise to underlying factors that have a bearing on a young person's behaviour. Misuse of drugs or alcohol can also affect their behaviour adversely.

Any of these factors can make it very difficult for children and young people to change their behaviour without the right kind of support. Through supportive interventions they can learn about the boundaries of behaviour that are expected by society and the impact that their behaviour is having on others. Support can also help them get to grips with underlying issues.

## 6.10 Anti-Social Behaviour Order (ASBO)

A stand-alone anti-social behaviour order (ASBO) can be obtained from the magistrates' court acting in its civil capacity. The most common types of behaviour tackled by ASBOs are unruly conduct such as verbal abuse, harassment, assault, graffiti and excessive noise. ASBOs have also been used to combat drug dealing, vehicle crime, misuse of the 999 system, prostitution and fly-tipping.

An application for an ASBO is made on complaint to the Magistrates Court and must be made within six months of the behaviour complained of (although earlier incidents may be used as background information to support the case). One incident of serious anti-social behaviour demonstrate that an order is necessary to stop the behaviour from continuing.

The evidence in support of an ASBO application should prove that the defendant acted in a way that caused, or was likely to cause, harassment, alarm or distress to one or more persons not in the same household as the defendant. Evidence should explain to the court the context of the anti-social behaviour and its effect on other people. It can include direct witness statements, professional witness statements, hearsay, CCTV footage, letters of complaint (including anonymous complaints) to police, council, landlord, or articles in local press. Any non-compliance with other interventions, eg behaviour agreements or warnings, should be cited.

In many instances anti-social behaviour can be stopped if challenged early, hence the importance of early warnings, visits or letters in preventing an escalation of problems. It is important to make sure the appropriate intervention is used at the right time. Whilst an incremental approach is generally the right one, there will be occasions when it is not practical to follow all the stages to deal swiftly and effectively with anti-social behaviour to provide immediate protection to individuals and the community.

It is not necessary to have tried other interventions before applying for an ASBO and there will be cases where an ASBO is the appropriate first intervention.

ASBOs are not criminal penalties and are not intended to punish the offender. Instead they prohibit that person from continuing to do specified anti-social acts or entering defined locations, in order to protect the public in those areas. This means that they are civil orders and are made in civil proceedings.

The civil law status of ASBOs has implications for the type of court proceedings at which applications are heard. It also affects the type of evidence that can be used to support an ASBO application. The ASBO remains a civil order irrespective of the issuing court. Although ASBOs on conviction can be requested in the criminal courts following the process described in criminal procedure rules the order remains a civil order

### Who can apply for an ASBO?

Any one of the following agencies can apply for an order, subject to a legal obligation to consult with other agencies:

- Local authorities: district councils, London boroughs, the Corporation of London, the Isle of Wight, Welsh counties or county boroughs and English county councils.
- Police Forces
- British transport police

- Registered social landlords (as defined by Section 1 of the Housing Act 1996) Housing action trusts (as defined by Section 62 of Housing Act 1988) Environment Agency
- Transport for London
- Arm's-length management organisations (ALMOs) where these powers are contracted out by a local authority.

### When can an agency apply for an ASBO?

Local authorities and the police can apply for an ASBO where it is considered necessary to protect persons in their area (relevant persons) irrespective of where the anti-social behaviour took place.

The order can be extended, where necessary, to provide protection, not just for relevant persons, but to any person in England and Wales. For example, if there is evidence that a person subject to an ASBO is likely to continue the anti-social behaviour in other areas of the country, the order could include a prohibition covering the whole of England or Wales.

### ASBOs on conviction

#### Legislation

Section 1C of the Crime and Disorder Act 1998 as amended, allows the criminal courts to make an order equivalent to an ASBO prohibiting the defendant from doing anything specified in the order, after that person has been convicted of a relevant offence

#### About the order

An ASBO on conviction is still a civil order and therefore the civil rules of evidence apply. The order is in addition to the criminal sentence and is considered separately from the criminal part of the proceedings.

An order on conviction has the same effect as any other ASBO. It lasts for a minimum of two years and a breach of the terms of the order is a criminal offence.

#### When can an order be made?

Orders on conviction can be made by the:

- Magistrates' court
- Youth court
- Crown court.

The form of these orders is set out in the Crown Court (Amendment) Rules 2002.

Usually the CPS requests the court to make an order on conviction although courts can make the orders of their own volition. An order may only be made if the court sentences or conditionally discharges the offender for a relevant offence.

The court has to consider that:

- The offender has acted in an anti-social manner, that is, in a manner that caused or was likely to cause harassment, alarm and distress to one or more persons not of the same household as the offender; and
- An order is necessary to protect any persons in any place in England and Wales from further anti-social acts.

#### Evidence

Evidence should explain to the court the context of the anti-social behaviour and its effect on other people. It can include:

- Direct witness statements
- Professional witness statements
- Hearsay
- CCTV footage
- Letters of complaint (including anonymous complaints) to police, council, landlord
- Articles in local press
- Number and nature of the charges against the defendant
- Defendant's character and conduct as revealed by the evidence
- Content of the victim's personal statement

- Other offences that have been taken into consideration (TICs)
- Details of final warnings or previous convictions
- Risk assessment in any pre-sentence report
- Records of any non-compliance with other interventions, eg acceptable behaviour agreements or warnings
- Community impact statements

A community impact statement can be written by a caseworker and/or by the local police.

The purpose of a community impact statement is to outline the effect the anti-social behaviour is having on the wider community in a way that is clear and concise for the Court's consideration.

In certain circumstances, some elements of evidence such as hearsay, CCTV footage and letters of complaint can be put into a community impact statement.

### **Adjournments**

Section 10(3) Magistrates Courts Act 1980 permits adjournments to be made after conviction and before sentence to enable enquiries to be made or to determine the most suitable way of dealing with an application for an order under Section 1C of the Crime and Disorder Act 1998.

Where the court adjourns and delays sentencing to consider the order, it can impose bail conditions in the normal manner.

### **Interim orders on conviction**

An interim order on conviction can be sought to protect vulnerable witnesses and communities from threats of violence, intimidation and further anti-social behaviour by the defendant pending the full hearing.

### **Suspended prohibitions**

Any order will come into effect on the day it is made, however the court can make the provision that the prohibitions in the order can be suspended until the offender is released from custody. If this is done, the order runs alongside the custodial sentence but the prohibitions only come into effect from the time that the defendant is released from custody.

It is up to the judge to take into account the length of the custodial sentence when determining the length of the order. For example, if an individual is given a 12 month custodial sentence the judge may feel it prudent to impose a 3 year order, with the prohibitions suspended for one year, so the order runs for a full two years after the individual is released from custody. Alternatively, the judge may feel that a 12 month custodial sentence in addition to a 2 year order, which runs for one year on release, to be a proportionate sanction.

Magistrates' Courts (ASBOs) Rules 2002 make the justices' clerk responsible for sending a copy of the order to any agency which initiated the request for an order and the agencies with which it would normally have to consult.

## **6.11 Prosecution**

The decision to prosecute, as with other disposals, is a serious step. As with an alternative disposal a prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction for the offence in question and if so consider whether a prosecution is required in the public interest.

The CPS code for crown prosecutors provides that a prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour or unless the prosecutor is satisfied that the public interest may be properly served in the first instance by offering the offender an out-of-court disposal.

It follows that the more serious the offence or the offender's record of criminal behaviour, for example previous convictions or out-of-court disposals, the more likely it is that a prosecution will be in the public interest.

In deciding whether or not a prosecution is in the public interest the prosecutor should also take account of the victim's views regarding the impact of the offence.

## 6.12 Injunctions

An injunction can require a person to refrain from doing something for example not to go to a particular place (prohibitory), require a person to do something (mandatory) or sometimes prevent the commission of something illegal for example the commission of an offence that is threatened or likely to happen (a quia timet injunction).

Injunctions are civil orders obtained from the county or high court. This is a very useful power but it can be costly to obtain and so should only be used in appropriate cases.

### When are injunctions used?

Injunctions are increasingly used to control anti-social behaviour in situ rather than displacing the problem and can be used to prevent a range of criminal and anti-social behaviour affecting heritage assets and their settings, for example:

- Using a property for drug dealing
- Playing loud music at night
- Verbal abuse
- Vandalism
- Causing public nuisance
- Inappropriate fossil collecting;
- Vehicle nuisance
- Preventing unauthorized works to a listed building
- Preventing unauthorized works or damage to a scheduled monument

### When will the court make an injunction?

Injunctions are a discretionary remedy. This means that the court can decide whether it would be just and appropriate for one to be issued in the circumstances of a particular case.

There are four main principles that the court will consider when deciding whether to grant an injunction:

1. Is it just and convenient to issue the injunction? The court will consider when deciding this whether there was any delay in making the application for an injunction and whether the applicant has acted properly.
2. Is the injury suffered by the applicant continuous or irreparable? In the case of threatened damage, for example, the probability of that happening must be high and likely to cause substantial damage.
3. The applicant must have a valid underlying claim (for example that the actual or apprehended activities are/will be in breach of the criminal law).
4. The court will need to be satisfied that damages are not an appropriate remedy.

### What are final and interim injunctions?

Injunctions can be granted following trial of the substantive matter (final) or they can be granted before any proceedings for the substantive matter are issued (interim).

Final injunctions are made at the end of proceedings, once evidence has been heard in full and the court has given due consideration to all the issues.

Interim or emergency injunctions might be used where it is believed that an offence is about to be committed, is in the process of being committed or to prevent the commission of an offence providing victims or the wider community with immediate protection from anti-social behaviour or other heritage crime. In effect an interim injunction is a temporary order that is made at a court hearing in advance of the full hearing.

Interim injunctions may be applied for and granted by the court at any time from the commencement of proceedings. Injunctions may only be made without notice to the respondent where the court considers it is just and convenient to do so.

### **How long will an injunction last?**

The court may grant an injunction for a specified period, or may decide that the injunction will apply until varied or discharged. This can mean that an injunction can be in force for the lifetime of the person against whom it is obtained.

### **What happens on breach of injunction?**

A power of arrest can be attached to an injunction which means that a person can be arrested when they breach the injunction. The penalty for breach of the conditions of an injunction can result in up to two years' imprisonment and/or an unlimited fine for contempt of court.

### **General power of local authorities to apply for an injunction**

Under section 222 of the Local Government Act 1972, local authorities have a general power to prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, where they consider it expedient for the promotion or protection of the interests of the inhabitants of their area.

Historic buildings and sites are protected in the interests of the local inhabitants, as well as wider society and others, using this general power, local authorities should be able to apply for injunctions to restrain activities that may lead to damage to heritage assets in its area or that may disrupt their enjoyment.

### **Breaches of the Planning (Listed Buildings and Conservation Areas) Act 1990 – listed buildings and conservation areas**

Under section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990 a local planning authority or Historic England can apply to the High Court or the county court for an injunction restraining actual or apprehended unauthorized works to a listed building where they consider it necessary or expedient to do so.

This also applies to the unauthorised demolition of an unlisted building in a conservation area.

### **Breaches of Part 1 of the Ancient Monuments and Archaeological Areas Act 1979 – scheduled monuments**

In England, Historic England can institute proceedings for an injunction to restrain any contravention of Part 1 of the Ancient Monuments and Archaeological Areas Act 1979, for example, unauthorised works or damage to a scheduled monument and illegal metal detecting.

The above are just some of the powers available to apply for injunctions but there are many others which will apply to specific enforcement agencies.

# 7 Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 (POCA) contains a range of powers that can be used to disrupt and dismantle criminal enterprises, whether major or locally based criminals. Powers include the ability to confiscate assets after criminal conviction and powers for civil recovery and taxation of unlawfully obtained assets. Part 2 of POCA makes the Crown Court the main venue for confiscation for offences committed after 23rd March 2003.

The Crown Court has the power to make a confiscation order against a convicted individual requiring payment to the state of a sum of money based upon the benefit obtained from their criminal conduct, which is referred to as the 'recoverable amount'. This amount will either be the full amount the Court has found to be his benefit or the value of all of the defendant's assets called the 'available amount'. The order can be made against anyone convicted of an indictable offence (one that can be heard in the Crown Court) or committed by the Magistrates' Court.

A confiscation order can be made either at the request of the Prosecution or if the Court believes it is appropriate to do so. One of the means of enforcement of a confiscation order is imprisonment.

## **How might this relate to heritage crime?**

There have been a number of cases in which powers under POCA have been used to confiscate money earned through uses which are in breach of a planning enforcement notice. An example of this is the case of *R v Del Basso and Goodwin [2010] EWCA Crim 119*, where a confiscation order was made on conviction of the defendants for failure to comply with an enforcement notice which required the use of land as a commercial park and ride facility to cease. A confiscation order was made for the benefit obtained from the illegal park and ride facility.

As it is possible to obtain confiscation orders for ignoring planning legislation it should follow that confiscation orders could be made where there are breaches of heritage legislation. For example the unauthorised demolition of a listed building under the Planning (Listed Buildings and Conservation Areas) Act 1990 could produce considerable financial gain to a developer.

# 8 Appendices

## Appendix 1: Heritage Crime Memorandum of Understanding

As part of an initiative to tackle heritage crime in England a [Memorandum of Understanding](#) on the Prevention, Investigation, Enforcement and Prosecution on Heritage Crime (MOU) was drawn up.

Signed jointly by the Police, the Crown Prosecution Service, English Heritage (now Historic England) and a growing number of local authorities, community safety partnerships and National Park Authorities, it is an agreement to work in partnership with each other to prevent and solve crimes against historic places.

## 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 either way. A person convicted of an offence under section 9 is liable:

(a) on summary conviction to a fine not exceeding £20,000 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))

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 either way. A person convicted of an offence under this section is liable:

(a) on summary conviction to a fine not exceeding £20,000; or

(b) on indictment to a fine. (see section 43(5)).

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 ie 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 they 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).

### **Control of Works affecting unlisted buildings in Conservation Areas:**

Section 9(1) and (2) offences are applied to conservation areas by section 74(3)

Section 9(1) – executing or causing to be executed the demolition of an unlisted building in a conservation area without conservation area consent except where consent is not required.

Section 9(2) – failure to comply with a condition attached to a conservation area consent. Both notifiable offences – Home Office Code 94 Planning Laws.

### **Failure to comply with a conservation area enforcement notice:**

Section 43 is applied to conservation area enforcement notices by section 74(3).

Notifiable Offence – 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 either way. A person convicted of an offence under this section is liable on:

- (a) summary conviction to a fine not exceeding the statutory maximum; or
- (b) on indictment to a fine.

(see section 2(10))

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 either way. 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 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)).

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 Historic England.

An offence under this sub-section is summary only. On conviction a person is liable to a 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 Historic England.

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

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on indictment to a fine.

Section 42(5) –

- (a) using a metal detector in a ‘protected place’ in accordance with a consent granted by Historic England 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 Historic England 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 either way. 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 either way. 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; or
- (b) on indictment to a fine. (see section 3(4)).

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 either way. 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; or
- d) on indictment to a fine. (see section 3(4)).

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 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 the Secretary of State 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 either way. A person convicted of any offence under section is liable:

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on indictment to a fine

(see section 2(7)).

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

## **Appendix 3: 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 they must –

- (a) if they are the owner of it give notice to the receiver stating that they have found or taken possession of it and describing the marks by which it may be recognised;
- (b) if they are not the owner of it, give notice to the receiver that they have found or taken possession of it, and as directed by the receiver, either hold it to the receiver's 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 a fine not exceeding level 4 on the standard

scale. Further if they are not the owner of the wreck they 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 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 either way. 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 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)).

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

#### **Treasure Act 1996 –**

Section 8(3) the finder of an object which 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 a maximum term of imprisonment of 3 months or both.

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.

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# Historic England

We are the public body that looks after England's historic environment. We champion historic places, helping people understand, value and care for them.

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