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## Appendix 14.10

# Legislative Framework Protecting the Archaeological Resource

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Rialtas  
na hÉireann  
Government  
of Ireland

Tionscadal Éireann  
Project Ireland  
2040



Air Roinn Iompar  
Turasoireachta agus Spóirt  
Department of Transport,  
Tourism and Sport



Transport Infrastructure Authority



Dún Dealgan, Ceilíníocht  
le Contae Limerígh  
Limerick City  
& County Council

**JROD**  
AECOM

## **APPENDIX 14.10**

### **Legislative Framework Protecting the Archaeological Resource**

#### **Protection of Cultural Heritage**

The cultural heritage in Ireland is safeguarded through national and international policy designed to secure the protection of the cultural heritage resource to the fullest possible extent (Department of Arts, Heritage, Gaeltacht and the Islands 1999, 35). This is undertaken in accordance with the provisions of the European Convention on the Protection of the Archaeological Heritage (Valletta Convention), ratified by Ireland in 1997.

#### **The Archaeological Resource**

The National Monuments Acts 1930 to 2014 and relevant provisions of the National Cultural Institutions Act 1997 are the primary means of ensuring the satisfactory protection of archaeological remains, which includes all man-made structures of whatever form or date except buildings habitually used for ecclesiastical purposes. A National Monument is described as 'a monument or the remains of a monument the preservation of which is a matter of national importance by reason of the historical, architectural, traditional, artistic or archaeological interest attaching thereto' (National Monuments Act 1930 Section 2).

A number of mechanisms under the National Monuments Act are applied to secure the protection of archaeological monuments. These include the Register of Historic Monuments, the Record of Monuments and Places, and the placing of Preservation Orders and Temporary Preservation Orders on endangered sites.

#### **Ownership and Guardianship of National Monuments**

The Minister may acquire national monuments by agreement or by compulsory order. The state or local authority may assume guardianship of any national monument (other than dwellings). The owners of national monuments (other than dwellings) may also appoint the Minister or the local authority as guardian of that monument if the state or local authority agrees. Once the site is in ownership or guardianship of the state, it may not be interfered with without the written consent of the Minister.

#### **Register of Historic Monuments**

Section 5 of the 1987 Act requires the Minister to establish and maintain a Register of Historic Monuments. Historic monuments and archaeological areas present on the register are afforded statutory protection under the 1987 Act. Any interference with sites recorded on the register is illegal without the permission of the Minister. Two months' notice in writing is required prior to any work being undertaken on or in the vicinity of a registered monument. The register also includes sites under Preservation Orders and Temporary Preservation Orders. All registered monuments are included in the Record of Monuments and Places.

#### **Preservation Orders and Temporary Preservation Orders**

Sites deemed to be in danger of injury or destruction can be allocated Preservation Orders under the 1930 Act. Preservation Orders make any interference with the site illegal. Temporary Preservation Orders can be attached under the 1954 Act. These perform the same function as a Preservation Order but have a time limit of six months, after which the situation must be reviewed. Work may only be undertaken on or in the vicinity of sites under Preservation Orders with the written consent, and at the discretion, of the Minister.

#### **Record of Monuments and Places**

Section 12(1) of the 1994 Act requires the Minister for Arts, Heritage, Gaeltacht and the Islands (now the Minister for Culture, Heritage and the Gaeltacht) to establish and maintain a record

of monuments and places where the Minister believes that such monuments exist. The record comprises a list of monuments and relevant places and a map/s showing each monument and relevant place in respect of each county in the state. All sites recorded on the Record of Monuments and Places receive statutory protection under the National Monuments Act 1994. All recorded monuments on the proposed development site are represented on the accompanying maps.

Section 12(3) of the 1994 Act provides that 'where the owner or occupier (other than the Minister for Arts, Heritage, Gaeltacht and the Islands) of a monument or place included in the Record, or any other person, proposes to carry out, or to cause or permit the carrying out of, any work at or in relation to such a monument or place, he or she shall give notice in writing to the Minister of Arts, Heritage, Gaeltacht and the Islands to carry out work and shall not, except in the case of urgent necessity and with the consent of the Minister, commence the work until two months after the giving of notice'.

Under the National Monuments (Amendment) Act 2004, anyone who demolishes or in any way interferes with a recorded site is liable to a fine not exceeding €3,000 or imprisonment for up to 6 months. On summary conviction and on conviction of indictment, a fine not exceeding €10,000 or imprisonment for up to 5 years is the penalty. In addition, they are liable for costs for the repair of the damage caused.

In addition to this, under the European Communities (Environmental Impact Assessment) Regulations 1989, Environmental Impact Statements (EIS) are required for various classes and sizes of development project to assess the impact the proposed development will have on the existing environment, which includes the cultural, archaeological and built heritage resources. These document's recommendations are typically incorporated into the conditions under which the proposed development must proceed, and thus offer an additional layer of protection for monuments which have not been listed on the RMP.

### **The Planning and Development Act 2000**

Under planning legislation, each local authority is obliged to draw up a Development Plan setting out their aims and policies with regard to the growth of the area over a five-year period. They cover a range of issues including archaeology and built heritage, setting out their policies and objectives with regard to the protection and enhancement of both. These policies can vary from county to county. The Planning and Development Act 2000 recognises that proper planning and sustainable development includes the protection of the archaeological heritage. Conditions relating to archaeology may be attached to individual planning permission.

### **Limerick County Development Plan 2010–2016 (as extended)**

#### **Objective EH O25: Preservation of the Archaeological Heritage**

It is the objective of the Council to seek the preservation (in situ, or at a minimum, preservation by record) of all known sites and features of historical and archaeological interest. This is to include all the sites listed in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act 1994.

#### **Objective EH O26: Preservation of the unrecorded/newly discovered archaeological heritage**

It is the objective of the council to protect and preserve (in situ, or at a minimum, preservation by record) all sites and features of historical interest discovered subsequent to the publication of the Record of Monuments and Places.

#### **Objective EH O27: Protection of the setting of archaeological monuments**

It is the objective of the council to ensure that any proposed development shall not have a negative impact on the character or setting of an archaeological monument.

Objective EH027A: Preservation of the Underwater Archaeological Heritage

It is the objective of the Council to seek the preservation (in situ, or at a minimum, preservation by record) of all known and all previously unrecorded sites and features of historical and archaeological record in riverine, lacustrine, estuarine and or marine environments.

Objective EH O29: Assessment and recognition of archaeological landscapes

It is an objective of the council to designate archaeological landscapes as part of an ongoing appraisal for Historic Landscape Characterisation of the County.

Objective EH O30: Raise public awareness and encourage active participation

It is an objective of the Council to generally raise public awareness of the archaeological and historic heritage and to assist and encourage active participation by the public following consultation with National Monuments Service, in the conservation, consolidation and presentation of landmark sites, where this is appropriate and subject to available resources.

**Askeaton Local Area Plan (2015 – 2021)**

Objective EH 3: Archaeology

It is the objective of the Council:

(a) to seek the preservation (in situ, or at a minimum, preservation by record) of all known sites and features of historical and archaeological interest. This is to include all the sites listed in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act 1994.

(b) to protect and preserve (in situ, or at a minimum, preservation by record) all sites and features of historical interest discovered subsequent to the publication of the Record of Monuments and Places.

(c) to ensure that any proposed development shall not have a negative impact on the character or setting of an archaeological monument.

(d) that the area of a monument and the associated buffer area shall not be included as part of the open space requirement demanded of a specific development, but should be additional to the required open spaces, and if appropriate, where such a monument lies within a development, a conservation and/or management plan for that monument shall be submitted as part of the landscape plan for that development.

**Rathkeale Local Area Plan (2012 – 2018, extended until 2022)**

Objective EH 3: Archaeology

It is the objective of the Council to:

(a) seek the preservation (in situ, or at a minimum, preservation by record) of all known sites and features of historical and archaeological interest. This is to include all the sites listed in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act 1994.

(b) protect and preserve (in situ, or at a minimum, preservation by record) all sites and features of historical interest discovered subsequent to the publication of the Record of Monuments and Places.

(c) ensure that any proposed development shall not have a negative impact on the character or setting of an archaeological monument.

(d) the area of a monument and the associated buffer area shall not be included as part of the open space requirement demanded of a specific development, but should be additional to the required open spaces, and

(e) if appropriate, where such a monument lies within a development, a conservation and/or management plan for that monument shall be submitted as part of the landscape plan for that development

### **Adare Local Area Plan (2015 – 2021)**

#### Objective EH 4: Archaeology

It is the objective of the Council:

(a) to seek the preservation (in situ, or at a minimum, preservation by record) of all known sites and features of historical and archaeological interest. This is to include all the sites listed in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act 1994.

(b) to protect and preserve (in situ, or at a minimum, preservation by record) all sites and features of historical interest discovered subsequent to the publication of the Record of Monuments and Places.

(c) to ensure that any proposed development shall not have a negative impact on the character or setting of an archaeological monument.

(d) that the area of a monument and the associated buffer area shall not be included as part of the open space requirement demanded of a specific development, but should be additional to the required open spaces, and if appropriate, where such a monument lies within a development, a conservation and/or management plan for that monument shall be submitted as part of the landscape plan for that development.