



An Roinn Ealaíon, Oidhreachta,
Gnóthaí Réigiúnacha, Tuaithe agus Gaeltachta

Department of Arts, Heritage,
Regional, Rural and Gaeltacht Affairs

PART IV PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED)

REVIEW OF OPERATION

EXPERT ADVISORY COMMITTEE REPORT

VOLUME 1

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FOR

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Ministerial Foreword

I welcome the publication of the Review of Part IV of the Planning and Development Act 2000 (as amended). It was an initiative of my Department and was carried out by an Expert Advisory Committee established for the purpose, with the support of my Department. The committee consisted of respected representatives of the public sector, including the then Department of the Environment, Community and Local Government, the Office of Public Works, An Bord Pleanála, the Heritage Council and local authorities (including architects, architectural conservation officers and planners), the Royal Institute of the Architects of Ireland, local authority management and heritage NGOs.

The review examines in detail the implementation of the Planning and Development Act since 2001. The committee has considered the many contributory factors which have helped or hindered its effectiveness and has made a number of very useful recommendations to assist in bringing a much greater degree of clarity, certainty and assistance to planning authorities, owners and professional practitioners. My Department will utilise these recommendations in formulating objectives to obtain optimal outcomes for architectural heritage protection, within the limits of the resources of all the organisations involved. The committee's interdisciplinary nature gave its proceedings a dynamism and its work a high quality that bestows great merit on the members.

I thank all those who gave time and attention to this important work, especially the committee members and Department staff, but also other Irish experts in the field of architectural heritage protection who contributed to the task.

I would especially like to remember the late Tom O'Connor, who chaired the Expert Advisory Committee. Tom was noted for his lengthy service with An Bord Pleanála and his contributions over the years to architectural heritage protection, to which he was unwaveringly committed. He brought a professional hand to the committee's endeavours in seeking the best conservation outcomes for the architectural heritage of Ireland.

Heather Humphreys TD

Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs

EXECUTIVE SUMMARY

The Local Government (Planning and Development) Act, 1999, and subsequently Part IV of the Planning and Development 2000, were envisaged as part of a range of measures for identification, designation and protection of Irish architectural heritage, in which the local authority system plays a pivotal role. A series of administrative measures, to include the creation of conservation officer posts and the establishment of conservation grants, were also initiated. In the intervening years there has been a significant accumulation of conservation knowledge by policy-makers, professionals, educators and craftspeople working in the field, and professional conservation accreditation systems are now in place. The Expert Advisory Committee considered that the protection of the built heritage has been significantly improved since 2000 and the legislative basis transformed by Part IV. However, twelve years on, and in a different economic context, it is timely to review this impressive start.

Note:

The Expert Advisory Committee met from September 2011 to June 2012. A number of current department names, functions and policies post-date the completion of the report.

PRINCIPAL FINDINGS

1. REGENERATION POTENTIAL OF PART IV

There is strong and achievable potential for the historic built environment to be the catalyst for sustainable, dynamic and integrated urban regeneration grounded in national planning policy with amended area-based protection provisions, co-ordination in local authority management, the input of state financial and training resources, and appropriate deployment of private sector expertise;

2. LEGISLATIVE IMPROVEMENTS IDENTIFIED

Strategic amendments (specifically to Section 57 of the Planning and Development Acts 2000-2012) would clarify responsibilities imposed on local authorities and owners through time, and would allow for more effective protection of heritage and better management and development through use of Part IV. A number of housekeeping amendments are also recommended. The existing tax relief scheme, S.482 of the Taxes Consolidation Act 1997 could also be made more effective and other legislative provisions proofed to mitigate adverse impacts on protected structures and areas;

3. REFINEMENT OF FINANCIAL INSTRUMENTS NECESSARY

A range of fiscal tools is considered necessary from which to choose more broad based and effective, direct and indirect subvention of the cost of maintaining and appropriately repairing historic structures and areas, based on existing Irish and international models, along with revision of existing fiscal incentives so as to reduce unintended adverse consequences on the historic building stock; both will simultaneously drive demand for skilled repair, maintenance and improvement in the construction sector, assist in implementing heritage-centred regeneration and maintain owners' goodwill towards the aims of the legislation;

4. TARGETED EDUCATION / TRAINING TOOLS NECESSARY

A range of measures has been identified as necessary to improve competency on the part of local authorities and other stakeholders, including the private sector at profession and trades levels, in all aspects of protecting, managing and planning for the historic built environment

PRINCIPAL RECOMMENDATIONS

1. ENHANCE STATE MANAGEMENT OF THE HISTORIC BUILT ENVIRONMENT

Improve strategic management of the historic built environment by the State, with a strong emphasis on the promotion of sustainable, heritage-centred urban regeneration which balances social, environmental and economic impacts:-

PRIORITY ACTIONS:	RECOMMENDATIONS
Implement Government Policy on Architecture actions 22, 44 and 45 with local and State authorities to develop integrated historic built environment management and heritage-centred regeneration policies, and better define responsibilities, roles and relationships	1.A.1; 1.C.2; 3.A; 3.C
Make amendments to Part IV [initially] of the 2000-2012 Acts and review area-based protection mechanisms so as to improve the planning framework for heritage-centred regeneration	1.C.1
Engage at high level with State departments and produce protocols / guidance to further integrate built heritage policy and practice into (i) State property management and development proposals; (ii) use of public works contracts; (iii) application of Building Regulations; (iii) functions of Nama	1.C.3
Revise and update the <i>Architectural Heritage Protection Guidelines for Planning Authorities</i>	1.C.3
Devise and implement a pilot heritage-centred regeneration project on the Swedish Halland model	2.C

2. EFFECTIVELY ALLOCATE FINANCIAL RESOURCES

Improve the efficiency and effectiveness of all relevant State spending to achieve quality in the historic built environment:-

PRIORITY ACTIONS:	Recommendations
Work with State stakeholders to create and strengthen safeguards for the built heritage from existing general [non-conservation] State capital expenditure, tax relief and supports	2.C
Research potential direct and indirect fiscal measures which will stimulate heritage-centred regeneration activity, evaluate past programmes, and recommend new funding measures and amendments to existing legislative provisions	2.A; 2.C
Reintroduce the Local Authority Conservation Grant Scheme and Civic	2.B.1

Structures Scheme	
Tighten compliance requirements for receipt of (S. 482) tax relief and improve the management of the scheme	2.B.2

3. ENHANCE PUBLIC SECTOR SKILLS BASE

Allocate and maintain an effective level of service to support constructive local authority built heritage management: -

PRIORITY ACTIONS:	Recommendations
Redefine and expand architectural conservation officer role and duties to achieve expert local authority service provision	3.C.1
Map local authority skills needs for integrated built heritage management and identify existing post-holder competencies to improve multi-disciplinary historic built environment management	3.A
Devise and pilot a local authority historic built environment training module for architectural conservation officers and other officers with a view to CPD and PMDS engagement	3.C.2

INTRODUCTION

This report is the outcome of a review undertaken by an Expert Advisory Committee assembled by the Department of Arts, Heritage and the Gaeltacht, of the operation of the legislative provisions for the protection of the built heritage, which are contained in Part IV of the Planning and Development Act 2000, as amended.

(i) REPORT STRUCTURE

The document is structured in three parts with appendices:

- I. An introduction to Part IV, with summary of the operation of the Act over the past twelve years, noting the elements of the Act and accompanying statutory instruments and local and central government administration that have worked satisfactorily;
- II. A summary of the findings of the Expert Advisory Committee (EAC) constituted for the purposes of the review (which included members from representative state and non-governmental organisations) and others in the course of the review;
- III. General and specific recommendations made to the Department of Arts, Heritage and the Gaeltacht. All recommended legislative / statutory instrument changes are included as an appendix.

(ii) TERMS OF REFERENCE

It has been the practice to review the operation of new legislation when it has been in operation for a period. The current legislative arrangements have been in place for thirteen years. The Expert Advisory Committee noted that generally they have worked well and have resulted in improvements in both formal protection of the built heritage and improved awareness of the contribution that this heritage makes to Irish social and economic life. However, the economic context is that there has been an especially hard impact on historic urban centres and the construction industry since 2008. It is opportune now in light of the need to drive administrative efficiencies and to work within new financial limitations and the current objectives of the Department of Arts, Heritage and the Gaeltacht, that the *operation* of the system be reviewed. It is not proposed to alter the fundamental legislative framework of protection. The review focused on technical amendments/legislative corrections and revisions to regulations where appropriate as well as more substantial administrative and policy initiatives. It included an examination of three key areas:

- I. An outline review of how the legislation is *operating* in practice regarding the protection and management of architectural heritage from a central and local government perspective, with input from a diverse range of stakeholders, including users of this heritage;
- II. The reduction in resources currently available both centrally/locally for the conservation of protected structures and the need to consider alternative ways of supporting the conservation of the built heritage;
- III. The potential need for allocation of staff through redeployment or a multi-disciplinary, integrated approach in staffing responses at local authority level in carrying out conservation functions (and any training inputs required).

(iii) REVIEW PROCESS AND STRUCTURE

The review has been co-ordinated by the Department of Arts, Heritage and the Gaeltacht, led by the expertise assembled in the EAC.

The EAC was chaired by Mr Thomas O'Connor B Arch, Dip TP, FRIAI, MIPI, formerly Director of Planning and Board Member of An Bord Pleanála. Deputy Chair was Mr Martin Colreavy, Dip Arch, BArch Sc, MSc Urban Design, MRIAI and Principal Advisor, Built Heritage and Architectural Policy, Department of Arts, Heritage and the Gaeltacht. Co-ordination of the review process was undertaken by administrative and professional staff from the Built Heritage and Architectural Policy Section of the Department of Arts, Heritage and the Gaeltacht.

The EAC consisted of 16 suitably qualified and experienced senior professionals in the practice and operation of planning legislation, including that of architectural heritage. Other experts, internal and external, aided the EAC in the carrying out of its work. The committee sat for seven meetings between September 2011 and June 2012. Some recommendations are based on the views of the majority rather than the full committee. There is to be a limited consultation process with relevant stakeholders from the public and private sector following the completion of the EAC process and submission of the draft report to the Minister for Arts, Heritage and the Gaeltacht. It should be noted that recommendations to change planning legislation and guidance will be subject to the usual inter-departmental processes.

PART 1: OPERATION OF PART IV TO DATE

1.1 POLICY CONTEXT OF PART IV

The protection and management of the historic built environment is an integral part of sustainable development and a primary function of the Planning and Development Act 2000 (as set out in the long title of the Act).

The historic built environment, comprising historic buildings and places is an economic, environmental and social, as well as a cultural, asset. These special characteristics are worth passing on to the next generation. The historic built environment contributes to the sense of place which makes Ireland an attractive location in which to base economic activity. Protection of this resource is fundamental to the sustainable construction and tourism industries.¹

The historic built environment and the jobs it supports are also tied to place. This endowment requires stewardship to prolong its life and to retain the character of each element in the public interest. Conservation, more than merely being the maintenance of the physical resource, is the management of change. It places emphasis on the meaning and value of the tangible environment for the people who live in, work in, invest in or visit such places, and seeks to maintain the integrity and diversity of the cultural resources that sustain society.

Management of change at policy level

The historic built environment is vulnerable to incremental as well as rapid transformation from natural and cultural causes, whether intended, accidental or as a by-product of change. In recent decades such changes have resulted in large-scale vacancy in some town and city cores and the physical decay of much existing building stock – modern and historic – as well as social problems.

The 1997 policy document *Sustainable Development: a strategy for Ireland* sets out a well considered approach to sustainable management of resources, and has been updated in the new government policy *Our Sustainable Future, A Framework for Sustainable Development for Ireland* (Department of the Environment, Community and Local Government, 2012).

The Government Policy on Architecture (2009-2015) includes many actions to assist in the sustainable use of resources. This policy considers the existing built environment – including its heritage assets – as requiring an integrated approach to secure quality outcomes. As stated in the Government Policy on Architecture–

The State is committed to the highest standards in the protection, conservation, and maintenance of the built heritage and landscapes in its care and to promoting the adoption of these standards towards the historic built environment²

European Environmental Impact Assessment [EIA] and Strategic Environmental Assessment [SEA] Directives have put in place structures since 1985 and 2004 respectively, to underpin forward planning and development management. Both directives require integrated analysis of likely effects on the distinct elements that make up the environment, including cultural heritage.

¹ Ecorys and Fitzpatrick Associates, *Economic Value of Ireland's Historic Environment* (The Heritage Council, 2012). This report sets out the economic argument in favour of appropriate maintenance, repair, use and enhancement of historic buildings, showing that these activities contribute at multiple levels to quality of life and economic activity.

² Paragraph 3.6.

SEA operates at the macro level to inform local and national policies. On a large to medium scale, landscape planning complements the concept of SEA. It has been developed in Europe as an effective forward planning tool for places. Conservation planning, a concept developed in Australia, brings a similar deliberative process to the smaller scale, for example of an area, plot or group of holdings. Both types of forward planning recognise the importance on many levels of the sense of place or genus loci to the health of a place and its inhabitants. The plan structures are sensibly organised, first evaluating the character of the place as embodied in its physical and cultural layers, then identifying the resources held by it and their significances, thirdly itemising threats and finally developing policies for managing change while retaining that which is valued of the place. The work is carried out in conjunction with a wide range of stakeholders.

To develop landscape or conservation plans requires integrated management across many sections of a local or regional authority, the input of stakeholders from the public and private sector, and appropriate professional expertise from a range of spheres. Done well, such multi-faceted, evidence-based and area-based forward plans make it much easier to obtain quality in development management.

By reason of this policy context, some of the issues covered in this review extend beyond the immediate focus of Part IV of the Planning and Development Acts 2000-2012.

1.2 LEGISLATIVE PROVISIONS

The Local Government (Planning and Development) Act, 1963 (as amended) contained a discretionary provision for the “preservation of buildings of artistic, architectural or historic interest”. The Local Government (Planning and Development) Act 1976 contained a further discretionary provision for the “preservation of plasterwork, staircases, woodwork or other features of artistic, historic or architectural interest and forming part of the interior of structures”. A report by the Department of Arts, Culture and the Gaeltacht, *Strengthening the Protection of the Architectural Heritage* (1996), made a series of recommendations with reference to the Granada Convention.³ The ratification by Ireland of this Convention provided the basis for a national commitment to stronger protection of the architectural heritage. The 1996 report recommended that a more systematic identification of structures for protection, and that statutory protection of the built heritage be instituted. The Local Government (Planning and Development) Act, 1999 and the Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act, 1999 were enacted in response.

Apart from transitional arrangements and some additions, the provisions of the Local Government (Planning and Development) Act, 1999 formed Part IV of the Planning and Development Act 2000, which consolidated the planning code. [The Planning and Development Acts 2000-2012 and the consequential regulations now apply.] The main provisions are:

- a) Planning authorities have a clear obligation to create a record of protected structures (RPS) which includes all structures or parts of structures in their functional areas which, in their opinion, are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. This record forms part of a planning authority's development plan. There are no gradations within the designation of a protected structure.
- b) Planning authorities are also obliged to preserve the character of places and townscapes which are of special architectural, historical, archaeological, artistic,

³ Convention for the Protection of the Architectural Heritage of Europe (Council of Europe, 1985), ratified by Ireland in 1997

cultural, scientific, social or technical interest or that contribute to the appreciation of protected structures, once they have been designated architectural conservation areas (ACAs) in their development plan.

- c) Development plans must include objectives for the protection of structures of special interest and the preservation of the character of areas designated as architectural conservation areas
- d) It is the responsibility of owners and occupiers of protected structures not to allow them to become endangered and planning authorities have additional powers to ensure that buildings are not endangered either directly or through neglect ("endangered" means exposed to harm, decay or damage, whether immediately or over a period of time, through neglect of direct or indirect means (Section 2))
- e) Where a structure is protected, the protection includes the structure, its interior and the land within its curtilage and other structures within that curtilage (including their interiors) and all fixtures and features which form part of the interior or exterior of all these structures. All works which would materially affect the character of a protected structure, or a proposed protected structure, require planning permission.
- f) The owner or occupier of a protected structure may seek a declaration from the relevant planning authority to determine what works would or would not materially affect the character of the structure, or any element of it which contributes to its special interest

The protection of the built heritage is effected for the most part at local authority level through forward planning and development management. While almost all the specific protective measures are in Part IV, Parts II (Plans and Guidelines) and III (Control of Development) are everyday tools that involve actions that impact on the historic built environment as a whole and protected structures and architectural conservation areas in particular. Part VIII (Enforcement), X (Environmental Impact Assessment), and XI (Development by Local and State Authorities) of the Act also affect protected elements and areas of the built environment, while Part XIII (Amenities) and Part XVI (Events and Funfairs) contain provisions that can affect built heritage protection.

The Minister for Arts, Heritage and the Gaeltacht is a statutory consultee in relation to the protection of architectural heritage under the provisions of the Planning and Development Regulations 2001 (as amended), and is notified of planning applications, draft development plans and local area plans. The other statutory consultees for this purpose are the Heritage Council, An Taisce, An Chomhairle Ealaíon and Fáilte Ireland.

The adoption of the record of protected structures is a reserved function. Once protected, a structure remains on the record in each succeeding development plan unless deleted by reserved function. An architectural conservation area, once designated in a development plan, must be included in the succeeding development plan in order to remain in force.

The characteristics of special interest in the Act are wide ranging and not limited to artistic, architectural or historical interest as applied under the 1963 code. The Act offers almost the full range of protective provisions for structures that have been proposed for protection as those which have been included in the record of protected structures.

1.3 SUMMARY OF OPERATION TO DATE

The range of statutory functions involving built heritage protection extends from forward planning (including the work associated with drafting development plan policies and preparing RPS and ACA designations); to development management (including pre-planning consultations and local and state authority developments); declarations, endangerment notification and management, enforcement and administering conservation grants.

The Department of Arts, Heritage and the Gaeltacht (formerly the Department of Environment, Heritage and Local Government) has issued circulars and guidance on the operation of the Act and related matters, including the statutory *Architectural Heritage Protection Guidelines for Planning Authorities*, issued in 2005⁴, and the Advice Series of booklets on practical aspects of the conservation of older buildings, seven of which have been published to date (2007 - 2012).

Statistical indicators

Some indicators measure the use to date of the new provisions available to planning authorities in Part IV of the 2000 Act (as amended), quantified in annual returns by local authorities to DECLG (formerly DEHLG). As of 2011 there were 33,340 protected structures nationally. Ministerial Recommendations have been made in respect of c.37,000 structures arising from inventories carried out by the National Inventory of Architectural Heritage (a unit within the Department).

Before 2009 statistics were not sought in respect of many of the provisions of Part IV. Several reports commissioned by the Heritage Council and others illustrate the operation of specific elements of the Act.⁵ As comprehensive quantitative and qualitative analyses have not yet been undertaken to show the use and effectiveness of all of the provisions within Part IV, one recommendation of this review [1.A.1] is to make good that information deficit.

Public opinion

Part IV of the Act has given legitimacy to citizens' expectations that the State will actively protect and care for that which is communally considered of heritage value in the built environment. The operation of the legislative provisions has given status and validity to the increasing interest on the part of citizens in the protection and preservation of the built heritage, as part of a wider growth in pride of place, sustainable use of resources and heritage tourism. It has been seen that with modest resources and positive engagement, local authorities and communities have greatly improved protection, awareness-raising and management of the built heritage in little over a decade.

Specific owner and occupier issues

While there is public goodwill generally towards the protection of built heritage, many owners and occupiers of protected structures are unhappy with the burdens imposed by such designation. The most common issues are:

- uncertainty over the spatial extent of protection where a curtilage is not clear cut, and the extent of protection afforded to interiors of protected structures

⁴ Reissued in 2011 by the Department of Arts, Heritage and the Gaeltacht.

⁵ *An Assessment of the Implementation of Legislative Measures to Protect the Architectural Heritage by Planning Authorities in Ireland* Heritage Council 2006 (unpublished); *Curtilage Report*, Heritage Council 2009 (unpublished); *The Section 57 Declaration Provisions: A Review* by E. Jane Dennehy, EAC member (undertaken for this review).

- the financial outlay associated with the maintenance and repair needs of an older building arising from the obligation not to endanger
- property insurance issues
- lack of clarity about what exactly requires permission and what does not, and
- confusion over the competencies needed to prepare documents or carry out works.

For some, protected structure designation is seen as an unfair burden to be avoided if possible, and is contrasted with the seeming ease with which permission can be obtained for other, non-designated, sites. In addition, the huge reduction in market values of property has resulted in owners being reluctant to invest in repair where they are unlikely for the foreseeable future to recoup this investment through sale.

The absence of relevant expertise within a number of local authorities, which can result in the spread of confused messages on technical aspects of protection, also increases negative perceptions of the responsibilities that Part IV imposes. Until recently the availability of the Local Authority Grant Scheme helped to lessen some of these negative perceptions. A number of findings and recommendations on public confidence-building measures (1.C.4) are made in consequence.

Local authority financial resources

Operation of schemes until 2010

Between 1999 and 2010 the Department of Arts, Heritage and the Gaeltacht (in its former remit as the Department of Environment, Heritage and Local Government) allocated sums to each city and county council on an annual basis to disburse to protected structure grant applicants subject to qualifying criteria and inspection. In total €40.3m was allocated through the Local Authority Conservation Grant Scheme between 2003 and 2010 and €7.7m to the Civic Structures Scheme between 2007 and 2010.⁶

This funding generated investment of further millions of euro in capital works by owners to maintain and restore protected structures.⁷ It has generated a market for specialist and traditional building skills, as the certification process requires that appropriate types of work are carried out to a high quality.

Grant funding has facilitated well-considered repairs, rather than emergency patches. Such detailed attention to the well-being of individual structures and areas has given local authorities a street-level view of their functional area that did not before exist and has opened lines of communication with individuals, business interests and community groups.

Strategic use of the Local Authority Conservation Grant Scheme has built on successful repair projects by persuading other owners to improve their buildings, making grant-funded projects a catalyst for local area regeneration. It has also supported a growing awareness amongst local authorities that the historic built environment is an essential resource underpinning sustainable

⁶ Figures from the Department of Arts, Heritage and the Gaeltacht.

⁷ The Association of Architectural Conservation Officers has collated information outlining the immediate and indirect economic and social benefits of the local authority conservation grant scheme and has estimated a multiplier of 4.31 in grant-funded projects based on sample returns from 2005 to 2010 (unpublished correspondence March 2011). Carrig Conservation International Ltd, Louise Harrington and Integral Finance Technology Ltd, in *Grant Aid for Building conservation: ‘Quanta’ Research* (The Heritage Council, 2011) have compiled an analysis and commentary for the Department of direct funding measures under a number of headings and made twelve recommendations.

economic activities, notably tourism. All of the above activity, which stems from legislative protection of the built heritage, has resulted in considerable economic dividends.⁸

However, the requirement for funds to be disbursed and projects completed within a calendar year has been noted as a significant impediment of all direct funding schemes. This restriction is all the more acute as grant allocations are not announced until the second quarter. Many stakeholders have argued that such restrictions are especially invidious when dealing with repairs to structures which should not be rushed but instead carefully planned with expert input and carried out in clement weather.

Current situation

The current economic climate is having a severe impact on the built heritage. The Local Authority Conservation Grant Scheme and Civic Structures Scheme were ended due to budgetary cutbacks in 2011, and have been replaced by a centrally-operated "Structures at Risk Fund". This assists about 30 structures annually, which are proposed by local authorities. A maximum of two nominations per authority is permitted.⁹ The Department of the Environment, Community and Local Government Grant for the Renewal or Repair of Thatch Roofs is still operational and disbursed €725,000 in 2011.¹⁰

Pressures within the local authority system are evident, arising from such factors as lost market / economic value; abandonment; owner and occupier financial pressures (etc); and also from reduced local authority revenue, loss of grant-funding role; reductions in staff numbers and other issues.

Local authority managers are reported to be less willing to enforce protection by prosecuting owners for endangerment as they recognise that many owners are struggling financially. The committee noted that local authorities, which formerly used these provisions successfully (often in tandem with a grant offer), now have scarcer resources to aid owners in repairing their structures and very limited access to central government grant funds.

Local authority skills resources

The introduction of the workload associated with operating the legislation created pressure on local authority personnel, administrative capacity and financial resources. In the years since 2000 most local authorities have developed considerable professional and administrative experience. However, familiarisation with the requirements of the Act, and the creation of effective local authority structures and responses, have taken a period of time and the outcome has been uneven.

Some local authorities have developed the skills and confidence to use the provisions of the Act in a strategic and creative manner to integrate policies and objectives for the historic built environment into their general functions. Such local authorities see Part IV as an intrinsic part of reinforcing, renewing and sustaining places and usually have more focused policies and objectives as a result. They are also likely to have stronger lines of communication between the various departments which deal with the built environment and a greater ability to illustrate the benefits of protecting structures and areas to the members. As local authorities are planning authorities, sanitary authorities, building control authorities and housing authorities the local authorities that make the best use of existing architectural conservation skills are those in which all these 'internal' authorities interact in an effective manner. [See Volume 2, 5 1.2]

⁸ Ecorys and Fitzpatrick Associates (2012) suggest that there could be a return on investment equivalent to €16 per €1 of public expenditure on the historic environment.

⁹ €650,000 was allocated nationally in 2011 and €500,000 in 2012.

¹⁰ Figure from the Department of the Environment, Community and Local Government, 1.11.2012.

Other local authorities, however, have been hesitant or reluctant to recognise the importance of built heritage protection and to see the potential in Part IV. They often appear to isolate its requirements for consideration only at specific times such as drafting the development plan, or in specific circumstances such as when planning proposals are submitted. The absence of conservation skills, compounded by decreasing staff numbers, lowers the priority afforded to management of the historic built environment in such authorities.

Architectural heritage skills

The employment of architectural conservation officers has greatly contributed to the quality and breadth of local policies, objectives and initiatives. The architectural conservation officer provides the local authority with in-house professional expertise and experience of the repair, regeneration, and redevelopment of historic buildings, structures and areas, ensuring that within the authority there is a knowledge and understanding of the local historic building stock, and a consistency in the authority's management of this resource [see also Volume 2, 5 1.1]. Effectiveness of the operation to date of the legislation by local authorities appears to be affected by the location within the authority of the architectural conservation officer (where there is one) and the reporting structure.

Heritage officers, employed by many local authorities, also engage in built heritage activities¹¹ and where both architectural conservation officers and heritage officers work in tandem they demonstrate that a co-ordinated approach can bring about increased effectiveness.

It is recognised that there is a lack of built heritage education and training courses available, with few accredited qualifications targeted at the competency needs of local authority staff. In addition, financial restraints currently make it difficult to be released for training.

Finally, the committee considered it important to note that the goodwill and co-operation, and in many cases leadership of ordinary citizens, non-governmental organisations, amenity societies and representative groups, often channelled through the architectural conservation officer or heritage officer, has also been pivotal in obtaining local engagement with the aims of Part IV.

¹¹ Heritage officers, who advise on biodiversity and cultural heritage matters, are employed by many local authorities under the aegis of the Heritage Council's Heritage Officer Programme, which began in 1999.

PART 2: EXPERT ADVISORY COMMITTEE FINDINGS

For the purpose of tackling the range of issues at hand, the Expert Advisory Committee deliberated on specific elements of the wording and operation of the legislation, with reference to recent Irish and international research and policy documents. In-depth discussions were held at sub-committee level and some external experts were invited to discuss specific issues of importance.

The committee found that the operation of Part IV requires an integrated approach in order to be as effective in practice at local authority level as it is in theory. Many built heritage issues involve several aspects of a local authority's remit. This overlap means that several fronts must be tackled at once or sequentially to achieve best practice in managing the historic built environment.

The findings on the operation of Part IV are set out in this chapter and are cross-referenced to other findings and recommendations, including findings on matters relating to other Parts of the Planning and Development Acts and discussions on detail that are contained in Volume 2. General recommendations are set out in Part 3 and legislative recommendations are in Appendix 1.

2.1 PRINCIPAL FINDINGS IN SUMMARY

<p>1. REGENERATION POTENTIAL OF PART IV</p> <p>There is strong and achievable potential for the historic built environment to be the catalyst for sustainable, dynamic and integrated urban regeneration grounded in national planning policy with amended area-based protection provisions, co-ordination in local authority management, the input of state financial and training resources, and appropriate deployment of private sector expertise</p>	<p>All principal recommendations refer</p>
<p>2. LEGISLATIVE IMPROVEMENTS IDENTIFIED</p> <p>Strategic amendments (specifically to Section 57) would clarify responsibilities imposed on local authorities and owners through time, and would allow for more effective protection of heritage and better management and development through use of Part IV. A number of housekeeping amendments are also recommended. The existing tax relief scheme, S.482 of the Taxes Consolidation Act 1997 could also be made more effective and other legislative provisions proofed to mitigate adverse impacts on protected structures and areas</p>	<p>Principal recommendation 1 refers</p>
<p>3. REFINEMENT OF FINANCIAL INSTRUMENTS NECESSARY</p> <p>A range of fiscal tools is considered necessary from which to choose more broad based and effective, direct and indirect subvention of the cost of maintaining and appropriately repairing historic structures and areas, based on existing Irish and international models, and revise existing fiscal incentives so as to reduce unintended adverse consequences; both will simultaneously drive demand for skilled repair, maintenance and improvement in the construction sector, maintain owners' goodwill towards the aims of the legislation and assist in implementing heritage-centred regeneration</p>	<p>Principal recommendation 2 refers</p>

4.	TARGETED EDUCATION / TRAINING TOOLS NECESSARY A range of measures has been identified as necessary to improve competency on the part of local authorities and other stakeholders, including the private sector at profession and trades levels, in all aspects of protecting, managing and planning for the historic built environment	Principal recommendation 3 refers
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2.2 REVIEW OF OPERATION OF PART IV OF THE PLANNING AND DEVELOPMENT ACT (Sections 51-92)

2.2.1: Section 51 Record of protected structures

The committee examined the potential inclusion of other categories of special interest in Section 51 (and Section 81). Having considered the matter it was thought that the categories are sufficiently descriptive and comprehensive not to require to be augmented.	Vol.2 5.7.4
The committee noted that a number of the special interests set out in the National Monuments Acts 1930-2004 coincide with those in Section 51. ¹² Issues to do with overlap between both codes are discussed in the Appendices. No change is recommended to Part IV. The categories of special interest in the Taxes Consolidation Act 1997 also differ, and it is recommended that these are changed to align with those of Part IV.	Vol.2 3.6 Vol.2 5.7.3 Rec. A.2.1
The committee noted that once a local authority forms an opinion that a structure is of special interest, the drafting of S.51 requires the planning authority to include it in the RPS, but this does not always happen, or happen in a timely manner. The committee found that this is due mainly to resource issues on the part of the authority and uncertainty as to the implications of protection on the part of the members and the public. The findings are discussed below and recommendations are made aim to resolve some of these problems.	1.3 2.2.5 Rec. A1.12
Little use appears to have been made of the provision for naming entry specified features in the attendant grounds on the RPS. Some research would be necessary to consider if it has been useful or should be revised.	Rec. 1.A.1

2.2.2: Grades of protection

The legislation does not provide several grades of protection. The committee considered the benefits and drawbacks of introducing a grading system, as obtains in some jurisdictions such as the UK. In looking at this issue the committee had regard to the methodologies pursued in identifying structures for protection. In the UK a detailed historical survey is made of each structure prior to listing. In Ireland the National Inventory of Architectural Heritage [the NIAH, a unit of the Department of Arts, Heritage and the Gaeltacht] makes a brief record, usually of the exterior only. Given the limited resources available to both the NIAH and local authorities the	Vol. 2 5.9
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¹² The National Monuments Act 1930 interprets a 'national monument' as having national historical, architectural, traditional, artistic or archaeological interest; the amendment of 1987 introduced 'historic monument', a monument associated with the commercial, economic, industrial, military, religious or social history of a place.

<p>committee felt it would be unduly onerous and time-consuming to adopt the UK methodology in order to identify with certainty the characteristics of each structure and be confident in assigning a grade prior to protecting it.¹³</p> <p>There is a perception that many structures are not of sufficient special interest to warrant protection of the interior or curtilage and that the existing single tier of protection gives rise to undue owner and occupier burdens. It has been argued that a second tier, with less onerous responsibilities, would be fairer to such owners. However, within such a two-tier system it is possible that the second tier would be considered of little importance, making structures on this tier vulnerable to adverse alteration, or indeed vulnerable to rejection of the recommendation to protect in the first place.</p> <p>Therefore, the committee concluded that, at the present time, it would be a retrograde step to attempt to assign grades to structures on the RPS.</p> <p>In considering how to reduce the burdens and clarify responsibilities attaching to ownership or occupation of a protected structure the committee discussed the potential of expanding the scope of the S.57 declaration to 'tailor' the extent of the statutory protection which would be warranted in any particular case. This is intended be a more sophisticated method than grading in addressing the issue of the relative importance of the heritage value of different structures.</p> <p>In cases where it is clear that it is the character of a group of structures or an area that is of special interest and not the interiors of individual structures, the designation of an ACA may be appropriate instead.</p>	<p>Vol.2 5.7.1 2.2.16 2.2.17 2.2.32</p>
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2.2.3: Section 51 (2) Form of the record of protected structures

<p>The Minister for the Environment, Heritage and Local Government set out the form of the RPS in guidance in 2004; however implementation of the INSPIRE Directive¹⁴ will require a change to the regulations to prescribe a new national schema for the RPS [to be done by the Minister for the Environment, Community and Local Government].</p> <p>The committee welcomed the new schema as it will prescribe a national standard for local authority administration of RPS files. The prescription of the form of the RPS did not, as intended, result in a standardised RPS format being adopted nationally.¹⁵ A single database format will make it easier to copy relevant development plan RPS data into local area plans without inadvertently dropping or duplicating records. It will also allow more thorough compilation of national statistics. The committee discussed the implications arising from drawing a line (for the purpose of the Directive) to define the curtilage of the protected structure, if there is uncertainty about the spatial extent to which protection applies in any given situation. This is also a consideration in registering the title. Guidance will therefore be necessary in tandem with the new schema.</p>	<p>Rec. A1.10 2.2.16 Vol.2 5.4 2.2.10 Rec. 1.C.3</p>
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¹³ See for instance, *Criteria for Listing Review*, Northern Ireland Environment Agency, April 2010.

¹⁴ Directive 2007/2/EC establishing an Infrastructure for Spatial Information in the European Community. See Irish Spatial Data Infrastructure, *Implementing the INSPIRE Directive regulations in public bodies*. Department of the Environment, Community and Local Government, 2011.

¹⁵ Prescribed in Article 51 of the Regulations and elaborated upon the *Architectural Heritage Protection Guidelines* 2004, section 2.8. Many planning authorities persist in categorising the RPS into typologies, and the detail of identifying information on the RPS record is insufficient in some cases.

2.2.4: Section 52 Guidelines by Minister for Arts, Heritage, Gaeltacht and the Islands

The committee deliberated on issues relating to liturgical requirements. It found that the provision in S. 52 (2)(a) for guidance on the issue of declarations in respect of protected structures which are regularly used as places of public worship is unnecessary following a judgement of the High Court, ¹⁶ and has recommended that this subsection be deleted.	2.2.21 Vol.2 5.8 Rec. A1.11
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2.2.5: Section 53 Recommendations to planning authorities concerning specific structures

The Minister for Arts, Heritage and the Gaeltacht may make recommendations to planning authorities to protect structures. Generally this happens following the completion of a survey by NIAH. The Irish practice of delegating this function to local government differs from international practice, whereby the public body that inventories is normally also responsible for the legal protection of structures and areas. The committee accepted the primacy of the local authority (based on the subsidiarity principle) in designating protection which is set out in the Act. However, the committee noted perceptions that local authorities may choose to not protect structures of architectural (or other special) interest for reasons which do not relate to their heritage value. The committee noted that the Minister for the Environment, Community and Local Government has a general power to direct local authorities in the making of their development plans.	2.2.1 Vol.2 5.7.1
The committee noted that S. 55 (2) (and S. 12 (3)(b)(iv)) imply that the Minister has the power to recommend deletions as well as additions, however such a power is not stated in S. 53. The committee concluded that the Minister should indeed have the ability to recommend deletions. A minor amendment is recommended to S. 53.	Rec. A1.12 Vol.2 2.2.2
The committee discussed whether structures recommended for inclusion in the RPS by the Minister should be conferred with interim protection, until such time as a formal decision to accept or reject the recommendation has been made by the planning authority. The question arises as lengthy delays can occur between making recommendations of structures and commencing the process. The committee noted that any proposal to confer interim protection on a structure would have to be carefully considered to allow for notification of owners and to retain meaningful involvement by the members in the process. In part the procedural delay could be reduced by making changes to inventory practice and information handover. The committee also found that several improvements could be made to the existing procedures, as outlined below.	Rec. A1.12 Rec. 1.B Vol. 2 5.7.1 App.2

¹⁶ 2006/639 JR

2.2.6: Section 53 (3) decision not to comply with recommendations

<p>At present there is no time limit specified for consideration of Ministerial recommendations and no requirement for the planning authority to respond to central government as to progress. A planning authority may decide not to act on the recommendations when given them because it considers the workload excessive, staff resources insufficient and/or the priority low.</p> <p>The committee noted that no response may issue to the Minister if the authority considers that it may at some time decide to commence the process. However, this has the result that structures that have been recommended as possessing specific special interests but are not added to the RPS, enter an administrative vacuum.</p> <p>To improve timely compliance with this subsection the committee considered that the period between the Ministerial recommendation and the commencement of the protection process by the planning authority should be time-constrained.</p>	Rec.1.B Rec. A1.12
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2.2.7: Section 53 (3), Section 55 (3) and Section 12 Notifications to Minister

<p>Notifications to the Minister of intended deletions from the RPS, or of decisions to not accept Ministerial recommendations, do not currently require the planning authority to elaborate upon the decision it intends to take or has taken. The committee considered that a planning authority should be required to state an opinion on architectural heritage grounds that the structure does not warrant protection. This would make the decision-making process clearer to the Minister, the members and the general public. The committee recommended that this could be done by requiring a ‘pro-forma’ statement to be made and returned to the Department within a specified time. For the purpose of transparency this form should state if the owner or occupier of the structure is or is not a public body.</p>	Rec. A1.12 App.2
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2.2.8: Section 54 Additions to and deletions from record of protected structures

<p>The committee considered that Section 54 (and S. 12) should require proposals to materially change the description or extent of a protected structure to be validated by the members. Examples of a material change would be to reduce the extent of protection to ‘façade only’ or to exclude structures previously specified in the attendant grounds. A specific opinion for the addition, change or deletion on architectural heritage grounds should be set out using a pro-forma statement. In carrying out such changes to the record the Minister would be notified in the usual manner and the form attached to the notification.</p>	Rec. A1.13 Vol.2 2.2.2
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2.2.9: Section 55 Procedure for making additions and deletions

<p>The Ministerial notification methodology differs between S.12 and S.55. On balance the committee considered that the S.12 procedure is more thorough in that S.12 (4) requires a Manager’s report on the additions to and/or deletions from the RPS. However, the use of a prescribed form for use with S.53 and S.55 as is proposed in this report would improve reporting standards, particularly when deletions or material changes to the record are proposed. The form should be attached to the notification to the Minister.</p>	Rec. A1.14
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The committee considered that issues of owner and occupier identification and notification (Sections 12 and 55(1)) can be dealt with by guidance rather than legislative change. For example, more use could be made of S.8 of the Act during the notification process to establish the identity of the current owner and/or occupier.	App.2 Rec. 1.C.3
Notification of the owner and occupier only takes place upon first listing, and not upon transfer of occupation or ownership. Therefore, the committee advised that the appropriate authorities who are concerned with standards for conveyancing such as the Law Society of Ireland should ensure that searches on title are thorough. ¹⁷ It was considered that auctioneers / estate agents should also have a specific onus placed upon them to disclose the protected status of a structure or area to a prospective purchaser (this obligation should include proposed protected structures).	Vol. 2 2.1.4 Rec. 1.C.3
The committee considered ways of increasing public knowledge of a proposal to delete a structure from the RPS using S.55. While discussions centred on the feasibility of requiring a fixed site notice it was concluded that it was impractical given the range of typologies concerned. (It would not be feasible to attach a site notice to many types of protected structure.)	

2.2.10: Section 56 Registration under Registration of Title Act 1964¹⁸

The committee considered that registering a burden on title through the Registration of Title facility can be useful only where the curtilage in each case is established, in order that the full extent of protection can be clearly mapped on Land Registry maps. Liaison with the Property Registration Authority of Ireland is recommended prior to issuing any guidance on improving uptake of S. 56.	App.2 Rec. 3.A
The committee noted that operating Section 56 has implications for local authority resources and gives rise to training needs, including training in any legal issues arising from mapping curtilage.	Vol.2 2.1.4 Vol.2 5.4

2.2.11: Section 57 Works affecting character of protected structures or proposed protected structures

The effectiveness of the provisions of S.57 is at the core of the operation of Part IV. The committee gave considerable time and effort to reviewing existing use of the provisions and examining whether they could be improved.	Vol.2 2.1.2 Vol.2 2.1.3
S.57 (1) significantly limits exempted development rights in respect of protected structures and proposed protected structures. The test as to whether or not any work is exempted development – all other restrictions considered – is whether or not it would affect the character of the structure, or any element of the structure which contributes to its special interest.	

Section 57 (2) gives an owner or occupier the opportunity to obtain a clear statement as to what would or would not materially affect the character of their protected structure. A declaration issued under S.57 (2) should be blind as to the merits of any proposed work. It is merely an opinion as to whether or not the stated

¹⁷ Two documents are relevant: Law Society ‘General Conditions of Sale 2009 Edition’; Law Society ‘Objections and Requisitions on Title 2001 (Revised) Edition’. Neither specifically refers to the RPS.

¹⁸ Now the Registration of Deeds and Title Acts 1964 and 2006

<p>type of work would have a material effect on character in that structure. The subsection does not purport to state that works undertaken on foot of a declaration are exempted development. However, in practice the principal reason that a declaration is normally sought is to bring clarity as to what is and is not exempted development.</p>	
<p>Arising from amendments made to the terms of S.57 (1) (Section 34 of the 2010 amending Act) it appeared to the committee that local authorities, as owners of protected structures and proposed protected structures, are not bound by the restrictions on exempted development set out in S. 57 (1). Subsections (1)(b) to (g) on development by a local authority are now specifically excluded from the terms of S. 57 (1). This has several consequences. It removes many types of works (to buildings that are often the most architecturally important in the local authority's functional area) the estimated cost of which is less than €126,000¹⁹, from the scrutiny afforded by development management or even from the general obligation to preserve character, while imposing such obligations on all other owners and occupiers. A recommendation has been made to make good this oversight.</p>	<p>Vol.2 2.1.2 Rec. A1.2</p>
<p>The committee had the benefit of a review of the operation of Sections 5 and 57 undertaken especially for this report.²⁰ It found that the S. 57 declaration is issued in a process that is not transparent, excludes third party involvement and remains an opinion, albeit one having the benefit of a manager's order. In addition take-up has been consistently low and the quality of outcomes mixed.</p> <p>The report found that the S.57 declaration has often been misappropriated as a vehicle to determine exempted development status, and that this has been compounded by the absence of an opportunity for third party involvement. The reviewer considered also that the provision has been misused as a 'fast-track' for permitting proposals which are considered to be positive by a planning authority irrespective of whether material effects arise. There is no national oversight of declaration practice and consequently difficulty in ascertaining the standards observed, or ensuring that errors, if made once, are not continued through misinformed practice.</p>	
<p>S.57 declarations offer a free, expert service to an owner or occupier seeking clarification as to the scope of works which may be deemed to be of consequence to the heritage value of a protected structure. However, as currently applied, the provision is considered to be unsatisfactory by the committee for a number of reasons. Of most concern to the committee are the inconsistent use of declarations and the stretching of the provision beyond its original intent, arising from diverse interpretations of the purpose of the section amongst planning authorities, lack of expertise in some cases leading to inaccurate opinions, and the assumption that certainty in relation to what is development or exempted development can be addressed through a S. 57 declaration.</p>	
<p>The Section 5 declaration process was discussed by the committee in relation to its capacity to make a decision as to what is or is not exempted development in a protected structure or proposed protected structure. The Section 57 review, and the committee, noted the preference (for reasons of speed and clarity of decision) of many agents and local authorities to use S.5 declarations. Importantly, S. 5 permits further information to be sought, in order to be able to make a clear decision on a</p>	<p>2.2.19 Vol.2 2.1.3 Rec. A1.15</p>

¹⁹ Article 80 (1)(k) refers.

²⁰ By E. Jane Dennehy, member of the EAC

<p>question (there is no provision to apply conditions).</p> <p>There is also provision for a third party to disagree with a declaration issued under S.5 and refer it to An Bord Pleanála for review. The original S. 57(9) specifically permitted the application of S. 5 to any question as to what in a particular case is or is not exempted development. This provision was deleted in 2002.²¹ The committee considered that there should be recourse to referral for first and third parties as permitted in S. 5 and therefore has suggested a mechanism for so doing within S. 57, as well as recommending reinstatement of the original S. 57 (9).</p>	2.2.20
<p>In-depth discussions were held reflecting the varying opinions that exist within the committee on the benefit, or not, of the S.57 declaration provision. A minority opinion was that the provision should be deleted and its useful aspects incorporated in S.5. However, the committee considered that revising S.5 alone (in order to have a single declaration provision in the Act, with provision for referral to An Bord Pleanála) could not provide the flexibility that S.57 offers, as the S. 5 process may determine only if a specific proposal is or is not exempted development. It does not allow for a general consideration of the special interest characteristics of the structure and the likely effects of proposed types of work on this character, or a discussion of alternative solutions.</p> <p>The committee decided therefore to recommend amendments to the S. 57 declaration provision to deal with the issues identified in the Section 57 review.</p>	Rec. A1.15

2.2.12: Suggested changes to scope of S.57 provision

<p>Following detailed deliberations the committee has made recommendations to vary the declaration provision in several respects.</p> <p>The most significant suggestion is to give Part IV the scope to answer all questions about whether works involving a protected structure or proposed protected structure do or do not require planning permission. This would remove the option for such owners and occupiers of seeking a S.5 declaration in the first instance. The proposal would include a provision to determine questions of whether specified works are development and /or exempted development, with the aim of rendering more certainty to owners as to their obligations in respect of developments and works. The details of the recommendation are expanded below.</p>	Rec. A1.3
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2.2.13: Extending applicability of declarations

<p>At present owners and occupiers of proposed protected structures are not permitted to obtain a S.57 declaration, which could give clarity about their obligations under the Act should the protected status be confirmed under S.55 (4). The committee considers that such owners and occupiers should be able to seek a declaration.</p> <p>The amendment to S. 57 (1) (by S. 34 of the 2010 amending Act) inadvertently removes from a local authority a reason to issue itself a declaration for the protected structures for which it is an owner or occupier. The committee considered that a declaration should be a baseline property management tool for managers within an authority across its multifarious responsibilities. The committee advised therefore that S.57 (2) should be worded so as to permit all classes of public and private</p>	Rec, A1.15
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²¹ Section 13 (c), Planning and Development Amendment Act 2002.

users to avail of a declaration.	
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2.2.14: *Proposal to subdivide S.57 (2) into separate categories of declaration*

The committee considered that to give certainty to specific matters, regularise ad-hoc practice and offer a more useful service to owners and occupiers, S.57 should be amended to provide for several categories of declaration, as set out below.

App.2
Rec.
1.C.3

It considered that these proposed new subsections could improve the operation of S.57 significantly and ease the burden of protection for owners and occupiers. Guidance will be required on the changes for both owners and planning authorities.

2.2.15: (A) *Clarity of opinion on material effect of certain works*

The committee considered that S. 57 (2) should be limited to state the types of works that would not materially affect the character of the structure or of any element of it that contributes to its character. This would become the standard S. 57 declaration. New variants for specific purposes are outlined below.

Rec.
A1.15

The committee found that, as things stand, an owner or occupier can request a declaration to contain an opinion as to whether potential future works would materially affect character. A planning authority is put in an invidious position in cases where such works are not in fact described by the owner or occupier (and the committee noted that the planning authority is not permitted to request such information). It thereby gives rise to the potential for overburdening the planning authority in carrying out declarations with such a broad scope and risks the declaration having to be worded in generalities and not specifics.

Omitting any statement in a declaration on the types of works that would affect character would also reduce the incidence of third party dissatisfaction with such declarations.

The committee has recommended a new subcategory within S. 57 for stating the types of works that would materially affect character. This is discussed in 2.2.19.

2.2.16: (B) *Spatial extent of protection*

One of the issues noted by the committee is the extent to which curtilage is amenable to being delineated as part of a declaration. The committee has recommended formalising a means of transfer of such information to the record of the structure by way of a schedule, to be appended to the individual RPS entry when drafting the next development plan.

Rec.
A1.15

The committee considered that a conservative interpretation as to the spatial extent of curtilage should be encouraged when preparing a declaration, normally covering only lands immediately associated with the structure. Augmented guidance is required on assessing curtilage, to include reassessment of existing agreed curtilages where these do not stand up to scrutiny under parameters given in

App.2
Rec.
3.A
Vol.2

statutory guidance. Therefore the committee recommended that the findings of an unpublished Heritage Council report ²² should be used as a resource in this regard and that training in the assessment of curtilage should be provided.	5.4
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2.2.17: (C) Schedule of exclusions

<p>The committee considered implications arising from the blanket protected status that results from inclusion in the RPS. It can give rise to perceptions that all structures and features within a curtilage contribute to the character of a structure when this may not be so. A method of stating that specific features and structures do not in fact contribute to character, and including them in a schedule, has been recommended by the committee. The committee noted the existing advice as to modern extensions to protected structures,²³ but found that there is no legal provision in the Act to support it. The proposed change would provide essential clarity in relation to the scope of protection in individual cases.</p>	Rec. A1.15
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2.2.18: (D) Repair or restoration works

<p>At present a declaration deals with types of work that affect character and it is open to an owner or occupier to seek a declaration for specific minor works.²⁴ Generally S.59 or S.60 are invoked to require specific works for endangerment or restoration purposes respectively, which are considered necessary by the planning authority. The drafting of these two provisions suggests a need for the planning authority to require the owner or occupier to uphold their obligations under S. 58.</p> <p>The committee recommended the inclusion of a category of declaration to provide a non-adversarial context for agreeing specific works of repair restoration of character that have no material effect of the character, with the aim of burden reduction for owners and occupiers. Work carried out under S.59 or S.60 are automatically (by virtue of S. 62) exempted development and the same exemption should be accorded to any declaration issued under this proposed category.</p>	Rec. A1.15 2.2.25 2.2.27
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2.2.19: (E) Declaration on development / exempted development

<p>A new subcategory of declaration recommended by the committee would specifically determine what, in any particular case, is or is not development and is or is not exempted development in respect of a site within which a protected or proposed protected structure is situated. This provision would transfer the S.5 declaration in relation to such structures to S.57, requiring a minor clarifying amendment to S.5 to direct owners and occupiers to S. 57. The committee considered that this would have the benefit that Part IV would deal with all first party questions relating to works or development to protected and proposed protected structures.</p> <p>Such an amended provision would, as in S.5, permit the planning authority to request further information, and also allow for third party involvement and review by An Bord Pleanála.</p>	2.2.11 Vol.2 2.1.3 Rec. A1.15
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²² Curtilage Report, by Mona O'Rourke BL, November 2009.

²³ *Architectural Heritage Protection Guidelines*, 6.8.4: “In general, modern extensions to a protected structure do not have protected status themselves unless they contribute to the character of the structure”.

²⁴ *Architectural Heritage Protection Guidelines*, 4.1.3.

2.2.20: Referral of declarations to An Bord Pleanála

<p>The committee discussed the issue of third parties seeking a S.5 declaration to resolve a dispute over a S.57 declaration, effectively creating an appeal process, as at present there is no provision for third party referral in S.57.</p> <p>Prior to an amendment in 2002 S. 57 contained a specific reference to S.5 (the former S.57 (9)).²⁵ The question of whether or not there should be a provision for third party involvement within S.57 remains, for example in cases where it may be argued that a local authority has erred in deciding what does or does not affect character. The committee considered that the proposal made in 2.2.19 above should resolve most concerns (to add a provision for review by the board in respect of a declaration that gives an opinion on particular works). However, for clarity the members favoured the reintroduction also of the deleted original S. 57 (9).</p>	<p>2.2.11 Rec. A1.5</p>
<p>In order to reduce intrusion into owners' or occupiers' enjoyment of their private space the committee discussed whether questions as to what is exempted development within the interior of a protected structure used as a principal private residence should be subject to third party referral.²⁶ However, a majority did not favour making exceptions for any particular type of usage or user.</p>	

2.2.21: Section 57 (5) and (6) Liturgical requirements

<p>Section 57 (5) relates to the issuing of declarations for places regularly used for public worship and requires the planning authority to respect liturgical requirements. S.57 (6) relates to consideration of applications for planning permission in such places and includes the same requirement to respect liturgical requirements.</p>	
<p>In 2007 a High Court judgement²⁷ reviewed a decision made by An Bord Pleanála on a referred S.57 declaration, and found that works proposed to a protected structure regularly used as a place of public worship, which are for liturgical requirements, must be judged first on the test of whether or not they materially alter the character of the structure or of any element of it which contributes to its special interest characteristics. The court found that subsection (1) stands alone (the test for exemption), whereas subsections (2) to (5) are to be read together (the process for making declarations, including the requirement to have regard to guidelines, where issued). Essentially the court found that subsections (2) to (5) serve to instruct the authority on how to go about doing the declaration. However, if the type of works would materially affect the character of the structure (or of an element which contributes to its special interest), in making the decision S. 57 (1) must apply. This decision required published Departmental guidance to be revoked.²⁸</p>	<p>Vol.2 5.8</p>
<p>As a declaration issued under S. 57(2) is a statement regarding whether works do or do not materially affect the character of a protected structure the committee did not find that respect for requirements of any particular user groups should have any</p>	<p>Vol.2 5.8</p>

²⁵ “A declaration under this section shall not prejudice the application of section 5 to any question that arises as to what, in a particular case, is or is not exempted development.”

²⁶ The term ‘principal private residence’ had currency at the time this report was drafted but is now of historical interest only. It arose from the Local Government (Charges) Act 2009, which introduced an annual charge on non-principal private residences and was effective for the years 2009-2013 only. It was repealed by Part 12 of the Local Government Reform Act 2014.

²⁷ High Court 2006/639 JR, Mr Justice Edwards. Judicial Review between Fionnuala Sherwin [applicant] and An Bord Pleanala [respondent] and Fingal County Council [notice party]

²⁸ *Architectural Heritage Protection Guidelines*, 2004, paragraph 5.2.3, first sentence.

bearing upon the decision made in the declaration. In discussing this matter the committee noted that it is now more common than when the Act was framed for building types that were not designed and furnished for worship to be so used (such as houses and commercial premises), some of which could be protected structures.	
The committee concluded therefore that while provisions relating to liturgical requirements are not relevant to declarations they are relevant in relation to applications for permission, where works may conceivably be permitted that alter the character. Therefore, the majority of committee members recommended that S.57 (5) should be deleted and subsection (6), along with reference to guidelines on liturgical requirements currently in (5)(b), both be incorporated into S.57 (10), which deals with applications for planning permission generally to protected structures and proposed protected structures. It is recommended also that the reference to guidance on declarations in S. 52 (2) be revised.	Rec. A1.15 2.2.4
The committee noted that the effect of the High Court judgement has not been effectively communicated at local level. In addition, locally-initiated changes to places of public worship are not always subject to the agreed process (of assessment by a Historic Churches Advisory Committee established by the denomination or diocese) set out in the guideline <i>Architectural Heritage Protection for Places of Public Worship</i> . ²⁹ These are matters that require to be dealt with guidance or protocols.	Rec. 1.C.3

2.2.22: Section 57 sundry matters on declarations

The committee considered how to raise third party awareness of declarations that are requested and issued. A system for listing all declarations requested in a specified period in a public place (such as a local authority website or area offices) would assist people with concerns relating to works to a protected structure or proposed protected structure to know that a declaration on the issue of development or exempted development had been requested or issued.	App.2
The question was discussed by the committee as to whether or not both S.5 and S.57 declarations should have the same title, as having two distinct types of declaration has led to confusion. Alternative titles, such as 'licence', 'consent', 'statement of significance', and 'notification of consent' were suggested amongst the committee but agreement was not reached on a satisfactory substitute.	
The committee found that guidance on declarations requires to be augmented to emphasise that, notwithstanding the receipt of a declaration, compliance is required with the provisions of the Act in general. For example, there are restrictions on exempted development itemised in Section 4 and Article 9 (1) of the Regulations (as amended), which are relevant to protected structures that are also recorded monuments.	App.2
The committee considered that there should be a prescribed S.57 declaration application form and a prescribed form for issuing declarations. The legislation should also set out standard formats for schedules affixed to a declaration. These forms should note the requirement to comply with other codes in carrying out works.	Rec. A1.15
With regard to the absence of a national oversight of declarations issued, the committee considered that it would be useful in the first instance to require	Rec.

²⁹ Department of the Environment, Heritage and Local Government, 2003. Subsequently it became Chapter 5 of the *Architectural Heritage Protection Guidelines for Planning Authorities*, 2004.

information identifying each site for which a declaration has been issued to be included in the annual planning returns.	1.B
The committee discussed whether there is potential to reduce the statutory timeframe for issuing a S.57 declaration, but given the inspection and work required to prepare a S.57 compared to a S.5, it was considered impractical.	
<p>The committee considered that guidance to planning authorities is advisable on so-called 'letters of comfort'. These are informal opinions issued by some planning authority due a perception that S. 57 declarations are cumbersome and time-consuming to prepare. However, there is a difficulty with relying on informal correspondence should further problems arise in any case.</p> <p>Letters of comfort are usually issued in response to a query about specific works. The proposed new classes of S. 57 declaration will give a formal standing to such queries and responses, and should cancel out the need for such informal letters in situations involving protected and proposed protected structures. Where an unprotected structure in an ACA is concerned and a query is made about works, a letter of comfort should contain the opinion of the architectural conservation officer and should be retained on file.</p>	App.2

2.2.23: Section 57 (10) Development management

This subsection states that planning permission may be granted for demolition of a protected structure or proposed protected structure only in exceptional circumstances. The committee discussed the benefits and drawbacks of defining the term "exceptional circumstances" in S.57 (10)(b). It was considered that it warrants further guidance rather than a definition, specifically on the approach to take to demonstrate alternatives to demolition (for example to strike a balance between the values attributed to the structure in question and the national policy context). ³⁰	App.2
The proposals made here to add provisions to S. 57 for defining curtilage and including a schedule of exempted features or elements should be of benefit generally in development management and specifically with regard to proposals to demolish elements of structures.	
Where specified features in the attendant grounds are included in the RPS entry of a protected structure they are themselves protected and subject to the same exempted development restrictions. It is not clear the extent to which such cases have been encountered in development proposals. As is noted above, research will be necessary to establish the efficacy of the attendant grounds concept.	Rec. 1.A.1

2.2.24: Section 58 Duties of owners and occupiers to protect structures from endangerment

Endangerment is interpreted in S. 2, and this along with the text of S. 58 suggests that the obligation is on the prevention of severe damage or decay. Some committee members considered there should be a general duty of care instead,	App.2 Rec.
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³⁰ *Irish Planning Law and Practice*, (A&L Goodbody, Solicitors; Butterworths, 2001), p.85, expresses concern that S. 57 (10)(b) may prove to be very onerous due to the wide definition of "structure" in Section 2 and the absence of a definition of "exceptional circumstances". The 2012 supplement contains the same note.

<p>which would accord with conservation guidance that advises ongoing maintenance of the built heritage resource in preference to repair necessitated by preventable damage.³¹</p> <p>It is noted that other legislation also deals with places which may be unsafe or unsightly due to their condition (Local Government (Sanitary Services) Act 1964, Derelict Sites Act 1990), both of which pre-date Part IV. The relevant aspects of these Acts are discussed in Volume 2. While there is an amending section in Part IV with respect to the 1964 Act, there is none with respect to the 1990 Act. This report recommends a remedy. Guidance is recommended on the appropriate use of the legislative codes as they provide, <i>inter alia</i>, for emergency works to structures which have the special interest characteristics itemised in S.51.</p>	A2.2 Vol.2 3.3 2.2.29
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2.2.25: Section 59 Notice to require works to be carried out in relation to endangerment of protected structures

<p>While the endangerment provisions of Part IV are generally technically adequate they are often not applied effectively. However, the committee found that two major drawbacks exist with the current drafting of S. 59 and has recommended legislative amendment to resolve them. First, the provisions do not apply to proposed protected structures. The committee considered that this should be rectified. While it would impose further obligations on an owner or occupier prior to a confirmation decision on the protected status it is already the case that almost the full set of legal obligations applies in respect of proposed protected structures. Second, there is a statutory time lapse before a notice can take effect (stated in S. 62) and a right of representation and legal appeal to challenge the notice. The committee noted that in consequence of this time lapse two processes are initiated in some instances (Part IV and Part VIII of the Act) as Part VIII allows the local authority to proceed with enforcement immediately. However, the Part VIII process is permitted only in relation to unauthorised development. In addition, the maximum six month period allowable for completion of work under Part VIII is unrealistic where engagement of professionals, detailed surveys and specification, and complex work may be necessary.</p> <p>The committee recommended that guidance on endangerment management be augmented. For example, work carried out pursuant to a notice under S. 59 (1) is stated to be exempted development (S.68). This obliges a planning authority to be particularly diligent in issuing such notices in order to ensure compliance with Article 9 of the Regulations (as amended), for example if the protected structure is also a recorded monument. Also, more advice should be given on S. 58 (5), which deals with the types of defence that may be put forward to appeal an endangerment notice.</p>	Rec. A1.16 App.2
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2.2.26: Sundry comments on endangerment

<p>The committee considered that the current increase in endangerment of structures resulting from bankruptcy, abandonment or low priority attaching to expenditure on maintenance and repair is a particular issue. The committee noted that in some</p>	Vol.2 4.4 Rec.
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³¹ *Irish Planning Law and Practice*, (A&L Goodbody, Solicitors; Butterworths, 2001), p.86, notes that the duty of care is imposed from the time the structure is proposed for protection and that 'many commentators' have questioned the constitutionality of the provision given that the duty arises before an owner / occupier has an opportunity to put in submissions.

<p>jurisdictions, instead of or following the use of enforcement / endangerment provisions, historic structures at risk of endangerment are transferred to building preservation trusts for repair as educational projects or commercial sale. The potential for such a move in Ireland should be pursued.</p>	1.C.4 2.2.30 Rec. 2.B.1
<p>The committee found the removal of the Local Authority Conservation Grant Scheme to be a significant drawback with regard to endangerment, as no financial incentive can be offered by a local authority to owners of structures at risk to remedy damage before it becomes overwhelming. It has been recommended that the scheme be reinstated.</p>	

2.2.27: Section 60 Notice to require restoration of character of protected structures and other places

<p>This provision requires an owner or occupier, upon receipt of a notice, to restore the character of a protected structure, or a structure within an architectural conservation area. The committee noted a notice under S. 60 cannot be issued in respect of a proposed protected structure.</p>	Rec. 1.A.1
<p>The committee noted that there are several reasons why the provision has seldom been used and considered that there could be grounds to repeal it, but for the present has recommended some research into its effectiveness. Some preliminary amendments are also recommended with the aim of increasing its usefulness.</p>	
<p>The provision was intended to deal with rectifying past works not in character with the structure (or area) that otherwise would require to be dealt with by obtaining planning permission. The ability of a planning authority and owner to formally discuss detail of restoration work prior to confirming, amending or revoking the notice gives the owner the comfort of knowing the specific work that he or she may carry out without having to obtain permission.</p> <p>However, its use in this manner has most likely been low due to resource constraints, absence of a sanction for non-compliance and because the S.57 declaration process has regularly been used to answer questions of what works should or should not be carried out in a protected structure.</p>	2.2.11
<p>A notice issued under S.60 (3)(e) obliges the planning authority to pay any expenses reasonably incurred in carrying out the works, save if the works relate to an unauthorised structure which has been constructed within seven years of the notice being served. This requirement was considered by the committee to be unduly onerous and to contribute to the lack of use of S.60 except by agreement with an owner or occupier. Therefore the committee recommended that the obligation to fund the work be removed, for example making it discretionary where a request to issue a notice is initiated by the owner or occupier to provide assurance for work they wish to carry out.</p>	Rec. A1.16
<p>The committee noted that S.63 does not make non-compliance with a S. 60 notice an offence, which annuls its effectiveness if used in an adversarial context. Accordingly the committee recommended that it would be appropriate to apply a proportionate sanction to increase the likelihood of compliance with a notice, however further research on the efficacy of the provision is recommended initially.</p>	Rec. 1.A.1
<p>As with S. 59 (1), work carried out pursuant to a notice under S. 60 (2) is exempted development (S. 68). Therefore a notice issued under S. 60 (2) should be compliant with Article 9 of the Regulations (as amended). Advice is recommended.</p>	App.2

The committee concluded that the augmentation of S.57 (2) suggested above, to provide for an owner or occupier to seek a declaration as to the specific works necessary to restore the character of a protected structure, would effectively render S. 60 redundant in its current form. This should either be contradicted or confirmed by research.	Rec. 1.A.1
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2.2.28: *Sections 71 – 78 [acquisition of protected structure]*

The committee was aware of only one case where the power to acquire a protected structure has been used. Observations could not be made on the efficacy of the provisions. ³²	Rec. 1.A.1
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2.2.29: *Section 79 Obligations of sanitary authorities in respect of protected structures*

The committee noted that this provision requires a sanitary authority, before issuing a notice under the Local Government (Sanitary Services) Act 1964 in respect of a protected structure or proposed protected structure, to consider whether a notice should be issued instead under S.59 (1). The committee has recommended that S.59 (1) be revised to include reference to a proposed protected structure.	Rec. A1.16
The committee considered that all proposals to invoke Sanitary Services legislation where a site contains a protected structure (not just those structures recommended by the Minister) should be required to be referred to the Minister in advance of commencing works.	Rec. A1.17
Section 79 does not provide for recording or orderly salvaging of structures which are permitted to be partially or fully demolished. A recommendation has been made for a requirement similar to that in S.34 (4) (p) (planning permission conditions).	Rec. A1.17
The committee recommended that specific guidance on the S.79 provision should be provided to local authorities. Amongst other matters it should recommend involvement of the local authority architectural conservation officer in drafting of notices, and should offer guidance on use of S.5 of the Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act, 1999, which contains a similar obligation in respect of registered monuments.	App.2
The committee noted the absence of an amending provision in respect of the Derelict Sites Act 1990, which has been invoked on many occasions for protected structures. More discussion is included in Volume 2. A recommendation has been made for legislative change to both Part IV and the Derelict Sites Act.	Rec. A1.17 Rec. A2.2 Vol.2 3.3

2.2.30: *Section 80 Grants to planning authorities in respect of functions under this Part*

The State has an international obligation, stated in the Granada Convention and provided for by Section 80, to give financial assistance to the protection of the	1.3
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³² *Irish Planning Law and Practice*, (A&L Goodbody, Solicitors; Butterworths, 2001), p.91, notes that the Notice of Intention to acquire a protected structure is not required to be registered in the planning register.

<p>architectural heritage. The Local Authority Conservation Grant Scheme and Civic Structures Scheme addressed this requirement up to the end of 2010. The very limited Structures at Risk Fund that has replaced it allows each local authority to put forward just two projects for assessment and removes local authority input from the decision-making process.</p> <p>The committee found, however, that the availability of appropriate financial tools is vital to achieving acceptance of the impositions of the legislation not only on an individual level but also in terms of public perception of government interest in valuing and conserving the historic built environment. This topic is discussed at length elsewhere in the report and a recommendation has been made to reinstate the direct grant funding schemes.</p> <p>With regard to the particulars of S.80, the committee noted that the Structures at Risk Fund allows the nomination of structures within ACAs, and considered that this should be permitted generally by minor amendment to S. 80.</p>	<p>2.3.1 Rec. A1.18 Rec. 2.B.1</p>
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2.2.31: Chapter II Architectural Conservation Areas and Areas of Special Planning Control

<p>The committee noted that international theory and policy developments on the protection of historic areas (by UNESCO, the Council of Europe, ICOMOS and other bodies) have advanced considerably since the Act was framed. It was considered that area-based protection could potentially be used effectively and dynamically to plan and manage heritage-centred regeneration, World Heritage Sites and historic towns generally in an integrated manner. Further research is necessary to establish the nature and extent of any required legislative change.</p> <p>The committee considered that the concepts of landscape planning and conservation planning, which are useful management tools for protected areas, are a good fit with the core strategy provision (Section 7 of the Planning and Development (Amendment) Act 2010) and the draft Local Area Plan guidance (D/ECLG 2012).</p> <p>To this end the committee recommended more specific cultural heritage management guidance on the existing provisions to aid local authority forward planning and development management. In addition, a number of Actions of the Government Policy on Architecture are relevant in this regard, specifically Actions 22 and 44, which deal with local and public authority policies and actions. It is recommended that these Actions be prioritised.</p>	<p>Vol. 2 5.3 Rec. 1.C.1 Rec. 1.C.2 Rec. 2.B.2 1.1 App.2</p>
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2.2.32: Section 81 Architectural conservation areas

<p>The committee noted that S.81 allows an architectural conservation area [ACA] to be designated in a development plan. The wording of S.81 (2) suggests but does not make explicit that an ACA can be designated by making a variation of a development plan. However, there is a restricted timescale specified for public consultation in S.13, which militates against use of this provision. The committee recommended that the existing guidance be developed to itemise the steps of the process that can take place prior to formally proposing to designate an ACA as a variation to a development plan.</p> <p>Guidance is also required on the best method to vary the ACA, for particular purposes such as to change the boundary or revise objectives.</p>	<p>Vol.2 2.2.3 App.2</p>
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<p>The committee found that the Act should be amended to give the Minister the power to survey areas and recommend ACAs.³³ This would make more effective use of the knowledge of historic areas built up by the National Inventory of Architectural Heritage in carrying out buildings and gardens surveys, to assist the planning authority in identifying potential ACAs and preparing to designate them. The committee noted also that there is an educational aspect to creating effective ACAs, which could be complemented by close work between the planning authority and the NIAH and which accords with the new emphasis on the creation of effective local area plans.</p>	Rec. A1.19 Vol.2 3.5 Rec. 1.B
<p>The committee noted the absence of a requirement to notify the Minister of the steps taken to make or materially alter the policies and objectives of an ACA apart from the general notification of draft, or variations of, development plans to the prescribed bodies. The committee considered that notification to the Minister should specifically refer to the making or altering of an ACA, as is required under S.85 (2) upon preparation of a Special Planning Control Scheme.</p>	Rec. A1.19
<p>Guidance would be useful to local authorities and communities on the making of recommendations by the Minister to protect areas instead of individual structures, where the Minister considers the special interest of these groups of structures or areas could be effectively protected by using S.81(1). Such instances would arise where it is considered there is not likely to be a benefit arising from protection of interiors, or where the character resides in groups of structures or the arrangement of the area rather than in individual structures. It may also be useful, on the basis of current knowledge, to reassess entries in the RPS where the objectives of the Development Plan would be as effectively protected by designating an ACA. The aim of any such reassessment would be to reduce unnecessary burdens on owners and occupiers.</p>	App.2 Rec. 1.B
<p>The committee discussed ways of increasing public knowledge of the status of an ACA when developments are proposed. As it stands individual notification of the status of an area to owners and occupiers is not required and development proposal notices do not require the status of the area concerned to be specified. A recommendation has been made to improve this situation. The committee was mindful that the success of ACA designation rests on an acceptance of the planning constraints in return for the preservation of the particular valued character of the place. However, it also noted that bringing attention to the status of the area (by the statutory notices) could bring with it a preference for stasis and little toleration for change, especially for modern interventions to structures, which is not the intent of the designation.</p>	Vol.2 3.1 Rec. A1.9
<p>An ACA is statutorily based within the development plan. Any changes to the ACA must be made through the development plan provisions in Part II. An individual ACA therefore must be contained within the borders of one planning authority. This can be a drawback if the special character of an area extends across the boundary of two functional areas (for instance a town and a county area). With the new concentration on planning for and within local areas, it would be useful to allow an ACA to have a separate identity, to enable it to be referred to in more than one development plan without duplicating the effort involved in designating it.</p>	Rec. A1.19 1.A.1

³³ It would not require the Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act, 1999 to be amended. Section 1 of that Act clarifies that it relates to 'architectural heritage' including groups of structures and buildings, and sites, while Section 2 allows the Minister to determine the form and content of the inventory.

A scheme established under the area of special planning control provision must be consistent with the objectives of the relevant development plan or local area plan (or integrated area plan), however it exists separately from the statutory plan. (S. 86 (1) requires that a Special Planning Control Scheme be reviewed at least every six years.) Permitting such a provision in respect of an ACA may be an advantage to allow area-based protection be administered more effectively. Further investigation is recommended.	
Development management within ACAs is regulated by Article 9 (1)(a)(xii). This creates a restriction on exempted development or works to the exterior of structures. However, apart from Article 6 (2)(b)(iv) [restricting advertisement structures within ACAs] there is no restriction on other works that materially affect the character of an ACA such as by utilities or state authorities, other than are governed by Part XI. The committee considered that either Article 9 (1)(a)(xii) should be amended to restrict works that materially affect the character of an ACA, or codes of practice developed, and guidance set out on Part XI works.	Vol.2 2.4.1 Rec. A1.2

2.2.33: ACAs and local area plans

As noted above, the committee considered that an ability to designate an ACA within a local area plan would be of benefit to such plans. The methods used to draft and advertise a proposed ACA are likely to engage local communities, who understand and value their immediate area and are concerned to see it managed well. The committee has recommended legislative change in this respect.	Vol.2 2.2.4 Rec. A1.19
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2.2.34: Prescribed form of architectural conservation area

The requirements of the INSPIRE Directive require the Minister for the Environment, Community and Local Government to prescribe the form of an architectural conservation area in a new subsection of S. 81. The committee noted that a national schema is to be developed by the Departments concerned ³⁴ to standardise ACA descriptions and corresponding GIS requirements for online publication. At present there is a wide variety of practice nationwide in development plan ACA descriptions and objectives specific to ACAs. The preparatory workload involved in creating ACAs has tended to result in the designation of some areas without the benefit of detailed research or carefully phrased objectives as was recommended in the <i>Architectural Heritage Protection Guidelines</i> . ACAs where the character is not well described, or policies and objectives are not specific, are at a crucial disadvantage in terms of effective development management, including enforcement. Augmented guidance is recommended for ACA information systems and management.	Rec. A1.19 App.2 2.2.3
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2.2.35: Sections 84-92 Area of special planning control / special planning control schemes

The area of special planning control [ASPC] provision is designed to effect a greater degree of control over change within an ACA than would usually obtain (S.84 (1)). Due to its location in Part IV and the drafting of S. 84(2), it might be considered that the provision would relate primarily to controlling changes to the architectural heritage character of an area. However, it has been used in just one planning	Rec. 1.A.1 Vol.2
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³⁴ Environment, Community and Local Government and Arts, Heritage and the Gaeltacht.

<p>authority area, for controlling types of use, and this planning authority has recently queried the requirement for the provision to be confined within an ACA.³⁵</p> <p>From the perspective of the committee, there is a natural fit between preserving the architectural character of a place and seeking to encourage types of uses that assist to preserve it, or restore the social or economic dynamic that is essential to a viable future.</p> <p>The committee discussed whether the ASPC provision could be revised or reworked in order to make it more usable and useful as an integrated forward planning tool in urban areas, especially historic urban areas in need of regeneration, less as a means of control and more as a means of stimulating integration between the cultural and natural resources of the area and its users.</p> <p>Research is required to establish whether it is necessary to link both provisions or if an ACA could be more effectively contained within a larger ASPC-type provision than the other way around.</p> <p>The committee recommended that the emphasis on 'control' could also be changed to reflect more closely the two-way, public-private effort needed to effectively protect, manage and plan areas.</p> <p>Preliminary recommendations have been made to carry out research.</p>	<p>5.3 2.2.31</p>
<p>The committee noted that the provision is currently limited as to where it can be implemented as its use is confined to certain planning authorities (S. 84 (6)). Notwithstanding the research considered necessary to shape the ASPC provision into a useful planning tool, it is recommended by the committee that the provision be amended to be open to all local authorities to designate.</p>	<p>Rec. A1.20</p>
<p>The committee has also made findings and recommendations on area-based tax reliefs to enable areas in need of regeneration to be 'primed' by targeting fiscal incentives to individual owners which link to the aims of an area enhancement scheme, with ongoing mentoring to ensure high standards of proposals and projects. There is a potential for linkage of such incentives with architectural conservation areas and Special Planning Control Schemes.³⁶</p>	<p>Rec. 2.A 2.3.1 Rec. 2.C</p>

³⁵ Extract from a letter dated, 16.4.12, written by the Dublin City Council Manager to the Department of the Environment, Community and Local Government dealing with the review of the planning system established by that Minister (Appendix 1e, *Planning Review Report*, June 2012). The manager suggested that there needs to be greater clarity in respect of relationship between ASPC and ACA. "One further area where a review of legislation would be useful is in terms of the designation of Areas of Special Planning Control. While such Control Areas are beneficial to the City in terms of controlling uses, it is unclear to us why there is an additional, advance requirement to prepare an Architectural Conservation Area. The two designations are not necessarily related in their purpose and it is not clear why one is required in advance of, or in addition to, the other."

³⁶ The effects of the Town Renewal Scheme 1999 and Town Renewal Act 2000 have not been evaluated. A current comparable UK scheme (which uses direct grant aid) is the Townscape Heritage Initiative. A KPMG / Murray O'Laoire / NIERC *Study on the Urban Renewal Schemes 1986-1995* was published by the Department of the Environment and Local Government in 1996 (out of print). It recommended that future programmes be linked to area based integrated strategic planning (0.60, p.xii).

2.3 FINANCIAL RESOURCES IMPLICATIONS

Funding provisions and mechanisms

2.3.1: Conservation grant schemes

<p>It is considered by many stakeholders, and was expressed by members of the committee, that for many owners the benefits accruing from ownership of a protected structure are overridden by the financial and legal impositions that arise from their obligations under the Act.</p>	<p>1.3 2.2.30 Rec. 2.B.1</p>
<p>The committee noted, therefore, the seriousness with which owners and local authorities view the ending of the Local Authority Conservation Grant Scheme and its replacement by a centrally administered Structures At Risk fund (with a much smaller budget). At present each local authority cannot seek funding for more than two projects per year and there is no guarantee of success. The scheme aims to assist buildings at risk, however the amounts allocated are very small in relation to the urgent needs of most such buildings. Some Heritage Council funded schemes are still operational; however the total amount available has fallen substantially in recent years.³⁷</p>	
<p>It was noted by the committee that the Grant for the Renewal or Repair of Thatch Roofs is still operational. However, although it is intended for a class of roofing which is overwhelmingly a traditional type of roof which gives structures a specific architectural heritage interest, this grant is not specifically a conservation scheme. The committee recommended that it be transferred to the Department of Arts, Heritage and the Gaeltacht and that its terms and conditions be revised accordingly.</p>	
<p>The committee consulted research carried out on the several direct funding schemes which, in the period since 2000, have either specifically targeted or inter alia affected built heritage conservation.³⁸ Some of this research suggests that a percentage of grant-funded projects would not have proceeded without funding assistance, albeit that the proportion of moneys allocated is often a relatively small percentage of the full contract amount.</p>	<p>Rec. 2.A Rec. 2.B</p>
<p>In order to fully understand the effectiveness of current and past direct and indirect support schemes, particularly those not specifically targeted at protection of the built heritage, the committee considered that further research is necessary. This should gauge the likely effects of specific changes to existing schemes as well as assess the economic, social and environmental aspects of proposing new funding provisions. Such research is essential to develop fiscal tools (indirect aid) that will stimulate regeneration and consolidation of the historic built environment but not</p>	

³⁷ The Heritage Council Buildings At Risk scheme operated from 1997 to 2010. The allocation in 2010 was €599,000; in 2009 it was €1.27m. The reduction in allocations to built heritage is discussed in an unpublished submission by the Association of Architectural Conservation Officers to the Minister dated February 2012.

³⁸ Quanta Report. This fulfilled part of Action 18 of the Government Policy on Architecture. Appendix 1 of the report itemises the schemes: Buildings at Risk; Large-scale properties not in state care; significant places of worship; REPS4 traditional farm buildings; local authority conservation grant scheme; civic structures; town walls; thatch roof repair and renewal. See also PhD thesis by Tracy Pickerill, 2007; School of Real Estate and Construction Economics, Dublin Institute of Technology: 'Development of a Conceptual Model of the Architectural Heritage Funding Process to Inform the Evolution of Area Based Heritage Funding Policy in Political Context'. The committee was very grateful to Dr Pickerill who voluntarily summarised the main findings of her thesis for distribution to the members and gave time to discuss them with members of the committee.

<p>displace viable market activity.</p> <p>The committee noted that Action 18 of the Government Policy on Architecture requires research to be undertaken into tax relief and recommended that it be carried out.</p>	
<p>The committee found that the gains resulting from public expenditure on the built heritage require to be quantified and quality of outcomes assessed. For example, data has been compiled by a number of local authorities indicating that conservation grant funding generates a significant multiplier effect.³⁹</p> <p>The grant schemes have also brought awareness that conservation is a feasible, practical option for structures of all types, with funding resulting in identifiable community benefits and sustainable development. The quality of outcome to each structure or area is the most immediate benefit. A secondary gain is the enhancement of the condition and appearance of the historic built environment, which is a public good. Economic and educational benefits include the increase in sustainable construction activity and related skills enhancement, and the increase in revenue arising from this activity.</p>	Rec. 2.A
<p>However, a major drawback of all direct funding schemes, of adherence to annual budgeting procedures, was identified by the committee. Some freedom to work to longer timelines was considered essential.</p>	1.3 Rec. 2.B.1
<p>The existence of a suite of provisions covering direct and indirect aid is considered vital by the committee to correct the inability of the free market to put a financial value on public goods such as cultural heritage. Forms of aid should cover all potential requirements and various owner and income profiles.</p> <p>The committee noted that the provision of direct funding or tax relief is considered internationally to be an effective method to change mindsets. Assistance of one or other type encourages the sustainable development of historic buildings and settlements, and recognises that such structures and sites form a vital part of the economic, cultural and social infrastructure that is essential for the construction of a viable, post-industrial creative economy. It also supports high quality in conservation work, with the intent that the grant amount or relief obtained assists to bridge the gap between standard work and best practice.</p> <p>The committee was mindful of the current fiscal situation in recommending ways both to improve the efficacy of existing schemes and in suggesting new measures.</p>	
<p>The question was discussed by the committee of whether or not works of maintenance should be eligible for grant funding, as they are for tax relief under the S.482 scheme. It was agreed that funding repair rather than maintenance (and especially prioritising urgent repair) has the unintended effect of rewarding the absence of timely care of a structure, while not assisting those who – in line with best practice – keep their structures maintained. (Separately the committee has made recommendations on issues related to maintenance.)</p>	Rec. 2.B.1 Rec. 2.B.2 Vol.2 5.6 2.2.26 Rec. 1.C.4

³⁹ AACO March 2011 submission to Minister.

The committee discussed broadening tax relief to operate on an area basis, as has been done in other jurisdictions. Such area enhancement schemes are undertaken usually to target areas in need of regeneration. Upon compilation of a plan of action for the conservation and enhancement of the area, individual owners and occupiers are eligible to seek tax relief for projects which support the aims of the area enhancement scheme. In this jurisdiction architectural conservation areas and areas of special planning control, having already been identified as areas of distinct character worthy of preservation, are likely candidates for any such scheme.	2.2.35 Rec. 2.C
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2.3.2: General State capital assistance

In looking at State funding programmes that inter alia affect the built environment, the committee noted that such expenditure includes some large budget national programmes such as housing supports; energy efficiency grant schemes; National Lottery Beneficiary Fund expenditure; Rural Development Programme funding; Fáilte Ireland capital grant schemes, as well as the Per Cent for Art Scheme.	Rec. 2.A Rec. 2.C Rec. 1.C.3
The committee observed that very few such schemes require the protected status of the property to be noted, or the application and assessment procedures to take this into account, where relevant to the type of scheme.	
The State spends a significant sum annually on social housing and rental supports, directly to owners and through local authorities. The number of rental properties that are also protected structures for which owners are in receipt of support is not known but is likely to be significant in historic urban areas. ⁴⁰ A requirement to state the status would, in the first instance, inform the State as to the number of landlords who have responsibilities under the Part IV of the Planning and Development Acts. Local authorities could then use this information when carrying out housing inspections to ensure that protected structures and structures within ACAs are not subject to inappropriate works resulting from their use as rental properties. Guidance for housing inspectors is recommended.	
The energy efficiency grant schemes operated by the Sustainable Energy Authority of Ireland (SEAI) cover types of improvement works that potentially could adversely affect the long-term performance as well as the character of traditionally constructed buildings, or could be less effective than assumed due to the modelling tools used. ⁴¹ There is no specific category within these schemes to promote types of retro-fitting which are appropriate to such structures. The present situation is exacerbated by the absence of specific knowledge in this specialist field on the part of contractors, whose skill and judgement is relied upon by owners given that most such small projects are not overseen by a professional (many of whom would not in any case have sufficient awareness of the drawbacks of some types of upgrading works). The committee recommended that research on traditional Irish construction materials and methods be carried out and a specialist funding stream be established, with appropriate expertise allocated to it within the SEAI. Specific categories of energy-improvement works should be established for protected structures and structures within ACAs, and for assisting historic structures to be brought back into use – on all floors – for heritage-centred regeneration.	Rec. 2.C

⁴⁰ There is no requirement to state the status of a structure on the application form for rental assistance. The (published) register of the Private Residential Tenancies Board does not note the status.

⁴¹ Responsible Retrofit, Sustainable Traditional Buildings Alliance, September 2012, p.63 et seq.
www.stbauk.org.

<p>The National Lottery Beneficiary Fund was set up to use the surplus from the National Lottery under Section 5 of the National Lottery Act, 1986. In 2011 a fund of €349m was provided, of which €5.9m was allocated to the Heritage Council.⁴²</p> <p>In that year €64.500m was allocated to private housing grants, €28.976m to local and community development programmes and a similar amount to sporting bodies and the provision of sports and recreational facilities. It is not clear what proportion of expenditure from this fund materially affected the historic built environment, and to what extent such State-funded projects were designed and carried out with the benefit of appropriate types of conservation skills.</p> <p>In some jurisdictions a specified amount of lottery funding is dedicated to heritage projects. The UK model⁴³ is a case in point, which not only has a multi-million pound annual budget, but has created structures to most effectively use this fund to achieve quality in heritage spending.</p> <p>The committee recommended that the allocation to built heritage be made a specific percentage of the beneficiary fund, and that all works to structures and areas protected under Part IV assisted by this fund be required to adhere to specified standards.</p>	Rec. 2.C Vol.2 5.9
<p>The committee welcomed the publication of revised rules for heritage projects funded under Axes 3 and 4 of the Rural Development Programme 2007-2013, which allocates large sums under specific programme measures. The new requirements should help this funding to sustain the character and fabric of the rural and village built heritage.</p>	
<p>The committee also welcomed the development of greater awareness within Fáilte Ireland of the merits of capital funding on heritage places as well as to visitor attraction infrastructure, with a Heritage Fund established in 2011.⁴⁴ This complements the new Historic Towns Initiative, which has been initiated by the Department in partnership with The Heritage Council and Fáilte Ireland.⁴⁵ The committee recommended the issuing of joint policy and guidance for design and operation of capital schemes that directly or indirectly affect the historic built environment.</p>	Rec. 1.C.3
<p>The committee noted that the 'Per Cent for Art' scheme, which commenced in 1997, includes architecture within its scope. This could be clarified to include built heritage urban realm projects, to improve public engagement between an historic area and the building newly sited within it.</p>	Rec. 1.C.3
<p>The committee noted that decisions by State organisations (and private bodies) to fund projects with direct grant aid may generate a need for the project promoter to obtain planning permission. This is particularly relevant if the structure is protected or within an ACA and applies whether or not the grant is for the purposes of preserving or enhancing architectural heritage character. There is in some instances a misapprehension that where the State in one guise agrees to subvent a project</p>	Rec. 1.C.3

⁴² 'National Heritage' is one of nine categories to which funds may be allocated. The €5.9m was the total Heritage Council budget. See <http://per.gov.ie/wp-content/uploads/Appendix-01-Lottery1.xls> and the Council's Annual Report 2011, which states that €3m in capital grants were funded by the National Lottery.

⁴³ The Heritage Lottery Fund distributes a share of the money raised through the National Lottery (UK) since 1994. Of the 28% of expenditure on lottery tickets that goes directly to good causes, 20% goes to heritage. See www.hlf.org.uk

⁴⁴ The first annual amount (for 2011) was €1m. Overall €150m was allocated to the Tourism Capital Investment Programme in 2011.

⁴⁵ Department of Arts, Heritage and the Gaeltacht, press release 26.4.2012.

this removes a need to obtain other consents, or overrides other considerations, such as architectural heritage protection. Cross-departmental and agency guidance is recommended to ensure that all State-supported grant schemes require projects to be appropriately designed and carried out.

2.3.3: Reliefs

The committee noted that European countries apply VAT rates at varying levels for renovation and repair activities.⁴⁶ A special reduced VAT rate of 9% was imposed in Ireland on certain activities related to the tourism sector on 1.7.2011 (until 31.12.2013). The committee considered that a case should be made to likewise incentivise the architectural renovation and repair sector, which is a sustainable element of construction, helps to improve the appearance of villages, towns and cities and maintain property capital values.

The committee noted the Quanta report suggestion that in certain cases the VAT alone accruing to the state from a grant -aided project could be greater than the grant amount.⁴⁷ A not insignificant element of this is the 23% VAT rate charged on professional fees.⁴⁸ In some cases, therefore, it could be argued that the State benefits more from the project than the owner or occupier.

The retention of a professional competent to design, specify, oversee and certify repair works is recommended to achieve best conservation practice. Charging the standard rate of VAT to fees means that much of the State's grant contribution is unavailable to fund the contract price of the project. Committee members have observed that there is a reluctance on the part of many owners to engage professionals and instead are guided by the contractor alone, with potential implications for quality and adherence to statutory requirements. It is unclear if this can be attributed to the imposition of an extra 23% onto professional fees; generally, however, transactions in the black economy are attractive to purchasers and businesses alike as they are exclusive of VAT.

The household charge, to be replaced by a property tax, exempts properties granted a determination under S.482 of the Taxes Consolidation Act.⁴⁹ The committee considered that the property tax, currently in preparation, should contain a waiver or relief for protected structures.⁵⁰

The committee considered that it would be beneficial to allow reliefs from exchequer duties such as capital gains tax and inheritance tax, with research required into the appropriate terms and conditions to be imposed.

With regard to financial reliefs within the gift of local government, the imposition of

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⁴⁶ http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf. Belgium applies a rate of 6% for renovation and repair of private dwellings completed more than 5 years previously. Luxembourg and Spain apply a super-reduced rate of 3% and 4% respectively to renovation and repairs; in Luxembourg this rate applies only to buildings constructed more than 20 years previously. Ireland applies a rate of 13.5% for both new build and renovation and repair (however complex calculations apply as to the rate charged in each situation). In the UK the zero rate applies for approved alterations to listed buildings.

⁴⁷ Quanta, Section 2.24.

⁴⁸ The cost of VAT and professional fees are eligible to be rebated in the Structures at Risk Fund. They were not eligible in the Local Authority Conservation Grant Scheme.

⁴⁹ Local Government (Household Charge) Act 2011, section 19 (1)(b).

⁵⁰ This text was prepared prior to the enactment of the Finance (Local Property Tax) Act 2012, which does not exempt or provide a waiver for protected structures or structures with a determination under S. 482.

<p>commercial rates, planning application fees and development levies are areas the committee found could be recalibrated to better assist built heritage protection and consolidate historic urban fabric. Therefore the committee welcomed the proposed waiver from development contributions in respect of protected structures.⁵¹</p>	2A App.2 Rec. 1.C.3
<p>Advice would also be beneficial as to appropriate built heritage improvements to which any available funds could be put in local development contribution schemes.</p> <p>The committee noted that a number of the recommendations made in relation to scrutiny of direct and indirect funding mechanisms would have implications for local authority conservation workloads and skills resources. Sufficient competency will be required in all local authorities, whether or not there is a designated architectural conservation officer post, to allow local government to respond quickly and effectively.</p>	Rec. 3.A Rec. 3.C

2.4 LOCAL AUTHORITY SKILLS RESOURCES

2.4.1: Competency and skills needs

<p>This report has highlighted the need for competency throughout the processes involved in built heritage protection. The committee has found that particular skillsets are vital, in both the public and private sectors, in order to effectively and sustainably manage the historic built environment.</p>	1.1 Vol.2 5.1 Vol.2 5.2
<p>Understanding and assessing the present and future needs of the historic built environment is a core task of sustainable development that requires specific diagnostic and management skills. The committee considered it necessary that local authorities should organise and utilise their staff so as to have clear lines of responsibility for the historic built environment. The position within the reporting structure of the architectural conservation officer is therefore important, in order to obtain maximum benefit for the authority from this post.</p>	Rec. 1.C.2 Rec. 3.A Rec. 3.C
<p>The elements of every place are composed of environmental, cultural, social and economic aspects. Local government should ideally co-ordinate its actions in an integrated fashion for timely, effective and sustainable management of this multi-layered and intertwined environment.⁵² The committee suggested that built environment roles within local government should include multi- and cross-disciplinary arrangements that support the architectural conservation officer in his/her role (or compensate for the absence of the post). In this regard the committee recommended the implementation of Actions 22, 44 and 45 of the Government Policy on Architecture, which together aim to achieve integrated management of the historic built environment.⁵³</p>	

The committee was also aware that there are professional officers (engineers,

Rec.

⁵¹ Department of the Environment, Community and Local Government, *Development Contributions - Draft Guidelines for Planning Authorities* (June, 2012), p.8.

⁵² *Our Sustainable Future: A Framework for Sustainable Development for Ireland*, Government of Ireland, 2012, p.70..

⁵³ Action 22 relates to the assessment and sustainable re-use of public authority building stock. Action 44 relates to the establishment of historic buildings committees by public authorities. Action 45 includes, inter alia, a built environment forum at local level.

<p>planning officers and architects) within local authorities and the wider public service with architectural conservation qualifications and experience, whose skills and educational qualifications are not formally utilised. A skills audit would be of benefit in the first instance to identify the level of competency in each local authority.</p> <p>Where the necessary skills are not available within the authority and where it is feasible to do so, historic built environment management should be supported by sharing services with a neighbouring local authority and efforts should be made to up-skill existing staff.</p>	3.A Vol.2 5.12
<p>The committee noted that the Government Policy on Architecture seeks to address professionals' and crafts' skills needs (Actions 20 and 32). To date the education and training requirements of local authorities (through PMDS) and the CPD required by most professional institutes are not supported by training geared to the effective implementation of Part IV.</p> <p>The committee recommended that formal training, mentoring, shadowing and peer to peer learning, cross-disciplinary training and on-the-job training should be fostered within the local authority system and especially within the professional associations for local authority professionals whose posts relate to built heritage protection, however tangentially. To this end a series of recommendations seeks to identify and address skills needs and set up relevant competency standards and national role profiles for historic built environment professionals and craftspeople.⁵⁴</p>	Rec. 3.C.2
<p>National monitoring of training outcomes and of the standards of operation of Part IV in general would assist to enhance State management of the historic built environment. The proposed historic buildings committee or built environment forum (GPA Actions 44 and 45 respectively) should be given this task, moderated by the Department of Arts, Heritage and the Gaeltacht.</p>	Rec. 1.C.2 Rec. 3.B Rec. 3.C.2

2.4.2: Private sector skills needs

<p>While the immediate focus of the skills element of the review is on the duties and responsibilities of local authority staff, the types of education and training required by all involved in the historic built environment sector overlap considerably.</p>	
<p>The Act assumes competency on the part of local authority staff, professionals and the contractors and/or specialists implementing works and development. However, building works are often carried out to protected structures without formal training in conservation by the project professional or contractor. Many works are done without those in charge seeking to know if they would affect the character of the structure (or are otherwise exempted development).</p>	Vol.2 5.1.3
<p>The committee noted that the types and levels of skills training, available to both public and private sector, and numbers of accredited conservation service providers, vary by profession, craft and geography and supply is very limited. There is no national standard for competency in conservation craft skills. The committee noted that several professional institutes now provide accreditation in conservation</p>	Vol.2 5.1.3

⁵⁴ The ICOMOS International Education and Training Profiles, 1993, and Conference on Training in Architectural Conservation [COTAC], *Multidisciplinary Collaboration in Conservation Projects in the UK Based on the ICOMOS Guidelines for Education and Training in the Conservation of Monuments, Ensembles and Sites*, 1994, provide useful source material.

<p>giving owners and occupiers a greater level of certainty about the competency of those they choose to engage.⁵⁵ However, unless professional and construction accreditation systems incorporate inspection and effective sanctions, and require conservation-orientated ongoing learning, the development management system remains reliant on competency at planning authority level.⁵⁶</p>	
<p>It was also noted that theoretical and practical aspects of architectural conservation education remain isolated rather than integrated within most courses in the third level curriculum, which concentrate on the making of new places and structures.</p>	
<p>The committee considered that the development management system (which essentially is a creation of the 1960s) was not established, and is not suited, to deal with matters of specialist and technical complexity. Traditionally, site inspection, certification and enforcement are functions of building control inspectors and not planning officers. The relatively recent requirement for protection of the character of specific structures is imperfectly addressed by the planning system.</p>	<p>2.2.11 et seq. Vol.2 3.2 Vol.2 5.1 Rec. 1.C.1</p>
<p>In architectural heritage protection, the nuances of <u>how</u> work is done can determine if it is compliant with a grant of permission or a declaration (or with S. 57 (1)). This is the rationale behind the committee's recommendations to have a clearer process and outcome for S. 57 declarations. For example, repair of historic roof timbers by cutting out decay and splicing in new timber is not likely to affect character, but removal and replacement of the entire set of timbers will do so.</p> <p>The committee was also aware that inexpertly specified and executed work could affect the character (including future performance of the structural elements) of a protected structure. This could include specification of 'deemed to comply' examples from the Technical Guidance Documents [TGD] of the Building Regulations instead of alternative solutions more appropriate to traditionally-built structures. The committee discussed the need to allow for reasonable arguments for varying the Regulations, noting that a precedent has been established in Section 0.7 of the Building Regulations 2010 <i>Technical Guidance Document M Access and Use</i> for setting out types of practicable situations with respect to works to an existing building. The committee recommended that this work be pursued through Action 26 of the Government Policy on Architecture.⁵⁷</p> <p>The statutory guidance on Part IV recommends that certification of a project could be required as a condition of permission prior to permitting the completed structure to be occupied. This is effective to a degree, however it is while a conservation project is on site that the competencies of those involved, the site conditions or other matters (such as client direction) dictate if the works actually follow the permitted drawings, specifications and method statements. The involvement of an architectural conservation officer or other planning authority representative, who is</p>	

⁵⁵ Royal Institute of the Architects of Ireland, Engineers Ireland, Royal Institute of Chartered Surveyors, Society of Chartered Surveyors Ireland. The Construction Industry Federation is undertaking research to establish CPD / CLD requirements for members of the Register of Heritage Contractors, which is not complete at the time of writing.

⁵⁶ In the UK the Construction Skills Certification Scheme Heritage Skills Card may be attained by companies and sole traders to show that they are competent to work on historic buildings.

⁵⁷ Action 26: "The Department of the Environment, Heritage and Local Government will liaise with the Building Regulations Advisory Board and relevant professional institutes with regard to providing detailed advice on best practice in the application of the Building Regulations to older/traditionally-built buildings with a view to appropriate alteration." Action 2 is also relevant: "The Office of Public Works will undertake materials research to support State practice and technical advice in the area of building conservation, maintenance and repair."

<p>in a position to inspect the work and discuss matters of detail, is of great assistance. Without such technical involvement the planning authority may remain uncertain that the project is fully compliant.</p>	
<p>The committee concluded therefore that training and guidance is required for both public and private sector on many aspects of the operation of Part IV.</p>	<p>Rec. 3.A</p> <p>Rec. 3.B</p>

2.4.3: Public procurement issues

<p>The committee found that the Capital Works Management Framework, which must be used by public bodies including local authorities, and which was developed for new construction, is not suited to conservation projects. The difficulty of carrying out investigative works (except by using a separate contract) or varying a contract to respond to conditions on site, the manner of contracting specialists at one remove from the professional and the absence of contingency provisions impedes the achievement of best conservation practice.</p> <p>The committee noted that the Government Policy on Architecture contains, as part of Action 10, a commitment that the Office of Public Works will conduct a review of the effectiveness of current procurement procedures with respect to architectural conservation projects.⁵⁸ The committee recommended that this Action should be prioritised.⁵⁹</p>	<p>Vol.2 5.2</p> <p>Rec. 1.C.2</p>
<p>The committee recommended that education and training in conservation should be pursued to certified national standards for professionals and craft skills. A portable proof of competence such as a heritage skills card (along the lines of a Safepass card) should be awarded to those who meet the relevant national standard. Where standards are set, adherence to them can be monitored, and practice thereby improved. This recommendation links to the overall aim of the Government Policy on Architecture 2009-2015), which is to deliver quality within the built environment.</p>	<p>Rec. 3.A</p>

2.4.4: Labour market activation schemes

<p>In terms of assuring the delivery of conservation craft skills in the private sector in order to service built heritage needs and assist with heritage-centred regeneration, there is likely to be a lesson to be learned from the Swedish Halland Model⁶⁰, which utilised active labour-market policies in the Swedish recession of the early 1990s to</p>	<p>Rec. 2.C</p>
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⁵⁸ “In order to further promote the achievement of quality, the Government will implement the following measures: ... (ii) the Office of Public Works will contribute to the work of the Government Construction Contracts Committee by conducting a review of (a) the effectiveness of current procurement procedures with respect to architectural conservation projects...”. Action 10 [extract], Government Policy on Architecture 2009-2015 (Government of Ireland, 2009).

⁵⁹ The committee had noted that guidance on using the Capital Works Management Framework for heritage projects was in preparation. It has appeared in the current version of the Capital Works Management Framework Guidance Note, Procurement and Contract Strategy for Public Works Contracts GN 1.4 (10 May 2011).

⁶⁰ The Halland Model is a Swedish framework in which the state skills training budget finances the provision of on-site training and upskilling of building craft skills apprentices, unemployed craftspeople, technicians and professionals and regenerates underused protected structures at risk. See Christer Gustaffson, A Trading Zone for Building Conservation in Concert with Labour Market Policy and the Construction Industry, aiming at Regional Sustainable Development, PhD thesis, submitted to the Chalmers University of Technology, Sweden in 2009.

successfully train conservation personnel and to ensure sustainable new uses for conserved buildings. A recommendation is made to explore the potential for a similar scheme in Ireland.

PART 3: GENERAL RECOMMENDATIONS

The recommended actions will be led by for the most part by the Department of Arts, Heritage and the Gaeltacht. Most will involve participation by other Government departments, public bodies and local authorities. Some of the actions will involve ongoing work.

3.1 PRINCIPAL RECOMMENDATIONS IN SUMMARY

1. Enhance State management of the historic built environment

Improve strategic management of the historic built environment by the State, with a strong emphasis on the promotion of sustainable, heritage-centred urban regeneration which balances social, environmental and economic impacts: -

- By amending and improving certain provisions of the Planning and Development Act and other legislation which affect the protection of built heritage
- By better integrating built heritage policy and practice within the briefs of central government departments
- By better defining responsibilities, roles and relationships between and within local and central government and public bodies

2. Effectively allocate financial resources

Improve the efficiency and effectiveness of all relevant State spending to achieve quality in the historic built environment:-

- By creating and/or strengthening safeguards in the several types of existing State capital expenditure, tax relief and financial supports, which inter alia affect built heritage conservation
- By refining existing financial incentives and direct funds and researching and designing new targeted incentives

3. Enhance public sector skills base

Allocate and maintain an effective level of service to support constructive local authority built heritage management: -

- By identifying existing competencies, providing appropriate training and supports, and refining local government management practice.

3.2 Principal recommendation 1:

Enhance State management of the historic built environment

1.A *Research on State management of built heritage*

Carry out statistical and qualitative research on the management of built heritage by the State as a baseline for formulating statistics, policy and potential legislative amendments, as follows:

1.A.1 *Part IV of the Planning and Development Act 2000*

- Research the use and spatial distribution since 2000 of all of the measures provided in Part IV of the Planning and Development Act 2000 (as amended) using local authority annual returns and statistics generated by the INSPIRE Directive
- 1. Review the effectiveness to date of the Area of Special Planning Control [ASPC] concept to date, to advise on whether further guidance or legislative change is necessary to achieve the original objectives and to make it more relevant to proactive and dynamic protection, management and planning practice, especially heritage-centred urban regeneration
 - With reference to the UNESCO Recommendation on Historic Urban Landscape assess if an amended Area of Special Planning Control provision could provide an effective statutory basis for regeneration masterplans and a planning framework for World Heritage Sites
 - Consider if it is necessary that an ASPC should also be an Architectural Conservation Area [ACA] or if the two provisions should be separated
 - Develop indicators for measuring the success of operation of the ACA and ASPC provisions
- 2. Investigate if an ACA should be given an identity separate to the development plan, to allow individual ACAs to be referred to in more than one development plan or local area plan
- 3. Research advantages and disadvantages in demarcating the curtilage of a protected structure, proposed protected structure or ACA (etc) on either or both the RPS and development plan maps and recommend whether or not a delineated curtilage should be indicated in the plans and particulars accompanying a planning application
- 4. Review the experience by planning authorities of specifying features in the attendant grounds and the effect of protection of such specified features on development management practice, to consider if the provision is effective or should be amended
- 5. Review the effectiveness of the Section 60 provision and make recommendations as to whether it should be retained and, if so, whether a proportionate fine should be applied for non-compliance

6. Research use of the power to acquire a protected structure, make recommendations on its efficacy and advise whether or not notice of intention to acquire should be stated on the planning register or elsewhere

1.A.2 *Other Planning and Development Act provisions and other legislative codes*

1. Research the use since 2000 of other legislative codes [e.g. Derelict Sites Act 1990; Local Government (Sanitary Services) Act 1964 (as amended) and codes listed in Articles 7 and 8 of the Planning and Development Regulations 2001 (as amended)], the use of which may affect the built heritage, to assess any consequences arising and make recommendations as to legislative amendments and / or guidance on practice
2. Research methods of better integrating built heritage management principles in national, regional and local administration of policies, plans and programmes that have both direct and indirect effects on the historic built environment
3. Increase the statistical information sought by annual return, to include geographical distribution of sites issued with S. 57 declarations

1.B *Improve D/AHG inventory and approval procedures*

1. Consider the most appropriate way to record and protect specific typologies such as industrial and military heritage (etc), and structures that are ruinous prior to initiating protection. Consider whether it is reasonable if structures which are stated to be of national interest in one inventory should de facto be of national interest in another
2. Revise architectural heritage recording procedures to suggest relationships between primary and ancillary structures and to allow the record and mapping of each to reflect these relationships
3. Adapt recording procedures and compilation and presentation of information to enable Ministerial recommendations on potential ACAs to be made; develop contextual material to co-ordinate with local authority in the educational / promotional aspect of ACA designation
4. Augment first generation 'interim' county surveys with partial resurvey to more fully record the architectural heritage
5. Formally hand over the designed landscapes / gardens survey information to local government to use in environmental resource management and public education
6. Develop the architectural inventory website to allow two-way conversations and uploading of information via social media, to augment published survey records
7. Explore potential for NIAH survey recommendations to link with the tax designation provisions of Section 482 of the Taxes Consolidation Act, by indication on the NIAH website of individual designated properties (where the property is open to the public) and by use of NIAH information as corroborating material in assessing merits of applications for S.482
8. Assign to the NIAH the inspection of Section 482 applicant properties, with a trial handover period carrying out inspections jointly with OPW; draw up guidance for inspectors on applying the criteria in the Act and matters to consider in assessing whether or not a structure or garden reaches the threshold for acceptance; convene an

- expert committee (to include art, architectural, garden and design historian and horticultural expertise) under the auspices of the NIAH to advise on determination decisions; and conduct spot inspections of properties with determinations;
9. Require the S.482 application form to outline all statutory designations affecting the site for which an application is made, including RPS and ACA. Introduce a requirement on the form for appropriate consents and documentation of proper advice and materials used for eligible works with emphasis on the engagement of conservation expertise

1.C Collaborate with State Departments and agencies:

1.C.1 Legislative amendments

1. Recommend specific amendments to Part IV and other Parts of the Planning and Development Acts 2000-2012 to the Department of the Environment, Community and Local Government (itemised in Appendix 1)
2. On foot of research (1.A.2 above), recommend specific amendments to other legislative codes to the relevant Government department(s) to better protect the architectural heritage
3. With the Department of the Environment, Community and Local Government (Building Standards Section) and other stakeholders, and in association with Government Policy on Architecture Actions 26 and 2, devise examples of practicable situations for inclusion in future Technical Guidance Documents where alternative solutions for traditionally-built structures to the 'deemed to comply' examples may be necessary, and support the undertaking of research to assist with appropriate compliance

1.C.2 Engagement with State stakeholders

1. Circulate this draft report to all of the authorities prescribed for the purpose of architectural heritage protection to initiate consultation on potential improvements to operation of the prescribed authority functions
2. Implement Government Policy on Architecture Actions 22, 44 and 45, to effectively identify, protect, manage and plan for the historic building stock in state and local authority ownership in tandem with stakeholders, devising a national framework and standards for adaptation to suit local circumstances
 - o The resulting committees /groups to develop integrated built heritage management procedures across all relevant statutory and discretionary functions within wider local authority restructuring project
3. Local authorities to establish a built heritage Strategic Policy Committee, administered by the architectural conservation officer (or in their absence the heritage officer or other delegated officer)
4. Implement Action 10 (ii)(a) of the Government Policy on Architecture to review the effectiveness of public procurement procedures with respect to achieving best practice in publicly-funded architectural conservation projects
5. Implement Action 17 of the GPA to initiate a pilot preventive maintenance scheme for buildings in public ownership with reference to international best practice, to include specific recommendations on design, implementation, management and post-hoc assessment:

- Include a representative selection of property types and complexities in the pilot project
- Assess the potential for the operation of a conservation maintenance scheme for privately owned structures, to examine if participation in such a scheme should be a condition of payment of direct conservation grant, tax incentive (S.482) or other state funding which benefits owners of private property
 - Research the potential linkage between private owner membership of such a scheme and the potential for lowering improving insurance risk profile

1.C.3 Central government guidance and protocols

- 1. Revision of Architectural Heritage Protection Guidelines for Planning Authorities**
 - Expand and revise the *Architectural Heritage Protection Guidelines for Planning Authorities* 2004/2011 in liaison with D/ECLG [see Appendix 2 for identified items]
- 2. New Department of Arts, Heritage and the Gaeltacht guidance:**
 - Publish a guidance leaflet for owners of protected structures on understanding, recognising and analysing the significance of their structures to include clear, easily read guidance on curtilage and structures and features in the attendant grounds, showing how to assess the relative significance of structures and features, what to consider when preparing to apply for grant funding, and what to consider when planning material changes
 - Publish guidance on best practice in documenting conservation projects which are grant funded or supported by tax incentives, including levels and types of information needed, potential methods of distillation and how to publicise Irish case studies to inform future practice
 - Provide guidance on the Per Cent for Art scheme in respect of allocations for built heritage elements of the public realm under the 'architecture' category
 - Publish guidance on heritage-centred urban regeneration, in partnership with State and other stakeholders
- 3. Protocols and codes of practice with Government departments, State agencies and professional bodies on enhancement of architectural heritage protection as relevant to each organisation:**

Department of the Environment, Community and Local Government:

- D/AHG liaise with D/ECLG in formulation of advice to operators and users of exchequer schemes (state authorities; housing authorities; fire authorities; sanitary authorities; state bodies, state-funded organisations), and funding streams and reliefs operated by the D/ECLG which relate to protected property under Part IV
- D/AHG liaise with D/ECLG on appropriate text for inclusion in future revisions to statutory planning and building standards guidance, with formal participation from early in the process

Department of Finance:

- D/AHG devise a protocol with the Department of Finance and Nama on the identification of built heritage assets, on matters to consider when intending to act under S.141 of the Nama Act [entry and maintenance order] and on the consideration of architectural heritage special interests in assessing potential courses of action as to asset disposal
- D/AHG devise a protocol with the Department of Finance, the Financial Services Regulatory Authority and the insurance sector on underwriting and claims handling in respect of insurance policies for protected structures, traditionally built buildings and certain categories of structure such as thatched structures
- D/AHG in tandem with the Property Registration Authority agree guidance for planning authorities and other users on the registration of properties which contain protected structures or are in ACAs, and on registering the status of a protected structure as a burden on title, with specific reference to training on the legal implications of defining curtilage
- D/AHG with Department of Finance to produce guidance on managing State funding programmes so as to proof them for heritage requirements and standards (e.g. administration / management needs; project eligibility rules, project assessment skills and reporting requirements)
- D/AHG with Revenue and the City and County Managers Association to agree methods to ensuring that proposed and permitted works and developments to structures and gardens having a determination under S. 482 of the Taxes Consolidation Act 1997 preserve the significance of such structures and gardens [see also Recommendation 2.B.2]

Department of Justice:

- D/AHG to liaise with Department of Justice, Law Society of Ireland, Society of Chartered Surveyors Ireland and Institute of Professional Auctioneers and Valuers about revising the Law Society documents 'General Conditions of Sale 2009 Edition' and 'Objections and Requisitions on Title 2001 (Revised) Edition' to ensure clarification of the status of a protected structure or proposed protected structure upon sale

Department of Transport, Tourism and Sport / Fáilte Ireland:

- D/AHG, Department of Transport, Tourism and Sport and Fáilte Ireland to devise appropriate built heritage protection criteria for capital funding schemes

Liturgical authorities:

- D/AHG to agree to codes of practice / protocols jointly with the major religions on establishing advisory bodies for the property management of all places of worship, which are of architectural heritage special interest [Historic Churches Advisory Committees or similar]

I.C.4 Public confidence building measures

1. Liasse with the insurance sector to address issues concerning insurance of traditionally constructed structures

- Initiate awareness training on built heritage and Part IV as an element of the sector's training and CPD programmes for insurance professionals
 - Discuss the potential with the Irish Insurance Federation for membership of a preventative maintenance scheme to positively affect insurance risk profile
2. Create, or support the creation of structures and initiatives for informal education in built heritage awareness by other parties, for example:
 - A virtual network / web portal for information-sharing between and within historic built environment disciplines and for the general public
 - Support local authority and NGO initiatives on informal learning opportunities / awareness raising for owners and others, using the structures recommended to be put in place for local / public authority education and training
 - Support and promote educational events, shows or conferences and/or programmes relating to architectural conservation run by NGOs to inform protected structures owners at local and national level
 3. Liaise with non-governmental groups on the establishment of a protected structures owners' support group, as a vehicle for management of matters of relevance and concern to owners
 4. Support the establishment of building preservation trusts with revolving funds for undertaking the repair of redundant structures of architectural heritage special interest for future lease or sale and reinvestment (including the potential for voluntary transfer of property following or instead of pursuing enforcement or endangerment procedures), using research into Northern Irish and international models
 - Investigate the potential for such trusts to engage in building craft skills training and engagement with the voluntary housing and community arts sector

3.2 Principal recommendation 2: Effectively allocate financial resources

2.A *Fiscal research*

Model and analyse existing and potential direct and indirect funding mechanisms, referencing Irish and international experience in the funding of conservation and urban regeneration, using relevant economic, social, environmental and qualitative research criteria. This elaborates upon the outstanding element of Action 18 of the Government Policy on Architecture 2009-2015

1. Carry out an economic and social assessment of past State-supported conservation and regeneration projects, to be representative of building sizes, locations, types and project complexities, noting economic and social impacts in the years following each project
2. Establish if it is feasible to estimate a percentage of the value of a conservation project which can be grant funded to stimulate repair projects without displacing viable commercial activity, noting types of buildings and of uses, and instances where repair is unlikely to be of economic or social benefit to the owner

3. Note types of economic social dividends arising from financial aid (building condition, local employment numbers; quality of life indicators; cultural effects; capital values; yields) and estimate how or if funding different percentages of overall project cost affects the economic and social dividends obtained
4. Compare the economic cost and quality of outcome gained from once-off grant funding with annual tax credits for the same property type and condition over a specified period (model several scenarios and note ability to local authority to monitor quality of outcome) and develop a modelling tool to assess the best matches and bundles of direct and indirect state funding per project and applicant profile
5. Estimate economic expenditure and income tax foregone on maintenance, repair and restoration of structures and gardens approved by Revenue under Section 482 of the Taxes Consolidation Act 1997
 - o Review the abolition of the passive investor provision and make recommendations as to its reintroduction with appropriate safeguards
 - o Examine the impact of threshold changes and opening requirements on take-up of the provision (for example by reference to property owners who have received determinations but not proceeded to claim relief, or who have ceased to claim it)
 - o Estimate costs/benefits, including indirect benefits, of allowing use of S.482 properties for cultural and educational events, including an analysis of values added arising from availability of nationally important resource
 - o Analyse the potential economic and social impact of allowing tax relief for specific categories of work to all protected structure owners
 - o Assess (liaising with Revenue) the quality of work that has obtained tax relief under S.482 by inspection of files and properties, to recommend if any changes are needed to the provision and/or the procedures used to administer it to ensure best quality outcomes
6. Assess the efficacy of previous schemes targeted at area-based regeneration such as the Town Renewal Scheme and Living Over the Shop Scheme and advise on parameters for any future such schemes, and investigate the regeneration potential of area-based tax relief schemes which target the preservation and enhancement of specific areas [such as architectural conservation areas or areas of special planning control], under which private sector repair / reuse projects would be eligible to seek approval
7. Research the costs and benefits of allowing reliefs on capital gains tax and inheritance taxes relating to protected structures and explore the potential to attach conditions to any such relief specifically to retain the character of such structures
 - o Draw up potential criteria, including specification of grounds for re-imposition of full liability, e.g. where protected structures are delisted a certain percentage of relief would be clawed back; where a proposed protected structure is added to the RPS a tax credit or similar would be allowed
8. Investigate the potential to allow take-up of tax incentives by classes of owner with little taxable income (charities, owners in receipt of social welfare, State pension etc), including by the computation of 'in-kind' calculations

9. Investigate if the imposition of VAT on grant funded projects affects the economic benefit of grant aid for categories of owners who cannot claim it back, in order to recommend revisions to VAT categories
10. Research international experience on types of financial assistance not previously utilised in Ireland, such as low-interest loans, loan guarantees, and easements for conservation works in order to identify how or if such instruments could be of economic or social benefit in the Irish context and the types of conditions that should be attached
11. Building on the Quanta report and other research, review the quality of works carried out to date under the local authority conservation grant scheme, Heritage Council buildings at risk scheme and civic structures scheme by doing a sample analysis of supporting documentation and quality of outcome
 - Assess subsequent care and maintenance of such structures which are in public ownership to see if the value of the State's investment has been sustained
12. Review the effects on the character of the historic building stock of the operation of capital funding schemes which inter alia promote heritage tourism or improvements to building stock (LEADER; Failte Ireland; National Lottery Beneficiary Fund; SEAI etc) in order to recommend improvements to such schemes
13. Estimate the cost of the 'do-nothing' scenario, i.e. the gross State income and expenditure that does not accrue when projects are not aided; the numbers of repair projects that do not take place; the percentage of such buildings not repaired that deteriorate to dereliction; the economic and social impact of such dereliction on surrounding areas, and estimate State receipts foregone in projects that take place outside the tax net

2.B Revise and improve fiscal schemes

2.B.1 Local Authority Conservation Grant Scheme and Civic Structures Scheme

1. Re-establish the Local Authority Conservation Grant Scheme and Civic Structures Scheme, as low unit-cost, high impact mechanisms which support and develop traditional building skills, assist to maintain the condition of the historic building stock, encourage local regeneration by example, increase receipts to the exchequer from direct income and the associated increase in construction (repair / maintenance / improvement) activity, and are a means for positive local authority engagement with professionals, contractors, specialists and owners; revised as follows:
 - Build in capacity for multi-annual funding programmes
 - Revise categories of eligible works (and schemes of priorities) to include specific types of maintenance (e.g. relate eligible works to Advice Series guidance)
 - Provide a specific source of funding for cases arising from S.59 action and other urgent works, available year round to be allocated by planning authorities when required
 - Publish annual overviews of grant-aided projects for qualitative project reviews: to learn lessons from case studies, including what has and has not worked, and where problems persist, to aid ongoing management and refinement of the scheme
 - Transfer the Department of the Environment, Community and Local Government Grant for the Renewal or Repair of Thatch Roofs to the Department of Arts,

Heritage and the Gaeltacht, revising some terms and conditions to foster best conservation practice, with local authority architectural conservation officer oversight

2. Examine, in consultation with stakeholders, ways to reduce the paperwork associated with funding schemes (especially paperwork handled by owner or agent) while not compromising quality control; eliminate duplication of effort for example by use of secure electronic information-sharing software

2.B.2 S.482 of the Taxes Consolidation Act: improvements to procedures

1. As a requirement of the Section 482 application form an applicant should submit any and all previous S.5 or S.57 declarations and planning permissions issued in respect of the property; local authority architectural conservation officer to carry out a S.57 inspection before work takes place subsequent to being granted S.482 determination ; and notice of subsequent planning decisions to be communicated to the Department and the Revenue and put on the file
2. Upon receipt of S.482 determination, require owner's agent to compile a dilapidation schedule from which works are deemed eligible if carried out as specified, as a mechanism for itemising types of work that will qualify in each case for relief; all such works to be certified on completion by a qualified and experienced conservation professional and countersigned by local authority architectural conservation officer, to accompany submission to Revenue
3. Grant of determination under Section 482 to be communicated to the planning authority along with recommendation for inclusion of the building (or garden, where appropriate) on the Record of Protected Structures
4. Upon conclusions of research into indirect funding tools to recommend any necessary legislative amendments to Section 482. If eligibility for tax relief is to be made more widely available, the level allowed so Section 482 properties should exceed the level set for protected structures generally

2.C Potential new direct and indirect funding measures

Convince the Department of Finance of the benefit of developing a suite of direct and indirect funding tools and reliefs based upon international experience and Irish research (particularly of the detail noted above) of existing and potential scheme types, of the economic, social and environmental dividends from investing in architectural conservation:

1. Develop variations on several basic tools such as tax credit, mortgage credit, tax rebate, low-interest loans and loan guarantees to suit differing owner and occupier economic profiles (bearing in mind the inability of some owners to benefit from tax incentives); for urban regeneration purposes relate types of tools to potential economic use of buildings, define building typologies at risk and cross-refer to typical owner profiles to tailor optimal assistance and thereby motivate owners to bring historic buildings back into use
2. Build an argument based on European precedent for a super-reduced VAT rate for approved types of conservation and maintenance work to protected structures, proposed protected structures and structures within ACAs, with appropriate ceilings on annual expenditure
3. Develop a national policy for abatement or exemption from rates, development levies, capital gains tax and other national and local charges for protected structures and

landholdings containing protected structures, and establish the necessary links to ensure that such relief is tied to preservation of character / maintenance / prevention of endangerment

4. Develop heritage-centred urban regeneration programmes and encourage for-profit partnerships with local authorities by use of tailored tax incentives, covenants and easements (researched for the Irish situation), to invest in the market to absorb risks and thereby encourage other investors to activate the market
 - Support market activation regeneration projects such as the Swedish Halland Model and area-based schemes which undertake conversion of historic building stock for example to social and affordable housing, and maintenance watch schemes
 - Work with relevant central government departments and local authorities to refine such models as necessary to the Irish situation, fully documenting the processes and outcomes
 - Publish guidance with the relevant central government departments and state training agency to enable use of such training models nationally
5. Present the argument that a specific percentage of National Lottery Beneficiary Fund be reserved for heritage conservation, in line with international lottery funding models
6. Establish formal links with national bodies which provide funding inter alia for the historic built environment and:-
 - Require the insertion of an indication of protected status on application forms for all State funding streams and specify on such forms that appropriate consents may be necessary
 - Require statistics generated on such schemes to include information on the numbers of protected structures and proposed protected structures benefiting from each scheme
 - Produce guidance on managing funding programmes
7. Further to Action 16 of the Government Policy on Architecture encourage the Sustainable Energy Authority of Ireland to:-
 - Develop energy assessment software that effectively measures levels of energy efficiency in traditionally constructed buildings
 - Devise a specialist funding stream within the SEAI for specific categories of energy improvement works for protected structures and structures within ACAs; and for historic structures in urban areas being brought back into use, with the benefit of expert input
 - Train assessors to include advice to owners as to appropriate types of energy saving measures for traditionally constructed buildings

Principal recommendation 3:

Enhance public sector skills base

3.A ***Research built heritage competencies and address skills requirements***

1. Identify local authority (and state body) built heritage competencies and skills requirements needed to obtain quality at every stage of protecting, managing and planning for the historic built environment with the assistance of an expert group (e.g. architectural conservation and heritage officer services, architecture, planning, housing and engineering services, works and outdoor staff, administrative support etc), with emphasis on interdisciplinary and multidisciplinary needs
 - o Process-map the individual skills and linkages within the local authority system required to effectively carry out area-based historic built environment management, listing issues unique to the administration of Part IV
2. Under the auspices of Actions 20 and 32 of the Government Policy on Architecture, establish a multi-sector expert task force to identify and put in place conservation competencies and skills standards, for local authority / public body PMDS requirements, professional institute accreditation and CPD requirements and heritage contracting registration systems, to include linkages within and between professions and crafts
 - o Analyse current provision and skills gaps within the education system at all relevant NFQ levels and assess future built heritage conservation skills needs at each level
 - o Itemise currently available technical conservation information and advice specific to Ireland, both published and unpublished, for educational purposes
 - o Identify national profiles for all appropriate built heritage craft, technical and professional strands (public and private sector)
 - o Develop pilot curricula and courseware [to NFQ levels], including a heritage skills awareness module for PMDS / CPD purposes where knowledge of aspects of conservation is required; and an advanced craft skills award / supplementary certificate module
 - o Develop training the trainer profiles and standards and mentoring supports at crafts and professional levels
 - o Create a quality-assurance heritage skills card scheme for personnel certified to nationally recognised and accredited conservation standards
3. Support the use of bursaries and student exchanges
4. Build on the local authority up-skilling initiative to develop conservation competencies in both the wider public sector and the private sector in order to service the needs of public service capital works and private sector projects funded by the exchequer

3.B Skills awareness building

1. Improve the standard of architectural conservation practice through establishing requirements for documentation of publicly supported projects and utilise this information as both the basis of educational courseware and an evidence base for monitoring adherence to national standards by local and state funding and regulatory bodies
2. Publish case studies of publicly supported conservation projects (Local Authority Conservation Grant Scheme, Civic Structures Scheme and Heritage Council schemes and projects funded by the State and carried out by OPW and state agencies)
3. Implement Action 19 of the Government Policy on Architecture to sponsor (and publish) multi-disciplinary conferences guided by a scientific committee on the protection and conservation of the historic landscape and built environment. The scientific committee should contain at least one local authority representative at management level and one at architectural conservation officer level

3.C Enhance staff skills and structures

3.C.1 Local authority architectural conservation services

1. Improve and augment existing architectural conservation services at local authority level in consultation with all relevant stakeholders:
 - o Formalise central government support for architectural conservation officer post, through revision of circular PD5/99, issue of a national qualifications sheet, and the creation of a national role profile to expand and redefine the architectural conservation officer post to meet identified challenges and improve expertise

3.C.2 Public authority skills training and management

1. Using the findings of the research into built heritage competencies and skills requirements, implement a pilot integrated professional structure for area-based built heritage management, review its operation and use the findings to construct a template for national use
 - o Create a formal structure or network for dissemination of knowledge gained by the local government sector in caring for built heritage and for upholding the standards of operation of Part IV (through implementation of Actions 44 and 45 of the Government Policy on Architecture)
2. Support the delivery of training courses and modules on the theory and practice of historic built environment management (including issues specific to the administration of Part IV) at national, regional and / or local level for local authority, government department and public body professional, administrative and outdoor staff, including through the established training vehicles of PMDS and CPD

APPENDIX 1: LEGISLATIVE AMENDMENT RECOMMENDATIONS

Note: legislative provisions other than Part IV are discussed in Volume 2

A1 Planning and Development Acts 2000-2010

References are made to articles of the Regulations under the relevant Part of the Act.

Part 1 Preliminary and General

A1.1 Section 2 interpretations

- Amend to either amalgamate the definitions of 'structure' and 'protected structure' or insert all references to protected structures that are currently within 'structure' into the definition of 'protected structure'
- Amend definition of 'attendant grounds' to indicate the reasonable spatial extent of its application

A1.2 Section 4 Exempted development

- Amend Article 9 (1)(a) to create a general restriction on exempted development
 - For protected structures and proposed protected structures
 - Within the demarcated area of a World Heritage Site
- Amend Article 9 (1)(a)(xii) to
 - omit reference to a variation of a development plan unless a provision is made through an amendment of Section 13 to explicitly allow for same (see Vol.2 Section 2.2.3 and A1.7 below)
 - include text to de-exempt works and development that materially affect the character of the area in addition to works to the exterior of a structure located within an architectural conservation area

A1.3 Section 5 Declaration and referral on exempted development

- Amend Section 5 to state that all first party questions of what is or is not development or exempted development within a protected structure and proposed protected structure are to be answered in the first instance by reference to S.57

A1.4 Section 8 obligation to give information

- Require the permanent subdivision of an agreed curtilage of a protected structure to be a matter for which the owner or occupier of a protected structure or a proposed protected structure must inform a local authority when required to give notification

Part II Plans and Guidelines

A1.5 Section 10 development plan objectives

- Require there to be a mandatory objective for preservation of the character of a World Heritage Site where such site is fully or partly within the boundary of the functional area of the authority, and to co-ordinate objectives with all relevant such authorities where a World Heritage Site crosses a functional boundary

A1.6 Section 12 Making of development plan

- Require all proposed additions to, deletions from and material amendments to site descriptions within the RPS to be notified to the M/AHG
- Require notification of any material change to the extent of protection afforded through the development plan [e.g. to limit to 'façade only']
- Amend 12 (3) to require notification to the M/AHG where the planning authority intends to delist any protected structure which had formerly been recommended by him/her
- Amend 12(3)(b)(iv) to require a report to issue to the M/AHG where recommendations for inclusion on the RPS which were made by him / her are not accepted by the members, using a form prescribed for the purpose (see S.53 below), within a specified time limit
- Amend 12(3) to require notification to M/AHG to state if the plan is to include an addition or amendment to, or deletion of an ACA

A1.7 Section 13 Variation of development plan

- Amend S.13 (3) to prescribe a practical timescale to designate an ACA by making a variation of a development plan, to allow for completion of the public awareness steps involved in such designation

A1.8 Section 20 Consultation and adoption of local area plans

- Amend to prescribe a practical timescale to designate an ACA within a local area plan, to allow for completion of the public awareness steps involved in such a designation

Part III Control of Development

A1.9 Section 34 Permission for development

- Article 22: Item 17 [Development Details] of the planning application form (as prescribed by Form no.2 of the Planning and Development Regulations 2006) should state that where the box indicating ACA is ticked this information should also be noted on the statutory notices
- Article 23 (1)(d): indicate the presence of a protected structure or proposed protected structure in contiguous elevations
- Article 23 (2): require an indication of curtilage, where it has been agreed with the planning authority, to be made on the site plan, where it differs from the extent of the development site

- Article 28 (1)(c)(ii): amend the words ‘detract’ and ‘appearance’ [of a protected structure] in sub-article (ii) to words such as ‘affect’ and ‘setting’ or ‘character’, and require notification to be sent to the Minister for Arts, Heritage and the Gaeltacht

Part IV Architectural Heritage

A1.10 Section 51 Record of protected structures

- Amend (2) and Article 51 [form of the record of protected structures] to fulfil the requirements of the INSPIRE Directive (Directive 2007/2/EC)

A1.11 Section 52 Guidelines by Minister for Arts, Heritage and the Gaeltacht

- Delete S.52 (2)(a) in tandem with proposed change to S.57 (5)

A1.12 Section 53 Recommendations to planning authorities concerning specific structures

- Amend S.53 (1) to permit the Minister for Arts, Heritage and the Gaeltacht to recommend deletions from, as well as additions to, the RPS
- Amend S. 53 (3) to stipulate a time period within which a planning authority must commence the protection of structures recommended by the Minister for Arts, Heritage and the Gaeltacht for inclusion in the RPS
- Amend S. 53 to require justification and a reporting procedure to the Minister for Arts, Heritage and the Gaeltacht where recommendations for inclusion on the RPS which were made by him / her are not accepted, setting out a specified time limit within which a return is to be made to the Minister for Arts, Heritage and the Gaeltacht and a prescribed form for so doing
 - The prescribed form to require justification on the grounds of the categories of special interest set out in S. 51 (1) and to state if the structure is in public ownership

A1.13 Section 54 Additions to and deletions from record of protected structures

- Amend S. 54 (1) to require that proposals to materially change the description or spatial extent of a protected structure are to be a reserved function. Where an addition, material change or deletion is proposed, the opinion of the planning authority is to be set out using a prescribed form, noting the reasons as per the categories of special interest set out in S. 51 (1)

A1.14 Section 55 Recommendations to planning authorities concerning specific structures

- Amend to require a report to issue to the Minister for Arts, Heritage and the Gaeltacht where recommendations for inclusion on the RPS which were made by him / her are not accepted by the planning authority, within a specified time limit and using a form prescribed for the purpose

- Amend to provide notification to the Minister for Arts, Heritage and the Gaeltacht where structures are proposed to be deleted from the RPS that were protected under recommendations formerly made by him or her
- Require notification to be made to the Minister for Arts, Heritage and the Gaeltacht of the final decision on all additions and deletions and not just those recommended by him or her

A1.15 Section 57 Works affecting character of protected structures or proposed protected structures

- Allow a declaration under S. 57 (2) to be obtained in respect of a proposed protected structure
- Permit all classes of owner and occupier, including a public authority, to avail of a declaration under S. 57 (2)
- Add separate categories of declaration to allow for: -
 - a declaration describing works that would not materially affect the character of a structure
 - a declaration to define the spatial extent of the protected structure as described by a delineation of its curtilage [for which a prescribed schedule of curtilage is required]
 - a declaration to state which elements do not contribute to the special interest of the structure and are therefore excluded from protection [for which a prescribed schedule of exclusions is required]
 - a declaration to describe the types of work necessary to repair, restore character or prevent endangerment (which as per S.68 are exempted development)
 - a declaration to state if works in any particular case are exempt or are not exempt from a requirement to obtain planning permission, to mirror the provisions of S. 5
- Delete subsection S.57 (5) and insert S.57 (6) into S.57 (10) to form a new subsection (10)(c) on matters relating to protected structures which are places of public worship
- Reinstate the original S. 57 (9) to clarify the relationship between S. 5 and S. 57 (2)
- Append two prescribed forms to the Schedules: a declaration application form and a form upon which a declaration is to issue; as well as the two schedules listed above

A1.16 Sections 58-70 Endangerment and restoration of character

- Amend S.59
 - To allow an endangerment notice to be served on a proposed protected structure
 - To provide that the notice shall take effect on the date of the service thereof
- Amend S. 60 (3)(e) so that a planning authority is not obliged to pay expenses that are incurred in carrying out work

- Amend S. 62 to allow an endangerment notice issued under S. 59 (1) to take effect on the date of service

A1.17 Section 79 Obligations of sanitary authorities in respect of protected structures

- Amend (2) to require the Minister for Arts, Heritage and the Gaeltacht to be notified of the intent to issue a notice under the Local Government (Sanitary Services) Act 1964 in respect of all protected structures and proposed protected structures and sites within architectural conservation areas
- Create a similar provision within the Section for cases where it is intended to issue a notice under the Derelict Sites Act for a site which contains a protected structure or proposed protected structure or is within an architectural conservation area, to require the status of the structure or area to be considered and to notify the Minister for Arts, Heritage and the Gaeltacht
- Provide for the making of a record and orderly salvage of structures or parts of structures permitted to be altered or demolished under this section, similar to the provisions of S.34 (4)(p)

A1.18 Section 80 Grants to planning authorities in respect of functions under this Part

- Amend to allow grants to be made for structures within architectural conservation areas

A1.19 Section 81 Architectural conservation areas

- Amend (1) to permit ACAs to be made in a local area plan
- Amend (1) to permit the Minister to make recommendations for ACA designation
- Amend (2) to notify the Minister for Arts, Heritage and the Gaeltacht when an ACA is created, revised or deleted
- Create a prescribed format for an ACA to comply with the requirements of the INSPIRE Directive

A1.20 Section 84 Area of special planning control

- Amend (6) to allow the provision to be open to all planning authorities to designate

Part XI Development by Local and State Authorities, Etc

A1.21 Section 179 Local authority own development

- Amend (2) to allow for the provision of further information, with the usual stipulations regarding timeframe, notification of prescribed bodies, and advertising of significant revisions and formalise a means of participation by the prescribed authorities after the decision has been made
- Amend Article 82 (3) (c) by substituting ‘affect’ and ‘setting’ or ‘character’ for the words ‘detract’ and ‘appearance’ in sub-article (ii) [as is recommended with respect to the

similar Article 28 (1) (c) (ii)]; standardise the drafting of Article 82 (3)(c) with that of Article 88 (2); and require notification to be sent to the Minister for Arts, Heritage and the Gaeltacht

A1.22 Section 181 Development by State authorities

- Amend (1) to provide a mechanism so that a state authority, where it intends to vary or modify a proposal, gives notice including revised or modified plans and particulars to the relevant planning authority and the prescribed bodies (and notice to those who made submissions) within a statutory period, and formalise a means of participation [developing the provision in S. 181 (1)(b)(vi)] by the prescribed authorities after the decision has been made]
- Amend Article 86 (1)(c) so that its requirements read clearly and that it expressly prohibits demolition save in exceptional circumstances
- Amend Article 88 (2) to standardise the drafting of the requirements with the above-recommended amendments to Article 82 (3)(c); and require notification to be sent to the Minister for Arts, Heritage and the Gaeltacht

Part XVI Events and funfairs

A1.23 Licensing of outdoor events

- Articles 185 (2) and 193 (2): include in the statutory notices a requirement to state whether the proposed event is within or in the attendant grounds of a protected structure or ACA
- Amend articles 187 (1) and 194 (2):
 - State in the application if the site is to include, or be within the attendant grounds of a protected structure or proposed protected structure, or within an architectural conservation area;
 - To include details in the submitted draft management plan of any features or fixtures which contribute to the character of the protected structure or ACA that would be affected by the associated works, including mitigation measures and restoration measures subsequent to the event;
 - To identify the protected structure on the site location map (including its curtilage if this has been agreed with the PA) or the boundary of the ACA, as relevant;

Part XVII Financial Provisions

A1.24 Section 246 Fees payable to planning authorities

- Waive or reduce planning application fees for proposed development of or to protected structures and proposed protected structures which would be exempted development were the structure not protected under Part IV
- Waive the cost of 80 euro for a declaration under S.5 to a first party in respect of a structure in an architectural conservation area

- Provide that a planning authority may apply a fee for issuing a S. 57 declaration similar to that imposed for making an observation on a planning application [Regulations, Schedule 10]

PLANNING AND DEVELOPMENT REGULATIONS

A1.25 *Schedule 3*

- Form no. 2 [Application Form], Item 17 Development Details: require the designation[s] / information ticked in item 17 to be noted in the statutory notices

A2 *Other legislation*

A2.1 *Taxes Consolidation Act 1997*

- Amend categories of special interest for buildings and gardens in S. 482 to mirror those of the 2000 Act (retaining “horticultural” in respect of gardens) and carry out all other such revisions, including the addition of regulations, if necessary, as are recommended pursuant to a review of the drafting and operation of the code

A2.2 *Derelict Sites Act 1990*

- Amend sections 8, 11, 13 and 15
 - Indicate the protected status of the land or any element of it in the entry in the Derelict Sites Register
 - Require notices issued to refer where relevant to the designated status of the site
 - Cross-refer to section 59 of the Planning and Development act in respect of deciding under which Act it is most appropriate to take action
 - Require notification of the Minister for Arts, Heritage and the Gaeltacht where the site is or contains a protected structure, a proposed protected structure or is within an ACA
 - Provide for recording of structures of architectural heritage special interest where it is permitted to alter or demolish them on foot of an order under this Act

Appendix 2: Material for inclusion in revision of Architectural Heritage Protection Guidelines for Planning Authorities

Forward planning

1. Guidance on timelines for processing of Ministerial Recommendations, commencing the process of protection and working within the prescribed timescales for making and varying a development plan, and reporting on non-acceptance of recommendations
2. Guidance on inclusion of built heritage objectives in the development plan and local area plan [for protected structures, historic urban areas, setting, ACAs; including on resolution of potential conflicts between objectives prior to publication of plan, and considering 'exceptional circumstances' in relation to material contravention of objectives, and creating built heritage objectives for development contribution schemes]
3. Guidance on objectives for devising a strategy and timeframe for delineating curtilage for existing protected structures and identifying curtilage in advance of protection in the future, including the extent to which curtilage boundary walls are protected
4. Augmented guidance on owner notification following liaison with the Property Registration Authority of Ireland, including use of Section 8 to procure information for future notifications and use of S.56 on registration of title
5. Augmented guidance on designating ACAs:
 - o Using legislative provisions to create or amend an ACA [local area plan; development plan; variation of plan]
 - o Setting boundaries to include rather than exclude sites and structures that detract from the character of the area, in order to assess developments proposed to such sites in the context of objectives to protect the character of the area
 - o Protecting areas and groups of structures instead of individual structures where appropriate
 - o Considering the setting of the ACA in phrasing objectives for the area
6. Advise on integration of conservation planning and landscape planning concepts into new forward planning mechanisms such the Core Strategy provision and statutory Local Area Plans
7. Guidance on use of ASPC provision including explanation of the distinctiveness and purpose of ACA and ASPC designations
8. Guidance on the prescribed form of the RPS and ACA required under the INSPIRE Directive
9. Guidance on record management arising from INSPIRE requirements
 - o Expand information on level of ACA descriptive material that should be included in the development plan [INSPIRE]

- Making available on the public file note of declarations issued
10. Curtilage: recommend best practice on the optimal time to identify curtilage in existing protected structures and those to be designated in future, including reassessment of curtilages previously defined to ensure they adhere to best practice principles:
- Include the summary of useful principles developed by Mona O'Rourke BL to assist local authorities to be clear and precise about that which they wish to protect and which mechanisms to employ where the extent of the area to be protected would not be covered by a narrowly defined curtilage
 - Advise on notification issues regarding lands which are part of the curtilage of a building held in separate ownership (e.g. where the separate curtilage has no structures upon it), and structures and features in attendant grounds
 - Include advice on curtilage boundary walls and protection
11. Elaborate on the concept of setting for the Irish context
- Set out parameters and/or matrices for objective assessment of the elements, tangible and intangible, of setting, and of the relative significance of types and degrees of potential impact (depending on size, distance etc) on built heritage and designed landscapes, including protected structures and architectural conservation areas, well as structures and areas which are not formally protected
 - Suggested as for publication within the revised Architectural Heritage Protection Guidelines with potential for use also as part of EIA and landscape guidance
12. Expand existing EIA advice and introduce SEA advice [cross-referencing guidance on setting]
13. Following liaison with the Property Registration Authority of Ireland, advise on registering a burden on title (S. 56)

Development Management

14. Provide guidance on using S. 5 declarations in respect of structures within ACAs and others for which the proposed revised S. 57 will not be available (specifically to achieve certainty about the detail of the proposed work given the absence of conditions).
15. Insofar as they affect the built heritage, advise on the Acts that grant certain activities exemption from development management requirements, as specified in Part II of the Planning and Development Regulations and the associated schedules
16. Advise on the effect of the change to S. 57 (1) as amended in 2010 [the relationship with Regulations made under Section 4 (2)]
17. Provide detailed guidance on S.57 declarations, as proposed to be amended.
- Include consideration of exempted development within curtilage and devise a formulaic agreement on curtilage to be part of every declaration where a structure is considered to have a curtilage.
 - Guidance on implications of Section 4 and Article 9 [restrictions on exempted development] in relation to Section 57 declarations and development within ACAs

- Guidance on 'letters of comfort'
18. Guidance on handling pre-planning enquiries which relate to the historic built environment
19. Augment guidance on development management:
- More detailed guidance on extensions – nuances of modern versus traditional, size and scale etc
 - Guidance on what might constitute exceptional circumstances (S.57(10)(b))
 - Guidance on Article 28 (1)(c)(ii)
 - Guidance on S.42(2) and S.42A(2) on attaching conditions to an extended permission
 - More detail on enforcement in relation to protected structures and ACAs
 - Elaboration of guidance on Part 8 and Part 9 development, including notifications
20. Include a summary of other codes which affect the management of the built heritage: National Monuments Acts, Building Control Act, Derelict Sites Act; Local Government (Sanitary Services) Act as amended by S. 79, Nama Act
21. Augmented, updated guidance on implications of signing off on alternative compliance solutions to historic buildings arising from the Building Control Acts [when amended]
22. Guidance on 'at risk' property management, including establishing local Buildings At Risk registers, promotion of temporary holding measures (direct interventions and temporary uses) and dealing with decay and deliberate damage in the context of delayed extant and extended planning permissions.
23. Augmented guidance on use of endangerment provisions in Part IV; enforcement in Part VIII; Derelict Sites; Sanitary Services S.79; recommendations as to staffing responses [involvement of architectural conservation officer where a protected structure or ACA is involved]. Guidance on S58 (5) 'good defence' of works to secure the preservation of a structure
24. Augmented guidance on forms of consultation for non-affiliated Christian denominations and non-Christian religions, and the implications of case law
25. Guidance on consideration in development management of the status of a structure or garden approved under S.482 of the Taxes Consolidation Act
26. Guidance on use of ASPC provision for integrated historic area regeneration and management and types of effective staffing responses
27. Guidance on Section 60 restoration of character provision
28. Guidance on use of sites containing protected structures or within ACAs for licensed events

