



**AN BILLE NA SÉADCHOMHARTAÍ NAÍSIÚNTA (LEASÚ), 1993**  
**NATIONAL MONUMENTS (AMENDMENT) BILL, 1993**

**EXPLANATORY AND FINANCIAL MEMORANDUM**

1. The Bill expressly establishes the State's right to ownership of all archaeological objects, with no known owner, found after the enactment of the Bill and provides for the retention by the State of such objects. The Bill extends the statutory protection and preservation of archaeological objects to include the concept of treasure trove and provides for the payment of rewards to the finders of archaeological objects. Procedures are also established for the reporting of the finding and initial preservation of archaeological objects and creates offences relating to the possession, sale, or acquisition of unreported archaeological objects found since 1930. Provision is made for the extension and amendment of the National Monuments Acts, 1930-87 in respect of, *inter alia*, the recording and preservation of all monuments, the acquisition of monuments and increasing the penalties for offences under these Acts.

2. *Exchequer costs*

There is no cost to the Exchequer arising out of these proposals.

3. *Staffing implications*

There are no staffing implications for the Department.

4. *Section 1* contains definitions.

5. *Section 2* expressly establishes the State's right to ownership of all archaeological objects which have no known owner found in the State after the Bill is enacted. The section also defines the term "owner" as the person who is entitled to the actual possession of the object. This definition is derived from the definition of "owner" of a monument under the terms of the National Monuments Acts, 1930 to 1987.

*Existing Law:* New provision.

6. *Section 3* provides the State with a waiver of its rights to the ownership of an archaeological object.

*Existing Law:* New provision.

7. *Section 4* makes it unlawful to retain the possession of an archaeological object found in the State after the enactment of the Bill, or to engage in the sale, exchange or disposal of such object.

*Subsection (1)* makes it an offence for a person to have such an object in his possession or control unless for the purpose of reporting the object to the Director of the National Museum in accordance with

section 23 of the National Monuments (Amendment) Act, 1987, or where the State's rights of ownership have been waived.

*Subsection (2)* makes it an offence for a person to sell, offer for sale or exchange or otherwise dispose of such an object or buy or otherwise acquire such an object and, in relation to the sale or exchange, unless the State's rights to ownership have been waived in accordance with *section 3* of this Bill.

*Subsection (3)* provides that in proceedings for an offence under *subsection (1)* or *(2)* above, the onus is on the defendant to establish that the object was found before the passing of this Bill or was discovered outside the State.

*Subsection (4)* provides that this section shall not apply to the Director of the National Museum or to a person designated by him.

*Subsection (5)* provides that *subsection (1)* shall not apply to a person granted an excavation licence under section 26 of the National Monuments Act, 1930.

*Subsection (6)* provides that certain offences under the National Monuments Acts, 1930 to 1987 relating to the withholding of information, failure to give name and address upon request to a member of the Garda Síochána, and obstruction of official enquiries, shall be construed as applying to an offence under this section.

*Subsection (7)* provides that summary prosecutions may be instituted within 2 years of the date of the offence.

*Existing Law:* New provision.

8. *Section 5* makes it unlawful for a person to possess, purchase, acquire, sell or otherwise dispose or otherwise control an archaeological object found in the State after the enactment of the National Monuments Act, 1930 unless it has been reported in accordance with section 23 of that Act or *section 5* of this Bill.

*Subsection (1)* provides that it shall be unlawful for a person to have in his possession an archaeological object that has not been reported under Section 23 of the National Monuments Act, 1930 as amended or not reported under *subsection (3)* within three months of enactment of the Bill.

*Subsection (2)* provides that no person shall in any way acquire or dispose of an archaeological object unless the transaction is notified in accordance with *subsection (3)* to the Director of the National Museum within 30 days of the transaction.

*Subsection (3)* sets out the particular information that must be conveyed when a report is first being made and provides for furnishing of a prescribed form.

*Subsection (4)* provides that the prescribed form must be returned within 7 days of being furnished.

*Subsection (5)* provides for the prescription of regulations and cites the basic information required.

*Subsection (6)* provides for separate offences for

- failure to report,
- wilfully withholding information concerning the object,

- failing to return the form within the periods cited,
- knowingly making a false or misleading report,
- failure to give information or the provision of misleading information to the Director of the National Museum.

*Subsection (7)* provides that in proceedings for an offence under *subsection (1)* or *(2)* above, the onus is on the defendant to establish that the object was found before the passing of the Bill or was discovered outside the State.

*Subsection (8)* provides that this section shall not apply to the Director of the National Museum or to a person designated by him.

*Subsection (9)* provides that *subsection (1)* shall not apply to a person granted an excavation licence under section 26 of the National Monuments Act, 1930.

*Subsection (10)* provides that certain offences under the National Monuments Acts, 1930 to 1987 relating to the withholding of information, failure to give name and address upon request to a member of the Garda Síochána, and obstruction of official enquiries, shall be construed as applying to an offence under this section.

*Subsection (11)* provides that summary prosecutions may be instituted within 2 years of the date of the offence.

*Existing law:* New provision. Section 23 of the National Monuments Act, 1930 only requires the *finder* of an archaeological object to report the finding to the Director of the National Museum; section 24 of that Act restricts the export of all archaeological objects; section 25 of that Act prohibits injury to such objects.

9. *Section 6* provides that the Director of the National Museum may designate a person to carry out his functions in relation to the receiving of archaeological objects reported in accordance with the provisions of the Bill and provides that the Minister may designate places where archaeological objects found after the enactment of the Bill may be placed for safe keeping.

*Existing Law:* New provision.

10. *Section 7* provides for the seizure and forfeiture of unauthorised detection devices and diving equipment found at the site of a national monument.

*Subsection (1) (a)* and *(b)* provide that a member of the Garda Síochána may seize without warrant a detection device found at the site of a National Monument or diving equipment which he believes has been or is about to be used in any waters protected by an underwater heritage order made under section 3 of the National Monuments (Amendment) Act, 1987.

*Subsection (2)* provides that it will be an offence to obstruct a member of the Garda Síochána acting under this section.

*Subsection (3)* provides that where a person is convicted of an offence under the *National Monuments Acts, 1930 to 1993*, involving the unlawful use of detection devices or diving equipment, the court may order the equipment concerned to be forfeited and destroyed or otherwise disposed of.

*Subsection (4)* provides that equipment shall not be forfeited under this section until any person claiming to be the owner of or otherwise

interested in the equipment has had an opportunity to show cause why the equipment should not be forfeited.

*Subsection (5)* provides that an order of the court forfeiting equipment under this section shall not be made until the ordinary time for instituting an appeal against the conviction has elapsed or any such appeal has been decided or abandoned.

*Subsection (6)* provides that the term "detection device" has the same meaning as the definition contained in section 2 of the National Monuments (Amendment) Act, 1987.

*Existing Law:* New provision.

11. *Section 8* provides for inspections and excavations to be carried out by the Director of the National Museum.

*Subsection (1)* provides that where the finding of an archaeological object has been reported to the Director of the National Museum, he may inspect or cause to be inspected by a designated person the land or premises under which or in the vicinity of which the object was found.

*Subsection (2)* provides that the Director or a designated person may enter on any lands or premises and do anything which is reasonably necessary including the carrying out of an inspection or excavation in the performance of his functions.

*Subsection (3)* provides that no person may impede the Director or a designated person in the exercise of his functions under this section.

*Existing Law:* New provision.

12. *Section 9* relates to the taking possession of, on behalf of the State, archaeological objects with no known owner found after the enactment of the Bill by the Director of the National Museum.

*Subsection (1)* requires the Director of the National Museum to take possession of an archaeological object found after the enactment of the Bill as soon as practicable after the finding of the object has been reported to him or to a designated person. The Director may retain the object in question on behalf of the State.

*Subsection (2)* provides that this section shall not apply to an object which is not in the opinion of the Director of sufficient historical or archaeological interest to justify its retention by the State.

*Existing Law:* New provision.

13. *Section 10* provides for the payment of a reward to a person finding an archaeological object.

*Subsection (1)* provides for payment of a reward by the Director of the National Museum to any, or any combination of the following:

- the finder of the object
- owner of the land
- occupier of the land

where such object is retained by the State. Payments can only be made under this section following consultation with, and the consent of, the Minister and the Minister for Finance.

*Subsection (2)* expressly states that payment of a reward confers no rights to the ownership of the object on the recipient of the reward.

*Subsection (3)* sets out the criteria whereby the Director of the National Museum may evaluate whether a reward should be paid, namely, the intrinsic value and importance of the object, the circumstances of its finding and amounts paid in other comparable cases.

*Subsection (4)* expressly states that there is no obligation on the Director of the National Museum to pay any reward unless he is satisfied that it is in the public interest to do so.

*Existing Law:* There is no specific existing statute law in relation to the payment of rewards but rewards have been given in respect of treasure trove.

14. *Section 11* provides for the acquisition either by agreement or compulsorily of national monuments by the Commissioners of Public Works.

*Subsection (1)* provides that, with the consent of the Minister and the Minister for Finance, the Commissioners may acquire by agreement or compulsorily any of the following:

- any monument that is, in their opinion, a National Monument,
- part of such a monument,
- land in the vicinity of such a monument for the provision of facilities for persons having access to the monument,
- rights, easements, titles or any other interests in respect of the land or monument being acquired,
- easement over land to provide access to or service for the monument being acquired.

The subsection also provides that the Commissioners may acquire such monuments or lands whether or not they or a local authority are the guardians of the monument and whether or not a preservation order regarding the monument is in force. Compulsory acquisitions of monuments or land must be carried out in accordance with the schedule to this section.

*Subsection (2)* repeals section 6 of the National Monuments (Amendment) Act, 1987 which stipulated the procedures governing the acquisition of monuments by the Commissioners.

*Existing Law:* Section 6 of the National Monuments (Amendment) Act, 1987 provides for the acquisition of national monuments, parts thereof and lands in their vicinity. The provision does not extend to rights, easements or other interests.

*The Schedule to section 11* stipulates the procedure which must be adhered to by the Commissioners when they propose to compulsorily acquire any monument or lands. The schedule provides for

- the publication of the intention to acquire and informing the owners/occupiers of the property to be acquired,
- the lodging of objections by the owner/occupier of the land or monument to be acquired,
- the conditions which must be met before the consent of the Ministers is given,
- the mechanism whereby the property is actually acquired,

- the payment of any outstanding debts to the State relating to the property being acquired,
- the calculation and payment of compensation in respect of rights associated with the property,
- the prescribing by regulations of vesting orders giving effect to acquisitions.

15. *Section 12* provides for the establishment by the Commissioners of Public Works of a list of all monuments, and places where they believe monuments are located.

*Subsection (1)* is the basic provision which empowers the Commissioners to establish the record of monuments and places in which monuments may be located and the creation of a map showing such monuments and places on a county by county basis.

*Subsection (2)* provides that the Commissioners shall exhibit the list of and map showing the monuments and places recorded under *subsection (1)* for each county and shall publish information about when lists and maps may be consulted.

*Subsection (3)* provides that an owner or occupier of a monument or place recorded under *subsection (1)* shall not carry out any work on the monument or place so recorded unless he gives prior notice in writing to the Commissioners. Except in the case of urgent necessity work may not commence until two months have elapsed following the giving of the notice.

*Subsection (4)* provides for the prescribing of the manner of the exhibition of the lists of recorded monuments and places.

*Subsection (5)* extends the prohibition on the possession and use of a detection device at a monument or place recorded under this section.

*Existing Law:* *Subsections (1) to (4)* are new provisions. In relation to *subsection (5)*, section 2 of the National Monuments (Amendment) Act, 1987, *inter alia*, restricts the use and possession of detection devices in places currently protected under the National Monuments Acts, 1930 to 1987.

16. *Section 13* provides for penalties on conviction for the new offences created under *sections 4 (1), 4 (2), 5 (1), 5 (2), 5 (6), 7 (2), 8 (3) and 12 (3)* of the Bill. The maximum penalty on summary conviction is £1,000 and/or twelve months imprisonment and on conviction on indictment £50,000 and/or five years imprisonment.

17. *Section 14* makes amendments to section 2 of the National Monuments Act, 1930 by revising the definition of “archaeological object” so that the term now includes “treasure trove”.

*Existing Law:* The existing definition excludes the concept of “treasure trove” in which the rights of the State have not been waived.

18. *Section 15* substitutes *subsection (6)* of section 3 of the National Monuments (Amendment) Act, 1987 by making a particular provision requiring the reporting of archaeological objects found on or under the sea bed or in water to the Director of the National Museum.

*Existing Law:* *Subsection (6)* of section 3 of the National Monuments (Amendment) Act, 1987 provides for the reporting of both wrecks and archaeological objects found on the sea bed or in land

covered by water to the Gardai or the Commissioners of Public Works.

19. *Section 16* amends section 23 of the National Monuments Act, 1930 and revises and extends the procedures for reporting the finding of archaeological objects.

*Subsections (1) to (7)* prohibit the removal of or interference with the archaeological object found unless its removal is necessary for its preservation, provides for the removal of the object to a designated place, the reporting of its finding within a reasonable period, and the format and delivery of the report.

*Subsection (8)* stipulates the offences created by not complying with the provisions of this section and provides for penalties on conviction for an offence. The maximum penalty on summary conviction is £1,000 and/or one years imprisonment and on conviction on indictment £50,000 and/or five years imprisonment.

*Subsection (9)* provides that this section will not apply to those in possession of an excavation licence under the National Monuments Acts, 1930 to 1987 or a person who is exempted from the requirement to hold such a licence.

*Existing Law:* Section 23 of the National Monuments Act, 1930 as amended by section 15 of the National Monuments (Amendment) Act, 1987 stipulates the current requirements for reporting the finding of archaeological objects. Under this section objects taken into possession by the Director must be returned to the finder after six weeks.

20. *Section 17* extends the provisions of section 25 of the National Monuments Act, 1930 by prohibiting the cleaning, restoring or sampling by any process of archaeological objects except under and in accordance with a licence issued by the Minister.

*Existing Law:* Section 25 (1) of the National Monuments Act, 1930 contains a general prohibition on the injury, defacing or destruction of an archaeological object but the Minister is empowered to issue a licence to alter a specified archaeological object.

21. *Section 18* amends section 26 of the National Monuments Act, 1930 to require the Commissioners of Public Works to consult with the Director of the National Museum before the issue of an excavation licence.

*Existing Law:* Section 26 of the 1930 Act prohibits the digging or excavation of any land for the purpose of searching for archaeological objects unless in accordance with a licence issued by the Commissioners of Public Works.

22. *Section 19* extends the search warrant provisions of section 22 of the National Monuments (Amendment) Act, 1987 by providing that a search warrant may authorise the Director of the National Museum or a designated person to accompany the holder of the warrant.

*Existing Law:* Section 22 of the National Monuments (Amendment) Act, 1987 provides for the issuing of search warrants to members of the Garda Síochána where an offence under the National Monuments Acts, 1930 to 1987 is suspected.

23. *Section 20* provides for the making of regulations by the Minister.

24. Section 21 deals with the short title, commencement, collective citation and construction of the Bill.

*An Roinn Ealaíon, Cultúir agus Gaeltachta, Samhain, 1993.*

Subsections (1) to (5) prohibit the removal of or interference with the archaeological object found unless its removal is necessary for its preservation. Subsection (6) provides for the removal of the object to a designated place, the reporting of its finding within a reasonable period, and the format and delivery of the report.

Subsection (8) stipulates the offences created by not complying with the provisions of this section and provides for penalties on conviction for an offence. The maximum penalty on summary conviction is £1,000 and on conviction on indictment £50,000 and/or five years imprisonment.

Subsection (9) provides that this section will not apply to those in possession of an excavation licence under the National Monuments Act, 1930 to 1987 or a person who is exempted from the requirement to hold such a licence.

Section 22 of the National Monuments Act, 1930 is amended by section 17 of the National Monuments (Amendment) Act, 1993 to provide for the Director to issue licences to persons in possession of archaeological objects. Under this section objects taken into possession by the Director must be returned to the holder after six weeks.

Section 17 extends the provisions of section 22 of the National Monuments Act, 1930 by prohibiting the cleaning, restoring or amending by any process of archaeological objects except under and in accordance with a licence issued by the Minister.

Section 25 (1) of the National Monuments Act, 1930 contains general provisions on the injury, damage or destruction of archaeological objects. The Minister is empowered to issue licences to persons in possession of archaeological objects. The maximum penalty on summary conviction is £1,000 and on conviction on indictment £50,000 and/or five years imprisonment.

Section 18 amends section 25 of the National Monuments Act, 1930 to require the Commissioners of Public Works to consult with the Director of the National Monuments before the issue of an excavation licence. The maximum penalty on summary conviction is £1,000 and on conviction on indictment £50,000 and/or five years imprisonment.

Section 20 of the 1930 Act prohibits the digging or excavation of any land for the purpose of searching for archaeological objects unless in accordance with a licence issued by the Commissioner of Public Works or a person exempted from the requirement to hold such a licence.

Section 19 extends the search warrant provisions of section 22 of the National Monuments (Amendment) Act, 1987 by providing that a search warrant may authorise the Director of the National Monuments to designate persons to accompany the holder of the warrant.

Section 23 of the National Monuments (Amendment) Act, 1987 provides for the issue of search warrants to members of the Garda Síochána where an offence under the National Monuments Act, 1930 to 1987 is suspected.

Section 20 provides for the making of regulations by the Minister.