



APPENDIX 13-2

**LEGISLATION PROTECTING THE
ARCHAEOLOGICAL RESOURCE**

Protection of Cultural Heritage

- 1 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, p.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

- 2 The National Monuments Act 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. 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).
- 3 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.
- 4 The National Monuments Act 1930, as amended by various acts including but not limited to, the National Monuments (Amendment) Act 1954, the National Monuments (Amendment) Act 1987, the National Monuments (Amendment) Act 1994 and the National Monuments (Amendment) Act 2004 (together the National Monuments Acts) make provision for the protection and preservation of national monuments, archaeological monuments and archaeological objects in Ireland. The description of the existing environment in this chapter takes account of those statutory designations and the chapter takes account of the legislative monitoring and licencing requirements as mitigation.
- 5 The Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023 (the 2023 Act) was enacted by the Oireachtas in late 2023 and aims to address a range of structural issues, simplify terminology, as well as provide a single accessible piece of legislation. At the date of writing many sections of the 2023 Act have yet to commence. It is not anticipated that this will result in statutory protection being extended to any potential receptors apart from those already considered in the Cultural Heritage chapter and the chapter already identifies as mitigation the various archaeological investigations and licencing requirements that will come into force when the 2023 Act is commenced. Accordingly, the EIAR conclusions are likely to be unchanged should the 2023 Act commence fully while the application is moving through the planning process.

Ownership and Guardianship of National Monuments

- 6 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

- 7 Section 5 of the 1987 Act 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

- 8 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

- 9 Section 12(1) of the 1994 Act requires the Minister for Arts, Heritage, Gaeltacht and the Islands (now the Minister for the Arts, Heritage, Regional, Rural and Gaeltacht Affairs) 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.
- 10 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*'.
- 11 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 six months. On summary conviction and on conviction of indictment, a fine not exceeding €10,000 or imprisonment for up to five years is the penalty. In addition they are liable for costs for the repair of the damage caused.
- 12 In addition to this, under the European Communities (Environmental Impact Assessment) Regulations 1989, Environmental Impact Assessment Reports (EIAR) are required for various classes and sizes of development project to assess the impact 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 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 2024

- 13 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 2024 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.

CLARE COUNTY COUNCIL DEVELOPMENT PLAN 2023–2029

The following are objectives of Clare County Council:

Development Plan Objective: Sites, Features and Objects of Archaeological Interest

CDP16.8

- a) To safeguard sites, features and objects of archaeological interest generally;
- b) To secure the preservation (i.e. preservation in situ or in exceptional cases preservation by record) of all archaeological monuments included in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act, 1994, and of sites, features and objects of archaeological and historical interest generally;
- c) In securing such preservation, to have regard to the advice and recommendations of the Department of the Culture, Heritage and the Gaeltacht;
- d) To have regard to the government publication Framework and Principles for the Protection of the Archaeological Heritage 1999 in relation to protecting sites, features and objects of archaeological interest; and
- e) To advocate for greater financial assistance for the maintenance and improvement of features of archaeological interests in County Clare

Development Plan Objective: Newly Discovered Archaeological Sites

CDP16.9

To protect and preserve archaeological sites discovered since the publication of the Record of Monuments and Places.

Development Plan Objective: Zones of Archaeological Potential

CDP16.10

To protect the Zones of Archaeological Potential located within both urban and rural areas as identified in the Record of Monuments and Places.

Development Plan Objective: Archaeology and Infrastructure Schemes

CDP16.11

To ensure that decisions relating to development (including infrastructure associated with broadband, telecommunications, renewable energy, major road/ rail infrastructure, flood relief schemes and other services) which may have implications for Recorded Archaeological Monuments/Sites, Zones of Archaeological Potential or undiscovered archaeology, are informed by an appropriate level of archaeological investigation undertaken by qualified persons and the case of flood relief schemes have regard to archaeological Guidelines for Flood Relief Schemes (DHLGH and OPW2022).