

Information Note

Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023 ("the Act of 2023")

Coming into operation of provisions relating to protection of records relating to the results or findings of work licensed under the Act of 2023 or the National Monuments Acts 1930 to 2014 and archaeological objects found in the course of such work

Introduction

The purpose of this note is to draw attention to statutory protection and notice requirements now applicable in certain circumstances to records relating to the results or findings of work licensed (or consented to) under the Act of 2023 or the National Monuments Acts 1930 to 2014. Such records are referred to in the legislation as "relevant records" and are so referred to in this Note. The circumstances in question are (in summary):

1. where the holder of the relevant licence or consent has died, **or**
2. such records are in the possession of a company which has been, or is in the process of being, dissolved.

The protections and notice requirements set out below also apply to archaeological objects found in the course of work licensed or consented to under the National Monuments Acts or the Act of 2023. However, in the vast majority of cases such objects will, in any event, be State property in accordance with the relevant legislation and (under other provisions of the legislation) cannot be disposed of without the permission of the Board of the National Museum. Even where archaeological objects are not State property, there are general restrictions under the legislation on disposing of them without prior notice to the National Museum. The focus of this Note is therefore on records.

As regards records, it should be remembered that the protections and notice requirements summarised below do not displace the conditions of any licence or consent held by any person.

This Note is not legal advice. Provisions of the legislation may be stated in summary or paraphrase to assist with ease of understanding. It is the responsibility of all parties to ensure they are compliant with the relevant legal requirements and legal advice should be taken in any case of doubt.

The legal requirements in question are contained in section 159 of the Act of 2023, which came into force on the 31st May 2024.¹ There are two main legal rules established under section 159, which are set out below.

Scope of “relevant records”

The term “relevant records” is defined for the purposes of section 159 as meaning:

“any records relating to the results or findings of any work or activity carried out under a new authorisation or old authorisation, or to the recording of such results or findings or the preparation of a report on them, but does not include records of a solely financial or administrative character.”.

The term “new authorisation” refers to licences etc. issued under the Act of 2023, while “old authorisation” refers to licences, consents etc. issued under the pre-existing National Monuments Acts 1930 to 2014.

The term “records” is widely defined and would include records in electronic form.

First legal rule: Prohibition on disposal etc. of relevant records in certain circumstances

Section 159(4) of the Act of 2023 prohibits (except where done with the consent of the Minister for Housing, Local Government and Heritage or any Minister succeeding to that Minister) a personal representative of a deceased person, or a liquidator or receiver, from damaging, destroying, disposing of, selling or transferring relevant records. Where any such damage, disposal etc. is permitted, it must be done in accordance with any directions given by the Minister.

As noted earlier, a similar prohibition applies to archaeological objects, but in the vast majority of cases such objects will in any event be subject to other statutory rules restricting their disposal.

Breach of the prohibition set out in section 159(4) is an offence which may be prosecuted summarily or on indictment (i.e. in either the District or Circuit Court).²

Second legal rule: Requirement to give notice of relevant records in certain circumstances

Where a company is going to be wound up or a licence or consent holder dies, then under section 159(2) of the Act of 2023 the liquidator or receiver or the personal representatives of the deceased person (as the case may be) must send notice of certain matters to the person or body which issued the licence or consent in question. Section 159(2) applies where the deceased person or the company, as the case may be, had or has possession of relevant records.

¹ See Statutory Instrument No. 252 of 2024, Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023 (Commencement) Order 2024.

² Section 175, subsections (3) and (4) of the Act of 2023.

It also applies where such person or company has or had possession of archaeological objects found in the course of work licenced or consented to under the legislation.

The required notice must be given as soon as practicable after the death of the person in question or the commencement of the winding up of a company (for the detailed rules applicable in the case of the winding up of a company, reference should be had to section 159(2) of the Act of 2023). The “as soon as practicable” provision is subject to a maximum of 21 days (with a lesser period in some circumstances as set out in the legislation).

The person or body which issued the licence or consent in question (the “relevant authority” in the terminology of the legislation) should, in regard to licensed archaeological excavation or works to monuments consented to under the National Monuments Acts, be understood to be the Minister currently holding those licensing or consent functions under the National Monuments Acts (or the analogous functions when the Act of 2023 comes fully into operation). In other words, as matters stand at the time of issuance of this Note, the Minister for Housing, Local Government and Heritage.

The manner in which notice must be given and the information which must be contained in the notice are specified in section 159(2) of the Act of 2023 and regulations made under it.³

The notice must be sent by registered post to the address of the head office of the relevant authority, and by email to the address specified on the website of the relevant authority (as explained above, “relevant authority” means the person or body who issued the licence etc., read in line with where that licensing function currently sits).

For the purposes of email notice being given to the Minister for Housing, Local Government and Heritage (or any succeeding Minister) the specified email address is, until further notice:

nationalmonuments@housing.gov.ie

The notice must advise of the following matters:

- In the case of a company, that the process of winding up has commenced (for precise requirements please refer to section 159(2));
- In the case of an individual, that they have died;
- The identity of the company or the individual (as the case may be);
- The site of the relevant records or archaeological objects;
- Any number or other unique identifier which was issued with the licence, consent etc. and which is known to the person giving the notice.

The notice must also be clearly marked “Notification under section 159(2)”.

Failure to give the required notice is an offence which may be tried summarily (i.e. in the District Court).⁴

³ Statutory Instrument No. 492 of 2024, Historic and Archaeological Heritage (Notification of Possession of Records) Regulations 2024.

⁴ Section 175, subsections (7) and (8) of the Act of 2023.

General comments and advice

It is essential to understand that none of the above displaces the conditions of any licences or consents issued under the National Monuments Acts, nor will any of it displace conditions of licences which will be issued under the Act of 2023. For example, if a company holding relevant records enters the process of being wound up, the requirement to comply with the rules set out above would be in addition to, and not in place of, the requirements on any individual who holds a licence.

As has been noted already, the requirements set out above do not alter the legal position regarding ownership of archaeological objects in any case. It also needs to be understood that neither is the legal position regarding ownership of records compiled in the course of licensed or consented work altered. Such records will **not**, by reason of this legislation, automatically become State property and no automatic right to deposit such records with the State will arise solely by reason of this legislation.

Having regard to the above (and in line with well established principles for the management of archaeological and other heritage projects), licensees, consent holders or companies holding records relating to projects regulated under the relevant legislation are advised to give timely consideration to arranging for the appropriate long term deposition of such records.

Consulting the legislation

The Act of 2023 can be consulted here:

[*Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023*](#)

The Regulations made under the Act of 2023 can be consulted [here](#).

DISCLAIMER

Please note that the above is provided for information only and is not a legal interpretation.

National Monuments Service

Department of Housing, Local Government and Heritage

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