



APPENDIX 14-3

**LEGISLATION *PROTECTING*
THE *ARCHAEOLOGICAL*
*RESOURCE***

PROTECTION OF CULTURAL HERITAGE

The cultural heritage in Ireland is safeguarded through national and international policy designed to secure the protection of the cultural heritage resource to the fullest possible extent (Department of Arts, Heritage, Gaeltacht and the Islands 1999, 35). This is undertaken in accordance with the provisions of the *European Convention on the Protection of the Archaeological Heritage* (Valletta Convention), ratified by Ireland in 1997.

THE ARCHAEOLOGICAL RESOURCE

The *National Monuments Acts 1930 to 2014* and relevant provisions of the *National Cultural Institutions Act 1997* are the primary means of ensuring the satisfactory protection of archaeological remains, which includes all man-made structures of whatever form or date except buildings habitually used for ecclesiastical purposes in the Republic of Ireland. A National Monument is described as ‘a monument or the remains of a monument the preservation of which is a matter of national importance by reason of the historical, architectural, traditional, artistic or archaeological interest attaching thereto’ (National Monuments Act 1930 Section 2). A number of mechanisms under the National Monuments Act are applied to secure the protection of archaeological monuments. These include the Register of Historic Monuments, the Record of Monuments and Places, and the placing of Preservation Orders and Temporary Preservation Orders on endangered sites. The Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023 was enacted in October 2023. Most of the Act has not yet entered force, pending ministerial Commencement Orders that will repeal the National Monuments Acts and institute new provisions equipped to cater for the protection of historic heritage in a modern era.

OWNERSHIP AND GUARDIANSHIP OF NATIONAL MONUMENTS

The Minister may acquire national monuments by agreement or by compulsory order. The state or local authority may assume guardianship of any national monument (other than dwellings). The owners of national monuments (other than dwellings) may also appoint the Minister or the local authority as guardian of that monument if the state or local authority agrees. Once the site is in ownership or guardianship of the state, it may not be interfered with without the written consent of the Minister.

PRESERVATION ORDERS AND TEMPORARY PRESERVATION ORDERS

Sites deemed to be in danger of injury or destruction can be allocated Preservation Orders under the 1930 Act. Preservation Orders make any interference with the site illegal. Temporary Preservation Orders can be attached under the 1954 Act. These perform the same function as a Preservation Order but have a time limit of six months, after which the situation must be reviewed. Work may only be undertaken on or in the vicinity of sites under Preservation Orders with the written consent, and at the discretion, of the Minister.

RECORD OF MONUMENTS AND PLACES

Section 12(1) of the 1994 Act requires the Minister for Arts, Heritage, Gaeltacht and the Islands (now the Minister for the Department of Housing, Local Government and Heritage) to establish and maintain a record of monuments and places where the Minister believes that such monuments exist. The record comprises a list of monuments and relevant places and a map/s showing each monument and relevant place in respect of each county in the state. All sites recorded on the Record of Monuments and Places receive statutory protection under the National Monuments Act 1994. All recorded monuments on the proposed development site are represented on the accompanying maps.

Section 12(3) of the 1994 Act provides that ‘where the owner or occupier (other than the Minister for Arts, Heritage, Gaeltacht and the Islands) of a monument or place included in the Record, or any other person, proposes to carry out, or to cause or permit the carrying out of, any work at or in relation to

such a monument or place, he or she shall give notice in writing to the Minister of Arts, Heritage, Gaeltacht and the Islands to carry out work and shall not, except in case of urgent necessity and with the consent of the Minister, commence the work until two months after giving of notice’.

Under the National Monuments (Amendment) Act 2004, anyone who demolishes or in any way interferes with a recorded site is liable to a fine not exceeding €3,000 or imprisonment for up to 6 months. On summary conviction and on conviction of indictment, a fine not exceeding €10,000 or imprisonment for up to 5 years is the penalty. In addition, they are liable for costs for the repair of the damage caused.

In addition to this, under the *European Communities (Environmental Impact Assessment) Regulations 1989*, Environmental Impact Statements (EIS) are required for various classes and sizes of development project to assess the impact the proposed development will have on the existing environment, which includes the cultural, archaeological and built heritage resources. These document’s recommendations are typically incorporated into the conditions under which the proposed development must proceed, and thus offer an additional layer of protection for monuments which have not been listed on the RMP.

THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Under planning legislation, each local authority is obliged to draw up a Development Plan setting out their aims and policies with regard to the growth of the area over a five-year period. They cover a range of issues including archaeology and built heritage, setting out their policies and objectives with regard to the protection and enhancement of both. These policies can vary from county to county. The Planning and Development Act 2000 (as amended) recognises that proper planning and sustainable development includes the protection of the archaeological heritage. Conditions relating to archaeology may be attached to individual planning permissions.

CORK COUNTY DEVELOPMENT PLAN 2022-2028 Objectives:

TO 10-5: Protection of Natural, Built and Cultural Features

Protect and conserve those natural, built, and cultural heritage features that form the resources on which the County’s tourist industry is based. These features will include areas of important landscape, coastal scenery, areas of important wildlife interest, historic buildings and structures including archaeological sites, cultural sites including battlefields, the Gaeltacht areas, arts and cultural sites, the traditional form and appearance of many built up areas and promote access and interpretation of archaeological sites in State and Local Authority ownership.

HE 16-2: Protection of Archaeological Sites and Monuments

Secure the preservation (i.e. preservation in situ or in exceptional cases preservation by record) of all archaeological monuments and their setting included in the Sites and Monuments Record (SMR) (see www.archaeology.ie) and the Record of Monuments and Places (RMP) and of sites, features and objects of archaeological and historical interest generally.

In securing such preservation, the planning authority will have regard to the advice and recommendations of the Development Applications Unit of the Department of Housing, Local Government and Heritage as outlined in the Frameworks and Principles for the Protection of the Archaeological Heritage policy document or any changes to the policy within the lifetime of the Plan.

HE 16-4: Zones of Archaeological Potential in Historic Towns and Settlements

Proposed development works in Historic Towns and settlements, Zones of Archaeological Potential, Zones of Notification and the general historic environs in proximity to the zones, should take

cognisance of the impact potential of the works, and all appropriate archaeological assessments employed to identify and mitigate the potential impacts.

HE 16-5: Zones of Archaeological Potential

Protect the Zones of Archaeological Potential (ZAPs) located within historic towns, urban areas and around archaeological monuments generally. Any development within the ZAPs will need to take cognisance of the upstanding and potential for subsurface archaeology, through appropriate archaeological assessment.

HE 16-6: Industrial and Post Medieval Archaeology

Protect and preserve industrial and post-medieval archaeology and long-term management of heritage features such as mills, limekilns, forges, bridges, piers and harbours, water-related engineering works and buildings, penal chapels, dwellings, walls and boundaries, farm buildings, estate features, military and coastal installations. There is a general presumption for retention of these structures and features. Proposals for appropriate redevelopment including conversion should be subject to an appropriate assessment and record by a suitably qualified specialist/s.

HE 16-8: Burial Places

Protect all historical burial places and their setting in County Cork and encourage their maintenance and care in accordance with appropriate conservation principles.

HE 16-9: Archaeology and Infrastructure Schemes

All large scale planning applications (i.e. development of lands on 0.5 ha or more in area or 1km or more in length) and Infrastructure schemes and proposed roadworks are subjected to an archaeological assessment as part of the planning application process which should comply with the Department of Arts, Heritage and the Gaeltacht's codes of practice. It is recommended that the assessment is carried out following pre planning consultation with the County Archaeologist, by an appropriately experienced archaeologist to guide the design and layout of the proposed scheme/development, safeguarding the archaeological heritage in line with Development Management Guidelines.

HE 16-10: Management of Monuments within Development Sites

Where archaeological sites are accommodated within a development it shall be appropriately conservation/ protection with provision for a suitable buffer zone and long-term management plan put in place all to be agreed in advance with the County Archaeologist.

HE 16-11: Archaeological Landscapes

To protect archaeological landscapes and their setting where the number and extent of archaeological monuments are significant and as a collective are considered an important archaeological landscape of heritage value.

HE 16-13: Undiscovered Archaeological Sites

To protect and preserve previously unrecorded archaeological sites within County Cork as part of any development proposals. The Council will require preservation in situ to protect archaeological monuments discovered. Preservation by record will only be considered in exceptional circumstances.

HE 16-23: Cultural Heritage

Protect and promote the cultural heritage of County Cork as an important economic asset and for its intrinsic value to identity of place and the well being of people within the County.