

## Appendix 17.1 Summary of Relevant Legislation

### Historic and Archaeological Heritage and Miscellaneous Provisions Act (2023)

The Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023 was enacted in October 2023 and this Act is now law. The Minister for DHLGH commenced certain provisions in May 2024 (S.I. No. 252/2024) which relate to World Heritage Property in the State, inventories, the protection of certain records, the promotion of heritage, and the issuing of statutory guidance. Certain related and supporting provisions concerning implementation and enforcement are also commenced. However, until the Act is fully commenced, the National Monuments Acts and the Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act have not yet been repealed and therefore remain in force.

The Act also contains transitional provisions which will, if necessary, enable certain aspects of the existing National Monuments Acts 1930 to 2014 to continue in operation while successor provisions are being brought fully into operation. An example of this would be provisions enabling the Record of Monuments and Places to continue to have effect pending the establishment of a new Register of Monuments.

A person performing a function under this Act shall recognise and take due account of the following principles in performing that function:

that historic heritage is a non-renewable resource of great cultural and scientific importance which, in addition to its intrinsic value, provides evidence for the development of society and promotes public understanding and appreciation of all periods of the past;

that the first option to be considered should be the protection in situ of historic heritage and that there ought to be a presumption in favour of this option;

that any removal or alteration of historic heritage should be accompanied by all necessary and appropriate recording of such heritage;

that the Valletta Convention should be adhered to as well as any other international treaty, to which the State is a party, the provisions of which are aimed at promoting or securing the protection of the archaeological, architectural or other historic heritage;

that responsibility for the protection of historic heritage is, as a resource of benefit to all, shared by all and, accordingly, that those permitted to remove or interfere with such heritage should, in the normal course, bear the costs of any recording or protective work necessitated by, or associated with, such removal or interference.

For the avoidance of doubt, it is hereby declared that the destruction, whether in whole or in part and by whatever means, of a monument to which general protection or special protection applies shall not prejudice the continuation of such protection to the remainder (if any) of the monument, including the site, surrounding area and immediate surroundings of the monument.

The Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023 will establish a Register of Monuments which will replace and supersede the existing Record of Monuments and Places and the Register of Historic Monuments. The Register shall include

- a) prescribed monuments known to the Minister which are deemed appropriate to be entered in the Register;
- b) relevant things of a relevant interest deemed appropriate to be entered in the Register.

A prescribed monument will be a relevant thing of archaeological interest or of other relevant interest. It may be prescribed by reference to any one or more than one of the following criteria:

- a) age, date or period (including by reference to any terminology relating to periods) that, in the opinion of the Minister, is or has been in use in archaeology or other relevant disciplines;
- b) morphology;
- c) condition;
- d) typology (including by reference to typologies which, in the opinion of the Minister, are or have been in use in archaeology or other relevant disciplines);
- e) the environment in which the relevant thing is situated (including whether or not the relevant thing is situated under water);
- f) the circumstances in which the relevant thing is found (including the manner of finding);
- g) whether the relevant thing is or is not marked or shown on any—
  - i. edition of any ordnance map, or
  - ii. map prescribed for the purposes of this paragraph.

“Relevant thing” means any of the following things, whether situated on, in or under land and whether or not attached to the surface of the land or forming part of land and whether or not intentionally or originally in the sites where they respectively are:

- a) any artificial structure, construction, deposit, feature or layer (including any building and any burial or interment);
- b) any artificially altered structure, construction, deposit, feature or layer, whether or not natural in origin;
- c) any wreck;
- d) any ritual or ceremonial site;
- e) any site where an historic event took place, including any other site directly associated with that event;
- f) any battlefield;
- g) any site with legendary or mythological associations;
- h) any feature, deposit or layer, whether or not natural in origin and whether or not artificially altered, containing or providing information or evidence relating to the past environment;

The Register shall be in the form of an electronic database which is easily accessible to members of the public through public telecommunication networks. The registered monument may include a surrounding area which is considered reasonably necessary to secure the protection of the monument or thing.

Where a person finds, or believes that he or she has found a prescribed monument other than a registered monument, the person shall make a preliminary report Minister or a member of An Garda Síochána within 72 hours, or in the case of discovery in the course of licensable activity, that it be reported to the Minister in such a manner as specified in the licence.

Special protection may be applied to a registered monument taking into account whether the monument is, in terms of such heritage, of special or particular interest, character, integrity, community or amenity value, whether at a local, regional, national or international level. This includes

- a) a national monument,
- b) a wreck of 100 or more years old, or
- c) a guardianship monument.

A person shall not carry out works at, on, in, under, to, or within the immediate surroundings of a monument to which special protection applies, or direct or authorise the carrying out of such works, other than under and in accordance with a licence. This shall be deemed to apply to a registered

monument in the ownership or guardianship of the Minister or a local authority where special protection does not otherwise apply to the monument.

General protection applies to

- a) a registered monument to which special protection does not apply, and
- b) a prescribed monument (not being a registered monument).

A person shall not carry out works at, on, in, under, to, or within the immediate surroundings of a monument to which general protection applies, or direct or authorise the carrying out of such works, other than under and in accordance with a licence.

A person shall not, except under and in accordance with a licence, do any of the following at, on, in, over, under or in the vicinity of a wreck 100 or more years old, a registered monument or prescribed monument which is under water, or an archaeological object which is underwater:

- a) dive or direct or authorise diving;
- b) use or possess, or direct or authorise the use or possession of, diving, survey or salvage equipment;
- c) dump or deposit, or direct or authorise the dumping or deposition of, any thing whether or not it interferes with or causes damage to the thing;
- d) interfere, remove or tamper in any way (whether with or without causing damage) with the thing.

The Minister may prescribe a licence, consent, approval, permission or other authorisation where

- a) a licence, consent, approval, permission or other authorisation is required to be granted, issued or given under an enactment (not being the Act of 2000) for works to be carried out which may require an EIA, and
- b) the Minister is satisfied that such works are capable of being at, on, in, under, to, or within the immediate surroundings of a monument, and it is reasonable and proportionate to do so and compatible with the protection of monuments,

The Minister shall consider whether or not the relevant works in respect of which they should be made subject to conditions and may require all or any of the following:

- a) the carrying out of an assessment of heritage interest or potential including an assessment by way of archaeological excavation, use of detection devices or any form of photographic or geophysical survey equipment or any other appropriate form of survey or inspection;
- b) the recording of the monument as a whole or any part or aspect of it (including its immediate surroundings) or any objects on, in, under or within it or its immediate surroundings including recording by way of archaeological excavation, use of detection devices or any form of photographic or geophysical survey equipment or any other appropriate form of survey or inspection;
- c) the carrying out of any form of monitoring (including archaeological monitoring), supervision or inspection;
- d) the salvaging, collection or protection of any part of the monument (including its immediate surroundings) or any object on, in, under or within it or its immediate surroundings and, where appropriate, the preparation of such part or object for deposition in an appropriate museum or other site for such deposition;
- e) the specification of the time period when the relevant works are to be carried out;
- f) that the relevant works be done in a specified manner or be funded or carried out by a specified person or a person falling within a specified category of persons.

The Minister shall make a screening determination for EIA in respect of the proposed relevant works on the basis of the information provided by the applicant. The Minister shall ensure that, before the application is determined, proposed relevant works likely to have significant effects on the environment by virtue of their nature, size or location (or any combination thereof) are made subject to an EIA. The applicant shall in this case submit to the Minister an EIAR in respect of the proposed relevant works, having regard to guidelines issued by the Minister.

The Minister may appoint himself or herself, or with the consent of a local authority, appoint the local authority as the guardian of a registered monument to which special protection applies. A national monument under the Act of 1930 will be deemed both a registered monument and a guardianship monument.

Any archaeological object where such object has no known owner shall be vested in the State. An owner or owner exception of land, not being the State, or a finder of an archaeological object is deemed not to acquire any rights of ownership to an archaeological object found on, in or under the land.

Where a person finds, or believes that he or she has found an archaeological object, the person shall make a preliminary report of the finding of the thing to the Board of the National Museum of Ireland or a member of An Garda Síochána within 72 hours, in the case of licensable activity, to the Minister or the Board in such manner as is specified in the licence. A person, other than a relevant person, shall not interfere with or remove a relevant archaeological object, or cause it to be interfered with or removed, except under and in accordance with a licence, or where there is reasonable grounds to believe that it is necessary to remove the thing from the site where he or she found it for the purposes of the safekeeping of the thing.

“Architectural heritage” means—

- a) structures and buildings together with their settings and attendant grounds, fixtures and fittings,
  - b) groups of structures and buildings referred to in paragraph (a), and
  - c) sites,
- that are of archaeological, architectural, cultural, historic, scientific, social or technical interest;

A person shall not, other than under and in accordance with a licence—

- a) undertake or carry out, or direct or authorise the undertaking or carrying out of, archaeological excavation,
- b) ... archaeological monitoring,
- c) search for or collect... archaeological objects lying exposed on the surface of land, whether or not any such object is known to be on, in or under that land,
- d) search for... wrecks one hundred or more years old or archaeological objects or prescribed monuments, or other relevant things of archaeological interest, situated on, in or under the sea bed or land covered by water...
- e) be in possession of a detection device in, at, on, over or above, or within the immediate surroundings of, a registered monument or a wreck one hundred or more years old, or
- f) use... a detection device for the purpose of identifying, locating (including searching for), investigating, surveying or recording any archaeological object or monument or relevant thing of archaeological interest...

Anything done by a person in the course of his or her employment shall, in any proceedings brought under this Act, be treated as done also by that person’s employer, whether or not it was done with the employer’s knowledge or approval. Anything done by a person as agent for another person,

with the authority (whether express or implied and whether precedent or subsequent) of that other person shall, in any proceedings brought under this Act, be treated as done also by that other person.

### **National Monuments Legislation (1930-2014)**

The National Monument Act, 1930 (as amended) provides the formal legal mechanism to protect monuments in Ireland. Protection of a monument is provided via:

Record of Monuments and Places (RMP);

National Monument in the ownership or guardianship of the Minister for Arts, Heritage, Regional, Rural & Gaeltacht Affairs or a Local Authority;

National Monument subject to a Preservation Order (or temporary Preservation Order);

Register of Historic Monuments (RHM).

The definition of a monument is specified as:

any artificial or partly artificial building, structure or erection or group of such buildings, structures or erections;

any artificial cave, stone or natural product, whether forming part of the ground, that has been artificially carved, sculptured or worked upon or which (where it does not form part of the place where it is) appears to have been purposely put or arranged in position;

any, or any part of any, prehistoric or ancient tomb, grave or burial deposit, or (ii) ritual, industrial or habitation site; and

any place comprising the remains or traces of any such building, structure or erection, any cave, stone or natural product or any such tomb, grave, burial deposit or ritual, industrial or habitation site.

Under Section 14 of the Principal Act (1930):

It shall be unlawful...

to demolish or remove wholly or in part or to disfigure, deface, alter, or in any manner injure or interfere with any such national monument without or otherwise than in accordance with the consent hereinafter mentioned (a licence issued by the Office of Public Works National Monuments Branch),

or

to excavate, dig, plough or otherwise disturb the ground within, around, or in the proximity to any such national monument without or otherwise than in accordance...

Under Amendment to Section 23 of the Principal Act (1930):

A person who finds an archaeological object shall, within four days after the finding, make a report of it to a member of the Garda Síochána...or the Director of the National Museum...

The latter is of relevance to any finds made during a watching brief.

In the 1994 Amendment of Section 12 of the Principal Act (1930), all the sites and 'places' recorded by the Sites and Monuments Record of the Office of Public Works are provided with a new status in law. This new status provides a level of protection to the listed sites that is equivalent to that accorded to 'registered' sites [Section 8(1), National Monuments Amendment Act 1954] as follows:

The Commissioners shall establish and maintain a record of monuments and places where they believe there are monuments and the record shall be comprised of a list of monuments and such places and a map or maps showing each monument and such place in respect of each county in the State.

The Commissioners shall cause to be exhibited in a prescribed manner in each county the list and map or maps of the county drawn up and publish in a prescribed manner information about when and where the lists and maps may be consulted.

In addition, when the owner or occupier (not being the Commissioners) of a monument or place which has been recorded, or any person proposes to carry out, or to cause or permit the carrying out of, any work at or in relation to such monument or place, he shall give notice in writing of his proposal to carry out the work to the Commissioners and shall not, except in the case of urgent necessity and with the consent of the Commissioners, commence the work for a period of two months after having given the notice.

The National Monuments Amendment Act enacted in 2004 provides clarification in relation to the division of responsibilities between the Minister of Environment, Heritage and Local Government, Finance and Arts, Sports and Tourism together with the Commissioners of Public Works. The Minister of Environment, Heritage and Local Government will issue directions relating to archaeological works and will be advised by the National Monuments Section and the National Museum of Ireland. The Act gives discretion to the Minister of Environment, Heritage and Local Government to grant consent or issue directions in relation to road developments (Section 49 and 51) approved by An Bord Pleanála and/or in relation to the discovery of National Monuments.

14A. (1) The consent of the Minister under section 14 of this Act and any further consent or licence under any other provision of the National Monuments Acts 1930 to 2004 shall not be required where the works involved are connected with an approved road development.

14A. (2) Any works of an archaeological nature that are carried out in respect of an approved road development shall be carried out in accordance with the directions of the Minister, which directions shall be issued following consultation by the minister with the Director of the National Museum of Ireland.

Subsection 14A (4) Where a national monument has been discovered to which subsection (3) of this section relates, then the road authority carrying out the road development shall report the discovery to the Minister subject to subsection (7) of this section, and pending any directions by the Minister under paragraph (d) of this subsection, no works which would interfere with the monument shall be carried out, except works urgently required to secure its preservation carried out in accordance with such measures as may be specified by the Minister.

The Minister will consult with the Director of the National Museum of Ireland for a period not longer than 14 days before issuing further directions in relation to the national monument.

The Minister will not be restricted to archaeological considerations alone, but will also consider the wider public interest.

#### **Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act, 1999**

This Act provides for the establishment of a national inventory of architectural heritage and historic monuments.

Section 1 of the act defines “architectural heritage” as:

(a) all structures and buildings together with their settings and attendant grounds, fixtures and fittings,

(b) groups of such structures and buildings, and,

(c) sites

which are of architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

Section 2 of the Act states that the Minister (for Arts, Heritage, Gaeltacht and the Islands) shall establish the NIAH, determining its form and content, defining the categories of architectural heritage, and specifying to which category each entry belongs. The information contained within the

inventory will be made available to planning authorities, having regard to the security and privacy of both property and persons involved.

Section 3 of the Act states that the Minister may appoint officers, who may in turn request access to premises listed in the inventory from the occupiers of these buildings. The officer is required to inform the occupier of the building why entry is necessary, and in the event of a refusal, can apply for a warrant to enter the premises.

Section 4 of the Act states that obstruction of an officer or a refusal to comply with requirements of entry will result in the owner or occupier being guilty of an offence.

Section 5 of the Act states that sanitary authorities who carry out works on a monument covered by this Act will as far as possible preserve the monument with the proviso that its condition is not a danger to any person or property, and that the sanitation authority will inform the Minister that the works have been carried out.

The provisions in the Act are in addition to and not a substitution for provisions of the National Monument Act (1930–94), and the protection of monuments in the National Monuments Act is extended to the monuments covered by the Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act (1999).

### **The Local Government (Planning and Development) Act, 1999**

The Local Government (Planning and Development) Act, 1999, which came into force on 1st January 2000, provides for the inclusion of protected structures into the planning authorities' development plans and sets out statutory regulations regarding works affecting such structures, thereby giving greater statutory protection to buildings. All structures listed in the development plan are now referred to as Protected Structures and enjoy equal statutory protection. Under the 1999 Act the entire structure is protected, including a structures interior, exterior, the land lying within the curtilage of the protected structure and other structures within that curtilage. This Act was subsequently repealed and replaced by the Planning and Development Act, 2000, where the conditions relating to the protection of architectural heritage are set out in Part IV of the Act.

#### **Protected Structures, Curtilage & Attendant Grounds**

A protected structure is defined in the Local Government (Planning and Development) Act 2000 as any structure or specified part of a structure, which is included in the planning authorities' Record of Protected Structures (RPS). Section 57 (1) of the 2000 Act states that "...the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of

- (a) the structure, or
- (b) any element of the structure, which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

By definition, a protected structure includes the land lying within the curtilage of the protected structure and other structures within that curtilage and their interiors. The notion of curtilage is not defined by legislation, but according to Architectural Heritage Protection Guidelines for Planning Authorities (2004) and for the purposes of this report it can be taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purpose of the structure.

The attendant grounds of a structure are lands outside the curtilage of the structure but which are associated with the structure and are intrinsic to its function, setting and/or appreciation. The attendant grounds of a country house could include the entire demesne, or pleasure grounds, and any structures or features within it such as follies, plantations, lakes etc.