

APPENDIX 15.4
Archaeological Legislation

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Summary of Legislation Governing the Protection of Cultural Heritage in Ireland

The National Monuments Acts 1930 to 1994

The National Monuments Acts, 1930 to 1994 provide a specific legislative basis for the protection of archaeological monuments and areas and archaeological objects. The Minister of Arts, Culture and the Gaeltacht (now the Minister of Arts, Heritage, Gaeltacht and the Islands) is required to establish and maintain both a 'Register of Monuments and Places' and 'Record of Historic Monuments' under the terms of the 1987 and 1994 Amendments Acts respectively.

The 'Record of Monuments and Places' is meant to contain a list of places where the Minister believes there are monuments. The 'Register of Historic Monuments' is meant to contain a list of historic monuments and archaeological areas which are known and which in his/her opinion should be entered. In the case of the 'Record of Monuments and Places' the record shall consist of a list of monuments and such places, and maps showing them, for each county in the State.

Under Section 1 of the 1987 Act all monuments dating to before AD 1700 are automatically defined as 'historic monuments'. Historic monuments may also be of 'such later date as the Minister may appoint by regulations'. Under Section 12 of the 1994 Act all monuments listed on the 'Record of Monuments and Places' are given a minimum level of protection in the form of a requirement to give two months notice in writing to the Minister of intention to interfere.

A national monument, as defined in Section 2 of the 1930 Act, may also include, as provided for in Section 11 of the 1987 Act, 'a group of buildings, structures or erections' and/or 'any place comprising the remains or traces of buildings, structure or erection'. The 1930 definition also includes the 'site of the monument and such portion of land adjoining such site as may be required to fence, cover in or otherwise preserve from injury the monument or to preserve the amenities thereof'.

'Archaeological areas' are defined under Section 1 of the 1987 Act as 'areas which the Minister considers to be of archaeological importance but not including the area of an historic monument entered in the Register'. Notification has to be sent to the owner that such a historic monument or area has been entered in the Register.

Other forms of protection include a 'preservation order' and a 'temporary preservation order' instituted under section 8 of the 1930 Act and Section 4 of the 1954 Act

respectively. A 'Preservation Order' may be made if the Minister is of the opinion that a monument is 'in danger of being or is actually being destroyed, injured or removed, or is falling into decay through neglect' while a 'Temporary Preservation Order', lasting for a period of six months, may be made if the Minister is of the opinion that a national monument is 'in immediate danger of injury or destruction'

The Minister may also, under Section 9 of the 1930 Act, appoint her/himself 'guardian' of a national monument (obliging her/him to maintain it) and thus make it an offence 'to demolish or remove wholly or in part or to disfigure, deface or alter, or in any manner injure or interfere' with the national monument 'or to excavate, dig, plough or otherwise disturb the ground within, around or in proximity to any such national monument' without the consent of the Minister.

Number 22 of 2004 National Monuments (Amendment) Act 2004

The purpose of the Act in light of Court decisions, is to clarify the division of responsibilities under the National Monuments Act between the Minister of Arts, Culture and the Gaeltacht and the Minister for Environment, Heritage and Local Government; to set out revised procedures whereby works affecting national monuments may be permitted in certain circumstances, subject to necessary safeguards and, also to make provision for appropriate protection of the archaeological heritage along the routes of approved road developments.

Heritage Act 1995

The Heritage Act established a statutory 'Heritage Council', the functions of which include proposing policies and priorities for the identification, protection and preservation of the national heritage. Section 2 of the Act includes in its definition of 'archaeology' the term 'landscape' and 'landscape' is defined as including 'areas, sites, vistas and features of significant scenic, archaeological, geological, historical, ecological or other scientific interest.'

Local Government (Planning and Development) Acts 1963 to 1993

Under the Local Government Planning and Development Acts 1963 to 1964 the use of land for agriculture (including turbarry) or forestry (including afforestation) are exempted by statute from the provisions therein. Furthermore other activities such as river dredging and land reclamation can be exempted by regulation.

However, in the case of those activities exempted by regulation, the exemption ceases if the activity consists of or comprises 'the excavation, alteration or demolition of caves, sites, features or other objects of archaeological ... interest the preservation of which is an objective for the development plan for the area in which the development is proposed' or

if it is a class of activity scheduled in the Environmental Impact Assessment (EIA) Regulations.

The Environmental Impact Assessment (EIA) Directive and Regulations

The EIA Regulations of 1989 were made under the European Communities Act 1972, for the purpose of giving effect to the European Communities (now EU) Environmental Impact Assessment Directive. Environmental Impact Statements (EISs) are required to contain a description of the likely significant effects, direct and indirect, on the environment of a development, explained by its possible impact on, inter alia, the cultural heritage and where significant adverse effects are identified a description of the measures envisaged in order to avoid reduce or remedy those effects.

The Forestry Act 1988

The Forestry Act 1988, established Coillte Toeranta as a semi-state company. Under the Act, it is a general duty of the company to have due regard to the environmental and amenity consequences of its operations.

The Turf Development Acts 1946 to 1990

The Turf Development Acts provide the statutory basis for Bord Na Móna and its activities; In performance and exercise of its duties Bord Na Móna may 'ensure that all its activities are conducted in such a manner as to afford appropriate protection for the environment both locally and nationally'.

The Roads Act 1993

The Roads Act 1993 provides for local authorities to be roads authorities and sets out the functions of the National Roads Authority. It requires the roads authorities to prepare an EIS for any proposed road development that fall within the parameters set out in the Roads Regulation 1994 or if the Minister for the Environment considers a particular road development to have significant effects on the environment.

National Parks and Heritage Areas Bill

The Bill, if enacted would allow the Minister for Arts, Culture and the Gaeltacht to enter into management agreements with landowners and to acquire land where this would be desirable for the proper exercise of his/her functions under the Act. Where land is owned by him/her or is subject to a management agreement he/she will be able to designate it as a National Historic Park provided such land contains historic heritage, i.e. historic monuments, archaeological areas and monuments of national importance.