

Historic and Archaeological Heritage Bill 2023

No. 2 of 2023

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Abstract

The Historic and Archaeological Heritage Bill seeks to revise and replace the existing National Monuments Acts and other related legislation/enactments going back to the 19th century with a modernised legislative code for the protection of historic monuments and archaeological heritage. The Bill proposes to establish a new Register of Monuments to replace multiple systems for monument protection, revise licensing systems for activities regulated under the Bill, and enable the State to ratify some key international conventions in heritage protection.



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Glossary and abbreviations

Table 1 Glossary and abbreviations.

| Term | Meaning (as per Section 2) |
|-------------------------|--|
| Archaeological heritage | Relevant things of archaeological interest and archaeological objects |
| Board | Board of the National Museum of Ireland |
| Commissioners | Commissioners of Public Works in Ireland |
| Council | The Heritage Council |
| Department | Department of Housing, Local Government and Heritage |
| EIA | Environmental impact assessment within the meaning of the EIA Directive |
| EIA Directive | Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 |
| Habitats Directive | Council Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended by Council Directive 97/62/EC of 27 October 1997, Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003, Council Directive 2006/105/EC of 20 November 2006 and Council Directive 2013/17/EU of 13 May 2013 |
| Historic interest | Includes association with, or being representative of, historic events, periods, persons, subjects or themes |
| Minister | Minister for Housing, Local Government and Heritage |
| Monument | Refers to (a) a registered monument, or (b) a prescribed monument which is not a registered monument |
| Register | Register of Monuments (as to be established under section 14(1)) |
| Relevant interest | Refers to a relevant thing that is of known or potential archaeological, architectural, artistic, historic or traditional interest (or any combination thereof) |
| Relevant thing | Refers to a range of specified things (e.g. wrecks, ritual or ceremonial sites, a site of a historic event) whether situated on, in or under land and whether or not attached to the surface of the land or forming part of land and whether or not intentionally or originally in the sites where they respectively are |

Introduction

The [Historic and Archaeological Heritage Bill](#) ('the Bill'), formerly known as the Monuments and Archaeological Heritage Bill, and the accompanying [Explanatory Memorandum](#) were published on Tuesday, 17 January 2023. The Bill is scheduled to be taken for Second Stage in Seanad Éireann on Wednesday, 22 February 2023.

The proposed Bill seeks to revise and replace the National Monuments Acts 1930 to 2014 and other related legislation and aims to "address a range of structural issues, simplify terminology, as well as provide a single accessible piece of legislation".¹

On the publication of the Bill, a [press release](#) from the Department of Housing, Local Government and Heritage ('the Department') advised that the Bill seeks to:

- modernise existing historic and archaeological heritage legislation;
- provide for a single integrated licencing system and statutory codes of practice; and
- confer legal protections on new finds of archaeological sites.²

In terms of provisions within the Bill, the Department indicated that:

The Bill contains a range of proposals intending to help streamline existing systems and processes, and provides for the State to ratify some key international conventions in the area of heritage protection, should the government decide to do so. There are also proposals for innovative measures, such as legal protection for new finds of archaeological sites, a single integrated licencing system, statutory codes of practice, and a civil enforcement system to be used as an alternative to, or to supplement criminal proceedings.³

On announcing the publication of the Bill, the Minister of State for Heritage and Electoral Reform described it as:

.. a major milestone in making Ireland's historic heritage protections fit for the 21st century. The work involved in revising and updating the 1930 Act has been substantial, and I know today's publication of the Bill will be warmly welcomed by everyone who cares about our unique and irreplaceable heritage. We are so fortunate to have countless examples of priceless monuments and archaeological objects, both on land and under the seas, that are admired the world over. This new legislation will ensure their protection for generations to come.⁴

¹ [gov.ie - Archaeological Sites and Underwater Wrecks to Receive Stronger Protection through Proposed New Monuments and Archaeological Law \(www.gov.ie\)](#)

² [gov.ie - Minister Noonan announces publication of the Historic and Archaeological Heritage Bill 2023 \(www.gov.ie\)](#)

³ *ibid*

⁴ *ibid*

Background

The National Monuments Act 1930 (as amended) “provides for the protection and preservation of National Monuments”, with the National Monuments Service:

Protecting, conserving and managing Ireland’s archaeological heritage through the provision of an appropriate administrative, policy and legislative framework under the National Monuments Acts.⁵

In respect of monuments:

The National Monuments Acts 1930-2004 provide for the protection of monuments and archaeological sites, the protection of the portable archaeological heritage and the regulation of archaeological works. All known monuments are entered in the statutory Record of Monuments and Places (RMP). Following a major review of archaeological policy and practice in Ireland in 2007, a single piece of consolidated and modernised legislation was proposed to replace the existing National Monuments Acts 1930-2004.⁶

Concerning the Record of Monuments and Places (RMP), this is described as follows:

The Record of Monuments and Places (RMP) is the statutory list of recorded monuments established under Section 12 of the National Monuments (Amendment) Act 1994. The RMP was issued for each county between 1995 and 1998. Monuments appear on the paper RMP maps issued in the 1990s and have a form of statutory protection. The ASI is in the process of revising and updating the RMP for publication in the near future (2012/2013). Monuments listed in the RMP are afforded legal protection and typically, any work taking place at or in relation to a Recorded Monument must be notified to the Minister.⁷

The Sites and Monuments Record

The Sites and Monuments Record (SMR) formed the basis of the RMP and comprises an extensive body of records relevant to the archaeological heritage of the State. This includes a list of sites accompanied by Ordnance Survey maps onto which the sites have been plotted. All sites recorded in the SMR appear on the ASI Map Viewer (www.archaeology.ie) but not all of these are included in the RMP and hence have no statutory protection.

(Reproduced from Department of the Arts, Heritage and the Gaeltacht (2013, p.14)

According to the Department, the current Bill proposes to modernise legislation protecting Ireland’s monuments by, amongst other things, seeking to:

⁵ Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2020) [Briefing for Minister June 2020 – Heritage](#).

⁶ Department of the Arts, Heritage and the Gaeltacht (2013) [Review of Archaeological Survey and Mitigation Policy relating to Bord Na Móna Peatlands since 1990](#), June 2013, p.13

⁷ *ibid*, p.14

.. introduce new measures to protect archaeological structures and sites, including the establishment of a single Register of Monuments, a statutory reporting scheme for newly discovered monuments and provisions to prevent the illicit import and possession of stolen cultural property.⁸

The Bill also seeks to incorporate historic wrecks and underwater cultural archaeological objects and will enable the State to ratify a number of international conventions concerning the protection of cultural heritage.⁹

Further, the Department has advised that the multiple amendments to the [National Monuments Act, 1930](#) (combined with multiple transfers of functions) have resulted in “fragmented legislation which is far from easily accessible and comprehensible”.¹⁰ The Minister of State for Heritage and Electoral Reform introduced the Bill as follows:

This proposed Bill will modernise existing legislation protecting monuments and archaeology – some of this legislation dates back to the 19th century. It covers a breadth of areas including licencing, a reporting system and a single Register of Monuments. If enacted, this legislation will substantially strengthen protection of archaeological heritage for the enjoyment of future generations and also represent major progress on the protection of our built heritage.¹¹

On the presentation of the revised General Scheme of the Monuments and Archaeological Bill to the Joint Committee on Housing, Local Government and Heritage by the Minister of State for Heritage and Electoral Reform, a press release from the Department highlighted a range of provisions proposed in the Bill, including those set out in the text box below.

- Establishment for the first time of a generally applicable system for the protection of newly discovered archaeological structures
- Creation of a single Register of Monuments to replace the several overlapping systems currently used for designating and protecting monuments
- Introduction of a statutory reporting scheme, and corresponding legal protection, representing a major strengthening of the legal protection for archaeological- structures and sites.
- Ensuring that all objects coming within the definition of “archaeological object” will be legally protected through a licensing requirement for their alteration and all finds of archaeological objects will have to be reported to the National Museum of Ireland.

⁸ [gov.ie - Archaeological Sites and Underwater Wrecks to Receive Stronger Protection through Proposed New Monuments and Archaeological Law \(www.gov.ie\)](#)

⁹ *ibid*

¹⁰ *ibid*

¹¹ *ibid*

- Provides for the enactment of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage as ratified by Ireland in 1991. This intends to give the term “World Heritage Property” a legal basis in Irish law for the first time, thus strengthening the legal standing of the use of the term in county development plans as adopted by planning authorities.
- Proposal that the ratification of two important international Conventions pertaining to archaeological finds, enabling Ireland to play its part in the international effort to combat the illicit trade and looting of antiquities and cultural objects. These two Conventions are:
 - the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and
 - the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.
- Revise protection of historic wrecks and archaeological objects located underwater and make provision for the first time that such wrecks with no known owner are State property. The proposed Bill also proposes that commercial salvage law (in particular, rights to be recognised as salvor in possession or to claim salvage rewards) does not apply to historic wrecks.
- Introduction of an integrated licencing system whereby one licence can authorise a range of activities to be regulated under the Bill. A common set of application procedures, matters to be considered and powers to impose conditions will be available in respect of all applications for licences under the Bill. A statutory appeals process with regard to regulatory decisions will also be introduced for the first time. This will promote regulatory reform and procedural fairness while at the same time strengthening heritage protection.
- Introduction of three statutory inventories (architectural heritage, archaeological sites and historic wrecks) and provide discretionary powers to create inventories of other categories of sites.
- Provision for the Minister, in consultation with other relevant authorities, to issue guidance on dealing with all aspects of historic heritage in the Environmental Impact Assessment process and to issue guidance to local authorities on how they should deal with historic heritage in the exercise of their functions. Local authorities will be obliged to have regard to such guidelines
- Establishment of penalties for offences created under the proposed Bill. For the most serious offences, penalties of up to 5 years imprisonment and a €10,000,000 may be imposed.

Reproduced from Department [press release](#)¹²

¹² *ibid*

Operational context

According to the National Monuments Service¹³:

In October 1874 the first group of monuments, those on the Rock of Cashel, Co. Tipperary, was taken into State care. Since then, almost 1,000 individual monuments at 768 locations, have been taken into ownership or guardianship. These range from megalithic tombs of the neolithic period to medieval churches and castles, industrial mills and historic buildings of more recent times. One of the core functions of the National Monuments Service is to ensure the preservation of the monuments in its care for the benefit and enjoyment of present and future generations.¹⁴

A [PQ](#) in October 2022 noted that:

[The OPW] is responsible for the day-to-day maintenance, operation and presentation of National Monuments and Historic Properties in State care. There are 780 National Monuments in the care of the OPW with Visitor services provided at in excess of 70 sites either directly by OPW or in cooperation with local partners.¹⁵

A list of monuments in the care of the State can be found [here](#).

The overall costs of managing, maintaining and staffing the National Monuments in the State's care (from 2019 to 2022*) are set in Table 2 below.

Table 2 Cost of managing, maintaining and staffing National Monuments (2019-2022*)

| 2019 | 2020 | 2021 | 2022* |
|------------|------------|------------|------------|
| 26,996,615 | 24,577,504 | 24,354,907 | 20,882,365 |

*up to 30/09/22

Source: Derived from PQ¹⁶

The Community Monuments Fund (CMF) is administered by the National Monuments Service in the Department of Housing, Local Government and Heritage through the Local Authorities, with €5 million allocated to the scheme for 2022.¹⁷

¹³ As per a 2022 briefing from the Department:

The National Monuments Service provides for the protection, conservation and management of Ireland's archaeological heritage through the provision of an appropriate administrative, policy and legislative framework under the National Monument Acts. (Department of Housing, Local Government and Heritage (DHLGH) (2022) [Briefing Paper - Vote 34: DHLGH Appropriation Account 2020](#). Public Accounts Committee, 17 February 2022, p.48)

¹⁴ [How many National Monuments are in State care? | National Monuments Service \(archaeology.ie\)](#)

¹⁵ [National Monuments – Wednesday, 5 Oct 2022 – Parliamentary Questions \(33rd Dáil\) – Houses of the Oireachtas](#)

¹⁶ [National Monuments – Wednesday, 5 Oct 2022 – Parliamentary Questions \(33rd Dáil\) – Houses of the Oireachtas](#)

¹⁷ [National Monuments – Tuesday, 22 Mar 2022 – Parliamentary Questions \(33rd Dáil\) – Houses of the Oireachtas](#)

Policy and legislative context

The statutory underpinning of the protection and preservation of monuments and archaeological objects is currently provided by the National Monuments Acts, with the Screening Regulatory Impact Analysis for the proposed legislation stating that:

This legislation has been extensively amended since its enactment resulting in a level of inconsistency and a number of gaps in the law. As a result, the existing statutory scheme has become fragmented and intricate, making the law difficult to ascertain in places.¹⁸

As per a commitment in the *Programme for Government 2007-2012* to “Update and consolidate the law on national monuments to maximise and clarify the protection provided to our archaeological heritage”¹⁹, work began in the mid-noughties on a major review of archaeological practice and policy. As part of this review, the Department of the Environment, Heritage and Local Government circulated a document, [Review of Archaeological Policy and Practice in Ireland: Identifying the issues](#), to set the template for discussion. This document outlined some aspects of this major review²⁰:

The Department is holding a series of seminars to give all stakeholders involved an opportunity to make their views known on the scope of the review and its terms of reference ... As an initial step the Minister has published this Issues Paper which represents an initial attempt to identify some of the issues which need be addressed in the course of the review.²¹

Potential issues in respect of a wide range of policy areas were highlighted in the Review document circulated for consultation, including those outlined in the text box below²².

Potential issues identified re: selected policy areas

Recording of Monuments

- Would it be better to replace the existing lists/registers of monuments with a single list or register as the principal mechanism under which monuments of archaeological, architectural, historical or other cultural interest will be protected in future?
- Should the system for listing/registering monuments and sites be open to more public consultation and scrutiny?

¹⁸ Department of Housing, Local Government and Heritage (2021) Screening Regulatory Impact Analysis (RIA) September 2021, p.1

¹⁹ *ibid*, p.1

²⁰ It also noted that a set of broad policy principles for the protection of archaeological heritage were set out in a document entitled [Framework and Principles for the Protection of the Archaeological Heritage](#) (Department of Arts, Heritage, Gaeltacht and the Islands, 1999).

²¹ Department of the Environment, Heritage and Local Government (2007) [Review of Archaeological Policy and Practice in Ireland: Identifying the Issues](#), p.1

²² *ibid*, p.4,6,11-12, 13

- Can the system for listing/registering monuments and sites be speeded up and made more efficient?
- Should a new register incorporate some system for grading monuments e.g. distinguishing between monuments of national importance and other monuments?
- Should owners be notified of a proposal to include or remove monuments from the register?
- Should owners have a right to appeal the inclusion (or removal) of a monument from the register?
- How can archaeological landscapes be defined and protected?
- How can the archaeological elements of a landscape be related to other elements of the landscape and how should this be evaluated?
- How can local authorities, local societies and local communities be encouraged to protect their local archaeological heritage?

Recognition of National Monuments

- Are the criteria for determining whether or not a monument is a national monument appropriate?
- Should any additional criteria apply?
- Should any of the criteria be deleted?
- Should a system for recording newly discovered monuments of archaeological importance, other than those discovered on road schemes, be introduced?
- What procedures should apply to registering new monuments and controlling works at or in the vicinity of new monuments?
- What steps should be required where a person finds or believes they have found a new monument of archaeological interest?

Archaeology, Infrastructure and other development

- What improvements could be made in the current system for applying for, processing and enforcing licensing conditions?
- Are excavations being carried out to a sufficiently high standard?
- Does the document Policy and Guidelines on Archaeological Excavation require up-dating in line with present day thinking on excavation?
- Are excavation methodologies currently in use appropriate e.g. the use of machines to remove plough-soil?
- Are the arrangements in place for dealing with archaeological issues arising in the context of infrastructure and other development adequate and appropriate?
- Do the procedures which come into play when a new national monument is discovered during the course of road or other infrastructure construction need to be reviewed?
- How well are the Codes of Practice on Archaeology, in place between the Department and a number of infrastructure providers, working?

Excavation Reports

- Can a better connection be made between the gathering of archaeological information and the dissemination of archaeological knowledge?
- Does web-based publication of excavation reports offer a solution to the problem?
- How can the contribution of development-led excavations to the archaeological knowledge base be improved?
- How can the standard and speed at which excavation reports are submitted be raised?

In 2009, an Expert Advisory Committee recommended to the then Minister for the Environment, Heritage and Local Government that the National Monuments Act be replaced. Subsequently, Heads of Bill were approved by Government in 2010; however, as noted by the relevant Department, “progress has continued on an intermittent basis since then”.²³

The Bill’s Regulatory Impact Statement noted that:

The Department confirmed its commitment to conserve, protect, manage and present our built and natural heritage through appropriate development of the legislative framework for heritage protection in its Statement of Strategy 2018 – 2020.²⁴

Specifically, one high level strategy in the Statement of Strategy centred on:

Ensuring effective implementation of the appropriate policies, legislation, actions to comply with our EU and national Heritage obligations²⁵

A key relevant indicator was “Appropriate development of the legislative framework for heritage protection”.²⁶

More recently, the Department published [Heritage Ireland 2030: A Framework for Heritage](#), which contained the following action: Action 41- Enact new Monuments and Archaeological Heritage Bill with appropriate communication and training strategy in place.

Legal context: Treasure trove

A landowner's rights in private property were qualified at common law by the royal prerogative in treasure trove. This right applied only to valuable chattels, made substantially of gold or silver, which had been concealed for the purpose of protecting them and with the intention of retrieving them. The status of the royal prerogative in treasure trove was considered at length by the Supreme Court in *Webb v. Ireland*²⁷ as were a number of other complex questions of law and policy: the extent of ownership of archaeological objects as between individuals and the State, treatment of the trespassory finder, the right to compensation.

The case involved the finding of the “Derrynaflan Hoard”, which consisted of an ancient chalice and other religious artefacts, on the site of a national monument. The finders came upon the hoard using metal detectors and dug in the land without the landowners' consent. The hoard was delivered up to the National Museum, which promised the finders that they would be honourably treated. Having failed to negotiate an award acceptable to both parties, the finders instituted proceedings for the return of the hoard. Meanwhile the landowners accepted an award from the State and signed documents conveying their interest in the objects to the State.

The High Court found that, following *Byrne v. Ireland*,²⁸ no royal prerogatives had survived enactment of the 1922 Constitution which Finlay CJ upheld in the Supreme Court rejecting the

²⁷ [1988] IR 353 at 389–390.

argument that it was possible to distinguish between the prerogative of immunity from suit, on which the Byrne decision was based and which related to the royal dignity of the King, and that to treasure trove, which related to his position as sovereign or ruler. The State's rights in treasure trove could therefore be upheld as part of a larger bundle of rights incident upon State sovereignty. Therefore, the Supreme Court ruled that the hoard belonged to the state. Illegally recovered from protected land, the treasure could not be claimed by the Webbs. However, recognising that the payment of some money to treasure hunters would encourage them to report their finds to officials, the Irish government made a voluntary payment of 50,000 pounds Irish to the Webbs.

As a result of the Webb decision, Section 2 of the *National Monuments Act, 1994* vests in the State ownership of all archaeological objects found in the State after the coming into effect of the Act which have *no known owner*, owner being defined as “the person for the time being having such estate or interest in the archaeological object as entitles him to actual possession thereof”²⁹. Section 2 of the 1994 Act ostensibly eliminates any confusion by extending the State's ownership to all “archaeological objects”, as defined in the National Monuments Act, 1930 as amended. The Law Reform Commission recommended the following:

*It is recommended that the lack of clarity as to the precise balance between State and private ownership, which exists as a result of the combined effect of the Webb decision and the 1994 Act, should be rectified. We recommend that a provision be enacted which states that a landowner on whose land archaeological objects are found does not constitute an “owner” for the purposes of the 1994 Act unless he is the original owner of the object or that person's successor in title.*³⁰

Regulatory Impact Analysis (RIA)³¹

In considering the current legislative framework and the protection of archaeological objects, the Summary Regulatory Impact Analysis (RIA) asserted that:

New discoveries of archaeological sites currently have no legal protection until they have been specifically designated or registered under the existing Acts. Existing legislation can operate in such a way that if an owner is consulted about a site before it is protected, the

²⁴ Department of Culture, Heritage and the Gaeltacht (2020) Summary of Regulatory Impact Analysis (RIA). May 2020, p.2

²⁵ Department of Culture, Heritage and the Gaeltacht (2018) [Statement of Strategy 2018 – 2020](#), p.19

²⁶ *ibid*, p.19

²⁷ [1988] IR 353 at 389–390.

²⁸ [1972] IR 241.

²⁹ 1994 Act, section 4(2)

³⁰ Law Reform Commission (LCR 55-1997) Report on The Unidroit Convention on Stolen or Illegally Exported Cultural Objects, (1977) para 4.81 p.84

³¹ Please note that two RIAs are referred to in this section: a Summary of RIA (May 2020) and a Screening RIA (September 2021)

site is left with no protection while the consultation takes place. This contrasts with finds of historic wrecks and archaeological objects, which are automatically protected.³²

Further, in respect of the protection and preservation of monuments, it states:

Additionally, there is a complex and confusing system of different procedures for designating and protecting monuments, based on serial amendment of very old legislation.

The National Monuments Acts 1930 to 2014 do not provide a clear statutory basis to the Commissioners of Public Works to carry out their operations at national monuments.³³

The Summary RIA also observed that:

A piecemeal approach to offences has been put in place over several Acts from 1930 to 2004, however no system of civil enforcement exists so undertaking criminal proceedings is the only recourse available to prosecute breaches of the Acts. This is not workable where more minor offences are committed, meaning that there is little protection for archaeological heritage in these cases.³⁴

Turning to the objectives being pursued by this piece of legislation, the Screening RIA described them as per Table 3 below and overleaf.

Table 3 Objectives of the Bill (Screening RIA)

| |
|---|
| <p>Objective A - Monument Protection</p> <ul style="list-style-type: none"> Establish a generally applicable system providing legal protection for newly discovered archaeological sites; Establish a single Register of Monuments replacing the various systems currently used for designating and protecting monuments; Provide a clear statutory basis for the Commissioners of Public Works or relevant Local Authority, as the case may be, to manage monuments; Establish a clear basis for the Minister's or Local Authority's legal title to ownership or guardianship of monuments. <p>Objective B - Regulatory Reform</p> <ul style="list-style-type: none"> Introduce a modernised, streamlined, and integrated licensing system with a statutory appeals process. <p>Objective C - Appropriate Enforcement</p> <ul style="list-style-type: none"> Introduce a system of civil enforcement which can be used as an alternative to, or to supplement, criminal proceedings |
|---|

³² Department of Culture, Heritage and the Gaeltacht (2020) Summary of Regulatory Impact Analysis (RIA). May 2020, p.3

³³ *ibid*, p.3

³⁴ *ibid*, p.4

Objective D - Ratification of International Conventions

- Provide for the ratification of key international conventions in the area of heritage protection.

Source: Derived from Department³⁵

Three policy options are described by the Screening RIA, as per Table 4 below.³⁶

Table 4 Policy options identified (Screening RIA)

| Policy options | |
|----------------|--|
| Option 1 | Maintain the status quo |
| Option 2 | Reform the current system without amending legislation |
| Option 3 | Introduce legislation to consolidate, revise and replace the National Monuments Acts and related enactments. |

Similar policy options were assessed across three dimensions – cost, benefits and impacts – in the earlier Summary of RIA (see Table 5 below and overleaf).

Table 5 Assessment of policy options (Summary of RIA)³⁷

| Option | Costs | Benefits | Impacts |
|--------|--|--|---|
| 1 | 'No change' benchmark, no new costs associated. | Stakeholders are familiar with the current legislative framework. | Not viable. Current system is out of date, law reform is essential. |
| 2 | No new costs associated. Resources redeployed from current regime. | A single database of national monuments could be compiled and made available to the public. Guidelines and codes of best practice could be publicised. Departmental processing of existing licensing could be simplified and improved. | Risks due to possible remaining gaps and inconsistencies in existing legislation. Newly found or under-consultation archaeological sites remain unprotected. |
| 3 | No new costs associated. Resources | Introduce a statutory reporting scheme and legal protection for newly | Dedicated resources will be required to establish and maintain a register. |

³⁵ Department of Housing, Local Government and Heritage (2021) Screening Regulatory Impact Analysis (RIA) September 2021, p.2

³⁶ Ibid, p.2

³⁷ Derived from Department of Culture, Heritage and the Gaeltacht (2020) Summary of Regulatory Impact Analysis (RIA). May 2020, p.1-2

| | | | |
|--|--|---|---|
| | <p>redeployed from current regime.</p> | <p>discovered archaeological sites.</p> <p>Replace several complex overlapping mechanisms for protecting monuments with a single Register of Monuments with two possible levels of protection.</p> <p>Provide for consultation with landowners regarding entering monuments into the Register, while giving interim protection.</p> <p>Replace a series of licensing and consent requirements with an integrated licensing system, ending the situation whereby a single activity can require several licences or consents.</p> <p>Provide clear statutory criteria for assessing licence applications and an appeals process.</p> <p>Provide civil enforcement powers to end the current position where criminal proceedings are the only option.</p> <p>Allow the State to ratify key international conventions in the area of heritage protection.</p> | <p>It is estimated that three archaeologists would be required for approximately three years, with resources met from within the existing staff complement.</p> <p>Some initial training on regulatory requirements will be necessary for archaeological companies.</p> <p>A programme of outreach and stakeholder engagement will be necessary to educate other stakeholders, such as local authorities.</p> |
|--|--|---|---|

Option 3 was identified as the preferred option in the Summary of RIA³⁸, with the Screening RIA noting that:

The main benefits of a revised Monument and Archaeological Heritage Act will be the conservation and protection of archaeological heritage for future generations and the elimination of gaps and loopholes in the current legislative framework.³⁹

By contrast, Options 1 and 2 were not considered appropriate for a range of reasons, including the limited benefits they would offer.

Maintaining the status quo will bring little or no benefit while reforming the current system without any legislative change may see partial benefits, such as a single monument database and publication of guidelines.⁴⁰

Further, in respect of Option 3, the Screening RIA noted the following concerning enforcement and compliance:

A revised Act provided under Option 3 would result in a more practical and effective enforcement regime for the protection of our archaeological and historic heritage.

The proposed civil enforcement system means that proportionate and reasonable penalties could be pursued where criminal prosecution would be considered to be too severe. The ability to introduce bye-laws and on-the-spot fines, as supported by the Commissioners of Public Works, are tools that would benefit agents on the ground who have the responsibility for enforcing monument and archaeological heritage legislation.⁴¹

In terms of staffing, the Screening RIA noted that whilst there would be no additional costs expected from any of the three options examined, the introduction of new legislation (i.e. Option 3) would mean that:

.. within the Department, dedicated resources will be required to establish and maintain a single register but as there is a requirement to update the current Record of Monuments and Places, staff resourcing must be committed either way.⁴²

Further, in respect of the Register of Monuments, the Screening RIA identified a range of performance indicators to determine if the revised legislative proposals achieves the intended benefits and objectives. Once the new register is fully compiled (expected to take 3 years to complete), the Screening RIA indicates that the following indicators are intended to be reviewed annually:

³⁸ *ibid*, p.1

³⁹ Department of Housing, Local Government and Heritage (2021) Screening Regulatory Impact Analysis (RIA) September 2021, p.7

⁴⁰ *ibid*, p.6-7

⁴¹ *ibid*, p.8-9

⁴² *ibid*, p.6

- No. of monuments added to the register with special/general protection;
- Level of consultation;
- No. of submissions from owners;
- No. of objections from owners;
- No. of monuments removed from special protection;
- No. of newly discovered monuments reported; and
- No. of new discoveries added to the Register.⁴³

Stakeholder commentary

In May 2017, the Royal Irish Academy (RIA)⁴⁴ launched [Archaeology 2025: Strategic Pathways for Archaeology in Ireland](#), a long-term strategy “based on the key strength of an inclusive approach, with inputs from a broad range of interested parties: those within the archaeological profession as well as external stakeholders”.⁴⁵ The recommendations were described as “consensus-based”, with the strategy resulting from an eight-month consultation process involving a wide range of stakeholders at local, national, cross-border and international levels.⁴⁶ During the consultation process, six priority pillars were identified, including Pillar 3: Modernising Legislation, with the objective of updating “legislation to regulate and manage archaeological practice”.⁴⁷ The strategy noted that:

.. the protection and preservation of archaeological sites and objects is legislated for under the National Monuments Acts, 1930–2014. Amendments were made between 1954 and 2004, and other changes have been made through statutory instrument. From a comparative international perspective, this has resulted in a strong body of legislation. However, the piecemeal evolution of legislation has created the need for a stronger regulatory framework.⁴⁸

In respect of the current Bill, the strategy notes that:

The drafting of this consolidated bill has unfortunately been delayed for various reasons ... We recognise the updating and consolidation of the National Monuments Acts as a key issue for the regulation of archaeological work. We recommend that the bill be brought to publication and enactment as soon as possible.⁴⁹

⁴³ *ibid*, p.9

⁴⁴ This initiative was driven by the RIA’s Standing Committee for Archaeology, with financial support and support-in-kind received from a range of institutions, including The Discovery Programme, Dublin City Council, Heritage Council, Institute of Archaeologists of Ireland, National Monuments Service, National Museum of Ireland, Royal Society for Antiquaries Ireland, and Transport Infrastructure Ireland. [Source: [Archaeology 2025 | Royal Irish Academy \(ria.ie\)](#)]

⁴⁵ [Archaeology 2025: Strategic Pathways for Archaeology in Ireland | Irish Humanities Alliance](#)

⁴⁶ [Archaeology 2025 | Royal Irish Academy \(ria.ie\)](#)

⁴⁷ [Archaeology 2025: Strategic Pathways for Archaeology in Ireland](#), Royal Irish Academy, p.11,12

⁴⁸ *ibid*, p.41

⁴⁹ *ibid*, p.42

Similarly, the Institute of Archaeologists of Ireland asserts that:

The introduction of revised archaeological legislation is long-overdue and to be welcomed. We each have a responsibility to see that the newly proposed Bill is extensive, comprehensive and that it can be implemented fully.⁵⁰

However, a piece on the then titled Monuments and Archaeological Heritage Bill in *Archaeology Ireland* raised issues in terms of the resourcing and implementation of the proposed legislation:

.. there is a further issue regarding the funding of the State archaeological service and its ability to enforce the existing legislation, in terms of both monument protection and excavation licensing. While this is obviously a separate issue, the procedures regarding enforcement will be of some interest.⁵¹

Enforcement concerns were also raised in a recent radio piece:

On *Newstalk Breakfast* this morning, sculptor John Coll said the change is long overdue – but it's still not clear how it will work.

"We need to protect our architecture and our heritage, in general, big time," he said.

"The old bill was drafted back in 1930 so I absolutely welcome the bill.

"But how are you going to enforce this? Who is going to enforce it?

"I don't think OPW staff will be too delighted going around trying to slap a bill of €200 on someone .."⁵²

Pre-legislative scrutiny of the revised General Scheme of the Bill

The revised [General Scheme](#) of the Bill was published by the Department on 2 December 2021 with an accompanying [press release](#). The Joint Committee on Housing, Local Government and Heritage ('the Committee') agreed to undertake Pre-Legislative Scrutiny (PLS) of the revised General Scheme on 18 January 2022, following its referral on 15 December 2021.⁵³ The Committee conducted its PLS over the course of 3 meetings, as outlined in Table 6 below and overleaf, with its [PLS report](#) published in June 2022.

Table 6 Overview of the Committee's PLS meetings (dates/witnesses)⁵⁴

| Committee Meeting | Witnesses |
|-------------------|---|
| 27 January 2022 | Department of Housing, Local Government and Heritage |
| 3 February 2022 | An Taisce Archaeology Ireland Local Authority Archaeologist's Network |

⁵⁰ [General Scheme of the Monuments and Archaeological Heritage Bill | Institute of Archaeologists of Ireland](#)

⁵¹ News - New Monuments and Archaeological Heritage Bill, *Archaeology Ireland*, Vol. 33, No. 4 (Winter 2019), pp. 6

⁵² [€200 fines for offences at national monuments: 'Who's going to enforce this?' | Newstalk](#) (January 2022)

⁵³ [Report on Pre-Legislative Scrutiny of the Revised General Scheme of the Monuments and Archaeological Heritage Bill – June 2022 \(oireachtas.ie\)](#), p.4

⁵⁴ Derived from PLS report, p.4-5

| | |
|------------------|--|
| | Transport Infrastructure Ireland |
| 17 February 2022 | The Heritage Council Office of Public Works Irish Planning Institute |

In addition, the Committee invited a number of stakeholders to make written submissions on the General Scheme, and links to these can be found in Appendix 5 of the Committee's [PLS report](#).

L&RS traffic light analysis of PLS recommendations versus published Bill

This section of the Digest seeks to assess the extent to which the Committee's recommendations have been addressed in the Bill, as presented for Second Stage. To do this, a traffic light system is used by the L&RS, indicating whether a key issue is accepted and reflected in the Bill, whether a consistent or unclear approach is used, and whether the recommendation has not been accepted or is not reflected in the Bill (see Table 7 below). This traffic light approach represents the L&RS's own, independent analysis of the Bill (see Table 8 below and overleaf). In addition, a number of blue text boxes in the next section (Principal Provisions of the Bill) contain additional consideration of the PLS recommendations in the context of specific provisions. The L&RS is grateful to the Departmental officials for providing their assessment of the actions taken and comments in relation to the PLS recommendations.

Table 7 Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.






| L&RS categorisation of the Department's response in the Bill to the Committee's key issue | Traffic light dashboard used in Table 8 to highlight impact of the Committee's PLS conclusion |
|--|---|
| Key issue has clearly been accepted and is reflected in the Bill. |  |
| The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear. |  |
| Recommendation/Key issue has not been accepted or implemented in the Bill. |  |


Table 8 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

| Joint Committee's recommendations | Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right) | |
|--|---|--|
| 1. That the Department provide adequate and appropriate staffing, resources, and funding to enable local |  | The Bill seeks to revise and modernise many of the procedures and systems that are currently in place under the existing law |



| Joint Committee's recommendations | | Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right) |
|--|---|--|
| <p>authorities and those agencies and organisations that are assigned responsibilities under the proposed Bill to carry these out effectively.</p> | | <p>relating to the protection of historic heritage. Provision is made for statutory guidelines, codes of practice, and the promotion of best practice in relevant disciplines and professions, which in combination with a general streamlining of existing processes, and the delineation of stakeholder functions and roles, intends to help reduce administrative burdens and provide for more efficient and effective services.</p> <p>Specific provision is made under section 5 of the Bill relating to expenses and financial matters⁵⁵. For example, expenses incurred by the Minister in the administration of the Bill are to be met from moneys provided by the Oireachtas. Section 5 of the Bill will also allow for moneys received by way of fees charged under the Bill by the Minister, or the Office of Public Works, to be used to offset expenses incurred in the administration or implementation of the Bill.</p> <p>In addition, any moneys received by the Office of Public Works by way of the (discretionary) fixed payment notice scheme will be put towards the administration of that scheme. Any moneys received by local authorities from the fixed payment notice scheme are to be lodged to their local fund (see section 97 of the Local Government Act 2001).</p> |
| <p>2. That the Bill provide for the automatic entry into a planning authority's Record of Protected Structures for those prescribed</p> |  | <p>The Department supports the principle purpose of this recommendation (the incorporation of registered monuments into development plans), however the approach proposed to achieve this purpose is not</p> |




⁵⁵ Please note that there appears to be a typo in respect of the information provided to the L&RS in respect of this recommendation - Section 6 (as opposed to Section 5) deals with expenses and other financial matters.

| Joint Committee's recommendations | | Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right) |
|--|---|---|
| monuments that the Minister enters into the Register of Monuments. | | <p>favoured as it is not compatible with the role of local authorities in the operation of the Record of Protected Structures (RPS).</p> <p>Regarding the maintenance duties arising for owners of structures listed in the RPS, the suggested approach would place unworkable obligations on landowners given the nature and condition of many structures to be included in the Register of Monuments (e.g. ruined medieval buildings).</p> <p>Alternatively an amendment to, or a revision of, Section 10 of the Planning and Development Act 2000 (as provided for under section 50(2)(d) and (e) of the recently published draft Planning and Development Bill 2022) can be made in order to ensure that the protection of registered monuments is listed as an objective in county development plans.</p> <p>The mandatory objective provisions relating to development plans will be extensively revised (including as they relate to heritage) and the relevant issues raised during pre-legislative scrutiny can be explored further as the finalisation of the Planning and Development Bill proceeds.</p> |
| 3. That the National Monuments Advisory Council be re-established and that the proposed Bill provide for an obligation to consult with the Heritage Council and the National Monuments Advisory Council where changes in the level of protection are proposed for a monument, where it is proposed to remove a monument from the register, and where works to a monument with special protection may cause damage. |  | <p>The Department accepted that the proposed Bill needed revision to ensure that there is an independent advisory input into the decisions referred to in Recommendation 3.</p> <p>The National Monuments Advisory Council was abolished under previous legislation and the relevant advisory functions under the existing National Monuments Acts are now vested in the Heritage Council (as established under the Heritage Act 1995).</p> |

| Joint Committee's recommendations | | Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right) |
|--|---|--|
| | | <p>The policy underpinning the Heritage Act was that there be a single statutory advisory council in relation to heritage matters. It endows the Heritage Council with wide ranging powers to advise the Minister on heritage matters.</p> <p>After consultation with the Heritage Council and the Office of Parliamentary Council, the Bill has been amended as follows to take account of this recommendation:</p> <ul style="list-style-type: none"> • <u>Section 3(2)</u>: Heritage Council now included in list of bodies regarding co-operation in implementation of Bill; • <u>Section 17(5)</u>: Mandatory consultation with Heritage Council required if deleting monument from Register; • <u>Section 22(7)</u>: Mandatory consultation with Heritage Council required if removing special protection; • <u>Section 168</u>: Heritage Council now specified regarding the co-ordination and development of public policy on historic heritage. |
| <p>4. That the proposed Bill should provide for a process to be undertaken wherein all landowners with a recognised monument on their lands be officially notified of its presence, significance, and attendant legal protection. Should a monument subsequently be illegally damaged or destroyed, an enforcement order should be placed on its footprint requiring the protection of the surviving subsurface elements of the monument and the associated legally protected artefacts.</p> |  | <p>The Bill provides for comprehensive consultation requirements prior to entering, amending or deleting particulars in the Register of Monuments (such actions to be known as 'register actions'). A further notification must also issue where a register action is carried out. Notice may be given in the following ways:</p> <ul style="list-style-type: none"> • Giving notice directly to the owner of the land on which a relevant monument is situated ('specific notice'); • Publishing a notice in a national newspaper regarding the availability |

| Joint Committee's recommendations | Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right) |
|-----------------------------------|--|
| | <p>of further information relating to a register action ('general list notice'). The information referred to will be available on the Department's website and at a relevant site, such as a library, a local authority office, or a Garda Station.</p> <p>Where special protection applies to a monument, notice of a registered action must be by way of specific notice directly to a landowner.</p> <p>It is considered that this approach strikes a workable balance between ensuring that owners are, to the fullest extent possible, made aware of the legal protection applicable to registered monuments but without running the risk that important sites are left unprotected due to administrative difficulties, such as identifying the identity or whereabouts of landowners. This will help ensure that the Register of Monuments is established swiftly following enactment of the Bill, while not precluding further work regarding notification to landowners by way of specific notice.</p> <p>To facilitate the second part of this Recommendation, an amendment has been made to section 8(3) as follows:</p> <p>"For the avoidance of doubt, it is hereby declared that the destruction, whether in whole or in part and by whatever means, of a monument to which general protection or special protection applies shall not prejudice the continuation of such protection to the remainder (if any) of the monument, including the site, surrounding area and immediate surroundings of the monument."</p> |

| Joint Committee's recommendations | | Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right) |
|---|---|--|
| <p>5. That the proposed Bill provide criteria which must be met when changes in the level of protection are proposed for a monument and where it is proposed to remove a monument from the register.</p> |  | <p>Section 20(3) has been amended so that the criteria to be considered when ceasing to apply special protection to a monument are now set out:</p> <p>“The Minister, in deciding whether or not to apply or cease to apply, pursuant to subsection (1) or (2) as appropriate, special protection to the Register action monument shall consider the interest, character, integrity or amenity value of the monument in terms of its archaeological, architectural or historic heritage, taking into account whether the monument is, in terms of such heritage, of special or particular interest, character, integrity or amenity value, whether at a local, regional, national or international level.”</p> <p>As per section 17(2), the criteria and matters to be taken into account when considering the entry of a structure or site in the Register of Monuments must also be considered if considering the removal of a monument from the Register.</p> |
| <p>6. That the proposed Bill provide for things of ‘cultural interest’ in its definition of ‘relevant interest’, and that the definition of ‘archaeological interest’ be clarified and drafted to include objects, sites, and structures etc., of modern cultural heritage.</p> |  | <p>The concept of archaeology, and what it encapsulates, can be considered to continuously evolve over time. The definition in the Bill of “relevant interest” has been fashioned in order to be sufficiently broad so as to take account of this constant evolution.</p> <p>The Bill caters for a wide range of interests - archaeological, architectural, artistic, historic, or traditional. The incorporation of ‘cultural interest’ (an undefined term and possibly open to a broad and varied interpretation) into the definition of “relevant interest” could alter the nature and basis of the proposed legislation in an unclear, uncertain and possibly unintended manner, if not merely duplicating what is already provided for elsewhere.</p> |

| Joint Committee's recommendations | | Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right) |
|---|---|--|
| | | For these reasons, the Department does not support this recommendation. |
| 7. That the proposed Bill provide the Minister with power to vest in local authorities' title to private burial grounds of historic and cultural interest. |  | Section 51 of the Bill provides that, with the consent of the Minister, a local authority may acquire (by agreement or compulsorily) a registered monument where it is considered appropriate that it becomes a national monument (as defined under the Bill) and be maintained by that local authority. Burial grounds which meet the relevant criteria can be included in the Register of Monuments as established under the Bill. |
| 8. That the proposed Bill provide for consultation with family members of deceased former residents where an institutional burial ground is assigned special protection and guardianship, or ownership is appointed to the Minister or Local Authority. |  | It is expected that the public consultation process will be suitably extensive to meet the needs as set out under this recommendation. |
| 9. That the proposed Bill incorporate the principles and requirements as laid out in the articles of the European Convention on the Protection of the Archaeological Heritage, particularly in regard to archaeological landscapes, and that the proposed Bill make specific reference to the Convention. ⁵⁶ |  | The long title of the Bill has been amended to make specific reference to the Valletta Convention. |

Source: The L&RS is grateful to the Department of Housing, Local Government and Heritage for providing their analysis of how the Committees recommendations impact on the Bill. The traffic light assessment represents the analysis of the L&RS.

⁵⁶ Please note that there are two slightly different versions of this recommendation in the PLS report, one on P.26 and one on P.27. The one on P.26 (included here) contains an additional element, namely the inclusion of the phrase “particularly in regard to archaeological landscapes”.

Principal Provisions of the Bill

This section of the Bill Digest examines the main provisions of the Bill, which is 244 pages long and contains 12 Parts and 238 Sections. Due to the length and complexity of the Bill, this section contains a **non-exhaustive** overview of the principal provisions of the Bill.

Part 2 Monuments

Part 2 (Monuments) of the Bill contains 18 chapters, including those outlined below.

Chapter 2 Prescribed Monuments

Chapter 2 sets out provisions regarding prescribed monuments. It contains two sections, Sections 12 and 13.

Section 12 is described in the Explanatory Memorandum as a “key provision providing for the concept of prescribed monuments”.⁵⁷

Section 12(1)(b-d) provides that the Minister is enabled to prescribe a class of ‘relevant things’ – to be referred to as a ‘**prescribed monument**’, defined as those of archaeological interest (and potentially of other interest also) and deemed appropriate to be subject to the provisions that apply to prescribed monuments due to their nature or their situation.

Section 12(1)(c) establishes that wrecks of 100+ years are designated a class of relevant things.

In addition, **Section 12(2)(a-g)** provides that the Minister may prescribe a class of relevant things, with reference to a range of criteria including, amongst other things, age, date, period, morphology, condition and typology.

In respect of **Section 12**, the Explanatory Memorandum states that:

In **Section 2**, “relevant thing” is defined as any of the following:

- (a) any artificial structure, construction, deposit, feature or layer (including any building and any burial or interment);
- (b) any artificially altered structure, construction, deposit, feature or layer, whether or not natural in origin;
- (c) any wreck;
- (d) any ritual or ceremonial site;
- (e) any site where an historic event took place;
- (f) any site with legendary or mythological associations;
- (g) any feature, deposit or layer, whether or not natural in origin and whether or not artificially altered, containing or providing information or evidence relating to the past environment

With limited exceptions, under the National Monuments Acts 1930 to 2014, discoveries of archaeological sites have no legal protection until they have been specifically designated or registered. The introduction of **prescribed monuments** will represent a major strengthening of the legal protection afforded to archaeological sites whereby such sites are protected without the need for formal designation or registration.⁵⁸

⁵⁷ [Historic and Archaeological Heritage Bill 2023: Explanatory and Financial Memorandum](#), p.2

⁵⁸ *ibid*, p.3

Please see below for details of how this protection is strengthened under the Bill.

| Strengthening the Level of Legal Protection | | | | |
|--|--|---|---|--|
| At present, with limited exceptions, discoveries of archaeological sites have no legal protection until they have been specifically designated or registered under the existing Act. The Minister will have power to prescribe classes of sites of archaeological interest, with such sites to be known as “prescribed monuments”. Subject to certain exceptions and exemptions, any find of a site belonging to such a class will have to be reported to the Minister. Prescribed monuments will be given a level of protection known under the Bill as ‘general protection’ (see below). | | | | |
| Prescribed monuments Section 12 | Minister is enabled to prescribe a class of ‘ relevant things ’ – to be referred to as a ‘ prescribed monument ’, defined as those of archaeological interest (and potentially of other interest also) and deemed appropriate to be subject to the provisions that apply to prescribed monuments due to their nature or their situation. | “ monument to which general protection applies ” means (Inter alia (c) a prescribed monument (not being a registered monument); - Section 2 | “ general protection ”, in relation to a thing means that section 27 applies to the thing pursuant to— (a) Section 21 , or (b) Section 23(3) ; - Section 2 | General protection under Section 27 <i>means that works to a monument cannot be carried out lawfully other than</i> -under a licence granted under the Bill, -or unless a notification procedure has been completed. Where such a notice has been served, the Minister will consider whether the monument should be assigned special protection (which would mean a licence is mandatory) and in any event, the Minister will be enabled to impose conditions on the carrying out of any notified works. This is considered to be strengthening as under the current regime, when the notice period elapses, the Minister is unable to regulate the carrying out of damaging works. |

| | | | |
|--|---|--|---|
| <p>“Monument to which special protection applies”</p> <p>Section 2</p> | <p>(a) a registered monument to which special protection applies pursuant to Section 20(1) or 24(1), or</p> <p>(b) a potential Register action monument (Section 22) to which special protection applies pursuant to Section 22(3);</p> | <p>Consultation on proposals to assign special protection are mandatory.</p> <p>Provision is also made for notification to be given to the particular land owner regarding assigning or removing special protection.</p> <p>Where a proposed Register action will remove the application of special protection from a monument, the Minister must consult with the Heritage Council and have regards to the Council’s views, if any, when deciding whether or not to remove special protection.</p> <p>Chpt 4 Section 22</p> | <p>Special protection will mean that (subject to any exemptions set out in regulations made under the Bill) works to a monument cannot be carried out lawfully other than under and in accordance with a licence.</p> <p>Chpt 5 Section 24</p> <p>Before a licence is granted which would result in the demolition of a registered monument subject to special protection, the proposal to demolish must be made subject to EIA.</p> <p>Section 34</p> <p>This is to ensure full compliance with EIA requirements and the findings of the Court of Justice of the European Union in Case C-50/09</p> |
|--|---|--|---|

Section 13 establishes the requirement to report the finding of a prescribed monument, whereby a person who finds, or believes that they have found a prescribed monument is obliged to make a preliminary report to the Minister or a member of An Garda Síochána within 72 hours of finding the thing, with power for other time periods to be set out in regulations where appropriate. Section 13(3)(a) provides that the report must contain the name and address of the finder, a description of the find and the site where the find was made (which may include a photograph), whilst Section 13(3)(b) provides that the member of An Garda Síochána to whom the initial report is made will ensure that this is given to the Minister as soon as practicable thereafter. Section 13 also establishes the administrative processes, as well timeframes, underpinning the reporting process, including that a form will be returned for completion to the person reporting the find.

Further, Section 13(5) establishes the nature of the information required for completion in this form (‘the return’) including, amongst other things:

- His/her name and address;
- The time and date of the finding of the thing;
- A description of the thing (which may include imagery of the thing), and the site of thing (which again may include imagery of the site);
- The circumstances surrounding the finding of the thing; and
- The name of the owner/occupier of the land on which the thing is situated, if this information is known.

On receipt of this return, Section 13(6) establishes that the Minister will provide that the relevant thing will be inspected. Section 13(7) provides that Section 13 will not apply if a thing is found in the course of licensable activity, where the activity is carried out under and in accordance with a licence and if that activity is subject to a condition that requires that the finding of any relevant thing(s) is reported to the Minister as per the specifications of the licence. Nonetheless, Section 13(8) does provide that a condition of a licence may specify that Section 13 will apply to the finding of a thing during the course of licenced activities. Section 13(9) provides that the Minister is not obliged to make a return if, amongst other things, he/she is of the view that the preliminary report does not relate to a relevant thing, does not merit completion, or is trivial/vexatious. Further, if these conditions are met, Section 13(10) establishes that the Minister is not obliged to provide that the thing is inspected.

Chapter 3 Establishment of Register of Monuments and related provisions

Chapter 3 sets out provisions regarding the establishment of a Register of Monuments, replacing several designation and registration systems under the existing National Monuments Acts.

It contains five sections, Sections 14 to 18.

The Bill does not provide for the automatic entry into a planning authority's Record of Protected Structures for those prescribed monuments that the Minister enters into the Register of Monuments as recommended by the PLS

Section 14 concerns the establishment of the Register of Monuments ('the Register'), with Section 14(1) obliging the Minister to establish and maintain such a Register as soon as practicable after the commencement of this section.

According to **Section 2**, a registered monument is defined as:

"(a) a prescribed monument the particulars of which are entered in the Register pursuant to section 14(3)(a), or

(b) a relevant thing of a relevant interest the particulars of which are entered in the Register pursuant to section 14(3)(b)" (p.26)

Section 14(2) further provides that the Register will take the form of an electronic database that is easily accessible by the general public, though it may also take other forms if deemed appropriate by the Minister.

Section 14(3) establishes that the Minister will enter into the Register the details of:

- (a) prescribed monuments including sites which the Minister believes there are prescribed monuments and
- (b) relevant things of relevant interest⁵⁹ known to the Minister which he/she is of the view are appropriate to be entered into the Register.

Section 14(7) sets out the range of matters that the Minister is obliged to take account of in forming such an opinion including, amongst other things: the level of archaeological interest, physical integrity, likelihood of protection in situ, or the extent to which the monument or thing is already subject to protection under another enactment.

Section 14(4)(a) establishes that the Minister may enter into the Register details of the surrounding area of the monument or thing as he/she deems necessary to secure the protection of the monument or thing (including protection of its amenities and any other prescribed monuments or relevant things of relevant interest which would be “reasonable to consider” might be in its vicinity) and, as per Section 14(4)(b), this surrounding area will then become part of the prescribed monument or relevant thing of relevant interest immediately upon entry in the Register.

Section 14(5) provides that the Minister may also take account of the topographical features in the area within which the monument is situated as well as boundaries

The PLS report noted the importance of both referencing the Valetta Convention and the importance of protecting archaeological landscapes such as those found at Brú na Bóinne and giving full recognition and legislative protection to archaeological or historical landscapes. It is suggested that Section 14(4)(a), (b) and 14(5) could be used to provide this protection.

Section 14(6)(a) enables the Minister to make two or more entries in the Register in respect of a single prescribed monument or relevant thing of a relevant interest if:

- (a) it is unclear if it is a single monument or thing or constitutes two or more of such monuments or things; or
- (b) such a measure assists in the application of special protection.

Conversely, Section 14(6)(b) enable the Minister to make two or more monuments or relevant things of a relevant interest the subject of a single entry in the Register if:

- (a) it is unclear if such monuments or things are two or more of such monuments or things or are in fact a lesser number; or
- (b) such a measure assists in the application of special protection.

Whilst the Explanatory Memorandum includes the following in respect of Section 14, please note that Section 14 itself does not reference amending or deleting entries into the Register, only

⁵⁹ This is defined in **Section 2** as follows: “‘relevant interest’, in relation to a relevant thing, means that the thing is of known or potential archaeological, architectural, artistic, historic or traditional interest (or any combination thereof)”. (p.26)

entering such particulars. Section 17 permits the Minister to amend or delete entries into the Register.

“Where the Minister enters, amends or deletes particulars into the Register, he or she may decide to enter particulars of an area surrounding the monument or thing, if doing so secures the protection of the monument or thing.” ([Explanatory Memo](#), p.3-4)

Section 15 requires the Minister to include a statement when entering, amending or deleting particulars in the Register as to the type of prescribed monument or relevant thing, the site of the monument or thing, and whether special protection applies or is to be applied. Section 15(2) provides that the Minister may include a statement stipulating either that any structures, features or deposits on/under/above/within/adjacent to a registered monument are the sole/exclusive extent of that monument or, alternatively, that they are not part of it. According to Section 15(3), this preceding provision pertains in respect of any proceedings relating to a registered monument with such a statement. Thus, for instance, any structures, features, or deposits not referred to in the statement as being the sole/exclusive extent of the monument will not be considered part of the monument for the purpose of such proceedings.

In respect of the registration of monuments, Section 15(4) obliges the Minister to assign a unique registration number, whilst Section 15(5) enables the Minister to assign a unique group registration number to two or more registered monument (in addition to these unique registration numbers). Section 15(6) provides that these registration numbers (both unique and group) may be used to identify a registered monument/group of two or more registered monuments during any relevant proceedings.

Additionally, Section 15(7) establishes that if the Minister has actual knowledge that special protection is applicable to a registered monument (as per Section 24(1)), he/she is obliged to include a statement in the Register reflecting this as soon as practicable after attaining such knowledge.

In performing his/her functions under Sections 14 and 15, Section 16 obliges the Minister to take into account the results of surveys, inventories and inspections carried out under this Act, as well as any other available information that he/she deems appropriate.

Section 17 provides that the Minister may amend or delete any particulars entered into the Register. In the event that he/she intends to take a Register action that would result in a registered monument ceasing to be a registered monument, Section 17(5) obliges the Minister to (a) consult with The Heritage Council to seek its views on the action, and (b) have regard to any such views in deciding whether to take the action.

The PLS report recommended that the National Monuments Advisory Council be re-established and that the proposed Bill provide for an obligation to consult with the Heritage Council and the National Monuments Advisory Council where changes in the level of protection are proposed for a monument, where it is proposed to remove a monument from the register, and where works to a monument with special protection may cause damage. Section 17 partly addresses this recommendation.

Section 18 provides that the Minister may promote public awareness of the Register as he/she considers appropriate, with Section 18(2) enabling the Minister to cooperate with, assist and encourage those individuals he/she considers appropriate to promote public awareness of the Register.

Chapter 4 Register actions and consultation on potential Register actions

Chapter 4 sets out provisions regarding Register actions and consultation in respect of potential Register actions.

It contains five sections, Sections 19 to 23.

The PLS report states that this is the first time that Irish legislation will provide a statutory right for consultation to take place. The PLS had recommended that the Bill should provide for a process to be undertaken wherein all landowners with a recognised monument on their lands be officially notified of its presence, significance, and attendant legal protection. Should a monument subsequently be illegally damaged or destroyed, an enforcement order should be placed on its footprint requiring the protection of the surviving subsurface elements of the monument and the associated legally protected artefacts. These sections address this recommendation.

Section 19 concerns the process by which the Minister gives notice of Register actions. Section 19(1) obliges the Minister to give notice of a Register action in one or more of a specified number of ways, as he/she considers appropriate. These include:

- Giving a notice to the owner of the land on which the monument subject to the Register action is situated including, amongst other things, a map showing the situation of the monument, specifying whether general or special protection applies to the monument, or in the event that all particulars have been deleted from the Register, specifying that the monument has ceased to be a registered monument.
- Publishing a notice in a national newspaper stating that a notice ('a general list notice') has been made available by the Minister for inspection by members of the general public on the Department's website and at relevant sites in the geographical area as considered appropriate by the Minister (and as specified in the national newspaper notice).

Should the Minister be unable to give a "specific notice"⁶⁰ to the landowner due to their identity and whereabouts being unknown, Section 19(2) stipulates that Minister publishes the notice (to include the relevant map) in a national newspaper as soon as is practicable after this is established. In addition, the Bill provides that the Minister may publish the notice in *Iris Oifigiúil*, with identifying information (e.g. name, contact details) redacted.

Section 19(6) establishes that the minister will give notice of a Register action via a specific notice if the relevant monument is a registered monument to which special protection applies. In the event that a register action results in a monument ceasing to become a registered monument and

⁶⁰ This is defined in **Section 2** as follows: "'specific notice' means the notice of a Register action given to the owner of the land concerned by the Minister pursuant to section 19(1)(a)". (p.33)

the Minister gives notice of this by means of a general list notice/revised general list notice, Section 19(7) provides that no future notices (including any related maps) need to refer to the monument or illustrate its location – unless it becomes a registered monument once again.

Section 19(8) stipulates a range of provisions in respect of a general list notice, including that it:

- (a) lists registered monuments (including the relevant monument even it has ceased to be a registered monument) situated (partly or wholly) in the area, as well as containing/being accompanied by a map illustrating the location of these monuments; and
- (b) specifies if the monument relating to the Register action is one to which general/special protection applies, or indicate that a monument has ceased to be a registered monument as appropriate.

Finally, Section 19(9) indicates that a revised general list notice will be a general list notice that, amongst other things:

- (a) is revised to include/exclude the Register action monuments amongst the registered monuments in the area, with a map illustrating the location of these monuments; and
- (b) indicates if the Register action monument is one to which general/special protection applies, or indicate that a monument has ceased to be a registered monument as appropriate.

Section 20 provides that the Minister has discretion to apply special protection to a Register action monument (i.e. subject to Section 30), as well as establishing that the Minister may specify that Section 30 disapplies to the monument.

Section 20(3) stipulates that the Minister will have regard to a range of matters in deciding whether to apply/disapply special protection including the interest, character, integrity or amenity value of the monument, as well as taking into account if the monument is of special interest, character, integrity or amenity value at local, regional, national or international level.

Section 20(3) addresses the PLS recommendation to provide criteria which must be met when changes in the level of protection are proposed for a monument and where it is proposed to remove a monument from the register.

Section 20(4) indicates special protection will not cease to apply in the event that the monument is (a) a national monument, (b) a wreck (as per Section 135), or (c) a guardianship monument (as per Section 68).

Section 21 establishes that general protection applies to all registered monuments (to which special protection has not been applied).

Section 22 concerns special protection.

Section 22(1) details the nature of the notice that the Minister will provide in respect of the application/removal of special protection, whilst Section 21(2) stipulates that the Minister will consider any written representations by the relevant owner (where made within the relevant time period as set out in subsection (3) and provided they are not inconsistent with Sections 14(3), (7) or (20), and then proceed/decline to proceed with the action, giving written notice to the owner of the decision and the reasons for this decision. Section 22(6) enables the Minister to initiate such

action at a later date (having previously given notice that he/she has declined to proceed) provided the provisions in this section are complied with. In the event that the Minister is unable to give Section 22 notice because the identity and whereabouts of the owner are unknown, Section 22(2) stipulates that the Minister will publish the notice in a national paper as soon as is practicable after this is established.

Whilst Section 22(4) provides that interim special protection applies in place of the general protection (if any) applied to the monument immediately in advance of this attaching, Section 22(5) establishes that this protection will not prejudice the operation of any licence granted in respect of the monument prior to such protection being applied.

Section 22(7) stipulates that if the Minister is of the opinion that special protection should be removed, they are obliged to consult with the (Heritage) Council in respect of this proposed action and have regard for any such views in deciding if this action should proceed.

Section 23 sets out the provisions concerning consultation on entering particulars of potential Register action monument in Register where no special protection is intended to be applied to monument.

For instance, it establishes that a Section 23 notice (given where the Minister proposes a Register action) is to be given in one or more way, including a notice to the owner of the land and through publication of the notice in a national newspaper indicating that a draft of the general list notice or revised general list notice is available on inspection on the Department's website and any other sites in the geographical area as considered appropriate by the Minister. It also stipulates the timeframes that apply in respect of consideration of any written representations made to the Minister and that the Minister will consider these considerations provided that they are not inconsistent with Sections 14(3), (7) or (20), and then proceed/decline to proceed with the action, giving written notice to the owner of the decision and the reasons for this decision. In the event that the Minister is unable to give Section 23 notice because the identity and whereabouts of the owner are unknown, Section 23(2) stipulates that the Minister will publish the notice in a national paper as soon as is practicable after this is established.

Section 23(3) provides that in the event that general/special protection is not otherwise applied to a Section 23 monument, Section 27 will apply to the monument from the date on which the Minister gives the Section 23 consultation notice or publishes either the Section 23 general or revised general list consultation notice in a national newspaper until either (a) 150 days after the giving of notice or publication of such a notice, (b) the Minister proceeds with a Section 23 action or (c) the Minister gives notice that he/she has declined to proceed with the Section 23 action, whichever first occurs.

Section 23(4) establishes that a potential Section 23 Register action relating to the deletion of all particulars entered in the Register will not affect the general protection applied to the monument unless and until the Minister process with the Section 23 Register action, whilst Section 23(5) provides that the interim general protection applied will not prejudice the operation of any licence granted in respect of the monument prior to such protection being applied. Section 23(6) enables the Minister to initiate such action at a later date (having previously given notice that he/she has declined to proceed) provided the provisions in this section are complied with.

Chapter 5 Special protection for certain registered monuments

Chapter 5 sets out provisions regarding special protection for certain registered monuments. It contains one section, Section 24, which concerns special protection applied to registered monuments in ownership or guardianship of the Minister or local authority.

Chapter 6 Works at, etc., monuments

Chapter 6 sets out provisions in respect of works at monuments. It contains seventeen sections, Sections 25 to 41.

Section 27 sets out provisions regarding general protection and relevant works, some of which are noted below. For instance, Section 27(1) stipulates that works will not be carried out on monuments to which general protection has been applied other than under and in accordance with a licence. However, Section 27(3) establishes it will not be a contravention of Section 27(1) for works to be carried out without a relevant licence (including without making a relevant application for such licence) if a number of conditions are met, including that relevant valid written notice has been given to the Minister of the intention to conduct the works, the relevant time period has elapsed and the works are carried out in accordance with any conditions specified by the Minister under Section 28(2)(a) or (4). Section 27(3) establishes the form that such a notice will take including, amongst other things, providing the name and contact details of the person giving the notice, identifying the monument by reference to its identification number and the relevant geographical area, and indicating the nature of the works to be performed and if they will take place on all or part of the monument, as well as specifying the timeframe/time period associated with the works. Section 27(9) stipulates the processes that will apply in the event that, on receipt of the notice, the Minister decides special protection should apply, or not, to the monument.

Section 28 deals with the attachment of conditions to certain relevant work, including specifying a range of conditions that may apply, such as:

- conducting an assessment of heritage interest/potential by way of, amongst others, archaeological excavation, the use of detection devices or photographic/geophysical survey equipment;
- the recording of the monument as a whole or any part or any objects related to it by way of, amongst others, archaeological excavation, the use of detection devices or photographic/geophysical survey equipment;
- the salvaging, collection or protection of any part of the monument, or any object associated with it, including the preparation of any such part/object for deposition in a appropriate museum or another site;
- that any of the preceding work be done in specified manner or be funded or conducted by a specified person including that this will be subject to further conditions of any set as set out in Section 151(4).

Section 29 concerns the exemption of certain relevant works from Section 27. For instance, whilst Section 29(2) indicates that a class of relevant works may be prescribed as a class to which Section 27 will not apply, Section 29(3) stipulates that the Minister will not exercise this power unless a range of conditions are met, including consideration of the potential effect on the

monuments, that the Minister is satisfied that this would be unlikely to have significant effects on the environment or a European site and that the class of relevant works either:

- (a) cannot be reasonably considered as creating a risk of damage to monuments, or
- (b) was an established recurrent activity prior to the relevant monuments becoming monuments to which general protection applies.

Section 30 stipulates that, subject to Section 31(3), works will not be carried out on a monument to which special protection applies other than under, and in accordance with, a licence.

Section 31 concerns the exemption of certain relevant works from Section 30. For instance, whilst Section 31(1) indicates that a class of relevant works may be prescribed as a class to which Section 31 will not apply, Section 31(2) stipulates that the Minister will not exercise this power unless a range of conditions are met, including that the Minister is satisfied that this would be unlikely to have significant effects on the environment or a European site and that the class of relevant works either:

- (a) cannot be reasonably considered as creating a risk of damage to monuments to which special protection applies, or
- (b) was an established recurrent activity prior to the relevant monuments becoming monuments to which special protection applies.

Section 32 details the processes pertaining to the application for screening for an environmental impact assessment (EIA), including noting that an application for a relevant licence will make an application to the Minister for a screening determination for EIA in the event that the proposed works fall within certain specifications as per various specified Planning and Development Regulations. Section 32(2) stipulates the nature of the information/particulars to be included with an application including, amongst others, the name and address of the applicant, the name and address of the owner of the land (and occupier if different), a location map for the proposed works, and a description of the nature of the proposed works and their likely significant effects on the environment (with reference to the EIA Directive and how available results of other relevant assessments carried out pursuant to EU legislation have been taken into account). Section 32(3) provides that an application may be accompanied by a description of any measures envisaged to avoid or prevent significant adverse environmental impacts, whilst Section 32(4) establishes that an application will be accompanied by the prescribed fee (if any). Section 32(5) provides that in carrying out a screening for an EIA, the Minister may seek further information deemed necessary from either the applicant/any other person he/she considers appropriate, and/or consult the Board, the relevant local authority and regional assembly, as well as any other person he/she considers appropriate, specifying the period within which the information/views are required to be received by the Minister. In the event that the applicant is not the owner or occupier of the land, Section 32(6) obliges the Minister to invite, in writing, these parties to make a submission on an application, specifying the period within which the submission(s) are required to be received by the Minister. In addition, Section 32(7) stipulates that this invitation will state that the owner/occupier may, amongst other things, provide a description of any measures envisaged to avoid or prevent significant adverse environmental impacts. Section 32(8) provides that the Minister may reject an application if he/she is of the view that it is incomplete, whilst Section 32(9) establishes in the event of an application being rejected, the Minister will return the relevant application documents (though

this may be copied, retained in electronic format, or retained with the agreement of the applicant) and give reason for this decision to the applicant. Further, if the applicant is not the owner or occupier of the land, the Minister is obliged to notify the owner and occupier (where appropriate) of this decision.

Section 33 concerns the determination of application for screening for EIA, with Section 33(1) establishing that the Minister will make a screening decision on the basis of the information provided by the applicant, taking account of the relevant selection criteria specified in Annex III to the EIA Directive and any relevant results or assessments of the effects on the environment carried out pursuant to other EU legislation. In the event that the Minister determines that the proposed works are likely to have significant environmental impacts, Section 33(2) stipulates that the screening determination will specify the main reasons for that determination (with reference to the relevant criteria listing in Annex III to the EIA Directive). Conversely, in the event that the Minister determines that the works are not likely to have significant effects on the environment, Section 33(3) establishes that the screening determination will outline the main reasons for that determination (with reference to relevant criteria listed in Annex III to the EIA Directive), as well as any of the following that the Minister relied on in making this decision:

- any features of such works to avoid or prevent significant adverse effects on the environment; (Section 33(3)(a))
- measures proposed by the Minister/applicant/another person to avoid/prevent significant adverse effects on the environment (Section 33(3)(b))

Section 33(4) stipulates that the Minister will make his/her screening determination as soon as possible, and within 90 days from the date that the applicant has submitted all the necessary information to the Minister, though it also provides that the Minister may extend the 90 days period in exceptional cases, such as where the nature, complexity, location or size of the proposed works justify this. In such cases, Section 33(4)(b) establishes that the Minister will inform the applicant (and owner or occupier of the land as appropriate) in writing of the reasons for the extension and the expected date when the determination will issue.

In the event that the Minister determines that the applicant is not required to submit an environmental impact assessment report (EIAR), Section 33(5) establishes that the applicant will comply with any specified measures that the Minister relied upon to make a determination (as per Section 33(3)(b)).

Finally, Section 33(6) stipulates that the Minister will publish a notice of his/her screening determination (containing this determination) in a form or manner he/she considers appropriate, including publishing it on the website of the Department – alongside information to the procedure related to seeking a judicial review of the decision.

Section 34 concerns relevant works at relevant monuments to be subject to an EIA.

Section 34(1) establishes that the Minister will ensure that proposed works likely to have significant environmental impacts on the environment are made subject to an EIA. Sections 34(2)(a) and (c) establishes that an EIA will be carried out by the Minister in respect of proposed works that fall within certain specifications as per various specified Planning and Development Regulations.

Further, Section 34(2)(b) stipulates that an EIA will be conducted where the proposed works would result in the demolition of a relevant monument to which special protection applies. Section 34(3) establishes that, where the Minister is required to conduct an EIA, the applicant will submit an EIAR in respect of the proposed works. In the event that the applicant does not submit this EIAR, Section 34(4) provides that the Minister will give written notice to the applicant, requiring him/her to submit an EIAR in respect of the proposed works and that the applicant will comply with this requirement, as soon as practicable after receiving this notice.

Section 34(5)(a) stipulates that an EIAR will include, amongst other things, the following information:

- a description of the relevant project and the likely significant effects of the project on the environment;
- a description of the measures envisaged to avoid, prevent or reduce and, if possible, offset the likely significant adverse effects on the environment;
- a description of reasonable alternatives studied by the development, plus an outline of the main reasons for the option chosen, taking account of the environmental impacts of the of the project;
- a non-technical summary of the above information and any additional, relevant information specified in Annex IV of the EIA Directive.

In the event that a relevant opinion has been given, Section 34(5)(b) stipulates that the EIAR will be based on this opinion and will include the information necessary to reach a reasoned conclusion on the significant environmental effects of the project taking account of current knowledge and assessment methods. Section 34(5)(d) obliges the applicant to ensure that the EIAR is prepared by those with sufficient expertise.

Section 34(6) provides that the Minister will give a written opinion on the scope and level of detail to be included in the EIAR (after consulting with the applicant, the Board, the relevant local authority and the relevant regional assembly) if the applicant requests this in advance of submitting the EIAR to the Minister. Section 34(7) stipulates that a request for a relevant opinion will include, amongst other things, the name and contact details of the applicant, details of the geographical location of the monument, and a brief description of the proposed work and possible effects on the environment. In the event that the Minister believes that he/she has insufficient information available to make a relevant opinion, Section 34(8) establishes that he/she will inform the applicant in writing that she/she is required to submit further information as specified by the Minister within a specified timeframe and that the applicant will comply with this. Sections 34(9) and (10) sets out the matters that the Minister will have regard to when dealing with a request for a relevant opinion.

Section 35 concerns submissions on an EIAR to the Minister.

Section 35(1) stipulates that if an applicant is required to submit an EIAR to the Minister, he/she will publish his/her intention to do so in at least one national newspaper, on the relevant section of the Department's website and on the EIA portal, not more than 2 weeks before submitting the EIAR.

Section 35(2) sets out the particulars that must be contained within the notice, whilst Section 35(4) provides that this notice will accompany the EIAR submitted to the Minister. In the event that the

Minister is of the view that the notice does not contain the required particulars or is misleading or inadequate, Section 35(5) stipulates that the Minister will, by written notice to the applicant, require that the applicant publishes a further notice as per the specification of the Minister, providing evidence to the Minister that this has been undertaken. Section 35(6) provides that the Minister will send a copy of the EIAR for consultation purposes to the Board, the relevant local authority, the relevant regional assembly and any other person he/she deems appropriate, with Section 35(7) establishing that the Minister will inform such people/entities that submissions in respect of the EIAR may be made in writing to the Minister within a 5-week time period (as per Section 35(2)(f)).

Whilst Section 37(2) provides that the Minister shall take into account the EIAR when carrying out an EIA, there appears to be no explicit requirement for the Minister to take into account any written submissions received under Section 35(7) – though this could be read as being covered by the aforementioned Section 37(2), which obliges the Minister to take account of any further information submitted to the Minister under this Chapter, as per Section 37(2)(b).

Section 36 concerns the Minister's consideration of EIAR and power to require further action by applicant for relevant licence. For instance, Section 36(1)(b) stipulates that the Minister will ensure that he/she has the necessary access the sufficient expertise in the matters subject to the EIA, whilst Section 36(1)(c) provides that the Minister may require the applicant to submit additional information, as specified in Annex IV of the EIA Directive, and the applicant will comply with this. In the event that the Minister is of the view that the EIAR is deficient in a range of specified ways (e.g. does not comply with the relevant opinion or does not identify or adequately describe with the environmental effects of the work), Section 36(2) establishes that the Minister will require the applicant to submit any further information deemed necessary for remedying these deficiencies, and that the applicant will comply with this. Further, Section 36(3) provides that the Minister will require the applicant to provide any further information he/she deems necessary to enable him/her conduct an EIA, and that the applicant will comply with this. Such requirements for further information will be given by way of written notice from the Minister, with Section 36(4) establishing that any such notice will, where applicable, specify the manner in which the EIAE is deficient (as specified in this subsection). In the event that the Minister is of the view that this further information contains significant additional data concerning the environmental effects of the proposed works, Section 36(5) obliges the Minister to, amongst other things, forward a copy of this information to any person consulted under Section 34(6) to advise them that written submissions in respect of this further information may be made to the Minister within a specified period and require the applicant to publish a notice in at least one national newspaper stating the matters as specified in Section 36(7). Further, Section 36(5)(b) obliges the Minister to notify any person who made submissions in respect of the proposed work of a range of matters as specified in Section 36(7) including, amongst others, that:

- significant additional data concerning the environmental effects of the proposed work has been provided to the Minister and that this information is available for inspection at the offices of the Minister or other convenient site specified by the Minister;
- the further information is available for inspection on the relevant section of the Department's website and on the EIA portal;

- written submissions in respect of this further information may be made to the Minister within a time period specified by the Minister

In the event that the Minister is of the view that the notice does not contain the required particulars or is misleading or inadequate, Section 36(9) stipulates that the Minister will, by written notice to the applicant, require that the applicant publishes a further notice as per the specification of the Minister, providing evidence to the Minister that this has been undertaken.

Section 37 concerns the carrying out of EIA by the Minister, etc., and grant or refusal to grant the relevant licence, with Section 37(1) stipulating that the Minister will only grant such a licence if the relevant requirements have been complied with. Concerning the carrying out of an EIA, Section 37(2) obliges the Minister to take account of, amongst other things, the submitted EIAR, any submissions concerning the environmental effects of the proposed work and the views of any other Member State which may have been provided, whilst Section 37(4) provides that the Minister may also take account of any reports produced for him/her by specified entities. In respect of the decision to grant a licence or not, and where an EIA has been conducted, Section 37(3) establishes that the Minister will take into account a range of matters, including, amongst other things, the EIA (and its results and findings), the EIAR submitted to the Minister and any submissions on the environmental effects of the proposed works. In such circumstances, Section 37(5) also enables the Minister to take account of any reports produced for him/her by specified entities in deciding whether to grant a relevant licence. In granting any such licence, Section 37(6)(a) enables the Minister to attach any conditions he/she deems necessary to avoid, prevent, reduce and (if possible) offset the significant adverse environmental effects of the proposed works, whilst Section 37(6)(b) stipulates that the Minister will provide for the monitoring of any such measures and any adverse environmental effects. Section 37(6)(c) further obliges the Minister to ensure that the types of parameters monitored and the duration of this monitoring are proportionate to the project concerned and the significance of its environmental effects.

Section 38 concerns works that may affect the environment in another Member State. In the event that the Minister is of the view that the relevant works are likely to have significant effects on the environment of another Member State (or if another Member State is of this view and so requests), Section 38(1) stipulates that the Minister will send to that Member State as soon as possible a description of the proposed works and any available information of its positive environmental effects in that Member State, as well as relevant information on the decision-making procedure concerning the granting of the relevant licence. In addition, it obliges the Minister to give the Member State a reasonable time frame to indicate if it wishes to provide views on these effects. In the event that the Member State indicates that it wishes to provide views, Section 38(2) establishes that the Minister will send a copy of the EIAR to the Member State, as well as any further relevant information on the decision-making procedure concerning the granting of the relevant licence. Further, Section 38(3) provides that the Minister will consult with the Member State in respect of the potential environmental effects of the works in that Member State, as well as the measures aimed at reducing/eliminating such effects. Finally, Section 38(4) obliges the Minister to notify the relevant Member State of his/her decision in respect of the granting of the relevant licence.

Section 38 concerns the public notice of the Minister's decision to grant or refuse to grant the relevant licence, whilst **Section 40** details provisions in respect of exemption from the requirements of Sections 32 to 39 or 34 to 39.

Section 41 concerns Judicial Review, with Section 41(1) establishing that relevant notices will inform the public that a person may question the validity of the decisions in respect of whether an EIA or appropriate assessment is required, the granting of a relevant licence, or the granting of an exception by way of a judicial review, as well as identifying where practical information on the review mechanism can be found. Section 41(2) establishes that a person will not question the validity of specified decisions/acts by the Minister, only by way of an application for a judicial review. Section 41(3) stipulates that the High Court will not grant leave for a judicial review unless it is satisfied that:

- (a) the applicant has sufficient interest⁶¹ in the relevant matter; or
- (b) the applicant is a body/organisation⁶² with aims/objectives relating to the promotion of environmental protection, aims/objectives that have been pursued in the 12 months prior to the date of the application.

Section 41(5) stipulates that in determination an application for leave for judicial review, the High Court will act as expeditiously as possible (as well as in a manner that is consistent with the administration of justice).

Section 41(7) establishes that an application for leave to apply for judicial review in respect of the act as per Section 41(2)(a) will be made within 8 weeks from the doing of the act, whilst an application for judicial review in respect of a relevant licence as per section 41(2)(b) will be made within 8 weeks from the date on which the Minister fulfils his obligations as per Section 39(1)(a) or (b), whichever is latest. However, Section 41(9) provides that the High Court may extend these time periods, but only if it is satisfied that (a) there is good and sufficient reason to do so and (b) the family to make the application within the time period was as a result of circumstances outside the control of the party seeking the extension.

Chapter 8 Provisions applicable to monuments to which general or special protection applies

It contains 5 sections, Sections 43 to 47, some of which are outlined below.

Section 43 concerns restrictions on the export of a Chapter 8 monument, whereby Section 43(1) stipulates that a person will not export (or direct or authorise the export) of such a monument other than other and in accordance with a licence, with Section 43(2) establishing the basis under which the preceding subsection will not apply (e.g. a licence has been granted and the Minister has approved the terms and conditions of such a licence).

⁶¹ Section 41(4) establishes that this is not limited to an interest in land or other financial interest.

⁶² State authorities, public authorities, governmental bodies or agencies are not encompassed within this/are expressly excluded from this provision.

Section 44 contains provisions in respect of the protection of the removed part of a Chapter 8 monument, with Section 44(1) establishing that where part of such a monument is removed, the same general/special protection that applied to the whole monument applies to that part (and the monument itself following any changes as a result of such a removal). However, Section 44(2) provides that the preceding subsection will cease to apply to any such part if the monument ceases to become a Chapter 8 monument, whilst Section 44(3) establishes that the Minister may declare that Section 44(1) does not apply to a specific Chapter 8 monument by way of a notice published in *Iris Oifigiúil*. Finally, Section 44(4) provides that Section 44(1) will not apply to such a part that has been removed under and in accordance with a licence, providing that the licence states that the subsection will not apply to the relevant part.

Section 47 concerns the transfer by public authority or local authority of registered monument. Section 47(2) stipulates that such an authority will not dispose of, convey, assign or otherwise transfer its ownership of/interest in a registered monument to any party other than the Minister without consulting the Minister. In respect of such a consultation, Section 47(3) establishes the authority will give the Minister notice of its proposed actions and will not take such action (or any similar action) until 90 days have elapsed since giving the notice to the Minister unless, during this period, the Minister gives written notice that he/she has not objection to the authority taking such action. Further, Section 47(4) provides that, during such a consultation, the Minister may request the authority to give the Minister the opportunity to acquire the monument as per terms agreed between the Minister and the authority, and the authority shall comply with this request.

Chapter 10 Acquisition of registered monument

Chapter 10 sets out provisions concerning the acquisition of a registered monument. It contains 1 section, Section 51.

Section 51 concerns the acquisition of a registered monument by the Minister or a local authority, with Section 51(1)(a) establishing that, after consultation with the Commissioners⁶³, the Minister may acquire a registered monument (either by agreement or compulsorily) if he/she is of the view that the monument is suitable to be a national monument.

Section 51 addresses the PLS recommendation that the proposed Bill provide the Minister with power to vest in local authorities' title to private burial grounds of historic and cultural interest.

However, Section 51(1)(b) stipulates that the Minister will not exercise this power unless he/she is of the view that the nature of the acquisition is such that he/she can perform his/her Chapter 15 functions in respect of the monument. Subject to this preceding subsection, and with the consent of the Minister, Section 51(2)(a) provides that a local authority may acquire a registered monument (either by agreement or compulsorily) if it is of the view that the monument is suitable to be a national monument. However, Section 51(2)(b) obliges the Minister not to give such consent unless he/she is of the view that the nature of the acquisition is such that the local authority can perform its Chapter 15 functions in respect of the monument. Section 51(3) establishes the basis by which the Minister or local authority can acquire the registered monument, whilst Section 51(4)

⁶³ This means refers to the Commissioners of Public Works in Ireland.

enables the Minister or local authority to decline to acquire a registered monument by way of a gift, bequest or devise. Section 51(6) outlines the provisions in respect of the area surrounding the monument, whilst Section 51(7) establishes that stamp duty will not be chargeable in respect of such an acquisition of a registered monument by the Minister or local authority.

Chapter 12 Burial grounds

Chapter 8 sets out provisions in respect of burial groups. It contains 4 sections, Sections 63 to 66, some of which are outlined below.

Sections 66 and 64 detail definitions in respect of this Chapter and transitional provisions applicable to certain burial grounds originally vested in guardians of poor law union or burial board respectively.

Section 65 contains provisions in respect of the Minister's power to vest certain burial grounds in Minister or local authority. For instance, Section 65(3) establishes that the Minister may order:

- vest in fee simple the land comprising a burial ground in the Minister on the date specified in the order and without any conveyance/assignment; or
- vest in fee simple that land comprising a burial ground in the local authority in whose area it is situated (by consent of the local authority) on the date specified in the order and without any conveyance/assignment.

However, Section 65(4) provides that nothing in such an order will operate to prejudice any estate, right, title or interest in or over the land existing immediately before the order take effect, other than such estates, rights, titles or interests as specified, or any encumbrance on land existing immediately before the order takes effect (other than where such an encumbrance wholly favours a public authority) (Section 65(4(b))).

Chapter 13 Guardianship of certain registered monuments

Chapter 13 sets out provisions in respect of the guardianship of certain registered monuments. It contains 1 section, Section 67.

Section 67 concerns the guardianship of certain registered monuments by the Minister or a local authority. Section 67(1) provides that, following consultation with the Commissions, the Minister may by order:

- (a) appoint himself/herself as the guardian of a registered monument to which special protection applies; or
- (b) with the consent of, or at the written request of, a local authority, appoint it as the guardian of a registered monument within its functional area to which special protection applies.

Such an order will include a map defining the relevant area, as per Section 67(2), which may be extended/reduced by further order under Section 67(3)(a). Additionally, Section 67(3)(b) provides that the Minister may, by order, revoke such a guardianship order. In the event that the Minister proposes to make/revoke a guardianship order, Section 67(5) stipulates that he/she will give written notice of this to the owner of the land on which the relevant monument is situated, considering any submissions made by the owner within the specified time period in advance of deciding whether or not to proceed. However, Section 67(6) empowers the Minister to make a

guardianship order without complying with this preceding section if he/she is of the view that the relevant monument is in immediate danger (e.g. decay, deterioration). In the event that the Minister decides not to proceed with a guardianship order, Section 67(7) provides that he/she is not prevented from proceeding with such a proposal (or a similar one) in the future.

Chapter 15 Provisions applicable to registered monuments in ownership or guardianship of Minister or local authority (national monuments)

Chapter 15 sets out provisions in respect of national monuments. It contains 6 sections, Sections 73 to 78, some of which are outlined below.

Section 73 details the application of Chapter 15, whilst Section 74 presents the definitions applicable to the Chapter.

Section 75 concerns the maintenance and presentation of national monuments, whereby Section 75(1) establishes that it is the duty of the relevant authority to maintain the archaeological, architectural, artistic, historic and traditional interest of a national monument, in so far as may be practicable. Notwithstanding this, Section 75(2) stipulates that such a duty will not prevent or restrict any act which results in the loss (whole or in part) of these interests where, in the view of the relevant authority, it is justified on (a) substantial and appropriate research grounds or (b) substantial public interest grounds. In respect of a national monument, Section 75(3) provides that the relevant authority may do all or any of the following:

- protect the monument;
- present the monument to the public (e.g. provide visitor access and facilities) subject to such conditions, restrictions, prohibitions or charges that the authority may determine;
- undertake any related works.

In determining any conditions, restrictions, prohibitions or charges, Section 75(4) provides that the relevant authority may take into account any matters related to the protection of the national monument, the safety/welfare of the public, the enjoyment by the public of the monument or the opinions (if any) of the owner of the land on which the monument is situated.

Finally, Section 75(5) establishes that the relevant authority may move the monument to a site where its protection may be more effectively secured if it is of the view that this is necessary for the protection of a national monument or required on substantial public interest grounds.

Section 77 contains provisions in respect of the granting of lease or licence in respect of national monument. For instance, Section 77(1) provides that the Minister may grant a lease or licence (though not one granted under Section 151) in respect of the land comprising of a national monument, whilst 77(2) enables a local authority to grant such a licence with the consent of the Minister.

Chapter 16 Provisions supplementary to Chapter 15

Chapter 16 contains supplementary provisions to Chapter 15. It contains 7 sections, Sections 79 to 85, some of which are outlined below.

Section 79 presents the definitions applicable to the Chapter, whilst Section 80 details the functions of the Commissioners in respect of national monuments.

Section 81 contains provisions in respect of the protection of national monuments and members of the public. Section 81(1) provides that the Commissions may, with the consent of the Minister, make bye-laws for any of the following purposes:

- the protection, management or control of national monuments and their amenities;
- the protection of the safety of the public at, in, on or around national monuments.

Section 81(2) enables local authorities to make bye-laws on a similar basis.

Section 81(3) establishes that bye-laws may be made in respect of a particular class of national monuments or in respect of a particular monument.

Section 82 details the matters on which bylaws may be made including, amongst other things:

- the regulation of any activity (incl. events) at, in, on or in the vicinity of the monuments;
- the regulation of all aspects of access to the monuments (incl. the imposition of charges for access);
- the regulation of transport to, from or within the monuments (incl. imposition of charges as specified);
- the preservation of public order at, in, on, or around monuments (incl. restriction/prohibition of the possession, use, sale or consumption of any thing);
- the prevention or removal of any nuisance or obstruction at, in, on, or in the immediate vicinity of the monuments (incl. subsequent disposal)
- the control of animals (or any specified class of animals) at, in, on, or in the immediate vicinity of the monuments;
- traffic management at, in, on, or in the vicinity of the monuments;
- the granting of a licence authorising the doing of any thing which would otherwise be in contravening of the bye-laws (subject to any conditions determined by the bye-law maker).

Section 83 contains a range of supplementary provisions in respect of Sections 81 and 82. For instance, Section 83(2) obliges the bye-law maker to consult the Minister for Transport, the Commissioner of An Garda Síochána and any other public authority or local authority responsible for transport or traffic management in the area in which the bye-laws, if made, would have effect, whilst Section 83(6)(a) enables an authorised officer to give directions, for the purpose of ensuring compliance with a bye-law, to a person in control of a vehicle.

Section 84 concerns the display of bye-laws. For instance, Section 84(1)(a) establishes that bye-laws will be displayed at the national monument to which they relate in such a manner as deemed best for giving information to the public, whilst Sections 84(1)(b) and (c) provide that the bye-law maker does not have to comply with the preceding subsection if a bye-law applies to all national monuments and if it has been published in *Iris Oifigiúil*. Section 81(2) stipulates that the bye-law maker will provide a copy of the bye-laws to any person applying for them (a reasonable charge – not exceeding the reasonable cost of making the copy – may be fixed by the bye-law maker). Further, Section 84(3) enables the bye-law maker to disseminate the bye-laws in other ways (e.g. publishing them on its website) as it thinks appropriate to bring these to the attention of the public. Finally, Section 84(4) establishes that a copy of the bye-laws which meets certain specified criteria will constitute evidence of the bye-laws in every court and in all legal proceedings.

Chapter 17 Fixed payment notices

Chapter 17 contains provisions in respect of fixed payment notices. It contains 3 section, Sections 86 to 88, some of which are outlined below.

Section 86 sets out the definitions in respect of this chapter, whilst Section 87 contains provisions in respect of authorised officers. For instance, Section 87(1) establishes that the Commission may (or will, if so directed by the Minister) appoint any officer of the Commissioners to be a authorised officer in respect of a national monument for a range of specified purposes. Section 87(2) provides that the Commissions will furnish an authorised officer with a certificate of his/her appointment, which he/she will furnish for inspection if requested to do so when performing a relevant function. Section 87(3) provides that a local authority may appoint any officer of the local authority to be an authorised officer in respect of a national monument (LA) for a range of specified purposes. Section 87(4) provides that the local authority will furnish an authorised officer with a certificate of his/her appointment, which he/she will furnish for inspection if requested to do so when performing a relevant function. Finally, Section 87(5) stipulates that an authorised officer may only perform a relevant function in respect of the national monument related to his/her appointment.

Section 88 concerns fixed payment for relevant offence. Section 88(1) provides that, for the purposes of assisting the protection and proper management of national monuments through effective sanctions, where an authorised officer has reasonable grounds for believing that a person has committed a relevant offense, he/she may issue a fixed payment notice in writing stating, amongst other things:

- the name and address of the person;
- that the person is alleged to have committed a specific relevant offence;
- that the person may, during a 21-day timeframe from the date of the notice, pay the specified amount to the relevant authority;
- that the person is not obliged to make the specified payment; and
- that prosecution will not be initiated during the 21-day timeframe and, if the specified payment is made during that period, no prosecution will be initiated.

Section 88(2) provides that in event that a fixed payment notice is issued:

- (a) the relevant person may make the specified payment to the relevant authority during the 21-day period;
- (b) the relevant authority will issue a receipt for the payment on receipt, with any payment received not recoverable by the payee and that relevant authority will retain the money and dispose of as per Section 88(4);
- (c) a prosecution will not be initiated in the period specified by the notice and, if the specified payment is made during this period, no prosecution will be initiated.

Section 88(3) stipulates that the amount specified in the fixed payment notice will be a figure not exceeding €200 and, if no amount is prescribed, will be €100. Section 88(4) stipulates the means by which the moneys received can be disposed of.

Chapter 18 Enforcement of easements and covenants

Chapter 18 contains provisions in respect of the enforcement of easements and covenants. It contains 1 section, Section 89.

Easements – rights which an owner/occupier of land has, by virtue of their ownership of land, over the land of a neighbour – for example, right of way, light, support and water.

A covenant is a promise under seal of a deed and is enforceable as between the parties under contract law rules. It can either a freehold or leasehold (between lessor and lessee) covenant.

Drawn from: Wylie on Irish Land law (2020)

Section 89(1) empowers the Minister, the Commissioners, or a local authority to enforce an easement, where the easement relates to or have of effect of providing access to a national monument by members of the public.

Section 89(2) establishes that if the Minister or a local authority conveys a registered monument to another person, then any covenants for the protection of the monuments or its amenities, or for access, shall bind that person, any person who subsequently succeeds to that estate and any person to whom the estate is subsequently conveyed.

Part 3 Measures to assist in implementing 1972 Convention Concerning Protection of World Cultural and Natural Heritage

Part 3 of the Bill contains 5 sections, Sections 90 to 94, some of which are outlined below.

Section 90 establishes that the Convention referenced in this section is the Convention Concerning the Protection of the World Cultural and Natural Heritage, with the words/expressions used in this section having the same meaning as in the Convention (unless the context requires otherwise).

Section 91 establishes that the Minister is the competent authority for:

- (a) submitting to the World Heritage Council the inventory referenced in Article 11 of the Convention, and
- (b) arranging participation in the work of the World Heritage Committee on behalf of the State (and in cooperation with other Ministers).

Section 92 stipulates that the Minister will engage in consultation with such person or the public as he/she deems appropriate in advance of submitting the inventory referenced in Article 11 of the Convention, as well as enabling him/her to specify the procedures for carrying out such consultation.

Section 93 stipulates that a property within the State which is included in the World Heritage List will be known as a 'World Heritage Property'.

Section 94 establishes that enactment of this Part will not prejudice the validity of previous actions taken for the purpose of complying with the State's obligations under the Convention or participating in the work of the World Heritage Committee.

Part 4 Archaeological Objects

Part 4 (Archaeological Objects) of the Bill contains 11 Chapters, including those outlined below.

Chapter 2 Ownership and disposal of archaeological objects

Chapter 2 contains provisions in respect of the ownership and disposal of archaeological objects. It contains 5 sections, Sections 96 to 100, some of which are outlined below.

The Explanatory Memo states that:

“Section 96 to 97 provide for State ownership of archaeological objects in the State with no known owner. Subject to remedying a number of possible uncertainties in existing law, this is essentially a restatement of the legal principle established under section 2 of the National Monuments (Amendment) Act 1994, which in turn built on the principles set out in the Supreme Court’s decision in *Webb v. Ireland* [1988] I.R. 353. Provision is included to ensure that the rule operates without prejudice to any rights the State might have to objects found before the coming into effect of the Act of 1994.” (p.21)

This section closes the current loophole in the law that gives the State the right to ownership of archaeological objects found with no known owner by making it clear that owners of land on which such objects are found are not counted as “known owners”⁶⁴. Procedures are introduced that enable the State to clearly pursue claims to archaeological objects found before the enactment of the National Monuments (Amendment) Act 1994, subject to appropriate protection for the interests of legitimate possessors of such objects. Where there is a known owner of an archaeological object, the State will be given the power to compulsorily acquire the object on payment of appropriate compensation.

Section 96 concerns State ownership of archaeological objects with no known owner, with Section 96(1) establishing that ownership will be vested in the State of any archaeological object with no known owner⁶⁴, an ownership that results in an absolute and immediate right to possession of the object (Section 96(2)). Section 96(3) stipulates that another party, not being the State, is deemed not to acquire any rights of ownership to an archaeological object found on, in or under the land, whilst Section 96(4) establishes that a finder of such an object is deemed not to acquire related ownership rights. Notwithstanding this, the relevant landowner or finder will, if the object is taken from him/her in a manner that is not in accordance with this Act or another enactment, or if he/she is induced to relinquish possession by dishonest, be deemed the owner of the object for the purposes of any offences under the Criminal Justice (Theft and Fraud Offences) Act 2001. Without prejudice to any other rights of the State to an archaeological object, the Board of the National Museum of Ireland may apply to the Circuit Court for an order declaring any archaeological object found between 6 December 1922 and 21 November 1994 to be in the ownership of the State (Sections 96(6) and (8)). Section 96(7) provides that the Court may grant such an order if it is satisfied that, in all circumstances, it would be appropriate to do so, with Court also empowered to grant such an order subject to specific conditions it considers appropriate.

⁶⁴ This section also explicitly states that this is without prejudice to any other rights of the State arising in relation to any archaeological object found before 21 November 1994.

Section 98 contains provisions in respect of the acquisition of archaeological objects by the Minister. For instance, Section 98(1) empowers the Minister (following consultation with the Board of the National Museum of Ireland and with the consent of the Minister for Public Expenditure and Reform) to:

- (a) acquire for the State, by agreement/compulsorily, an archaeological object from the owner of the object or the individual purporting to be the owner, or
- (b) accept on behalf of the State a gift, bequest or device of an archaeological object where any attached conditions are not insistent with the provisions of this Act.

However, Section 98(3) stipulates that an archaeological object will not be compulsorily acquired if:

- a person has lawfully brought it into the State, and
- there is a written agreement with the Minister or the Board of the National Museum of Ireland that the object will not be subject to compulsory acquisition if the conditions (if any) specified in the related agreement are complied with.

Further, 98(4) establishes that a person (not being the Minister or the Board) will not initiate legal proceedings seeking the recovery on behalf of the state of a Section 98(3) object, except with the of the Minister.

Section 99 concerns the disposal of an archaeological object, with Section 99(1) establishing that an archaeological object owned by the State will not be disposed of except in accordance with Section (99)(2), which provides that where the Board are of the view that an archaeological object is not (or has ceased to be) of sufficient interest (archaeological, historic, cultural or scientific) to justify its continued retention by the State, it may consent to the disposal of the object as prescribed. However, in the event that an archaeological object is subject to an order under Section 96(7), Section 99(4) stipulates that the Board will not consent to its disposal without the consent of the Minister and either (a) in conformity with any conditions attached or (b) with the leave of the Court which made the order. Section 99(5) establishes the basis underpinning the disposal of the object by way of (or which includes) the transfer of the object to another person.

Chapter 3 Finding of archaeological objects

Chapter 3 contains provisions in respect of the finding of archaeological objects. It contains 6 section, Sections 101 to 106.

Section 101 contains provisions in respect of the requirement to report the finding of an archaeological object, whilst other sections concern the safekeeping (Sections 102 and 104) and the prohibition against interfering with the relevant archaeological object (Section 103).

Section 105 concerns the actions that may be taken by the Board in respect of the relevant archaeological object. For instance, Section 105(1) stipulates that where the Board is aware of a relevant object, it shall, if it is not aware of any owner of said object, take the object into custody pending a decision to retain the objective on behalf of the State, retain it, or dispose of it in accordance with Section 99. In the event that the Board takes it into custody pending such a decision, Section 105(2) establishes that the object will be kept either in a designated site, a temporary designated site or at the site where it was found. If the Board decide to retain the object, Section 105(3) provides that it may be kept in a designated site, a temporary designated site or

either (a) at the site where it was found, (b) at another site with a similar natural environment conducive to the protection of the object. In the event that the Board decides to retain an object and if of the opinion that it would be best protected where it was found or at another site with a similar natural environment conducive to the protection of the object, Section 105(4) provides that, with the written consent of the owner (if any) (binding to successors in title of the site as per Section 105(5)), the Board may cause the object to continue to be kept at that site or moved to and kept at another site. Further, Section 105(6) states that this a relevant archaeological object will not be interfered with or removed other than by a relevant person. Finally, Section 105(7) stipulates that where the Board makes such a decision (under Section 105(4)), it shall give written notice of that decision to the Minister as soon as practicable after making this decision.

Chapter 4 Placing of archaeological objects in designated museums

Chapter 4 contains provisions in respect of the placing of archaeological objects in designated museums. It contains 5 sections, Sections 107 to 111.

Section 107 contains provisions in respect of the designation of museums to which this Chapter applies, whilst other sections concern the placing of an archaeological object in a designated museum (Section 108) and the transfer of a transfer of archaeological object placed in a designated museum (Section 109). Section 110 empowers the Minister to prescribe standards to be complied with in respect of archaeological objects placed in a designated museum.

Chapter 5 Payment of rewards

Chapter 5 contains provisions in respect of the payment of rewards. It contains 1 section, Section 112.

Section 112 concerns the payment of rewards in respect of finds of relevant archaeological objects. For instance, in the event that an object is retained on behalf of the State and the Board is of the view that it is in the public interest to pay a reward, Section 112(1)(a) empowers the Board to pay (at its discretion) a reward to the finder of such an object, to the owner/occupier of the related land, or to both parties as it sees fit. Section 112(1)(b) stipulates that such a reward will not exceed €1,000, except with the consent of the Minister and the Minister for Public Expenditure and Reform. Section 112(2) lays down the criteria that the Board will take account of when making a decision as to whether or to pay a reward (e.g. intrinsic value, general archaeological and historic importance), whilst Section 112(3) stipulates that this will not be construed as requiring the payment of a reward based on the relevant market value, the Board has the discretion to take into account such market value if warranted. Section 112(4) establishes the circumstances in which a reward will not be paid, whilst Section 112(5) stipulates the parties who will not be paid a reward (e.g. relevant officers and officers of the Minister/Commissions/Board/local authority, where the object was found whilst performing his/her functions under the Act or arising from any related employment). Section 112(6) establishes the payment of such a reward will not be taken as conferring any rights in respect of the object to the recipient of the reward.

Chapter 6 Possession and disposal of archaeological objects by person other than Board, etc.

Chapter 6 contains provisions in respect of possession and disposal of archaeological objects by person other than Board. It contains 2 sections, which deal with the possession (Section 113) and disposal/acquisition of such objects (Section 114) respectively.

Chapter 7 Duties of coroners in respect of reports of human remains

Chapter 7 concerns the duties of coroners in respect of reports of human remains. It contains 1 section, Section 115.

Section 115 sets out the duties of coroners in respect of reports of human remains which are also archaeological objects. For instance, Section 115(1) stipulates that where a report is made to the coroner concerning human remains which appear to him/her to be (or potentially be) an archaeological object, the coroner will consult the Board as soon as is practicable. If, following this consultation, the Board is satisfied that the human remains are archaeological objects, Section 115(2) stipulates that the remains will be dealt with in accordance with this Act (notwithstanding the provisions of the Coroners Act, 1962) and that the coroner will not take any further action in respect of the remains.

Chapter 9 Acceptance into the law of the State of rules established under the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

Chapter 9 concerns the acceptance into the law of the State of rules established under the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. It contains 8 sections, Sections 117 to 124.

Section 117 sets out the relevant interpretations that apply to this Chapter, whilst Section 118 establishes the Circuit Court will have the jurisdiction to hear and determine proceedings under this Chapter relating to a cultural object within the State and Section 119 provides that the Convention will have effect in the State in accordance with the provisions of this Chapter. Section 120 contains provisions in respect of bringing of claims, time limits for claims and determination of claims, whilst Section 121 concerns the possessor of stolen or illegally exported cultural objects and compensation. Section 122 contains supplementary provisions, whilst other sections concern interim and interlocutory orders (Section 123) and rules of court (Section 124) respectively.

Chapter 10 Measures to assist the State in ratifying UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970

Chapter 10 concerns the Measures to assist the State in ratifying UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970. It contains 6 sections, Sections 125 to 130.

Section 125 details the definitions that apply to this Chapter, whilst Section 126 obliges the Minister to prescribe cultural property for purposes of Convention and Section 127 empowers the Minister to prescribe requirements for certification of exports of cultural property. Section 128 contains provisions in respect of the prohibition of the import of certain categories of stolen cultural property, whilst Section 129 concerns the prohibition of possession of, or dealing in, certain categories of cultural property. Finally, Section 130 provides for regulations regarding the sale of cultural property.

Part 5 Wrecks and other elements of underwater cultural heritage

Part 5 (Wrecks and other elements of underwater cultural heritage) of the Bill contains 2 Chapters.

Chapter 1 State ownership of certain wrecks and restriction of salvage claims, etc.

Chapter 1 contains provisions in respect of State ownership of certain wrecks and restriction of salvage claims. It contains 5 sections, Sections 132 to 136, some of which are outlined below.

Section 134 contains provisions in respect of salvage payments including, amongst others, that a person will not be eligible for salvage payment in respect of a range of objects, including:

- a wreck that is 100 or more years old (including any object removed from the wreck);
- an archaeological object that is 100 or more years old, and
- a registered monument (including any object removed from the monument).

Section 135 establishes that special protection (i.e. Section 30) will be applied to a wreck that is 100 or more years old.

Section 136 concerns prohibited activities in the vicinity of a relevant thing (e.g. a wreck that is 100 years or more, a registered monument/archaeological object on, in, or under land covered by water), with Section 136(2) stipulating that a range of things will not be done except under and in accordance with a licence including, amongst others things:

- diving
- the use or possession of diving, survey or salvage equipment
- dumping or depositing of anything
- interference, removal or tampering.

Chapter 2 Measures to enable the State to ratify the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage.

Chapter 2 contains provisions in respect of Measures to enable the State to ratify the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage. It contains 11 sections, Sections 137 to 147, some of which are outlined below.

Section 138 contains provisions in respect of the carrying out by relevant persons of activities directed at underwater cultural heritage beyond the limits of territorial seas, as per Section 138(1). For instance, Section 138(2) establishes that a relevant person will not authorise or carry out (or permit the same) activities directed at underwater cultural heritage in the relevant area other than under and in accordance with either a licence or an authorisation granted pursuant to Article 10 or 12 of the UNESCO Convention by the Minister or the appropriate person in a state party.

Section 139 concerns the reporting of the discovery of underwater cultural heritage or intention to engage in activities directed at underwater cultural heritage in the exclusive economic zone of the State, whilst Sections 140, and 141 concern the protection of underwater cultural heritage in the exclusive economic zone of the State, in the exclusive economic zone of state party⁶⁵, Sections 142 and 143 contain provisions in respect of the reporting of discovery of underwater cultural heritage or the intention to engage in activities directed at underwater cultural heritage in the

⁶⁵ As per Section 137, this refers to a state which has consented to be bound by the UNESCO Convention other than the State.

Area⁶⁶ and the protection of underwater cultural heritage in the Area respectively, whilst Section 147 concerns the restriction on import of underwater cultural heritage.

Part 7 Licences

Part 7 (Licences) of the Bill contains 4 Chapters, including those outlined below.

Chapter 2 Applications for licence and grant, refusal, revocation or suspension of licence

Chapter 2 contains provisions in respect of applications for a licence and the granting, refusal, revocation or suspension of a licence. It contains 5 sections, Sections 150 to 154, some of which are outlined below.

Section 150 contains provisions in respect of the application for licence. Section 150(1) provides that a person may apply to the licensing authority for a specified licence in respect of the licensable activity specified in the application. Section 150(2) establishes that an application may require any of a range of information to be provided in respect of any matter related to the application including, amongst other things:

- information relating to the competence of the applicant or those acting on his/her behalf;
- information relating to the previous record (if any) of the applicant (other than relating to a spent conviction as specified), or those acting on his/her behalf, of compliance or non-compliance with a range of specified matters (e.g. a new or old authorisation, an enforcement notice);
- information relating to whether the applicant, or those acting on his/her behalf, has been convicted of a number of specified offences, the subject of specified civil proceedings, given an enforcement notice under this proposed Act (or a related notice in another jurisdiction);
- the licensee under a relevant licence that has been revoked or suspended under a relevant enactment;
- information relating to the manner in which the licensable activity is proposed to be carried and competency relevant to any such activity;
- information concerning the funding or supporting of the relevant activity;
- information as to whether the application or those acting on his/her behalf have been convicted on an offence relating to fraud or dishonesty;
- a valid tax clearance certificate (applicant).

Section 150(3) provides that the licensing authority may, via written notice, require the applicant to provide additional information related to the matter of the application as deemed necessary by the authority in order for it to determine the application, whilst Section 150(4) establishes that the application will be accompanied by a prescribed fee (if any).

⁶⁶ As per Section 137, “Area” has the same meaning it has in the UNESCO Convention

Section 151 contains provisions in respect of the granting or refusal of a licence, some of which are outlined below. For instance, Section 151(1) stipulates that the licensing authority will determine an application for a licence by either (a) granting the licence (subject to any conditions it deems appropriate) or (b) giving written notice to the applicant of its refusal to grant the licence. Section 151(2) further establishes that if the authority grants a licence with conditions attached, or if it refuses to grant a licence, the authority will give written notice of the reasons for these conditions or refusal. Sections 151(3)(a) and (b) contain provisions in respect of the information and factors that the authority is obliged to take account of in determining the application, whilst Section 151(4) establishes the range of conditions that may be attached to a licence and Section 151(6) concerns the grounds for refusing a licence. Section 151(7) provides that, in advance of determining the application, the authority will ensure that, amongst other things, if the relevant provisions of Part 5 of the Habitats Regulations apply, those provisions have been complied with and, if an AA has been carried out, that the licence, if granted, and the conditions (if any) attached to the licence are compatible with such AA. Section 151(8) and (9) deals with licencing and the demolition of a prescribed monument, whilst Section 152 concerns the assessment of competence.

Section 153 contains provisions in respect of consultation, with Section 153(1) stipulating that the Minister shall consult the Board before granting a licence whereby the Minister gives the Board a copy of the application and all other information that the Minister received in respect of the application (as per Section 150). Further, Section 153(3) establishes that the Minister will consider any views regarding the application submitted by the Board (provided the views are submitted not later than 21 working days from the date of consultation, or later if agreed between the Minister and the Board).

Section 154 concerns the revocation or suspension of a licence. For instance, Section 154(1) provides that the authority may revoke or suspend a licence (or vary the attached conditions) via written notice (giving the reasons for its decision, as per Section 154(2)) if it is satisfied that, amongst other things:

- an attached licence has been contravened;
- a provision of this Act has been contravened in the carrying out of the relevant activity;
- any information provided (as per Section 150) was either false or misleading; or
- there has been an adverse material change in either the circumstances of the licensee, of the licensable activity or any related activity that will or may potentially affect the satisfactory execution of that activity.

Chapter 4 Appeals

Chapter 4 contains provisions in respect of appeals. It contains two sections, Sections 156 and 157.

Section 156 concerns appeals officers, with Section 156(1) establishing that the Minister may appoint 1+ persons to be appeals officers if the Minister is satisfied that they have knowledge/experience relevant to the licence or are legal practitioners, Section 156(2) stipulating that an appeals officer will hold such a position for a 5-year term and Section 156(3) providing that such an officer will be paid such remuneration (if any) and expense allowances as the Minister specifies in writing (with the consent of the Minister for Public Expenditure and Reform). Further,

Section 156(4) provides that an appeals officer may either resign from office (via a letter addressed to the Minister) or be removed from office if the Minister is of the view that he/she has become incapable of effectively performance his/her functions through ill-health or has committed a misdemeanour, whilst Section 156(5) stipulates that the appeals officer will be independent in the performance of his/her duties.

Section 157 contains provisions in respect of appeals, with Section 157(1) establishing that an applicant may appeal against a decision to refuse to grant a licence or a decision to attach conditions to his/her licence. Section 157(2) provides that the appeals officer will give a copy of this appeal to the licencing authority, with Section 157(3) establishing that the authority will give written observations relating to the grounds of the appeal to the appeals officer and a copy to the appellant, with the appellant afforded a reasonable opportunity to reply. Section 157(4) provides that, in determining an appeal, the appeals officer may either confirm the decision of the licensing authority or recommend that this decision be set aside or varied (as the officer considers appropriate), giving written notice of this determination (and the reasons for it) to both the appellant and the licensing authority. In the event that the authority does not accept the recommendation of the appeals officer to set aside/vary its original decision, Section 157(5) establishes that it will give written notice to the appeals officer and the appellant of the decision not to accept the recommendations and the reasons for this. Section 157(6) provides that an appellant may withdraw an appeal by sending a withdrawal notice to the relevant appeals officer, whilst Section 157(7) establishes that time limits may be prescribed for the making and determining of appeals.

Part 9 Issuing of guidelines and matters relating to historic heritage

Part 9 (Issuing of guidelines and matters relating to historic heritage) of the Bill contains 6 sections (Sections 166 to 171), including those outlined below.

Section 166 provides that the Minister (after consultation with those he/she considers appropriate) may issues guidance relating to the dealing with historic heritage in the course of preparing or conducting an EIA, whilst Section 167(1) establishes that the Minister (after consultation with those he/she considers appropriate) may issue guidance to local authorities concerning their dealings with historic heritage and World Heritage Property (including a property with the potential to become one) and Section 167(2) stipulates that a local authority will have regard for these guidelines. Section 168 concerns the coordination and development of public policy on historic heritage, whilst Sections 169 and 170 contain provisions in respect of the promotion of best practice in relevant disciplines and professions and the promotion of the protection of historic heritage by public authorities, respectively. Finally, Section 171 establishes that it will be a general function of a public or local authority to have regard to historic heritage in the performance of their respective functions.

Part 10 Implementation and enforcement

Part 10 (Implementation and enforcement) of the Bill contains 11 Chapters, including those outlined below.

Chapter 2 Offences

Chapter 2 contains provisions in respect of offences. It contains 5 sections, Sections 175 to 179, some of which are outlined below.

Sections 175, 176 and 177 concerns the offences and penalties that apply in terms of this proposed Act. Penalties under this proposed Act, based on contravention of specified provisions of this proposed Act, are set out in the Table 9 below.

Table 9 Penalties under various sections

| Category | Summary conviction | Indictment |
|--|---|---|
| Offence under Section 175(2) | Class A fine and / or up to 12 months imprisonment | Maximum fine of €10,000 and / or up to 5 years imprisonment |
| Applies to sections 27(1), 30, 116(2), 128(2), 129(2), 136(2) and 138(2) | | |
| Offence under Section 175(4) | Class A fine and / or up to 6 months imprisonment | Maximum fine of €10,000,000 and / or up to 3 years imprisonment |
| Applies to sections 43(1), 99(1) and (5)(b), 103(1), 105(6), 113(1) and (2), 114(1), 147, 148(1), 159(4), 172, 173 and 174. | | |
| Offence under Section 175(6) | Class A fine | N/A |
| Applies to sections 13(2)(b), (3)(a) and (4)(b), 101(2)(b), (3)(a) and (4)(b), 114(4)(b), 139(1), (2) and (3), 142(1) and (2), 148(2) and (4) and 201(2)(b), (3)(b) and (4)(b) | | |
| Offence under Section 175(8) | Class A fine | N/A |
| Subsection (7) applies to sections 159(2) and 214(2) | | |
| Offence under Section 175(10) | Class E fine (first offence) Class C fine (second or any subsequent offence) | N/A |
| Applies to sections 76(2)(b) and (d), 83(6)(b) and 85(2)(b) and (d). | | |
| Offence under Section 176 (re regulation under Act stated to be a penal regulation) | Class A fine and / or up to 12 months imprisonment | N/A |
| Offence under Section 177 (re bye-laws) | Class E fine (first offence) Class C fine (second or any subsequent offence) | N/A |

Further, **Section 178**, which concerns continuing offences, provides for differing penalties for further offences, with the following sanctions applicable for each subsequent offence (see Table 10 below).

Table 10 Penalties under Sections 178 re continuing offences

| Category | Summary conviction | Indictment |
|------------------------------|--------------------|-------------------------|
| Offence under Section 178(1) | Class A fine | Maximum fine of €50,000 |
| Offence under Section 178(2) | Class E fine | Maximum fine of €10,000 |

Chapter 3 Defences

Chapter 3 contains provisions in respect of defences. It contains 7 sections, Sections 180 to 186, some of which are outlined below.

Section 180 establishes that it will be a defence for a person charged to prove that he/she has made a payment according to Section 88 (Fixed payment notice for relevant offence), pursuant to a fixed payment notice being issued in respect of that offence.

Section 181 concerns defence in respect of offences committed at sea or on water and establishes that, where a person is charged with an offence (at sea or on water) under this proposed Act, a defence will be for the person to demonstrate that the act was urgency required to:

- protect human life;
- protect persons from serious harm; or
- prevent serious damage to the environment.

Other defences provided for under the Bill include, amongst others:

- the defence that the act was carried out to protect or record elements of archaeological, architectural or historic heritage in immediate danger of destruction (Section 182);
- the defence that person was acting as servant or agent (Section 183);
- the defence in relation to finding of prescribed monuments (Section 184);
- the defence in relation to relevant works (Section 185); and
- the defence in relation to finding of archaeological objects (Section 186)

Chapter 5 Inspections

Chapter 5 contains provisions in respect of inspections. It contains 2 sections, Sections 188 to 189.

Section 188 concerns the powers of the Minister in respect of inspections. For instance, Section 188(1) provides that a Minister may inspect (or cause to be inspected) a range of matters including, amongst others:

- a relevant thing of a relevant interest (or such a thing that the Minister reasonably believes may be of such interest);
- a site where such a relevant thing might be situated (or might once have been situated); or
- a site where licensable activity is being/has been carried out,

whilst Section 188(2) establishes what is meant by the term 'inspect' for the purposes of this section.

Section 189 contains provisions in respect of the powers of the Board in respect of inspections, with Section 189(1) empowering the Board to inspect (or cause to be inspected) either:

- any site where an archaeological/historic object has been found (or that the Board reasonably believes may have been found); or
- any site where an archaeological/historic object is situated (or that the Board reasonably believes may have been situated).

Section 189(2) establishes what is meant by the term 'inspect' for the purposes of this section.

Chapter 6 Enforcement notices

Chapter 6 contains provisions in respect of enforcement notices. It contains 8 sections, Sections 190 to 197, some of which are outlined below.

Section 191 establishes the High Court's and Circuit Court's jurisdiction under this Chapter, with Section 191(1) stipulating that the High Court will have jurisdiction in respect of an enforcement notice given relating to Section 175(2) or (4) and Section 191(2) establishing that the Circuit Court shall have jurisdiction in respect of an enforcement notice given relating to sections other than Section 175(2) or (4).

Section 192 contains provisions in respect of the issuing of enforcement notices. Section 192(1) establishes that, for the purposes of assisting in the protection of monuments or archaeological heritage, Section 192(2) applies where the relevant authority is of the view that a person has or is contravening a relevant provision or has contravened such a provision in circumstances where it is likely that this contravention will continue/be repeated. Section 192(2) provides that the relevant authority may give the person written notice (with a copy of this Chapter), including, amongst other things:

- the name and contact details of the person;
- the relevant opinion and the reasons for this;
- indicating the relevant provisions that apply,
- directing the person to take the specified steps to remedy the contravention (options may be provided, as per Section 192(3)) and specifying a reasonable timeframe for this to occur.

Section 192(4) provides that if a person makes an application under Section 193(1) to cancel a direction specified in the enforcement notice, the relevant steps need not be taken pending determination, withdrawal or abandonment of this application. Section 192(5) establishes that the relevant authority may cancel such a notice via written notice to the person concerned. In the event that a person fails to take the steps specified in the enforcement notice, Section 192(6) provides that the relevant authority may apply in summary manner to the relevant court for an order requiring these (or similar steps) to be taken. Further, it provides that the court may make a range of decision including, amongst other things:

- make sought order;
- make the sought order with variations to the steps;
- make the sought order subject to similar steps; or
- dismiss the application.

Further, it establishes that the Court may make an order as to costs. Section 192(7) establishes the steps, or combination of steps, that may be specified in an enforcement notice.

Section 193 concerns an application of the cancellation of a direction specified in an enforcement notice, with Section 193(1) establishing that a person who receives an enforcement may apply to the relevant court for the cancellation of any specified direction not later than 30 days after giving notice to the relevant authority. It further empowers the court to either cancel the direction, confirm or vary the direction, as well as to make an order re costs as it see fit. Section 193(2) stipulates that the decision of the relevant court will be final, save for the provided specified appeals routes.

Section 194 contains provisions in respect of injunctions, with Section 194(2) establishing that the relevant authority may apply to the relevant court for an interim/interlocutory order directing the relevant person to do/cease to do the relevant act until the relevant event occurs (as defined in Section 190) and empowering the court to make the order (subject to any specified conditions) or dismiss the application and make an order re costs as it sees fit. and Sections 195-197.

Chapter 7 Arrest, search and seizure powers

Chapter 7 contains provisions in respect of arrest, search and seizure powers. It contains 4 sections, Sections 198 to 201, some of which are outlined below

Section 200 contains provisions in respect of the powers of arrest, search and seizure of relevant bodies (i.e. An Garda Síochána, the Naval Service of the Defence Forces, or the Revenue Commissioners, as per Section 199). If enacted, Section 200(1) empowers a member of a relevant body to arrest without warrant any person committing a relevant offence, or any person the members believes to be committing such an offence, whilst Section 200(2) empowers a member of a relevant body to arrest without warrant any person on suspicion of having committed a relevant offence or being involved in committing such an offence if he/she has reasonable grounds to believe that such a person may abscond. Section 200(3) establishes the actions that the member of a relevant body (accompanied as necessary) may carry out, including conducting searches, seizing and detaining things or securing relevant sites for future searches. Notwithstanding this, Section 200(4) stipulates that a private dwelling will not be entered under this section without the consent of the occupier unless a District Court warrant has been obtained under Section 200(5), which establishes that a District Court judge may issue such a warrant if he/she is satisfied (by way of information on oath of a member of An Garda Síochána) that there are reasonable grounds for suspecting that relevant evidence is to be found in the dwelling. Section 200(6) contains provisions in respect of such a search warrant including, amongst other things, that with one month of the issuing of the warrant and on production of the warrant, authorised members of An Garda Síochána may:

- enter the dwelling by force if necessary,
- seize anything found in the dwelling that may be evidence of the commission/intended commission of a relevant offence, or
- secure the dwelling for future search.

Chapter 8 Evidentiary and procedural matters

Chapter 8 contains provisions in respect of evidentiary and procedural matters. It contains six sections, Sections 202 to 207, some of which are outlined below.

Section 202 concerns inferences, evidential burdens and onuses of proof arising in certain circumstances. For instance, Section 202(1) stipulates that, in the event that a person charged with a relevant offence claims that she/he has been granted, given or issued a new authorisation, the burden of showing that this lies with the defendant. Section 202(2)(a) provides that *prima facie* evidence may be given that no such authorisation has been granted, given or issued by way of production to the court of an authenticated copy of the relevant extract of any register or record of new authorisations covering the relevant period, with Section 202(2)(b) establishing the basis for such authentication. Section 202(3) stipulates that, in the event that a person charged with a

relevant offence claims that she/she has been given a relevant and valid notice or other relevant document, the burden of showing that this lies with the defendant. Section 202(4)(a) provides that *prima facie* evidence may be given that no such notice or other document was given by way of production to the court of an authenticated copy of any such portion or extract of any register or record of notices or other documents received by the Minister, the Commissioners or the Board, or local authority, as appropriate, as relates to or covers the relevant period, with Section 202(4)(b) establishing the basis for such authentication.

Section 204 concerns vicarious liability, with Section 204(1) establishing that anything done by a person in the course of his/her employment will be treated as also done by that person's employer (whether done with the employer's knowledge or approval). However, subject to subsection (4) Section 204(3) provides that it shall be a defence for the employer in any relevant proceedings for the employer to prove that it took such steps as were practicable to prevent the employee for carrying out the act or from doing so in the course of his/her related employment acts. Section 204(2) establishes that anyone done by an agent of another person with their authority (express/implied) will be treated as also being done by that person.

Section 206 establishes that a relevant offence may be summarily prosecuted by either the Minister, the Board (if it relates to an archaeological/historic object) or the relevant local authority in the case of a national monument (LA).

Section 207 contains provisions in respect of the time limits for offences that may only be brought by summary proceedings. For instance, Section 207(1) provides that summary proceeding for relevant offences may be instituted (a) within 12 months of the offence being committed, or (b) within 6 months of the date on which evidence sufficient to justify proceedings come to the knowledge of the person instituting the proceeding, whichever is later (with a signed certificate indicating this counting as evidence as per Section 207(2)). However, Section 207(2) also stipulates that no such proceedings will commence later than 2 years after the date on which the relevant offence was committed.

Chapter 9 Costs of prosecutions and civil proceedings and recovery of debts

Chapter 9 contains provisions in respect of the costs of prosecutions and civil proceedings and the recovery of debts. It contains 2 sections, Sections 208 to 209.

Section 208 concerns the costs of prosecutions and applications for injunctions. Section 208(1) stipulates that, unless there are special and substantial reasons for not doing, the court will order the relevant person to pay the Minister, the Commissioners, the Board, the local authority or other person, as appropriate, the costs and expenses of the action as determined by the court.

Section 209 contains provision regarding the recovery of debts, with Section 209(1) establishing the basis by which the relevant body can recover, as a simple contract of debt in any appropriate jurisdiction, the amount due from the relevant person and Section 209(2) providing that, if the relevant person in default of such payment, the relevant body may apply specified interest to the outstanding amount, as per Section 209(2)(b).

Chapter 10 Codes of practice

Chapter 10 concerns codes of practice. It contains 3 sections, Sections 210 to 212, some of which are outlined below.

Section 211 contains provisions in respect of codes of practice. Section 211(1) empowers the Minister to prepare and publish a code of practice to:

- set out the manner in which he/she proposes to perform any relevant function; or
- provide practical guidance to assist with the compliance.

If the Minister wishes to prepare and publish such a code of practice, Section 211(2) obliges him/her to, before publication, undertake a number of actions including, amongst others:

- make a draft code available those he/she believes to be appropriate and invite them to make written representation to the Minister within the specified period (not less than 30 days from making the draft available); and
- consider any representations received and make any modifications he/she seems appropriate to the draft.

In the event that the Minister publishes a code of practice, Section 211(3) obliges him/her to publish a notice to this effect in *Iris Oifigiúil* containing certain specified information, whilst Section 211(4) stipulates that he/she post the relevant code(s) on the designated space on Department's website to host such codes (in a publically available fashion, as per Section 211(5)).

Section 211(7) empowers the Minister to amend or revoke a published code of practice (though this must be in accordance with Section 211(2)). Further, if the Minister amends or revokes a code of practice, Section 211(8) obliges him/her to publish a notice to this effect in *Iris Oifigiúil* containing certain specified information.

Section 212 concerns the admissibility of codes of practice and provides that a code of practice (or an amended code as per Section 211) bearing the seal of the Minister will be admissible in evidence in any proceedings before a court or tribunal or in any other proceedings concerning the provisions of the proposed Act to which the code relates.

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