



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

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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 2**

**November 2016**

**FOR**

**DEPARTMENT OF ARTS, HERITAGE, REGIONAL,  
RURAL AND GAELTACHT AFFAIRS**



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## 1. EXPERT ADVISORY COMMITTEE MEMBERS

<b>Chair</b>	Thomas O'Connor B.Arch., Dip.TP., FRIAI, MIPI, former Director of Planning and Board Member of An Bord Pleanála.
<b>Deputy Chair</b>	Martin Colreavy <b>D/AHG, Built Heritage &amp; Architectural Policy</b>
<b>EAC Secretary</b>	Nessa Roche <b>D/AHG, Built Heritage &amp; Architectural Policy</b>
Helena Bergin	<b>Association of Architectural Conservation Officers (AACO)</b>
Frank Donnelly	<b>D/AHG, Built Heritage &amp; Architectural Policy</b>
Karl Kent	<b>An Bord Pleanála (until November 2011)</b>
Jane Dennehy	<b>An Bord Pleanála (from November 2011)</b>
Ian Lumley	<b>An Taisce</b>
Fionnuala May	<b>City and County Architects Association (CCAA)</b>
Gabrielle McKeown	<b>DECLG, Planning Inspectorate</b>
Paul McMahan	<b>Office of Public Works</b>
Colm Murray	<b>Heritage Council</b>
Freddie O'Dwyer	<b>D/AHG, Built Heritage and Architectural Policy</b>
Mona O'Rourke	<b>ICOMOS (Ireland)</b>
Grainne Shaffrey	<b>Royal Institute of Architects of Ireland (RIAI)</b>
Michael Walsh	<b>City and County Managers Association (CCMA)</b>
Rónán Whelan	<b>D/AHG, Built Heritage and Architectural Policy</b>

City and County Managers' Association nominees:

Eileen Quinlivan	<b>Dublin City Council</b>
James O'Mahoney	<b>South Tipperary County Council</b>



## 2. FINDINGS ON PARTS OF THE PLANNING AND DEVELOPMENT ACTS 2000-2012 OTHER THAN PART IV

*Note: Articles from the Planning and Development Regulations (as amended) are discussed as applicable under the relevant Part of the Act*

### 2.1: Part I Preliminary and General (Sections 1-8):

#### 2.1.1 Section 2 Interpretation

<p>The definition of the term “structure”, as it is related to protected structures and proposed protected structures, is separate to the definition of “protected structure”. This is a weakness in the drafting of the Act as the definition of “protected structure” is divided between the two entries. The definition of “structure” is that which contains the full description of the spatial extent of protection. The committee considered that the definitions should be clearly cross-referenced or amalgamated. Augmented guidance is also recommended.</p>	<p><b>Rec. A1.1</b></p> <p><b>App.2</b></p>
<p>The concept of curtilage has proved a difficult notion to absorb for many stakeholders. The term curtilage is referred to in the definition of structure but is not defined itself, which has posed problems of interpretation.<sup>1</sup> The committee debated whether or not the term “curtilage” could feasibly be interpreted for the purposes of this Act to provide greater legal clarity than currently obtains. There is a recent Irish legal definition of curtilage<sup>2</sup> however this is explicitly concerned with dwellings; indeed the committee noted that historically the concept of curtilage was associated primarily with dwellings. The committee considered that any definition of curtilage in this Act would have to take into account the range of building typologies which could contain the special interest categories listed in S.51 of the Planning and Development Act 2000 (as amended).</p> <p>The committee favoured a conservative spatial application of curtilage in most cases in the interests of clarity. This should be promoted by augmenting guidance for planning authorities in compiling or amending the RPS.</p>	<p><b>Rec. 1.C.3</b></p> <p>App.2</p> <p>Vol.2 5.4</p>
<p>The committee considered that the intent to protect curtilage in the Act was to protect the integrity of the immediate setting of a protected structure. This has, however, led to the interdependent, but distinct, concepts of curtilage and setting becoming confused. The term setting has been in longer use than curtilage as a planning consideration and is generally recognised as a relevant tool in development management, albeit an imprecise and not necessarily objectively used one, to consider an impact that is not caused by a direct intervention.</p> <p>Consideration of setting is valid in terms of protection of the architectural heritage, as a mechanism of evaluating change to the place from which a historic structure derives much of its character and special interest, which in most cases is a larger area than the curtilage.</p>	<p>Vol.2 5.4</p> <p>Vol.2 5.5</p>

<sup>1</sup> The recently published report *Planning a Better Future* by Property Industry Ireland (IBEC), 2012, p.26, seeks a definition of curtilage.

<sup>2</sup> Criminal Law (Defence and the Dwelling) Act 2011: “curtilage”, in relation to a dwelling, means an area immediately surrounding or adjacent to the dwelling which is used in conjunction with the dwelling, other than any part of that area that is a public place.

<p>“Setting” is not interpreted in the Act, however the legislation provides a way to protect the appreciation of a protected structure (S.81) and for consideration of effects on the appearance of a protected structure (Art 28). The committee examined policy and guidance from other jurisdictions, to come to a finding on the merits or otherwise of defining “setting”. While not ad idem on the issue of defining the term for the purposes of Part IV the committee is satisfied that guidance is necessary.</p> <p>The committee found that the extent to which planning authorities assess effect on setting as an element of the effects on the character of a protected structure varies in carrying out development management. The EIA approach offers a methodology for evaluating impacts on setting, which should be refined into more definitive guidance for the built heritage.</p>	<p>Vol.2 3.2</p> <p>Vol.2 5.5</p> <p>App.2</p>
<p>The term ‘attendant grounds’ is interpreted in Section 2, but reads as an observation. It does not indicate the reasonable spatial extent of its application, by reference to the purpose of the term. The interpretation would benefit from expanding the definition based on the text in paragraph 13.2.1 of the <i>Architectural Heritage Protection Guidelines</i>.</p>	<p><b>Rec. 1.A.1</b></p> <p><b>Rec. A1.1</b></p>

### 2.1.2 Section 4 Exempted development

<p>Section 4 and articles 6, 7 and 8 and Schedule 2 of the Regulations specify certain classes of development as exempted development for the purposes of the Act.<sup>3</sup> Exempted development rights relating to protected structures or within ACAs are restricted in general and are character-specific in contrast to S.4 (and the articles and schedules), which deal with classes. The committee discussed whether S.4 (and the relevant articles and schedules) could for the purposes of clarity state this general restriction in respect of protected structures and proposed protected structures. Article 9 (1)(a)(xii) refers to ACAs, could provide a template.</p> <p>The existence of several classes of exemptions for development carried out under the Environmental Protection Agency Act, Arterial Drainage Acts and Harbour Act and by An Post (for example) was noted by committee members as having had ramifications for architectural heritage protection in respect of river, maritime, rail, airport and postal service architecture.</p> <p>An amendment to S. 57 (1) has been made (S. 34 of the Planning and Development Amendment Act 2010) so that it now states “notwithstanding section 4 (1)(a), (h), (i), (j), (k), or (l) and any regulations made under section 4 (2) the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character ...”. This clarifies previous uncertainty as to whether the exemptions listed in the schedules of the Regulations were applicable to protected structures. This amendment requires to be highlighted in general development management guidance, as there is no cross-reference within S. 4.</p> <p>The committee noted that the 2010 Act extended the range of consideration of classes of exempted development listed in Section 4 that are restricted by S. 57 and S. 82. The intent was to align S.4 more closely with the provisions of Part XI. However, Part 8 of the Regulations, which deals with local authority development, prescribes inter alia ‘any development ... the estimated cost of which <u>exceeds</u> €126,000 ...’. This minimum cost creates a loophole, as local authority development</p>	<p><b>Rec. A1.2</b></p> <p>2.2.11</p> <p>Vol.2 4.3</p> <p>App.2</p>
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<sup>3</sup> Articles 7 and 8 deal with works consisting of or incidental to the carrying out of development in certain other Acts that give effect to a condition attached to a licence granted by the Environmental Protection Agency or a drainage scheme.

<p>of a lesser contract value can be carried out without a general obligation to the general requirements of the Act as would occur if Article 9 contained a general restriction for structures and areas protected under Part IV.</p> <p>The committee considered that there is also a need to give the international designation of World Heritage Site specific protection within the planning system. The simplest method to do so is to create a general restriction in Article 9 on exempted development within the area inscribed by UNESCO for the purpose of protecting the outstanding universal value of the World Heritage Site<sup>4</sup> and to operate a balanced mix of policies, objectives and development management within any nationally demarcated buffer zone. Other legislative provisions to consider are to make a local area plan specifically for the site and its buffer zone, or to designate an ACA.</p>	
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### *2.1.3 Section 5 Declaration and referral on development and exempted development*

<p>The committee considered the use of Section 5 declarations in relation to protected structures and proposed protected structures. In order for a planning authority to be able to state that a development involving a protected structure or proposed protected structure does not require planning permission it must know with certainty that the submitted proposal will not affect the character or any element of the structure that contributes to the character. This normally requires a site inspection and expert judgement. Therefore the committee recommended that internal referral to the architectural conservation officer (where in place) should be required with regard to all such questions. However, the committee has also suggested a significant change in the application of S.5, for which a minor amendment would be necessary. For these reasons S. 5 is dealt with more fully within the discussion on S. 57 declarations.</p>	<p><b>Rec. A1.3</b></p> <p>2.2.11</p> <p>2.2.12</p> <p>2.2.19</p> <p>App.2</p>
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### *2.1.4 Section 8 Obligation to give information to local authority*

<p>The committee noted that difficulties arise as to finding out the identity of the owner and occupier of a protected structure or proposed protected structure. For example, notification is not required to be given to the local authority where a protected curtilage is subdivided into two or more holdings, or upon the sale or transfer of the property. The committee advised that the text of S.8 should make reference to notification of the ownership / occupation of land within the curtilage of a protected structure, the spatial extent of which has been agreed with the planning authority, including when this land is subdivided by sale or lease.</p>	<p><b>Rec. A1.4</b></p>
<p>The committee considered that guidance should be given on using S.8 during the S. 12 (development plan) or S. 55 (RPS) notification processes to establish the identity of the current owner and/or occupier of a protected or proposed protected structure and of any parts of its curtilage which are in separate ownership. Increasingly land will be registered upon sale, and ownership details will be available through the Property Registration Authority. Such guidance should bear in mind the notion of beneficial ownership, when dealing with a curtilage that has been divided</p>	<p>App.2</p> <p>2.2.10</p> <p>Vol.2</p> <p>3.1</p>

<sup>4</sup> UNESCO states that where a World Heritage Site has a buffer zone (as does Brú na Boinne, Co Meath) it provides additional protection for the outstanding universal value and integrity of the site. UNESCO recommends that the concept of the buffer zone should be adequately recognised in the legal system. See World Heritage Papers no. 25, *World Heritage and Buffer Zones* (UNESCO World Heritage Centre, 2009), p.188, recommendation no.3.

specifically to facilitate development on part of a holding.	
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## **2.2: Part II Plans and Guidelines (Sections 9-31)**

### **2.2.1 Section 10 Content of development plans**

The committee considered that the mandatory and discretionary development plan policies and objectives set out in S.10 and the First Schedule are adequate, but that they should be utilised in a more coherent way to more fully integrate consideration of the existing historic building stock into forward planning, including regeneration of historic cores and areas. Augmented guidance for planning authorities is recommended.	<b>Rec. A1.5</b>  <b>Rec. 1.C.3</b>  Vol.2 5.3  App.2
The committee discussed whether or not consideration of the setting of protected structures should be added to the purposes for which objectives may be indicated in the development plan (S.10 and First Schedule) in order to regularise current ad hoc practice. The committee was not ad idem on the suggestion of installing the concept of setting in the legislation, and no recommendation was made.	Vol.2 5.5
As noted above, the committee found that designated World Heritage Sites, which are internationally agreed to be areas of outstanding universal value, are not given a specific standing in Irish planning legislation. The committee recommended that it should be mandatory to make development plan objectives for such a site where it is fully or partly within the functional area of the local authority. In the case of trans-boundary sites it should be a requirement for the planning authorities concerned to co-ordinate such mandatory objectives in each development plan affecting the area.	<b>Rec. A1.5</b>

### **2.2.2 Section 12 Making of development plan**

The committee found that the procedures for notification of the Minister in the course of making a development plan are not sufficiently robust. While a draft plan is forwarded to all the prescribed bodies, individual notification to the Minister is done (under S. 12(3)(b)(iv)) only in respect of submissions that are made on the draft plan relating to proposed additions or deletions of structures that were recommended by the Minister. The committee considered that all proposed additions or deletions should be notified to the Minister. It should be noted that this subsection contains an error in assuming that recommendations as to both additions and deletions may be made by the Minister, which is not the case. The committee has recommended an amendment to S. 53 (1) to allow for deletions to be recommended (see 2.2.6 and Recommendation A1.12).	<b>Rec. A1.6</b>  2.2.7  2.2.8  App.2
The committee considered that a material amendment to the legal description of a protected structure should also trigger notification to the Minister (for example when reducing the extent of protection to 'facade only'). Similarly where it is proposed not to accept a structure recommended by the Minister, notification should be sent to him/her using a prescribed form stating the architectural heritage grounds for not accepting the recommendation. The required S. 12 (4)(b) report should note the subject matter of submissions in respect of structures which, having been recommended by the Minister, are not be added to the RPS.	
The committee noted that the statutory timescales for making a plan do not allow for making amendments to the RPS during the second display period. S.12 (7) and (8)	<b>Rec. A1.6</b>

allow four weeks for public consultation and eight weeks for completion of amendments. This is considered to be insufficient for owner notification purposes and also for notification of and receipt of a response from the Minister. Either the Act should make it possible to allow amendments to be considered following the first public display period or it should specifically exclude the possibility, in which case guidance on alternative processes for dealing with amendments should be set out.	App.2
The committee considered it appropriate that notification be required to be made to the Minister if a planning authority intends to create, amend or delete an ACA. The intention to create a national ACA record held by the Department will assist to broaden knowledge of the current numbers and descriptions of ACAs at any given time, but will not provide the Department with specific notice prior to a decision being taken by a planning authority.	<b>Rec. A1.6</b> 2.2.32

### 2.2.3 Section 13 Variation of development plan

The committee noted that the timescales set out for adopting a variation to a development plan effectively preclude designating an ACA as a variation. <sup>5</sup> It would be feasible to do so only if S.13 (3) were amended to allow for completion of the public awareness steps required. The committee considered that it would be advantageous to allow ACAs to be designated at a time when planning authority resources are not occupied with drafting a new development plan and therefore that S.13 should be amended.	<b>Rec. A1.7</b> 2.2.32
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### 2.2.4 Chapter II Local Area Plans

Amendments to the Planning and Development Act 2000 (most particularly the 2010 amendment) have accorded more status to local area plans. Local area plans have the potential to focus more closely than a county or city plan on the character of the historic built environment, to recognise the importance it holds for local people and to target its objectives to the needs of an area.	2.2.31 2.2.33
The ACA concept is about area-based protection and management. This is of relevance to local communities and is a good fit with the new emphasis from the Department of the Environment, Community and Local Government on making better and more consistent local area plans. <sup>6</sup> The committee considered that carefully crafted local area plans should assist in promoting heritage-centred regeneration. However, due to the timescales involved in preparation and designation of an ACA the provisions allotted in the Act for set out for making a local area plan are insufficient for creating an ACA as a part of the plan.	<b>Rec. A1.8</b> <b>Rec. 1.C.3</b> App.2
The committee advised that amendments be made to Part IV Chapter II to specifically allow an ACA to be included in an LAP. In addition, LAP guidance (draft 2012) should take account of the timescales needed for advance preparation of an ACA, so that ACA designation can be accomplished at the time of making the LAP.	

## 2.3: Part III Control of Development (Sections 32-50)

### 2.3.1 Section 34 Permission for development

<sup>5</sup> The wording of Article 9 (1)(a)(xii) refers to ACAs in the context of a variation of a development plan, however other such references were deleted in the amending Regulations of 2006.

<sup>6</sup> Local Area Plans: Public Consultation Draft of Guidelines for Planning Authorities, DECLG June 2012; and Manual for Local Area Plans [consultation draft], DECLG June 2012.

<p>The committee found that the development management provisions generally work well, however existing guidance could be augmented and minor regulatory changes made in respect of some provisions insofar as they affect the architectural heritage.</p>	<p><b>Rec. A1.9</b></p>
<p>With regard to developments proposed within ACAs, the members were cognisant that it is not a requirement to notify owners and occupiers of structures within ACAs of the designation. Notwithstanding, it would be advantageous in terms of third party participation in the process if site notices were to state if a development site is within an ACA (Article 22 refers).</p> <p>The planning application form (form no.2 of the 2006 Regulations) includes tick boxes for completion in respect of development proposed to protected structures or within ACAs. The committee considered that location within a World Heritage Site should also be noted by applicants on the statutory form where the applicant is aware of the status. When these boxes are ticked by an applicant the status of the area should also be stated on the statutory notices. This method would allow for third party consideration of the context in which the development is proposed (via reading the statutory notice) without invalidating the application under Article 22 for failure to comply, as would happen if indication of the status was mandatory.</p>	<p><b>Rec. A1.9</b></p> <p>2.2.32</p>
<p>The committee discussed the potential benefits of requiring an indication of the curtilage to be outlined on site plans (Article 23 (2)). The 'pink wash' used in the Northern Ireland planning system was noted. The committee considered that while useful it is premature to suggest a method or technology for delineating curtilage in the development management process.</p>	<p>Vol.2 2.1.4</p>
<p>The committee advised that planning application particulars should indicate the presence of a protected structure in contiguous elevations, to allow for consideration of this structure in assessing the proposal. This could be done by amending Article 23 (1)(d). The ease of identifying the status of structures and sites in the environs of a development site will be improved when the Myplan website introduces the data layer of protected areas or structures (currently in preparation to fulfil INSPIRE requirements).</p>	<p><b>Rec. A1.9</b></p>

### 2.3.2 Article 28 Notice to certain bodies

<p>The statutory consultees for architectural heritage prescribed for the purpose of Article 28 are the Minister for AHG, the Heritage Council, An Taisce, An Chomhairle Ealaíonn and Fáilte Ireland.</p> <p>Two of the consultees (apart from the Minister) were represented on the committee. The role and efficacy of the statutory consultees was not examined in detail. The issue raised by the committee was whether or not these organisations have officers assigned to assess planning applications referred to them, and to what extent they involve themselves in commenting on individual cases. The draft report should be circulated to all of the statutory consultees.</p>	<p><b>Rec. 1.C.2</b></p>
<p>Article 28(1)(c)(ii) requires planning applications to be referred to the consultees which, inter alia, might detract from the appearance of a protected structure. The sub-article clearly requires such referrals to be made in respect of applications for which the site does not include a protected structure but where the integrity, amenity or setting of such a structure could be adversely affected. However, the words 'appearance' and 'detract' are open to interpretation. Elsewhere the Act refers to 'character' rather than appearance, which would be clearer in this sub-article, however the term 'setting' would be more precise again. It is recommended that the article be amended.</p>	<p><b>Rec. A1.9</b></p> <p>Vol.2 5.5</p>

### 2.3.3 Section 42 and 42A Power to extend appropriate period

<p>The committee raised an unintended effect of the provision, expanded in 2010, which allows for extension of the period of permissions. Many cases exist where enabling development<sup>7</sup> of a protected structure has been permitted as part of a larger development scheme. However, many such permitted developments have been postponed due to the economic downturn. The amended provision to extend the duration of permission therefore may further delay bringing these structures back into use. The committee considered that there is a need to provide guidance to planning authorities specifically on preventing decay and deliberate damage and to effectively use enforcement procedures.</p>	<p>Vol.2 3.4</p> <p><b>Rec. 1.C.3</b></p> <p>2.2.25</p> <p>App.2</p>
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### 2.3.4 Section 48 Development contributions

<p>The committee had considered the potential value of reducing or waiving development contributions before the publication of <i>Development Contributions – Draft Guidelines for Planning Authorities</i> (D/ECLG 2012). The committee welcomed the waiving of development contributions attached to obtaining planning permission for protected structures, which is proposed in this draft. It is recommended that criteria be developed to differentiate between types of work or development to encourage proposals that accord with conservation guidance, and those that bring structures back into use. It is also suggested that contribution rates differentiate between developments which are proposed by private (domestic) users and those which are commercial in nature.</p> <p>The committee also welcomed the waiver for certain change of use permissions and for developments which support town centres, as this will assist in heritage-centred regeneration and keep historic buildings in use or bring them back into use. The committee considered that the extension of waivers for certain types of development in ACAs would also be advantageous, to aid the preservation and enhancement of the character of such areas in line with development plan objectives for the area. More detail on criteria and eligibility should be given in guidance.</p>	<p><b>Rec. 1.C.3</b></p> <p>Vol.2 5.3</p>
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<sup>7</sup> Enabling development is where development of a structure has been permitted, in which adverse effects on the character of the structure arising from the development are mitigated by a requirement to appropriately repair and reuse the existing structure.

## 2.4: Part XI Development by Local and State Authorities (Sections 178-182)

### 2.4.1 Part XI Introduction

<p>Certain issues have been observed in the operation of Part IV of the Act by local and state authorities arising from the particular provisions for development by such authorities set out in Part XI.</p> <p>The brief guidance given in the <i>Architectural Heritage Protection Guidelines</i> is the only statutory advice on Part XI and the built heritage. The <i>Development Management Guidelines</i> (2007) do not cover Part XI developments.</p> <p>The committee noted that the presence or absence of conservation expertise within or retained by many local and state authorities affects the quality of built heritage development proposals made by such authorities. As there is no appeal mechanism for developments permitted using the Part XI process it is vital to attain high standards if the State is to lead by example in the development of its historic building stock.</p>	<p>Vol.2 5.1.2</p> <p>Vol.2 5.2</p>
<p>A number of actions in the Government Policy on Architecture 2009-2015 specify initiatives to achieve excellence in management and development of the built environment. The committee recommended that the actions that relate to development of the historic built environment by local and public authorities should be carried out as a matter of priority.</p> <p>Action 22 encourages public authorities to meet sustainability objectives. One measure of the Action is for such authorities to</p> <p style="padding-left: 40px;">Prepare a conservation policy for buildings of architectural heritage value in their care and/or ownership and within this framework to prepare a conservation plan for individual places as appropriate. Such policies should be based on an inventory of their historic building stock and make provision for ongoing conservation and maintenance programmes in fulfilment of the policy objectives.</p> <p>The implementation of this Action would instigate more informed stewardship and sustainable development by local and state authorities of their historic building stock. In particular it would contribute to a greater understanding of potential uses for publicly owned built heritage assets in urban areas that are currently underused or vulnerable to future vacancy. It would in so doing assist to set the parameters for heritage-centred regeneration.</p>	<p><b>Rec.</b> <b>1.C.2</b></p> <p>Vol.2 5.2</p> <p>Vol.2 5.3</p>

### 2.4.2 Part XI specific matters

<p>The committee noted that Part XI developments are not subject to a specific time period within which they must be commenced, as are planning permissions granted under Part III. Open-ended delays could result in a publicly owned protected structure lying vacant and deteriorating while it awaits redevelopment, notwithstanding the owner's duty to prevent endangerment. In historic urban areas such dereliction by a state organisation is especially invidious as it has a stifling effect on private investment in historic properties in these areas.</p>	<p><b>Rec.</b> <b>1.C.3</b></p> <p>Vol.2 5.2</p> <p>App.2</p>
<p>The absence of a deadline for commencement of the development of a protected structure could also lead to a situation where by the time it is carried out the project</p>	

<p>does not accord with local policies or objectives for protection of the built heritage.</p> <p>It has also been the experience of some committee members that a selective approach appears to be taken by some Part XI development promoters as to the need to comply with Article 82 (local authorities) and Article 88 (State authorities) on notification to certain bodies where protected structures, proposed protected structures and sites within ACAs are concerned. Guidance for local and state authority development should be formulated to address these issues.</p>	
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### 2.4.3 Section 179 Local authority own development

<p>Part XI prescribes classes of development that may be carried out on behalf of a local authority, or in partnership with it. The committee considered this provision insofar as its use affects structures and areas protected under Part IV.</p> <p>S. 178 restricts local authorities from carrying out developments that materially contravene the relevant development plan. The committee noted, however, that some developments have been permitted in the past using S. 179 (1)(d) which have contravened local and national policies on built heritage protection. The committee considered that structures and areas protected under Part IV should not be subject to inappropriate Part XI proposals as there is no appeal mechanism and no formal method of revising proposal designs. The committee was also made aware of local authority actions which transgress the spirit of S. 178, for example the deletion from the RPS of a protected structure owned by a local authority and later demolition and site redevelopment permitted under Part XI.</p> <p>This subsection allows developments to be carried out jointly by a local authority which is a planning authority (in partnership or pursuant to a contract). However, all developments that are put in train for the benefit of a private developer should be subject to the same levels of scrutiny and oversight, especially where there is potential for such schemes to contravene built heritage policies and objectives. Guidance is necessary on these issues.</p>	<p>Vol.2 2.1.2</p> <p>App.2</p>
<p>Articles 82-84 require notification of prescribed authorities (including the Department in respect of a protected structure, proposed protected structure or to the exterior of a structure within an ACA), a period of public consultation and notification of the decision. Similar to Article 28 (1)(c)(ii), Article 82 (3)(c)(ii) requires notification where a proposed development might 'detract from the appearance' of a protected structure or proposed protected structure or exterior of a structure in an architectural conservation area. The committee has recommended that the wording be revised and that the wording of this Article and Article 88 (State authority development) be the same and that the Regulations be amended to require notification of such developments to be sent to the Minister for Arts, Heritage and the Gaeltacht [these Articles of the Regulations were not amended in 2011 following the establishment of the Department of Arts, Heritage and the Gaeltacht].</p> <p>The committee noted that there is no provision to allow for the revision or variation of a proposal in the course of the process, for example in response to issues raised by the public or the prescribed authorities. If a planning authority considers that a proposal should be varied or modified this is noted in the manager's report to the elected members. The details of an intended modification are not open to scrutiny by the prescribed authorities as there is no circulation required prior to making a resolution on the proposal. Conditions, as such, are not attached to the decision and any modifications thought necessary by the elected members are finalised at a later date.</p>	<p><b>Rec. A1.21</b></p> <p><b>Rec. A1.22</b></p>
<p>A number of local authority development proposals known to the committee, which</p>	<p><b>Rec.</b></p>

<p>affected protected structures, went through ad hoc further information / revised proposal procedures devised by the planning authority to mitigate adverse impacts on architectural heritage that were identified through prescribed authority observations.</p> <p>The committee considered that all provisions used should have a legal basis and therefore the Part XI provision should contain formal further information / revised proposal procedures for when they prove necessary, with specific uses and timeframes prescribed, along with requirements for notification and advertisement of significant revisions.</p>	<b>A1.21</b>
<p>The committee considered also that it should be feasible to frame a means of providing for prescribed authority involvement subsequent to a council passing a resolution to permit a development under S.179. This would be particularly useful in relation to developments permitted to be varied or modified following observations from the prescribed authorities, so as to ensure that the final design does not materially affect the character of the protected structure or proposed protected structure in ways other than have been expressly permitted by the members.</p>	<b>Rec. A1.21</b>
<p>It was considered that guidance should be augmented on the use of Part XI by local authorities, including on the appropriate consideration of the national policy context for structures and areas protected under Part IV.</p>	<b>Rec. 1.C.3</b> App.2

#### 2.4.4 Section 181 Development by State authorities

<p>Part XI is drafted with the presumption that state authorities have the competence to make complex planning and architectural decisions that do not require oversight by a planning authority. This may not always be the case. In addition, the committee found that not all of the provisions are clearly drafted.</p> <p>It is not clear that a State authority is restricted from granting itself permission to demolish a protected structure or proposed protected structure (save in exceptional circumstances). S. 57 (10) refers only to planning authorities and An Bord Pleanála, while S. 181 and Part 9 of the Regulations, which prescribe and regulate classes of development to which the Act does not apply, are silent on demolition.</p> <p>Article 86 (1)(c) qualifies the obligations of the state authority towards protected (and proposed protected) structures with regard to specified developments. However this sub-article appears to lack a conclusion. It states</p> <p style="padding-left: 40px;">“subject to paragraph (e), where any building, premises or other installation referred to in paragraph (a) is a protected structure or proposed protected structure any works which would materially affect the character of the protected structure or proposed protected structure.”<sup>8</sup></p> <p>The committee recommended that this sub-article be amended so that its intended requirements are clear and that it prohibits demolition save in exceptional circumstances</p>	Vol.2 5.2  <b>Rec. A1.22</b>
<p>The committee considered that for the purposes of architectural heritage protection state authorities generally should have regard to the relevant objectives of the relevant development plan in formulating proposals. Guidance is recommended on cases where the proposed development may not accord with local and national policies or objectives on architectural heritage. For example, in the documentation</p>	<b>Rec. 1.C.3</b> App.2

<sup>8</sup> Paragraph (a) covers types of development and paragraph (e) covers particular types of sites which are in uses connected with national security or the administration of justice.

issued to the relevant planning authority and the prescribed authorities the State authority should describe the mitigating measures taken in designing the proposal so as to protect the special interest characteristics of the structure concerned.	
As has been outlined above in respect of local authority development, S. 181 should be amended to provide a mechanism for revising or varying a proposal during the process to address observations made to the State authority.	<b>Rec. A1.22</b>
S. 181(1)(b)(vi) entitles the Minister for the Environment, Community and Local Government to make regulations as to the reference to a specified person of any dispute or disagreement, between a State authority and the planning authority for the area in which the proposed development is to be carried out. To date no such provision has been made in the Regulations.  To pre-empt an adversarial situation developing which would require a referee, the Act could permit a means of allowing engagement by the planning authority, or prescribed authorities, after the state authority has made its decision on a proposal.	<b>Rec. A1.22</b>
It was observed (see 2.4.3 above) that Article 88 (notification to certain bodies) differs from Article 82 (local authority own development) and a recommendation has been made on this point. It was also noted that Article 88 is required for proposals affecting the architectural heritage but not for structures protected under the National Monuments Acts. This affects structures, which are not protected under Part IV although possessing the special interest characteristics that would merit it, for example by reason of oversight or misunderstanding of the type of protection afforded by the National Monuments Acts.	<b>Rec. A1.22</b>  Vol.2 5.7

#### 2.4.5 Section 182 Cables, wires and pipelines

This Section (expanding on S. 4(1)(g)) states that cable, wire or pipe works by local authorities and statutory undertakers are exempt from the normal requirement to obtain planning permission. The Section does not require permission to be obtained where works would affect the character of protected structures, proposed protected structures or ACAs.	<b>Rec. A1.2</b>  <b>Rec. 1.C.3</b>
The general restriction itemised in Article 9 (1)(a)(xii) on exemption for classes of development specifies works to the exterior of a structure in an ACA, but not other works within the ACA. The restrictions listed in S. 57 (1) <sup>9</sup> exclude S. 4 (1)(g). This has had the effect of clarifying that cable, wire or pipe works that could in fact have a material effect on the character of protected structures, proposed protected structures or ACAs are indeed exempted development.	2.2.11  Vol.2 2.1.2  App.2
The committee has made an argument in favour of a general restriction on exempted development in respect of protected structures and proposed protected structures, to be added to Article 9. Such an amendment to the Regulations would resolve the gap in protection noted within S. 182.	
The committee considered that interaction between planning authorities and statutory undertakers should also be improved, codes of practice agreed and guidance augmented, in respect of works undertaken under this section to minimise the instances where such works adversely affect the character of protected structures, proposed protected structures and ACAs.	

<sup>9</sup> as amended by S. 5 of the Planning and Development Amendment Act 2010.

**2.5: Part XIII Amenities (Sections 202-209)**

**2.5.1 Section 204 Landscape conservation area**

<p>The committee discussed the little-used provisions of Part XIII insofar as they are relevant to the consideration of historic landscapes, which can include the likes of demesnes, industrial remains and military sites. Such areas usually contain one or more of the special interest characteristics listed in Part IV.</p>	
<p>The drafting of S. 204 suggests that it could be used to designate large areas of land, including land crossing the functional boundaries of two or more planning authorities. The committee noted that the designation is not time-bound, has an existence outside the development plan and does not require a description of character to be drawn up. Restrictions on exempted development are by way of prescription rather than by consideration of the material effect on the character of the area. However, no regulations have been made for Part XIII since its inception and the S. 204 provision has not been used to date.<sup>10</sup></p> <p>The committee considered whether the provision could be used to give World Heritage Sites a formal status in Irish planning law, which they do not currently have. A recommendation has been made to require objectives in a development plan and restrict exempted development rights for such sites but the committee considered that an overarching planning framework is desirable.</p> <p>The committee noted that the National Monuments Service of the Department of Arts, Heritage and the Gaeltacht has commenced a separate legislative process (consolidation of the National Monuments Acts 1930-2004), which is to include provisions for protecting historic landscapes.</p> <p>On a wider front, the forthcoming National Landscape Strategy is likely to establish a planning mechanism for landscape character assessment (including historic landscape characterisation) as part of the local authority development plan process.</p> <p>It was concluded that rather than make recommendations at present as to the potential use of Part XIII for matters connected with the built heritage, it would be more appropriate to respond to these processes in due course.</p> <p>In the interim, research and publications on the holistic and dynamic nature of Irish landscape and its elements are needed as an aid to more effective local protection and conservation of landscapes. Action 19 of the Government Policy on Architecture commits the Department to document and publish best practice in the protection and conservation of the historic landscape and built environment, following multi-disciplinary conferences guided by a scientific committee.<sup>11</sup> This Action should be commenced as soon as possible.</p>	<p>Vo.2 5.3</p> <p>Vol.2 3.6</p> <p><b>Rec. A1.2</b></p> <p><b>Rec. 3B</b></p>

<sup>10</sup> A draft Landscape Conservation Area was made for Tara Skryne, Co. Meath in 2010, but the Order has not been adopted to date.

<sup>11</sup> Action 19: "The State is committed to the documenting and publication of its work in protection of the historic landscape and built environment. The Department of the Environment, Heritage and Local Government in collaboration with the Office of Public Works and the Heritage Council will sponsor conservation conferences on practice and research in the area of building and landscape conservation of which the outcomes will be published. The conferences, which will be multi-disciplinary in scope, will be guided by a Scientific Committee established for the purpose."

## 2.6: Part XVI Events and funfairs

### 2.6.1 Section 230 Obligation to obtain a licence for holding of an event

<p>Large-scale public events and performances are regularly held within designed landscapes surrounding protected structures. This is more common now than when the Act was framed. The committee considered that potential impacts of the associated works on the character of such places should be set out by those who apply for licences to hold events, and assessed by local authorities in making their decision, including where a local authority or public authority intends to hold an event. Minor amendments are therefore recommended to the Regulations and guidance will also be necessary.</p>	<p><b>Rec. A1.23</b> App.2</p>
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## 2.7: Part XVII Financial Provisions

### 2.7.1 Section 246 Fees payable to planning authorities

<p>This Section and the associated regulations (including Schedules 9 and 10) impose planning fees in respect of applications for development. The committee noted that owners and occupiers of protected structures, proposed protected structures and owners and occupiers of structures within ACAs are obliged to apply for permission to carry out a greater range of works than is usually the case due to the restrictions on exempted development in respect of such structures and areas.</p> <p>Therefore the committee considered that planning fees should be reduced or waived to mitigate the financial burden on these owners and occupiers, insofar as an application relates to works that would be exempted development were the structure or area not designated.</p>	<p><b>Rec. A1.24</b></p>
<p>The question of whether or not a fee should be prescribed for a S.57 declaration was discussed. The committee noted the members' views which ranged from favouring it as a free expert service to those who maintained that a small charge would give the service a value in the eyes of owners and occupiers. Any charge should be sufficiently low not to discourage an owner or occupier from applying, and planning authorities should have discretion to waive it. The committee noted that broadening the range of S. 57 declarations as is proposed in this report may make more owners and occupiers seek them and correspondingly give rise to an increased body of work on the part of the planning authority. A small charge would therefore be justified to assist the authority to resource the work.</p> <p>The committee noted that the proposals outlined for S. 57 (2) exclude structures in ACAs. Such owners or occupiers applying for a S.5 declaration should not be charged, as they may require certainty about specific work or development to a greater extent than generally obtains but are not permitted to seek a S.57 declaration.</p>	<p><b>Rec. A1.24</b> 2.2.11</p>

## 2.8: Part XVIII Miscellaneous

### 2.8.1 Section 247 Consultations in relation to proposed development.

<p>The committee noted that the <i>Development Management Guidelines</i> (2007) states that the architectural conservation officer (or other competent planning authority officer) should be involved in consultations where protected structures are involved and that the <i>Architectural Heritage Protection Guidelines</i> should be consulted. This advice should be broadened to include cases affecting architectural conservation</p>	<p><b>Rec. 1.C.3</b> App.2</p>
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areas and proposals for demolition or large-scale development proposed in historic locations such as town centres.	
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### 2.8.2 Section 260 Saving for national monuments

<p>The committee noted that the general exemption from the requirement to obtain planning permission for national monuments has remained substantially unaltered since the Local Government (Planning and Development) Act 1963.<sup>12</sup> Since that time the original focus of repair or restoration of national monuments has been expanded by carrying out interventions (in modern as well as historicist styles), some of which have had a substantial impact on the character of the relevant monuments. The administrative and legislative environment has also changed in the interim, with the OPW now managing national monuments on behalf of the Minister, and a licensing and consent system in operation.</p>	Vol.2 3.6
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<p>Since the Local Government (Planning and Development) Act, 1999 most or all national monuments in State care that are structures have become protected structures. This dual protection was not envisaged in 1963. Section 260, insofar as it affects protected structures, has effectively created a separate class of exempted development for structures which are considered amongst the most valuable of the nation's heritage.</p>	Vol.2 5.7
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<p>The committee noted, however, that the forthcoming consolidation of the National Monuments Act is to deal with the mechanisms for carrying out works to national monuments. Therefore no recommendations are made at this time.</p>	
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<sup>12</sup> Originally Section 90 of the Local Government (Planning and Development) Act, 1963 referred to the functions of the "Minister for Finance or the Commissioners of Public Works in Ireland".

### 3. OPERATION OF OTHER LEGISLATIVE CODES

A number of other Acts and Regulations either impact on the implementation of the protection of the built heritage or regulate provisions for indirect financing of built heritage protection.

#### 3.1 *Taxes Consolidation Act 1997 (as amended)*

<p>S.482 of the Taxes Consolidation Act contains the sole provision offered by the State for owners of structures which have been determined by the Minister under this Act to be of significant scientific, historical, architectural or aesthetic interest. The scheme also aids the owners and occupiers of approved gardens, which are considered to be intrinsically of significant horticultural, scientific, historical, architectural or aesthetic interest, and which afford reasonable access to the public.<sup>13</sup></p> <p>Expenditure on repair, maintenance or restoration works, security alarm systems, and public liability insurance is eligible to be offset against income tax. There is no limit on the amount of tax relief that can be claimed on qualifying expenditure incurred on repair, maintenance or restoration on an approved building or garden.<sup>14</sup> In return, public access is required for a specified number of days per year.</p> <p>To date 524 structures and 21 gardens have obtained a determination from the Minister, of which 182 houses, 21 guest houses and 10 gardens are open to the public at present.<sup>15</sup></p> <p>Importantly, the committee found that there has been no research into the use and effectiveness of the provision in terms of architectural heritage protection. In addition, while it is a useful aid to the owners of a relatively small number of very significant structures, the committee noted some inadequacies in the legislation and its operation and considered that in some respects these need to be updated.</p>	
<p>The committee considered that the special interest categories, provisions and objectives of S. 482, which were formulated in 1982 (as S.19 of the Finance Act, 1982), should be examined and revised to correlate with those of the Planning and Development Acts 2000-2012.</p>	<p><b>Rec. A2.1</b></p>
<p>Action 18 of the Government Policy on Architecture commits the State to investigate funding models. The committee recommended that the element of this action examining indirect funding should be prioritised to provide an essential knowledge upon which to base specific recommendations both to revise the existing S. 482 provisions and to introduce a more broadly beneficial system. The committee considered that in the current economic situation indirect funding is more likely to be forthcoming than grant aid and therefore discussed the broadening out of tax relief to owners and occupiers of protected structures generally.</p> <p>The committee looked at existing research into international models on types of indirect funding and has suggested types of analysis and parameters for further</p>	<p><b>Rec. 2.A</b></p>

<sup>13</sup> The surrounding garden is generally included where a building is approved by the Revenue Commissioners, and is separate to the provision in the Act for approving gardens independently from a building.

<sup>14</sup> There is an aggregate ceiling of €6,350 on repair, maintenance or restoration of approved object in an approved building or garden (with conditions attaching); the installation, maintenance or replacement of a security alarm system and the provision of public liability insurance.

<sup>15</sup> September 2012 figures from the Department of Arts, Heritage and the Gaeltacht, of the total number of buildings and gardens granted a determination under S.19 of the Finance Act, 1982 and under S. 482 of the Taxes Consolidation Act, 1997. Figures for active participants in the tax relief scheme have been provided to the Department by Revenue.

<p>such research.<sup>16</sup></p> <p>This research should examine the reasons for the discrepancy between approval by the Minister and take-up of tax relief, and consider if the extension of relief to other types of activities, changes in opening time requirements or alterations of ceilings and thresholds would make the provision more attractive.</p>	
<p>The committee recognised that there is not an exact equivalence between inclusion in the RPS and approval under S.482. The level of significance of the special interests of such structures and gardens must be enough to make them a draw for visitors. Therefore, in considering how best to target indirect funding, it is suggested that the levels of aid available for S.482 properties should exceed any levels set for protected structures which do not have the determination.</p>	<p><b>Rec. 2.B</b></p>
<p>A major inadequacy of the existing tax relief scheme identified by the committee is that oversight is not required by either a central or local government body of the works for which tax relief are claimed. This has resulted in there being little awareness generally of the standard of works which have received state benefit, and instances of work are known to have been carried out that did not adhere to good conservation practice. The committee considered that a means could be formulated of rectifying this omission, for example of specifying eligible works by way of a quinquennial dilapidation schedule done by a qualified and experienced conservation professional, with the works to be certified upon completion and the certification to be forwarded to the Revenue Commissioners.</p> <p>A formal link should be required between such a dilapidation schedule and a S.57 declaration (in the augmented format as recommended in this report), so that Revenue is assured of the appropriate involvement of the planning authority in decisions as to the types of repair or restoration work to be carried out. The committee noted that this will answer the need for a greater degree of engagement between planning authorities and owners of structures and gardens with a S. 482 determination.</p> <p>In addition, where planning permission is sought for developments to a structure or garden with a S. 482 determination, the fact of the determination should be noted as a material fact in the planning report. Notice of the planning permission should be given to the administrators of the S. 482 scheme in the Department and Revenue. Guidance or a protocol is recommended.</p> <p>The gardens of some approved houses have been grant funded under the European Regional Development Fund/Great Gardens of Ireland restoration programme operated by Failte Ireland (which commenced in 1994 and is now closed).<sup>17</sup> No official evaluation has been carried out of the scheme with respect to impact on character, which is recommended in order to suggest improvements to any future capital schemes that affect architectural heritage.</p>	<p><b>Rec. 1.C.3</b></p> <p><b>Rec. 2.A</b></p> <p><b>Rec. 2.B.2</b></p> <p>2.3.2</p> <p>App.2</p>
<p>The committee considered (as noted above) that there is a need to ensure that high conservation standards are adhered to in order to receive tax relief. However, it was also noted by the committee that there is no effective sanction under the Act that can be imposed on owners or occupiers, who are in receipt of a determination under S. 482, and who carry out unauthorised developments (or indeed authorised</p>	<p><b>Rec. 2.A</b></p>

<sup>16</sup> The committee was significantly assisted in this work by Dr Tracy Pickerill of Dublin Institute of Technology.

<sup>17</sup> The Failte Ireland website does not contain any information about the Tourism Operational Programme 1994-1999, under which the Great Gardens of Ireland Restoration Programme operated. Properties funded under the programme are members of the Houses, Castles and Gardens of Ireland organisation. The website ([www.hcgi.ie](http://www.hcgi.ie)) does not give statistics.

<p>developments) that adversely affect the character of the structure or garden concerned.</p> <p>The drafting of the legislation (S.482 (5)(c)) permits the Minister to make a determination that the building has ceased (in his or her opinion) to be a building which is intrinsically of significant, scientific, historical, architectural or aesthetic interest (or reasonable access ceases to be afforded to the public). However, there is no provision to withdraw a determination to a garden. In addition there is no provision to withdraw a determination on foot of works which adversely affect the character of a structure but do not intrinsically detract from it. It should be noted that no structure has, to date, been struck off the list. The absence of such a sanction is a significant inadequacy which should be rectified following research into the efficacy of the current provisions.</p>	
<p>The committee noted that applications for approval for gardens have been low in comparison with the number of gardens which could potentially satisfy the eligibility criteria. Many (but not all) of the approved gardens are historic designed landscapes intrinsically associated with protected structures. Some gardens may be located at a distance from the principal house, and therefore fall outside the curtilage, requiring either a separate listing or itemisation as a feature of the attendant grounds. No research has been done to establish the numbers of approved gardens (or structures within them) which are protected under Part IV.</p>	<p><b>Rec. 2.A</b></p>
<p>The committee considered that it should be simple and effective to develop web-based information links between the gardens protected under S. 482 of the Taxes Consolidation Act and the gardens and designed landscapes surveyed by the National Inventory of Architectural Heritage, in order to increase awareness of the availability of tax relief for owners of approved significant gardens and raise knowledge about gardens open to the public. Subject to complete of phase three of the survey and the fiscal research recommended in this report, it may be feasible to link NIAH evaluation of the importance of a garden / designed landscape with eligibility for tax relief in any revision of the S.482 provision.</p>	<p><b>Rec. 1.B</b></p>
<p>Inspections are carried out and recommendations made on behalf of the Department by architects and other professionals from the Office of Public Works, a practice dating back before the inception of the original Department of Arts, Culture and the Gaeltacht. The committee considered that inspections of buildings and gardens upon application for a determination should be a function of the Department and should be carried out by the National Inventory of Architectural Heritage (NIAH), which has developed a national overview in this specialist field. A trial period of D/AHG and OPW jointly carrying out inspections would be merited. It is also of note that the threshold for success in applying is not clearly set out, and (as with the protection of structures under Part IV) there appears to be greater emphasis on clearly visible architectural quality over the other criteria in the Act.</p>	<p><b>Rec. 1.B</b></p>
<p>The provision was amended (in 2008) to abolish a passive investor scheme. The committee considered that adequate safeguards could be introduced to allow the reintroduction of a carefully worded passive investor provision, to stimulate investment in the sustainable development of the built heritage. Such a provision would be especially useful for owners of structures who do not have a taxable income, to allow their structure to benefit from the scheme.</p>	<p><b>Rec. 2.A</b></p> <p><b>Rec. 2.B.2</b></p>
<p>It should be a requirement of obtaining a determination that the structure, if not already on the RPS, should be proposed for inclusion by the planning authority. It is reasonable to assume that owners or occupiers of structures seeking a determination under S. 482 (and the relevant planning authority) should be amenable to the structure being protected under the Planning and Development</p>	<p><b>Rec. 2.B.2</b></p>

Acts. <sup>18</sup>	
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### 3.2 *Building Control Act 2007*

The implications of requirements arising from the Building Control Act 2007, specifically Parts B (fire); L (conservation of fuel and energy); and M (access) were discussed. The committee noted that compliance with the Building Regulations, if not sensitively designed and carried out, can have significant impacts on the character and reuse potential of traditionally designed and constructed buildings.	
Structures of architectural heritage special interest (whether protected or not), and the historic building stock in general, are vulnerable to large-scale adverse change arising from the requirements of the Act and from straight adherence to, rather than sensitive alternative approaches to, the 'deemed to comply' solutions set out in the Technical Guidance Documents (TGD). <sup>19</sup>	Vol.2 5.1.3  2.4.2
Competency standards in architectural conservation practice are not sufficiently high across the country as yet, and inadequately designed responses to the requirements are commonplace. These can adversely affect not just the character of older buildings but also their performance and fitness for purpose.	<b>Rec. 1.C.1</b>
The committee noted that Part B (Fire) has been revised over years of practical application in a sophisticated way, with fire engineering solutions for historic buildings developed and accepted by fire officers that are not direct applications from the TGD. In addition, the most recent revision of Part M of the Building Regulations (2010) has introduced the concept of 'practicability', listing for existing buildings six situations where meeting the requirements of Part M might not be practicable. <sup>20</sup>	
The committee considered that research should be carried out into the practical experience in Ireland of appropriately and sensitively meeting structural, health and safety requirements in historic buildings, to develop examples of practicable situations, with a view to including a determination of practicability in future revisions of each TGD. Such research would also provide the foundation for guidance to professionals.	
The committee welcomed the recently published code of practice and complementary guidance on access to heritage sites, both of which should assist Local Authority Building Control and Access Officers in their work. <sup>21</sup>	
The committee noted that with regard to certification of compliance upon completion the current draft revised Building Control Regulations will put more emphasis than before onto the design and construction team. <sup>22</sup> This will put more pressure on designers not to deviate from the 'deemed to comply' solutions, especially where Part B is concerned. The committee considered that this is likely to have further consequences for the character of protected structures which are subject to works	2.4.2  Vol.2 5.1.3

<sup>18</sup> It is current Departmental practice that the Minister recommends such structures to the planning authority upon determining that the structure is of significance. This should be formalised.

<sup>19</sup> All of the TGDs contain a preamble that buildings of architectural or historical interest may need other approaches than those specified in the TGD. Protected structures are exempt from adherence to Part L.

<sup>20</sup> Technical Guidance Document M Access and Use; p.14. 0.7 Determination of practicability.

<sup>21</sup> *Code of Practice for Accessible Heritage Sites*. National Disability Authority, Dublin, 2011, Access: *Improving the Accessibility of Historic Buildings and Places*. Department of Arts, Heritage and the Gaeltacht Advice Series; Government of Ireland, 2011.

<sup>22</sup> The text was drafted prior to the Statutory Instrument (No.80 of 2013) being finalised. A new Part IIIC – Certificate of Compliance on Completion applies.

<p>regulated by all Parts, but especially B and M.</p> <p>The committee observed that conservation works by their nature can be less straightforward from design to completion than new build, require more professional consideration during the process and benefit from the interaction and problem-solving skills of skilled craftsmen and site managers. The committee is concerned that the dialogue and minor changes that take place during the construction phase of a conservation project between the contractor, specialists, designer and professional to resolve unexpected matters may be constrained arising from the strengthened obligations of the project professional. This is especially problematic in the large numbers of projects where professionals do not have experience in managing conservation works and may be less likely to deviate from the samples in the TGDs and less aware that future problems could arise as a result.</p>	
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**3.3 Local Government (Sanitary Services) Act 1964 (as amended) AND Derelict Sites Act 1990**

<p>The Local Government (Sanitary Services) Act 1964 (amended by S. 79 of the Planning and Development Act 2000, and the Derelict Sites Act 1990 provide for specified works to take place without further requirements for planning permission where matters of urgent public safety or dereliction are concerned.<sup>23</sup></p>	
<p>Section 79 of the Planning and Development Act 2000 puts the onus on the sanitary authority to use alternative powers (i.e. a notice under S. 59(1) or under S.11 of the Derelict Sites Act)<sup>24</sup> in respect of protected structures or proposed protected structures. The committee noted that the definition of ‘derelict’ in S.3 of the Derelict Sites Act has a very wide scope, and is open to subjective interpretation.<sup>25</sup></p> <p>The committee recommended that minor legislative amendments be made to the Derelict Sites Act. A local authority should be required to consider the protected status of a structure or area prior to entering a site onto the Derelict Sites Register, to enter the status of the structure or area into the particulars of the entry in the Register, refer to the designated status of a protected structure, proposed protected structure, or site within an ACA and to make notification of proposed works to the Minister in advance.</p> <p>Proposals to dispose of sites on the Derelict Sites Register, which are held by statutory authorities and which contain protected structures or are within ACAs, should also be referred to the Minister and measures such as those outlined in</p>	<p><b>Rec. A2.2</b></p> <p><b>Rec. 1.C.2</b></p>

<sup>23</sup> S. 11(6) of the Derelict Sites Act 1990 states, “The carrying out of any works, within the meaning of the Local Government (Planning and Development) Acts, 1963 to 1983, which are specified in a notice or in the notice as amended, as the case may be, under this section shall be exempted development for the purposes of those Acts”. The Local Government (Sanitary Services) Act 1964 does not contain any reference to the requirements or exemptions set out in the Local Government (Planning and Development) Act 1963. However, as works specified under S.3 of the 1964 Act are carried out by a local authority the assumption is that they come within the ambit of S. 4(1)(b), (c) and (d) of the Planning and Development Act 2000.

<sup>24</sup> The current inability of a planning authority to issue a notice under S.59 in respect of a proposed protected structure is noted in 2.2 XXV.

<sup>25</sup> A “*derelict site*” means any land (in this section referred to as “*the land in question*”) which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of (a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or (b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or (c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by statute or by common law.

Action 22 of the Government Policy on Architecture should be undertaken.	
<p>Since 2000, both Acts have been used to positively assist historic buildings that are endangered; however negative outcomes have also been noted. It is also the case that works designed with good intent under notices have nonetheless led to partial or total loss of buildings. Neither Act provides for recording of structures in the event that preservation is not feasible, in the manner of section 34 (4) (p) of the Planning and Development Act 2000.</p> <p>The committee found that no overall assessment of the impact of these two codes on the protection of the built heritage has taken place since the commencement of built heritage protection in 2000 and it recommended that such an assessment take place. Research and guidance are recommended initially, with the potential that more widespread legislative changes may be found necessary when the relevant issues are analysed.</p>	<p><b>Rec. 1.A.2</b></p> <p><b>Rec. A2.2</b></p>

### 3.4 National Asset Management Agency Act 2009

The National Asset Management Agency may have a charge over real estate as security for a bank loan (a bank asset). This includes a number of properties that are protected under Part IV, for which to date no figures are available. <sup>26</sup>	
<p>The Nama Act citation requires the agency to 'protect, enhance and better realise the value of assets transferred to it'. One of the purposes of the Act (S.2) is to 'contribute to the social and economic development of the State'.</p> <p>There committee noted that it is not public knowledge if Nama has procured expertise in architectural heritage protection and management, to enable the agency to deal with structures that are legally protected in a manner that reflects the obligations put on all owners and occupiers of protected structures. At a minimum, the committee considered that recognition of the legal status of a site, and any constraints this may reasonably make on the maximisation of economic returns, should be recognised by NAMA in undertaking its work.</p>	
<p>Many protected structures which are a security against bank debts are historic estates with houses and ancillary structures set in designed landscapes. Some are vacant, unmaintained and unsupervised, and protection against damage or theft may depend on the retention of security personnel.</p> <p>The committee noted that it may be ineffective for a planning authority to initiate endangerment action against an owner who has no resources or who has left the jurisdiction. The committee heard that some architectural conservation officers have expressed concerns to Nama about endangerment of specific protected structures. However, there is no remedy until Nama takes possession of a site and is legally conferred with the obligations of ownership.</p>	App.2
<p>Nama asserts that it bears no responsibility for physical property which is a bank asset, unless and until it takes enforcement action and appoints an insolvency practitioner for the purposes of selling the asset. Until this point the debtor remains the owner of the property.</p> <p>S. 141 of the 2009 Act gives Nama the power to effect a 'maintenance and entry'</p>	<p><b>Rec. 1.C.3</b></p> <p>Vol.2 2.3.3</p> <p>App.2</p>

<sup>26</sup> The Nama website lists properties which have been subject to enforcement under the Nama Act 2009, however the database does not note any particular status under the 'additional asset description' field.

<p>order to an acquired bank asset. Subsections (4) and (6) of this section suggest that an order can be effected prior to taking legal control of the asset.<sup>27</sup> This appears to suggest that the agency may enter upon the land without acquiring the usual obligations associated with legal possession. The committee recommended that clarity is brought to bear on this question, to know at what stage the obligations apply as to endangerment, as set out in S.58 of the Planning and Development Act. Where Nama does undertake works under S. 141 of the 2009 Nama Act they should comply with good conservation practice.</p> <p>S. 29a of the Planning and Development Amendment Act 2010<sup>28</sup> allows Nama an additional two years during which an extension of duration application may be made (S.42A (7)) for an existing planning permission. In consequence there are implications for timely repairing and returning to use protected structures for which such an application is granted.</p>	
<p>The committee concluded that specific guidance is required for ensuring best practice in management (including securing, mothballing and carrying out urgent works), development and disposal of sites containing protected structures, or within ACAs, that are now assets held by banks or Nama. It should be produced by the Department in conjunction with Nama and the Department of the Environment, Community and Local Government (as the parent department for local government).</p>	<p><b>Rec. 1.C.3</b></p>

### **3.5 Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act, 1999**

<p>The committee examined the operation of the National Inventory of Architectural Heritage (NIAH)<sup>29</sup>, which was put on a statutory basis by the Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act, 1999. This Act was intended to complement the provisions of the Local Government (Planning and Development) Act, 1999, as was set out in the policy report <i>Strengthening the Protection of the Architectural Heritage</i> (1996).</p>	
<p>The committee noted some differences between the Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act 1999 and Part IV of the Planning and Development Acts 2000-2012, arising mainly from the different purposes of each Act.<sup>30</sup> These differences do not impede the transfer of inventory information to the RPS via Ministerial Recommendations.</p>	
<p>The committee identified a need for the work of the NIAH to more effectively aid the protection of the built heritage at local authority level, by expanding the types of information it collates on each site.</p> <p>Essentially, the documentation handed to local authorities does not include all detail that is necessary for the recommended structures to be formally proposed for</p>	<p><b>Rec. 1.B</b></p>

<sup>27</sup> S. 141 (4): NAMA shall give each owner and, where the relevant land is occupied, each occupier of the relevant land at least 24 hours' notice of its intention to enter on the land or any building or structure on it under the authority of an entry and maintenance order.

S. 141 (6): If NAMA enters on land or a building or structure under the authority of an entry and maintenance order, NAMA shall not be taken to be a mortgagee in possession of the land or any building or structure on it.

<sup>28</sup> Schedule 3 Part 8 of the NAMA Act 2009, now incorporated as S. 42A of the Planning and Development Act.

<sup>29</sup> The NIAH is a unit within the Department of Arts, Heritage and the Gaeltacht. It operates the website [www.buildingsofireland.ie](http://www.buildingsofireland.ie).

<sup>30</sup> This Act interprets 'architectural heritage' which is not interpreted in the 2000 Act, and in that interpretation notes the inclusion of 'fixtures and fittings', whereas in the 2000 Act the term is 'fixtures and features' (as it is in the Local Government (Planning and Development) Act, 1999).

<p>inclusion in the RPS. Identification of the owner and occupier of a structure, and the grouping of records of ancillary structures associated with a primary structure, are not matters ascertained by the NIAH surveys. The NIAH contends, logically, that it could not safely provide this information because of the absence of interaction by its survey teams with owners.</p> <p>The committee accepted that owner identification and recommendations as to the potential spatial extent of the land covered by each record could only be made within a two-way process. However, it is not satisfied that the requirement to do so should continue to be solely a matter for the planning authority as the resulting information gap is a significant impediment to quickly initiating protection, and requires the local authority to allocate scarce resources to the task.</p>	
<p>The committee considered that there is potential for the NIAH to supply additional forward planning services to local and state authorities. The legislation does not contain a provision allowing it to identify, record or recommend areas suitable to be designated as ACAs. The committee considered that it would be beneficial to allow the Minister for Arts, Heritage and the Gaeltacht to do so, in line with international support for area-based protection and the need to develop heritage-centred urban regeneration policies based upon knowledge of the constraints of such areas.</p> <p>The NIAH Historic Gardens and Designed Landscapes survey (which at present is an end in itself) should be developed as a landscape planning tool.<sup>31</sup> Other thematic surveys could assist local authorities to identify particular typologies in their functional area with the benefit of the national overview possessed by the NIAH.<sup>32</sup></p>	<p>2.2.32</p> <p><b>Rec. 1.B</b></p> <p><b>Rec. A1.19</b></p>
<p>In the public mind the concept of ‘list one’ or ‘list two’ endures from the old system (and UK legislation). The NIAH allots a grade to each record arising from an inspection of the exterior of the structure (and occasionally access to the interior). The ascribed grades have no legal standing, however they contribute the widespread belief that there is a difference in the protection offered to a structure depending on its grade. It is also the case that structures may well possess characteristics not evident to the NIAH surveyor, such that the structure’s overall heritage importance is not accurately represented by the allocated grade (for example where mediaeval buildings have been retained and subsumed by subsequent enlargement or remodelling).</p> <p>A majority of the committee concluded that attaching a grade to a structure is of little or no consequence as the main outcome of the NIAH survey process is to determine whether or not the structure will be recommended by the Minister for inclusion in the RPS.</p>	<p>2.2.2</p> <p>Vol.2 5.7.1</p>
<p>The committee noted that the NIAH interim county surveys are stated to be ‘representative’ in nature, a selection of the post-1700 AD (in most cases) architectural heritage of each county. In most of the early county surveys significant numbers of structures known to be of architectural heritage merit – including those which pre-date 1700 AD – were not included, due to a concentration on selecting post-1700 AD structures which had been previously noted in publications. Within the local authority system and in the public mind there is a standing associated with inclusion in an NIAH survey. This disadvantages structures of architectural heritage merit that for one or other reason have not been included in an interim survey.</p> <p>The committee recommended that as resources permit, the NIAH should revisit the</p>	<p><b>Rec. 1.B</b></p>

<sup>31</sup> This survey has been carried out countrywide to phase two, and to phase three for two counties, Donegal and Louth. See [www.buildingsofireland.ie](http://www.buildingsofireland.ie)

<sup>32</sup> The NIAH previously undertook a thematic survey of courthouses and Jewish built heritage.

interim county surveys to make each inventory a more comprehensive study, and in so doing to enhance the level of detail provided with each record.	
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### 3.6 National Monuments Acts 1930-2004

Members of the committee discussed salient provisions of the National Monuments legislation with representatives of the National Monuments Service of the Department of Arts, Heritage and the Gaeltacht, and were informed that legislation is proposed to replace the National Monuments Acts. <sup>33</sup> This will deal with matters of interest to the committee relating to the identification, protection and management of architectural heritage, such as inventory, historic landscape protection and Section 260 of the Planning and Development Act (the 'saver' for National Monuments). <sup>34</sup>	Vol.2 5.7
<p>The committee noted that both planning and monument codes have separate aims, principles, policies and owner obligations. A significant number of structures are protected under both codes. It was agreed that identification and protection under two codes is beneficial in principle, to avoid gaps in protection.</p> <p>However, the committee was aware that as things stand the two codes and two sets of requirements arising can be conflated in the public mind, and that where works are planned an additional engagement may be necessary by the owners and occupiers over and above what they expected would be required. This can arise in situations where both archaeologists and conservation professionals are required to be retained connected with works or development (for example by the Department of Arts, Heritage and the Gaeltacht, a planning authority or a grant-funding body).</p>	Vol.2 5.7.3
<p>Owners of protected structures are under obligation to protect them from endangerment (S.58). Many ruins are protected under both codes and were ruined prior to being added to the Record of Protected Structures. It is a characteristic of ruins that they are deteriorating from their completed state and that they are not in current use, and most likely are not maintained. This characteristic presents specific challenges to local authority endangerment practice that require guidance.<sup>35</sup></p> <p>Therefore the committee considered that the statutory <i>Architectural Heritage Protection Guidelines for Planning Authorities</i> (reissued in 2011) should expand on aspects such as this of dual protection, to complement the Department's Advice booklet <i>Ruins: the conservation and repair of masonry ruins</i> (Government of Ireland, 2010).</p>	App.2

<sup>33</sup> The general scheme of the draft Monuments Bill was approved by the Government in 2010 and is presently with the Office of the Parliamentary Counsel.

<sup>34</sup> In light of the greater protection available since 2000 under the Planning Acts a review of policy in the National Monuments Section, on inclusion of monuments within the Record of Monuments and Places, has been announced to determine how, and under which legislation, certain structures should be protected. Department of Arts, Heritage and the Gaeltacht press release of 21.9.11, on [www.ahg.gov.ie](http://www.ahg.gov.ie).

<sup>35</sup> It is relevant that section 5 of the Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act, 1999, requires a sanitary authority to inform the Minister (for Arts, Heritage and the Gaeltacht) where it has served, or proposes to serve a notice under section 3 (1) of the Local Government (Sanitary Services) Act, 1964 in respect of a registered monument. The proposed Monuments Bill would repeal this provision as part of its comprehensive revision of protection of monuments.

## 4. PUBLIC AWARENESS / CONFIDENCE BUILDING ISSUES

### 4.1 *Awareness raising*

Committee members related that it is a matter of concern to some owners is that they become aware after the fact that their structure is protected or is within an ACA. The committee has noted that while research on title is a conveyancing requirement, it may not always be thorough. An easily understood public information leaflet (a revised and expanded version of the leaflet issued by the Department of the Environment and Local Government in 2003) would be useful to owners and occupiers to demystify the concept of protection.

### 4.2 *Insurance issues*

The committee noted that owners and occupiers of protected structures, structures in architectural conservation areas and certain categories of building such as those with thatched roofs, have been experiencing difficulty in obtaining or renewing household insurance at a competitive premium, or at all. The number of insurance providers has reduced as underwriters have become stricter in acceptance of structures deemed to be “non standard” by the insurance sector. The committee considered that the issue of insurance is a significant one, as any extra burden on owners and occupiers erodes goodwill towards the implementation of the legislation. Committee members and their stakeholder organisations have reported instances of owners seeking to be delisted and council members refusing to add structures due to insurance difficulties (whether real or perceived).

The committee noted that in Britain listed building and thatch owner lobbies have been established, which (amongst other benefits) offer insurance through specialist brokers. Research into the potential for such group schemes here is recommended. The committee suggested that owners who seek specialist insurance cover are more likely to care for the structure and to value its characteristics. Similarly, such owners would be potential customers of maintenance watch schemes, especially if such schemes were linked to reduced insurance premiums or specialised insurance products.

### 4.3 *Maintenance schemes*

The committee examined some Irish and continental material on maintenance watch schemes. These initiatives are a means for owners to purchase expertise in historic building repair at affordable rates. The work involves carrying out seasonal tasks and minor repairs in order to prevent the build-up of larger problems. Not only does such a practice give comfort to owners, but membership of a maintenance watch scheme can in some countries be linked to tax relief (as is the case in Denmark) or perhaps to a group insurance scheme.

The committee considered that the subvention of proactive and systematic maintenance would complement the conservation grant system and especially the structures at risk scheme as the latter rewards those who do not routinely take care of their structures. A pilot scheme (for structures in the ownership of local authorities) is an Action of the Government Policy on Architecture. Accordingly the committee has made a recommendation on this subject.

### 4.4 *Trusts, registers and innovative uses*

Buildings Preservation Trusts, and 'Buildings At Risk' or 'Wasting Assets' registers are common in the UK. These and other measures help to prevent endangerment and maintain the economic value of historic buildings until permanent repairs and occupation can be achieved. Temporary 'pop-up' shops and creative leasing arrangements are new options for retail outlets as are live-in guardian uses for other buildings. The committee discussed the potential for establishing initiatives such as these, to assist in demonstrating to owners the potential for realistic commercial returns from their properties using an integrated approach to assisting the endangered built heritage. The newly established Historic Towns Initiative was welcomed by the committee as a vehicle for discussing and addressing such matters.



## PART 5

# DISCUSSION ON RELEVANT PROVISIONS AND CONCEPTS

The committee discussed many issues that for reasons of brevity could not be accommodated within the main body of the report.

### **5.1 Skills development – public and private sector**

#### *5.1.1 Architectural conservation officer post*

The architectural conservation officer post was introduced at local authority level in 1999, starting in several local authorities on a pilot basis. The roles and duties of the post were set out in 1999.<sup>36</sup> The scheme was supported financially by the Department until 2011.<sup>37</sup> As of the time of writing there are 26 conservation personnel, employed in 21 city and county councils. Several of these positions are currently vacant due to maternity leave. Of the permanent posts two are joint housing architect / architectural conservation officer posts and one joint planning officer / architectural conservation officer post). Twelve county and two city councils do not have an architectural conservation officer, of which nine have never employed an architectural conservation officer.

Apart from the statutory functions of forward planning and development management, declarations and grant administration, the architectural conservation officer is able to provide important services to the authority and the public:

- The architectural conservation officer is the ‘face’ of the authority in dealing with phone and written queries from the public, state agencies, NGOs, and others, as well as meeting owners, agents and contractors on site in relation to the operation of Part IV of the Planning and Development Act 2000, specific works or projects, and negotiating the best outcomes for the built heritage;
- In-house architectural conservation expertise is available to all departments and sections of the local authority on projects or policy documents that may impact on the built heritage; the officer works in interdisciplinary teams on conservation plans and maintenance programmes; local area plans; infrastructure schemes; traffic management schemes and urban design strategies;
- The architectural conservation officer keeps up to date with national and European legislation, regulation and programmes affecting architectural conservation theory or practice; offers advice to the authority about new theoretical or regulatory developments and requirements, and provides expertise to grant funded projects;
- The architectural conservation officer raises awareness within the local authority and amongst the public – including owners and occupiers – of the multi-faceted benefits of maintaining the built heritage (such as economics, environmental sustainability, tourism, specialist building skills); seeks to match potential sources of funding with locally-generated projects and organises educational and training seminars to the general

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<sup>36</sup> The roles and duties of the architectural conservation officer post are outlined in Circular PD5/99 issued in 1999 by the Department of the Environment and Local Government.

<sup>37</sup> Through an annual fund of €300,000 for salary stipend. In respect of heritage officers, there is a subvention of the salary on a sliding scale.

public and local practitioners in relation to the built heritage, best conservation practice and appropriate repairs.

The officers' representative network, the Association of Architectural Conservation Officers, has sought to have a national role profile developed. The circular (PD5/99) is also out of date and should be revised. In order that competencies are standardised for future internal and external candidates, national qualifications for the post should be declared. The committee has made recommendations on these issues.

Where an architectural conservation officer is not in place, a planning authority delegates another member of staff to undertake some duties (for example, administration of the grant scheme) and may contract out other duties (for example, preparation of S.57 declarations). This could mean that tasks are assigned to staff who do not have the training to distinguish good conservation practice, while by employing contractors or consultants to carry out work the knowledge gained does not transfer to the local authority. There is also the question of whether it is cost effective to employ consultants for specific work, especially when such tasks are ongoing duties of the local authority. A full time employee is in a position to contribute to the preparation of a range of measures, schemes and plans in addition to their main duties.

A formal career structure has not been developed which incorporates architectural conservation officers in a consistent manner nationally. In most local authorities there is just one architectural conservation officer post and therefore no opportunity for promotion within the post. The absence of a promotional structure was identified by the committee as an impediment to morale of existing architectural conservation officers. It also discourages voluntary redeployment into the post from the existing staff complement, as qualified and experienced staff may be unwilling to lose opportunities for advancement.

The position within the local authority system of the architectural conservation officer is not consistent countrywide. In many authorities the post is situated within the planning section, however in a few it sits within the architects' section.

Both architectural conservation officer and heritage officer posts have brought many tangible benefits to built heritage protection. Seventeen county and city councils have both posts and some have set up an integrated heritage unit. However, a widespread lack of clarity as to the distinct roles of each officer has also led to unrealistic perceptions within some local authorities that one officer should be sufficient carry out the whole range of duties and responsibilities pertaining to all natural and cultural heritage.

### *5.1.2 Local authority historic built environment management*

The committee noted that local authority staff require competency in areas such as diagnosis, design, procurement, specification and project management in respect of the historic built environment generally and in local authority own works including physical infrastructure. In addition, specific competencies are also required on the part of those who are involved in the management of the historic building stock, whether protected or not, at local authority level and in state bodies as well as central government. The development of skills in a holistic and multi-disciplinary fashion will support decision making in the public and private sectors, and thereby improve the quality of the historic built environment.

Those involved in the chain of actions necessary to protect, manage or plan for historic buildings should all be able to take sustainable, conservation-orientated, decisions or to consult appropriate guidance where necessary. One valuable outcome of an integrated approach to historic built environment management is to reduce uncertainty and expense on the part of building owners at all stages of the various processes involved in owning or carrying out works to a protected structure.

### 5.1.3 Other public and private sector skills

The committee noted that research is required as to the exact state of conservation education and training in Ireland and the skills base available directly or through public procurement for local government services.<sup>38</sup> There are few National Framework of Qualifications<sup>39</sup> accredited courses which provide entrant level or advanced training in conservation (for crafts or professions). At present an irregular and sparse supply of ad hoc courses is on offer. The committee considered that training could potentially be organised on a regional basis (perhaps by regional authorities) to accommodate clusters of local authorities and public body staff. As well as classroom studies, training should include discussion of examples of best practice, engage the trainees in dialogue and foster ongoing learning and peer-to-peer mentoring (using and expanding on the skills that all participants in such training environments already possess in their individual areas of expertise). When accredited training provision has become established, there will be a potential to link grant funding for conservation projects and public procurement of conservation works to professional or contractor conservation certification, which would be an important step towards raising the standard of conservation practice by the State. At present a tendering organisation may be blind to the skills of those who price fairly for expert conservation work, while favouring those who undercut in price but may be unable to deliver best practice.

The corollary of training provision is the development of a market for conservation skills. A public which is informed of the long-term as well as short-term benefits of repairing, maintaining or appropriately adapting traditionally-constructed buildings has the tools with which to make sustainable decisions and challenge poor practice. The committee therefore expressed support for the promotion of informal learning and other programmes and events that create a market for informed decision-making on the part of potential clients and customers of conservation services.

## 5.2 State management of built heritage

The State, in the guise of departments, agencies and authorities, owns and occupies some of the most architecturally important buildings and areas in the country. Most, but not all such structures are protected under Part IV. An unknown number of structures owned or occupied by state organisations are situated within ACAs.

Most by far of these structures are working buildings occupied by State tenants and are managed by the Office of Public Works (OPW), which is responsible for the largest portfolio of properties in the State and has a large complement of professional and technical staff. Within this organisation models of good multi-disciplinary conservation practice exist. Resources permitting, the ongoing development of preventive maintenance procedures is an integral part of the operation. However, depending on circumstances, the conservation requirements of these buildings may or may not be appropriately considered when developments are proposed to be undertaken by the OPW or project-managed by OPW for other state authorities (such as the Courts Service).

In addition, the OPW and most other state departments, local and public authorities and agencies with property portfolios do not have standardised in-house practice guides or standard operating procedures for protected structures. Some other organisations employ their own design or maintenance staff. Many local authorities do not have an architects' department and

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<sup>38</sup> Relevant literature includes ICOMOS Ireland *Sustaining our Built Environment* 2009; UK National Heritage Training Group report on Ireland *Traditional Building Craft Skills – assessing the need, meeting the challenge* (2009).

<sup>39</sup> The National Framework of Qualifications is to be managed by the new Qualifications and Quality Assurance Authority of Ireland, established in 2012.

of those that do a minority of staff (and in a few instances the practice itself) is accredited in conservation by the Royal Institute of the Architects of Ireland.

The State has not published technical research on conservation derived from the expertise built up over decades within state organisations (principally the OPW) as a resource for both public and private practitioners and educators. The committee also noted uneven levels of awareness within State organisations of the potential adverse impact of general maintenance / repair / replacement policies devised for modern structures on the special character and long-term performance of a historic structure. The Department of Arts, Heritage and the Gaeltacht has produced guidance in its Advice Series and guidance on maintenance has been produced by a few State organisations.<sup>40</sup> Few State organisations are aware of, or have used, conservation management plans as a property management tool. The committee noted that the implementation of Actions 1, 2 and 19 of the Government Policy on Architecture would greatly assist the spread of knowledge on technical matters throughout the system of public administration.

Established functions, strategies or policies within State organisations compete with the relatively new restrictions imposed by the Part IV of the Planning and Development Act. Some committee members reported reluctance on the part of some State organisations to fully engage with the spirit of Part IV in instances where it is considered that the protected status of a structure hinders the organisation in carrying out its statutory duties or has management or budgetary implications. This can lead to an absence of conservation involvement from the inception of the project and defensive responses to enquiries rather than early and constructive engagement with local authorities (or the Department of Arts, Heritage and the Gaeltacht).

Implicit in Part XI of the Planning and Development Act 2000 (freedom from ordinary development management channels for certain local authority and state authority development proposals) is a corresponding obligation on the part of these authorities to design and specify works which accord with all relevant state policies, including those relating to architectural conservation. However, the committee noted that state authorities and statutory undertakers in particular are not always apprised of their obligations under Part XI, that interaction between planning authorities, state authorities and statutory undertakers is often reactive and that projects are sometimes poorly designed or inappropriately specified. Further, referrals of proposals to the prescribed authorities are not made in a consistent way, with some State authorities using their own judgement as to what should be referred. Types of development which are especially likely not to be referred are those that do not have a direct physical impact on historic fabric, such as those within a curtilage or in non-protected sites within ACAs.

### ***5.3 Historic area management and heritage-centred urban regeneration***

This report recommends research into the use and effectiveness of the Area of Special Planning Control facility, to make recommendations on changes, if any, that would allow it to become a master planning and regeneration tool for historic urban areas to adapt European precedents on heritage-centred regeneration.<sup>41</sup> To do so it would need to facilitate multi-faceted, sustainable management of historic urban areas, in a way that takes account of their complexity, diversity and dynamism.

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<sup>40</sup> The National Roads Authority has developed expertise in masonry arch bridge survey, maintenance and repair and the Department of Education and Science has published guidance on school building maintenance.

<sup>41</sup> For example: HerO [Heritage as Opportunity], an Urbact II project funded by the European Regional Development Fund, see [www.urbact.eu/hero](http://www.urbact.eu/hero); INHERIT: Investing in Heritage – A Guide to Successful Urban Regeneration, part-funded by INTERREG IIIC.

Internationally the trend is evident (supported by the Council of Europe, the EU and UNESCO) towards conservation, management and planning of areas and landscapes to support sustainable development. Management of World Heritage Sites and candidate World Heritage Sites requires a similar approach, with the addition of international requirements to maintain the outstanding universal value for which the site was designated. The provision for making a landscape conservation area (Part XIII), which has not been successfully used to date, was considered by the committee to be a potential vehicle for formalising management of such areas. Alternatively, a revised ASPC provision could provide a statutory basis for managing World Heritage Sites (and areas on the tentative WHS list) and could be especially useful as a basis to which regeneration master plans could adhere.

The Town Renewal Scheme 1999 / Town Renewal Act 2000, which expired in 2006, European Regional Development Fund assisted projects such as the Cork Urban Pilot Project, relevant INTERREG and PEACE II schemes; the 'Urban and Village Renewal' programme 2000-2006 and the Living Over The Shop scheme administered by the Department of the Environment and Local Government should also be re-evaluated with the potential for recasting as heritage-led urban regeneration tools.<sup>42</sup>

It may also be beneficial to change the name "Area of Special Planning Control" to be a more appropriate name for a mechanism for celebrating a special place and accommodating change within it. There is a similar perception on the part of the public (expressed by committee members) that the term Architectural Conservation Area implies a preference for stasis and discourages change within such areas.

## **5.4 Curtilage**

Definition of the term curtilage has been problematical internationally in respect of architectural heritage protection.<sup>43</sup> Recently an Irish interpretation has been defined in respect of dwellings, in the Criminal Law (Defence and the Dwelling) Act 2011.<sup>44</sup> Opinions within the committee were mixed on the potential benefit both of this wording and on the principle of interpreting it in relation to built heritage, where multiple typologies occur. An alternative interpretation was discussed by the committee, to wit the curtilage is the land where exemptions from development control do not apply; however this does not give an indication of what could be its reasonable spatial extent. The 2011 legal interpretation, if it can be considered relevant in a legal sense, suggests that it would not be possible to delineate a curtilage on land not under the control of the owner / occupant of the protected structure.

It is axiomatic that the full extent of statutory protection cannot be known if the curtilage is not delineated, as the curtilage is legally an integral part of the protected structure. Curtilage in respect of a listed building was not an issue prior to 2000 and it was not made a requirement of the 2000 Act that curtilage is identified and described on the RPS. Therefore, local authorities have both inherited the old lists and added further records since, including additions on the basis of Ministerial Recommendations from the NIAH surveys, without delineating curtilage. This gives rise to the unsatisfactory situation in most cases that the curtilage of a protected structure is unmarked and unclear.

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<sup>42</sup> A study was carried out by KPMG / Murray O'Laoire / Northern Ireland Economic Research Centre on the Urban Renewal Schemes 1986-1995, by the Department of the Environment and Local Government in 1996.

<sup>43</sup> Unpublished report for the Heritage Council by Mona O'Rourke BL.

<sup>44</sup> In this Act "curtilage", in relation to a dwelling, means an area immediately surrounding or adjacent to the dwelling which is used in conjunction with the dwelling, other than any part of that area that is a public place.

The committee concluded that ideally curtilage should be established in respect of structures prior to proposing them for the record as this has the benefit of clarity as to the intent of what to protect, the possibility of public participation in the process and the stamp of affirmation by the elected members of the council. Given the implications for owners and local authorities of identifying curtilage, the committee considered it incumbent on each local authority to work out a strategy and timeframe for delineating curtilage for existing protected structures.

Local authority practice in delineating curtilages is diverse. Both insufficiently small and excessively large curtilages have been attributed to protected structures (as observed by committee members). The committee noted also that certain typologies are not capable of having a curtilage, or typically consist of groups of structures, none of which is demonstrably primary or ancillary. Many parts of structures, such as facades, are protected, but could not reasonably be said to have a curtilage. For such types of structures, an assessment of effects on their character must include reference to their setting.

The committee considered that guidance would be beneficial on the extent to which boundary walls of the curtilage of a protected structure are themselves protected. This would assist to clarify when or if adjoining owners must be notified of the status of a boundary structure.

## 5.5 Setting

The committee debated whether setting should be made a material consideration in sustainable planning and development, to more fully protect the built heritage. So doing would formalise current development management practice and would accord with international practice and Irish case law which gives weight to the spatial context in which development takes place.<sup>45</sup> Not all members agreed, however, that setting should be interpreted or that objectives on setting should be required in a development plan (over and above the purposes for which objectives may be indicated that are itemised in the First Schedule) and therefore no recommendation was made on this issue.

The committee found that for the purpose of forward planning and development management, the consideration of setting is at least as important as consideration of curtilage, as effects on the character of a protected structure may, and often do, arise from a proposed development sited outside the curtilage. Indeed, the nature and scale of some development proposals may affect the character of several protected structures which are not contiguous or adjacent, or of an ACA, despite being situated at a distance from them. The committee noted that other jurisdictions have developed objective criteria for such assessments and considered that the EIA methodology provides a useful precedent. Guidance to do with impacts on setting would also assist local authorities to identify the logical limits of curtilage with greater clarity and would assist to clear up widespread confusion about both concepts.

The case put forward for interpreting 'setting' in the legislation is that it would support and allow for more effective explanation of, and guidance on, setting, a term that is in relatively common use in development management. However the contrary argument is that the application is

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<sup>45</sup> The ECJ [C-392/96, *Commission v Ireland*, 1999, paragraph 66] judged that in certain cases a small-scale project can have significant effects on the environment if it is in a location of particular environmental sensitivity. It is accepted also that a project may have significant effects even if sited at a distance from the area affected. Arising from this judgement certain sub-threshold developments require an EIA if they are likely to have a significant effect on the environment, including landscapes of historical, cultural or archaeological significance (see *Environmental Impact Assessment Guidance for Consent Authorities regarding Sub-threshold Development*, D/EHLG, 2003).

The Supreme Court [1985 no.118/133; *Irish Law Report Monthly* 1989, 768-777, quotation from p.775] noted in respect of the Carrowmore Co Sligo passage grave cemetery, "If a particular area be identified as an area for conservation for any amenity reason, one does not then legitimately permit development to the very boundary of the area; either the area must itself be prescribed as extending to a sufficient circumference as will allow for a fallow area in between, or must envisage that such fallow area shall adequately extend outside the immediate area of the amenity."

dependent on the circumstances of every case, both in respect of the protected structure (or area) and the change proposed to its setting. Therefore rather than be prescriptive at this time it may be more useful to educate users of the planning system through publication of guidance on consideration of setting and the nuances of indirect impacts on the built heritage.

The committee found consideration of impacts on setting to be particularly important where protected structures are not capable of having a curtilage or where a complex is spread over a wide area. In some instances there may be no basis on which to designate an ACA, which could contain objectives that relate to setting within the area. Indeed, the committee was also cognisant that an ACA may itself have a setting which contributes to its character and noted the importance of phrasing ACA objectives to allow for consideration of impacts on the setting of an ACA.

## **5.6 Maintenance**

Maintenance is essential in managing all structures. Although vital to retaining the value, and indeed character, of a structure, regular maintenance has little traction in Ireland, where wholesale replacement of dilapidated or decayed elements is generally seen as more attractive – although more expensive – than ‘a stitch in time’.

The prevention of endangerment is a stated obligation in respect of the owner/occupier of a protected structure (S.58). However, endangerment suggests that structures have deteriorated to a state where their future is at risk. Best conservation practice on the other hand requires active stewardship or husbandry in order to actively manage and protect the value of the asset. A culture of maintenance should be supported to improve and maintain our historic building stock in good repair. Not only does it contribute greatly to sustainable management of this non-renewable resource but it improves the appearance and attractiveness of the historic built environment as a place in which to live, work and invest.

In the early 2000s the Heritage Council studied the Dutch Monumentenwacht maintenance scheme, which encourages private owners to sign up to a preventative maintenance service, giving them expert advice and contractors as needed for less expense than would otherwise cost for individual projects. The Heritage Council commissioned material in 2002 which was prepared in order to carry out a cross-border initiative (which was to have sought funding from Interreg) along this model. However, the scheme was not piloted and more up-to-date research is necessary. The Danish maintenance model (run by the Danish Association of Owners of Historic Houses) is also worth assessing for applicability.

For any such scheme to be successful, it has to have advantages for owners. The potential for a maintenance scheme to tie into lower insurance premiums was a factor in the proposed Heritage Council model. The committee considered that it should be possible to devise a means of signing up to a maintenance scheme as part of an owners’ representative group, with the aim of introducing a group insurance scheme to obtain more competitive rates for owners who demonstrate careful stewardship of their asset (by virtue of their involvement in the maintenance scheme).

It is possibly the case that the low level of activity in repair, maintenance and improvement of the historic building stock (statistics have been extrapolated in the Heritage Council’s Ecorys report of 2012) may be due as much to a low priority afforded to maintenance in Ireland as it is of lack of finance to carry it out. Appropriately targeting assistance at this portion of the construction market would incentivise a sustainable market, increase skills levels in conservation contracting and at the same time result in visible benefits and regeneration at the local level, contributing to quality of life indicators and tourism.<sup>46</sup>

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<sup>46</sup> There are potential linkages with the Halland Model initiative; see 2.4.4 and Recommendation 2.C.

Action 17 of the Government Policy on Architecture 2009-2015 recommends a pilot maintenance scheme for buildings in public ownership, which if successful would be developed for older buildings in private ownership. It relates also to Action 22 on local and public authorities (22 iii). The committee has recommended that this Action be prioritised.

## **5.7 Architectural heritage and archaeological inventories: identification of structures prior to protection**

### **5.7.1 National Inventory of Architectural Heritage practice**

The National Inventory of Architectural Heritage (NIAH) is a unit within the Department of Arts, Heritage and the Gaeltacht. It carries out county and city architectural heritage surveys, which record a representative sample of the built heritage (generally post-dating 1700 AD). It does not claim to include all structures potentially of special interest. The individual records, in the main, do not describe interiors, suggest curtilage or attendant grounds, or note the historical associations (ownership, use) between groups of structures. The legislation does allow the NIAH to gain access to property, however the provision in the law to obtain a court order to do so has not been used to date. The survey does not research the identity of property owners or occupiers. This approach was taken to allow the inventory to proceed at a relatively fast rate.

The NIAH does not generally record groups of structures or seek to identify areas in its buildings surveys that have the characteristics to become architectural conservation areas. It is also carrying out a survey of historic gardens and designed landscapes, many of which are – or were – intrinsic elements of the design of large rural houses and villas.<sup>47</sup>

Although the Planning and Development Act does not differentiate between grades of protection, the NIAH does grade its records as of local, regional, national or international interest. Ministerial Recommendations for inclusion in the RPS are made in respect of structures considered of regional and greater interest. At present some structures considered to be of 'local' interest are recorded, however the inventory concentrates on assessing structures which are likely to be of regional or greater special interest. All of the records are handed to each local authority which may designate 'local' structures or not. The committee considered that the grading system used by the NIAH can lead to confusion amongst owners, practitioners and local authorities as to the status, and spatial extent of protection, of particular structures.

### **5.7.2 Archaeological Survey of Ireland practice**

The Archaeological Survey of Ireland (ASI), a unit within the National Monuments Service of the DAHG, records the known detail of all monuments and places pre-dating 1700 AD that have been brought to its attention, and also includes a selection of monuments from the post 1700 AD period. Following the survey process most are protected under National Monuments legislation.<sup>48</sup>

### **5.7.3 Issues arising from NIAH and ASI overlap**

Each code protects structures and areas inter alia of architectural, historical and archaeological interest under distinct aims and using different provisions. Therefore many of the monuments that are structures recorded by the ASI contain one or more of the special interest categories

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<sup>47</sup> The survey has been carried out countrywide to phase two (examination of map records and aerial photography), and to phase three (final phase, with more detailed inventory and site assessment) for two counties, Donegal and Louth. [www.buildingsofireland.ie](http://www.buildingsofireland.ie)

<sup>48</sup> The National Monuments Amendment Act 1994 established the Record of Monuments and Places. See [www.archaeology.ie](http://www.archaeology.ie) for more detail on the types of monument protected under the National Monuments Acts 1930-2004 and the types of protection afforded them.

listed in Part IV. The committee was informed that recent GIS developments have allowed identification of overlap and potential gaps in coverage between the ASI and NIAH.

Given that some structures are already protected under both codes (or could in future be) the criteria used by both ASI and NIAH should be distinct and clear to each unit and to the public. For example, where a structure is stated to be a national monument or is the subject of a preservation order<sup>49</sup>, it was discussed whether or not for the purpose of consistency it should be accorded a national rating by the NIAH, as it has been stated to be of national importance by the Minister (under categories of interest that are included in both Acts).

In many cases it is clear that protection is warranted under both codes. However, misunderstanding of the distinct purposes of the National Monuments Acts and the Planning and Development Acts has led to gaps in effectively protecting some structures. A recorded monument is protected in two main ways, neither of which requires that *all* works that materially affect its character require permission.<sup>50</sup> Certain county archaeological surveys recorded large numbers of structures which post-date 1700 AD. In consequence these structures were considered by some local authorities to be adequately protected and were not added to their RPS. This has left such structures – country houses, churches, mills etc – without specific safeguards against types of work being carried out that materially affect their character.

The NIAH concentration on structures post-dating 1700 AD tends to result in the RPS in many local authorities containing few structures which pre-date 1700. While it is logical to concentrate on buildings in use (or with the potential to be reused), the committee was of the view that the date cut-off used by the NIAH contributes to a widespread, erroneous conception that 1700 AD is the line that divides architecture from archaeology.<sup>51</sup>

#### *5.7.4 Typologies commonly protected under both codes*

Many structures and sites that can be generally described as ‘vernacular’, ‘military’ or ‘industrial’, which commonly span the notional 1700 AD divide, are protected under both Acts. These are terms closely associated with particular building typologies and the terms ‘social’ and ‘technical’ in Part IV are often used to describe their special architectural heritage interest. It was felt by some committee members that these terms are imprecise and for better clarity the special interest terms should be augmented. However, the existing categories are adjectives, while to broaden them to include the likes of ‘vernacular’, ‘military’ or ‘industrial’ would instead itemise particular typologies rather than characteristics.

The committee considered that typologies such industrial, vernacular or military heritage require particular consideration so they are protected under the most appropriate code (or codes) that ensure the survival of the structure and of the information contained in it about the associated human activities. The committee also noted that these typologies present specific issues, such as obsolescence of the original use, and scale and complexity of sites in the case of military or

<sup>49</sup> “National monument”, by Section 2 of the National Monuments Act, 1930, means “a monument or the remains of a monument the preservation of which is a matter of national importance by reason of the historical, architectural, traditional, artistic, or archaeological interest attaching thereto ...”. For preservation order see Section 8, National Monuments Act, 1930.

<sup>50</sup> Section 12.3 of the National Monuments Act as amended require subsurface works to be notified in advance to the Minister. Secondly, works consisting of excavation, alteration or demolition of ‘places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest’, the preservation of which is an objective of a development plan, are not exempted development (Article 9 (1)(a)(vii) of the Planning and Development Regulations as amended).

<sup>51</sup> 1700 AD is a date that has had currency since the 1987 amendment of the National Monuments Acts created a category which automatically gives all monuments in existence before 1700 AD the title ‘historic monument’. National Monuments (Amendment) Act, 1987, S. 1 (1). The use of 1700 AD as a ‘marker’ of importance is not just an Irish phenomenon. The English Department of Culture, Media and Sport operates a general principle that all buildings predating 1700 that contain a significant proportion of their original fabric are listed. See Principles of Selection for Listing Buildings, DCMS, March 2010.

industrial architecture, and the availability of particular types of building materials or skills in the case of vernacular structures.<sup>52</sup>

Therefore, the committee welcomed the Minister's statement of 21.9.11 on the issue of protection under the National Monuments Acts of post-1700 AD sites. The Minister stated that the greater protection available since 2000 under the Planning Acts that "there are obviously issues that will arise as to how, and under which legislation, certain structures should be protected."<sup>53</sup> The committee recommended, therefore, that the matter [of which inventory should protect what] should be given further consideration by both inventories.

The committee noted that the Office of Public Works uses both statutory and non-statutory designations for particular properties in its care. The 'national monument' designation is an example of the former and is dealt with above. Another designation, 'historic property', has no legal meaning. Such properties are generally important architectural set-pieces open to the public. Many of them are protected structures and some are also National Monuments.

## **5.8 Liturgical requirements discussion**

The committee discussed at length the requirement in section 57 (5) [in connection with protected structures that are regularly used as places of public worship] with regard to consideration of a request for declaration under section 57 (2), and the similar requirement in section 57 (6) of the Act [to respect liturgical requirements in consideration of planning applications by a planning authority or An Bord Pleanála on appeal].

The judgement in the Judicial Review between *Fionnuala Sherwin, applicant, An Bord Pleanála, respondent and Fingal County Council, notice party* [2006 JR 639] held that as the view had already been taken that the carrying out of works to provide for changes to the internal layout necessary to facilitate liturgical requirements [of a protected structure regularly used as a place of public worship] would materially affect the character of the structure or any element of it contributing to its special interest, as provided for in section 57 (1) of the Act such works cannot be considered to be exempted development.

On foot of this High Court Judgement, when considering requests for declarations in connection with works involving reordering of an interior in order to facilitate liturgical requirements within a protected structure regularly used as a place of public worship, a planning authority or the board shall respect liturgical requirements as provided for in section 57 (5) only after it considers whether or not works proposed to facilitate such requirements materially affect the character [of the protected structure].

In considering whether or not to recommend the deletion of Section 57(5) of the Act, the committee debated the merit of retaining any provision if it is essentially without purpose. It looked at the context in which the Act was framed, in which the Oireachtas found that while exemption from the planning process for places of worship was not warranted, recognition of the liturgical character of places of worship, and a sensitive approach to applications for change to facilitate the rituals of worship, was warranted. Accordingly, the committee has made a recommendation to delete S. 57 (5) and incorporate S. 57 (6) into S. 57 (10) which deals with development control. It is also recommended that S. 52 (2) need not refer to the issue of guidance on declarations in respect of protected structures which are regularly used as places of public worship.

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<sup>52</sup> In the case of the term vernacular, it can loosely be described as the traditional ways by which communities housed themselves, used space and related to the cultural landscape, however there is no agreed international definition of 'vernacular' in relation to buildings.

<sup>53</sup> Press Release 21.9.2011; on [www.ahg.gov.ie](http://www.ahg.gov.ie). The Minister noted that the Department of Arts, Heritage and the Gaeltacht is reviewing policy for including monuments in the RMP.

## 5.9 UK built heritage legislation

For comparative purposes with the Irish situation, the most useful area of study for a number of reasons is the United Kingdom. Firstly, the regime of heritage protection on both islands has its roots in common legislation; secondly, like Ireland, Britain has separate legislation for the protection of monuments, listed buildings (protected structures), and natural heritage; and thirdly, there are close parallels generally between British and Irish planning legislation.<sup>54</sup>

English Heritage is the UK government's statutory advisor on the historic environment for England and is the largest source of non-lottery funding for heritage assets. Cadw, the historic environment service of the Welsh government, is the executive agency responsible for built heritage in Wales. Historic Scotland, an executive agency of the Scottish Government, is responsible for built heritage in Scotland. Responsibility for built heritage in Northern Ireland lies with the Department of the Environment and is operated by an executive agency, the Northern Ireland Environment Agency, embracing both built and natural heritage.

In all four jurisdictions the relevant heritage body carries out surveys of the built heritage and effects statutory protection in accordance with criteria set out in legislation. These are limited to consideration of architectural and historical interest in Northern Ireland, England and Wales and age, rarity, architectural interest and close historical association in Scotland.

There are three grades of listed buildings in most UK jurisdictions, which are included on the statutory list of buildings of special architectural interest (drawn up by the relevant heritage body). England and Wales have Grade I, Grade II\* and Grade II categories. In Scotland these are termed A, B and C. In Northern Ireland there are four grades, A, B+, B1 and B2, however these gradings are not statutory. Generally buildings over thirty years old are eligible for consideration. The building, its interior and curtilage are protected, along with fixtures and structures in the curtilage.

A building may be what is termed in England 'spot-listed', that is, listed upon being proposed by a private individual, local authority or amenity body. The listing is done by the Secretary of State in England and Wales if it is considered to be of national significance. In Scotland a Building Preservation Notice can be served, which is a form of temporary listing. In Northern Ireland suggestions may be considered on occasion by the Department of the Environment. Scotland has recently introduced a mechanism for guaranteeing that a particular building does not meet the criteria for listing for a five-year period (Certificate of Intention Not To List).

Each jurisdiction also operates area-based protection for built heritage, termed conservation areas. A conservation area is an area whose character and appearance has been deemed to be of special architectural or historic interest.

Listed building consent is required from the planning authority, or in some circumstances from the Secretary of State (in England) for demolition, or for alteration or extension of a listed building in any way which would affect its special character. For consent applications or for works to Grade I or II\* buildings in England English Heritage is always consulted and in a few cases each year will request the Secretary of State to determine the application rather than the planning authority. For similar types of work / demolition to A or B listed buildings in Scotland Historic Scotland is notified of all applications and appeals are to Scottish Ministers. In Northern Ireland listed building consent applications are determined by the Department of the Environment.

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<sup>54</sup> [http://www.european-heritage.net/sdx/herein/national\\_heritage/voir.xsp?id=4.2.4\\_UK\\_en](http://www.european-heritage.net/sdx/herein/national_heritage/voir.xsp?id=4.2.4_UK_en)

Applications for demolition of (most) buildings within conservation areas require conservation area consent, which is generally determined by the planning authority. The Secretary of State (or Welsh or Scottish Ministers) may call an application in for his / her own determination following a public enquiry. In Northern Ireland applications are determined by the Department of the Environment.

## **GLOSSARY OF TERMS**

### ***Glossary:***

AACO	Association of Architectural Conservation Officers
ACA	architectural conservation area
ASI	Archaeological Survey of Ireland
ASPC	Area of Special Planning Control
DAHG	Department of Arts, Heritage and the Gaeltacht
DECLG	Department of the Environment, Heritage and Local Government
EAC	Expert Advisory Committee
EIA	Environmental Impact Assessment [Directive 85/337/EEC]
GPA	Government Policy on Architecture 2009-2015
ICOMOS	International Council on Monuments and Sites
INSPIRE	Infrastructure for Spatial Information in the European Community [Directive 2007/2/EC]
NIAH	National Inventory of Architectural Heritage
OPW	Office of Public Works
RIAI	Royal Institute of the Architects of Ireland
RPS	Record of Protected Structures
SEA	Strategic Environmental Assessment [Directive 2001/42/EC]
SRF	Structures at Risk Fund
TGD	Technical Guidance Document
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WHS	World Heritage Site

## **REFERENCES**

### **Legislation cited:**

Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Act, 1999

Building Control Act 2007

Building Regulations 1997 – 2012 and Technical Guidance Documents

Criminal Law (Defence and the Dwelling) Act 2011

Derelict Sites Act, 1990

Local Government (Planning and Development) Act, 1963

Local Government (Planning and Development) Act, 1976

Local Government (Planning and Development) Act, 1999

Local Government (Sanitary Services) Act, 1964

National Asset Management Agency Act 2009

National Monuments Acts 1930 – 2004

Planning and Development Acts 2000 – 2012

Registration of Deeds and Title Act 2006

Taxes Consolidation Act 1997

Town Renewal Act 2000

### **International Conventions:**

Convention for the Protection of the Architectural Heritage of Europe (“Granada Convention”, Strasbourg, 1985)

### **Legal references:**

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

European Court of Justice C-392/96, Commission v Ireland, 1999

The Supreme Court 1985 no.118/133; reported in *Irish Law Report Monthly* 1989

### **Reports and publications cited:**

*Access: Improving the Accessibility of Historic Buildings and Places*. Department of Arts, Heritage and the Gaeltacht Advice Series; Government of Ireland, 2011

- Architectural Heritage Protection Guidelines for Planning Authorities* (Department of the Environment, Heritage and Local Government, 2004)
- Carrig Conservation International Ltd, Louise Harrington and Integral Finance Technology Ltd, *Grant Aid for Building conservation: 'Quanta' Research* (The Heritage Council, 2011)
- Circular PD5/99, *Conservation of Architectural Heritage*, issued by the Department of the Environment and Local Government, 1999
- Code of Practice for Accessible Heritage Sites*. National Disability Authority, Dublin, 2011
- 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
- Criteria for Listing Review*, Northern Ireland Environment Agency, April 2010
- Development Contributions - Draft Guidelines for Planning Authorities* (Department of the Environment, Community and Local Government June, 2012)
- Development Management Guidelines* (Department of the Environment, Heritage and Local Government, 2007)
- Ecorys and Fitzpatrick Associates, *Economic Value of Ireland's Historic Environment* (The Heritage Council, 2012)
- Environmental Impact Assessment Guidance for Consent Authorities regarding Sub-threshold Development* (Department of the Environment, Heritage and Local Government, 2003)
- Government Policy on Architecture 2009 – 2015 Towards a Sustainable Future: Delivering Quality within the Built Environment (Department of the Environment, Heritage and Local Government, 2009)
- ICOMOS *International Guidelines for Education and Training in the Conservation of Monuments, Ensembles and Sites*, Colombo, 1993
- Irish Planning Law and Practice*, (A&L Goodbody, Solicitors; Butterworths, 2001 and 2012)
- Irish Spatial Data Infrastructure, *Implementing the INSPIRE Directive regulations in public bodies* (Department of the Environment, Community and Local Government, 2011)
- KPMG / Murray O'Laoire / Northern Ireland Economic Research Centre, *Study on the Urban Renewal Schemes 1986-1995* (Department of the Environment and Local Government, 1996)
- Law Society of Ireland, General Conditions of Sale 2009 Edition
- Law Society of Ireland, Objections and Requisitions on Title 2001 (Revised) Edition
- Local Area Plans: Public Consultation Draft of Guidelines for Planning Authorities* (Department of the Environment, Community and Local Government, June 2012)
- Manual for Local Area Plans* [consultation draft] (Department of the Environment, Community and Local Government, June 2012)
- Our Sustainable Future, A Framework for Sustainable Development for Ireland* (Government of Ireland, 2012)
- Planning a Better Future* by Property Industry Ireland (Irish Business and Employers Federation, 2012)

*Planning Review Report* Department of the Environment, Heritage and Local Government, June 2012

*Principles of Selection for Listing Buildings*, Department of Culture, Media and Sport [UK], March 2010

*Responsible Retrofit* (Sustainable Traditional Buildings Alliance, September 2012)

*Ruins: the conservation and repair of masonry ruins* (Government of Ireland, 2010)

*Strengthening the Protection of the Architectural Heritage* (Department of Arts, Culture and the Gaeltacht, 1996)

*Sustainable Development: a strategy for Ireland* (Government of Ireland, 1997)

*Sustaining our Built Environment* (ICOMOS Ireland, 2009)

*Traditional Building Craft Skills – assessing the need, meeting the challenge: report on Ireland* (UK National Heritage Training Group, 2009)

World Heritage Papers no. 25, *World Heritage and Buffer Zones* (UNESCO World Heritage Centre, 2009)

### ***Unpublished reports, dissertations, submissions cited:***

Association of Architectural Conservation Officers, submissions to Minister for the Environment, Heritage and Local Government, March 2011; Minister for Arts, Heritage and the Gaeltacht, February 2012

Gustaffson, Christer, 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, 2009

Dennehy E. Jane, *The Section 57 Declaration Provisions: A Review*, 2011

Negussie, E., *An Assessment of the Implementation of Legislative Measures to Protect the Architectural Heritage by Planning Authorities in Ireland* Heritage Council, 2006

O'Rourke, Mona BL *Curtilage Report* Heritage Council, November 2009

Pickerill, Tracy, *Development of a Conceptual Model of the Architectural Heritage Funding Process to Inform the Evolution of Area Based Heritage Funding Policy in Political Context*. PhD thesis submitted to the School of Real Estate and Construction Economics, Dublin Institute of Technology, 2007