An Taisce
The National Trust for Ireland

OPENING STATEMENT BY AN TAISCE ON THE MONUMENTS AND ARCHAEOLOGICAL HERITAGE BILL 2021/22

The National Monuments Act was passed in 1930. Over the ensuing years, there have been periodical amendments with one motivation, to perfect, strengthen, and streamline the protection of our National Built Heritage. As a result, the Heritage protection legislation of this State reached the point of being the envy of colleagues from most other European jurisdictions, that is until the 2004 amendment undid all the good work of previous generations and cast us in legislative terms, back into the Stone Age.

In 2001 the Heritage Council published 'Archaeological Features at Risk: A Survey measuring the Recent Destruction of Ireland's Archaeological Heritage'. The survey established that 34% of the State's archaeological monuments had been destroyed since 1840, and that the destruction was continuing at an alarming rate. Land 'improvement' work bearing a large responsibility for the ongoing destruction. Yet, despite this warning, the 2004 Amendment determined that:

'The consent of the Minister … shall not be required where the works involved relate to an approved road development'

In the case of a national monument, the Minister could 'issue directions to the road authority concerned' to -

I. 'Preserve it'
II. 'Renovate or restore it'

Or -

III. 'Demolish or remove it wholly or in part or to disfigure, deface, alter, or in any manner injure or interfere with it,

It is of great relief to find that this latter clause will be consigned to the dustbin. We are left, however, with an enduring negative impact and legacy by the ethos created by the 2004 Amendment.

This State has never failed to promote and trade on the great history and heritage of the island. Fáilte Ireland relentlessly sells it abroad. 'Ireland's Ancient East' being one example. Tourists are encouraged to visit our ancient monuments and historic sites. And yet, as tourism has constantly grown our menu of sites to visit remains static.

Clearly, we need more new sites to cater to an ever-growing number of visitors to our shores. Yet, while archaeologists are finding these new monuments, the State has been busy facilitating their systematic removal, resting on the full support of

blatantly discriminatory legislation. However, even if the legislation is rectified, there would still be residual problems.

How can it be appropriate for a minister who has granted an excavation licence on strict archaeological conditions, be the authority who can subsequently issue the destruction order for the same monument, in direct contravention of the terms of the original licence?

Surely, it should be unacceptable that the fate of a monument is subject to the decision of one minister of the day? The current Act states that, in considering the fate of a monument, 'the minister is not restricted to archaeological considerations alone but is entitled to consider the public interest'.

The relevant minister will invariably be guided by political expediency. The minister's officials and employees will inevitably have to service the agenda of the incumbent. 'Archaeology' is a broad church. It would be generally accepted that most of the recognised leading authorities on the various elements of 'Archaeology' are to be found outside the Public Service.

How can it be acceptable that there is no 'Cultural/Heritage Court of Appeal' or Ombudsman to adjudicate on the fate of disputed sites and monuments of note?

The original Monuments Act clearly advanced the concept of having authoritative expert advice readily available to the Minister responsible for Heritage in the form of an Advisory Council.

In these modern times the composition of a re-activated Advisory Council should have a broader representation but be drawn exclusively from a pool of suitably qualified independent candidates, with no conflicts of interest.

Having the input of an Advisory Council would facilitate openness and transparency. It would create checks and balances, and ultimately confidence and trust in the system.

Opposition to the Advisory Council in the Republic of Ireland would bear a striking resemblance to the opposition generated against the formation of the Environmental Protection Agency. The subsequent work of that agency being now regarded as an essential aspect of Ireland's protection of the Environment.

The 2004 Amendment to the National Monuments Act, in the words of the Supreme Court, "removed a bundle of protections' from the Act". This was made crystal clear in the decision by the Court of Appeal in relation to the 1916 Moore Street site. It was ruled that, despite the monument having been declared a National Monument, its full extent or historical landscape could only be defined by the relevant Minister. The Court concluded that, as the law stands, it was a matter of 'a purely political assessment'.

Circa 1,000 monuments at approximately 750 sites are in the ownership or guardianship of the State (in the care of the OPW). The remaining circa 129,000 monuments are in private ownership. Vast numbers of which are **not** accessible to the public. Climate change will inevitably have an adverse effect on many of these monuments, especially those that are of purely earthen construction or located on exposed coastlines. Given the scientific reality of Climate Change, should the proposed Act not incorporate the necessary legal procedures under which these increasingly degrading monuments will be properly safeguarded and cared for?

Since 2007, 9 prosecutions have been taken by the DPP on the recommendation of *An Garda Siochána* for alleged offences under the National Monuments Acts 1930-2014.

The proposed Bill contains counterproductive 'Defences' that could be employed by a person accused of damaging or destroying a monument. It would also 'Provide for the establishment of civil enforcement procedures in relation to contravention of the Act … issue enforcement notices requiring the remedying of contraventions of the act, subject to the right of appeal to the courts'. The former proposition is unwelcomed, the latter innovation may prove useful.

It is commendable that the proposed Bill will assist in implementing the 1972 Convention Concerning Protection of World Cultural and Natural Heritage. This Convention was ratified by Ireland in 1991.

Minister Noonan's statement to this Committee, on the 27th of January (2022), noted that Objective D was to provide for the ratification of *key* international conventions in Heritage protection.

But this begs the question – is this not the correct time and opportunity to implement the 1992 'Valletta' Convention? It is a valuable Heritage protection instrument and has already been adopted by Ireland on the 16th of January 1992. It came into force on the 25th May 1995. It was formally adopted by Ireland in 1997.

'Valletta' made clear that Archaeological or Historical Landscapes must be given full recognition and legislative protection (the 'protected monuments and areas' and 'archaeological reserves' referenced in Articles 2 and 4 in the Convention).

Monuments that can be thousands of years old, and are, by their geographical and cultural affinities intrinsic elements of the very fabric of this Nation, can reasonably be defined as national resources. Ownership of national resources is vested in the Irish people by the Constitution. These cultural treasures deserve our respect and protection, even if it is against our own agents. It is time to restore the credibility of the National Monuments Act. It is time to introduce 'checks and balances' into the system. Failure to do so would be unforgivable. The broad thrust of the proposed Monuments and Archaeological Heritage Act will clearly go a long way to achieve

that objective. It might be reasonable to suggest that, with adjustments and additions, it could easily achieve more.

Finally, and in summary, An Taisce is proposing that:

(1.) The 'Valletta Convention' should be incorporated and implemented in the proposed legislation.
(2.) That the enhanced legal protection, and potential penalties, could be seriously offset and largely avoided by the notification of the relevant parties at the earliest opportunity, i.e., to prevent destruction rather than to subsequently have to prosecute. and
(3.) To re-activate the Monuments Advisory Council, to integrate checks and balances into the proposed legislation.