



Overview of Proposals to Replace the National Monuments Acts

*-Proposed new legislation to consolidate,
revise and extend the National Monuments
Acts*

Conference of the Institute of Archaeologists of Ireland,
Saturday July 18th 2009

[Background to Proposals]

- In September 2007 the Minister announced a review of archaeological policy & practice in Ireland.
- An Expert Advisory Committee was established to advise the Minister on issues that arose from the consultation process.
- EAC concentrated initially on the update and replacement of the National Monuments Acts 1930, 1954, 1987, 1994 & 2004.

Draft Heads of Monuments Bill 2009 – Some Key Issues

- Intended to be a single piece of modern legislation, replacing the National Monuments Acts 1930 to 2004 and related enactments (Amendment of Planning and Development Acts may also be covered)
- Intended to eliminate anomalies and inconsistencies in existing legislation
- Intended to provide effective mechanisms for the protection of monuments and to provide effective regulation control of licensable activities (e.g. archaeological excavation) but also providing streamlined regulatory systems
- Would introduce several new concepts, such as historic landscapes, into our legislation

[Protection of Monuments]

- A broad definition of ‘monument’
- Establishment of a single Register of Monuments
- Protection for newly discovered/previously unreported archaeological monuments
- Continuation in revised form of ownership/guardianship by Minister and local authorities; role of OPW to be set out in primary legislation

[The Register of Monuments]

- One Register which could be available in electronic/digital format
- Default level of protection: Work to monument required to be under licence unless notice given and set time has elapsed without Minister having imposed conditions on the work (“General Protection”)
- Full consent level protection (“Special Protection”) can also be assigned, without monument first having to be under threat or considered of national importance (though term “national monument” may be retained in modified form)
- Special protection also applying automatically to certain other categories; registered monuments in ownership/guardianship of the Minister or a local authority
- Notification of owners where special protection to be assigned; discretionary as regards general protection but new onus re. promotion of public awareness of Register

Protection of newly discovered/previously unreported archaeological monuments

- Aim is to provide same protection for these as applies to archaeological objects and wrecks 100 years old under existing legislation
- Clear definition of scope will be essential for a workable and legally robust system to be put in place – may necessitate a date criterion, but this would not apply to the Register
- Will include reporting requirements for new discoveries and a measure of protection for all monuments within scope of system (probably “General Protection”). This would bring Ireland into line with pattern in a number of common law jurisdictions
- Will not apply to monuments found in course of licensed archaeological excavation and provision for other necessary exemptions is being considered

Historic Landscapes

- Minister will be able, following consultation process, to designate Outstanding Historic Landscapes
- Protection of these would be achieved, at first instance, through the planning process but reserve powers will be provided for Minister should that prove insufficient
- Provision for management/conservation plans, developed in consultation with local communities
- Minister to also have role in providing list of other important historic landscapes (Special Historic Landscapes) which would have to be taken account of in planning process
- Broader recognition of historic character of whole landscape

[Archaeological & Historic Objects]

(1)

- Provisions regarding archaeological objects to a large extent build on existing ones, but aim to provide a clear statutory path from discovery to final disposition
- Intended to give better effect in statute law to the principles set out in case law in *Webb v Ireland*
- Licensing functions regarding archaeological objects to remain with Minister for Arts, Sport and Tourism/Board of NMI; but see further re. licensing in general

[Archaeological & Historic Objects]

(2)

- Consideration being given to a system of discretionary protection for a wider category of moveable objects than archaeological objects; “historic objects”
- Provision to enable ratification of:
 - the 1995 Unidroit Convention on Stolen and Illegally Exported Cultural Objects
 - the 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property (“Paris Convention”)

Protection of Underwater Archaeological Heritage

- Continuation of automatic full protection for all wrecks 100 or more years old and underwater archaeological objects, but possible diving in appropriate cases introduction of powers to grant exemption for non-intrusive
- Application of such protection to underwater archaeological monuments, but need for clear definition of scope as discussed earlier
- System of Underwater Heritage Orders to be, in effect, incorporated into Register of Monuments
- All searching for protected wrecks etc. to be regulated
- Provision to allow ratification of the UNESCO Convention on the Protection of the Underwater Cultural Heritage and implementation in statute law of principles set out in case law regarding non-application of salvage law to historic wrecks

General provisions regarding licensing

- Integrated licensing as regards all works and activities licensable by the Minister for EHLG under the Bill
- As regards alteration of archaeological objects, possible integration with agreement of NMI if method statement for an archaeological excavation (or other licensable activity) sets out appropriate and sufficiently detailed proposals
- Additions/clarifications regarding what activities are licensable
- Assessment of competence to receive a licence put on a statutory basis
- Factors to be taken account of in consideration of licence applications to be included in Bill
- Statutory appeals procedure

[Next Steps]

- Heads circulated to Government Departments for consultation
- Submissions from other Departments which must be addressed
- Draft scheme of Bill submitted to Government for approval
- Following Government approval Heads go to Office of Parliamentary Counsel for formal drafting
- Introduction of Bill into Houses of Oireachtas and subsequent enactment
- Implementation will require preparation of regulations, policy documents and guidelines, as referred to in the Act (and in some cases these may need to be in place at time of commencement of Act or parts of it)