



**AN BILLE UM AN OCHTÚ LEASÚ IS FICHE AR AN
mBUNREACTH 2006
TWENTY-EIGHTH AMENDMENT OF THE CONSTITUTION
BILL 2006**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purposes of this constitutional amendment Bill are twofold. First, it seeks to ensure that such objects and settings as may be discovered and as relate to the life world of different generations are recognised and protected as constituting the cultural heritage, to be held in perpetuity on behalf of all of the people by the State. This would finally dispose of any suggestion that cultural objects constitute “treasure trove”, as referred to in the law of other countries. Under these provisions, a reward for good citizenship in reporting a find may be appropriate but there would be no question of private ownership of objects that constitute the cultural heritage of all the people.

The second purpose is to position the State as custodian of the physical environment, including plant and animal life, and to place the State and other public authorities under a duty, as far as practicable, to protect the environment as part of the common heritage of the people.

The intention is to ensure that, so far as practicable, the State must take actions in relation to the environment and natural heritage that are in accordance with observance of the principles of sustainable development and minimum irreversible damage.

There is an evolving jurisprudence on the general concept of “intergenerational justice” on environmental protection issues. What is proposed here falls towards the minimum position of the spectrum of what is being proposed in discussions in this area in other jurisdictions.

Provisions of Bill

Section 1 provides that the Constitution is amended by the insertion in both texts of a new Article after Article 11.

Section 2 makes standard provision in relation to the citation of the amendment and of the Act.

The *Schedule* sets out the text of the amendment, in the form of a new Article 11A headed “Cultural Heritage, the Environment And Future Generations”. The Article reads as follows:

1. The State is custodian of the cultural heritage of the people, including its archeological, architectural, monumental, industrial, artistic and scientific heritage. The State is entitled, in accordance with law and on payment of such reward as may be prescribed, to claim ownership of newly discovered objects forming part of the cultural heritage. It is under a duty, for the performance of which adequate provision must be made by law, to secure the preservation of the cultural heritage and, as far as practicable, the retention of heritage objects within the State and their reasonable accessibility.
2. The State is also custodian of the physical environment, on land and sea and in the air, including plant and animal life, landscapes, seascapes and geological formations. The State and all other public authorities are under a duty, as far as practicable, to protect the environment as part of the common heritage of the people and to preserve its unique features, to promote and follow policies of sustainable development and to safeguard the interests of future generations.

Micheál D. Ó hUigín,
Eanáir, 2006.