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**AN BILLE RIALTAIS ÁITIÚIL (LIOSTÚ
SAINORDAITHEACH FOIRGNEAMH STAIRIÚIL AGUS
COSAINT d'INMHEÁNAIGH STAIRIÚLA), 1997
LOCAL GOVERNMENT (MANDATORY LISTING OF
HISTORIC BUILDINGS AND PROTECTION OF HISTORIC
INTERIORS) BILL, 1997**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Short title and collective citation.
 2. Definitions.
 3. Regulations.
 4. Listing of buildings and designation of conservation areas.
 5. Amendment of Principal Act.
 6. Amendment of Heritage Act, 1995.
 7. Right of appeal against listed building enforcement notice.
 8. Duty not to permit buildings to become or continue to be endangered.
 9. Contravention of planning permission and penalties therefor.
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Acts Referred to

Heritage Act, 1995	1995, No. 4
Local Government (Planning and Development) Act, 1963	1963, No. 28
Local Government (Planning and Development) Act, 1976	1976, No. 20
Local Government (Planning and Development) Acts, 1963 to 1993	



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BILL

entitled

AN ACT TO AMEND, CONSOLIDATE AND EXTEND THE
LAW RELATING TO THE CONSERVATION OF THE
INTERIOR AND EXTERIOR FABRIC OF BUILDINGS OF
SPECIAL ARCHITECTURAL OR HISTORIC INTEREST
AND THE CREATION OF CONSERVATION AREAS
AND IN SO DOING TO AMEND THE LAW RELATING
TO PLANNING AND DEVELOPMENT AND THE LAW
RELATING TO NATIONAL HERITAGE.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) This Act may be cited as the Local Government
(Mandatory Listing of Historic Buildings and Protection of Historic
Interiors) Act, 1997.

Short title and
collective citation.

(2) This Act and the Local Government (Planning and
Development) Acts, 1963 to 1993 shall be construed together as one
Act.

2.—(1) In this Act—

Definitions.

“special architectural or historic interest” includes areas, buildings or
structures—

(a) dating from the year 1850 or earlier,

and

(b) distinguished by the use of unusual or innovative techniques
or craftsmanship or those common only to the locality
concerned,

or

(c) distinguished by the use of unusual or innovative materials
or materials common only to the locality concerned,

or

- (d) associated with a person, group or event of local, national or international significance;

“building” shall include the curtilage thereto and the interior thereof and may take into account not only the building itself but also—

- (a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part, and 5
- (b) the desirability of preserving on the ground of its architectural or historic interest any feature of the building consisting of a man made object or structure fixed to or forming part of the interior or exterior of the building or forming part of the land as comprised within the curtilage of the building; 10

“conservation area” shall be construed in accordance with section 19 (3) (A) (ii) of the Principal Act, as inserted by this Act; 15

“endangered”, in relation to an element of built heritage, includes—

- (a) exposed or subjected to deterioration, decay, damage or neglect,
- (b) in a condition which renders it a dangerous structure within the meaning of the Principal Act; 20

“occupier”, in relation to land, includes any person in or entitled to immediate use and enjoyment of the land, any person entitled to occupy the land and any other person having, for the time being, control of the land;

“owner” means a person, other than a mortgagee not in possession, or whether in his own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be entitled if it were so let; 25

“development plan” shall be construed in accordance with section 19 of the Principal Act; 30

“functions” includes powers and duties;

“the Minister” means the Minister for the Environment;

“planning authority” shall be construed in accordance with section 2 (2) of the Principal Act;

“the Principal Act” means the Local Government (Planning and Development) Act, 1963. 35

(2) In this Act unless otherwise indicated, a reference to a section, Schedule or Part is to a section, Schedule or Part of this Act and a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs. 40

(3) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended or adapted by or under any other enactment.

3.—(1) The Minister may, in addition to any power to make regulations conferred by this Act, make regulations for the purpose of giving full effect to this Act. Regulations.

5 (2) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next twenty-one days on which that House has sat after the regulation has been laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously
10 done under the regulation.

15 4.—(1) For the purposes of this Act and with a view to the direction of planning authorities in the performance of their functions under this Act and the Principal Act in relation to buildings of special architectural or historic interest each planning authority shall compile lists of such buildings within their area of jurisdiction or approve with or without modification such lists compiled by the Heritage Council pursuant to section 6 (3) (d) of the Heritage Act, 1995 and may amend any list so compiled or approved. Listing of buildings and designation of conservation areas.

20 (2) In considering whether to include a building in a list compiled or approved under this section the planning authority may take into account not only the building itself but also—

(a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part, and

25 (b) the desirability of preserving on the ground of its architectural or historic interest any feature of the building consisting of a man made object or structure fixed to or forming part of the interior or exterior of the building or forming part of the land as comprised within the curtilage
30 of the building.

(3) Before compiling, approving (with or without modifications) or amending any list under this section the planning authority shall consult—

35 (a) The Heritage Council, An Taisce and The Irish Georgian Society, or

(b) with such other persons or bodies or persons as appear to him appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.

40 (4) In this Act “listed building” means a building which is for the time being included in the list compiled or approved by the Planning Authority under this section or under section 19 of the Principal Act which is hereby amended by the inclusion of this section as section 19 (3) (a) thereof.

(5) (a) Every local planning authority—

45 (i) shall from time to time determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and

(ii) shall designate those areas as conservation areas.

- (b) It shall be the duty of the planning authority from time to time to review the past exercise of functions under this section and to determine whether any parts or any further parts of their area should be designated as conservation areas; and, if they so determine they shall designate those parts accordingly. 5
- (c) Before designating any area a conservation area under this section the planning authority shall consult—
 - (i) The Heritage Council, An Taisce and The Irish Georgian Society, and 10
 - (ii) with such other persons or bodies or persons as appear to him appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.

Amendment of
Principal Act.

5.—For the purpose of clarifying that references in the Principal Act to a listed building includes references to the interior of such a building, section 4 of the Principal Act is hereby amended by the deletion of subsection (1A), as inserted by section 43 (1) (c) of the Local Government (Planning and Development) Act, 1976, and the substitution therefor of the following— 15
20

“(1A) Where a planning authority in its development plan has included any building in a list compiled pursuant to section 19 (3A) (a) then, notwithstanding subsection (1), any works which involve the demolition, removal or material alteration thereof, or which may cause injury thereto, shall not be 25
exempted development for the purposes of this Act.

(1B) Notwithstanding subsection (1), any works which involve the demolition, removal or material alteration or which may cause injury to a building, not included in a list compiled pursuant to section 19 (3A) (a), situate within a conservation 30
area, shall not be exempted development for the purposes of this Act.”.

Amendment of
Heritage Act, 1995.

6.—Section 6 (3) of the Heritage Act, 1995 is hereby amended by the insertion of the following paragraphs—

“(d) prepare, and from time to time vary, in respect of the area 35
of each planning authority, a list of the buildings of special architectural or historic interest, within that area, in accordance with the provisions of the *Local Government (Mandatory Listing of Historic Buildings and Protection of Historic Interiors) Act, 1997*, 40

(e) prepare, and from time to time vary, in respect of the area of each planning authority, a list of all the areas of artistic, architectural, cultural or historic interest the character or appearance of which it is desirable to preserve or enhance in accordance with the provisions of the *Local Government (Mandatory Listing of Historic Buildings and Protection of Historic Interiors) Act, 1997*.”. 45

Right of appeal
against listed
building
enforcement notice.

7.—A person having an interest in the building to which a listed building enforcement relates or a relevant occupier may appeal to An Bord Pleanála against notice on any of the following 50
grounds—

(a) the building is not of special architectural or historic interest,

(b) that the matters alleged do constitute a contravention of this Act do not involve such a contravention,

5 (c) that works to the buildings were or are urgently necessary in the interests of safety or health or for the preservation of the building, as it was not practicable to secure health or safety or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to minimum measures immediately necessary,

10 (d) where such an appeal is brought the listed building enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal, or

15 (e) person who gives notice of appeal under this section shall submit to An Bord Pleanála either when giving the notice or within such time as may be prescribed, a statement in writing—

20 (i) specifying the grounds on which he is appealing against a listed building notice, and

(ii) giving such further information as may be prescribed.

25 **8.—**(1) It shall be the duty of every owner or occupier of land to take all reasonable steps to ensure that a building of special architectural or historic interest situate thereon included in a list compiled pursuant to section 19 (3A) (a) of the Principal Act or which is unlisted and situate within a conservation area does not become or continue to be endangered.

Duty not to permit buildings to become or continue to be endangered.

30 (2) A material breach of duty referred to in the preceding subsection shall constitute an unauthorised use of land within the meaning of section 27 (1) (b) of the Local Government (Planning and Development) Act, 1976.

35 (3) The planning authority may make regulations in relation to the steps to be taken by an owner or occupier of land referred to in subsection (1) with regard to a listed building or an unlisted building in a conservation area which is unoccupied.

40 **9.—**(1) It shall not be lawful for any person (whether he is or is not the owner of the building or is or is not seized or possessed of an estate or interests therein) to do any of the following things in relation to a building of special architectural or historic interest which is a listed building or is an unlisted building in a conservation area unless with the full planning permission of the planning authority or if appealed to An Bord Pleanála with the approval of An Bord Pleanála that is to say—

Contravention of planning permission and penalties therefor.

45 (a) to demolish or remove wholly or in part or to disfigure, deface, alter, or in any manner injure or interfere with any such listed building or unlisted building within a conservation area without or otherwise than in accordance with the planning permission of the planning authority,

50 or

(b) to excavate, dig, plough or otherwise disturb the ground within, around, or in proximity to any such listed building or unlisted building within a conservation area without or otherwise than in accordance with the planning permission of the Local Authority. 5

(2) Every person who does any act or thing in contravention of any of the foregoing provisions of this section shall be guilty of an offence under this section and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 and £1,000 for each day thereafter that the offence remains unremedied or, at the discretion of the Court, to imprisonment for a term not exceeding twelve months or to both the fine and the imprisonment, or 10

(b) on conviction on indictment, to a fine not exceeding £100,000 and £5,000 for each day thereafter that the offence remains unremedied or, at the discretion of the Court, to imprisonment for a term not exceeding three years or to both the fine and the imprisonment. 15



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EXPLANATORY MEMORANDUM

Section 1 provides that the Bill is to be read with the Local Government (Planning and Development) Acts, 1963 to 1996 and is specifically titled to reflect its purpose in the listing and protection of historic buildings and interiors.

Section 2 defines the term “special architectural or historic interest” as dating from before 1850 or an item of unique craftsmanship or resulting from a skill in a specific locality or from the use of unique material or an item associated with a person, group or event of local, national or international significance. The section is also innovative in that it defines and extends the term “building” to include the interior and extended area of the building in its own merit and also in the context of the protection of streetscapes and specially designated conservation areas.

Section 3 provides for the making of regulations by the Minister.

Section 4 provides that

- it shall be mandatory for each planning authority to compile lists of buildings within their area which are of special architectural or historic interest and the planning authority shall draw on the lists also prepared by the Heritage Council,
- a building shall be listed for protection if it is of special architectural or historic interest or is part of a larger group of buildings or if its interiors or some part of its interiors require protection,
- the local authority will be required to consult with the Heritage Council, An Taisce and The Irish Georgian Society or with other expert or interested persons prior to finalising the list of protected buildings and interiors within its area,
- the planning authority will be obliged to list buildings into the main body of planning legislation,
- each local planning authority shall designate conservation areas such as particular streets or enclaves which should be designated together as conservation areas. These conservation areas shall also be compiled in consultation with the Heritage Council, An Taisce and The Irish Georgian Society and in consultation with other persons who have a specific knowledge or expertise of the buildings within these areas.

Section 5 arises from the fact that at present there is a substantial gap in the planning legislation which allows a building itself to be listed but at the same time leaving the interior of that listed building with no protection. *Section 5* specifically amends the planning legislation by providing that any works which involve the demolition, removal or material alteration or which may cause injury (to the interior of the building) shall not be exempted developments and shall require planning permission. *Section 5* also provides that any works to a building in a conservation area whether it is listed or not and whether the works involve treatment of the exterior or the interior of the building shall not be exempted development and these works shall require planning permission.

Section 6 amends the Heritage Act, 1995 by directing the Heritage Council to prepare lists of buildings of special architectural and historic interest and to identify conservation areas to be used in its advice and consultation with the local planning authority under the terms of this Bill. The planning authority must include anything on the list prepared by the Heritage Council unless there is a good reason not to do so.

Section 7 provides that a person having an interest in a building who objects to it being listed or to part of its interior being listed may object to An Bord Pleanála on the basis that the building itself is not of special architectural or historic interest; or that the works carried out to the building are necessary in the interest of safety or health. Such an objection places a stay on the listing of the building or its interior until the decision of An Bord Pleanála is granted.

Section 8 creates a duty on each owner or occupier of land to ensure that a building or the interior of a building which is listed or is in a conservation area does not become endangered.

Section 9 makes it unlawful for any person whether they are the owner or are in occupation of the building or any part of the building which is listed or which is within a conservation area to

- demolish or remove or disfigure or alter or in any manner injure or interfere with the interior or exterior of the building other than in accordance with planning permission, or
- excavate or plough or undermine the interior or exterior of the building other than in accordance with planning permission.

Section 9 also details the initial fine of £1,000 on summary conviction and £1,000 for each day thereafter that the offence is not remedied together with a prison sentence of not more than twelve months and on indictment a fine not exceeding £100,000 and £5,000 for each day thereafter that the offence is not remedied together with a possible term of imprisonment not exceeding three years.

*Na Teachtaí Síle de Valera agus Eoin Ó Riain,
Márta, 1997.*