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A summary of issues with archaeological archives in Northern Ireland, and a range of legislative and non-legislative options

This briefing paper explores a range of issues with the storage and ownership of archaeological archives in Northern Ireland, along with a number of potential options for legislative and non-legislative change in this area.

1 Introduction

A previous Assembly research paper indicated that around 1.47 million archaeological artefacts from Northern Ireland remain un-curated¹. These archives very largely lie in temporary storage with the commercial archaeological companies which excavated them as part of works associated with the planning process.

More recently, a survey undertaken by the Northern Ireland Environment Agency found that at least 1,825 archives are being temporarily stored by archaeological companies who have not been able to find a long-term repository. These archives consist not just

¹ Research and Information Service (RaISe). 12.12.11. Research Paper: *Archaeological archives in Northern Ireland: Legislation, guidance and comparison with other jurisdictions*. NIAR 621-11: <http://nia1.me/te>

of artefacts, but also the written, digital and photographic record of excavations. In total, it was reported that these outstanding archives represent 704m³ in total volume, or 4,308 boxes of artefacts/ecofacts². Currently, these archives are inaccessible to the public and researchers, and may be vulnerable to theft, decomposition or disposal of assets should such organisations cease trading.

2 Legislative options

Ownership of archaeological objects

In Northern Ireland, the law governing ownership of archaeological objects states that, apart from finds designated as Treasure under the Treasure Act 1996, all finds automatically belong to the landowner. Where objects are found during an archaeological project, in theory the archaeological licensee should transfer ownership from the original landowner using a 'transfer of title' form issued by the Northern Ireland Environment Agency.

This form states that 'it is expected that you will have secured the agreement of the owner to transfer ownership of all excavated material to the care of a recognised curatorial institution before excavation begins (and his/her signature to that effect)' . The form seeks to transfer the title of excavated material to the Department of the Environment on the understanding that it would be offered to the Ulster Museum. It is not clear to what extent this transfer has taken place for the substantial backlog of artefacts deriving from archaeological works since 1999.

A different legal arrangement exists in other jurisdictions. For example, in the Republic of Ireland, Section 2(1) of the National Monuments (Amendment) Act 1994³ states that any archaeological object belongs to the State. Section 9 of the Act provides that when an object is reported, the National Museum of Ireland will take ownership of it.

In Scotland, all archaeological artefacts may be claimed as the property of the Crown. All such finds must be reported to the Scottish Archaeological Finds Allocation Panel which has responsibility for determining which archive repository will have responsibility for, and assume ownership of, the material archive⁴.

² Tindall, A & Logue, P. 2013. *The Northern Ireland Archaeological Archive Review. A survey of archaeological archives from Northern Ireland held by archaeological practices*. Northern Ireland Environment Agency.

³ National Monuments (Amendment) Act 1994: <http://nia1.me/r5>

⁴ Scottish Government. 9.11.11. 'Scottish finds panel': <http://www.scotland.gov.uk/News/Releases/2011/11/09103221>

Option 1

Part III of the Historic Monuments and Archaeological Objects (NI) Order 1995 could potentially be amended so that all archaeological objects belong to the State.

Such an arrangement, where all archaeological objects are essentially owned by the State, would mean that responsibility for the curation of those objects would automatically lie with the State. This would dispense with transfer of title arrangements for the future, but would not deal with the backlog of objects found in the past.

Such a change would not necessarily, of itself, provide for which institution or agency would curate the artefacts, or what the process for deciding on this issue might be.

Historic Monuments and Archaeological Objects (NI) Order 1995

Legislative provision for the treatment of archaeological objects is made in the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995. This states in Part III, Article 42, that:

42.—(1) Any person who finds an archaeological object (in this Article referred to as “the finder”) shall, within 14 days of finding the object—

the circumstances of the finding;

(ii) the nature of the object found; and

(iii) the name (if known) of the owner or occupier of the land on which the object was found; and

(b) subject to paragraph (2), deposit the object found with the relevant authority.

The Order as it currently stands states that archaeological objects should be reported to the relevant authorities, which are defined as the Director (of the Ulster Museum), the Department (ie the Department of the Environment), or the officer in charge of a police station.

However, at present none of these authorities have a duty to *accept* such objects into their care or curate them for the future. It would also seem that Article 42 is intended for chance finds made by members of the general public, rather than larger and more complex archaeological archives resulting from a licensed excavation.

As is stated above, in the Republic of Ireland, all archaeological objects belong to the State. It is established in the National Cultural Institutions Act 2007 that if a find is reported, the Director of the National Museum of Ireland (NMI) is obliged to either (a) dispose of the object if it is deemed to be of insufficient archaeological interest, or (b) to take ownership of it. Once an object has been taken into state ownership, either the NMI, or another 'designated museum', is responsible for it and cannot dispose of it.

In Scotland, where all archaeological finds are the property of the Crown, artefacts are referred to the Scottish Archaeological Finds Allocation Panel which has responsibility for determining which archive repository will have responsibility for, and assume ownership of, the material archive.

Option 2

Section 42 of the Historic Monuments and Archaeological Objects (NI) Order 1995 could potentially be amended so that after a find is reported, it is referred to a Northern Ireland Finds Allocation Panel which has the task of assessing the archaeological significance of the find or collection of finds¹. It could be that an archaeological licensee is obliged to submit accompanying recommendations to the Panel regarding which objects within the archive should be disposed of and which retained for curation.

Finds will include those objects found during a licenced excavation but, in such circumstances, the licenced archaeologist will have six months from the completion of archaeological works to undertake reporting of the finds.

If a find or collection is deemed to be of significance, the Order could be amended so that NMNI has a duty to accept those finds into its custodianship. The nature of duties in place once finds are within its custodianship are already in place under the Museums and Galleries (NI) Order 1998. A local museum could make a representation to the Panel if it wishes to make a case for custodianship of an object or collection under consideration.

However, there may be significant resource implications for NMNI if it is required to curate finds of archaeological significance deriving from the planning process. It is unlikely that, at present, it has sufficient storage capacity to deal with the implications of such a change.

3 Non-legislative options

Planning Policy Statement 6

Planning Policy Statement (PPS) 6, which contains guidance on how archaeology and other aspects of built heritage should be treated during the planning process, states the following of archaeological remains:

3.14. In some circumstances it will be possible to permit development proposals which affect archaeological remains to proceed provided appropriate archaeological mitigation measures are in place which preserve the remains in the final development or ensure excavation recording prior to destruction.

However, while excavation and recording of such remains is stipulated, PPS6 does not provide any statement on the correct treatment of an archaeological archive once the excavation and the recording process has been completed.

Option 3

PPS6 could potentially be amended so that it is stated that the relevant planning authorities should consider applying conditions to planning consents in order to ensure that an appropriate level of not just excavation and recording prior to destruction, but also analysis, publication and archiving is carried out before and/or during development.

Such an amendment has been made to guidance in England in order for the maximum public benefit of archaeological mitigation works to be gained.

However, there may be concerns that such an amendment could increase costs for developers. It has been argued by some archaeological companies that archiving costs are already, to some extent, built into their tendering costs to account for the current temporary storage arrangements.

Archaeological licence

At present in Northern Ireland, under the provisions of the Historic Monuments and Archaeological Objects (NI) Order 1995, anyone conducting an archaeological excavation must first obtain an archaeological licence from the Northern Ireland Environment Agency. This licence is accompanied by a number of stipulations and conditions.

At present, the conditions which apply to the granting of a licence do not include provision for the destination of an archaeological archive resulting from the excavation. Although provision is made for the submission of a short written report within four weeks of the excavation (and a full report within six months), the way in which the physical objects (as well as the plans and other raw documentation) should be treated is not specified, with the exception of the condition that, as set out in Article 42 above, objects are reported to 'the relevant authority'⁵.

In England, Scotland or Wales, a licence is not required to conduct an archaeological excavation. However, in the Republic of Ireland similar arrangements to Northern Ireland exist. The text of the licence in the Republic of Ireland contains, within Section 12, a set of questions about the location of the archaeological archive which will (in almost all cases) result from an excavation⁶.

The Irish licence requires that the licensee states where the finds will be housed immediately after the excavation, where they will be housed ultimately, what facilities will be available for conservation, and where the proposed site archive will be located. It also states that it is a condition of issue that licence holders should conform to the Department's *Policy and Guidelines on Archaeological Excavations*.

Option 4

The Northern Ireland archaeological licence could be amended to specify that a licensee should conduct pre-project discussions with developers with the aim of securing a voluntary planning agreement. Such an agreement, as is the case in Wales, could provide for the excavation and recording of a site, the publication of results *and* the deposition of records in a designated public archive¹.

However, such an agreement would not necessarily be consented to by a developer, and would still not solve the issue of where each archaeological archive could be housed.

⁵ Department of the Environment. Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995: 'Licence to excavate for archaeological purposes'. Supplied by DoE on 2.11.11.

⁶ Department of Arts, Heritage and the Gaeltacht. *Application for a Licence to Excavate*: <http://nia1.me/262>

Enhanced archaeological guidance

At present, Northern Ireland does not possess any detailed, state-sponsored guidance on the treatment of archaeological remains beyond the statements made in the planning document, PPS6.

The Irish Government has previously issued two key good practice guides *Policy and Guidelines on Archaeological Investigation*⁷, and *Framework and Principles for the Protection of the Archaeological Heritage*⁸. With regard to the care and storage of archaeological objects, the Policy and Guidelines document states the importance of ‘the conservation of excavated archaeological objects and their curation prior to being taken into State care’.

Further to this, the *Framework and Principles* document draws together existing legislation on this issue, including the following:

- Section 2(1) of the 1994 Act⁹ states that any archaeological object belongs to the state. The finder of an object must report the find to the National Museum of Ireland (NMI) within 96 hours.
- It is recognised that holders of an archaeological licence do not have the same duty to report the finds within 96 hours as they may have to retain the objects for longer in order to study them.
- Section 9 of the 1994 Act provides that when an object is reported, the NMI will take ownership of it.

In England, a *Historic Environment Planning Practice Guide* is currently in place in support of the National Planning Policy Framework. This document states that following archaeological works, ‘the understanding gained is made publicly available’; and that ‘an archive is created, and deposited for future research’.

Option 5

The Northern Ireland Executive, potentially through both NIEA and NMNI, could create and publish jointly issued guidance on the treatment of archaeological archives containing statements of good practice, consolidating and expanding on existing statements and outlining preferred options for the destination and curation of archives.

However, while such guidance may provide useful clarification for preferred practice in the future, it is unclear what weight or effect such guidance would have.

⁷ Department of Arts, Heritage, Gaeltacht and the Islands. 1999. *Policy and Guidelines on Archaeological Excavation*: <http://nia1.me/ky>

⁸ Department of Arts, Heritage, Gaeltacht and the Islands. 1999. *Framework and Principles for the Protection of the Archaeological Heritage*: <http://nia1.me/ku>

⁹ National Monuments (Amendment) Act 1994: <http://nia1.me/r5>