

# Framework and Principles

for the  
Protection of the  
Archaeological Heritage



**An Roinn Ealaíon, Oidhreachta, Gaeltachta & Oileán**  
Department of Arts, Heritage, Gaeltacht and the Islands



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Ireland has a long and fascinating history of human occupation stretching back over 10,000 years. Archaeology seeks to enhance our knowledge and understanding of the societies which have existed in Ireland over that long period. Through increasing our understanding of the nature and diversity of past societies on this island we gain a deeper understanding of ourselves and the society in which we now live. The archaeological heritage in all its forms provides the material on which archaeological studies and research are based, and that heritage is therefore of great cultural and scientific importance.



Given its importance, the protection of the archaeological heritage has been a primary concern of Government since the foundation of the State. This is evidenced in the body of protective legislation built up over the years, in particular the National Monuments Act 1930 (strengthened through amendments in 1954, 1987 and 1994), the Heritage Act 1995 and the National Cultural Institutions Act 1997. Parallel developments have been the development of a broad central administrative and professional structure to oversee the protection of the archaeological heritage, the establishment of a Government Department with specific responsibility for heritage, and the ratification by Ireland of the European Convention on the Protection of the Archaeological Heritage formally recognising the protection of the archaeological heritage as being a key goal of Government and its agencies.

Broad principles for the protection of the archaeological heritage are set out clearly and comprehensively in this document. I am convinced that the full application of these principles by all concerned parties is vital if the archaeological heritage is to be protected in the face of rapidly increasing development arising from our economic success. I am delighted to be the Minister responsible for the publication of this important document, the first comprehensive statement of national policy on the protection of the archaeological heritage in the history of the State. This document will play a major role in avoiding unnecessary conflict between the requirements of archaeological conservation and those concerned with promoting and regulating development.

As the Minister with primary responsibility for heritage matters I will, of course, where necessary invoke the provisions of the National Monuments Acts in order to protect our archaeological heritage. However, I believe that a well informed and co-operative approach will better serve both conservation and sustainable development.

A handwritten signature in black ink, reading "Sile de Valera". The signature is written in a cursive, flowing style.

Sile de Valera, T.D.

Minister for Arts, Heritage, Gaeltacht and the Islands.

## Part I INTRODUCTION AND GENERAL

1.1	The nature and significance of the archaeological heritage	9
1.1.1	Nature of the archaeological heritage	9
1.1.2	Significance of the archaeological heritage	9
1.2	The role of the Minister for Arts, Heritage, Gaeltacht and the Islands	10
1.3	Purpose and structure of document	11
1.3.1	Purpose	11
1.3.2	Structure	11
1.4	Role of other bodies and the public in protecting the archaeological heritage	11
1.4.1	General	11
1.4.2	Necessity to consider the archaeological heritage in the development process	12
1.4.3	Availing of archaeological advice	13
1.4.4	The planning process and environmental impact assessment	13
1.4.5	Implications for local authorities	13
1.5	Archaeological research and public knowledge of, and interest in, archaeology	13
	Summary of Key Points	14



## **Part II ADMINISTRATIVE FRAMEWORK AND INTERNATIONAL CONVENTIONS**

2.1	The Department of Arts, Heritage, Gaeltacht and the Islands	15
2.1.1	General	15
2.1.2	Dúchas the Heritage Service	15
2.1.3	The National Museum of Ireland	17
2.1.4	The Heritage Council	18
2.2	International Conventions	19
2.2.1	The European Convention on the Protection of the Archaeological Heritage	19
2.2.2	Other relevant international conventions	20
	Summary of Key Points	21

## **Part III PRINCIPLES FOR THE PROTECTION OF THE ARCHAEOLOGICAL HERITAGE**

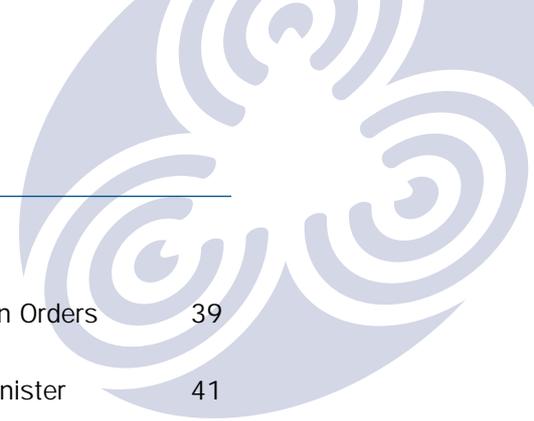
3.1	Introduction	23
3.2	General principles	23
3.3	Protection of the archaeological heritage in the context of development - overall approach	24
3.4	Preservation in-situ	24
3.5	Preservation by record	25
3.6	Archaeological assessment	25
3.6.1	Definition	25
3.6.2	Application	25
3.6.3	Benefits of archaeological assessment	26
3.6.4	Scope of archaeological assessment	26
3.6.5	Test excavation	27



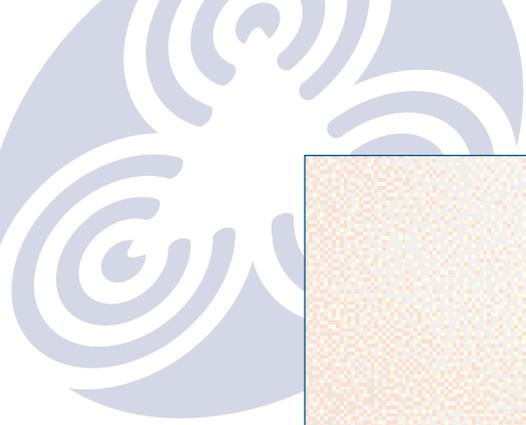
3.6.6	Archaeological assessment and EIA	27
3.6.7	Conditions which should apply	27
3.7	Archaeological monitoring	28
3.7.1	Definition	28
3.7.2	Application	28
3.7.3	Conditions which should apply	28
3.8	Historic towns located within present day urban areas	29
3.8.1	Introduction	29
3.8.2	Avoidance of developmental impact on the archaeological heritage in present day urban areas	30
3.8.3	Masonry structures surviving below ground level	31
3.8.4	Criteria for applying preservation by record in an urban area	31
3.8.5	Upstanding features and structures and street patterns	31
3.8.6	Options for preservation in-situ of sub-surface deposits	32
3.8.7	Particular consideration of archaeological requirements in urban areas	32
	Summary of key points	33

## **Part IV THE NATIONAL MONUMENTS ACTS AND THE PROTECTION OF THE ARCHAEOLOGICAL HERITAGE**

4.1	Introduction	35
4.2	Overall policy	35
4.3	Protection of archaeological monuments and areas	35
4.3.1	Definitions	35
4.3.2	The Record of Monuments and Places	37
4.3.3	The Register of Historic Monuments	38



4.3.4	Preservation Orders and Temporary Preservation Orders	39
4.3.5	National monuments in the ownership of the Minister	41
4.3.6	National monuments in the guardianship of the Minister	41
4.3.7	National monuments in the ownership or guardianship of a local authority	42
4.4	Protection of archaeological objects	42
4.4.1	Definition	42
4.4.2	Ownership of archaeological objects	43
4.4.3	Reporting the finding of archaeological objects	43
4.4.4	Retention by the NMI of archaeological objects	43
4.4.5	Possession of archaeological objects	43
4.4.6	Purchase etc. of archaeological objects	44
4.4.7	Alteration of archaeological objects	44
4.4.8	Export of archaeological objects	44
4.5	Protection of wrecks and underwater archaeological objects	45
4.5.1	Definition of wreck	45
4.5.2	Protection of wrecks over one hundred years old and underwater archaeological objects	45
4.5.3	Underwater Heritage Orders	46
4.6	Control of archaeological excavation	47
4.7	Control of detection devices	48
	Summary of key points	49



*Early Historic cross slab from Killeen, County Longford*

*The archaeological heritage is of great cultural and scientific importance. The Minister for Arts, Heritage, Gaeltacht and the Islands is responsible for developing national policy for that heritage and applying legislation to protect it. However, other bodies and the general public also have a key role. This document sets out for all concerned parties basic principles and approaches for the protection of the archaeological heritage.*

### 1.1 The nature and significance of the archaeological heritage

#### 1.1.1 Nature of the archaeological heritage

Archaeology is the study of past societies through the material remains left by those societies and the evidence of their environment. The archaeological heritage consists of such material remains (whether in the form of sites and monuments or artefacts in the sense of moveable objects) and environmental evidence.

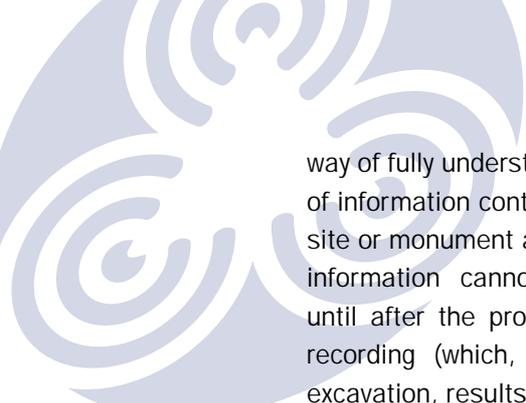
Archaeological sites and monuments vary greatly in form and date, examples include earthworks of different types and periods (e.g. Early Historic ringforts, prehistoric burial mounds), megalithic tombs from the Prehistoric period, medieval buildings, urban archaeological deposits and underwater features such as wrecks. Archaeological sites may have no visible surface features; the surface features of an archaeological site may have decayed completely or been deliberately removed but archaeological deposits and features may survive beneath the surface. Such sites may sometimes be detected as crop-marks visible from the air or have their presence indicated by the occurrence of artefact scatters in ploughed land, but in other cases may remain invisible unless uncovered through ground disturbance. Wetland environments (e.g. peatlands) have a high potential to contain archaeological sites (including trackways, field systems, and settlement sites) which are either difficult or impossible to identify from surface examination alone.

#### 1.1.2 Significance of the archaeological heritage

The archaeological heritage is a resource which can be used to gain knowledge and understanding of the past. The archaeological heritage is therefore of great cultural and scientific importance.

All the material remains of past societies contribute to developing our understanding of such societies through archaeology. Archaeology attempts to achieve the best possible level of knowledge and understanding of past societies by assembling all available evidence and analysing it. Unique sites, monuments or artefacts, or ones belonging to categories which only occur rarely, may be very important but archaeological significance or interest is not necessarily dependent on uniqueness or rarity. The analysis of patterns of occurrence and variation of frequently occurring site, monument and artefact types is a major element of archaeology. Examination of a broad range of evidence is necessary so as to have a reasonable expectation that the concepts being developed are valid. Only a proportion of the material remains of past societies have survived and this is another reason why all the available evidence is of archaeological significance.

In the case of sites and monuments the full archaeological significance or interest of a particular example may frequently be impossible to determine on the basis of features visible on its surface alone, if such exist at all, and excavation may be the only



way of fully understanding it. Usually the level of information contained in an archaeological site or monument and the importance of that information cannot be properly assessed until after the process of investigation and recording (which, if it takes the form of excavation, results in the destruction of all or part of the site or monument in question) has been gone through. It may also be necessary to place an archaeological site, monument or artefact in a national context rather than a local one to properly understand its significance and interest.

The existence of archaeological sites and monuments with no visible surface features (as noted above) means that inventories of archaeological sites and monuments cannot be expected to be definitive even if extensive field-work and aerial survey are undertaken. The information which as yet unidentified archaeological sites and monuments can provide may be as significant and interesting, or more so, as the information which may be derived from known sites or monuments.

The inventorying of archaeological sites and monuments carried out so far has tended to concentrate on ones dating to before 1700 AD (although later material has been to some

extent included), but date is not in itself a determinant of archaeological significance or interest. Any material remains which can contribute to understanding past societies may be considered to have an element of archaeological significance. Examples of such from the post-1700 AD period would include industrial and military structures and buildings and various types of rural settlement features. The principles set out in this document apply to all the archaeological heritage, pre and post-1700 AD.

Archaeological significance or interest may also be seen in terms of the potential for sites, monuments or artefacts to enable people to experience directly the evidence for past societies and through this allow them to better understand and appreciate their own past.

## 1.2 The role of the Minister for Arts, Heritage, Gaeltacht and the Islands

Within the framework of government, the Minister for Arts, Heritage, Gaeltacht and the Islands has specific responsibility for the archaeological heritage and exercises functions in that regard under the National



*Bog trackway in the course of excavation at Derraghan More, County Longford, dated to the 2nd century BC*

Monuments Acts 1930 to 1994, the National Cultural Institutions Act 1997 and the Heritage Act 1995. Ireland is a party to the European Convention on the Protection of the Archaeological Heritage. The Convention provides the basis for all policy on the protection of the archaeological heritage. The Minister for Arts, Heritage, Gaeltacht and the Islands is responsible for overseeing the implementation in Ireland of the Convention.

Clearly, therefore, the definition and establishment of national policy on the protection of the archaeological heritage is a concern of, and responsibility of, the Minister for Arts, Heritage, Gaeltacht and the Islands.

### 1.3 Purpose and structure of this document

#### 1.3.1 Purpose

This document is intended to set out for all concerned parties the basic principles of national policy on the protection of the archaeological heritage. Various types of development can have a major impact on the archaeological heritage, and the document therefore has a particular focus on the principles which should apply in respect of development and the archaeological heritage. In that context the document is of particular relevance to all those involved in undertaking, approving or authorising development.

The term development as used in the document includes agricultural, industrial, extractive, infrastructural and residential development. The principles set out in this document apply whatever the particular type of development, whether urban or rural or on land or underwater. Those principles therefore apply to issues such as afforestation, peat extraction, agricultural intensification, river dredging and sea-bed aggregate extraction just as much as to issues such as urban development and road construction.

In addition to development related matters, it is recognised fully that there are other relevant

issues such as treasure hunting, illicit dealing in artefacts, and natural erosion. The general principles as set out are applicable to all aspects of the protection and management of the archaeological heritage.

This document is not intended to be exhaustive. Where considered appropriate, detailed policy and guidance documents will be produced on particular issues. An example of this is the *Policy and Guidelines on Archaeological Excavation*, published in conjunction with this document.

#### 1.3.2 Structure

**Part II** of this document describes the administrative framework for the protection of the archaeological heritage by the Department of Arts, Heritage, Gaeltacht and the Islands and draws attention to relevant international conventions which provide a basis for policy development. **Part III** sets out principles for the protection of the archaeological heritage. **Part IV** summarises the provisions of the National Monuments Acts 1930 to 1994 and the National Cultural Institutions Act 1997 and sets out policies on their use.

### 1.4 The role of other bodies and the general public in protecting the archaeological heritage

#### 1.4.1 General

The protection of the archaeological heritage is not a matter concerning only the Minister for Arts, Heritage, Gaeltacht and Islands. The archaeological heritage is an essential part of the national heritage. All public and private bodies as well as the general public should act to ensure its protection.

The Minister for Arts, Heritage, Gaeltacht and the Islands promotes the application of the principles set out in this document by all bodies and authorities involved in undertaking, approving or authorising development. The application by such bodies and authorities of the principles set out in this document includes making grants of



approval or authorisation to undertake development subject to appropriate archaeological conditions.

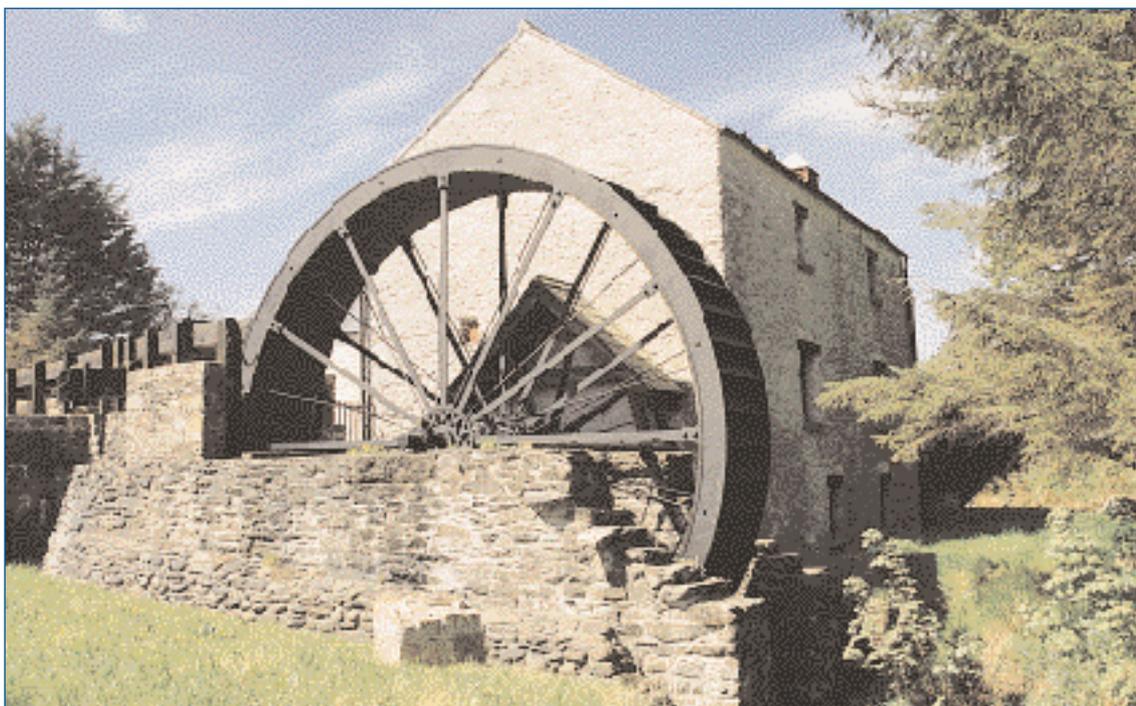
The focus in Part IV of this document on legislation under which the Minister for Arts, Heritage, Gaeltacht and the Islands has direct powers must not be construed as reducing the importance the Minister attaches to the carrying out of their functions by other bodies and authorities in such a manner as to afford appropriate protection to the archaeological heritage.

It is, indeed, the policy of the Minister that consultation and co-operation between the Department of Arts, Heritage, Gaeltacht and the Islands and bodies and authorities involved in undertaking, approving or authorising development should be maintained and strengthened and that specific archaeological policies and guidance for such bodies and authorities be put in place as appropriate. It is also the policy of the Minister to seek (as the opportunity arises) to have provisions relating to the protection of the archaeological heritage included in legislation dealing with the functions of such bodies and authorities. In this connection the provisions of Section 56

of the Turf Development Act 1998 may serve as an example. Under that provision Bord na Móna is required to ensure that its activities are conducted in such a manner as to afford appropriate protection for the archaeological heritage.

#### **1.4.2 The necessity to consider the archaeological heritage in the development process**

Full consideration of the protection of the archaeological heritage when undertaking, approving or authorising development is essential if unnecessary and damaging conflict between development and the protection of the archaeological heritage is to be avoided. The Minister for Arts, Heritage, Gaeltacht and the Islands is the national authority with specific responsibility for the protection of the archaeological heritage. It would clearly not be in the public interest for public bodies to undertake, approve or authorise development which the Minister for Arts, Heritage, Gaeltacht and the Islands found necessary to restrict or prevent through use of the provisions of the National Monuments Acts because the protection of the archaeological heritage had not been provided for.



*Newmills corn and flax mills, County Donegal, 19th century AD*

### 1.4.3 Availing of archaeological advice

Given the necessity to consider the protection of the archaeological heritage when undertaking, approving or authorising development and the role of the Minister for Arts, Heritage, Gaeltacht and the Islands, it is essential that all state and local authorities engage in appropriate and timely consultation with the Department of Arts, Heritage, Gaeltacht and the Islands when planning to undertake development or when considering the approval or authorisation of development, and act on the advice given by the Department.

The Minister for Arts, Heritage, Gaeltacht and the Islands is also of the view that public bodies and authorities which undertake, approve or authorise development should have their own professional archaeological expertise directly available to them. The availability of such advice contributes substantially to achieving the fullest possible consideration of the archaeological heritage in all stages of the development process and in encouraging a pro-active and positive approach to that heritage.

### 1.4.4 The planning process and environmental impact assessment

The planning process operating under the Local Government (Planning and Development) Acts 1963 to 1998 (the 'Planning Acts') is an essential mechanism for ensuring the protection of the archaeological heritage and is, indeed, often the primary means of doing so. The document *Sustainable Development: a Strategy for Ireland* published by the Government in 1997 contains a commitment to issue guidelines to planning authorities on archaeology in the planning process and this is considered by the Minister for Arts, Heritage, Gaeltacht and the Islands to be a priority.

The environmental impact assessment process established through the European

Communities (Environmental Impact Assessment) Regulations 1989 (as amended) and the Roads Act 1993 is also central to the protection of the archaeological heritage. The Department of Arts, Heritage, Gaeltacht and the Islands is committed to the development of appropriate guidelines on archaeology and environmental impact assessment.

### 1.4.5 Implications for local authorities

Section 7 of the Local Government Act 1991 provides that local authorities shall in the exercise of all their statutory functions (i.e. including functions as planning authorities, roads authorities and sanitary services authorities) have regard to policies and objectives of the Government or any Minister of the Government in so far as they may affect or relate to those functions.

In that context, it should be noted that this document sets out policies of the Minister for Arts, Heritage, Gaeltacht and the Islands.

## 1.5 Archaeological research and public knowledge of, and interest in, archaeology

Archaeology is, as already noted, the study of past societies, and the archaeological heritage is the source material for that study. The Minister for Arts, Heritage, Gaeltacht and the Islands seeks to promote and facilitate archaeological research consistent with the principles for protection of the archaeological heritage set out in this document.

The Minister for Arts, Heritage, Gaeltacht and the Islands also seeks to promote public knowledge of, and interest in, archaeology. This is an important objective of itself as well as being an essential element in securing the protection of the archaeological heritage. This objective will be pursued in co-operation with other relevant bodies and, in particular, the Heritage Council which has a specific statutory remit in that regard.



## Summary of key points

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- The archaeological heritage provides information on past societies and is of great cultural and scientific importance.
- The archaeological heritage consists of various types of known and as yet unidentified sites, monuments, objects and environmental evidence. Archaeological significance is not necessarily dependent on uniqueness, rarity or age.
- The Minister for Arts, Heritage, Gaeltacht and the Islands has specific responsibility for the protection of the archaeological heritage, but the general public and all public and private bodies also have a key role to play.
- This document sets out the basic principles of national policy on the protection of the archaeological heritage. The Minister for Arts, Heritage, Gaeltacht and the Islands promotes the application of those principles by all bodies and authorities involved in undertaking, approving or authorising development.
- Public bodies and authorities which undertake, approve or authorise development should have their own professional archaeological expertise directly available to them.
- If unnecessary and damaging conflict between development and the protection of the archaeological heritage is to be avoided it is essential that there be full consideration of the protection of the archaeological heritage when undertaking, approving or authorising development.
- The Minister for Arts, Heritage, Gaeltacht and the Islands seeks to promote and facilitate archaeological research consistent with the principles for protection of the archaeological heritage set out in this document and also seeks to promote public knowledge of, and interest in, archaeology.

*The Minister for Arts, Heritage, Gaeltacht and the Islands has a specific role at central government level in the protection of the archaeological heritage through the relevant legislation. The overall State archaeological service provided by the Department of Arts, Heritage, Gaeltacht and the Islands is delivered through Dúchas the Heritage Service and the National Museum of Ireland. The Heritage Council is a statutory independent body appointed by the Minister. The European Convention on the Protection of the Archaeological Heritage provides the basic policy framework for protection of the archaeological heritage.*

### 2.1 The Department of Arts, Heritage, Gaeltacht and the Islands and the protection of the archaeological heritage

#### 2.1.1 General

At central government level the Minister for Arts, Heritage, Gaeltacht and the Islands has a specific role in relation to the protection of the archaeological heritage through powers under the National Monuments Acts 1930 to 1994 and the National Cultural Institutions Act 1997. The Minister is one of the prescribed bodies under the Local Government (Planning and Development) Regulations 1994 (the 'Planning Regulations') to whom copies of draft development plans must be sent. Under those Regulations a planning authority must also send notice to the Minister of a planning application if it appears to them (i.e. the planning authority) that the proposed development would be unduly close to a site, feature or object of archaeological interest.

The Planning Regulations further provide for the sending of notice by local authorities to the Minister (as well as other prescribed bodies) of

- (a) proposed local authority development in respect of which an environmental impact statement has been prepared, and
- (b) other proposed local authority development coming within certain prescribed classes,

where, in either case, it appears to the local authority that the proposed development would affect a site, feature or object of archaeological interest.

The overall State archaeological service provided by the **Department of Arts, Heritage, Gaeltacht and the Islands** is delivered through **Dúchas the Heritage Service** (National Monuments and Historic Properties Division) and the **National Museum of Ireland** (Irish Antiquities Division). **The Heritage Council** is a statutory independent body appointed by the Minister for Arts, Heritage, Gaeltacht and the Islands.

#### 2.1.2 Dúchas the Heritage Service

##### (a) General

**Dúchas the Heritage Service**, is part of the **Department of Arts, Heritage, Gaeltacht and the Islands**. The role of the National Monuments and Historic Properties Division of Dúchas in respect of archaeology may be summarised as follows:

- advising the Minister for Arts, Heritage, Gaeltacht and the Islands regarding application of the National Monuments Acts 1930 to 1994 to protect archaeological monuments, including maintaining the Record of Monuments and Places,
- managing national monuments in State care on behalf of the Minister for Arts, Heritage, Gaeltacht and the Islands,

- advising the Minister for Arts, Heritage, Gaeltacht and the Islands regarding application of the National Monuments Acts 1930 to 1994 for the purpose of regulation of archaeological excavations, regulation of the use of detection devices for archaeological purposes, and regulation of diving on underwater archaeological objects and wrecks protected under the National Monuments Acts,
- carrying out of the Archaeological Survey of Ireland (involving inventorying and survey of archaeological sites and monuments) and other surveys,
- providing archaeological advice (on behalf of the Minister for Arts, Heritage, Gaeltacht and the Islands) to planning/local authorities in respect of planning and development matters and, in that regard, dealing with notifications to the Minister pursuant to the Planning Regulations,
- providing archaeological advice (on behalf of the Minister for Arts, Heritage, Gaeltacht and the Islands) to other bodies with responsibility for authorising or assisting development,
- allocating annually grants for research excavations on the recommendation of the Royal Irish Academy.

**(b) Archaeological survey**

The National Monuments and Historic Properties Division of Dúchas carries out the **Archaeological Survey of Ireland**. The purpose of the Archaeological Survey of Ireland is, in the first instance, to compile a base-line inventory of the known archaeological sites and monuments in the State. The large archive resulting from the work of the Archaeological Survey of Ireland is in the care of Dúchas.

To date lists of all certain or possible archaeological sites and monuments dating

to before 1700 AD (with some later ones also being included) have been completed for all counties in the State. These are referred to as **Sites and Monuments Records (SMRs)**. Approximately 150,000 archaeological sites and monuments have been included in the SMRs. SMRs consist of numbered lists of archaeological sites and monuments and accompanying maps on which the sites and monuments (other than certain ones for which a precise location is not known) are marked and numbered. These lists were in many cases based initially on examination of cartographic, documentary and aerial photographic sources with the results of fieldwork only being available for some counties.

The next stage of the Archaeological Survey is referred to as the **Inventory Stage** and involves field inspection of all the sites and monuments included in the SMR (if such has not previously been carried out) and the preparation of descriptions of those sites and monuments. The Inventory Stage is now well advanced and **Archaeological Inventories** are being published for each county. In addition to the Archaeological Inventories, one **full survey volume** has been prepared within the framework of the Archaeological Survey of Ireland. Several others have been prepared by locally based organisations with advice from the Archaeological Survey of Ireland. Such full volumes contain detailed descriptions and plans of known archaeological sites and monuments.

Dúchas also undertook an **Urban Archaeology Survey** which prepared reports on all historic towns dating to before 1700 AD with a view to delineating zones of archaeological potential within which archaeological deposits may exist as well as surveying upstanding pre-1700 AD archaeological remains in such towns. The results of the Urban Archaeology Survey were included in the SMRs (under the classification 'historic town') and both the Urban Archaeology Survey reports and the SMRs were issued to all planning authorities.

The SMRs (as revised in the light of fieldwork) formed the basis for the establishment of the statutory **Record of Monuments and Places** pursuant to Section 12 of the National Monuments (Amendment) Act 1994. The Record of Monuments and Places, consisting of lists of monuments and places for each county in the State with accompanying maps, is comprised of the results to date of the Archaeological Survey of Ireland. (Certain sites and monuments listed in the SMRs for which a precise location is not known are not, however, included in the Record).

It must be emphasised that the SMRs, the Archaeological Inventories, the full surveys and the statutory Record of Monuments and Places are not final lists of archaeological sites and monuments in each county. Other pre-1700 AD archaeological sites and monuments with visible above ground features will be identified in the future if prospection fieldwork and further aerial photographic work take place. Without doubt many as yet unidentified archaeological sites exist which have no visible above ground features. The existence of a wide range of as yet uninventoried post-1700 AD archaeological sites and monuments must also be taken into account.

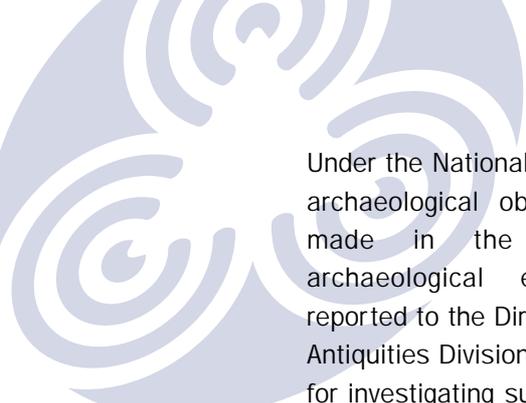
Other archaeological survey work undertaken by Dúchas includes **peatland surveys** and the compilation of a **Maritime Archaeological Record** of historic wrecks and other archaeological sites in coastal waters. Wrecks more than one hundred years old and archaeological objects situated underwater are afforded comprehensive protection under Section 3 of the National Monuments (Amendment) Act 1987.

### 2.1.3 The National Museum of Ireland

**The National Museum of Ireland** (the NMI) is the repository of the national collection of archaeological objects. This collection, now consisting of in excess of two million such objects, has been built up over a century and continues to grow. In addition to this collection the NMI has in its care a large paper archive (including records, reports and other material from the late eighteenth century to the present day) which constitutes the definitive inventory of archaeological objects, and is an essential source for archaeological research and the management of the archaeological heritage.



*Early Historic saddle bow from a lake at Ballynagarbry, County Westmeath*



Under the National Monuments Acts finds of archaeological objects (other than those made in the course of licensed archaeological excavations) must be reported to the Director of the NMI. The Irish Antiquities Division of the NMI is responsible for investigating such reports, as well as for the curatorial care, conservation, research, cataloguing and management of the collections, and the development and upkeep of public archaeological exhibitions. The National Monuments Acts also provide for mandatory reporting to the Director of the NMI of purchase or sale of archaeological objects found in the State since the coming into operation of the National Monuments Act 1930.

The National Monuments (Amendment) Act 1994 provides for State ownership of archaeological objects found in the State which have no known owner at the time of finding. The Director of the NMI has statutory responsibility in respect of decisions on the retention in the NMI or other disposal of such material. The NMI also has the primary responsibility for the long-term storage and curation of the large numbers of archaeological objects produced by archaeological excavations.

The Irish Antiquities Division of the NMI advises the Minister for Arts, Heritage, Gaeltacht and the Islands on:

- (i) licensing the export of archaeological objects as required under the National Cultural Institutions Act 1997
- (ii) licensing the alteration of archaeological objects as required under the National Monuments Acts

When established under the National Cultural Institutions Act 1997 the Board of the National Museum will be directly responsible for licensing the alteration of archaeological objects.

### (iii) licensing of archaeological excavations

The National Monuments Acts provide for the Minister for Arts, Heritage, Gaeltacht and the Islands to consult the Director of the NMI prior to issuing an archaeological excavation licence. In that context the NMI, within its remit, advises the Minister on the licensing of archaeological excavations.

Under the Merchant Shipping (Salvage and Wreck) Act 1993 the Director of the NMI has a statutory role regarding dealing with notifications from receivers of wreck of unclaimed wreck and the retention on behalf of the State of unclaimed wreck if it is of archaeological interest.

In the context of the statutory functions referred to above, the Irish Antiquities Division of the NMI has been actively involved in combating treasure hunting and theft of, illicit dealing in and export of antiquities. The NMI is involved in supporting the establishment and development of a professional local museum network. Assistance, advice and extensive loans of material have been provided to several County Museums and other local museums.

### 2.1.4 The Heritage Council

**The Heritage Council**, established under the Heritage Act 1995, is an independent statutory body appointed by the Minister for Arts, Heritage, Gaeltacht and the Islands. The Heritage Council is funded by the Department of Arts, Heritage, Gaeltacht and the Islands.

The functions of the Heritage Council as set out in the Heritage Act 1995 are to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage (including, *inter alia*, monuments, archaeological objects, landscapes and wrecks) and, in particular, to

- promote interest, education, knowledge and pride in, and facilitate the

appreciation and enjoyment of the national heritage,

- co-operate with public authorities, educational bodies and other organisations and persons in the promotion of the functions of the Council, and
- promote the coordination of all activities relating to the functions of the Council.

Under the Act the Heritage Council may make recommendations to the Minister for Arts, Heritage, Gaeltacht and the Islands on any matter relating to the Council's functions, and may make such recommendations public. The Act also provides that the Heritage Council shall, on the request of the Minister for Arts, Heritage, Gaeltacht and the Islands, furnish the Minister with advice on any matter relating to its functions.

The Act provides for the Heritage Council to establish a standing committee on archaeology as well as three other standing committees on wildlife, architectural heritage, and inland waterways. The Council may also establish other committees to perform functions allocated to them by the Council or to advise the Council on any matter related to its functions. Committees have been established to deal with museums and archives and education and communication.

The Heritage Council funds the **Discovery Programme Ltd**, an archaeological research company. The Discovery Programme carries out wide ranging integrated archaeological research projects. The Heritage Council may also, from time to time, assist other particular archaeological research projects.

The Heritage Council is a prescribed body under the Planning Regulations for the same purposes as noted above (section 2.1.1) in respect of the Minister for Arts, Heritage, Gaeltacht and the Islands. Under the National Monuments Acts the Heritage Council may make a report to the Minister

for Arts, Heritage, Gaeltacht and the Islands in respect of a national monument in danger and the Council must be consulted by the Minister prior to a Preservation Order being revoked (see section 4.3.3 below).

## 2.2 International Conventions with implications for policy on the archaeological heritage

### 2.2.1 The European Convention on the Protection of the Archaeological Heritage

The 1992 European Convention on the Protection of the Archaeological Heritage (the 'Valletta Convention') was ratified by Ireland in 1997. The aim of the Convention is to *'protect the archaeological heritage as a source of the European collective memory and as an instrument for historical and scientific study'* (Article 1).

The Convention provides the basic framework for policy on the protection of the



*Woman's costume from a bog at Shinrone, County Tipperary, 16th century AD*



archaeological heritage, and this document has been drafted in that context. In summary the obligations on the State under the Convention relate to the following:

- providing for statutory protection measures, including the maintenance of an inventory of the archaeological heritage and the designation of protected monuments and areas;
- the authorisation and supervision of excavations and other archaeological activities;
- providing measures for the physical protection of the archaeological heritage, including (as necessary) acquisition or protection by other means by public authorities of areas intended to constitute archaeological reserves, conservation and maintenance of the archaeological heritage (preferably in-situ), and the provision of appropriate storage places for archaeological remains removed from their original locations;
- providing for consultation between archaeologists and planners in relation to the drawing up of development plans and development schemes so as to ensure that full consideration is given to archaeological requirements;
- providing public financial support for archaeological research and public or private financial support (as appropriate) for rescue archaeology;
- facilitating the study of archaeological discoveries by making or bringing up to date surveys, inventories and maps of archaeological sites and taking practical measures to ensure the drafting, following archaeological operations, of a publishable scientific record before the publication of comprehensive studies;
- facilitating national and international exchanges of elements of the archaeological heritage for scientific

purposes, promoting the pooling of information on archaeological research and excavations, and contributing to international research programmes;

- educating the public in relation to the value of the archaeological heritage and the threats to it, promoting public access to important elements of this heritage, and encouraging public display of selected archaeological objects;
- preventing the illicit circulation of elements of the archaeological heritage, including co-operating with other states party to the Convention; and
- providing for the exchange of information and experts on the archaeological heritage between states party to the Convention.

### **2.2.2 Other relevant international conventions**

Ireland is party to the UNESCO (United Nations Educational Scientific and Cultural Organisation) Convention Concerning the Protection of the World Cultural and Natural Heritage (the 'World Heritage Convention'). For the purposes of the World Heritage Convention 'cultural heritage' includes elements and structures of an archaeological nature and archaeological sites, which are of outstanding universal value. States Party to the Convention are required to endeavour (in so far as is possible and as appropriate for each country) to, *inter alia*,

- adopt a general policy which aims to give the cultural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes,
- set up one or more services for the protection, conservation and presentation of the cultural heritage,

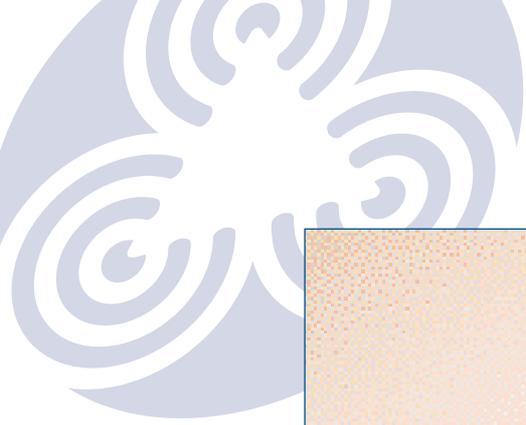
- take the appropriate legal, scientific, technical, administrative and financial measures for, *inter alia*, the identification and protection of the cultural heritage.

Ireland is also party to the United Nations Convention on the Law of the Sea ('UNCLOS'). Article 303 (1) of UNCLOS provides that States have the duty to protect objects of an archaeological and historical nature found at sea and that they shall co-operate for that purpose.

Ireland is a signatory to the 1954 UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 'Hague Convention') and the question of ratification of this convention is being examined. The question of ratification of the Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects (the 'Unidroit Convention') is also being examined. The Unidroit Convention provides for the restitution of stolen cultural objects and the return of illegally exported cultural objects. The term 'cultural object' as defined under the Convention includes objects of archaeological importance.

## Summary of key points

- At central government level the Minister for Arts, Heritage, Gaeltacht and the Islands has a specific role in relation to the protection of the archaeological heritage through powers and functions under the National Monuments Acts, the National Cultural Institutions Act 1997 and the Planning Regulations.
- The overall State archaeological service provided by the Department of Arts, Heritage, Gaeltacht and the Islands is delivered through Dúchas the Heritage Service and the National Museum of Ireland.
- The Heritage Council is a statutory independent body appointed by the Minister for Arts, Heritage, Gaeltacht and the Islands with an advisory and promotional role in relation to, *inter alia*, the archaeological heritage.
- The European Convention on the Protection of the Archaeological Heritage provides the basic framework for policy on the protection of the archaeological heritage.



*Wooden shield from a bog at Annandale, County Leitrim, 8th to 7th centuries BC*

*The archaeological heritage is a non-renewable resource. The first option in all circumstances must be non-destructive investigation and study. There should always be a presumption in favour of avoiding developmental impacts on the archaeological heritage. Based on general principles, a number of approaches and methods can be set out for securing the protection of the archaeological heritage in the context of development.*

### 3.1 Introduction

As noted in Part I (section 1.3.1), the general principles set out here are applicable to all aspects of the protection and management of the archaeological heritage. However, given that various types of development can have a major impact on the archaeological heritage, there is a particular focus on principles which should apply in respect of development and that heritage.

It was also noted in Part I (section 1.4.1) that the Minister promotes the application of the principles set out here by all bodies and authorities involved in undertaking, approving or authorising development. Appropriate application by such bodies and authorities of the approaches and methods set out here requires availing of professional archaeological advice.

### 3.2 General principles

The general principles set out below apply to all aspects of the protection and management of the archaeological heritage, whether that heritage is in moveable or immovable form.

**(a)** The archaeological heritage is a non-renewable resource. The gathering of archaeological information should never in any circumstances destroy any more of the archaeological heritage than is necessary.

**(b)** The first option in all circumstances must be non-destructive investigation and study. Non-destructive techniques should wherever possible be used instead of destructive ones.

**(c)** The resource formed by the archaeological heritage requires careful and responsible management which takes full account of

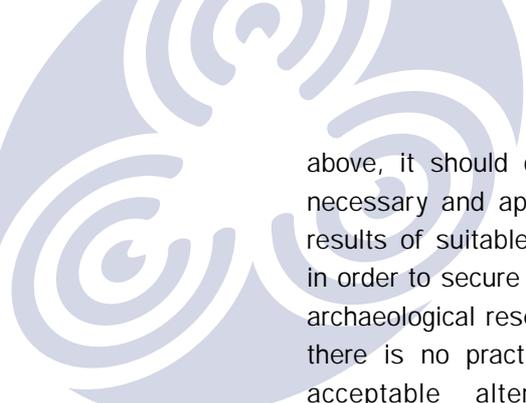
**(i)** the need to examine and re-assess in the future (possibly with new or better techniques and facilities) the conclusions reached by present day archaeology,

**(ii)** the necessity to provide for the long-term curation and conservation of artefacts uncovered in the course of archaeological excavations,

**(iii)** the ability of archaeology as a profession and discipline to process, analyse, absorb and disseminate the results of archaeological excavations,

**(iv)** the particular benefit the existence of archaeological monuments with visible surface features provides to the public in terms of promoting knowledge and understanding of the past.

Archaeological excavation results in destruction of part of the archaeological heritage. In view of the principles set out



above, it should only be carried if it is a necessary and appropriate follow-on to the results of suitable non-destructive methods in order to secure the further progression of archaeological research, or otherwise where there is no practicable or archaeologically acceptable alternative. Suitable non-destructive methods include both site specific work, broader field work and background research. Wherever possible part of a site or monument should be left unexcavated in order to allow some measure of future re-examination and re-assessment.

### 3.3 Protection of the archaeological heritage in the context of development - overall approach

Based on the general principles set out above (section 3.2), the following approaches and methods should apply to the protection of the archaeological heritage in the context of development.

- Whenever the archaeological heritage is affected, or proposed to be affected, by development the approach to be followed must be **preservation in-situ** or **preservation by record** through archaeological excavation and recording.
- **Archaeological assessment** is a method of, and the first step in, ensuring that the approaches of preservation in-situ and preservation by record are applied appropriately. In certain circumstances it may, on the basis of the results of archaeological assessment, be considered appropriate to carry out **archaeological monitoring**. However, archaeological monitoring is not an end in itself, rather a method of ensuring that preservation in-situ or preservation by record take place as appropriate.
- Archaeological assessment, monitoring and excavation must always be carried out by suitably qualified professional archaeologists.

- Having regard to the national significance of the archaeological heritage as a cultural and scientific resource of great importance and to the non-renewable nature of that resource, the Minister for Arts, Heritage, Gaeltacht and the Islands considers that the costs of archaeological work necessitated by development are a legitimate part of development costs.

Particular issues relating to historic towns located within present day urban areas are addressed in section 3.8 below.

### 3.4 Preservation in-situ

In the present context, preservation in-situ refers to the actual physical preservation of archaeological sites and monuments, including archaeological deposits, features and structures.

There should always be a presumption in favour of avoiding developmental impacts on the archaeological heritage. Preservation in-situ must always be the first option to be considered rather than preservation by record in order to allow development to proceed, and preservation in-situ must also be presumed to be the preferred option.

The particular benefits to the community of the continued existence of archaeological monuments with visible above ground features should always be a consideration and only the most compelling reasons can justify the removal of such monuments. There are, of course, many archaeological sites and monuments the removal of which should not be contemplated at all.

When considering requests for authorisation or approval to undertake development which would involve the removal of archaeological sites and monuments (or portions of such), or before proposing to carry out such development, relevant bodies and authorities should satisfy themselves that the development

- (i) cannot be re-located,
- (ii) cannot be re-designed to avoid removal of the site or monument (or portions of such),
- (iii) is really necessary.

Regard should also be had to the savings there may be to developers through applying the approach of preservation in-situ and designing developments so as to avoid damage to the archaeological heritage. Archaeological excavation and recording can be very expensive. Anticipated costs and time-scales for such work may have to be revised in the light of unexpected problems or complexities arising in the course of an excavation.

### 3.5 Preservation by record

Where archaeological sites or monuments (or portions of such) are to be removed due to development then it is essential that the approach of **preservation by record** be applied.

Preservation by record requires that appropriate archaeological excavation and recording is carried out which ensures that, as a minimum, a complete and meaningful record is preserved of all archaeological deposits, features and information likely to be damaged as a result of the development. Such archaeological excavation to mitigate the impact of development is known as rescue excavation.

If preservation by record is to be applied the developer must accept responsibility for the costs of archaeological excavation to the extent necessitated by the development. Such costs include those arising from the preparation of a report on the excavation.

It should be noted that the Minister for Arts, Heritage, Gaeltacht and the Islands may consider a proposed archaeological excavation to be inappropriate because there will be difficulties in providing for the long

term storage and curation of archaeological objects uncovered in the course of the excavation.

## 3.6 Archaeological assessment

### 3.6.1 Definition

In the present context **archaeological assessment** means investigation aimed at any of the following:

- (i) gaining a better understanding of a known or suspected archaeological site or monument with particular reference to considering the implications of proposed development for such a site or monument,
- (ii) locating previously unidentified archaeological sites or monuments (or possible ones) prior to the commencement of development works with particular reference to considering the implications of proposed development for such sites or monuments,
- (iii) considering the potential that proposed development works or longer term effects of a development may have on elements of the archaeological heritage not identified prior to the commencement of development works.

### 3.6.2 Application

Where it is considered that a proposed development may (due to its location, size, or nature) have archaeological implications, then an archaeological assessment should be carried out.

Archaeological assessment as defined at 3.6.1 (i) above may be appropriate in relation to development located within or in the vicinity of known or suspected archaeological sites or monuments.

Archaeological assessment as defined at 3.6.1 (ii) and (iii) above may be appropriate in



relation to development of such a scale or nature as to make it reasonable to consider its impact on as yet unidentified elements of the archaeological heritage. Examples of such development include:

- development likely to have a substantial or significant impact (whether through direct or in-direct effects) on present or former wetlands, unenclosed land, rivers, lakes, the inter-tidal zone, or the sea bed;
- development located in the vicinity of large complexes of sites or monuments of archaeological interest;
- development which is extensive in terms of area or length (this would always include development over one kilometre in length but by no means be restricted to this);
- development in respect of which an environmental impact statement is required to be prepared.

### 3.6.3 Benefits of carrying out archaeological assessment

Archaeological assessment may help greatly in securing preservation in-situ. It is an essential preliminary step before the application of preservation by record and archaeological monitoring. By helping to ensure that developments have been designed from the outset in such a way as to avoid or minimise archaeological impacts, archaeological assessment can avoid or reduce costs and delays.

### 3.6.4 Scope of archaeological assessment

Archaeological assessment may, as appropriate, include documentary research, field-walking, examination of upstanding or visible features or structures, examination of existing or new aerial photographs or satellite or other remote sensing imagery, geophysical survey, topographical assessment, general consideration of the archaeological potential



*Ringfort at Raheen, County Wicklow, an example of a widespread monument type dating c.500 to 1000 AD*

of the area or areas affected by a development based on their environmental characteristics, or archaeological testing.

In all cases an archaeological assessment should consider both direct and in-direct effects of proposed development.

It is always essential that the report on archaeological assessment contain an **archaeological impact statement** describing the possible direct or in-direct effects of the proposed development on elements of the archaeological heritage.

### 3.6.5 Test excavation

#### **(a) Definition**

Test excavation is that form of archaeological excavation where the purpose is to establish the nature and extent of archaeological deposits and features present in a location which it is proposed to develop (though not normally to fully investigate those deposits or features) and allow an assessment to be made of the archaeological impact of the proposed development. It may also be referred to as archaeological testing.

#### **(b) Application**

Where it is considered that a proposed development may have an impact on a known or suspected archaeological site or monument involving removal of, or interference with, archaeological deposits or features then the archaeological assessment should include test excavation unless:

- (i) the carrying out of test excavation would have significant adverse effects on the archaeological integrity of the site or monument or prevent future archaeological investigation of it, or
- (ii) the development proposals are altered so that there is no longer a potential impact on an archaeological site or monument, or

- (iii) the proposed development is already considered unacceptable on archaeological or other grounds.

Test excavation must only be done on the basis that it is accepted by all involved that

- (i) there may be significant further costs in respect of archaeological excavation, and
- (ii) the design of the development may have to be altered to secure appropriate levels of preservation in-situ, and
- (iii) the particular type of development proposed may be found to be unacceptable due to the level of impact it would have on the archaeological heritage.

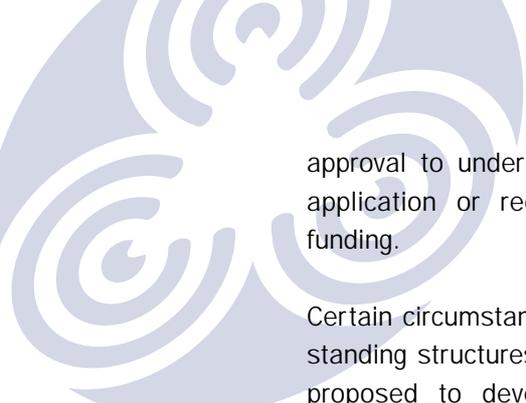
In cases where it is accepted that a known archaeological site or monument (or portion of such) must be removed to allow development to proceed, then it is essential that the approach of preservation by record be applied. In such cases, therefore, the carrying out of test excavation should be viewed as a means of assisting in planning and costing full-scale rescue excavation rather than determining if such is necessary, as might be the case with a location suspected of containing archaeological deposits or features.

### 3.6.6 Archaeological assessment and environmental impact assessment

Environmental impact assessment should, unless there are substantial grounds to show that it is not necessary, involve the carrying out of archaeological assessment including, where appropriate, test excavation.

### 3.6.7 Conditions which should apply to archaeological assessment

If archaeological assessment is appropriate, a report on the assessment (including a report on test excavation if such was undertaken) should accompany any application or request for authorisation or



approval to undertake development and/or application or request for assistance or funding.

Certain circumstances (e.g. the existence of standing structures on a location which it is proposed to develop) might prevent the carrying out of test excavation prior to the authorisation or approval of development.

In such circumstances it should be a condition of authorisation or approval of development that test excavation be carried out before the commencement of development works with a potential to affect archaeological deposits or sub-surface features. Such works include all sub-surface and construction works. The conditions of authorisation or approval of development should also provide for securing, as appropriate, preservation by record or preservation in-situ of archaeological deposits, features and structures; if necessary through alterations to the design of the development.

### 3.7 Archaeological monitoring

#### 3.7.1 Definition

Archaeological monitoring involves an archaeologist being present in the course of the carrying out of development works (which may include conservation works), so as to identify and protect archaeological deposits, features or objects which may be uncovered or otherwise affected by the works.

#### 3.7.2 Application

Archaeological monitoring may be appropriate in the circumstances set out below.

- (i) If development works are being undertaken in the vicinity of known or suspected archaeological sites or monuments but there are only slight grounds for believing that the particular location contains archaeological deposits or features (and especially if

the development works are minor in nature), then it may be considered acceptable not to have the location of the development archaeologically tested but to provide instead for archaeological monitoring of all ground disturbance.

- (ii) Where unavoidable works involving removal of archaeological deposits are being carried out within urban areas and such works cannot be preceded by archaeological excavation. This may apply, in particular, to the boring of test holes, the insertion of piled foundations and the digging of narrow trenches for services.
- (iii) In respect of very small scale developments within urban areas such as minor extensions to houses, provided that it is unlikely that the development will affect archaeological deposits or features and the impact of the development on such deposits or features would, in any event, be slight.
- (iv) In order to ensure that known or suspected elements of the archaeological heritage in the location of, or the vicinity of, development works are not damaged or interfered with.
- (v) Where a development is of a scale or nature as to make it reasonable to consider its impact on as yet unidentified elements of the archaeological heritage (see above, section 3.6.2, for examples of such development).

#### 3.7.3 Conditions which should apply to archaeological monitoring

##### (a) General

If a development is to be archaeologically monitored then the conditions of approval or authorisation for that development should provide for situations in which elements of the archaeological heritage are uncovered. There should be requirements for the

stopping (on the advice of the monitoring archaeologist) of all works which might affect elements of the archaeological heritage, the recording of exposed archaeological material, and preservation by record or preservation in-situ of the elements of the archaeological heritage, as appropriate.

Furthermore there needs to be a sufficient number of archaeologists present at all times in the course of relevant development works as specified above, and located in such a manner within the area where works are being carried out, so as to ensure that the aim of the monitoring can be achieved.

### ***(b) Archaeological monitoring and excavation licensing***

Although it is not a legal requirement for an archaeologist monitoring development works to obtain an archaeological excavation licence if the digging or excavating involved in such works are not being undertaken for an archaeological purpose, it is recommended that all archaeologists carrying out archaeological monitoring of large-scale developments (including housing schemes, road, sewage and water schemes) obtain an archaeological excavation licence prior to commencing such monitoring so as to prevent delays arising in the event of archaeological features being exposed which require excavation. Anyone considering undertaking archaeological monitoring of large-scale development without having obtained an archaeological excavation licence should note the following carefully:

- Section 23 of the National Monuments (Amendment) Act 1930 (as amended by Section 19 of the 1994 amending Act) lays down strict requirements in relation to finds of archaeological objects. A person finding an archaeological object must not remove it or otherwise interfere with it unless he or she has reasonable cause to believe that it is necessary to remove it so as to preserve it or keep it safe. Section 23 of the 1930 Act (as amended) also

requires that a find of an archaeological object be reported to the Director of the NMI within, at the latest, ninety-six hours. The finder is obliged to complete a prescribed form in respect of each archaeological object found.

*However, persons operating under and in pursuance of an archaeological excavation licence are exempted from the requirements of Section 23 of the 1930 Act regarding reporting of finds of archaeological objects.*

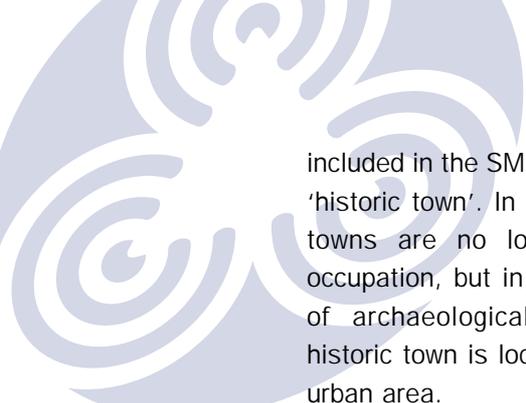
- Section 4 of the National Monuments (Amendment) Act 1994 provides that no person shall have in his or her possession or under his or her control an archaeological object found in the State after the coming into operation of the section unless such possession or control is for the purpose of complying with Section 23 of the 1930 Act (as amended), or the rights of the State to the object have been waived, *or the person in question is the holder of an archaeological excavation licence and the object was found in pursuance of that licence.*

Archaeologists intending to monitor small and medium sized developments should clarify with Dúchas in advance whether or not an excavation licence is recommended in that particular instance.

## **3.8 Historic towns located within present day urban areas**

### **3.8.1 Introduction**

As was noted in Part II (section 2.1.2 (b) above), Dúchas undertook an Urban Archaeology Survey which prepared reports on all historic towns dating to before 1700 AD with a view to delineating zones of archaeological potential within which archaeological deposits may exist as well as surveying upstanding pre-1700 AD archaeological remains in such towns. The results of the Urban Archaeology Survey were



included in the SMRs under the classification 'historic town'. In some cases such historic towns are no longer the site of urban occupation, but in many instances the zone of archaeological potential forming the historic town is located within a present day urban area.

Particular issues arise in relation to the protection of the archaeological heritage located within present day urban areas. Overall, it must be emphasised that the carrying out of archaeological assessment (including test excavation where appropriate) is an essential first step in determining what the archaeological requirements will be in pursuing the development of a zone of archaeological potential located within a present day urban area.

### **3.8.2 Particular reasons for avoiding developmental impacts on the archaeological heritage in present day urban areas**

In some cases development within present day urban areas can provide an opportunity to allow investigation of archaeological deposits and features which would otherwise

not arise. However, in addition to the general points noted above (sections 3.2 and 3.4) the following particular reasons for avoiding developmental impacts must also be taken into account.

- (i) In some historic towns forming present day urban areas there is a special need, given the extent of re-development resulting in archaeological excavation which has already taken place, to seek the preservation in-situ for the future of substantial portions of remaining archaeological deposits. This is so as to allow both the possibility of future archaeological investigation and the assimilation of the results of archaeological excavation carried out to date.
- (ii) Large scale archaeological excavation in present day urban areas with substantial surviving archaeological deposits can be especially expensive and such excavations are also likely to produce very large quantities of archaeological objects requiring long-term storage and curation by the State.



*River side revetment, Wood Quay, Dublin dating c.1200 AD, in the course of excavation*

### **3.8.3 Masonry structures of particular archaeological or historical interest surviving below ground level**

A frequently occurring feature of historic towns located within present day urban areas is the survival below ground level of masonry structures of particular archaeological or historical interest. Development within historic towns should be carried out with regard to the need to preserve in-situ (although not necessarily to present to the public) such structures. The application of this includes portions of town walls, religious houses and churches.

### **3.8.4 Criteria to be met before applying the approach of preservation by record in an urban area**

Development in a present day urban area involving removal of sub-surface archaeological deposits or features should only be carried out if it can be demonstrated that it can be done without unacceptable archaeological implications. The points made above (sections 3.4 and 3.5) regarding appropriate application of the approaches of preservation in-situ and preservation by record are, of course, central to this.

However, in the urban context a number of factors must be given particular consideration before a decision is made to opt for preservation by record rather than preservation in-situ. These are as follows:

- (i) that it is technically feasible to archaeologically excavate and record to the required standard the deposits and features being removed to allow development to proceed,
- (ii) that masonry structures of particular archaeological or historical interest surviving below ground level (including the categories set out above, section 3.8.3) will not have to be damaged or

removed to allow the development as proposed to proceed, and

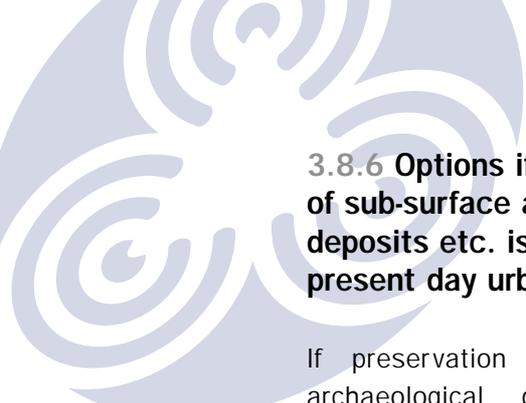
- (iii) that the Minister for Arts, Heritage, Gaeltacht and the Islands does not consider that further substantial archaeological excavation should be avoided in that town.

With regard to (iii) above, this would be a particular consideration where a relatively large amount of archaeological excavation has already taken place in a historic town.

### **3.8.5 Upstanding features and structures of archaeological interest and street patterns**

Most historic towns which have continued in use as urban areas retain an urban morphology which originated in the medieval period. Many aspects of that morphology (as well as the sub-surface archaeological deposits, features, structures and objects) are of archaeological interest. The following approaches apply to that morphology:

- (i) Every effort should be made to secure the preservation in-situ of surviving upstanding features or structures of archaeological interest located in historic towns, in particular town walls, all medieval and seventeenth century buildings or remains of such, and post-1700 AD buildings which are of archaeological interest.
- (ii) Development must (except in exceptional circumstances) be carried out in such a way as to preserve existing street patterns.



### 3.8.6 Options if preservation in-situ of sub-surface archaeological deposits etc. is proposed in a present day urban area

If preservation in-situ of sub-surface archaeological deposits, features or structures is being proposed in a present day urban area then the **first option** for securing this should be the retention of existing upstanding structures. This objective should, of course, be pursued on its own merits if such upstanding structures are themselves of archaeological, historical or architectural interest.

Failing that the **next option** (if preservation in-situ is being proposed) should be construction necessitating only minimal archaeological excavation or the removal of non-archaeological material. It may be possible to achieve this through using existing foundations, conventional foundations with load bearing walls, or raft foundations.

A **final option** (if preservation in-situ is being proposed) may be the use of piled foundations. The use of such foundations does result in destruction of archaeological deposits without recording, but this may be acceptable if **each** of the following factors apply:

- (i) that development of the location cannot be secured using either of the first two options set out above,
- (ii) that loss of potential archaeological information is at such a low level as to be negligible,
- (iii) that there is no damage to masonry structures of particular archaeological or historical interest surviving below ground level, and
- (iv) that future archaeological excavation would be feasible in the event that the building being constructed on the site was subsequently removed and that

such removal can be done without causing damage to archaeological deposits, features or structures.

More detailed guidelines on how the criteria for acceptable use of piled foundations may be met will be set out in guidelines issued by the Department of Arts, Heritage, Gaeltacht and the Islands. It must be emphasised that approaches to the use of piled foundations will have to be kept under review to take account of different piling methods and the evidence for their long term impact on archaeological deposits.

It should be noted that use of piled foundations is included here as an option if preservation in-situ is being proposed. When decisions are being made regarding use of piled foundations account should also be taken of whether archaeological excavation would be a better option having regard to the circumstances of the case. This would be a particular consideration in towns where the surviving archaeological deposits are shallow and where relatively little archaeological excavation has taken place.

### 3.8.7 Particular consideration of archaeological requirements in urban areas

Present day urban areas tend to provide little flexibility for re-location of proposed development so as to avoid impact on the archaeological heritage. Once existing buildings have been removed, or allowed to deteriorate to a point where refurbishment is no longer feasible, there may be limited scope for pursuing re-development which does not involve some level of impact on the archaeological heritage. Archaeological requirements should therefore be considered on an ongoing basis within present day urban areas and should form part of any re-development strategies from the earliest stage.



## Summary of key points

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- The archaeological heritage is non-renewable resource requiring careful and responsible management. The gathering of archaeological information should not destroy any more of that heritage than is necessary.
- There should always be a presumption in favour of avoidance of developmental impacts on the archaeological heritage and preservation in-situ of archaeological sites and monuments must be presumed to be the preferred option.
- Where archaeological sites or monuments (or portions of such) have to be removed due to development then it is essential that the approach of preservation by record be applied, i.e. that appropriate archaeological excavation and recording take place.
- The carrying out of archaeological assessment where appropriate is the first step in ensuring that preservation in-situ and preservation by record take place. Archaeological monitoring is another method of ensuring that preservation in-situ and preservation by record take place.
- Particular issues arise in relation to the protection of the archaeological heritage within present day urban areas, but the overall principles, approaches and methods still apply.
- The costs of archaeological work necessitated by development are a legitimate part of development costs.



*Early Historic church on St. Macdara's Island, County Galway*

*The National Monuments Acts give the Minister for Arts, Heritage, Gaeltacht and the Islands extensive powers to protect the archaeological heritage. It is the policy of the Minister to use those Acts to secure the protection of the archaeological heritage to the fullest possible extent, in accordance with relevant international conventions and the policies set out in this document as a whole. This in no way reduces the importance of the carrying out of their functions by other bodies and authorities in such a manner as to afford appropriate protection to the archaeological heritage.*

## 4.1 Introduction

This Part summarises key provisions of the National Monuments Acts 1930 to 1994 (and certain related aspects of the National Cultural Institutions Act 1997) and defines overall policy on their application. As has been previously noted (section 1.4.1 above), the focus here on legislation under which the Minister for Arts, Heritage, Gaeltacht and the Islands has direct powers does not reduce the importance attached to the carrying out of their functions by other bodies and authorities in such a manner as to afford appropriate protection to the archaeological heritage.

Where appropriate, comments are made regarding the scope of the various provisions of the Acts and the body responsible for their implementation (i.e. whether Dúchas or the NMI). Specific policies are set out in respect of certain provisions of the Acts.

Extensive powers are afforded to the Minister under the existing legislation. None the less, the adequacy of those provisions will be kept under review and further powers sought where appropriate.

## 4.2 Overall policy

The National Monuments Acts 1930 to 1994 and relevant provisions of the National Cultural Institutions Act 1997 will be used to secure the protection of the archaeological heritage to the fullest possible extent, in accordance with the provisions of the European Convention on the Protection of the

Archaeological Heritage, any other relevant international conventions to which Ireland is party, and the policies set out in this document as a whole.

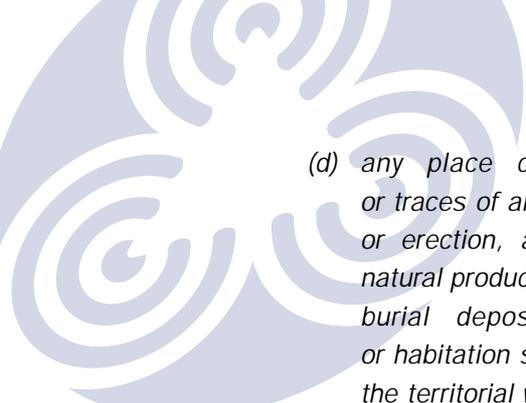
## 4.3 Protection of archaeological monuments and areas

### 4.3.1 Definitions

#### (a) Summary of provisions

Section 2 of the 1930 Act (as amended) provides that 'monument' includes the following (whether above or below the surface of the ground or the water and whether affixed or not affixed to the ground):

- '(a) any artificial or partly artificial building, structure or erection or group of such buildings, structures or erections,*
- (b) any cave, stone or other natural product, whether or not forming part of the ground, that has been artificially carved, sculptured or worked upon or which (where it does not form part of the place where it is) appears to have been purposely put or arranged in position,*
- (c) any, or any part of any, prehistoric or ancient-*
  - (i) tomb, grave or burial deposit, or*
  - (ii) ritual, industrial or habitation site,**and*



(d) *any place comprising the remains or traces of any such building, structure or erection, any such cave, stone or natural product or any such tomb, grave, burial deposit or ritual, industrial or habitation site, situated on land or in the territorial waters of the State,*

but excludes *'any building or part of any building, that is habitually used for ecclesiastical purposes'*.

Section 1 of the 1987 Act provides that *'historic monument'*

*'includes a prehistoric monument and any monument associated with the commercial, cultural, economic, industrial, military, religious or social history of the place where it is situated or of the country and also includes all monuments in existence before 1700 A.D. or such later date as the Minister may appoint by regulations',*

(the *'Minister'* being the Minister for Arts, Heritage, Gaeltacht and the Islands).

Section 2 of the 1930 Act provides that *'national monument'*

*'means 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....., and the said expression shall be construed as including, in addition to the monument itself, the site of the monument and the means of access thereto and also 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'.*

Section 1 of the 1987 Act provides that *'archaeological area'* means an area which the Minister for Arts, Heritage, Gaeltacht and the Islands considers

*'to be of archaeological importance but does not include the area of a historic monument standing entered in the Register',*

(the *'Register'* being the Register of Historic Monuments established under Section 5 of the 1987 Act).

#### **(b) Comments**

The term *'monument'* is (under the Act) a broad one including, in effect, all man-made structures of whatever form or date except buildings habitually used for ecclesiastical purposes. It must be emphasised that the scope of the National Monuments Acts is not restricted to pre-1700 AD monuments. The only provision regarding that date is that all monuments in existence before 1700 AD are automatically considered to be historic monuments within the meaning of the Acts.

It should also be noted that the scope of the Acts is not restricted to monuments of archaeological interest. Monuments of architectural and historical interest also come within the scope of the Acts. Many monuments may, of course, be of interest from several perspectives, whether archaeological, architectural or historical.

*'Monuments', 'historic monuments', 'national monuments' or 'archaeological areas'* are not afforded protection under the Acts simply by being such. The protective mechanisms outlined below must have been applied before they are protected under the National Monuments Acts.

The term *'archaeological monument'* does not appear in the Acts, but is used below to refer to monuments which are of archaeological interest or significance.

### 4.3.2 The Record of Monuments and Places

#### (a) Summary of provisions

Section 12 (1) of the 1994 Act provides that the Minister for Arts, Heritage, Gaeltacht and the Islands shall establish and maintain a record of monuments and places where the Minister believes there are monuments, such record to be comprised of a list of monuments and relevant places and a map or maps showing each monument and relevant place in respect of each county in the State. This is referred to as the **Record of Monuments and Places**, and monuments entered into it are referred to as **Recorded Monuments**.

Section 12 (2) of the 1994 Act provides that the Minister for Arts, Heritage, Gaeltacht and the Islands shall cause the relevant list and maps to be exhibited in a prescribed manner in each county in the State. Article 3 (1) of the National Monuments (Exhibition of Record of Monuments) Regulations 1994 provides that the Minister shall cause the relevant list and maps to be exhibited in the offices of the relevant planning authority and in one library of the relevant library authority for a period of not less than three months each year.

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 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 for Arts, Heritage, Gaeltacht and the Islands of the proposal 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.

#### (b) Comments

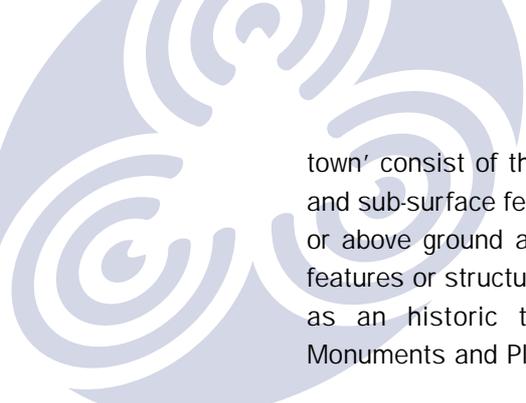
Dúchas maintains the Record of Monuments and Places on behalf of the Minister for Arts, Heritage, Gaeltacht and the Islands. Dúchas is also responsible for dealing with notices pursuant to Section 12 (3) of the 1994 Act.

The Record of Monuments and Places is comprised of the results to date of the Archaeological Survey of Ireland, as set out above in section 2.1.2 (b).

Monuments included in the Record of Monuments under the classification 'historic



*Franciscan friary at Rosserk, County Mayo, 15th century AD*



town' consist of the archaeological deposits and sub-surface features and any upstanding or above ground archaeological morphology, features or structures within an area marked as an historic town on the Record of Monuments and Places' maps.

**(c) Specific policy on the Record of Monuments and Places**

It is the policy of the Minister for Arts, Heritage, Gaeltacht and the Islands that the Record of Monuments and Places will be updated so as to take account of future results of the Archaeological Survey of Ireland.

### **4.3.3 The Register of Historic Monuments**

**(a) Summary of provisions**

Section 5 (1) of the 1987 Act provides that the Minister for Arts, Heritage, Gaeltacht and the Islands shall cause to be established and maintained a register of historic monuments, to be known as the **Register of Historic Monuments**.

Section 5 (2) of the 1987 Act provides that the Minister for Arts, Heritage, Gaeltacht and the Islands shall cause to be entered in the Register the name, location and a brief description of the historic monuments and archaeological areas in State which are known to the Minister and which, in the Minister's opinion, should be so entered.

Section 5 (5) of the 1987 Act provides that additions to, amendments of, and deletions from the Register must be published in *Iris Oifigiúil*. Section 5 (7) of the 1987 Act provides that where an entry is made in the Register in respect of a historic monument or archaeological area, or an entry made in the Register in respect of a historic monument or archaeological area is amended or deleted, then the Minister shall cause the owner and occupier of the monument or area to be notified in writing of the entry, amendment or deletion.

Section 5 (8) of the 1987 Act provides that where the owner or occupier (not being the Minister for Arts, Heritage, Gaeltacht and the Islands) of a historic monument or archaeological area entered in the Register, or any other person, proposes to carry out, or cause or permit the carrying out of, any work at or in relation to such a monument or area then he or she shall give notice in writing of the proposal to the Minister 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.

Section 5 (10) of the 1987 Act provides that a person shall not, other than in accordance with Section 5 (8) of the 1987 Act or a consent under Section 14 (2) of the 1930 Act (see below, under preservation orders, section 4.3.4), demolish or remove wholly or in part or disfigure, deface, alter or in any manner interfere with a historic monument entered in the Register.

**(b) Comments**

Dúchas maintains the Register of Historic Monuments on behalf of the Minister for Arts, Heritage, Gaeltacht and the Islands and advises the Minister on the entry of historic monuments and archaeological areas into the Register. Dúchas is also responsible for dealing with notices pursuant to Section 5 (8) of the 1987 Act.

It should be noted that although known formally as the Register of Historic Monuments, the Register may include both 'historic monuments' and 'archaeological areas'.

**(c) Specific policy on the Register of Historic Monuments**

Areas containing no known archaeological monuments may be included in the Register of Historic Monuments as archaeological areas if the Minister for Arts, Heritage, Gaeltacht and the Islands has reason to believe that such an area is of archaeological interest, including on the grounds of

- (i) its potential for containing archaeological monuments or objects, or
- (ii) its interest in respect of palaeo-environmental studies, or
- (iii) its importance in respect of protecting the amenities of an archaeological monument.

#### 4.3.4 Preservation Orders and Temporary Preservation Orders

##### (a) Summary of provisions

The National Monuments Acts provide for the making of **Preservation Orders** and **Temporary Preservation Orders** in respect of national monuments.

##### **Preservation Orders**

Section 8 (1) of the 1930 Act (as amended) provides that where it appears to the Minister

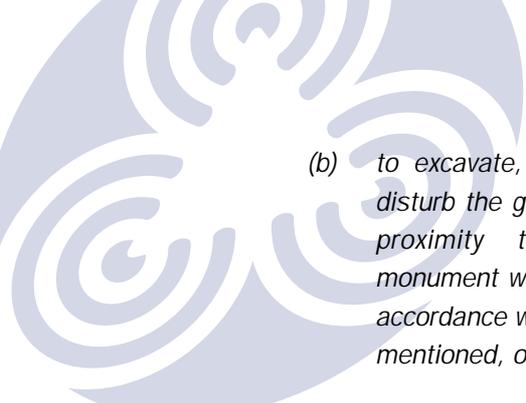
for Arts, Heritage, Gaeltacht and the Islands, on a report made by the Advisory Council (i.e. the Heritage Council) or otherwise, that a monument which in the Minister's opinion is a national monument is in danger of being or is actually being destroyed, injured or removed, or is falling into decay through neglect, the Minister may by order (i.e. a **Preservation Order**) undertake the preservation of such monument.

Section 14 (1) of the 1930 Act (as amended) provides that it shall not be lawful for any person to do the following to a national monument in respect of which a preservation order is in force, i.e.:

- '(a) *to demolish or remove wholly or in part or to disfigure, deface, alter, or in any manner injure or interfere with any such national monument without or otherwise than in accordance with the consent hereinafter mentioned, or*



*Tower house at Clara, County Kilkenny, 15th century AD, a well preserved example of a common late medieval monument type*



(b) *to excavate, dig, plough or otherwise disturb the ground within, around, or in proximity to any such national monument without or otherwise than in accordance with the consent hereinafter mentioned, or*

(bb) *to renovate or restore a national monument without or otherwise than in accordance with the consent hereinafter mentioned, or*

(c) *to sell for exportation or to export any such national monument or any part thereof.*

The consent referred to is, under Section 14 (2) of the 1930 Act, the consent in writing of the Minister for Arts, Heritage, Gaeltacht and the Islands. Section 14 (3) of the 1930 Act provides that the Minister may give such consent whenever he or she thinks it *'expedient in the interests of archaeology or for any other reason so to do'* and the Minister may *'attach to such consent all such conditions and restrictions'* as he or she thinks fit.

Section 14 (3) of the 1930 Act (as amended by the 1994 Act) further provides that a consent in respect of a case referred to in Section 14 (1) (a) must (except where the granting of the consent is in the interests of archaeology) be accompanied by an approval set out in a Ministerial Order. Exceptions to this may be made where the Minister considers the approval of a grant of consent to be expedient in the interests of public health or safety.

Section 8 (2) of the 1930 Act (as amended) provides that the Minister for Arts, Heritage, Gaeltacht and the Islands *'may at any time, by order made after consultation with the Advisory Council, revoke a preservation order'*, the *'Advisory Council'* being the National Monuments Advisory Council. Section 6 (2) of the Heritage Act 1995 provides that references to the National Monuments Advisory Council are to be construed as references to the Heritage Council.

### **Temporary Preservation Orders**

Section 4 (1) of the 1954 Act provides that where it appears to the Minister for Arts, Heritage, Gaeltacht and the Islands that a monument which in his or her opinion is a national monument is in immediate danger of injury or destruction then the Minister may by order (i.e. a **Temporary Preservation Order**) undertake the preservation of such monument. Section 4 (2) of the 1954 Act provides that a temporary preservation order shall, unless revoked by order of the Minister, remain in force for a period of six months and then expire.

Section 4 (3) of the 1954 Act provides that a temporary preservation order shall not *'be in substitution for or operate to prevent the making of a preservation order'*. Section 4 (4) of the 1954 Act provides that references to Preservation Orders in Section 14 of the 1930 Act shall be construed as including Temporary Preservation Orders.

### **(b) Comments**

Dúchas advises the Minister for Arts, Heritage, Gaeltacht and the Islands on the making of Preservation Orders and Temporary Preservation Orders and the giving of consents in respect of national monuments subject to such orders.

### **(c) Specific policy on Preservation Orders and Temporary Preservation Orders**

While the Minister for Arts, Heritage, Gaeltacht and the Islands seeks the co-operation of all persons and bodies in protecting the archaeological heritage, Preservation Orders and Temporary Preservation Orders will be made whenever necessary to secure the protection of national monuments of archaeological interest, such protection being in accordance with the provisions of the European Convention on the Protection of the Archaeological Heritage and the policies set out in this document.

Having regard to the nature and significance of the archaeological heritage as set out in section 1.1 above, the Minister for Arts, Heritage, Gaeltacht and the Islands will consider a monument or the remains of a monument to be a national monument on grounds of archaeological interest if such monument or remains of a monument contributes to the furtherance of archaeological research (or has the potential to do so), or if it contributes to the public understanding or appreciation of archaeology.

#### **4.3.5 National monuments in the ownership of the Minister**

##### ***(a) Summary of provisions***

The provisions of Section 14 of the 1930 Act regarding prohibition of injury to national monuments which are set out above in respect of national monuments subject to a Preservation Order apply similarly to national monuments in the ownership of the Minister for Arts, Heritage, Gaeltacht and the Islands. Section 12 (1) of the 1930 Act provides that the Minister for Arts, Heritage, Gaeltacht and the Islands shall maintain a national monument in his or her ownership.

Section 16 (1) of the 1930 Act provides that where the Minister for Arts, Heritage, Gaeltacht and the Islands is the owner of a national monument then the Minister shall admit the public to enter on and view such monument upon payment of such (if any) admission charge and subject to such conditions and limitations as the Minister shall prescribe.

Section 11 (1) of the 1994 Act provides that the Minister for Arts, Heritage, Gaeltacht and the Islands may acquire by agreement or compulsorily any monument that is in his or her opinion a national monument or any part of such a monument.

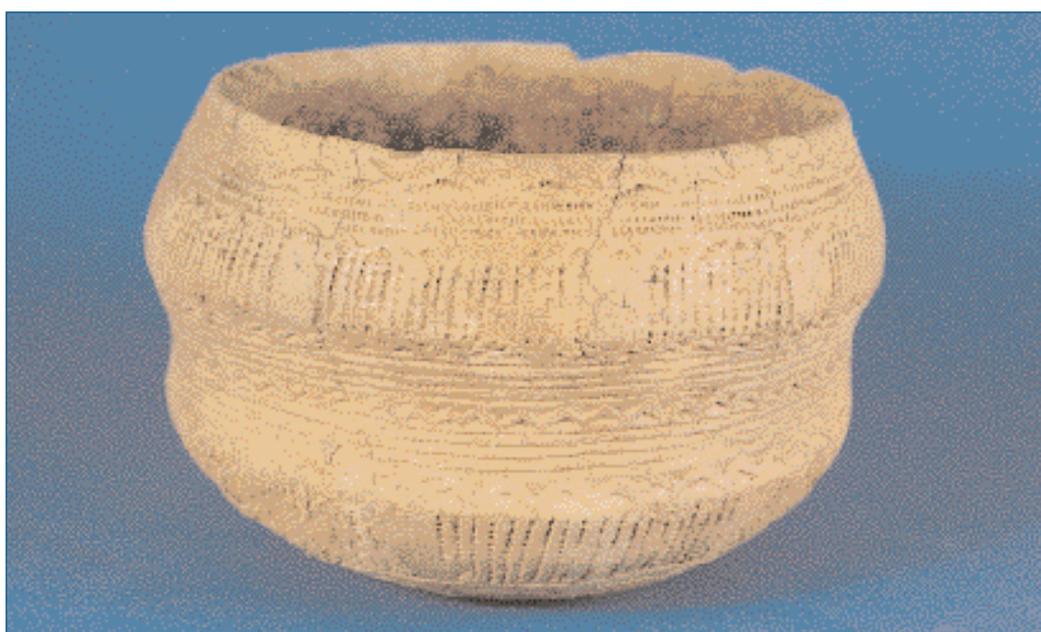
##### ***(b) Comments***

Dúchas manages national monuments in the ownership of the Minister for Arts, Heritage, Gaeltacht and the Islands and advises on the further acquisition of national monuments.

#### **4.3.6 National monuments in the guardianship of the Minister**

##### ***(a) Summary of provisions***

The provisions of Section 14 of the 1930 Act regarding prohibition of injury to national



*Bowl Food Vessel from a cist burial at Bohullion Upper, County Donegal, a category of Early Bronze Age funerary vessel dating late 3rd millennium BC to early 2nd millennium BC*



monuments which are set out above in respect of national monuments subject to a Preservation Order apply similarly to national monuments of which the Minister for Arts, Heritage, Gaeltacht and the Islands is guardian. Section 12 (1) of the 1930 Act provides that the Minister for Arts, Heritage, Gaeltacht and the Islands shall maintain a national monument of which he or she is guardian.

Section 16 (1) of the 1930 Act provides that in general where the Minister for Arts, Heritage, Gaeltacht and the Islands is the guardian of a national monument then the Minister shall admit the public to enter on and view such monument upon payment of such (if any) admission charge and subject to such conditions and limitations as the Minister shall prescribe. However, Section 16 (3) of the 1930 Act provides that where the Minister is guardian of a national monument by virtue of a deed made under the Act and such deed contains a prohibition (whether absolute or qualified) on the admission of the public to the monument, then the public shall not be admitted other than in accordance with the consent of the owner of the monument or other than in accordance with the provisions of the deed.

Section 5 (1) of the 1930 Act provides that the owner of a national monument (not being a building occupied as a dwelling house by any person other than a caretaker of that building and his or her family) may by deed, with the consent of the Minister for Arts, Heritage, Gaeltacht and the Islands, appoint the Minister as guardian of that national monument. Section 9 (2) of the 1930 Act provides that where a national monument has been made subject to a Preservation Order (and unless such monument is occupied as a dwelling house by any person other than a caretaker of that building and his or her family) then the Minister for Arts, Heritage, Gaeltacht and the Islands may by order appoint him or herself guardian of the monument.

## **(b) Comments**

Dúchas manages national monuments in the guardianship of the Minister for Arts, Heritage, Gaeltacht and the Islands and advises on the taking of national monuments into such guardianship.

### **4.3.7 National monuments in the ownership or guardianship of a local authority**

The provisions of Section 14 of the 1930 Act regarding prohibition of injury to national monuments which are set out above in respect of national monuments subject to a Preservation Order apply similarly to national monuments of which a local authority is the owner or guardian. However, Section 14 (2) of the 1930 Act provides that, in the case of a national monument of which a local authority is the owner or guardian the consent referred to in Section 14 (1) of the Act (i.e. consent to interfere etc. with the national monument), shall be the joint consent in writing of the Minister for Arts, Heritage, Gaeltacht and the Islands and the local authority.

Section 12 (1) of the 1930 Act provides that a local authority shall maintain a national monument of which it is the owner or guardian.

## **4.4 Protection of archaeological objects**

### **4.4.1 Definition**

Section 2 of the 1930 Act (as amended) provides that 'archaeological object' means

*'any chattel whether in a manufactured or partly manufactured or unmanufactured state which by reason of the archaeological interest attaching thereto or of its association with any Irish historical event or person has a value substantially greater than its intrinsic (including artistic) value, and the said expression includes ancient human, animal or plant remains'.*

#### 4.4.2. Ownership of archaeological objects

Section 2 (1) of the 1994 Act provides that

*'Without prejudice to any other rights howsoever arising in relation to any archaeological object found before the coming into operation of this section, there shall stand vested in the State the ownership of any archaeological object found in the State after the coming into operation of this section where such object has no known owner at the time when it was found'.*

#### 4.4.3 Reporting the finding of archaeological objects

Section 23 (1) of the 1930 Act (as amended) provides that where a person finds an archaeological object he or she *'shall not remove it or otherwise interfere with it'* unless there is reasonable cause to believe that such removal or interference is necessary *'so as to preserve it or keep it safe'*. Under Section 23 (2) the finder of an archaeological object shall, if necessary so to preserve the object or keep it safe, remove it to a place designated by the Director of the NMI or another safe place within thirty miles of the place of discovery.

Sections 23 (3) to (7) of the 1930 Act (as amended) and the National Monuments (Prescription of Form) (No. 2) Regulations 1994 provide that a person who finds an archaeological object must make a report of the finding to the Director of the NMI within a reasonable period (not being longer than 96 hours) from the time of finding and must then provide information on the find using a prescribed form.

However, the provisions of Section 23 of the 1930 Act (as amended) do not apply to a person finding an archaeological object in pursuance of an archaeological excavation licence issued under Section 26 of the 1930 Act (as amended) or a person exempted from

having such a licence (see Section 23 (9) of the 1930 Act, as amended).

#### 4.4.4 Retention by the NMI of archaeological objects

Section 9 of the 1994 Act provides that whenever the finding of an archaeological object with no known owner is reported to the Director of the NMI or a person designated by him or her, the Director shall take possession of the object and may retain it on behalf of the State.

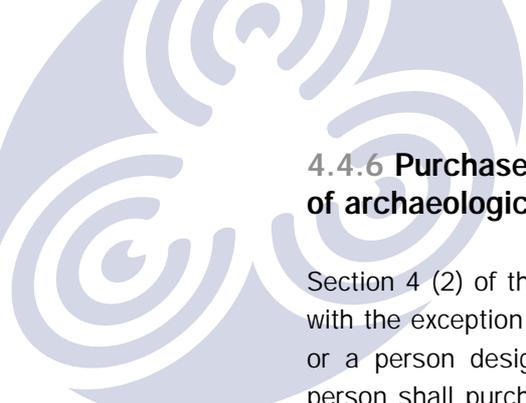
#### 4.4.5 Possession of archaeological objects

Section 4 (1) of the 1994 Act provides that, with the exception of the Director of the NMI or a person designated by him or her, no person shall have in his or her possession or under his or her control an archaeological object found in the State after the coming into operation of the section unless

- (i) such possession or control is for the purpose of complying with Section 23 of the 1930 Act (i.e. the section dealing with reporting finds of archaeological objects), or
- (ii) the rights of the State to the object have been waived, or
- (iii) the person in question is the holder of an archaeological excavation licence and the object was found in pursuance of that licence.

Section 5 (1) provides similarly in respect of archaeological objects found in the State between the coming into force of the 1930 Act and the coming into force of the 1994 Act and which have not been reported in accordance with Section 23 of the 1930 Act.

Under Section 2 and Section 17 of the National Cultural Institutions Act 1997 the NMI may lend objects from its collections.



#### 4.4.6 Purchase, acquisition or sale of archaeological objects

Section 4 (2) of the 1994 Act provides that, with the exception of the Director of the NMI or a person designated by him or her, no person shall purchase or otherwise acquire, sell or otherwise dispose of an archaeological object found in the State after the coming into operation of the section unless the object is one in which the rights of the State have been waived under the Act.

Section 5 (2) of the 1994 Act provides that, with the exception of the Director of the NMI or a person designated by him or her, no person shall purchase or otherwise acquire, sell or otherwise dispose of an archaeological object found in the State after the coming into operation of the 1930 Act, unless, at the time of purchase, acquisition, sale, or disposal or within thirty days thereof he or she makes a report to the Director of the NMI or a person designated by him or her. Such a report must be in accordance with the requirements set out in Section 5.

#### 4.4.7 Alteration of archaeological objects

##### (a) Summary of provisions

Section 25 (1) of the 1930 Act (as amended) provides that

*'It shall not be lawful for any person to injure, deface or destroy, clean, restore or sample by cutting, drilling or other process any archaeological object, nor shall it be lawful for any person to alter any archaeological object otherwise than under and in accordance with a licence in that behalf granted under this section'.*

Section 25 (2) of the 1930 Act provides that the Minister for Arts, Heritage, Gaeltacht and the Islands may issue to any person a licence to *'alter any archaeological object in such manner, to such extent and subject to such conditions as are specified in such licence'.*

##### (b) Comments

The NMI advises the Minister for Arts, Heritage, Gaeltacht and the Islands on the issuing of licences to alter archaeological objects.

Section 68 (1) of the National Cultural Institutions Act 1997 provides that the reference to the Minister in Section 25 (2) of the 1930 Act shall be construed as a reference to the Board of the National Museum of Ireland, to be established pursuant to the National Cultural Institutions Act.

#### 4.4.8 Export of archaeological objects

##### (a) Summary of provisions

Section 49 (7) of the National Cultural Institutions Act 1997 makes it unlawful to export or attempt to export an archaeological object other than in accordance with an export licence issued under Section 50 of the Act.

Section 50 (3) of the Act provides that the Minister for Arts, Heritage, Gaeltacht and the Islands may, at his or her discretion, grant or refuse to grant such a licence and a licence, if granted, may be subject to such conditions and restrictions as the Minister determines and specifies in the licence. Section 2 (1) of the Act provides for a definition of *'archaeological object'* which is the same as that under the National Monuments Acts.

Section 49 (3) of the National Cultural Institutions Act provides that the Minister for Arts, Heritage, Gaeltacht and the Islands may by order declare any object which is, in his or her opinion, an archaeological object to be an article to which Part IV of the Act (i.e. including Sections 49 and 50) applies.

##### (b) Comments

The NMI advises the Minister for Arts, Heritage, Gaeltacht and the Islands on the issuing of licences for the export of archaeological objects.

These provisions of the National Cultural Institutions Act 1997 replace similar provisions under the National Monuments Act 1930, but form part of an integrated licensing system for controlling the export of moveable cultural property.

#### **(c) Specific policy on export of archaeological objects**

The Minister for Arts, Heritage, Gaeltacht and the Islands will not normally issue licences for the permanent export of objects forming part of the national archaeological heritage.

### **4.5 Protection of wrecks and underwater archaeological objects**

#### **4.5.1 Definition of wreck**

Section 1 of the 1987 Act provides that 'wreck'

*'means a vessel, or part of a vessel, lying wrecked on, in or under the sea bed or on or in land covered by water, and any objects contained in or on the vessel and any objects that were formerly contained in or on a vessel and are lying on, in or under the sea bed or on or in land covered by water'.*

#### **4.5.2 Protection of wrecks over one hundred years old and underwater archaeological objects**

##### **(a) Summary of provisions**

Section 3 (4) of the 1987 Act provides that a person shall not dive on, damage, or generally interfere with, any wreck which is more than one hundred years old or an archaeological object which is lying on, in or under the sea bed or on or in land covered by water except in accordance with a licence issued by the Minister for Arts, Heritage, Gaeltacht and the Islands under Section 3 (5) of the Act. Under that section the Minister may, at his or her discretion, grant or refuse to grant a licence and may make a licence subject to such conditions as he or she thinks fit and specifies in the licence.

Section 3 (6) of the 1987 Act (as amended) provides that a person finding a wreck over one hundred years old must within four days make a report of the find to the Minister for Arts, Heritage, Gaeltacht and the Islands or the Garda Síochaná. Section 3 (6) of the 1987 Act (as amended) also provides that a person finding an archaeological object which is lying on, in or under the sea bed or on or in land covered by water must within four



*Logboat from the River Shannon at Clonmacnoise*



days make a report of the find to the Director of the NMI.

**(b) Comments**

Dúchas advises the Minister for Arts, Heritage, Gaeltacht and the Islands on the issuing of licences under Section 3 (5) of the 1987 Act. Dúchas also deals with reports of finds of wrecks over one hundred years old.

**(c) Specific policy on protection of wrecks over one hundred years old and underwater archaeological objects**

The Minister for Arts, Heritage, Gaeltacht and the Islands will only consider issuing licences under Section 3 (5) of the 1987 Act to carry out any activities involving damage to or removal (whether in whole or part) of wrecks or underwater archaeological objects where such damage or removal

- (i) cannot reasonably be avoided, or
- (ii) is in the interests of archaeological research (and long term conservation and storage facilities are available for any removed material), or
- (iii) is for the purpose of conservation.

### 4.5.3 Underwater Heritage Orders

**(a) Summary of provisions**

Section 3 (1) of the 1987 Act provides that where the Minister for Arts, Heritage, Gaeltacht and the Islands is satisfied in respect of any place *'on, in or under the sea bed of the territorial waters of the State or on, in or under the sea bed to which section 2 (1) of the Continental Shelf Act, 1968 applies or on or in land covered by water'* that

- '(a) it is or may prove to be the site where a wreck or an archaeological object lies or formerly lay, and*

- (b) on account of the historical, archaeological or artistic importance of the wreck or the object, the site ought to be protected',*

then the Minister may by order (an **Underwater Heritage Order**) designate *'an area of the sea bed, or land covered by water, around and including the site as a restricted area'*. Under Section 3 (2) (a) the area covered by an underwater heritage order (i.e. the restricted area) may be of such size as the Minister considers necessary for the protection of the site concerned.

Section 3 (3) of the 1987 Act provides that within a restricted area a person shall not dive on, damage, or generally interfere with, any wreck or archaeological object except in accordance with a licence issued by the Minister for Arts, Heritage, Gaeltacht and the Islands under Section 3 (5) of the Act. Under that section the Minister may, at his or her discretion, grant or refuse to grant a licence and may make a licence subject to such conditions as he or she thinks fit and specifies in the licence.

**(b) Comments**

Dúchas advises the Minister and on the making of Underwater Heritage Orders and on the issuing of licences under Section 3 (5) of the 1987 Act.

**(c) Specific policy on Underwater Heritage Orders**

Without prejudice to any other circumstances in which it may be appropriate, the making of an underwater heritage order in respect of an underwater archaeological object or wreck of archaeological interest will be considered by the Minister for Arts, Heritage, Gaeltacht and the Islands if there are grounds for believing that the protection of such a wreck or object would be better secured by the control of activities within a specifically designated area around the wreck or object.

The issuing of licences under Section 3 (5) of the 1987 in respect of wrecks or underwater archaeological objects covered by Underwater Heritage Orders will be done in accordance with the same policy as set out at 4.5.2 (c) above.

#### 4.6 Control of archaeological excavation

##### (a) Summary of provisions

Section 26 (1) of the 1930 Act makes it unlawful for any person *'without or otherwise than in accordance with'* a licence issued by the Minister for Arts, Heritage, Gaeltacht and the Islands to

*'dig or excavate in or under any land (whether with or without removing the surface of the land) for the purpose of searching generally for archaeological objects or of searching for, exposing or examining any particular structure or*

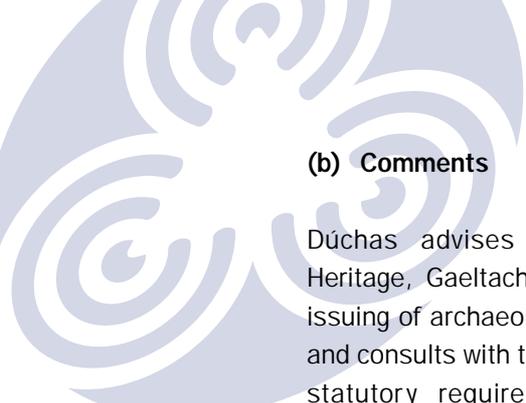
*thing of archaeological interest known or believed to be in or under such land or for any other archaeological purpose'*.

Section 2 of the 1930 Act (as amended) provides that *'land'* includes land covered by water.

Section 26 (2) of the 1930 Act (as amended) provides that, upon application being made to the Minister for Arts, Heritage, Gaeltacht and the Islands and him or her being furnished with such information in relation to the application as he or she may reasonably require, the Minister may, having consulted with the Director of the NMI, issue to any person *'a licence to dig or excavate in or under any specified land for any specified archaeological purpose'* (i.e. an **archaeological excavation licence**) and the Minister may insert in any such licence such conditions and restrictions as he or she thinks proper.



Viking swords from Kilmainham/Islandbridge, Dublin, 9th century AD



**(b) Comments**

Dúchas advises the Minister for Arts, Heritage, Gaeltacht and the Islands on the issuing of archaeological excavation licences and consults with the NMI consistent with the statutory requirement that the Minister consult the Director of the NMI prior to issuing such a licence.

**(c) Specific policy on licensing of archaeological excavation**

Detailed policy on archaeological excavation is set out in the document *Policy and Guidelines on Archaeological Excavation* published by the Department of Arts, Heritage, Gaeltacht and the Islands.

#### 4.7 Control of use of detection devices

**(a) Summary of provisions**

Section 2 (8) of the 1987 Act provides that (for the purposes of the section) ‘*detection device*’ means

*‘a device designed or adapted for detecting or locating any metal or mineral on or in the ground, on, in or under the sea bed or on or in land covered by water, but does not include a camera’.*

Section 2 (1) of the 1987 Act (as amended) provides that without the consent of the Minister for Arts, Heritage, Gaeltacht and the Islands a person shall not ‘*use or be in possession of a detection device*’

**(i)** in, or at the site of, a monument subject to a Preservation Order, or a monument in the ownership or guardianship under the Act of the Minister or a local authority, or a monument entered in the Register of Historic Monuments, or a monument included in the Record of Monuments and Places,

and

**(ii)** in an archaeological area entered in the Register of Historic Monuments, or in a restricted area (i.e. an area subject to an Underwater Heritage Order).

Furthermore, Section 2 (1) prohibits use without the consent of the Minister for Arts, Heritage, Gaeltacht and the Islands of a detection device in any other place ‘*for the purpose of searching for archaeological objects*’.

Sections 2 (2) and 2 (3) of the 1987 Act provide for the Minister for Arts, Heritage, Gaeltacht and the Islands to grant consent or refuse to grant consent for the use of a detection device to search for archaeological objects at a specified place or for the use and possession of a detection device at a place belonging to one of the categories protected under the National Monuments Acts as set out above. A consent may be subject to such conditions as the Minister thinks fit.

**(b) Comments**

Dúchas advises the Minister for Arts, Heritage, Gaeltacht and the Islands on the granting of consents in respect of use and/or possession of detection devices.

**(c) Specific policy on granting of consent to use or be in possession of a detection device**

The Minister for Arts, Heritage, Gaeltacht and the Islands will not as a general rule grant consents in respect of use and/or possession of detection devices except to suitably qualified archaeologists or persons who will be working under on-site archaeological supervision. However, exceptions to this general rule may be made in respect of geophysical survey being carried out by qualified geophysical surveyors for legitimate archaeological purposes.

Before a consent to use a detection device is issued it will have to be clear that the use of the device proposed by the applicant is in accordance with best archaeological practice.



## Summary of key points

- The National Monuments Acts and relevant provisions of the National Cultural Institutions Act will be used to secure the protection of the archaeological heritage to the fullest possible extent, in accordance with the provisions of the European Convention on the Protection of the Archaeological Heritage, other relevant international conventions to which Ireland is party and the policies set out in this document as a whole.
- The focus in this part on legislation under which the Minister for Arts, Heritage, Gaeltacht and the Islands has direct powers does not reduce the importance attached to the carrying out of their functions by other bodies and authorities in such a manner as to afford appropriate protection to the archaeological heritage.
- The scope of the National Monuments Acts is not restricted to pre-1700 AD monuments and the Acts can be applied to monuments of architectural and historical interest as well as to ones of archaeological interest.
- There are a number of mechanisms under the National Monuments Acts which can be applied to secure the protection of archaeological monuments (as well as monuments of other categories of interest). These include the Record of Monuments and Places, the Register of Historic Monuments, and the making of Preservation Orders and Temporary Preservation Orders.
- All archaeological objects found in the State which have no known owner at the time of finding are State property. In addition, all archaeological objects are protected through requirements for mandatory reporting of finds and licensing of alteration and export.
- All wrecks over one hundred years old are protected under the National Monuments Acts, and there is also provision for the making of Underwater Heritage Orders.
- Archaeological excavation and the use of detection devices are subject to strict control under the National Monuments Acts.
- Dúchas and the NMI are responsible for advising the Minister for Arts, Heritage, Gaeltacht and the Islands on use of powers under the legislation, Dúchas having the primary role in respect of protection of monuments and the NMI having the primary role in respect of archaeological objects.
- In addition to overall policy on use of the National Monuments Acts, Part IV above sets out specific policies on certain provisions of the Acts. Detailed policy on archaeological excavation is set out in the document *Policy and Guidelines on Archaeological Excavation*.