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Legislation and guidance governing the ownership of archaeological archives

Summary

Archaeological archives can be described as the artefacts and records which derive from archaeological excavation or survey work. The following is a summary of current issues regarding the ownership of archaeological archives in Northern Ireland, along with comparisons with other jurisdictions. A recent Assembly research paper has highlighted three issues associated with ownership of such archives¹, including their **legal ownership**, the **long-term destination of archives**, and the **process of transfer** between a development site and the long-term archive.

It should be noted that this briefing paper does not deal with the issue of objects declared as 'Treasure' under the provisions of the Treasure Act 1996.

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://www.niassembly.gov.uk/Documents/RaISe/Publications/2011/Culture-Arts-Leisure/17411.pdf>

1 Legal ownership and transfer of title arrangements

In **Northern Ireland**, the ownership of any archaeological object rests with the landowner. Provision for the ownership of archaeological objects is made through the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995. Section 42 of the Act states that any objects found should be reported to the Ulster Museum, the Northern Ireland Environment Agency (NIEA) or the 'officer in charge of a police station'.

The current legal framework does not allow for the passing of archaeological archives produced through the planning process to local museums, except through a subsequent loan from National Museums Northern Ireland.

In **England and Wales**, the legal status is similar to Northern Ireland in that all archaeological objects found belong to the landowner (though separate arrangements exist for an object legally declared as 'Treasure' under the provisions of the Treasure Act 1996).

In **Ireland**, the legal context is different in that all archaeological objects are the property of the state. A set of guidelines on archaeological investigation were published by the Irish government in 1999 which reiterate that any archaeological archives should be taken into state care².

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 archive³.

2 The long-term destination of an archaeological archive

A survey of museum collections in 2007 established that there are approximately 1.8 million objects held in **Northern Ireland's 38 Accredited Museums**, with around 307,777 of these (or 17%) being classed as 'archaeological' in nature⁴.

However, the majority of archaeological archives are produced by commercial archaeological companies in advance of development and construction work. A recent estimate indicated that approximately 1.47 million archaeological objects are currently being held by commercial companies, outside the museum sector⁵.

² Department of Arts, Heritage, Gaeltacht and the Islands. 1999. Policy and Guidelines on Archaeological Excavation: <http://nia1.me/ky>; 1999. Framework and Principles for the Protection of the Archaeological Heritage: <http://nia1.me/ku>

³ Scottish Government. 9.11.11. 'Scottish finds panel': <http://www.scotland.gov.uk/News/Releases/2011/11/09103221>

⁴ Northern Ireland Museums Council. 2007. *Survey of Museum Collections in Northern Ireland*: http://www.nimc.co.uk/crossfire/files/page_8/6_file.pdf

⁵ Research Paper: *Archaeological archives in Northern Ireland*: <http://bit.ly/tHbUeL>: p11.

A good practice guide published by the **Institute for Archaeologists** states that, 'contracting archaeological organisations are not recognised as suitable permanent repositories for archaeological project archives'⁶.

In **Ireland**, Section 2(1) of the National Monuments (Amendment) Act 1994 states that any archaeological object belongs to the state, and that the National Museum of Ireland (NMI) will take ownership of it. The National Cultural Institutions Act 2007 states that if a find is reported, the Director of the 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. The object can then be passed to another 'designated museum'.

3 The process of transferring ownership

Provision for archaeological excavation is made within **Planning Policy Statement 6: Planning, Archaeology and the Built Heritage**⁷. This states that where development will affect archaeological remains, DoE will impose conditions for 'the identification and mitigation of the archaeological impacts of the development, including where appropriate the completion of a licensed excavation and recording of remains before development commences'.

This policy statement does not refer to the archiving of excavation results or to transfer of ownership. However, any archaeological fieldwork in Northern Ireland must be carried out under a licence issued by the Northern Ireland Environment Agency, and the licence application 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)⁸.

All archaeological licensees are issued with a '**transfer of title**' form by the Northern Ireland Environment Agency. 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 Museum⁹. However, both the Ulster Museum and NIEA have indicated that they have not taken into their care any archaeological objects produced through commercial archaeological work as part of the planning process since the creation of planning policy Planning Policy Statement 6 in 1999¹⁰.

In reality, it is likely that most archaeological material will have a low financial value (in contrast to its potential public and research value) and that landowners would not seek

⁶ Brown, DH. 2011. *Archaeological Archives: A guide to best practice in creation, compilation, transfer and curation*. Institute for Archaeologists: p1: http://www.britarch.ac.uk/archives/Archives_Best_Practice.pdf

⁷ Planning Policy Statement 6: Planning, Archaeology and the Built Heritage: <http://nia1.me/r6>

⁸ Department of the Environment. 'Application for a licence to excavate for archaeological purposes': <http://nia1.me/oj>

⁹ Brown, DH. 2011. *Archaeological Archives: A guide to best practice in creation, compilation, transfer and curation*. Institute for Archaeologists: p28: http://www.britarch.ac.uk/archives/Archives_Best_Practice.pdf

¹⁰ Department of Culture, Arts and Leisure. Correspondence following an information request by the NI Assembly Research and Information Service, 4.11.11: Ref: GM/1251/2011; Department of the Environment. Correspondence following an information request by the NI Assembly Research and Information Service, 2.11.11: Ref: AR/4/11.

to sell the objects found. However, Section 42(8) of the **Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995** states that ‘the Department (of the Environment) may give financial assistance towards the purchase of any archaeological object, the finding of which has been reported under this Article’.

The lack of provision made in PPS6 for the transfer of the archaeological archive (including the objects) is in contrast to jurisdictions elsewhere. For example, in **England**, a new planning policy statement (PPS5) was issued in 2010, covering *Planning for the Historic Environment – Impact Assessment*¹¹. This statement is supported by a *Historic Environment Planning Practice Guide*¹². Together these documents state that ‘the resultant records, artefacts and samples are analysed and where necessary conserved’; that ‘the understanding gained is made publicly available’; and that ‘an archive is created, and deposited for future research’.

In **Wales**, *Planning and the Historic Environment: Archaeology (Wales)* encourages developers to conclude a voluntary planning agreement providing for the excavation and recording of a site, the publication of results and the deposition of records in a designated public archive.

The context for such provisions is set by the **Council of Europe Convention on the Protection of the Archaeological Heritage**¹³, which was ratified by the UK in 2000. The convention states in Article 4 that ‘each party undertakes to implement measures for the physical protection of the archaeological heritage, making provision...for appropriate storage places for archaeological remains which have been removed from their original location’.

¹¹ Department for Communities and Local Government. 2010. *Planning Policy Statement 5: Planning for the Historic Environment – Impact Assessment*. <http://nia1.me/kw>

¹² Department for Communities and Local Government. 2010. *Historic Environment Planning Practice Guide*: <http://nia1.me/kx>

¹³ Council of Europe Convention on the Protection of the Archaeological Heritage: <http://conventions.coe.int/treaty/en/treaties/html/143.htm>