



Cultural Heritage Agency  
Ministry of Education, Culture and Science



# Heritage Act 2016

SHUIS



# Content

## Act of 9 December 2015, Relating to the Combining and Amendment of Rules Regarding Cultural Heritage (Heritage Act)

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### Disclaimer

This is the English translation of the *Wet van 9 december 2015, houdende bundeling en aanpassing van regels op het terrein van cultureel erfgoed (Erfgoedwet)*.

Please note that this English translation is not legally binding. It is the Dutch-language text of the Act that is legally binding. The most recent version of the text of the Act can be found, in Dutch, on the website: <https://zoek.officielebekendmakingen.nl/stb-2015-511.html>.

Further information can be obtained from the Ministry of Education, Culture and Science (<https://www.government.nl/ministries/ministry-of-education-culture-and-science>); or by using the contact form) or the Cultural Heritage Inspectorate (<http://english.erfgoedinspectie.nl/>; e-mail address: [info@erfgoedinspectie.nl](mailto:info@erfgoedinspectie.nl)).



**Act of 9 December 2015,  
Relating to the Combining  
and Amendment of  
Rules Regarding Cultural  
Heritage (Heritage Act)**



We Willem-Alexander, by the grace of God King  
of the Netherlands, Prince of Orange-Nassau, etc.  
etc. etc.

Greetings to all who shall see or hear these  
presents! Be it known:

Whereas We have considered that it is desirable to  
combine, structure, and simplify, the legislation  
in the field of cultural heritage, and also *inter alia*,  
to give the handling of museum collections legal  
form, to regulate the disposal of cultural objects  
in the possession of public authorities, and to  
modernise the system of quality assurance in  
archaeology;

We, therefore, having heard the Advisory Division  
of the Council of State, and in consultation with  
the States General, have approved and decreed as  
We hereby approve and decree:

# 1. General provisions

## Section 1.1. Definition of terms

In this Act the following terms have the following meanings:

*archaeological monument*: a site that forms part of cultural heritage due to the remains, objects, or other traces present there of human presence in the past, including said remains, objects, and traces;

*archaeological find*: a remain, object, or other trace of human presence in the past originating from an archaeological monument;

*protected cultural object*: a cultural object that:

- a. has been designated as such pursuant to Section 3.7(1);
- b. is included in a catalogue as referred to in Section 3.7(3); or
- c. in the case of the designation of a protected collection pursuant to Section 3.8(1), for as long as no catalogue for that collection has been established, reasonably falls within the general description of that protected collection;

*protected collection*: a collection that has been designated as such pursuant to Section 3.7(2);

*certificate*: a certificate as referred to in Section 5.1(1);

*State Institution*: the King's Office [*Kabinet van de Koning*], the States General, the other High Institutions of State, the Offices of the Governors [*Kabinetten van de Gouverneurs*], or the Review Committee for the Intelligence and Security Services [*Commissie van toezicht betreffende de inlichtingen- en veiligheidsdiensten*];

*cultural heritage*: tangible and intangible resources inherited from the past, created in the course of time by people or arising from the interaction between man and the environment that people, irrespective of the ownership thereof, identify as a reflection and expression of continuously evolving values, beliefs, knowledge and traditions, and that offer a frame of reference to them and to future generations;

*cultural object*: a movable item forming part of cultural heritage;

*ensemble*: a national monument with cultural objects designated pursuant to Section 3.13;

*inspector*: an inspector as referred to in Section 8.3;

*institution*: a legal entity established under private law with full legal capacity;

*ecclesiastical monument*: a monument that is owned by a religious association, an independent part thereof, a body in which religious associations are united, or another spiritually-based association and that is used exclusively or predominately for the shared profession of religion or belief;

*monument*: immovable property forming part of cultural heritage;

*museological cultural object of the State*: a cultural object of particular importance that is owned by the State or whose care is entrusted to the State;

*normal maintenance*: necessary regular work intended to preserve monumental value;

*Our Minister*: Our Minister of Education, Culture and Science;

*excavation*: actions as referred to in Section 5.1(1);

*restoration*: work that goes beyond normal maintenance and that is necessary for renovation;

*national monument*: a monument or archaeological monument that is listed in the register of listed national monuments;

*Register of listed national monuments [rijksmonument]*: the register as referred to in Section 3.3;

*State*: the State of the Netherlands;

*collection*: cultural objects that belong together from a cultural-historical or scholarly viewpoint.

## Section 1.2. Scope

The provisions of Chapter 5 shall apply in the contiguous zone as referred to in Article 1 of the Contiguous Zone (Establishment) Kingdom Act [*Rijkswet instelling aansluitende zone*].

## Section 1.3. Report on state of cultural heritage

At least once every four years, Our Minister shall publish a scientific report describing the development of the state of the cultural heritage in the Netherlands.



## § 2.1. *Museological cultural objects of the State*

### **Section 2.1. Preservation in good condition**

Our Minister whom it concerns, a State Institution, or an institution shall ensure that museological cultural objects managed by the State are in good condition.

### **Section 2.2. Accessibility**

Our Minister whom it concerns, a State Institution, or an institution shall promote the accessibility of museological cultural objects managed by the State.

### **Section 2.3. Safeguarding**

1. Our Minister whom it concerns, a State Institution, or an institution shall put measures in place to prevent theft, loss, damage to, or destruction of museological cultural objects managed by the State.
2. Our Minister whom it concerns, a State Institution, or an institution shall report the loss or destruction of a museological cultural object managed by the State.

### **Section 2.4. Registration and administration**

Our Minister whom it concerns, a State Institution, or an institution shall ensure:

- a. registration of the museological cultural objects managed by the State; and
- b. description of the administrative organisation of the management, with due observance of this subsection and application of the procedures laid down in the administrative organisation.

### **Section 2.5. Termination of management**

Our Minister whom it concerns, a State Institution, or an institution shall only terminate management of a museological cultural object of the State or the provision of funds to an institution for that purpose after consulting Our Minister.

### **Section 2.6. Role of Minister of Education, Culture and Science**

1. Our Minister shall be charged with the management under private law of the museological cultural objects of the State.
2. Our Minister shall maintain a list of all museological cultural objects of the State that is present with Our Ministers whom it concerns, the institutions of State, and the institutions that have been charged with

- managing museological cultural objects of the State.
3. Our Minister can give instructions to Our Minister whom it concerns, to a State Institution, or to an institution regarding the management of museological cultural objects of the State.
4. Our Minister can take over, temporarily, the management of a museological cultural object of the State from Our Minister whom it concerns, from a State Institution, or from an institution if the preservation of such cultural object is endangered.
5. Our Minister shall accept cultural objects or collections on behalf of the State that are in or outside the Netherlands and that comply with the criteria, as referred to in Section 3.7, in so far as these are transferred, unencumbered, for no consideration, and without being subject to onerous conditions. Our Minister shall then be responsible for the management of such cultural objects or collections.
6. Our Minister may declare subsection 5 not to apply or deviate from it in so far as full implementation thereof cannot be reasonably required, given the associated costs.

### **Section 2.7. Further rules**

1. Our Minister shall impose further rules regarding the management of museological cultural objects of the State.
2. Said rules may relate, amongst other things, to
  - c. maintenance and restoration
  - d. registration and administration;
  - e. security;
  - f. damage, liability, and insurance; and
  - g. valuation and advising on cultural objects by Our Minister.

## § 2.2. *Task of managing collections*

### **Section 2.8. Assignment of a task**

1. Our Minister whom it concerns may take a decision assigning the task of managing museological cultural objects of the State, or other cultural objects, to an institution.
2. A decision as referred to in subsection 1 shall be for an indefinite period of time
3. A decision as referred to in subsection 1 shall be taken with due regard to:
  - a. the expertise, knowledge and experience of such institution with respect to managing and preserving cultural objects;
  - b. the suitability of the institution's facilities for managing and preserving cultural objects and the

- accessibility of said facilities to the public;
- c. the importance of cultural objects of the institution or the association between said cultural objects and museological cultural objects of the State;
- d. the responsibility that other administrative bodies have taken for the cultural objects concerned;
- e. the efficient use of funds.

### Section 2.9. Cultural objects to be managed

1. The decision as referred to in Section 2.8(1) shall state which cultural objects or collections it applies to.
2. After consultation with the institution concerned, Our Minister may amend said decision regarding the cultural objects or collections to which it applies.
3. In so far as said decision relates to museological cultural objects of the State, such cultural objects shall, for the period to which the decision relates, be loaned, by operation of law, as referred to in Section 1777 of Book 7A of the Dutch Civil Code [*Burgerlijk Wetboek*].
4. In so far as said decision relates to other cultural objects or collections, Section 2.1 shall apply, *mutatis mutandis*, to those cultural objects and collections, with the exception of Article 2.6(4).

### Section 2.10. Structural policy

1. An institution which has been charged with the care as referred to in Article 2.8(1), shall conduct structural policy for the preservation and management of the cultural objects or collections concerned.
2. Our Minister may impose further rules regarding structural policy, or may attach obligations to the decision as referred to in Section 2.8(1).

### Section 2.11. Withdrawal of task

1. Our Minister may withdraw a decision as referred to in Section 2.8:
  - a. at the request of the institution concerned;
  - b. if the institution does not comply with the obligations pursuant to this Act; or
  - c. on the basis of the considerations as referred to in Section 2.8(3).
2. Where subsection 1(c) applies, the decision shall enter into force no earlier than four years after the date of said decision.



## § 3.1. Designation of monument and archaeological monument

### Section 3.1. Designation as national monument

1. Our Minister, acting ex officio, may designate a monument or archaeological monument which is of general interest because of its beauty, scholarly significance, or cultural-historical value as a national monument.
2. Our Minister shall seek advice regarding such decision from the Municipal Executive [*college van burgemeester en wethouders*] of the municipality within which the monument or archaeological monument is located.
3. Our Minister shall seek advice regarding such decision from the Provincial Executive [*gedeputeerde staten*] if the monument or archaeological monument is located outside a built-up area [*bebouwde kom*] designated as such under the Road Traffic Act 1994 [*Wegenverkeerswet 1994*].
4. Our Minister shall designate an ecclesiastical monument after consultation with the owner.

### Section 3.2. Uniform Public Preparatory Procedure [uniforme openbare voorbereidings-procedure] applicable

1. Preparation of a decision on designation as a national monument shall be subject to the provisions of Part 3.4 of the General Administrative Law Act [*Algemene wet bestuursrecht*].
2. The Municipal Executive shall provide its advice within eight weeks.
3. Our Minister shall take the decision as speedily as possible, and within no more than six months.
4. The period as referred to in subsection 3 shall commence on the day when the draft decision is made available for perusal.
5. Our Minister shall send a copy of his decision to the Municipal Executive of the municipality within which the monument or archaeological monument is located.

### Section 3.3. Register of listed national monuments [rijksmonument]

1. Our Minister shall maintain a register of listed national monuments.
2. Said register of listed national monuments shall be open for consultation by all.
3. Our Minister shall enter monuments and archaeological monuments in said register if no appeal has been lodged against the decision

designating such as a national monument or an appeal has been dismissed.

4. The register of national monuments shall contain information regarding the registration and for identification of the national monuments.
5. Our Minister shall send a copy of the entry in the register to the Municipal Executive of the municipality within which the monument is located or, if the national monument concerned is not located within the territory of a municipality, to the competent authority for the environmental permit [*omgevingsvergunning*] as referred to in Section 2.1(1)(f) of the Environmental Permitting (General Provisions) Act [*Wet Algemene bepalingen omgevingsrecht*].

### Section 3.4. Amendment of register of listed national monuments

1. Our Minister, acting ex officio, may make changes to the register of listed national monuments.
2. If such amendment involves the removal from the register of a national monument, Sections 3.1 and 3.2 shall apply *mutatis mutandis*, unless such national monument has been destroyed as such.

### Article 3.5. Amendment of Land Registry designation

The Custodian of the Land Registry and Public Records [*kadaster*] shall notify Our Minister within fourteen days' notice of a change in the land registry designation of a national monument, with Our Minister then entering such change in the register of listed national monuments.

### Section 3.6. Public registers decisive

If the entry in the register of listed national monuments is not identical with a copy of that register in the public registers as referred to in Section 1(e) of the Immovable Property (Disclosure of Restrictions Under Public Law) Act [*Wet kenbaarheid publiekrechtelijke beperkingen*], the copy in the public records shall determine whether a monument or archaeological monument is deemed to be a national monument.

## § 3.2. Designation of cultural object and collection

### Section 3.7. Designation as protected cultural object or protected collection

1. Our Minister, acting ex officio, may designate a cultural object as a protected cultural object that is of particular cultural-historical or scholarly significance

or exceptional beauty and that, being irreplaceable and indispensable, should be preserved as part of the Dutch cultural heritage.

2. Our Minister, acting ex officio, may designate a collection as a protected collection that is, as a whole or because of one or more of the cultural objects that form a significant part of such collection, of particular cultural-historical or scholarly significance and that, being irreplaceable and indispensable, should be preserved as part of the Dutch cultural heritage.
3. The decision to designate a collection as a protected collection shall be accompanied by a general description of the protected collection and a catalogue of cultural objects belonging to the protected collection.
4. A cultural object shall be deemed to be:
  - a. irreplaceable if there are no other similar objects or objects of a similar type, or virtually no such objects, to be found in good condition in the Netherlands;
  - b. indispensable if it has a symbolic function, link function, or benchmark function.
5. The provisions in subsection 4 shall apply *mutatis mutandis* to designation as a protected collection.

### **Section 3.8. Expedited designation as protected collection**

1. In urgent cases, when deciding to designate a collection as a protected collection, Our Minister, notwithstanding Section 3.7(3), may suffice with a general description of the collection.
2. In a case as referred to in subsection 1, Our Minister shall establish a catalogue, as soon as possible after the decision to designate, of the cultural objects belonging to the collection.

### **Section 3.9. Consent of owner necessary for designation**

1. Designation of a cultural object as a protected cultural object or inclusion of a cultural object in the catalogue of a protected collection shall require the consent of the owner if said owner:
  - a. is the creator of said cultural object or the heir of the creator;
  - b. is the party that brought said cultural object into the Netherlands or that acquired it within five years after it was brought into the Netherlands, or is the heir of one of these.
2. The first subsection shall also apply to an heir that acquired said cultural object otherwise than by means of inheritance.

3. Subsection 1 shall only apply to an heir for a period of thirty years or, if archive material is concerned, fifty years after the death of the legator.
4. If the owner as referred to in subsection 1(b) is a legal entity, subsection 1 shall only apply for a period of thirty years or, if archive material is concerned, fifty years after said legal entity has brought the cultural object into the Netherlands or acquired ownership of the cultural object within five years after it was brought into the Netherlands.
5. Returning a cultural object to the Netherlands from a temporary location elsewhere shall not constitute bringing it into the Netherlands within the meaning of subsection b.

### **Section 3.10. Non-designation**

1. Our Minister shall not proceed with designation as a protected cultural object or protected collection if a cultural object as referred to in Article 3.7(1), a collection, or a part thereof:
  - b. is held by someone who has transferred his/her domicile to the Netherlands temporarily;
  - c. has been loaned by a non-resident for temporary exhibition in the Netherlands; or
  - d. in the opinion of Our Minister does not belong in the Netherlands due to similar circumstances.
2. Our Minister shall not proceed with designation as a protected cultural object or protected collection until one year after the circumstances as referred to in a to c of subsection 1 have ceased to apply.

### **Section 3.11. Register of protected cultural objects or protected collections**

1. Our Minister shall maintain a register of protected cultural objects and protected collections.
2. Said register shall be accessible by all, with the exception of data regarding the owner or the location of a protected cultural object or protected collection.
3. Said register shall in any case comprise:
  - a. for a protected cultural object: a description and reasons for the designation;
  - b. for a protected collection: a general description, a list of the cultural objects belonging to the collection, and the reasons for designation of the collection.

### **Article 3.12. Amendment of designation**

1. Our Minister, acting ex officio, may amend or withdraw a decision to designate a protected cultural object or a protected collection.
2. Our Minister, acting ex officio, may make factual

corrections to the description of a protected cultural object, the general description of a protected collection, or the catalogue of cultural objects belonging to a protected collection.

#### *Section 3.3. Designation as an ensemble*

### **Section 3.13. Designation as an ensemble**

Our Minister, acting ex officio, may designate a national monument together with cultural objects as an ensemble if the whole of such national monument and such cultural objects in their mutual cohesion is of exceptional cultural-historical or scholarly significance.

### **Section 3.14. Information system and register of listed national monuments**

1. Our Minister shall maintain an information system of designated ensembles that is linked to the register of listed national monuments.
2. Said information system shall be open for consultation by all.
3. For an ensemble that is included, said information system shall comprise at least a general description, a catalogue of the national monument, and, if the owner has consented, the cultural objects belonging to the ensemble and the reasons for designation of the ensemble.

### **Article 3.15. Amendment of designation**

1. Our Minister may amend or withdraw a decision to designate an ensemble.
2. Our Minister, acting ex officio, may make factual corrections to the description of an ensemble.

#### *§ 3.4. Municipal and provincial heritage*

### **Section 3.16. Municipal heritage**

1. The municipal council [*gemeenteraad*] of a municipality may adopt a set of heritage regulations [*erfgoedverordening*].
2. Such regulations shall concern the management and preservation of cultural heritage located within the municipality that is of particular cultural-historical or scholarly significance to the municipality.
3. The Municipal Executive shall maintain a municipal heritage register of designated cultural heritage.

### **Section 3.17. Provincial heritage**

1. A Provincial Executive may adopt a set of heritage regulations.
2. Such regulations shall concern the management and preservation of cultural heritage located, entirely or partly, within the province that is of particular cultural-historical or scholarly significance to the province.
3. The Provincial Executive shall maintain a provincial heritage register of designated cultural heritage.

#### *§ 3.5 Designation of international and European cultural objects*

### **Section 3.18. Designation as cultural objects under 1970 UNESCO Convention and Directive 2014/60/EU**

The following shall be designated for the Netherlands as cultural objects as referred to in Article 6.1(c) and Article 2(1) of Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No. 1024/2012 (OJEC 2014, L 159):

- a. protected cultural objects:
- b. cultural objects as referred to in Section 4.22.





## § 4.1. Protected cultural objects

### Article 4.1 Definition of terms

In this section, an action shall be understood to mean an action as referred to in Section 4.4(a) to (g).

### Section 4.2. Notification obligation of owner

The owner of a protected cultural object shall inform the party to which he transfers the cultural object or to whom he grants rights relating to the cultural object, in advance, that the cultural object has been designated as a protected cultural object.

### Section 4.3. Cooperation with monitoring

A party that has a protected cultural object in its possession shall show it, on request, to the inspector and shall notify the inspector promptly of the loss or destruction of such cultural heritage object.

### Section 4.4. Prohibition on acting without notification

Without prior written notice being given to the inspector, the following actions are prohibited in respect of a protected cultural object:

- a. relocating it;
- b. offering it for auction;
- c. disposing of it;
- d. encumbering it;
- e. renting it out;
- f. providing it on loan; or
- g. allocating it to a non-resident in the event of the division of a joint property [*boedelscheiding*].

### Section 4.5. Prohibition on acting without consent

1. For six weeks after the notification as referred to in Section 4.4 has been given, an action shall be prohibited without the consent of the inspector or Our Minister, unless said notification concerns only the intention to relocate within to the Netherlands.
2. If an action entails the removal of protected cultural object from the Netherlands, it shall only be Our Minister who may grant consent.

### Section 4.6. Prohibition on acting after objections

1. If Our Minister, within the period as referred to in Section 4.5(1) has stated written objections against the action to the party that has made notification, the action shall be prohibited.
2. Such objections may only be based on the consideration that there is a risk of the loss of the protected cultural object for cultural heritage present in the Netherlands.

### Section 4.7. Instructions in the case of objections

1. When stating objections, Our Minister may give notice that the prohibition will not apply if the action takes place with observance of instructions that he stipulates.
2. Such instructions shall only be intended to prevent the loss of the protected cultural object for cultural heritage present in the Netherlands.

### Section 4.8. No objections

1. If no objections have been stated, an action in respect of the same protected object shall again be prohibited when one year has elapsed since the date of the notification.
2. Our Minister shall, on request, confirm within eight days, in writing, that he has no objections against an action if the period as referred to in Section 4.5(1) has elapsed without his having stated objections.
3. If Our Minister withdraws objections that were previously stated, an action after a year after such withdrawal shall again be prohibited.

### Section 4.9. Announcement of objections in the Government Gazette [Staatscourant]

1. Our Minister shall announce the objections he has stated regarding a protected cultural object in a suitable manner, and in any case in the Government Gazette, against:
  - a. disposal;
  - b. allocation to a non-resident; or
  - c. relocation to the permanent residence of the owner outside the Netherlands.
2. Such announcement shall indicate the protected cultural object, the action as referred to in subsection 1, and the objections.
3. The announcement shall not contain information about the parties concerned or about the location of the protected cultural object.

#### **Section 4.10. Announcement of potential purchasers; bid to purchase by the State**

1. For six weeks after the publication in the Government Gazette [*Staatscourant*], potential purchasers of the protected cultural object may make themselves known to Our Minister.
2. Our Minister shall immediately notify the owner of the protected cultural object of such announcement.
3. After the period as referred to in subsection 1, objections as referred to in Section 4.9(1) shall be deemed to constitute a bid by the State to purchase the protected cultural object in the manner as provided in Sections 4.13 and 4.14.
4. Said bid shall apply for three months.
5. Upon written request by the owner, the point at which the bid commences may be postponed.
6. Our Minister and the owner may, in mutual consultation, extend the period as referred to in subsection 4.

#### **Section 4.11. Exceptions to instructions**

Sections 4.9 and 4.10 shall not apply if, when stating objections, Our Minister has made notification as referred to in Section 4.7(1).

#### **Section 4.12. Suspension of bid period**

The period as referred to in Section 4.10(4) shall be suspended for as long as a bid by the State to purchase a protected cultural object:

- a. is the subject of proceedings as referred to in Section 4.14(1) before the District Court in The Hague; or
- b. is the subject of an arbitration agreement between the State and the owner.

#### **Section 4.13. Minister enters into negotiations**

Immediately after the start of the period as referred to in Section 4.10(4), Our Minister shall enter into negotiations with the owner regarding the purchase price and other conditions of sale.

#### **Section 4.14. District Court in The Hague determines price**

1. If the negotiations as referred to in Section 4.13 fail to lead to agreement, the price shall be determined, at the request of either party, by the District Court in The Hague, unless the owner indicates that he will refrain from the action or Our Minister withdraws the

objections to said action.

2. Before rendering its decision, the District Court shall seek the advice of experts.
3. The Court Registrar [*griffier*] shall send a copy of the expert opinion to the applicant and the other party, both of whom may submit their comments on the advice to the Court Registrar.
4. Decisions pursuant to the present section shall only be possible by taking the appeal to the Supreme Court on points of law [*in cassatie*].

#### **Section 4.15. Waiver of objections or action**

1. Within one month after the purchase price pursuant to Section 4.14 has been established irrevocably, Our Minister may notify the owner that Our Minister will refrain from stating objections and the owner may inform Our Minister that it will refrain from performing the action of which he has given notification.
2. If the provisions of subsection 1 are not implemented, the price established shall be deemed to have been agreed between parties.

#### **Section 4.16. Reimbursement of expenditure by Minister**

1. Our Minister shall, if so requested, reimburse expenditure by an interested party if the usefulness of such has been negated by objections that have been stated pursuant to Section 4.6.
2. Subsection 1 shall not apply if said objections have led to the purchase of the protected cultural question by the State or such purchase has not taken place due to purchase by a third party.
3. Our Minister shall not reimburse expenses which, in view of the possibility that objections would be raised, should not, in all reasonableness, have been incurred.

§ 4.2. *Cultural objects of the State, province, municipality, or other legal entity under public law*

#### **Section 4.17. Announcement of intention to dispose**

1. A proposed decision to dispose of a cultural object or collection shall be announced by Our Minister, the Provincial Executive, or the Municipal Executive in a manner specified by Our Minister.
2. Said announcement shall comprise in any case a description of the cultural object or collection, reasons for the proposed disposal, and a notification



of whether advice will be sought as referred to in Section 4.18.

3. If no advice is sought as referred to in Section 4.18, any person may, within six weeks from the date of announcement of the intention, submit a formal presentation of views [*zienswijze*] to Our Minister, the Provincial Executive, or the Municipal Executive regarding whether the cultural object or collection is of particular cultural-historical or scholarly significance and irreplaceable and indispensable as part of the Dutch cultural heritage.
4. The cultural object or collection shall not be disposed of during the period as referred to in subsection 3. After said period, formal presentations of views shall be assessed by Our Minister, the Provincial Executive, or the Municipal Executive, and advice shall if necessary be sought as referred to in Section 4.18.

#### **Section 4.18. Advice in the case of disposal of cultural object or collection**

Our Minister, the Provincial Executive, the Municipal Executive, or another legal entity under public law shall seek the advice of a committee of independent experts on a decision to dispose of a cultural object or collection if:

- a. it can reasonably be assumed that the cultural object or collection is of particular cultural-historical or scholarly significance and irreplaceable and indispensable as part of the Dutch cultural heritage; and
- b. disposal is being considered to a party other than the State, a province, a municipality, or other legal entity under public law.

#### **Section 4.19. Scope of advice**

Said committee shall advise on whether the planned disposal concerns a cultural object or collection of particular cultural-historical or scholarly significance or that is irreplaceable and indispensable as part of the Dutch cultural heritage.

#### **Section 4.20. Advisory committee**

1. The committee shall consist of at least three members, including the chairperson.
2. The expertise of said committee shall concern in part the specific features of the cultural object or collection on which advice is sought.
3. Apart from by virtue of their membership of the committee, the members shall not carry out any work for the public law legal entity concerned. Said

members shall also not have any interests or positions that might bring the independence of their contribution or trust in that independence into question.

#### **Section 4.21. Obligation to inform Minister**

If the committee's advice concerns a cultural object or collection of particular cultural-historical or scholarly significance that is irreplaceable and indispensable as part of the Dutch cultural heritage, the Provincial Executive, Municipal Executive, or competent body of another legal entity under public law shall notify Our Minister to that effect, including a copy of the advice, at least thirteen weeks prior to disposal to a party other than the State, a province, a municipality, or another legal entity under public law.

#### *§ 4.3. Cultural object in a public or ecclesiastical collection*

#### **Section 4.22. Prohibition on removal from the Netherlands without consent**

1. A cultural object that forms part of a public collection that is listed in the inventory of a museum, archive, or permanent collection of a library of which the State or another public entity is the owner shall not be removed from the Netherlands without the owner having granted written permission.
2. If the owner does not provide a statement to that effect, its consent may be replaced, at the request of an interested party, by a permit from Our Minister.
3. The prohibition as referred to in subsection 1 shall also apply to a cultural object that forms part of:
  - a. an inventory of cultural objects of cultural-historical or scholarly significance of which a religious association an independent part thereof, or another religiously-based association, is the owner;
  - b. a public collection listed in the inventory of a museum, archive, or permanent collection of a library, and whose ownership belongs to a legal entity under private law that is which is funded predominantly by grants provided by the State or another public body and that has been designated by Our Minister as regards application of this prohibition;
  - c. the list of museological cultural objects of the State as referred to in Section 2.6(2).
4. The prohibition as referred to in subsection 1 shall also apply to:
  - a. national monuments and parts thereof;
  - b. illegally excavated archaeological finds; and

- c. archive documents and parts thereof as referred to in Section 1(c)(1) to (3) of the Public Records Act 1995 [Archiefwet 1995] that are older than fifty years.
  - 5. Section 4.3 shall apply *mutatis mutandis*.
- § 4.4. Council Regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods
- Section 4.23. Prohibition on export outside the EU without a permit**
- 1. Without an export licence from Our Minister or another competent authority as referred to in Article 2(2) of Regulation (EC) No. 116/2009 of the Council of 18 December 2008 on the export of cultural goods (OJEU 2009, L 39), it is prohibited to export cultural goods belonging to a category listed in Annex I of said Regulation outside the territories to which the Treaty on European Union applies.
  - 2. Our Minister may provide that the prohibition as referred to in subsection 1 shall not apply to archaeological objects more than one hundred years old derived from excavations and finds on land or in the sea or from archaeological sites if such cultural goods:
    - a. are of limited archaeological or scholarly importance;
    - b. do not derive directly from excavations, finds, or archaeological sites within a Member State of the European Union; and
    - c. are on the market legally.



# 5. Preservation of archaeological monuments

## § 5.1. Carrying out excavations

### Section 5.1. Prohibition on excavation

1. It is prohibited, without a certificate for that purpose, to carry out actions involving the detection, investigation, or acquisition of cultural heritage, or parts thereof, which results in disturbance of the soil or disruption or total or partial displacement or removal of an archaeological monument or of underwater cultural heritage.
2. Cases may be specified by or pursuant to a general administrative order [*algemene maatregel van bestuur*] whereby the provisions of subsection 1 do not apply. For such cases, certain parts of the present chapter may be excluded from application or declared to apply *mutatis mutandis*.

### Section 5.2. Certification institutions

1. A certificate as referred to in Section 5.1(1) shall be issued, on application, by an institution designated to that end by Our Minister.
2. Our Minister shall appoint an institution only if it has accreditation whereby the Accreditation Council [*Raad voor Accreditatie*] has indicated that there is a legitimate expectation for a certain period that the certification institution is competent to issue certificates and complies with requirements regarding independence, impartiality and continuity, or other requirements to promote quality in the issuing of certificates.
3. Accreditation shall be deemed equivalent to said accreditation that has been issued by a competent institution in another Member State of the European Union or in a state that is not a Member State of the European Union which is party to a convention to that end, or also to that end, which binds the Netherlands, on the basis of investigations or documents that provide a level of protection at least equivalent to the level of protection offered by assessment against the requirements set out in subsection 2.
4. The Autonomous Public Authorities Framework Act [*Kaderwet zelfstandige bestuursorganen*] shall not apply to institutions that have been designated pursuant to subsection 1.

### Section 5.3. Issuing of certificate

A certification institution shall issue a certificate only if the applicant shows sufficiently that excavations and related actions, as referred to in Section 5.4(1), will be carried out in a professional manner.

### Section 5.4. Conditions for certificate

1. The holder of a certificate shall ensure that when an excavation is carried out the actions performed and the archaeological finds discovered are documented, the finds are preserved, and a report is drawn up summarising the results of said actions.
2. The holder of a certificate shall carry out the excavation and the other actions as referred to in subsection 1 in a professional manner.
3. A certification institution shall take appropriate measures if the holder of a certificate fails to carry out excavations, or other acts as referred to in subsection 1, in a professional manner, and shall if necessary suspend or revoke a certificate.

### Section 5.5 Further rules regarding certification

Further rules may be set by or pursuant to a general administrative order regarding:

the performance of an excavation in a professional manner;

- a. the adoption of guidelines, such as assessment guidelines or a protocol with requirements to promote professionalism in the performance of an excavation with which an applicant must comply in order to qualify for a certificate;
- b. the action to be taken in accordance with guidelines as referred to in subsection b;
- c. the submission of an application for designation as referred to in Section 5.2, the information that must be provided with an application, the grounds and conditions on/under which Our Minister may issue, modify, refuse, suspend, or withdraw a designation, the rules that may be attached to a designation, and the period for which a designation may be issued or suspended;
- d. the work by a certification institution that is deemed to constitute the issuing of a certificate as referred to in Section 5.2;
- e. the charges that a certification institution may make for issuing a certificate;
- f. the notification to be made to Our Minister regarding the withdrawal or suspension of a certificate or accreditation;
- g. the exchange of information between certification institutions and with Our Minister for the purposes of supervision and enforcement.

### **Section 5.6. Notification of excavation and transfer of finds and reports**

1. The holder of a certificate shall notify Our Minister of the commencement of an excavation.
2. The holder of a certificate shall notify Our Minister of the initial findings within two weeks after the completion of an excavation.
3. The holder of a certificate shall preserve the archaeological finds discovered and shall transfer them, together with the associated excavation documentation, to the owner within two years after the completion of the excavation.
4. Within two years after completion of an excavation, the holder of a certificate shall provide Our Minister, the owner, and the Municipal Executive of the municipality where the excavation took place with the report as referred to in Section 5.4(1).
5. Our Minister may grant exemption from the requirements referred to in subsections 2 to 4 if, in a given case, the holder of certificate is not reasonably able to comply with a requirement.

§ 5.2. Ownership of finds in the case of an excavation

### **Section 5.7. Ownership of archaeological finds**

- a. An archaeological find discovered during an excavation and of which no party can prove ownership shall be the property of:
  - b. the province where the find has been discovered;
  - c. the municipality where the find has been discovered if such municipality has a designated depot as referred to in Section 5.8(2); or
  - d. the State, if the find was discovered outside the territory of any municipality.

§ 5.3. Depots for finds in the case of excavations

### **Section 5.8. Maintenance of depots**

1. Provincial Executives shall maintain a depot where archaeological finds discovered during excavations within the province concerned can be stored in a manner that is responsible in terms of preservation and accessibility.
2. At the request of a Municipal Executive, a Provincial Executive may designate a depot in which archaeological finds that have been discovered during excavations within such municipality can be stored in a manner that is responsible in terms of preservation and accessibility.
3. Our Minister may designate depots for the storage of

archaeological finds discovered during an excavation site outside any municipality, and shall in any case designate one or more depots for the storage of archaeological finds associated with shipping which he considers to be specially suitable for such storage.

4. Requirements may be specified, by or pursuant to a general administrative order, for the responsible storage of archaeological finds and the associated excavation documentation and reports, with a view to preservation and accessibility.

### **Section 5.9. Storage of archaeological finds**

1. Archaeological finds that are owned, pursuant to Section 5.7, by a municipality, a province, or the State, and the associated excavation documentation and records, as referred to in Section 5.6(3) and (4), shall be stored in depots as referred to in Section 5.8.
2. Our Minister may provide that archaeological finds associated with shipping and that have been discovered during excavations, and the associated excavation documentation and records, will be stored in a depot designated for finds associated with shipping as referred to in Section 5.8(3).
3. Our Minister may provide, within six months of the notification as referred to in Section 5.6(2), that, because of its public interest, an archaeological find that is owned by a municipality or province pursuant to Section 5.7 shall be provided to a museum to manage.
4. The Public Records Act 1995 shall not apply to excavation documentation and reports that have been drawn up in connection with an excavation.

§ 5.4. Notification obligation for accidental archaeological find or observation

### **Section 5.10. Accidental archaeological finds**

1. A party who discovers a find, otherwise than when carrying out excavations, which he knows, or should reasonably assume, to be an archaeological find shall notify Our Minister of such as soon as possible.
2. The owner of an archaeological find as referred to in subsection 1 shall keep such find available, or make it available, for scholarly research for six months from the day of notification as referred to in subsection 1.

### **Section 5.11. Observation**

A party who makes observations when detecting archaeological monuments, without carrying out an excavation, which he knows, or should reasonably



assume, to be relevant to the preservation of archaeological monuments shall notify Our Minister of said observations as soon as possible.

§ 5.5. *Central archaeological information system and method of notification*

### Section 5.12. Information system

1. Our Minister shall maintain a central archaeological information system, containing in any case:
  - a. the register of listed national monuments in so far as it concerns archaeological monuments;
  - b. the decisions on applications for a permit as referred to in Section 11(2), of the Monuments and Historic Buildings Act 1988 [Monumentenwet 1988] as said Act read prior to the present Act entering into force;
  - c. the report as referred to in Section 5.6(4); and
  - d. the notifications as referred to in Sections 5.6(1) and (2), 5.10(1), and 5.11.
2. Said central archaeological information system shall be open for consultation by all.
3. The copyright in respect of the reports as referred to in Section 5.6(4) and the works they contain shall be reserved.
4. The copyright and the database right as referred to in Section 2(1) of the Databases (Legal Protection) Act

[Databankenwet] in respect of the central archaeological information system shall be reserved.

5. Charges may be made for the provision of information from the central archaeological information system, according to rates set by Our Minister.

### Section 5.13. Method of notification

Our Minister may impose rules regarding the manner in which notification as referred to in Sections 5.6, 5.10, or 5.11 shall be made.



§ 6.1. *Return of cultural property from states party to the 1970 UNESCO Convention*

## Section 6.1. Definition of terms

In this section, the following terms have the following meanings:

- a. *1970 UNESCO Convention*: C onvention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted in Paris on 14 November 1970 (Treaty Series of the Kingdom of the Netherlands [Tractatenblad] 1972, No. 50 and Treaty Series of the Kingdom of the Netherlands 1983, No. 66);
- b. *State Party*: a state that has ratified the 1970 UNESCO Convention;
- c. *cultural property*: property which has been designated by each state, on religious or secular grounds, as being of importance for archaeology, prehistory, history, literature, art or science and hence of essential importance to its cultural heritage and which belongs to one of the categories of cultural property listed in Article 1 of the 1970 UNESCO Convention.

## Section 6.2. Obligations to implement 1970 UNESCO Convention

1. Our Minister shall perform that which is required to implement Articles 2, 5, 6, 7, 9, 10, 13(a), (b) and (d), and 14 of the 1970 UNESCO Convention, except in so far as such concerns the imposition of rules pursuant to Article 10(a) of said Convention on antique dealers whose violation is a punishable offence.
2. Our Minister may impose further rules regarding implementation.

## Section 6.3. Prohibition on import of illicitly exported or appropriated cultural property

It is prohibited to import into the Netherlands cultural property which:

1. has been removed from the territory of a State Party and is in breach of the provisions adopted by that State Party, in accordance with the objectives of the 1970 UNESCO Convention in respect of the export of cultural property from that State Party or the transfer of ownership of cultural property; or
2. has been unlawfully appropriated in a State Party.

## Section 6.4. Taking into custody

1. Where there is a reasonable suspicion that the prohibition in Section 6.3 has been contravened, Our Minister may take into custody the cultural property concerned for such period as Our Minister considers necessary in order to enable the State Party from which the cultural property originates to arrange for attachment of such property, which period may not exceed twelve weeks.
2. The period of custody may be extended once for a maximum of twelve weeks.

## Section 6.5. Recording of custody decision

1. Our Minister shall record his decision in writing before taking cultural property into custody or extending the custody period. The written decision constitutes an administrative decision.
2. Notice of the decision to take into custody, or the extension of the custody period, shall be given as quickly as possible to:
  - a. the possessor of the cultural property that is taken into custody, in so far as that party is known; and
  - b. the party holding the cultural property at the time when it is taken into custody.
3. If the situation is so urgent that Our Minister is unable to record the decision to take into custody in advance in writing, he shall arrange for it to be recorded in writing and published as quickly as possible thereafter.

## Section 6.6. Termination of custody period

1. The period of custody shall terminate when the cultural property has been attached on the instructions of the State Party from which it originates or the period for custody expires unused.
2. If the period of custody terminates without the cultural property being attached, it shall be provided to the party that held it when the period of custody commenced, or to the party that can reasonably be deemed to be the party with valid title to the property.

## Section 6.7. Claim for return

The return of cultural property imported into the Netherlands in breach of the prohibition as referred to in Section 6.3 may be claimed, subject to Sections 1011(a) to 1011(d) of the Code of Civil Procedure [*Wetboek van Burgerlijke Rechtsvordering*], by proceedings brought by the

State Party from which the property originates or by the party with valid title to such property.

### **Section 6.8. Restriction on application**

This section shall not apply if the breach of the provisions as referred to in Section 6.3(a) or the unlawful appropriation as referred to in Section 6.3(b) occurred prior to 1 July 2009.

#### *§ 6.2. Return of cultural property from occupied territory*

### **Section 6.9. Definition of terms**

In this section, the following terms have the following meanings:

- a. *Protocol*: The Protocol of 14 May 1954 to the Convention for the Protection of Cultural Property in the Event of Armed Conflict done at The Hague on that date (Treaty Series of the Kingdom of the Netherlands 1955, 47);
- b. *occupied territory*: a territory occupied on or after 14 January 1959 during an armed conflict to which Article I of the Protocol applies;
- c. *cultural property*: cultural property as referred to in Article 1(a) of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (Treaty Series of the Kingdom of the Netherlands 1955, 47);

### **Section 6.10. Prohibition on import or possession of cultural property from occupied territory**

It is prohibited to import cultural property from an occupied territory into the Netherlands or to have such property in one's possession in the Netherlands.

### **Section 6.11. Taking into custody of cultural property from occupied territory**

1. Where there is a reasonable suspicion that the prohibition in Section 6.10 has been contravened, Our Minister shall take into custody the cultural property concerned for such period as Our Minister considers necessary:
  - a. at his own volition at the time of importation into the Netherlands; or
  - b. at the request of the authorities of the relevant occupied territory or previously occupied territory.
2. Our Minister may also take into custody of his own volition cultural property discovered in the Netherlands in respect of which a reasonable

suspicion as referred to in subsection 1 exists if there is also a reasonable expectation that a request as referred to in subsection 1 (b) will be made.

### **Section 6.12. Recording of custody decision**

1. Section 6.5 shall apply *mutatis mutandis* to provisions as referred to in subsection 6.11.
2. In addition to what is provided in Section 6.5(2), notification of the decision to take into custody shall also be made as quickly as possible to:
  - a. the authorities of the relevant occupied territory;
  - b. the owner of the cultural property taken into custody, if his identity is known; and
  - c. persons with limited rights to the property, if their identity is known.

### **Section 6.13. Costs of taking into custody of cultural property from occupied territory**

1. All or part of the costs of taking property into custody as referred to in Section 6.11 may, where appropriate, be charged by decision of Our Minister to the person contravening the prohibition in Section 6.10.
2. No costs are in any event payable if:
  - a. the claim referred to in Section 6.15 is dismissed or indemnification or fair compensation as referred to in Section 6.15(3), is awarded by unappealable judgment; or
  - b. Our Minister definitively decides against returning the cultural property.
3. If a case as referred to in subsection 2 occurs after Our Minister has made a decision as referred to in subsection 1, he shall revoke his decision.
4. The decision shall state the amount to be charged. The costs may include the costs of making preparations for the property to be taken into custody.
5. Our Minister may collect the costs owed pursuant to the above subsections from the offender, together with the costs incurred in the collection, by warrant of execution.
6. The warrant of execution shall be served at the expense of the offender by bailiff's notification and shall constitute an enforceable order as referred to in Book 2 of the Code of Civil Procedure. However, no enforcement shall take place as long as the situation envisaged in subsection 2(a) can still occur.
7. An action to have the warrant of execution set aside may be brought within six weeks of the day of service by service of a writ of summons on Our Minister.
8. Enforcement of the warrant of execution shall be suspended pending the action. The court may lift the suspension at the request of Our Minister.





### Section 6.14. Termination of custody

1. The custody as referred to in Section 6.11 shall terminate:
  - b. upon the return of the cultural property to the authorities of the relevant occupied territory or previously occupied territory following the granting of a claim under legal proceedings as referred to in Section 6.15;
  - c. upon the dismissal of the claim for return as referred to in Section 6.15;
  - d. by decision of Our Minister if the authorities of the relevant occupied territory or previously occupied territory withdraw a request submitted by them for cultural property to be taken into custody or if they declare, in the event of the property being taken into custody by Our Minister of his own volition, that they will not submit a request for the return of the cultural property; or
  - e. by decision of Our Minister for reasons other than those referred to at (a), (b), or (c).
2. If the custody as referred to in Section 6.11 ends without the cultural property being returned to the authorities as referred to in subsection 1(a), the property shall then be handed over to the person in possession of it at the start of custody or to the person who can reasonably be designated as legally entitled to it.

### Section 6.15. Legal proceedings for return

1. After taking cultural property into custody as referred to in Section 6.11, Our Minister shall lodge a claim in proceedings for the return of the cultural property against the possessor, whom failing against the holder, before the court having jurisdiction in accordance with the rules of the Code of Civil Procedure.
2. Neither Sections 86, 88(1) and 99(1) of Book 3 of the Civil Code nor agreements alienating or encumbering cultural property from occupied territory can be invoked against Our Minister where he is claiming cultural property under subsection 1.
3. A court which grants a claim as referred to in subsection 1 makes an order against the State awarding the possessor or holder:
  - a. an indemnification if he shows that he owns or acquired ownership of the cultural; or if other cases are concerned:
  - b. such compensation as is fair in the circumstances if the possessor or holder exercised due care and attention in acquiring the cultural property.
4. If the possessor or holder from whom the return of cultural property is claimed does not comply with the obligation imposed on him by Section 87 of Book 3 of the Civil Code, the provisions of subsection 3(b) shall not apply to him.
5. A claim under legal proceedings as referred to in subsection 1 shall not be subject to a time limit.



## § 7.1. Principles for funding

### Section 7.1. General principle

Our Minister may provide funding for the preservation of cultural heritage.

### Section 7.2 Management of collections

Our Minister shall provide funding to an institution entrusted with a task as referred to in Section 2.8 for caring for the management of museological cultural property of the State or other cultural property.

### Section 7.3. Preservation of monuments

1. Our Minister may, on application, provide multi-year funding for the normal maintenance of national monuments.
2. Our Minister may, on application, provide funding for the restoration of national monuments.
3. Our Minister may, on application, provide funding in connection with new functions for monuments.

## § 7.2. Rules for provision of funding

### Section 7.4. Budget proviso

1. Funding charged to a budget that has not yet been adopted shall be granted subject to the proviso as referred to in Section 4:34(1) of the General Administrative Law Act [*Algemene wet bestuursrecht*].
2. In the event of said proviso not being complied with, the funding amounts granted shall be reduced to the amount of the funding available after adoption or approval of the budget, with all this being in proportion to the number of funding applicants that have been granted funding and the funding amounts awarded.

### Section 7.5. Funding limits

1. Our Minister may determine one or more funding limits for the provision of funding.
2. If Our Minister determines a funding limit, notification shall simultaneously be given of how the available amount will be apportioned.

### Section 7.6. Ground for refusal of funding for preservation of national monument

Without prejudice to the provisions of Section 4:35 of the General Administrative Law Act, no funding shall in any case be granted for a national monument if a loan has been extended for the work for which funding is requested pursuant to Section 7.8 and the activities for which the loan was extended have not yet been completed.

### Section 7.7. Further rules

1. Our Minister shall establish further rules for the provision of funding as referred to in Sections 7.2 and 7.3(1) and (3).
2. Our Minister may establish further rules regarding the granting of funding as referred to in Sections 7.1 and 7.3(2).
3. Our Minister may provide, by means of further rules, that the provision of data, including the submission of applications, may be effectuated solely by electronic means.

## § 7.3. Loans for preservation of national monuments

### Section 7.8. Loan

1. Our Minister shall ensure that a loan may be obtained to cover the cost of preserving national monuments.
2. The conditions under which, and manner in which, such loan shall be provided shall be announced in the Government Gazette [*Staatscourant*].
3. Our Minister may determine a maximum amount available during a specific period for the provision of loans.
4. Provinces, municipalities, water boards, and public bodies set up pursuant to the Joint Regulations Act [*Wet gemeenschappelijke regelingen*] shall not qualify for a loan.
5. A loan shall not in any case be granted if it is requested for the same activities for which funding has been granted pursuant to Section 7.3 and the activities for which the loan is requested take place in the same period as that for which the funding has been granted.



## § 8.1. General provisions

### Section 8.1. Enforcement duty

Our Minister shall be charged with the enforcement under administrative law of the provisions of or pursuant to the present Act. Said duty shall comprise:

- a. the supervision of compliance with the provisions of or pursuant to this Act, including collecting and recording relevant data; and
- b. imposing an administrative sanction for conduct contrary to the provisions of or pursuant to the present Act.

### Section 8.2. Administrative coercion

Our Minister shall be empowered to impose administrative coercion [*last onder bestuursdwang*] to enforce the provisions of or pursuant to the present Act.

## § 8.2. Designation of inspectors and investigating officers

### Section 8.3. Inspectors

Inspectors and other public officials [*ambtenaren*] appointed pursuant to an order issued by Our Minister shall be charged with supervising compliance with the provisions of or pursuant to this Act.

### Section 8.4. Investigating officers

1. Without prejudice to Section 141 of the Code of Civil Procedure, the following shall be charged with investigating punishable contraventions of the provisions of or pursuant to this Act:
  - a. the inspectors referred to in Section 8.3, in so far as they have been designated pursuant to a decision by Our Minister of Security and Justice;
  - b. the public officials of the Tax and Customs Administration [*rijksbelastingdienst*] who have competence regarding customs.
3. The public officials as referred to in subsection 1(a) and (b) shall also be charged with investigating the acts made punishable in Sections 179 to 182 and 184 of the Criminal Code [*Wetboek van Strafrecht*] if said acts concern an order, demand, or act done or undertaken by themselves.

### Section 8.5. Publication in the Government Gazette [Staatscourant]

An order as referred to in Section 8.3 or Section 8.4(1)(a) shall be announced by its being published in the Government Gazette.

## § 8.3. Special powers and duties of inspectors

### Section 8.6. Special powers

1. The public officials within the meaning of Sections 8.3 and 8.4 shall be empowered:
  - b. taking with them the necessary equipment, to enter a dwelling without the consent of the occupant; or
  - c. to demand that the occupant show them protected cultural, museological cultural objects of the State or cultural objects as referred to in Section 4:22, Section 4:23, or Chapter 6 that is present within said dwelling.
2. With respect to supervision of compliance with the provisions of Chapter 6, the inspectors shall be empowered:
  - a. to seal rooms or objects if such is reasonably necessary for the exercise of the powers referred to in Section 5:17 of the General Administrative Law Act; or
  - b. if necessary with the assistance of the police, to exercise the powers as referred to in Section 5:17 of the General Administrative Law Act.

### Section 8.7. Special provisions regarding supervision of management of collections

1. Our Minister whom it concerns, a State Institution, or an institution that manages museological cultural objects of the State shall, on request, provide the information that the inspectors as referred to in Section 8.3 require in order to exercise their supervision.
2. Our Minister whom it concerns, a State Institution, or an institution shall grant the inspectors access to the museological cultural objects of the State that he/it manages and shall, if so requested, allow them to inspect all associated records, documents, and other data media.
3. The inspectors shall notify Our Minister whom it concerns, a State Institution, or an institution of their findings and in doing so shall, if necessary, indicate what measures they consider should be taken for the purpose of management.
4. The inspectors shall periodically provide Our Minister with a summary of the findings as referred to in subsection 3.
5. The present article shall apply *mutatis mutandis* to an institution charged, pursuant to Section 2.8, with the management of other cultural objects.

**Section 8.8. Investigation of protected cultural objects of EU Member States**

1. The public officials referred to in Section 8.4(1)(a) and (b) shall be charged, at the request of a Member State of the European Union or of another State that is a party to the Agreement on the European Economic Area, with investigating a moveable object, described by such State in said request, that is deemed by the national legislation of such State to be a cultural object as referred to in Article 2(1) of Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No. 1024/2012 (OJEC 2014, L 159), if such object has, as referred to in said Directive, been removed unlawfully from the territory of such State.
2. For the application of this section, an amendment to Directive No. 2014/60/EU shall apply from the day when the amending directive concerned must be implemented, unless another time is determined by a ministerial order published in the Government Gazette [*Staatscourant*].



## Section 9.1. Environment and Planning Act

1. Until such time as the legislative proposal submitted by a Royal Message on 16 June 2014 comprising rules for the protection and use of the physical environment (Environment and Planning Act [*Omgevingswet*]) (Parliamentary Documents [*Kamerstukken*] 33 962) has become law and has entered into force:
  - a. Chapters II, Sections 2 and 3, IV, V, Sections 1 and 9, and VI of the Monuments and Historic Buildings Act 1988 [*Monumentenwet 1988*], as they read prior to the present Act entering into force, shall apply;
  - b. Section 5 of the Monuments and Historic Buildings Act 1988, as it read prior to the present Act entering into force, shall apply *mutatis mutandis* to a monument or archaeological monument from the date when the draft decision to designate as a national monument is forwarded as referred to in Section 3:13(1) of the General Administrative Law Act.
2. In applying subsection 1, the following provisions, as they read prior to the present Act entering into force, shall apply:
  - a. Schedule 1 to the General Administrative Law Act;
  - b. Section 1a(2) of the Economic Offences Act [*Wet op de economische delicten*].

## Section 9.2. Protected objects

1. Monuments that were listed as referred to in Sections 6(1) and 7(3) of the Monuments and Historic Buildings Act 1988 as they read prior to the present Act entering into force shall be deemed to have been listed pursuant to Section 3,3(3) of the present Act.
2. Movable and collections that have been designated as protected objects or protected collections pursuant to the Cultural Heritage Preservation Act [*Wet tot behoud van cultuurbezit*] shall be deemed to have been designated as protected cultural objects or collections pursuant to the present Act.

## Section 9.3. Continued application of Monuments and Historic Buildings Act 1988

1. The Monuments and Historic Buildings Act 1988, as it read prior to the present Act entering into force, shall continue to apply to:
  - a. the designation of a monument and the amendment in the register if an application for advice as referred to in Section 3(2) of the Monuments and Historic Buildings Act 1988, as said Act read prior to the present Act entering into force, was made prior to the date when the

- present Act enters into force;
  - b. an application as referred to in Section 8(1) of the Monuments and Historic Buildings Act 1988, as said Act read prior to the present Act entering into force, on which no decision has yet been taken.
2. Funding provided pursuant to Section 34 of the Monuments and Historic Buildings Act 1988 shall remain subject to the rules that applied on the day prior to the present Act entering into force.

## Section 9.4. Continued application of Cultural Heritage Preservation Act

1. The Cultural Heritage Preservation Act, as said Act read prior to the present Act entering into force, shall continue to apply to:
  - a. the designation of a protected object or protected collection as referred to in Section 2, 3, or 3a of the Cultural Heritage Preservation Act, as said Act read prior to the present Act entering into force, if the procedure commenced prior to the date when the present Act enters into force;
  - b. the amendment of a designation as referred to in Section 3d(2) of the Cultural Heritage Preservation Act, as said Act read prior to the present Act entering into force, if the procedure commenced prior to the date when the present Act enters into force;
  - c. an application as referred to in Section 3d(1) of the Cultural Heritage Preservation Act, as said Act read prior to the present Act entering into force, on which no decision has yet been taken;
  - d. an intention as referred to in Section 7(1) of the Cultural Heritage Preservation Act, as said Act read prior to the present Act entering into force, if said intention was announced prior to the date when the present Act enters into force;
  - e. an application as referred to in Section 14 of the Cultural Heritage Preservation Act, as said Act read prior to the present Act entering into force, that was submitted prior to the date when the present Act enters into force, and a dispute regarding a decision on such application.
2. A permit granted pursuant to Section 14a or Article 14b of the Cultural Heritage Preservation Act shall be deemed to be a licence as referred to in Section 4.22 or Section 4:23 of the present Act.

## Section 9.5. Decisions on taking into custody

Decisions on taking into custody pursuant to the Cultural Property Originating from Occupied Territory (Return) Act



[Wet tot teruggave cultuurgoederen afkomstig uit bezet gebied] or the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act [Uitvoeringswet UNESCO-verdrag 1970 inzake onrechtmatige invoer, uitvoer of eigendomsoverdracht van cultuurgoederen] shall be deemed to have been taken pursuant to the present Act.

### **Section 9.6. Excavation permit**

1. An excavation that commenced prior to the present Act entering into force shall continue to be subject to Chapter V of the Monuments and Historic Buildings Act 1988, as said Act read prior to the present Act entering into force.
2. Until a year after the entry into force of the present Act, an excavation may take place without a certificate if the party carrying out the excavation holds a permit for the actions concerned as referred to in Section 45 of the Monuments and Historic Buildings Act 1988 as said Act read prior to the present Act entering into force. The rules imposed by or pursuant to the Monuments and Historic Buildings Act 1988 regarding said permit shall in such case continue to apply, with Section 5.6 applying *mutatis mutandis*.
3. Section 5.2(2) shall not apply until two years after the present Act has entered into force. If an institution has been designated pursuant to Section 5.2 and does not hold accreditation after two years, Our Minister shall suspend or withdraw the designation.



# 10. Repeal and amendment of other acts

## § 10.1. Repeal and inclusion of statutory regulations

### Section 10.1. Repeal

The following acts are repealed:

- a. Monuments and Historic Buildings Act 1988;
- b. 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act;
- c. Cultural Heritage Preservation Act;
- d. Act of 7 March 2002 amending the Cultural Heritage Preservation Act in connection with evaluation of said Act [*Wet van 7 maart 2002 tot wijziging van de Wet tot behoud van cultuurbezit in verband met een evaluatie van die wet*] (Bulletin of Acts, Orders, and Decrees [Stb.] 2002, 145);
- e. Cultural Property Originating from Occupied Territory (Return) Act; and
- f. National Museum Services (Privatisation) Act [*Wet verzelfstandiging rijksmuseumse diensten*].

### Section 10.2. New basis

After the present Act enters into force, the following regulations shall be based on Section 7.7(1) of this Act:

- a. Preservation of Monuments Subsidy Scheme [*Subsidieregeling instandhouding monumenten*]; and
- b. Promotion of New Functions of Monuments Subsidy Scheme [*Subsidieregeling stimulering herbestemming monumenten*].

## § 10.2. Amendment of other acts

### Section 10.3. General Customs Act

The General Customs Act [*Algemene douanewet*] shall be amended as follows:

A

In Section 1:3(3)(a) and (4), “Cultural Heritage Preservation Act” shall be replaced by “Heritage Act”.

B

Part B of the Schedule shall be amended as follows:

“1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act”, “Cultural Heritage Preservation Act”, and “Cultural Property Originating from Occupied Territory (Return) Act” shall be deleted.

The following shall be added within the alphabetical order: “– Heritage Act”.

### Section 10.4. General Administrative Law Act

In Schedule 1 to the General Administrative Law Act, the part “Monuments and Historic Buildings Act 1988: Section 29” shall be deleted.

### Section 10.5 of Book 3 of Civil Code

Book 3 of the Civil Code shall be amended as follows:

A

Section 86a(2) shall read as follows:

“2. Section 86 may also not be invoked against a person who claims a movable item as owner which, at the time when he lost possession thereof, was designated pursuant to the Heritage Act as a protected cultural object or whose removal from the Netherlands is prohibited pursuant to Section 4:22 of said Act. The person who was then listed as the owner in the register as referred to in Section 3:11 of said Act, or in an inventory as referred to in Section 4:22(2) of said Act, shall be assumed to have then been the owner of the item.”.

B

In Sections 86b(1) and 310c(1), “Article 4 of the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act” shall be replaced in each case by “Section 6.7 of the Heritage Act”.

C

In the preamble to Section 87a(1), “Article 1(d) of the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act” shall be replaced by “Section 6.1(c) of the Heritage Act”.

D

Section 99(2) shall read as follows:

“2. Subsection 1 shall not apply to movables which have been designated pursuant to the Heritage Act as protected cultural objects or that form part of a public collection or of an inventory as referred to in Section 4.22(2) of said Act, if possession commenced after said designation or while they so formed part.”

## E

In Sections 238(4) and 291(3), “Section 7 of the Cultural Property Originating from Occupied Territory (Return) Act” shall in each case be replaced by “Section 6.15 of the Heritage Act”.

## F

In Section 310b(1), “has been designated pursuant to the Cultural Heritage Preservation Act as a protected object or that forms part of a public collection or of an inventory as referred to in Section 14a(2) of said Act” shall be replaced by “has been designated pursuant to the Heritage Act as a protected cultural object or that forms part of a public collection or of an inventory as referred to in Section 4.22(2) of said Act.”

### Section 10.6. Government Accounts Act 2001

Section 38(3) of the Government Accounts Act [*Comptabiliteitswet 2001*] shall be deleted.

### Section 10.7. Crisis and Recovery Act

Section 2.10 of the Crisis and Recovery Act [*Crisis- en herstelwet*] shall be amended as follows:

1. In subsection 2, “Chapter V, Section 3 of the Monuments and Historic Buildings Act 1988” shall be replaced by “Section 5.1 of the Heritage Act”.
2. In subsection 4, a passage shall be inserted after “Chapter V, Section 1 of the Monuments and Historic Buildings Act 1988” reading “as applying pursuant to Section 9.1(1) of the Heritage Act”.
3. In subsection 7, a passage shall be inserted after “Section 11 of the Monuments and Historic Buildings Act 1988” reading “as applying pursuant to Section 9.1(1) of the Heritage Act”, and “Section 1(c) of the Monuments and Historic Buildings Act 1988” shall be replaced by “the Heritage Act”.
4. In subsection 8, a passage shall be inserted after “Section 1(g) of the Monuments and Historic Buildings Act 1988” reading “as said Act read prior to the entry into force of the Heritage Act”.

### Section 10.8. Earth Removal Act

Section 3(3) of the Earth Removal Act [*Ontgrondingenwet*] shall be amended as follows:

1. In subsection h “monuments and historic buildings as referred to in Section 1(b) of the Monuments and Historic Buildings Act 1988” shall be replaced by “archaeological finds as referred to in the Heritage Act”.
2. In subsection i “to carry out excavations as referred to in Section 1(h) of the Monuments and Historic Buildings Act 1988” shall be replaced by “to carry out an excavation as referred to in the Heritage Act”.

### Section 10.9. Environmental Permitting (General Provisions) Act

The Environmental Permitting (General Provisions) Act [*Wet Algemene bepalingen omgevingsrecht*] shall be amended as follows:

## A

Section 1.1(1) shall be amended as follows:

1. The term and associated definition of the term “protected monument or historic building” shall be deleted.
2. In the definition of the term “protected town or village conservation area”, a passage shall be inserted after “Monuments and Historic Buildings Act 1988” reading “as said Act read prior to the entry into force of the Heritage Act”.
3. A term and a definition of said term shall be added within the alphabetical order reading: “*national monument*: a national monument as referred to in Section 1.1 of the Heritage Act, with the exception of archaeological monuments as referred to in said section;”.

## B

In Section 2.1(1)(f), “protected monument” shall in each case be replaced by “national monument”.

C

In Section 3.2a, “an ecclesiastical monument as referred to in Section 1(e) of the Monuments and Historic Buildings Act 1988” shall be replaced by “an ecclesiastical monument as referred to in Section 1.1 of the Heritage Act”.

D

In Section 3.3(5), Section 5.13(b), and Section 6.2a, a passage shall in each case be inserted after “Monuments and Historic Buildings Act 1988” reading “as said Act read prior to the entry into force of the Heritage Act”.

E

In Section 5.1, a passage shall be inserted after “Monuments and Historic Buildings Act 1988” reading “in so far as in force in accordance with Section 9.1 of the Heritage Act”.

#### **Section 10.10. Income Tax Act 2001**

In Section 6.31(2) of the Income Tax Act 2001 [*Wet inkomstenbelasting 2001*], “one of the registers as referred to in Section 6 or Section 7 of the Monuments and Historic Buildings Act 1988” shall be replaced by “the register of listed national monuments as referred to in Section 3.3 of the Heritage Act”.

#### **Section 10.11. Immovable Property (Disclosure of Restrictions Under Public Law) Act**

The Immovable Property (Disclosure of Restrictions Under Public Law) Act [*Wet kenbaarheid publiekrechtelijke beperkingen*] shall be amended as follows:

A

Section 1(b)(2) and (3) shall read:  
 “2°. sending of a draft decision by Our Minister of Education, Culture and Science as referred to in Section 3.2(1) of the Heritage Act, in conjunction with Section 3:13(1) of the General Administrative Law Act;  
 3°. a copy of the registration by Our Minister of Education, Culture and Science Minister of a monument or archaeological monument designated as a national monument in the register of listed national monuments as referred to in Section 1.1 of the Heritage Act;”.

B

In Section 15(2)(c), “an immovable monument as a protected monument within the meaning of Section 6(1) or Section 7(3) of the Monuments and Historic Buildings Act 1988 has taken place” shall be replaced by “a monument or archaeological monument as a national monument in the register of listed national monuments as referred to in Section 1.1 of the Heritage Act has taken place”.

#### **Section 10.12. Environmental Management Act**

Section 4.9 of the Environmental Management Act [*Wet milieubeheer*] shall be amended as follows:

1. “and” shall be added at the end of subsection a.
2. Subsection c and “, and” at the end of subsection b shall be deleted.

#### **Section 10.13. Economic Offences Act**

The Economic Offences Act [*Wet op de economische delicten*] shall be amended as follows:

A

Section 1(2) shall be amended as follows:

1. “the Cultural Heritage Preservation Act, Sections 7, 8, 9, 14a, and 14b” shall be deleted.
2. The following shall be added within the alphabetical order: “the Heritage Act, Sections 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.22, and 4.23;”.

B

Section 1a(2) shall be amended as follows:

1. “the Monuments and Historic Buildings Act 1988, Sections 11, 45(1), 53(1), and 56;” shall be deleted.
2. The following shall be added within the alphabetical order: “the Monuments and Historic Buildings Act 1988, Sections 5.1(1) and 5.10(1);”.



#### **Section 10.14. Cultural Policy (Special Purpose Funding) Act**

Section 2c of the Cultural Policy (Special Purpose Funding) Act [Wet op het specifiek cultuurbeleid] shall read as follows:

“Section 2c

1. For the preparation of advisory reports, the Council may appoint temporary committees which, notwithstanding Section 16 of the Advisory Bodies Framework Act [*Kaderwet adviescolleges*], may consist wholly or partly of persons other than members of the Council.
2. The committee members as referred to in subsection 1 shall be subject, *mutatis mutandis*, to the provisions of Sections 11 to 14 of the Advisory Bodies Framework Act, on the understanding that such members are appointed, suspended and dismissed by Our Minister.”

#### **Section 10.15. Act for Establishment of the Public Limited Liability Company De Nederlandse Munt N.V.**

In Section 3(3) of the Act of 27 April 1994 comprising Regulations regarding the Establishment of the Public Limited Liability Company De Nederlandse Munt N.V. and to amend the Coinage Act 1987 [Wet van 27 april 1994, houdende regelen met betrekking tot de oprichting van de naamloze vennootschap De Nederlandse Munt N.V. en tot wijziging van de Muntwet 1987] (Bulletin of Acts, Orders, and Decrees 1994, 336), “Section 4 of the National Museum Services (Privatisation) Act” shall be replaced by “Section 2.6(1) of the Heritage Act”.

#### **Section 10.16. Code of Civil Procedure**

Section 1011a of the Code of Civil Procedure [Wetboek van Burgerlijke Rechtsvordering] shall be amended as follows:

1. In subsection 1 “Article 14 of the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act” shall be replaced by “Section 6.7 of the Heritage Act”.
2. In subsection 2(a) “Section 1(d) of the Implementation Act as referred to in the preamble” shall be replaced by “Section 6.1(c) of the Heritage Act”.
3. In subsection 2(b) “the Convention as referred to in said Implementation Act” shall be replaced by “the 1970 UNESCO Convention as referred to in Section 6.1(a) of the Heritage Act”.

#### **Section 10.17. Valuation of Immovable Property Act**

In Section 17(3) of the Valuation of Immovable Property Act [Wet waardering onroerende zaken], “one of the registers of protected monuments established pursuant to the Monuments and Historic Buildings Act 1988” shall be replaced by “register of listed national monuments as referred to in Section 3.3 of the Heritage Act”.

#### **Section 10.18. Monuments and Historic Buildings Act 1988**

In Section 11(1) of the Monuments and Historic Buildings Act 1988, a passage shall be added before the full stop at the end of the sentence, reading: “, or refrain from maintenance thereto that is necessary for its preservation”.



# 11. Final provisions

## **Section 11.1. Short (reference) title**

This Act may be cited as the “Heritage Act”.

## **Article 11.2. Entry into force**

This Act shall enter into force at a time determined by Royal Decree; such time may differ for the various sections or parts thereof.

We hereby order and command that this Act be published in the Bulletin of Acts, Orders, and Decrees and that all ministries, authorities, boards, and public officials to whom such applies shall take measures to implement it diligently.

Parliamentary Document 34 109

Done at Wassenaar, 9 December 2015

Willem-Alexander

The Minister of Education, Culture and Science,  
M. Bussemaker

Published on the *eighteenth* of December 2015

The Minister of Security and Justice,  
G.A. van der Steur

**Schedule to: Act Relating to the Combining and  
Amendment of Rules Regarding Cultural Heritage  
(Heritage Act)**

| Concordance table      |               |              |
|------------------------|---------------|--------------|
| Former                 |               | New          |
| Sections 1.1 to 3.12   |               | idem         |
| §3.2a                  | (amt. 41) 41) | §3.3         |
| Section 3.12a          | (amt. 41)     | Section 3.13 |
| Section 3.12b          | (amt. 41)     | Section 3.14 |
| Section 3.12c          | (amt. 41)     | Section 3.15 |
| §3.2a                  | (amt. 37)     | §3.4         |
| Section 3.12a          | (amt. 37)     | Section 3.16 |
| §3.2a                  | (amt. 38)     | §3.4         |
| Section 3.12a          | (amt. 38)     | Section 3.17 |
| §3.3                   |               | §3.5         |
| Section 3.13           |               | Section 3.18 |
| Sections 4.1 to 4.16   |               | idem         |
| Section 4.16a          | (amt. 35)     | Section 4.17 |
| Section 4.17           |               | Section 4.18 |
| Section 4.18           |               | Section 4.19 |
| Section 4.19           |               | Section 4.20 |
| Section 4.20           |               | Section 4.21 |
| Section 4.21           |               | Section 4.22 |
| Section 4.22           |               | Section 4.23 |
| Sections 5.1 to 10.17  |               | idem         |
| Section 10.18          | (amt. 18)     |              |
| Sections 11.1 and 11.2 |               | idem         |





# General part



The Netherlands has a rich cultural heritage. It can be found throughout Dutch society: in the country's numerous museums and historic town centres, in the countryside, in the soil, and – as intangible heritage – in traditions, rituals, and stories. Cultural heritage also manifests itself in many different ways. It comprises the entirety of tangible and intangible resources, created in the course of time by people, that give expression to continuously evolving values, convictions, knowledge and traditions, and that offer a frame of reference to present and future generations.<sup>1</sup>

## 1.1 Importance of cultural heritage

Cultural heritage is important for the social and physical environment in which we live. It is the source for the narrative of the country's history, making the past visible and therefore strengthening our cultural and historical awareness. Through our cultural heritage, we feel connected with one another and with the past, in that way deriving a significant part of our identity. Cultural heritage provides anchor points for understanding the present and thinking about the future. It generates memories and tells stories, and makes them tangible. Cultural heritage is also an important source of inspiration for innovation in design and spatial development. Attention to our cultural heritage has become an essential part of discussion of the quality of the living environment. It is also important in science and scholarship, and can form the basis for research. But that is not all. Cultural heritage is also of major economic value. Our museums, our historic town centres, and our monuments on UNESCO's World Heritage List attract countless tourists from home and abroad each year, thus forming a source of income for the national and local economy. Moreover, investors are drawn by an environment that is attractive from the perspective of cultural heritage and where employees are happy to come to live. People enjoy the beauties of art and an attractive living environment.

Care for Dutch cultural heritage began in the nineteenth century. In an important article "Holland at its narrowest" [*Holland op zijn smalst*] in *De Gids* (1873), Victor de Stuers

denounced the neglect of the national cultural heritage and the poor design of Dutch museums. The government responded by taking action, so that the ancestral "monuments of history and art" could contribute to the pride of the new Dutch state and society. The numerous initiatives by individuals to preserve our cultural heritage and make it accessible were also very important in the development of heritage conservation.

In the past one hundred and fifty years, care for cultural heritage expressed itself primarily in great concern about what was being lost through modernisation, industrialisation, and urban expansion and renewal. Much that was of value was found to be defenceless. This is no longer the case. Commitment through the years and the dedication of many people mean that caring for Dutch cultural heritage has become an established and broadly supported interest, whose value is widely recognised and acknowledged. Many tens of thousands of volunteers work at museums and for heritage organisations, National Heritage Day [*open monumentendag*] attracts nearly a million visitors annually, and the number of visitors to museums is increasing year on year.

There is widespread awareness that our cultural heritage represents an important social value that demands our attention. That involves not only maintaining it but also making it accessible, learning about it, and utilising it in the further development of our country. One highly influential development in this context is digitisation, i.e. technological developments such as the growing use of (mobile) Internet, the construction and accessibility of large databases, and a whole range of innovative developments. The same applies to the management and preservation of cultural heritage. In addition to the efforts of the professionals, owners and users of cultural heritage, and the many volunteers, this requires an active supporting and protecting role on the part of government.

## 1.2 Reasons for a single Heritage Act

Conservation and management of Dutch heritage is governed by various specific acts and sets of regulations. These are the Regulations on Material Management of Museum Objects [*Regeling materieel beheer museale voorwerpen*], the National Museum Services (Privatisation) Act [*Wet verzelfstandiging rijksmuseumse diensten*], the Monuments and Historic Buildings Act 1988 [*Monumentenwet 1988*], the Heritage Preservation Act [*Wet tot behoud van cultuurbezit*], the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act [*Uitvoeringswet*

1. The definition of cultural heritage in this legislative proposal is inspired by the broad approach to cultural heritage in the Council of Europe's Faro Convention. That approach applies not only to immovable heritage but also to moveable and intangible cultural heritage. This legislative proposal takes cultural heritage to be the following: "tangible and intangible resources inherited from the past, created in the course of time by people or arising from the interaction between man and the environment, that people, irrespective of the ownership thereof, identify as a reflection and expression of continuously evolving values, beliefs, knowledge and traditions, and that offer a frame of reference to them and to future generations".

UNESCO-verdrag 1970 inzake onrechtmatige invoer, uitvoer of eigendomsoverdracht van cultuuroederen], and the Cultural Property Originating from Occupied Territory (Return) Act [Wet tot teruggave cultuuroederen afkomstig uit bezet gebied]. These sectoral statutory regimes have been established over the course of time, with each type of heritage having its own specific definitions, procedures, and protection measures.

For all types of heritage, the current statutory provisions need to be amended or expanded. The museum memorandum “Strength through Cooperation” [Samen werken, samen sterker] of 10 June 2013<sup>2</sup> announced, for example, that a public-law arrangement would be introduced for careful decision-making on the disposal of cultural objects and collections by public authorities, that the current private-law management agreements between the State (as owner of the collections) and the museums (as the administrator) would be replaced by a public-law arrangement, and that supervision of management of the national collection would be structured in an integrated manner.

Most of the statutory provisions applying to monuments (including archaeological monuments) will also be gradually transferred from the Monuments and Historic Buildings Act 1988 to the Environmental and Planning Act [Omgevingswet] (in preparation), resulting in a greatly slimmed-down Historic Buildings Act. Finally, there are reasons to amend various parts of the current arrangements in addition to the above, most importantly through the introduction of self-regulation in archaeology and a supplement to the protection regime of the Heritage Preservation Act.

The current sectoral fragmentation of heritage legislation and amendments to the various statutory regimes that are considered desirable or necessary are the reasons to establish a single integrated Heritage Act integrating the various specific acts and regulations listed above. Where appropriate, the various protection regimes can be harmonised, and procedures with little or no added value can be scrapped so as to reduce red tape and administrative burdens. In a single Heritage Act – already announced in the aforementioned museum memorandum and which was also explicitly recommended by the Council for Culture [Raad voor cultuur]<sup>3</sup> – the government sets out clearly and understandably how our heritage is dealt with, which parties have what responsibilities, and how supervision is to take place. In this way, central government also

expresses how very important it is to society for our heritage to be dealt with carefully.

### 1.3 General principles of the legislative proposal

A number of general principles applied when the present legislative proposal was drawn up. First, merging the existing legislation and regulations will ensure that the levels of protection applying in the current arrangements are at least maintained. Second, where possible private organisations should also be involved in preserving cultural heritage. A reasonable balance should also be pursued between the rights of the owner of cultural heritage and protection of the public interest that his property represents, with regulations and procedures with no longer any clear added value being abolished. Finally, the international obligations which the Netherlands has undertaken in the field of cultural heritage should be included in the legislative proposal in full.

### 1.4 Main points of the legislative proposal

Besides bringing together the various regulations in a single Heritage Act, this legislative proposal contains a number of substantive new provisions in relation to the current statutory regulations on cultural heritage.

- There will be regulations on the disposal of cultural objects and collections that are owned by central government or by municipal or provincial authorities; these regulations are intended to ensure that decisions on such disposal are taken in a diligent manner. Before an authority can proceed to dispose of a high-quality cultural object or collection to a party other than the State, a province or a municipality, it must first seek expert advice.
- Care for the national collection will be laid down in law in a uniform manner. In the case of the museums for which the Minister of Education, Culture and Science is responsible, that legal basis will replace the existing management agreements under private law. This will create a basis for structured arrangements for financing the cost of managing the national collection.
- The Minister of Education, Culture and Science will be made subject to the obligation to accept cultural objects and collections (or parts of collections) that are of high quality for the national collection if the owner is no longer able to manage those objects and wishes to transfer them to the State unencumbered and at no charge. This will prevent the loss of important cultural heritage for which no one assumes management.

2. Parliamentary Documents II 2012/13, 32 820, No. 77.

3. Council for Culture, *Ontgrenzen en verbinden: naar een nieuw museaal bestel*, 2013 The Hague, p. 45 et seq.

- In integrating the provisions of the Heritage Preservation Act, a provision will be added that will give parties other than the State – for example museums – the opportunity to register as the potential purchaser of a protected cultural object that is at risk of disappearing abroad. This will extend the options for retaining such objects for the Netherlands.
- The system of permits for carrying out archaeological excavations will be replaced by a system of statute-based certification. Giving self-regulation a more prominent position in archaeology is intended to bring about more effective policy regarding quality in this field.
- To prevent disturbance of valuable shipwrecks and in general to ensure better protection for maritime heritage, the prohibition on carrying out excavations will be extended and the definitions will be made clearer.
- The procedure in the Monuments and Historic Buildings Act 1988 for designating national monuments will be replaced by the simpler Uniform Public Preparatory Procedure [*uniforme openbare voorbereidingsprocedure*] provided for in the General Administrative Law Act [*Algemene wet bestuursrecht*].
- Finally, enforcement and supervision will be harmonised and, in that context, supervision will be made the same for anyone who manages a national collection, with administrative coercion [*last onder bestuursdwang*] and the penalty for non-compliance [*last onder dwangsom*] being declared generally applicable.

### 1.5 Relationship to other legislation

In addition to the present legislative proposal a legislative proposal has been drawn up for an Environment and Planning Act.<sup>4</sup> In that proposal, the existing legislation and regulations regarding the physical living environment are integrated into a single coherent act which – in addition to securing a safe and healthy living environment and good environmental quality – also makes possible the effective management, use, and development of the physical environment in which we live in order to fulfil societal functions. The Environment and Planning Act will be of great importance to cultural heritage because it also provides for a scrupulous approach to cultural heritage within the physical living environment. The protection of monuments (including archaeological monuments), urban and village

conservation areas, and man-made landscapes will also be given an important place in that Act. The provisions of the existing Monuments and Historic Buildings Act 1988 which relate directly to decision-making regarding the physical living environment are also included in the proposal for the Environment and Planning Act (or will be included in the implementation regulations based on that Act), and are not repeated in the present legislative proposal. Transfer of the provisions to the Environment and Planning Act will lead to changes in the terminology and system. The zoning plan [*bestemmingsplan*] will be replaced, for example, by the environment plan [*omgevingsplan*]. The level of actual protection afforded to cultural heritage will remain at least the same. Implementing legislation will be utilised to ensure transitional law so that existing zoning plans, for example, do not cease to be applicable. The sections of the Monuments and Historic Buildings Act 1988 relating to other matters that must be arranged for monuments (including archaeological monuments) are included in the present legislative proposal. The Heritage Act and the Environment and Planning Act therefore complement one another. The basic principle is that the level of actual protection of cultural heritage afforded by those two pieces of legislation is at least the same as in the current system. The Heritage Act is expected to enter into force sooner than the Environment and Planning Act. So as to leave no gaps in the protection of cultural heritage in the meantime, all the provisions that are transferred to the Environment and Planning Act will remain in force until the point when the Environment and Planning Act enters into force.

Parallel to the present legislative proposal, the Government Accounts Act [*Comptabiliteitswet*] will be modernised,<sup>5</sup> with the basis for material management of the national collection in Section 38(3) of that Act no longer applying. The rules for Ministers and State Institutions [*colleges van staat*] regarding management of the national collection have been included in the present legislative proposal and will therefore no longer be covered by the regime of the Government Accounts Act.

The legislation on archives will continue, given its nature, to apply independently, and has not been incorporated into the present legislative proposal. The Public Records Act 1995 [*Archiefwet 1995*] stipulates that the archives of the various public authorities are to be stored carefully and made available, so that everyone has the opportunity to understand how the authorities operated

4. The legislative proposal for the Environment and Planning Act was submitted on 16 June 2014, Parliamentary Documents II 2013/14, 33 962.

5. Parliamentary Documents II 2012/13, 33 670, No. 1.

in the past. Given its focus on information and accessibility, that Act is not exclusively a heritage act and is therefore unsuitable for integration into the present legislative proposal. Government archives will therefore continue to be subject to the Public Records Act 1995, which sufficiently guarantees the preservation of those archives. Where archives are concerned, that Act must be seen as a *lex specialis* if there is a case of overlap.

### 1.6 Role of other authorities and of the Council for Culture

Preserving and managing cultural heritage is a responsibility for all levels of government with a general management task. The present legislative proposal focuses on the protection of cultural heritage that is considered at national level to be of public interest. Central government plays an important role in this, but other public authorities are also relevant. One clear example is care for national monuments. It is the State that is responsible for designating such monuments and for funding the maintenance costs, whereas the funds for restoration are provided via the provinces. In addition, the provinces have their core task and statutory powers in the field of spatial planning development and environmental policy. The province plays a connecting role in the area of its core tasks and can act as the area-specific coordinator. The provinces, for example, look after national heritage interests in the context of provincial spatial planning and deal with area-specific conservation of monuments. The municipalities are responsible for advising on the designation of national monuments by the State, for the safeguarding of cultural heritage in zoning plans, for issuing permits for the restoration or alteration of monuments, and for supervision. This legislative proposal does not entail any changes in this division of responsibilities, which has shown itself to be effective. Nor does the legislative proposal bring about changes in the responsibility of local and provincial authorities for protecting municipal and provincial monuments and collections of local or regional importance. The rules that the legislative proposal introduces regarding management of the national collection do not apply to museums that only manage collections belonging to other authorities, and the rules regarding supervision do not apply to those museums. The other authorities are responsible for their own collections; they can find inspiration in the legislative proposal for structuring that responsibility. This legislative proposal does, however, impose rules regarding cases in which authorities wish to dispose of cultural objects or collections (or parts of collections) that are of particular cultural-historical or scholarly

significance and that are irreplaceable and indispensable as part of the Dutch cultural heritage. Those rules comprise a duty of care (mandatory seeking of expert advice), and do not otherwise affect the autonomy of the authorities to arrive at a decision independently.

This legislative proposal does provide for a change in the role of the Council for Culture. The current advisory role of the Council regarding individual designations of national monuments (including national archaeological monuments) and protected cultural objects is not included in the legislative proposal. The Minister of Education, Culture and Science, acting *ex officio*, will take the relevant decisions on the basis of proposals from the Cultural Heritage Agency country's cultural heritage [Rijksdienst voor het Cultureel Erfgoed, RCE]. As has been shown in practice, the added value of advice from the Council is to be found not so much in its advice on individual cases as in a strategic context. The Council will continue, for example, to render advice (both solicited and unsolicited) on the designation programmes for monuments on which individual designations are based. The Council may also, of course, make suggestions to the Minister of Education, Culture and Science for *ex officio* designation if it identifies a cultural object that must not be lost to the Dutch cultural heritage.

### 1.7 International obligations

The Netherlands has entered into various international agreements on the protection of cultural heritage. This involves ratification by the Netherlands of conventions of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the Council of Europe, and of EU legislation. In some cases, these international agreements led to the drawing up of national legislation for the protection of cultural heritage. The international agreements are of great importance in protecting our cultural heritage, and have also served as important basic principles for the present legislative proposal. A list is given below of the international agreements that the Netherlands has entered into.

National legislation is not in all cases necessary for the country to carry out its international obligations. If legislation is in fact required, that requirement is met with the present legislative proposal in conjunction with, *inter alia*, the legislation in the field of the physical living

environment<sup>6</sup> and the civil law rules set out in the Civil Code [*Burgerlijk Wetboek*] and the Code of Civil Procedure [*Wetboek van burgerlijke rechtsvordering*]. The other obligations arising from international agreements – such as the surveying, management, preservation, and accessibility of the heritage concerned, monitoring, supervision, and the provision of information – are met by, *inter alia*, policy and communication. A good example of this is how intangible cultural heritage is dealt with, mainly by keeping it alive by giving heritage associations the opportunity to pass it on to future generations. This involves surveying it, disseminating knowledge of it, and by implementing model practices for its protection.

### List of conventions and EU regulations

#### UNESCO

- Convention for the Protection of Cultural Property in the Event of Armed Conflict, together with the associated (First) Protocol, 1954 (1954 Hague Convention);
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention);
- Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 (World Heritage Convention);
- Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1999 (Second Protocol);
- UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (2003 UNESCO Convention).

#### Council of Europe

- Convention for the Protection of the Architectural Heritage of Europe, Granada 1985 (Granada Convention);
- European Convention on the Protection of the Archaeological Heritage (Revised), Valletta 1992 (Valletta Convention);
- European Landscape Convention, Florence 2000.

#### European Union

- Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State;
- Regulation (EC) No. 116/2009 on the export of cultural goods;
- Regulation (EC) No. 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq (Article 3);
- Implementation of Regulation (EU) No. 1332/2013 of the Council of the European Union of 13 December 2013 amending Regulation (EU) No. 36/2012 concerning restrictive measures in view of the situation in Syria (OJEU L 335) and implementing Decision 2013/760/CFSP of the Council of the European Union of 13 December 2013 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJEU 335).

#### 1.8 Dutch Caribbean

Since 10 October 2010, the islands of Bonaire, St. Eustatius, and Saba (the “Dutch Caribbean”) have had the status of public authority [*openbaar lichaam*]. This legislative proposal will not apply in the Caribbean Netherlands, meaning that there will not be any change in the current situation. The acts that have been integrated into this legislative proposal also do not apply in the Caribbean Netherlands. For monuments and archaeology, there is a separate act, namely the Monuments and Historic Buildings (BES Islands) Act [*Monumentenwet BES*]. Based on that Act and the regulations applying to the BES Islands, the island governments can assign protected status to monuments. The Monuments and Historic Buildings (BES Islands) Act comprises a different system of protection to that in the legislation applying to the European part of the Netherlands. In the European part, the protection of monuments and archaeology is safeguarded above all in the legislation on spatial planning, and the Caribbean Netherlands has a different regime for that legislation also.

The chapter on the management of collections does not apply to the Caribbean Netherlands either. Management of the national collection is not allocated to any of the public authorities, and a locally based institution will not be charged by the Minister of Education, Culture and Science with the management of collections.

The implementing legislation for the First Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the

6. These rules are still included in various pieces of legislation but are combined in the proposal for the Environment and Planning Act. For the international obligations relating to the physical living environment, see Sections 2.3 and 7.3 of the Explanatory Memorandum to the legislative proposal for the Environment and Planning Act, Parliamentary Documents II 2013/14, 33 962, No. 3.

1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act also do not apply to the Caribbean Netherlands. The conventions can only come into force for this part of the Netherlands if the Civil Code and Code of Civil Procedure applying there have also been amended. That has not yet commenced due to the policy of legislative restraint. Other conventions in the area of cultural heritage do apply in the Caribbean Netherlands, however, including the World Heritage Convention, the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, the Granada Convention, and the Valletta Convention. In so far as necessary, these conventions have been implemented in specific BES Islands legislation.

### **1.9 Structure of the legislative proposal**

The legislative proposal is structured as follows:

- Chapter 2: Management of collections
- Chapter 3: Designation as protected heritage
- Chapter 4: Protection of heritage
- Chapter 5: Special rules for the preservation of archaeological monuments
- Chapter 6: The international return of cultural objects
- Chapter 7: Financial provisions
- Chapter 8: Enforcement and supervision

The general part of this Explanatory Memorandum follows that structure. The section-by-section part indicates how the provisions included related to the existing legislation. Concordance tables for the integrated acts are also included at the end.

### **1.10 Management of collections**

#### ***Supervision of management of the national collection***

As already pointed out, the rules regarding the management of the national collection are directly intended for anyone who carries out such management. This means that supervision of the museums that manage museological cultural objects of the State is no longer based on management agreements and funding decisions, but is enshrined in law. Furthermore, the system of the Government Accounts Act 2001 no longer forms a limitation as regards the supervision of institutions that are funded by Ministers other than the Minister of Education, Culture and Science. In that system it is only the relevant Minister who can be addressed and not the institution that actually manages the national collection. This means that the responsibility that the Minister of Education, Culture and Science has for supervision and enforcement is complex. This legislative proposal puts an end to that complex situation as regards the management and supervision thereof.

Because of the personal responsibility of anyone who manages a national collection, inspectors supervising the national collection will report their findings directly to the relevant manager. In doing so, they can also make recommendations. Only if the inspectors discover that the recommendations are not being complied with and preservation of the cultural objects is endangered will the Minister of Education, Culture and Science proceed to issue instructions or take over management.



## 2. Protection of heritage

### 2.1 Introduction

The public interest served by the entire Dutch cultural heritage justifies its protection and thus a certain restriction on how the private or individual owner can deal with his property. It goes without saying, of course, that careful consideration needs to be given, on the one hand, to the interest served by protection and, on the other, to the interest of the owner and the free movement of goods.

This chapter successively covers the rules imposed on owners of protected cultural objects, on authorities that wish to dispose of cultural objects, on the export of cultural objects abroad, and on the owners of national monuments.

### 2.2 Privately owned cultural objects

For owners of protected cultural objects, the restriction provisions of the Heritage Preservation Act have been incorporated into the legislative proposal. These mean that it is prohibited without the permission of the inspector (of the Cultural Heritage Inspectorate [*Erfgoedinspectie*]) or the Minister of Education, Culture and Science to carry out certain actions concerning a protected cultural object, including offering it for auction, disposing of it, or encumbering it. If an action entails the possibility of a cultural object being lost to the Netherlands, the Minister of Education, Culture and Science can state objections, which can ultimately lead to the Minister entering into negotiations with the owner about purchasing the object.

This legislative proposal adds a new method to the existing range of instruments for preserving protected cultural object for the Netherlands. Partly because the State's fund for such purchases is only limited, this legislative proposal offers private initiatives greater scope for contributing to the preservation of important cultural heritage for the country. Contributing in this way is not in fact exceptional; works that were at risk of being exported have in the past been purchased by individuals. More often, individuals make a significant financial contribution for the purchase of a cultural object by the State, for example through funds of a private nature. This is an important development that deserves long-term support and that reflects a valuable social commitment to, and responsibility for, the country's cultural heritage.

So as to improve the position of individuals, including professional managers such as museums, that wish to contribute to the preservation of important cultural objects for the Netherlands, the objections stated by the

Minister of Education, Culture and Science will be published if there is the risk of a protected cultural object being lost to the Netherlands. After publication, there will be a six-week period during which potential purchasers can make themselves known to the Minister. This period is deemed reasonable for an individual to come forward, while not being disproportionately disadvantageous for the owner. At this stage, it does not already need to be clear whether it will be possible to finance the proposed purchase of the protected cultural object.

The Minister of Education, Culture and Science notifies the owner of the potential purchasers without delay, and the owner can then contact them. The Minister of Education, Culture and Science has only a limited role during this phase. He publishes his objections and notifies the owner of the potential purchasers. He emphatically does not act as an intermediary. The owner is at liberty as to whether or not it will accept the potential purchasers. It is only six weeks after their publication in the Government Gazette [*Staatscourant*] that the Minister's objections are deemed to constitute a bid to purchase by the State. In this way, parties other than the State are more emphatically involved in the preservation of cultural heritage. At the same time, in view of the interests of the owner, the procedure is basically not extended. Extension of the procedure is only possible at the owner's own request.

The more prominent role of third parties in this procedure does not affect the State's authority to purchase a protected cultural object itself so as to retain it for the Dutch cultural heritage. This instrument remains important; its use requires there to be a balance between the public interest of the cultural heritage, the interests of the owner, the importance of freedom of movement, and the available public funds.

### 2.3 Cultural goods owned by public authorities

Much of the cultural heritage in the Netherlands is in public ownership. Central government, provinces, and municipalities are the owners of extensive and valuable collections, often managed by museums and other heritage institutions such as archives, libraries, and archaeological depots. Some of these collections have been acquired with public funds, are managed by publicly funded institutions, and are generally accessible to all.

In recent years, there have been a number of cases of the sale (or potential sale) of some cultural objects and collections in municipal ownership. It is important for public authorities to deal carefully with the cultural

objects with which they are entrusted, with it being necessary to prevent interesting cultural objects disappearing from the public context. It is also important for the museums that manage their collections for the authorities to show that they are reliable owners; after all, donations, bequests, and legacies are an important resource for expanding collections. If a public authority sells off cultural heritage objects from museums, doing so can deter potential donors.

The legislative proposal includes a guarantee for careful decision-making regarding the disposal of a cultural object or collection by central government, a province, or a municipality. That guarantee entails the obligation to seek expert advice on the proposed disposal. That obligation arises when there is a reasonable assumption that the planned disposal concerns a cultural object or collection of particular cultural-historical or scholarly significance and that is irreplaceable and indispensable as part of the Dutch cultural heritage. This corresponds to the criterion applying to the designation of a cultural object or collection as protected. In order to facilitate this system of evaluation and advice, the Cultural Heritage Agency has been assigned the task of operationalising a valuation system (*Op de museale weegschaal*, RCE, 2013). One needs to remember that the background to this is that cultural objects or collections in public ownership have never been designated as protected cultural objects or collections pursuant to the Heritage Preservation Act.

The procedure regarding disposal has only been prescribed for central government, provinces and municipalities, and not for other authorities. The obligation to seek advice has thus been imposed on clearly defined parties, partly in view of the balance between the extent of the obligation and the expected effect. Seeking advice is mandatory only in a case of proposed disposal to a party other than central government, a municipality, or province. That may be a foreign party, but it may also be a private person within the Netherlands. The responsibility that the various authorities have to decide on the disposal of cultural heritage therefore remains unaffected.

The obligation to seek advice is intended to guarantee careful decision-making regarding the disposal of a cultural object or collection owned by central government, a province, or a municipality. Section 4.19 of the Heritage Act imposes a few minimum requirements regarding the independence and expertise of the advisory committee. The Heritage Act does not establish any permanent advisory committees. It leaves the final decision on disposal of a cultural object and the

composition and working methods of the advisory committee to the relevant public authority. The competent authority of that public authority is therefore responsible itself for ensuring that the advisory committee has all the necessary knowledge and competencies to deliver meaningful advice.

The committee is required to be independent and expert. A committee that can meet the preconditions is the “protection assessment committee” [*beschermingswaardigheidscommissie*] in the context of the Museum Objects Deaccession Guidelines [*Leidraad Afstoting Museale Objecten*, LAMO] drawn up by the Netherlands Museums Association. During the deaccession procedure, their public responsibility generally requires municipalities to act carefully in the spirit of the professional standards as laid down in the LAMO, in the guidelines for deaccession of cultural heritage adopted by the Association of Netherlands Municipalities (VNG), or in other accepted professional guidelines.

It can be expected that if the committee considers that the cultural object or collection is in fact of particular cultural-historical or scholarly significance, and is irreplaceable and indispensable as part of the Dutch cultural heritage, the municipality concerned will not easily decide to continue with the proposed disposal. If it does continue, and the proposed sale is to a private party, the advice provided by the committee means that the Minister of Education, Culture and Science can proceed to designate the cultural object or the collection as a protected cultural object or a protected collection. If the owner perseveres with disposal, the possible annulment of the disposal decision by the Crown can be substantiated on the basis of the advice. Such annulment of a decision to dispose does not, of course, apply to decisions taken by the Minister of Education, Culture and Science himself. Given the Minister’s policy responsibility for cultural heritage, such decisions will naturally need to be taken with the greatest possible care.

## 2.4 Export of cultural objects

Besides cultural objects that have been specifically designated as protected, there are general restrictions on certain categories of cultural objects. These restrictions derive from EU regulations and relate to the export of cultural objects. They are intended to prevent illegal trading in cultural objects and to register trade in important cultural objects. These restrictions have been taken over directly from Sections 14a and 14b of the Heritage Preservation Act.



Firstly, there is the requirement that certain cultural objects are only permitted to leave the Netherlands with the consent of the owner. These include objects that are part of a public collection owned by a public authority, church collections, and collections designated by the Minister of Education, Culture and Science belonging to private institutions that receive funding to a predominant extent. The owner's consent may be replaced, at the request of an interested party, by a permit from the Minister of Education, Culture and Science. The prohibition on removal from the Netherlands without the consent of the owner also applies to national monuments or parts thereof, to archive material, and to illegally excavated objects.

Secondly, there is the requirement that certain cultural objects are only permitted to be taken outside the European Union if a permit has been issued by the Minister of Education, Culture and Science or the Cultural Heritage Inspectorate. This concerns cultural objects that fall into one of the categories listed in Annex I to Regulation 116/2009, and that meet the financial threshold value corresponding to the relevant category. The permit requirement also applies to relevant cultural objects from other EU Member States that leave the EU via the Netherlands.



## 3.1 Introduction

In this legislative proposal, two acts regarding the international return of cultural property have been integrated. These are the Cultural Property Originating from Occupied Territory (Return) Act [*Wet tot teruggave cultuurogoderen afkomstig uit bezet gebied*]<sup>7</sup> (referred to as the Occupied Territory (Return) Act [*Wet bezet gebied*]), and the 1970 UNESCO Convention (Implementation) Act [*Uitvoeringswet UNESCO-verdrag 1970*].<sup>8</sup>

Both these acts involve implementation by the Netherlands of ratified UNESCO Conventions, namely the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and the (First) Protocol to that convention,<sup>9</sup> (usually referred to as the “Hague Convention” or the “1954 UNESCO Convention”) and the 1970 Paris Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.<sup>10</sup>

Integration of those acts into this legislative proposal does not affect their purpose and effect. Importing and possessing cultural property from occupied territory continue to be prohibited, as does importing illegally exported or stolen cultural property that is protected by states that are parties to the 1970 UNESCO Convention. The tasks and powers of the Minister of Education, Culture and Science and others as provided in the existing legislation remain in force in this legislative proposal. The legislative proposal does clarify, however, (in Chapter 3) what is deemed to be protected cultural property for the Netherlands in the context of these conventions. The fact that the purpose and purport of the two acts remain unchanged means that the parliamentary history of the original acts retains its significance, with those documents being referred to for a detailed explanation.<sup>11</sup>

In addition to the 1954 UNESCO Convention and the 1970 UNESCO Convention, an EU Directive on the return of cultural objects is also relevant for the Netherlands.<sup>12</sup> As regards the return of cultural objects within the European Union, it is this directive that is the most relevant. Implementation of this directive has been effectuated by means of the Protection of Cultural Property against Illegal Export (Implementation) Act

[*Implementatiewet bescherming cultuurogoderen tegen illegale uitvoer*] and has led to amendments to the Civil Code and the Code of Civil Procedure. The Heritage Preservation Act has also been amended, with conditions being imposed on the export of certain cultural objects and with various matters being regulated regarding investigation. Those provisions of the Heritage Preservation Act are to be found in Chapters 4 and 8 of this legislative proposal. Those provisions do not directly concern recovery and are therefore not dealt with in this chapter. The Minister of Education, Culture and Science plays no part in the return process beyond the fact that he establishes the central authority which acts as a point of contact for cooperation, information, and investigation. That authority can play a mediating role in the return.

In addition, there are other international legal means relating to the return of cultural property in the case of (national) conflicts when the current international agreements prove to be insufficient. The UN and the EU have established sanctions for Iraq.<sup>13</sup> In December 2013, the EU also adopted a similar arrangement for Syria.<sup>14</sup>

## 3.2 Importance of international return

Dutch participation in conventions protecting cultural property is important because objects of cultural, historical, and scientific importance that belong to the protected cultural heritage of a state require effective international protection. Internationally, the importance of cultural heritage for a state’s own culture and the respect and recognition it deserves from other states are now generally accepted. However, the trade in nationally protected cultural property can be so profitable that national protection rules are contravened. Because this illegal trade can cause great damage to a country’s cultural heritage, UNESCO has established conventions in this field.

It is of great importance that protected cultural property that has left the country of origin illegally can be recovered by the state of origin or by the original party that is legally entitled to it. The rules applying in the state where the cultural property has been sold or found must make it possible to cooperate in the return of that

7. Bulletin of Acts, Orders, and Decrees [*Staatsblad*], 2007, 123.

8. Bulletin of Acts, Orders, and Decrees, 2009, 255.

9. Treaty Series of the Kingdom of the Netherlands [*Tractatenblad*], 1955, 47.

10. Treaty Series of the Kingdom of the Netherlands, 1972, 50 and Dutch translation in Treaty Series of the Kingdom of the Netherlands. 1983, 66.

11. See Parliamentary Documents numbers 30 165 and 31 255.

12. Directive 2014/60/EU has now replaced Directive 93/7/EEC.

13. Regulation (EC) No. 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq (Article 3). Implemented in the Netherlands by means of the Sanctions Order Iraq 2004 [*Sanctieregeling Irak 2004*].

14. Regulation (EU) No. 1332/2013 of the Council of the European Union of 13 December 2013 amending Regulation (EU) No. 36/2012 concerning restrictive measures in view of the situation in Syria (Art. 11 *quater*).

property to the country of origin from which it disappeared illegally.

The conventions operate on the basis of reciprocity: the Netherlands can also reclaim protected heritage from other states that are parties to the relevant convention if it has been removed from the Netherlands without the consent of the Minister of Education, Culture and Science or the owner.

Since the introduction of the Dutch legislation implementing the 1954 and 2007 UNESCO Conventions, in 2007 and 2009 respectively, the global situation in this regard has not become any calmer. Trouble spots and uprisings in various places, for example the Middle East and Africa, show the importance of international agreements to protect cultural property. Wars or conflicts involve a greater likelihood of the illegal export of cultural property. Not only may the situation be chaotic but in some parts of the country and at border crossings there may be a lack of control by the legal authorities. But archaeological sites are still looted even in countries that are relatively peaceful. Whether in wartime or peacetime, the illegal trade in cultural property impoverishes the cultural heritage of the country of origin and thus the heritage of humanity in general.

### 3.3 Combination in a single act

Combining the Occupied Territory (Return) Act and the Act implementing the 1970 UNESCO Convention in the present legislative proposal increases the accessibility and visibility of the rules regarding the return of cultural property. That applies all the more because the 1970 UNESCO Convention and the Protocol to the 1954 UNESCO Convention complement one another and have a priority arrangement as regards application when two parties claim the same cultural property.<sup>15</sup> Combining the two pieces of legislation also makes clear that implementation of the two conventions forms an integral part of Dutch heritage policy.

### 3.4 Different procedures

In the present legislative proposal, the procedures regarding return set out in the Occupied Territory (Return) Act and the Act implementing the 1970 UNESCO Convention have not been harmonised. The conventions on which the two Acts are based differ regarding this

point, and the procedures also differ for good reasons. Where the return of cultural property from occupied territories is concerned, the Minister of Education, Culture and Science plays a major role, whereas in the case of cultural property that has left a country illegally in some other manner, it is the party that is legally entitled to it or the relevant state that plays a leading role in the recovery proceedings. The reason for these different procedures is to be found in the special responsibility that the Netherlands has regarding cultural property from an occupied territory. This involves both the vulnerability of those cultural goods and the circumstances of the relevant authorities, which often make it difficult, if not impossible, to take effective action.

Both procedures do, however, involve return being achieved by means of private law. In order for return to take place, a claim must be submitted before a civil court against the possessor or holder. This is subject to different rules regarding good faith and time barring. One consequence is that part of implementation of the rules regarding return is to be found in Book 3 of the Civil Code and in the Code of Civil Procedure and that this legislative proposal must also be read in conjunction with those two codes.

In the case of cultural property that has unlawfully left a state that is a party to the convention, it is up to the party legally entitled to it or that state to institute proceedings before the Dutch courts. The Minister of Education, Culture and Science plays only a supporting role in this. For example, when a claim is to be instituted by a state that is a party to a convention, the Minister can take the cultural property into temporary custody. In the case of cultural property from an occupied territory, it is the duty of the Minister to take that property into custody. The Minister must then submit a claim for return and must ultimately actually transfer the property as soon as the conditions in the former occupied territory allow that to be done. In both situations – depending on the circumstances under which the possessor or holder obtained the cultural property – the owner or holder in good faith can be granted compensation at the expense of the State (in the case of cultural property from an occupied territory) or the party legally entitled to it or the state that is party to the convention (in the case of cultural property that has left such state illegally). The above procedures relate to the options for instituting legal proceedings. In addition to such legal remedy, there is always the possibility of an amicable settlement.

15. For a further explanation, see Section 13 of the Explanatory Memorandum to the Implementing Act 1970 UNESCO Convention, Parliamentary Documents II 2007/08, 31 255, No. 3.

## 4.1 Introduction

The provisions regarding enforcement and supervision in this legislative proposal largely correspond to which is regulated by the legislation and regulations that are combined within it. For example, the inspectors and public officials charged with supervision retain the same powers. The range of available sanctions is also taken on a one-to-one basis from the original legislation and regulations; it has, however, been expanded. The power to impose administrative coercion and a penalty for non-compliance will also apply, except for archaeology and historic buildings, to collections. This expansion adds to the ability to enforce compliance, effectively and proportionately, with the statutory provisions. The range of sanctions includes measures of increasing severity. The Minister of Education, Culture and Science does not need to follow this hierarchy, however, but can apply the sanction that he considers most appropriate in the specific situation concerned.

There are also no changes in the administrative relationships. As under the existing legislation and regulations, the Minister of Education, Culture and Science ensures administrative enforcement and appoints inspectors for that purpose. That does not alter the fact that the supervision of monuments is a matter to be dealt with by the municipalities and inter-administrative supervision by the provinces. No new specific system of supervision is introduced. The provisions in Chapter 8 regarding enforcement and supervision are also not related to the implementation of co-administration tasks by other public authorities. Other public authorities are only the subject of supervision if they are the party to which a certain standard applies [*normadressaat*], as in the case of a municipal excavation company or if they hold a national collection on loan. This does not constitute a change compared to the existing legislation and regulations.

## 4.2 Management of the national collection

Enforcement of the rules regarding management of collections has been expanded and made clearer. This legislative proposal makes direct supervision possible of any party that manages the national collection. Based on the system of the Government Accounts Act 2001, supervision is only possible of other Ministers and State Institutions and not of institutions that actually manage cultural objects for those Ministers or State Institutions. In the case of the museums for which the Minister of Education, Culture and Science is responsible, supervision is currently complex due to the combination of

management contracts and funding relationships. Directly imposing the standards on those who manage cultural objects also clarifies the situation regarding enforcement and supervision. For a further explanation, reference is made to Section 2.2.4, which deals in greater detail with the management of collections and the supervision of that management.

## 4.3 Preservation of archaeological monuments

The change from a permits system for excavations to a certification system means that enforcement and supervision will operate differently. It is no longer the Minister of Education, Culture and Science who issues the permit for carrying out excavations but a certification institution, which assesses whether a party is in fact suitable to carry out excavations. It is therefore basically the certification institution that checks whether the holder of a certificate then complies with the requirements. Currently, the Minister of Education, Culture and Science can withdraw a permit but in the new system, it is the certification institute that will do so if the requirements are not met. Where enforcement and supervision are concerned, the Minister of Education, Culture and Science is thus in fact placed at a greater distance as regards the quality of excavations. The Minister specifically ensures supervision of the certification institutions and the system as a whole. For a further explanation, reference is made to Section 5.3.3.

## 4.4 Illegal trade in cultural objects

The inspectors have a number of specific tasks regarding the detection of illegal trading in cultural objects. In that context, it is also relevant to mention the sanction arrangements implemented by the Minister of Foreign Affairs, for example those relating to Iraq and Syria.<sup>16</sup> These involve the investigation of illegally exported cultural heritage from countries that are in a conflict situation and where a vulnerable situation has arisen for cultural heritage. For this purpose, the inspectors have special powers under the Sanctions Act 1977 [*Sanctiewet 1977*] and underlying regulations. Supervision and enforcement therefore take place pursuant to that legislation and those regulations and not pursuant to the provisions of the present legislative proposal. The sanctions to be imposed in a given case are always of a temporary nature.

16. Sanctions Order Iraq 2004 II and Sanctions Order Syria 2012.



## II. ARTICLE BY SECTION

### Section 8.1. Enforcement duty

*Former: Section 63 Monuments and Historic Buildings Act 1988 in conjunction with Section 5.2 Environmental Law (General Provisions) Act*

*Amendment: clarification of what falls within the enforcement duty of the Minister of Education, Culture and Science*

This section specifies who is responsible for enforcement of this legislative proposal and what that enforcement duty entails. Enforcement entails (1) the supervision of compliance with the statutory provisions (supervision) and (2) imposition of administrative sanctions in the event of non-compliance with those provisions. As regards supervision, it is explicitly stated that this includes collecting and recording information to the extent that such information is relevant to supervision.

### Section 8.2. Administrative coercion

*Former: Section 63 Monuments and Historic Buildings Act 1988 and Sections 5.14 and 5.15 Environmental Law (General Provisions) Act*

*Amendment: power to impose administrative coercion is of general application*

As an administrative sanction, the Minister of Education, Culture and Science can impose administrative coercion.

For the purpose of enforcement regarding monuments and archaeology, the Minister already has the power to impose administrative coercion. That means of enforcement is formulated in this legislative proposal as a general power for the purpose of enforcement under administrative law. That expansion is mainly relevant to the rules regarding management of collections. Now that the management of collections has been regulated by law, both Ministers and State Institutions require an effective range of instruments for the Minister to enforce the standards regarding management. Depending on the particular situation, the Minister may impose administrative coercion or a penalty for non-compliance. After all, under Section 5:32 of the General Administrative Law Act, the Minister's power to impose administrative coercion, means that he in fact already also has the power to impose a penalty for non-compliance. It should be noted that there are a number of steps that precede the imposition of these instruments in the case of collections. The inspector will first make recommendations for management. Subsequently, the Minister, pursuant to Section 2.6, may issue instructions regarding the management and it will basically only be if those instructions are not complied with that a (remedial) sanction will be imposed. In urgent cases this escalation of interventions can, of course, be applied differently.



### Sections 8.3 to 8.5

*Former: Sections 15 and 16(1) and (4) Heritage Preservation Act, Section 8 of Occupied Territory (Return) Act, Section 8 Implementation Act 1970 UNESCO Convention, Section 11(1) Regulations on Material Management of Museum Objects 2013, and Section 63(3) Monuments and Historic Buildings Act 1988, in conjunction with Sections 5.1, 5.10 and 5.12 Environmental Law (General Provisions) Act*

*Amendment: no amendment*

The way in which inspectors are appointed and announced has been taken over unchanged from the existing legislation in the field of cultural heritage. The officials of the Cultural Heritage Inspectorate who have been designated, pursuant to the Heritage Preservation Act, as inspectors are also charged – pursuant to the Occupied Territory (Return) Act, the Act implementing the 1970 UNESCO Convention, and the Regulations on Material Management of Museum Objects 2013 – with supervision of compliance with those pieces of legislation. The inspectors are in general already charged with the supervision of compliance with all sectoral legislation in the field of cultural heritage. This provision simplifies that designation decision.

### Section 8.6. Special powers

*Former: Sections 17 and 18 Heritage Preservation Act, Section 9 Occupied Territory (Return) Act, Section 9 Implementation Act 1970 UNESCO Convention, and Section 63(3) Monuments and Historic Buildings Act 1988, in conjunction with Section 5.13 Environmental Law (General Provisions) Act*

*Amendment: no amendment*

In addition to their general powers under the General Administrative Law Act, the inspectors have a number of special powers under the present legislative proposal. Those special powers are taken from the existing legislation and are intended to make it possible to determine whether certain protected heritage is present. This may involve entering dwellings to check whether designated cultural objects have not been relocated or to check that protected cultural property from other countries is not present contrary to the prohibitions in Chapter 6. Where the latter cultural property is concerned, the inspectors also have the power to seal rooms or objects and to call in the police.

The power to enter a dwelling exists in all the legislation regarding cultural heritage that is incorporated into this legislative proposal. However, it is again emphasised that the application of this power also requires the inspectors, pursuant to the General Act on Entry into Dwellings [*Algemene wet op het binnentreden*], to have prior authorisation (except in urgent cases).

### Section 8.7. Special provisions regarding supervision of management of collections

*Former: Section 11(2) to (5) Regulations on Material Management of Museum Objects 2013*

*Amendment: directly applicable to institutions which manage national collection*

A separate provision has been included regarding supervision of the management of museological cultural objects of the State. That provision has been taken from the Regulations on Material Management of Museum Objects 2013. Given the relationships under constitutional law, supervision of the management of the national collection has been regulated separately. The Minister of Education, Culture and Science can, after all, in fact supervise other Ministers and State Institutions. This legislative proposal makes that provision also directly applicable to all institutions that manage museological cultural objects of the State. Pursuant to Chapter 2, these are, after all, directly bound by the rules governing the management of these cultural objects.

*Subsections 1 and 2.* The manager of the cultural objects must provide the inspectors with all the information that they request in order to exercise their supervision. The manager must also allow the inspectors access to the cultural objects and allow them to inspect the management documents.

*Subsection 3.* Because the Ministers and State Institutions have primary responsibility for management of the cultural objects, it has been stipulated that the inspectors will report their findings regarding the management of the museological cultural objects to those Ministers and State Institutions. In doing so, the inspectors can make recommendations.

*Subsection 4.* The Minister of Education, Culture and Science must be informed of the inspectors' findings.

*Subsection 5.* It has been stipulated that the provisions also apply to an institution that manages cultural objects or collections of other collections if that institution has been assigned a statutory duty, pursuant to Section 2.8, to take care of the management of those cultural objects or collections. Under Section 2.9(4), such institutions are namely subject to the same rules as those that apply to the national collection.

### **Section 8.8. Investigation of protected cultural objects of EU Member States**

*Former: Section 10(2) and (3) Heritage Preservation Act*

*Amendment: no amendment*

*Subsection 1.* In the context of Directive 2014/60/EU, the special investigating officers [*bijzondere opsporingsambtenaren*] have a specific task when it comes to investigating cultural objects that have been unlawfully removed from the territory of another Member State of the European Union. That task has been taken over unamended from the Heritage Preservation Act.

*Subsection 2.* In the light of the power to trace cultural objects, an amendment to Directive No. 2014/60/EU will apply from the day when the amendment concerned must be implemented. In advance of that date, a ministerial order can declare that the power to investigate pursuant to the amended directive already applies.





The Cultural Heritage Agency of the Netherlands is at the heart of heritage management in the Netherlands. We are closely involved in listing, preserving, sustainably developing and providing access to the most valuable heritage in our country. The Heritage Act 2016 is an integrated law regarding museum collections, museums, monuments and archeology.

The Cultural Heritage Agency provides knowledge and advice to give the future a past.