

# Heritage legislation

The Republic of Ireland and Denmark's heritage laws and their consequences for archaeology and archaeologists

*Archaeological legislation lays the framework within which archaeologists operate. It sets the stage on which the struggle for balance between development and archaeology is played out. The archaeological legislation and organisation in Denmark and the Republic of Ireland will be compared, to assess how well they function, and if improvements might be possible.*

*In the context of this paper, the terms 'Irish' and 'Ireland' refer only to the Republic of Ireland.*

## Introduction

Heritage legislation and how it is interpreted, enforced and overseen, has a direct impact on the work of archaeologists. It forms the basis for the protection of archaeological material, and defines how archaeologists must operate

### Ireland

- 1930 National Monuments Act – provided for the protection of monuments and archaeological objects within the state – replaced earlier British laws.
- 1954, 1987, 1994, 2004 National Monuments (Amendment) Act – additions and alterations to the original act. Dealt with (for example) use of metal detectors, ownership of archaeological objects, increases in scale of penalties. Reflected increase in development-led excavations.
- 2013 The Irish National Monuments Acts (1930-2004), comprised of the 1930 Act and its amendments, is to be replaced by a new act, which will streamline the current legislation.

### Denmark

- 1958 New museums legislation. Decentralisation of archaeological practice.
- 1969 Archaeological sites protected by law.
- 2001 New Museum Act. Denmark moved closer to the position outlined in the Valetta Convention, including the 'polluter pays' principle.
- 2013 Amendments made to the Museums Law, mainly in relation to finance related issues.

The Valetta Convention of 1992 saw countries adopt the principle of 'Polluter Pays' into the realm of archaeology (Council of Europe, 1992). Ireland signed up in 1997. In Denmark the Consolidated Museum's Law of 2001 brought in the 'Polluter Pays' system, and Denmark ratified Valetta in 2006.

## The system in Ireland

In the 1970's a large part of former Viking Dublin was removed to make way for a new development at Wood Quay. Following huge public protests a portion of the site was recorded and excavated to a good standard. This crisis showed that existing laws were out-dated and no longer carried severe enough penalties. This brought about legislative change in 1987 (Gowen, 2013, p. 153-166), with further amendments in 1994 and 2004. Overall, heritage legislation in Ireland has been generally reactive, written as a response to crises as they occur.

It was after Wood Quay that commercial rescue excavation first appeared in Ireland. There were no legal barriers to companies carrying out excavations, provided they followed the appropriate procedures. With the amount of development growing rapidly, archaeological consultancies gradually became more prominent through the 1980s and 1990s (Gowen, 2012, p 158-9). All development-led excavation in Ireland is now carried out by consultancies under license from the National Monuments Service, with the excavations paid for by the developer.

Since the National Monuments Act of 1930, only a license eligible archaeologist approved by the state can carry out an archaeological excavation (Gowen 2012: 160). An archaeologist must show the National Monuments Service and National Museum of Ireland that they have the appropriate qualifications, knowledge, skill and experience to lead an excavation. The archaeologist must produce a method statement outlining how the excavation will be conducted, and the site can be inspected by representatives of the state bodies to ensure that the work is being carried out properly. The archaeologist, in tandem with the consultancy, is responsible for producing a report, and the results should be published.

This system acts as a good balance to commercial archaeology, as standards must consistently be met or licences can be revoked. It functions as a form of state-based quality control.

### The System in Denmark

Archaeology in Denmark is the responsibility of local museums. Since 2001, it has been paid for by developers (Høst-Madsen and Harnow 2012: 43). A maximum budget for an excavation is pre-approved by Kulturstyrelsen, both to ensure that work is carried out to the right standard, and to ensure that the price is fair (Vander Linden and Webley 2012: 3, Mikkelsen, 2012: 120). The museums must be financially viable, but they should not return a profit based on their excavation work.

In 2009 Kulturstyrelsen requested an international evaluation which found that the Danish local museum system was a unique and effective system, but that excavations lacked research strategies. Also, subsequent research was insufficient (Høst-Madsen and Harnow 2012: 43). In 2011 a ministerial review found that the system was in need of improvement, with higher professional standards needed. To facilitate this, Kulturstyrelsen is working to reduce the number of local museums from 42 to 27, creating fewer, larger and more efficient organisations (KUAS 2011: 25-27).

### Comparative Assessment

In Denmark the local museum has the responsibility of deciding when a development requires an archaeological

investigation. A developer is not obliged to allow a pre-investigation, and an archaeological investigation is not legally required until archaeological material has been encountered. Generally though, the museum is involved by the developer from an early stage.

In Ireland, all planning applications are sent to the local council, who then send all relevant applications to the planning section of the National Monuments Service. Recommendations are made as needed (larger developments subject to EU directives on environmental impact assessments are automatically recommended for an archaeological assessment). If a recommendation is made, it becomes part of the planning conditions that the developer must fulfil (Gowen 2012: 160). The developer is required to employ an archaeologist, and at this stage they can choose to hire any consultancy or licensed archaeologist. That archaeologist will act on the conditions set down by the National Monuments Section, and will apply for a licence to the National Monuments of Ireland as necessary (and also to the National Museum).

This is rather different from the Danish system, where the museum that makes the recommendations as to what work is required also carries out the work. A developer might see this as a conflict of interest. There are mitigating circumstances – the fact that Kulturstyrelsen approve all work from a neutral standpoint, and the non-commercial nature of museums. A potential conflict of interest could also occur when a local museum carries out work in connection with a development undertaken by its own kommune (local council), as of course the museum has financial and organisational ties with the kommune (Mikkelsen 2012: 120).

Each area of Denmark is covered by one archaeological museum, which means there is no competition in the market. Consequently a developer has little choice in what they will pay. However, a developer can object if they feel the cost is unreasonable, and a budget only comes into effect when the developer officially approves it.

In Ireland consultancies compete for work, hence prices are competitive. This could mean lower standards due to cost-cutting measures. Unfortunately, despite the archaeological structure outlined earlier, in recent

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years standards do seem to have slipped as survival has become consultancies' overriding aim during the financial crisis. Some will view commercial archaeology with scepticism. However, in a system that operates properly it has good points, and overall it has worked quite well in the Irish context until recently.

In Ireland the archaeologist tends to be the loser. As profit margins tighten, wages are the easiest expense to reduce, and so the conditions of employment and salaries stay low, and have dropped considerably in recent years as a result of the financial crisis. This coupled with the smaller scale work now being carried out makes it a very difficult time to be an archaeologist in Ireland. Some pressure is currently being put on the Institute of Archaeologists of Ireland to establish national pay rates for archaeologists, and 2013 could yet be a landmark year for the profession in Ireland (Myles 2013: 5).

In Denmark, the developer is perhaps the loser. They foot the bill for excavation without the benefit of competition in the market. In Ireland the developer chooses who will carry out the work, and may employ the consultancy that offers the best price.

In Denmark the archaeologist is treated comparatively well, both in terms of salary and work conditions generally. Recent projects like the Metro City-Ring project in Copenhagen and the proposed route to Germany in Lolland-Falster have generated large amounts of work and recently it has been a good time to be an archaeologist in Denmark.

A benefit of the Danish system is the fact that those working long-term for a given institution will have good local knowledge of their region and its archaeological background. Consultancies take on work wherever it arises, and so may lack local knowledge of soils, geology and regional site types.

A positive for the developer in Denmark is an entitlement to a free (desk-based) assessment of the risk of finding archaeology within a development (Roland 2012), or, where a development is less than 5.000 m<sup>2</sup>, to a free assessment of the site itself, including test-trenches as well as a desk-based assessment (except within a medieval urban centre). This assessment is legally binding, which can have consequences. If a museum states that a site has no

archaeological potential, should significant remains be encountered thereafter, Kulturstyrelsen will pay the excavation costs, as stated in the Museums Law. In Denmark, archaeology is seen as an academic profession, with qualifications given respect. In most museums there are few if any non-qualified archaeologists, apart from students gaining experience. In Ireland, at entry level little weight is given to qualifications, they tend to matter more later on in one's career. It has been quite common for people with no qualifications other than experience to work as field archaeologists, frequently on an equal footing to those with degrees. Of course the unqualified diggers are often very good, but it can lead academically trained archaeologists to wonder why they studied for years. Ireland can learn from Denmark in this respect, with more recognition of the value of qualifications.

In both countries, even before Valetta and certainly in the years after, legislation has improved to the point that heritage is legally well protected. Partially because of Valetta, the legislation is similar in many ways, the major variation relating to the organisational structure and the role of commercialism.

The Irish system is centralised at the National Museum and the National Monuments Service. Excavations are licensed by these agencies, and excavation reports, archives and artefacts are centralised with the museum within a national registration system. This is a stream-lined system, where standards are equal across the country. A number of state publications over the years have helped to establish best practice in excavation and other archaeological work (NMS). The licensing system is also a positive, ensuring that those who take on the role of excavation leader are suitable for the task.

In Denmark, while all excavation reports are registered and kept by Kulturstyrelsen, the local museum element means practices and standards can vary to a greater degree, where more standardisation might be beneficial.

## Conclusion

The effects of the Valetta Convention in both countries have overall been positive, with a wealth of previously unknown sites excavated and documented in advance

of development. We must remember though, that the aim in both countries is the *preservation* of archaeological material/sites *in situ* as the preferred option. In reality this seldom happens, with '*preservation by record*' being the norm. This suggests that in both Denmark and Ireland archaeological excavation is affordable, and that there is little weight given to the stated aim of *in situ preservation*. It is rare that a development is significantly altered or abandoned on archaeological grounds.

It seems both systems work well enough at excavation stage, but fall down somewhat thereafter. In Denmark, unlike in Ireland museums are not allowed to bill developers for research associated with excavations. The developer funds the documentation and recording of the excavation only; this despite an implication in the Valetta Convention that excavation reports should include appropriate research. In neither country is there any real compulsion on the developer to pay for publication of the material. While the cost of recording and excavating impacted archaeology is seen as a legitimate part of a developer's construction costs, the same is not true of the proper contextualisation or dissemination of the knowledge gained. Consequently a lot of new information is gained but does not result in much new accessible knowledge. This makes the process somewhat futile.

Several failings of the Irish system including a lack of research strategies was addressed in a study published in 2006, *Archaeology 2020: Repositioning Irish Archaeology in the Knowledge Society* (Reeners 2006). Unfortunately, despite this study identifying weaknesses and proposing solutions, few improvements have been implemented to date. The aim in both countries is to increase our understanding of the past, and to a degree that is happening. However, a greater focus on this goal with research strategies and publication in mind, is to be recommended.

The lack of research strategies in Ireland is to an extent being dealt with in recent years with the creation of the Irish National Strategic Archaeological

Research Programme (INSTAR) by The Heritage Council. This programme funds thematic research that builds on recent decades of development-led archaeology, and aims to synthesise the information gained, involving consultancies, universities, and research organisations as well as individual archaeologists (Gowen 2013: 153-166) (heritage.ie). Sadly the economic collapse has seen its work curtailed greatly.

In Denmark there are increasing demands and expectations from Kulturstyrelsen for museums to conduct research in relation to their excavations. The downside of this is that this work is not developer-funded. Consequently much of the work must be externally funded and is often carried out in co-operation with universities as part of PhDs or other post-graduate work. Thanks in part to EU legislation, the legal protections for heritage in both Denmark and Ireland seem to be clear and strong. Nonetheless, development-led archaeology is not without its flaws, particularly in the research and post-excavation areas. In Ireland, it would be beneficial if the National Monuments Act was amended to state that a developer is obliged to fund the publication of the excavation. It would also be beneficial if it were a requirement that one was a qualified archaeologist or a student of archaeology in order to work on an excavation.

In Denmark, an amendment stating that research is a legitimate part of putting together a thorough and contextualised site report would be beneficial. A licensing system for archaeological excavations similar to Ireland's, whereby an archaeologist would have to prove their ability to lead an excavation to Kulturstyrelsen, would also be useful and would allow for clear conditions to be set down as to what standards should be met at excavation stage and report stage.

## Theme: Similarities and differences

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### Useful websites

Danish Heritage Agency

<http://www.kulturstyrelsen.dk/>

National Monuments of Ireland

<http://www.archaeology.ie/>

The Institute of Archaeologists of Ireland

[www.iai.ie](http://www.iai.ie)