

Department of the Environment, Heritage & Local Government

Summary of proposals to consolidate, revise and extend the National Monuments Acts, 1930 to 2004 and related enactments

Background

1. In September 2007 the Minister announced a major review of archaeological policy and practice in Ireland. The Minister stated that the aim of the review was to make policy and practice in protecting Ireland's archaeological heritage the best there could be and to draw from the experience and advice of experts both at home and abroad to achieve this.

In order to ensure that every effort was made to properly define the nature and scope of the Review and to advise the Minister on the prioritisation of issues coming out of a consultation process on the review, an Expert Advisory Committee was established to advise the Minister on how to respond to the issues that emerged in the consultation process.

At the Minister's request the Expert Advisory Committee concentrated, initially, on legislative provisions to up-date and replace the National Monuments Acts 1930, 1954, 1987, 1994 & 2004. The Minister made clear the high priority he sets on the production of new legislation in this area and set out an ambitious timetable for the delivery of recommendations for new legislation.

Main Provisions of the Proposed Bill

2. The proposed Bill will repeal existing legislation and eliminate many anomalies and inconsistencies which have arisen through successive amending acts.

The main objectives of the Bill include the provision of:

- A single piece of consolidated and modernised legislation to replace the existing National Monuments Acts dating from 1930 to 2004.
- A single Register of Monuments to replace the statutory Record of Monuments and Places and the statutory Register of Historic Monuments.
 - Monuments on the Register will have either Ministerial 'consent' level protection or 'notification' level protection; the term 'national monument' will no longer be used; monuments formerly designated as national monuments, including those subject to preservation orders, will be given 'consent' level protection
- A statutory mechanism for dealing with all new discoveries of archaeological monuments and sites; current legislation only deals with discoveries made on approved road schemes.
- A single consistent system for regulating archaeological works in relation to all types of development both in the public and private sector; at present

differing regimes apply to approved road schemes and other public infrastructure provision and private sector development.

- A more efficient licensing system for archaeological excavations, effectively providing for a single licence for all archaeological works relating to a particular scheme or project, rather than a multiplicity of licences which can be required at present.
- An appeals system where an application for a licence is refused.
- A new system for the identification, registration and conservation of historic landscapes.
- Improved recognition of and protection for archaeology under planning legislation.

Definition of Monument

3. The new legislation will include a broad definition of ‘monument’. A monument, however, will not have automatic protection simply by virtue of the fact that it is deemed to be a monument. Protection will only apply to monuments which are included in the Register of Monuments, based on the criteria set out for such inclusion. Whereas the definition includes all artificial or artificially altered structures, inclusion in the Register would have to be justifiable in each case by virtue of archaeological, architectural, historical or other cultural interest. This clarification is included to allay undue concerns regarding the implications of the broad nature of the definition of monument.

Conservation of Historic Landscapes

4. The Bill will also include a broad definition of landscape. Similar to monuments, however, a landscape will not attract automatic protection simply by virtue of the fact that it fits the definition. The issue of statutory recognition will be restricted through the set criteria and expert advice that the Minister applies prior to designation.

There will be two levels of protection for historic landscapes. The first level will include a small number of iconic landscapes, to be known as Outstanding Historic Landscapes. The second level will be comprised of Special Historic Landscapes; these will be more locally based historic landscapes, mainly complexes of archaeological monuments.

A Special Historic Landscape will merit formal recognition in the planning and development process. However, in the case of Outstanding Historic Landscapes, the Minister will have, in addition, discretionary powers to intervene directly to protect the landscape. The planning acts (Section 10) will be amended to acknowledge the existence of ‘Outstanding’ and ‘Special’ historic landscapes and the duty of the local authorities to conserve them.

Register of Monuments

5. The system of recording and listing monuments that has developed over time is far too complex and should be simplified. There will be one Register of Monuments which will be GIS based and available online. General parameters for what is to be included in the Register are to be set out in the Bill. Monuments in the Register will have either ‘higher’ or ‘general’ level protection. Monuments with ‘higher’ protection will be subject to a higher

‘consent level’ protection while monuments with ‘general’ protection will have ‘notification level’ protection, with the Minister allowed to impose conditions on any proposed works. Clear and understandable criteria regarding what monuments are to be assigned ‘higher’ and ‘general’ protection will be set out in regulations to be laid before the Houses of the Oireachtas. The Minister will have the power to determine such criteria.

New Discoveries

6. The Bill will include a clear statutory mechanism for dealing with unexpected discoveries. Chance discoveries of previously unknown monuments of archaeological interest will have to be reported to the Minister, who will then have the power to decide whether such a monument should be included in the Register, and what level of protection it should be given. If the Minister decides not to enter such a monument into the Register of Monuments, development works will be able to proceed without restriction. The Minister must set out, by regulation, what is to be reported and what would constitute a newly discovered monument of archaeological interest.

Archaeology infrastructure and other Development

7. The proposed Bill should not impede the delivery of major infrastructure projects. It is intended to support the productive capacity of the economy while, at the same time, ensuring that the Minister’s obligations to protect the built heritage are met.

The significance of the National Monuments legislation for infrastructural development arises primarily through the control of archaeological excavation standards. In this context the non-statutory Codes of Practice agreed between the Department and the National Roads Authority, the Railway Procurement Agency, the Irish Concrete Federation and others are highly effective. The Project Archaeologists appointed under the Codes of Practice have a direct role in determining the level of archaeological mitigation required and in ensuring all mitigation is carried out in a satisfactory and cost effective manner. The new Bill will give a general statutory basis for promotion of the Codes of Practice with infrastructure providers.

The current system whereby certain road schemes are treated differently in terms of archaeology to other types of development will not be maintained. There will be one effective and consistent system for dealing with archaeological activity associated with all types of development. See below in relation to licensing.

In relation to planning it is proposed that more detailed provision for archaeological heritage should be included in section 34 of the Planning Act of 2000. The aim of this will be to put beyond doubt the powers of planning authorities to take effective measures to ensure protection of such heritage when determining planning applications, whether by grant or refusal, and by attaching appropriate conditions. Whereas planning authorities do currently take account of archaeological heritage, the basis for this was not made clear or express in section 34 of the Act of 2000. This is in contrast to the situation as regards architectural heritage. It is, therefore, proposed to make clear that

archaeological heritage (including monuments etc. protected under the National Monuments Acts) must be considered in the determination of planning applications and, further, to make clear that planning conditions can require, at the expense of developers, the undertaking of archaeological work using appropriate methods.

It is also proposed that there should be a requirement on planning authorities to provide reasons, in writing, where they decide not to adopt a recommendation from the National Monuments Service of the Department.

Regulation of Archaeological Activity / Licensing

8. The existing provisions for regulation of archaeological activity are being replaced, in this Bill, with one overall licensing section. At the moment several different types of licence or consent may be required under the Acts to do the same or closely related archaeological work. For example, a person wanting to do an underwater archaeological survey (which can be needed as part of pre-development assessment) may need a licence to dive on a historic wreck and a consent to use a detection device (if the survey involves the use of a metal detector-type device to search for archaeological objects). If the work involved any excavation to uncover archaeological features then an archaeological excavation licence would also be required. In the new Bill, while a particular activity or set of activities might be covered by several provisions of the Act they will all come under one licence. Instead of varying usage of the terms 'licence' and 'consent' in different sections (as in the existing Acts), the Bill will use the term 'licence' consistently throughout.

A method statement will need to be submitted, along with the licence application, which will cover all activities that it is proposed be carried out on a site, including procedures for dealing with archaeological objects recovered during the course of an excavation (only applicable where the NMI have agreed to proposals as contained in the method statement for dealing with archaeological objects and to the extent specified in the method statement).

Searching for exposed archaeological objects and features will be brought within the licensing arrangements. Export of archaeological objects will remain separate from the main licensing system.

The Bill will set out the matters which the Minister will consider in deciding on the granting or refusal of a licence. The Bill also includes a new right of appeal in relation to refusal of licences. The Minister will have the power to appoint an appeals officer or an appeals panel.

Archaeological Objects

9. Existing provisions for archaeological objects are working well and will remain in place, with some improvements. Regulations are required for the curation and storage of artefacts recovered during excavation and post-excavation and for their storage in the national repository, once it is established.

The Bill will give a clearer effect to the principles set out by the Supreme Court in *Webb v Ireland* in 1988, building on what was achieved in the 1994 Act. The ownership of any archaeological object found in the State, which has no known owner, shall be vested in the State.

The Minister for Arts, Sports and Tourism retains responsibility for any Ministerial functions relating to archaeological objects.

Protection of Underwater Archaeological Heritage

10. The system of general protection of wrecks which are 100 or more years old will be maintained. There should, however, be a provision to allow the Minister to include later wrecks if required (e.g. WW2 wrecks). In addition, there should be a requirement for a licence to dive on all protected wrecks and underwater archaeological monuments, with the Minister allowed to grant exemptions for non-intrusive diving on wrecks of 100+ years which are of little archaeological or historical interest. Searching for wrecks of 100+ years and for other underwater archaeological sites should also be licensable.

Provision should be made in the new Act to enable Ireland to ratify the UNESCO Convention on the Protection of the Underwater Cultural Heritage which is about to enter into force as 20 states have now completed ratification.

Next Step

11. The Department is preparing draft heads of a bill based on the Recommendations of the Expert Advisory Committee. These draft heads will shortly be circulated to Government Departments for consultation. Following a period of consultation the draft scheme of the Bill will then be submitted to the Government for approval.