

Appendix A.13.8

Legislative Framework Protecting the Archaeological Resource

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Legislative Framework 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 Act 1930 to 2014 (as amended) 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. 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.

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.

Register of Historic Monuments

Section 5 of the National Monuments (Amendment) Act 1987 requires the Minister to establish and maintain a Register of Historic Monuments. Historic monuments and archaeological areas present on the register are afforded statutory protection under the 1987 Act. Any interference with sites recorded on the register is illegal without the permission of the Minister. Two months’ notice in writing is required prior to any work being undertaken on or in the vicinity of a registered monument. The register also includes sites under Preservation Orders and Temporary Preservation Orders. All registered monuments are included in the Record of Monuments and Places.

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 Environment, Heritage and Local Government) 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 the case of urgent necessity and with the consent of the Minister, commence the work until two months after the 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

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 recognises that proper planning and sustainable development includes the protection of the archaeological heritage. Conditions relating to archaeology may be attached to individual planning permission.

Galway City Development Plan 2023–2029

Policy 8.4 Archaeology

1. Protect, preserve and promote the archaeological heritage of the city including underwater archaeology in rivers, lakes, intertidal and subtidal environments
2. Ensure that proposed development within the designated city centre Zone of Archaeological Notification is not detrimental to the character of an archaeological site or its setting
3. Have regard to the archaeological recommendations of the DHLGH on any planning applications
4. Endorse the sustainable use of archaeological heritage as an educational and cultural resource and promote public awareness of the archaeological heritage of the city
5. Require the surveying, recording or excavation of archaeological heritage to include standing historic buildings and underwater archaeological heritage during the development process, where appropriate
6. Seek the preservation in situ or, at a minimum, preservation by record of archaeological sites/monuments included in the Record of Monuments and Places and of previously unknown sites, features or objects of archaeological interest that are revealed through development activity
7. Ensure that any development proposal with potential to impact on archaeological heritage, including the setting and amenity of sites and monuments, includes for an archaeological assessment. This includes within terrestrial, riverine, inter-tidal and sub-tidal environments

Policy 8.5 Industrial Archaeology

1. Promote the protection of the varied industrial heritage of the city and encourage greater appreciation and public awareness of this heritage.

Galway County Development Plan 2022–2028

ARC 1 Legislative Context

Support and promote the preservation, conservation and appropriate management and enhancement of the County's archaeological sites and monuments, together with the settings of these monuments, having regard to the legislative, statutory and policy provisions relevant to the conservation of the archaeological heritage.

ARC 2 Archaeological Sites

Seek to encourage and promote awareness of and access to archaeological heritage of the County for all, through the provision of information to landowners and the community generally, in co-operation with statutory and other partners.

ARC 3 Archaeological Landscapes

To facilitate where possible the identification of important archaeological landscapes in the County.

ARC 4 Protection of Archaeological Sites

Protect archaeological sites and monuments their settings and visual amenity and archaeological objects and underwater archaeological sites that are listed in the Record of Monuments and Places,

in the ownership/guardianship of the State, or that are subject of Preservation Orders or have been registered in the Register of Historic Monuments, or that are newly discovered and seek to protect important archaeological landscapes.

ARC 5 Development Management

All planning applications for new development, redevelopment, any ground works, refurbishment, and restoration, etc. within areas of archaeological potential or within close proximity to Recorded Monuments or within the historic towns of County Galway will take account of the archaeological heritage of the area and the need for archaeological mitigation.

ARC 6 Burial Grounds

Protect the burial grounds, identified in the Record of Monuments and Places, in cooperation with the National Monuments Service of the Department of Housing, Local Government and Heritage. Encourage the local community to manage burial grounds in accordance with best conservation and heritage principles.

ARC 7 Battlefield Sites

Protect the Battle of Aghrim site and other battlefield sites and their settings.

ARC 8 Underwater Archaeological Sites

To protect and preserve the archaeological value of underwater archaeological sites and associated features. In assessing proposals for development, the Council will take account of the potential underwater archaeology of rivers, lakes, intertidal and sub-tidal locations.

ARC 9 Recorded Monuments

Ensure that any development in the immediate vicinity of a Recorded Monument is sensitively designed and sited and does not detract from the monument or its visual amenity.

ARC 10 Zones of Archaeological Potential

To protect the Zones of Archaeological Potential located within both urban and rural areas and around archaeological monuments generally as identified in the Record of Monuments and Places. Any development within the ZAPs will need to take cognisance of the potential for subsurface archaeology and if archaeology is demonstrated to be present appropriate mitigation (such as preservation in situ/buffer zones) will be required.

ARC 11 Industrial and Post Medieval Archaeology

Protect and preserve the archaeological value of industrial and post medieval archaeology such as mills, limekilns, bridges, piers, harbours, penal chapels and dwellings. Proposals for refurbishment, works to or redevelopment/conversion of these sites should be subject to careful assessment.

ARC 12 Archaeology and Infrastructure Schemes

Have regard to archaeological concerns when considering proposed service schemes (including electricity, sewerage, telecommunications, water supply) and proposed roadwork's (both realignments and new roads) located in close proximity to Recorded Monuments and Places and their known archaeological monuments.