

REPUBLIC OF SOUTH AFRICA

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**NATIONAL HERITAGE  
BILL**

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*(As introduced in the National Assembly as a section 76 Bill)*

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(MINISTER OF ARTS, CULTURE, SCIENCE AND TECHNOLOGY)

**[B 139—98]**

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REPUBLIEK VAN SUID-AFRIKA

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**NASIONALE  
ERFENISWETSONTWERP**

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*(Soos ingedien in die Nasionale Vergadering as 'n artikel 76-wetsontwerp)*

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(MINISTER VAN KUNS, KULTUUR, WETENSAP EN TEGNOLOGIE)

**[W 139—98]**

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# BILL

To introduce an integrated and interactive system for the management of the national heritage which will co-ordinate the expression of the heritage of all who belong in South Africa; to promote good government at all levels, and empower civil society to nurture and conserve their heritage so that it may be bequeathed to future generations; to lay down general principles for governing heritage management throughout the Republic, to establish divisions for various aspects of heritage management; to introduce an integrated system for the identification, assessment and management of the heritage resources of South Africa; to establish a South African Heritage Division and a South African Heritage Agency to co-ordinate and promote the management of heritage resources at national level; to set norms and standards for the management of the recording of information on heritage resources in the Republic and to protect heritage resources of national significance; to control the export of nationally significant heritage objects and the import into the Republic of cultural property illegally exported from foreign countries; to enable the provinces to establish heritage authorities which must adopt powers to protect and manage certain categories of heritage resources; to provide for the protection and management of conservation-worthy places and areas by local authorities; and to provide for matters connected therewith.

## PREAMBLE

This legislation aims to present an integrated holistic and interactive heritage structure which will co-ordinate the expression of the living heritage of all who belong in South Africa. Its goal is to promote good government at all levels, and enable and encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations.

Our heritage is unique and precious and it cannot be renewed. It helps us to define our cultural identity and therefore lies at the heart of our spiritual well-being and has the power to build our nation. It has the potential to affirm our diverse cultures, and in so doing shape our national character.

Our heritage celebrates our achievements and contributes to redressing past inequities. It educates, it deepens our understanding of society and encourages us to empathise with the experience of others. It facilitates healing and material and symbolic restitution and it promotes new and previously neglected research into our rich oral traditions and customs.

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**SCHEDULE**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Application and interpretation**

1. This Act binds the State.

**Definitions**

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2. In this Act, unless the context requires otherwise—

- (i) “alter” means any action affecting the structure, appearance or physical properties of a place or object, whether by way of structural or other works, by painting, plastering or other decoration or any other means; (xxxix)
- (ii) “archaeological” means—
  - (a) material remains resulting from human activity which are in a state of disuse and are in or on land and which are older than 100 years, including artefacts, human and hominid remains and artificial features and structures;

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- (b) rock art, being any form of painting, engraving or other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and which is older than 100 years, including any area within 10m of such representation;
- (c) wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in South Africa, whether on land or in the maritime cultural zone referred to in section 6 of the Marine Zones Act, 1994 (Act No. 15 of 1994), and any cargo, debris or artifacts found or associated therewith, which is older than 60 years or which the SAHA considers to be worthy of conservation; and
- (d) features, structures and artefacts associated with military history which are older than 75 years and the sites on which they are found; (ii)
- (iii) “conservation”, in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance; (vi)
- (iv) “council” council of the NHC or division; (xxxii)
- (v) “cultural significance” means aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance; (xvii)
- (vi) “Department” means the national department responsible for arts and culture; (vii)
- (vii) “development” means any physical intervention, excavation, or action, other than those caused by natural forces, which may in the opinion of a heritage authority in any way result in a change to the nature, appearance or physical nature of a place, or influence its stability and future well-being, including—
  - (a) construction, alteration, demolition, removal or change of use of a place or a structure at a place;
  - (b) carrying out any works on or over or under a place;
  - (c) subdivision or consolidation of land comprising a place, including the structures or airspace of a place;
  - (d) constructing or putting up for display signs or hoardings;
  - (e) any change to the natural or existing condition or topography of land; and
  - (f) any removal or destruction of trees, or removal of vegetation or topsoil; (xxv)
- (viii) “Director-General” means the Director-General of the Department; (viii)
- (ix) “expropriate” means the process as determined by the terms of and according to procedures prescribed in the Expropriation Act, 1975 (Act No. 63 of 1975); (xxiv)
- (x) “*Gazette*” means the *Government Gazette*; (xxxvii)
- (xi) “grave” means a place of interment and includes the contents, headstone or other marker of such a place, and any other structure on or associated with such place; (xiv)
- (xii) “heritage agreement” means an agreement referred to in section 47; (xi)
- (xiii) “heritage authority” means the South African Heritage Agency, established in terms of section 29, or, insofar as this Act is applicable in or in respect of a province, a provincial heritage authority; (xii)
- (xiv) “heritage resource” means any place or object of cultural significance; (x)
- (xv) “heritage site” means a place declared to be a national heritage site by the SAHA or a place declared to be a provincial heritage site by a provincial heritage authority; (xiii)
- (xvi) “improvement”, in relation to heritage resources, includes the repair, restoration and rehabilitation of a place protected in terms of this Act; (xxxx)
- (xvii) “land” includes land covered by water and the air space above the land; (xv)
- (xviii) “local authority” means a municipality as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993); (xxix)
- (xix) “management”, in relation to heritage resources, includes the conservation, presentation and improvement of a place protected in terms of this Act; (v)
- (xx) “MEC”, unless otherwise stated and insofar as a provision of this Act is applicable in or in respect of a province, means the member of the executive council of a province responsible for cultural matters; (xviii)
- (xxi) “meteorite” means any naturally-occurring object of extraterrestrial origin; (xix)

- (xxii) “Minister” means the Minister responsible for arts and culture or in Chapter 2 if a provincial heritage authority exists, the MEC responsible for cultural matters in that province; (xx)
- (xxiii) “national symbols” means any heraldic representation so determined under section 5 of the Heraldry Act, 1963 (Act No. 18 of 1963); (xxi) 5
- (xxiv) “NHC” means the National Heritage Council, established in terms of section 7; (xxii)
- (xxv) “object” means any movable property of cultural significance which may be protected in terms of any provisions of this Act, including— 10
- (a) any archaeological artefact;
- (b) palaeontological and rare geological specimens;
- (c) meteorites; and
- (d) other objects referred to in section 4; (xxxxii)
- (xxvi) “owner” includes the owner’s authorised agent and any person with a real interest in the property and— 15
- (a) in the case of a place owned by the State or State-aided institutions, the Minister or any other person or body of persons responsible for the care, management or control of that place;
- (b) in the case of tribal trust land, the recognised traditional authority; (ix)
- (xxvii) “palaeontological” means any fossilised remains or fossil trace of animals or plants which lived in the geological past, other than fossil fuels or fossiliferous rock intended for industrial use, and any site which contains such fossilised remains or trace; (xxvii) 20
- (xxviii) “place” includes— 25
- (a) a site, area or region;
- (b) a building or other structure which may include equipment, furniture, fittings and articles associated with or connected with such building or other structure;
- (c) a group of buildings or other structures which may include equipment, furniture, fittings and articles associated with or connected with such group of buildings or other structures; 30
- (d) an open space, including a public square, street or park; and
- (e) in relation to the management of a place, includes the immediate surroundings of a place; (xxx)
- (xxix) “planning” means urban and regional planning, as contemplated in the Physical Planning Act, 1991 (Act No. 125 of 1991), and provincial town planning and land use planning legislation; (iii) 35
- (xxx) “planning authority” means an office of the State, including a province, a local authority or a regional authority, which is invested with a physical planning capacity; (iv) 40
- (xxxi) “prescribe” means prescribe by regulation; (xxxxi)
- (xxxii) “presentation” includes— 45
- (a) the exhibition or display of;
- (b) the provision of access and guidance to;
- (c) the provision, publication or display of information in relation to; and
- (d) performances or oral presentations related to, heritage resources protected in terms of this Act; (i)
- (xxxiii) “provincial heritage authority”, insofar as this Act is applicable in a province, means an authority established by the MEC; (xxxi)
- (xxxiv) “public monuments and memorials” means all monuments and memorials— 50
- (a) erected on land belonging to any branch of central, provincial or local government, or on land belonging to any organisation funded by or established in terms of the legislation of such a branch of government; or
- (b) which were paid for by public subscription, government funds, or a public-spirited or military organisation, and are on land belonging to any private individual; (xxvi) 55
- (xxxv) “regulations”, unless otherwise stated, means regulations published in terms of this Act by the NHC; (xxxiii)

- (xxxvi) “SAHA” means the South African Heritage Agency, established in terms of section 29; (xxxiv)
- (xxxvii) “site” means any area of land, including land covered by water, and including any structures or objects thereon; (xxviii)
- (xxxviii) “State” includes a province; (xxxviii) 5
- (xxxix) “structure” means any building, works, device, or other facility made by people and which is fixed to land and includes any fixtures, fittings and equipment associated therewith; (xxxviii)
- (xxxx) “supported body” means a body funded by or established in terms of the legislation of any branch of government, and includes state-owned enterprises; (xxiii) 10
- (xxxxi) “this Act” includes the regulations; (xvi)
- (xxxvii) “victims of conflict” means—
- (a) certain persons who died in any area now included in the Republic as a direct result of any war or conflict as specified in the regulations, but excluding victims of conflict covered by the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992); 15
- (b) members of the forces of Great Britain and former British Empire who died in active service in any area now included in the Republic prior to 4 August 1914; 20
- (c) persons who, during the Anglo-Boer War (1899-1902) were removed as prisoners-of-war from any place now included in the Republic to any place outside South Africa and who died there; and
- (d) certain categories of persons who died in the “liberation struggle” as defined in the regulations, and in areas included in the Republic as well as outside the Republic; (xxxv) and 25
- (xxxviii) “wreck” has the meaning given under the definition of “archaeological” in this section. (xxxviii)

## CHAPTER 1

### SYSTEM FOR MANAGEMENT OF NATIONAL HERITAGE 30

#### *Part 1*

#### *National heritage*

#### **National heritage**

**3.** For the purposes of this Act, the national heritage includes the national estate and living heritage, which coexist in a dynamic relationship. 35

#### **National estate**

**4. (1)** For the purposes of this Act, those heritage resources of South Africa which are of cultural significance or other special value for future generations and the present community, must be considered part of the national estate and fall within the sphere of operations of heritage authorities. 40

**(2)** Without limiting the generality of subsection (1), the national estate may include—

- (a) places, buildings, structures and equipment of cultural significance;
- (b) places to which oral traditions are attached or which are associated with living heritage; 45
- (c) historical settlements and townscapes;
- (d) landscapes and natural features of cultural significance;
- (e) geological sites of scientific or cultural importance;
- (f) archaeological and palaeontological sites;
- (g) graves and burial grounds, including— 50
- (i) ancestral graves;

- (ii) royal graves and graves of traditional leaders;
- (iii) graves of victims of conflict;
- (iv) graves of individuals designated by the Minister by notice in the *Gazette*;
- (v) historical graves and cemeteries; and
- (vi) other human remains which are not covered in terms of the Human Tissues Act, 1983 (Act No. 65 of 1983); 5
- (h) movable objects, including—
  - (i) objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects and material, meteorites and rare geological specimens; 10
  - (ii) ethnographic art and objects;
  - (iii) military objects;
  - (iv) objects of decorative or fine art;
  - (v) objects of scientific or technological interest; and
  - (v) books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings. 15
- (3) Without limiting the generality of subsections (1) and (2), a place or object is to be considered part of the national estate if it has cultural significance or other special value because of—
  - (a) its importance in the community, or pattern of South Africa's history; 20
  - (b) its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage;
  - (c) its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;
  - (d) its importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural places or objects; 25
  - (e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
  - (f) its importance in demonstrating a high degree of creative or technical achievement at a particular period; 30
  - (g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons; and
  - (h) its strong or special association with the life or work of a person, group or organisation of importance in the South African history.

### **Living heritage** 35

5. For the purposes of this Act, living heritage means the intangible aspects of inherited culture, and may include—
- (a) cultural tradition;
  - (b) oral history;
  - (c) performance; 40
  - (d) ritual;
  - (e) popular memory;
  - (f) skills and techniques; and
  - (g) the holistic approach to nature, society and social relationships,
- and must be integrated with the functions and activities of the NHC, the divisions and all other heritage authorities and institutions at national, provincial and local level. 45

### **General principles for heritage management**

6. (1) All authorities, bodies and persons performing functions and exercising powers in terms of this Act for the management of heritage resources must recognise the following principles: 50
- (a) heritage resources have lasting value in their own right and provide evidence of the origins of South African society and as they are valuable, finite, non-renewable and irreplaceable they must be carefully managed to ensure their survival;
  - (b) every generation has a moral responsibility to act as trustee of the national 55



- cultural heritage for succeeding generations and the State has an obligation to manage heritage resources in the interests of all South Africans;
- (c) heritage resources promote conciliation, understanding and respect, and contribute to the development of a unifying South African identity; and
  - (d) heritage resources management must guard against the use of heritage for sectarian purposes or political gain. 5
- (2) To ensure that heritage resources are effectively managed—
- (a) the skills and capacities of persons and communities involved in heritage resources management must be developed; and
  - (b) resources must be made available for the ongoing education and training of existing and new heritage workers. 10
- (3) Laws, procedures and administrative practice must—
- (a) be clear and generally available to those affected thereby;
  - (b) in addition to serve as regulatory measures, also provide guidance and information to those affected thereby; and 15
  - (c) give further content to the fundamental rights set out in the Constitution.
- (4) Subject to minimum standards for conservation and management, heritage objects which have a strong association with a place or community must be conserved in a location associated with their origin and must be accessible to the communities concerned. 20
- (5) Heritage resources contribute significantly to research, education and tourism and they must be developed and presented for these purposes in a way that ensures dignity and respect for cultural values.
- (6) Policy, administrative practice and laws must promote the integration of heritage resources conservation in urban and rural planning and social and economic development. 25
- (7) The identification, assessment and management of the heritage resources of South Africa must—
- (a) take account of all relevant cultural values, knowledge and disciplines;
  - (b) take account of material of cultural heritage value and involve the least possible alteration or loss of it; 30
  - (c) promote the use and enjoyment of heritage resources, in a way consistent with their cultural significance and conservation needs;
  - (d) contribute to social and economic development;
  - (e) safeguard the options of present and future generations; and 35
  - (f) be fully researched, documented and recorded.

## *Part 2*

### *National Heritage Council*

#### **Establishment of National Heritage Council**

7. There is hereby established a juristic person known as the National Heritage Council to co-ordinate the management of the national heritage, the affairs common to it, and the divisions and agencies associated with it. 40

#### **Constitution of NHC**

8. (1) The NHC consists of—
- (a) the chairperson of each division referred to in section 14; 45
  - (b) five other persons appointed by the Minister in terms of section 17 and selected on the basis of their expertise in the field of heritage and other skills necessary for the effective functioning of the NHC; and
  - (c) a representative of each province to be nominated by the MEC concerned.

#### **Object of NHC** 50

9. The object of the NHC is the development, promotion, protection and co-ordination of the national heritage.

## Functions, powers and duties of NHC

10. (1) The functions and powers of the NHC are—
- (a) to advise the Minister on—
    - (i) national policies on heritage matters, including issues pertaining to museums, archives, heritage resources, research, collections management, curation, exhibits, education and other relevant matters; 5
    - (ii) policies on provincial heritage matters;
    - (iii) national cultural symbols;
    - (iv) the development of living heritage projects in all institutions responsible for heritage; 10
    - (v) strategy planning and codes of ethics regarding heritage resources used for cultural tourism;
    - (vi) a system, including legislation, to be instituted for purposes of repatriation of heritage resources, and any other matter which the Minister may from time to time determine; 15
  - (b) to establish priorities and criteria for the allocation of funds by developing and publishing successive three-year strategy plans that will identify and prioritise criteria for the assessment of funding applications;
  - (c) to establish a financial system, with the concurrence of the Minister of Finance, and to publish regulations for funding heritage activities and projects 20 to—
    - (i) provide for grants-in-aid of development of national heritage activities and resources;
    - (ii) invite and review applications and fund bursaries and study loans;
    - (iii) strengthen heritage disciplines and institutions by affirmative action and redress, and by the training of personnel; and 25
    - (iv) give loans in aid of development of national heritage activities and resources;
  - (d) to facilitate and promote liaison between individuals and institutions involved in heritage management, training and promotion, including interdisciplinary 30 research, inter-divisions and inter-institutional initiatives and projects, by—
    - (i) initiating projects that will encourage closer co-operation and integration between the divisions;
    - (ii) establishing and maintaining a database on individuals, organisations, institutions, facilities and other information connected with heritage, 35 both nationally and internationally, that will be used for information sharing;
    - (iii) publishing an annual report with information on the activities, objects and functions of and grants made by the NHC;
    - (iv) liaising with the National Arts Council and provincial arts or heritage 40 councils to promote heritage more effectively throughout the country and to ensure meaningful co-ordination in the distribution of funds at provincial and national levels;
    - (v) promoting international exchange between institutions and bodies and between individuals with acknowledged expertise in heritage conserva- 45 tion;
    - (vi) generally supporting, nurturing and developing access to institutions and programmes that promote and bring equity to heritage management; and
    - (vii) lobbying and securing funding for heritage management both nationally and internationally. 50
- (2) The NHC may delegate any of its functions to any body established in terms of this Act.
- (3) The NHC may not establish, acquire or operate any cultural institution, but may initiate projects which it considers to be necessary in pursuit of its objects: Provided that such projects are undertaken in partnership with existing agencies which have the 55 capacity to undertake such projects.

**Implementation and delivery**

11. The chief executive officer and staff of the NHC must provide administrative and financial services and must liaise with the Department.

**Exercise of powers outside Republic**

12. The NHC may, on such terms and conditions as may be agreed upon, and subject to legislation regarding international co-operation, support heritage activity by any South African citizen in any territory outside the Republic. 5

**Regulations**

13. (1) The NHC may, with the approval of the Minister, prescribe a code of conduct for members of the NHC and associated bodies, in order to prevent conflicts of interest and the bringing into disrepute of the NHC and divisions. 10

(2) The Minister may on the advice of the NHC, make regulations regarding any matter which he or she deems necessary or expedient to prescribe in order to achieve the objects of this Act.

**Part 3** 15**Divisions****Divisions represented on NHC**

14. The following divisions must be established to advise the NHC—

- (a) the South African Heritage Agency;
- (b) the archives division; 20
- (c) the museums division; and
- (d) any other division that the NHC may deem appropriate.

**Functions of divisions**

15. (1) The divisions must advise the NHC concerning their areas of jurisdiction.

(2) The NHC has authority to solicit advice from a panel on any issue pertaining to its area or mutual areas of jurisdiction. 25

**Part 4****Functioning of NHC and councils****Status of NHC**

16. The NHC and its divisions and councils are juristic persons. 30

**Functioning of NHC and divisions**

17. (1) The NHC and its divisions consist of members appointed by the Minister and may include *ex officio* members as prescribed in this Act.

(2) The Minister must prescribe the procedures and other conditions for the appointment of members of the NHC, or a council, as the case may be: Provided that— 35

- (a) a system for the appointment and terms of office of members must be established whereby new members are appointed at regular intervals and no less than one quarter and no more than one half of the members are appointed each year;
- (b) nominations for the appointment of members by interested parties and the public must be called for; 40
- (c) the qualifications of members, including citizenship, and related factors may be prescribed;
- (d) conditions for the resignation and termination of appointment of members and of the chairperson must be stipulated; 45

- (e) the Minister, with the concurrence of the Minister of Finance, must determine the rates of allowances to and reimbursement of members of the NHC, or a council, co-opted members and members of committees; and
- (f) appointments must be published by the Minister in the *Gazette*.
- (3) The NHC or a division may co-opt a member to serve on it or on a committee established under subsection (5), on the grounds of that member's special knowledge of a particular matter and a co-opted member does not have any voting rights and holds office until the matter has been disposed. 5
- (4) The members of the NHC or a division must from amongst its members appoint a chairperson: Provided that no chairperson may serve more than two consecutive terms of office. 10
- (5) The NHC or a division may establish committees to assist it in the performance of its functions and, in addition to any members, it may appoint to such committees persons whom the NHC or division, respectively, considers competent or who possess specific skills and expertise. 15
- (6) The Minister must prescribe the frequency of and procedure at the meetings of the NHC or a council: Provided that meetings must be held at least twice a year.
- (7) The personal attendance of fifty percent plus one of the appointed members at a meeting constitutes a quorum.
- (8) The chairperson presides at any meeting of the NHC, or a council: Provided that if the chairperson is absent from any meeting, the members present must elect from amongst their number a person to preside at such meeting. 20

### Staff

- 18.** (1) The NHC, SAHA Council or other councils must appoint a senior member of staff as chief executive officer, who shall be known as the Director, and who must— 25
- (a) manage the affairs of the authority and carry out its decisions;
- (b) furnish it with an annual report on the financial affairs of the authority;
- (c) be its accounting officer, charged with the responsibility of accounting for all moneys received and all payments made by it, and who must exercise the powers and perform the duties which are conferred upon or assigned to an accounting officer as referred to in section 1 of the Exchequer Act, 1975 (Act No. 66 of 1975), by any law, Treasury Instructions and the Treasury, *mutatis mutandis*; 30
- (d) be responsible for the appointment and management of the staff in accordance with the staffing policy in terms of subsection (2); and 35
- (e) perform any other activities and duties assigned to the Director from time to time by the authority.
- (2) The NHC or a council must, in consultation with the Director, determine the staff needs and staffing policies of the authority concerned and the posts, conditions of service, remuneration, allowances, subsidies and other benefits of the staff in accordance with— 40
- (a) in the case of the NHC or a division, a system approved by the Minister with the concurrence of the Minister of Finance; and
- (b) in the case of a provincial heritage authority, a system approved by the MEC with the concurrence of the MEC responsible for finance: 45
- Provided that such staff are subject to the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983), and the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (3) The NHC and a division must designate one of the staff of the authority as acting Director when the office of Director is vacant or when the Director is absent.

### Finances and property 50

- 19.** (1) The funds of the NHC and a division consist of—
- (a) moneys appropriated by Parliament to enable it to perform its functions and exercise its powers;
- (b) fees and fines received under the regulations;
- (c) fees received in payment of services; 55

- (d) funds raised by and gifts and bequests to it;
  - (e) trust funds vested in it;
  - (f) interest derived from investments; and
  - (g) moneys received from any other source.
- (2) The NHC and a division must open one or more accounts with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), and must deposit therein any moneys received. 5
- (3) The NHC and a division with the approval of its council—
- (a) may not lend or borrow any money without the consent of the Minister given with the concurrence of the Minister of Finance; 10
  - (b) may purchase or otherwise acquire, hold, let, hire or receive in trust any real right in any immovable or movable property; and
  - (c) may not make over to any person to hold in trust or sell, exchange or otherwise alienate, or hypothecate, burden with a servitude or otherwise confer any real right in immovable property, without the approval of the Minister given with the concurrence of the Minister of Finance. 15
- (4) Once during every financial year, at a time determined by the Minister, the NHC and a division must submit a statement of its estimated income and expenditure for the following financial year to the Minister for approval, granted with the concurrence of the Minister of Finance. 20
- (5) The NHC and a division may during the course of a financial year, submit supplementary estimates of its expenditure for that financial year to the Minister for approval, granted with the concurrence of the Minister of Finance.
- (6) The NHC and a division must not incur any expenditure except in accordance with an estimate of expenditure approved under subsections (4) or (5). 25
- (7) The NHC and a division must—
- (a) keep full and correct accounts and records of all its financial transactions and affairs, including all its transactions in its capacity of trustee of any trust fund, and all properties under its control, and must ensure that all payments out of the funds of a heritage authority are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of a heritage authority, and the incurring of liabilities by such authority; and 30
  - (b) as soon as possible after the end of the financial year, draw up annual financial statements which must show money received and expenditure incurred by that heritage authority and its assets and liabilities at the end of the financial year concerned: Provided that if no audited financial statements are issued within three months of the financial year end, provisional financial statements must be issued. 35
- (8) The financial year of the NHC, a division and a heritage authority ends on 31 March each year. 40
- (9) The accounts and annual financial statements referred to in subsection (7)(b) must be audited by the Auditor-General.
- (10) The accounts and annual financial statements referred to in subsection (7)(b) must be available for public inspection.

## **Reports** 45

- 20.** (1) As soon as practicable after the end of the financial year, the NHC, and a division must compile and submit to the Minister a report on all its activities during that financial year, including a balance sheet and statements of income and expenditure certified by the Auditor-General.
- (2) The report referred to in subsection (1) must include a description of the condition of the national heritage during the period to which the report relates, including destruction and other losses incurred, threats to specific heritage resources or categories of heritage, and an account of offences and prosecutions and the results thereof. 50
- (3) Each division must supply the NHC with the information required to compile the report referred to in subsection (1). 55
- (4) The NHC may furnish to the Minister, such reports relating to the heritage resources of South Africa or a province as it deems fit.

(5) The NHC must furnish to the Minister, such additional reports as the Minister from time to time requires.

(6) The Minister must table the reports referred to in subsection (1), and a report furnished in terms of subsection (4) or (5) in Parliament as soon as possible.

## CHAPTER II

5

### HERITAGE RESOURCES

#### *Part I*

#### *National system for management of heritage resources*

#### **Application**

**21.** This Chapter establishes the national system for the management of heritage resources which it applies throughout the Republic and— 10

- (a) also applies to the actions of the State and a local authority;
- (b) serves as guidelines by reference to which any heritage authority, whether established in terms of this Act or any other law, and any other competent authority must exercise any discretion or take any decision in terms of this Act or any other law dealing with heritage resources management; and 15
- (c) serves as the general framework within which—
  - (i) any heritage authority must perform its functions and make recommendations; and
  - (ii) those recommendations must be considered by any competent authority in terms of this Act or any other law dealing with heritage resources management. 20

#### **Heritage assessment criteria and grading**

**22.** (1) The SAHA, after consultation with the NHC, and with the approval of the Minister, must by regulation establish a system of grading of places and objects which form part of the national estate, and which distinguishes between at least the following categories: 25

- (a) Grade I: heritage resources with qualities so exceptional that they are of special national significance;
- (b) Grade II: heritage resources with special qualities which make them significant within the context of a province or region; and 30
- (c) Grade III: other heritage resources worthy of conservation,

and which prescribes heritage assessment criteria, consistent with the criteria set out in section 4(3), which must be used by a heritage authority or a local authority to assess the intrinsic, comparative and contextual significance of a heritage resource and the relative benefits and costs of its protection, so that the appropriate level of grading of the resource and the consequent responsibility for its management may be allocated in terms of section 6. 35

(2) A heritage authority may prescribe detailed heritage assessment criteria, consistent with the criteria set out in section 4(3), for the assessment of Grade II and Grade III heritage resources in a province. 40

#### **Responsibilities and competence of heritage authorities and local authorities for identification and management of national estate**

**23.** (1) There is a three-tier system for heritage resources management, in which national level functions are the responsibility of the SAHA, provincial level functions are the responsibility of provincial heritage authorities and local level functions are the responsibility of local authorities. Heritage authorities and local authorities are accountable for their actions and decisions and the performance of its functions under this system. 45

(2) The SAHA is responsible for the identification and management of Grade I heritage resources and heritage resources for which it is responsible in terms of Part 3b of Chapter II, in accordance with the applicable provisions of this Act, and it co-ordinates and monitors the management of the national estate in the Republic.

(3) For the purpose of any application for a permit or other authorisation to perform any action which is controlled in terms of this Act or provincial heritage legislation, a formal protection by a heritage authority at a higher level takes precedence over any formal or general protection at a lower level, without prejudice to any incentives offered at any level. 5

### **Rights, duties and exemptions**

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**24.** (1) All branches of the State and supported bodies must give heritage authorities such assistance in the performance of their functions as is reasonably practicable.

(2) All branches of the State and supported bodies must, on the request of a heritage authority, make available for its use and incorporation into its data base any information which it has on record on heritage resources: Provided that the body supplying such information may prescribe conditions regarding the disclosure and distribution of such information by the heritage authority. 15

(3) Each State department and supported body must—

(a) maintain and conserve the heritage resources under its control in accordance with standards and procedures set out in regulations by the SAHA in consultation with the Department of Public Works; 20

(b) submit annually to the SAHA a report on the maintenance and development of such resources;

(c) in accordance with regulations, on the request of the Minister, or at the least 10 years from the commencement of this Act, compile and submit to the NHC and the SAHA, information on and an inventory of such heritage resources; 25

(d) on the request of the Minister and in accordance with regulations, prepare management plans for specified heritage resources;

(e) not take any action that adversely affects such a resource unless the authority concerned is satisfied that there is no feasible and prudent alternative to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken; 30

(f) at least 90 days before taking any action that could adversely affect such heritage resource, inform the NHC and SAHA of the proposed action and give them a reasonable opportunity to consider and comment on it; and 35

(g) where the destruction of such heritage resources is permitted in terms of this Act, record such resources in accordance with standards set by the NHC and undertake any other mitigating actions which may be required by the NHC or the SAHA.

(4) Where the SAHA has been informed of a proposed action by a State Department or supported body it must, as soon as practicable, submit its comments to the Department or supported body. 40

(5) For the purposes of this section, the making of a recommendation which, if adopted, would affect a heritage resource, the making of a decision, the approval of a program, the issue of a licence or the granting of a permission shall be deemed to be the taking of an action. 45

(6) Compliance with subsection (3), does not exempt a State Department or supported body from complying with requirements in terms of this Act, regarding any heritage resource in its ownership which is protected in terms of Part 3 of Chapter II or equivalent provincial legislation. 50

(7) The head of a government body at the national level of government must—

(a) inform the SAHA of his or her intention to destroy or delete any architectural or technical drawings in whatever medium, as may be defined in the regulations, jointly published by the SAHA and the National Archives Division; and 55

- (b) make such drawings available to the SAHA free of charge.
- (8) The head of a government body at the provincial or local level of government must—
- (i) inform the provincial heritage authority of his or her intention to destroy or delete any architectural or technical drawings in whatever medium; and 5
  - (ii) make such drawings available to a heritage authority free of charge.
- (9) The Registrar of Deeds must inform the SAHA or the relevant heritage authority, in a notice as prescribed, of the particulars of the registration of transfer or subdivision of any place which is formally protected by such heritage authority in terms of Part 3a of Chapter II, within 14 days of such registration. 10
- (10) When—
- (a) a place has been declared a national heritage site or a provincial heritage site under section 34;
  - (b) a place has been designated a protected area under section 35;
  - (c) a place has been provisionally protected for a period longer than six months under section 36; 15
  - (d) a place has been entered in a heritage register in terms of section 39;
  - (e) a place has been included in a heritage area in terms of section 38;
  - (f) a heritage covenant has been entered into in respect of a place for a period exceeding six months under section 47; or 20
  - (g) an order of no development under subsection 56(8) has been made in respect of a place,
- the heritage authority concerned must furnish the Surveyor-General and the Registrar of Deeds in whose deeds registry the land in question is registered with—
- (i) a copy of the notice in the *Gazette* or the *Provincial Gazette*; 25
  - (ii) the particulars of the protection;
  - (iii) a copy of any survey, including any diagram or plan, made under section 31(2)(g); and
  - (iv) a copy of the relevant order of no development or heritage covenant.
- (11) The Registrar of Deeds must— 30
- (i) endorse the title deed of the place in question filed in the deeds office;
  - (ii) make an entry in the appropriate registers and upon the owner's title deed as soon as it is lodged in the deeds office, relating to the particulars furnished in terms of subsection (10);
  - (iii) identify the area of the protected place; and 35
  - (iv) clearly state the particulars of the protection order or heritage covenant.
- (12) The Surveyor-General must—
- (i) endorse upon the relevant records filed in his or her office an entry referring to the notice furnished in terms of subsection (10); and
  - (ii) state the particulars of the protection order or heritage covenant in broad 40 terms.
- (13) (a) When—
- (i) any notice is amended or withdrawn under section 34(7);
  - (ii) the designation of a protected area is withdrawn under section 35(1) or (2);
  - (iii) a provisional protection for a period longer than six months is withdrawn 45 under section 36(1)(b);
  - (iv) an entry in a heritage register is amended or deleted;
  - (v) a place is excluded from a heritage area; or
  - (vi) an order of no development is amended or repealed under section 56(11),
- the heritage authority concerned must furnish a copy of the notice or order to the 50 Registrar of Deeds and the Surveyor-General.
- (b) The Registrar of Deeds must make the necessary endorsements upon the relevant title deeds and in the appropriate registers.



(c) The Surveyor General must make the necessary endorsements upon the relevant records filed in his or her office.

### **Principles for management of heritage resources**

25. (1) The general principles for the management of heritage resources set out in section 6 apply to this Chapter. 5

(2) The SAHA, after consultation with the Minister, may by notice in the *Gazette*—

- (a) prescribe any principle for heritage resources management in addition to, but not inconsistent with, the principles set out in section 6;
- (b) prescribe any principle as set out in section 6 in greater detail, but not inconsistent therewith; 10
- (c) publish for general information national policy relating to heritage resources management or any aspect thereof which is consistent with the principles set out in section 6 or prescribed under paragraphs (a) and (b),

whereupon such principle must apply throughout the Republic.

(3) A heritage authority must, before prescribing any principle or general policy under subsection (2)— 15

- (i) make a draft of such principle or policy available to the public; and
- (ii) consider any comment on such draft received from any person during a reasonable period after such publication.

### **General principles of procedure** 20

26. (1) The general principles of procedure set out in subsection (2) apply to any decision regarding the administration and management of the national estate by an authority to which a responsibility has been assigned in terms of section 23 and any other competent authority to which functions and powers for the administration and management of the national estate have been assigned or delegated, including any decision— 25

- (a) to formally protect a heritage resource by notice in the *Gazette* or the *Provincial Gazette*;
- (b) to issue or not to issue a permit; and
- (c) taken by any person or authority to whom an appeal is made. 30

(2) The decisions contemplated in subsection (1) must be taken in accordance with the following general principles:

- (a) the decisions must be consistent with the principles or policy set out in section 6 or prescribed under section 25;
- (b) a meeting at which decisions are taken must be open to the public and the agenda and minutes must be available for public scrutiny: Provided that when there is good reason to do so, a matter may, by decision of the majority of members present, be declared confidential and the discussion and minutes may be excepted from public scrutiny; 35
- (c) a person who may be affected by a decision has the right of appearance at such meeting; and 40
- (d) written reasons must be given for any decision upon request.

### **Applicability of provincial legislation**

27. Without prejudice to the provisions of Part 1 of this Chapter, in any province which has enacted legislation for the establishment of a provincial heritage authority and the management of heritage resources at provincial level, the provisions of such legislation must, as far as they relate to provincial areas of competence, take precedence over the equivalent provisions of this Act. 45

## **Part 2**

### ***Constitution, functions, powers and duties of heritage authorities*** 50

#### **Establishment, functions and constitution of SAHA Council**

28. (1) There is hereby established the SAHA Council.

(2) For the purposes of this Chapter, the South African Heritage Agency established in terms of section 29, is the executive of the SAHA Council.

(3) Wherever this Chapter provides for the SAHA to carry out any function, power or duty, that function, power or duty must, unless the context requires otherwise, vest in and be undertaken by the SAHA Council. The SAHA Council must— 5

- (a) be responsible and accountable for the performance or exercise of the functions, powers and duties of the SAHA;
- (b) make such recommendations as are required to enable the Minister to exercise his or her powers in terms of this Part;
- (c) advise and assist the SAHA in the performance of its functions, powers and duties; and 10
- (d) promote the co-ordination of policy formulation and planning for the management of the national estate at national and provincial levels.

(4) The SAHA Council consists of not less than seven and not more than 15 members appointed by the Minister by notice in the *Gazette*, with due regard to the desirability of the members— 15

- (a) having among them qualifications or special experience or interest in fields relevant to the management of the national estate, and the financial knowledge needed for the efficient functioning of the SAHA; and
- (b) being representative of the different provinces of South Africa, relevant sectoral interests and the cultural and demographic characteristics of the population of the Republic. 20

#### **Establishment of South African Heritage Agency**

**29.** There is hereby established the South African Heritage Agency, under the authority of the SAHA Council as provided for in this Act. 25

#### **Functions, powers and duties of SAHA**

**30.** (1) The general functions of SAHA are to—

- (a) advocate and promote the identification and management of the national estate;
- (b) establish national principles, standards and policy for the identification, recording and management of the national estate, in terms of which heritage authorities and other relevant bodies must function with respect to South African heritage resources; 30
- (c) advise the NHC on the co-ordination of the management of the national estate by all agencies of the State and other bodies; 35
- (d) monitor the activities of all heritage authorities to ensure that they comply with national principles, standards, and policy for heritage resources management;
- (e) identify, record, and manage nationally significant heritage resources and keep permanent records of such work; 40
- (f) advise, assist and provide professional expertise to any authority responsible for the management of the national estate at provincial or local level, and assist any other body concerned with heritage resources management;
- (g) promote and encourage public understanding and enjoyment of the national estate and public interest and involvement in the identification, assessment, recording and management of heritage resources; 45
- (h) promote training and education in fields related to the management of the national estate; and
- (i) perform any other functions assigned to it by this Act or as directed by the Minister. 50

(2) Without limiting the generality of subsection (1), and in addition to the general powers and duties conferred in terms of section 31, the SAHA—

- (a) must investigate and advise the SAHA Council on all matters relating to the national estate, including— 55
  - (i) the state of South Africa's heritage resources and any steps necessary to protect and conserve it;
  - (ii) national policy for the management of the national estate;

- (iii) legislative amendment and enactment for the management of the national estate;
- (iv) the repatriation of heritage resources which have been removed from South Africa and which the SAHA considers to be significant as part of the national estate; 5
- (v) the role of the national estate in the development and promotion of a cultural profile for South Africa;
- (vi) action and expenditure by the State for the identification and management of heritage resources, including financial incentives and concessions for heritage resources management; 10
- (vii) education and training at all levels to promote the effective identification and management of the national estate;
- (viii) any matter related to the operation of this Act; and
- (ix) any other matter pertaining to the national estate or its management;
- (b) must establish and maintain, for its own use and for the use of all heritage authorities and bodies and the public, the national heritage library, including documentary and other records relating to the national estate; 15
- (c) must promote the systematic identification and recording of the national estate, by—
  - (i) the development of a national strategy for the identification and assessment of heritage resources; 20
  - (ii) the establishment and funding of a standing South African Heritage Survey which is tasked with annual projects aimed at identifying, assessing and documenting heritage resources;
  - (iii) the co-ordination and support of initiatives by provincial heritage authorities, any other bodies and persons to survey and record heritage resources; 25
  - (iv) the administration, co-ordination and funding of projects and research programmes aimed at the creation of graphic and other records of heritage resources; 30
  - (v) training programmes and other relevant activities aimed at conserving and documenting traditional South African building techniques and structural forms;
  - (vi) promoting the identification and recording of aspects of living heritage associated with heritage resources; and 35
  - (vii) projects aimed at increasing the volume and detail of information held in the inventory of the national estate referred to in section 44, and must prescribe national norms and standards for the recording of information about heritage resources in data bases maintained by itself and by provincial heritage authorities. 40

### **General powers and duties of heritage authorities**

- 31.** (1) The SAHA has all such powers as are reasonably necessary or expedient to enable it to carry out its functions.
- (2) Without limiting the generality of subsection (1), the SAHA—
- (a) must furnish information, advice and assistance and may develop and conduct public information and education programmes, workshops, training sessions and other initiatives aimed at enhancing public sensitivity towards and awareness of the need for management of the national estate; 45
  - (b) must promote and engage in research and investigations relating to the identification, assessment and management of the national estate or necessary for the performance of its functions; 50
  - (c) may publish, or by any other means make available or distribute in any form, or cause to be published or distributed, any knowledge and information relating to the national estate and any of its functions or activities;
  - (d) must maintain a list of conservation bodies which have, in accordance with regulations by the heritage authority concerned, registered their interest in—
    - (i) a geographical area; or
    - (ii) a category of heritage resources;

- (e) may inspect or document any heritage resource—
- (i) which has the potential to become protected in terms of this Act;
  - (ii) which is, or which the heritage authority has reason to believe may be so protected; or
  - (iii) which it wishes to document for research purposes, for purposes of building up a public record of heritage resources or as part of an investigation into a suspected offence in terms of this Act, and must maintain a register of such inspections; 5
- (f) must regularly inspect heritage resources which are formally protected by the heritage authority concerned in terms of any provision of Part 3a of Chapter II; 10
- (g) may, whenever it is investigating the desirability of protecting any place in terms of this Act, take such steps as it considers necessary—
- (i) for erecting beacons on the corners of and surveying and preparing a diagram or plan of such place; or
  - (ii) for determining by survey the location of such place or object in relation to the beacons and boundaries of the land on which it is situated; 15
- (h) must endeavour to ensure that any community or body of persons with a cultural interest in any heritage resource has reasonable access to such heritage resource, and may for this purpose—
- (i) enter into negotiations with the owner of such resource; and 20
  - (ii) facilitate the making of such arrangements as may be required for the achievement of such access, including the execution of a heritage agreement under section 47;
- (i) must make arrangements to ensure the protection and management of all heritage resources and property owned or controlled by it or vested in it; 25
- (j) may undertake or make arrangements for the presentation of any place under its control or, after consultation with the Department concerned, any heritage site which is owned by the State;
- (k) may, by agreement with the authority or body concerned, co-operate in the management of any heritage resource which is owned or controlled by the State or a supported body; 30
- (l) may lend anything under its control to a museum or public institution, subject to such conditions as it deems necessary and appropriate;
- (m) may, subject to section 13, make and from time to time amend regulations relating to any matter which the heritage authority concerned considers to be necessary or expedient to prescribe to perform its functions and duties and exercise its powers under this Act, including— 35
- (i) the standards of practice and qualifications required of individuals, institutions or other bodies for the performance of work on heritage resources protected in terms of, and in the various fields covered by, this Act; and 40
  - (ii) the monitoring of activities at protected sites;
- (n) may create and where necessary register with the relevant authorities a badge, or an emblem for the authority, any of its projects or any category of protection provided for in terms of this Act; 45
- (o) may, where appropriate, affix to or otherwise display at any place protected in terms of this Act a badge or other sign indicating its status;
- (p) may produce, acquire and market products relating to the national estate, or enter into arrangements for the production, acquisition and marketing of such products; 50
- (q) may recover costs incurred by it and, where appropriate, charge for the provision of services rendered in terms of this Act, including but not limited to the—
- (i) processing of applications received;
  - (ii) carrying out of investigations; 55
  - (iii) production, acquisition and marketing of products; and
  - (iv) provision of information;
- (r) may arrange for the provision of insurance cover for—

- (i) itself against any loss, damage, risk or liability which it may suffer or incur regarding any property under its control;
- (ii) members of the SAHA Council, co-opted members, members of committees and members of its staff, in respect of bodily injury, illness, disablement or death incurred wholly and directly in the course of the performance of their duties on behalf of the heritage authority concerned; 5
- (s) may enter into contracts; and
- (t) may employ consultants to assist in the performance of its functions.

### **Consultation and co-operation with other authorities and organisations**

**32.** (1) The SAHA must, in the performance of its functions in relation to any matter, consult with the NHC, heritage institutions, the Departments and authorities of central and provincial government, local authorities, the community and other organisations. 10

(2) A provincial heritage authority must, in the performance of its functions in relation to any matter, consult with the SAHA, heritage institutions, the Departments and authorities of central and provincial government, local authorities, the community and other organisations. 15

(3) The SAHA and provincial heritage authorities may co-operate and enter into agreements with each other, provincial authorities, local authorities and any other organisation regarding the performance of their functions in terms of this Act.

(4) A heritage authority may assist and co-operate with other heritage bodies, both within and outside South Africa. 20

(5) If agreed upon between the Government of South Africa and the government of any other state, the SAHA has power, with the concurrence of the Minister, to perform in that state any functions which a heritage authority would be capable of performing in South Africa in terms of this Act. 25

(6) The Minister may make regulations concerning the application of any international convention, treaty or agreement relating to the protection of heritage resources which, in accordance with sections 231 to 233 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), forms part of the law of the Republic. 30

### **Delegation of functions or powers of heritage authorities**

**33.** (1) Subject to subsection (3), a heritage authority may, either generally or as otherwise provided, delegate in writing any of its functions or powers under this Act to all or any of the following:

- (a) in the case of the SAHA, any member of the SAHA Council; 35
- (b) in the case of a provincial heritage authority any member of its council;
- (c) a committee or any member of a committee;
- (d) any employee, heritage inspector, volunteer or other representative of the authority concerned;
- (e) specified office bearers or members of a conservation body registered with it in terms of section 31(2)(d); 40
- (f) in the case of the SAHA, a provincial heritage authority, provincial government, local authority, and any other authority which shows competence to perform such functions, by agreement with such authority;
- (g) in the case of a provincial heritage authority, a local authority or any other body which is competent to perform such functions, by agreement with such authority or body. 45

(2) A power delegated under subsection (1), when exercised by the delegate, shall for the purposes of this Act be deemed to be exercised by the heritage authority concerned: Provided that a delegate shall be held accountable to the heritage authority for all actions performed by him, her or it during the period of delegation. 50

(3) A heritage authority may not delegate power to do any of the following:

- (a) delegate any of its functions or powers under this section;
- (b) make a recommendation to the Minister in terms of this Act;

- (c) borrow money under paragraph 19(3)(a);
- (d) acquire or dispose of real property under paragraph 19(3)(b) or (c); or
- (e) adopt any statement of general policy or conservation management plan under section 52.

(4) A delegation under this section shall be revocable at will and no such delegation shall prevent the exercise of any power by the heritage authority: Provided that the delegation of any power to a provincial heritage authority in terms of an agreement under subsection (1)(f) shall only be revoked by the SAHA with the consent of the Minister, after the SAHA has consulted such authority. 5

### *Part 3*

10

### *Protection and management of heritage resources*

#### *Part 3a*

#### *Formal protections*

#### **National heritage sites and provincial heritage sites**

**34.** (1) The SAHA must identify places in terms of the heritage assessment criteria set out in section 4(2) and prescribed under section 22(1), and must investigate the desirability of their declaration as national heritage sites. 15

(2) Any person may submit a nomination to the SAHA for a place to be declared a national heritage site and the heritage authority concerned may prescribe the format and procedures for such nominations. 20

(3) A written motivation for the declaration of a place as a heritage site must be prepared and kept on record by the heritage authority.

(4) The NHC may, with the approval of the Minister, by notice in the *Gazette*, declare any place referred to in subsection (1) to be a national heritage site.

(5) The heritage authority may, by similar notice— 25

(a) amend any notice published under subsection (4); or

(b) withdraw any notice published under subsection (4) or paragraph (a);

(6) Before declaration of a place as a heritage site, or amendment or withdrawal of a notice under subsection (5), the heritage authority must notify—

(a) the owner; 30

(b) the mortgage holder, the occupier and any other person with a registered interest in the property; and

(c) all conservation bodies which have, in terms of section 31(2)(d), registered their interest in the geographical area in which the proposed heritage site is situated, 35

and give them at least 60 days to make submissions regarding the proposed declaration, amendment or withdrawal, and in the case of the owner, to propose conditions under which the action will be acceptable. All submissions must be considered before a final decision is made.

(7) A heritage authority may at any time withdraw a notice which it has served in terms of subsection (6)(a). 40

(10) For the purposes of subsections (11) to (17), a place shall be deemed to be protected as a heritage site for six months from the date of service of a notice under subsection (8)(a) or until the notice is withdrawn or the place is declared to be a heritage site, whichever is the shorter period. 45

(9) Subject to subsection (10), if the owner objects to the proposed declaration of a place or proposes conditions which the heritage authority considers unacceptable, the heritage authority may, prior to the expiry of the notice in terms of subsection (8), renew a notice under subsection (6)(a), whereupon the protection under subsection (8) shall be extended for a further six months. If during this time consultation between the heritage authority and the owner fails to lead to the withdrawal of the owner's objection or the 50

proposal of acceptable conditions, the heritage authority may declare the place to be a heritage site.

(10) The Minister, on the advice of the SAHA, must prescribe circumstances in which the State, a local authority or a supported body may object to the declaration as a heritage site of a place which it owns or controls. 5

(11) The SAHA is responsible for the protection of national heritage sites in accordance with the provisions of this section.

(12) Except in cases where the heritage authority considers it inappropriate, all heritage sites must be marked with a badge indicating their status.

(13) No person may destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site except with the authority of the heritage authority responsible for the protection of such site. 10

(14) The responsible heritage authority may make regulations—

(a) safeguarding heritage sites from destruction, damage, disfigurement, excavation or alteration; 15

(b) regulating the conditions of use of any heritage site or the conditions for any development thereof;

(c) regulating the admission of members of the public to any heritage site under its control or to any other heritage site, with the consent of the owner of that site, and the fees payable for such admission. 20

(15) Any branch of the State or supported body which is the owner of a heritage site must maintain such site according to a minimum standard and according to a procedure prescribed by the responsible heritage authority after consultation with the relevant Departments of Works.

(16) The responsible heritage authority may, by agreement with the owner of a heritage site— 25

(a) conserve or improve any heritage site;

(b) construct fences, walls or gates around or on a heritage site;

(c) acquire or construct and maintain an access road to a heritage site over any land, and construct upon such land fences, walls or gates; or 30

(d) erect signs on or near a heritage site.

(17) No person may damage any fence, wall or gate constructed or sign erected by a heritage authority in terms of subsection (16).

(18) (a) All reproduction rights either in two or three dimensions in respect of a heritage site, subject to any existing rights and the agreement of the owner of such site, belong to the State and vest in the heritage authority responsible for the protection of such site or, by agreement, with the authority or public institution responsible for the management of such site. 35

(b) No person may make such reproduction for profit except with the authority of the SAHA or a provincial heritage authority, as the case may be, which may prescribe the fees payable in respect of such reproduction and must deposit such fees in a trust fund dedicated to the conservation of such site or of heritage resources in general. 40

### Protected areas

**35.** (1) The SAHA Council with the approval of the Minister may, by notice in the *Gazette*, designate as a protected area— 45

(a) such area of land surrounding a national heritage site as is reasonably necessary to ensure the protection and reasonable enjoyment of such site, or to protect the view of and from such site; or

(b) such area of land surrounding any wreck as is reasonably necessary to ensure its protection. 50

(2) No person may damage, disfigure, alter, subdivide or in any other way develop any part of a protected area unless, at least 60 days prior to the initiation of such changes, he or she has consulted the heritage authority which designated such area in accordance with a procedure prescribed by that authority.

(3) A heritage authority may make regulations providing for specific protections for any protected area which it has designated, including the prohibition or control of specified activities by any person in the designated area. 55

### Provisional protection

- 36.** (1) The SAHA Council, with the approval of the Minister or a provincial heritage authority, may, subject to subsection (2), by notice in the *Gazette*, as the case may be—
- (a) provisionally protect for a maximum period of five years any—
    - (i) protected area; 5
    - (ii) heritage resource, the conservation of which it considers to be threatened and which threat it believes can be alleviated by negotiation and consultation; or
    - (iii) heritage resource, the protection of which the SAHA or the provincial heritage authority wishes to investigate in terms of this Act; and 10
  - (b) withdraw any notice published under paragraph (a).
- (2) A heritage authority may not provisionally protect any heritage resource unless it has notified the owner of the resource in writing of the proposed provisional protection.
- (3) A heritage resource shall be deemed to be provisionally protected for 30 days from the date of service of a notice under subsection (2) or until the notice is withdrawn or the resource is provisionally protected by notice in the *Gazette*, whichever is the shorter period. 15
- (4) A heritage authority may at any time withdraw a notice which it has issued under subsection (2)(a).
- (5) No person may damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of a provisionally protected place or object except with the authority of the heritage authority or local authority responsible for the provisional protection. 20

### Heritage objects

- 37.** (1) An object or collection of objects, or a type of object or list of objects, whether specific or generic, that is part of the national estate and the export of which the SAHA deems necessary to control, may be declared a heritage object, including—
- (a) objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects, meteorites and rare geological specimens; 30
  - (b) visual art objects;
  - (c) military objects;
  - (d) numismatic objects;
  - (e) objects of cultural and historical significance;
  - (f) objects of scientific or technological interest; 35
  - (g) books, records, documents, photographic positives and negatives, graphic material, film or video or sound recordings, excluding those that are public records as defined in section 1(xiv) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996), or in a provincial law pertaining to records or archives; and 40
  - (h) any other prescribed category.
- (2) For the purposes of this section, an object within a type of object declared to be a heritage object is deemed to be a heritage object.
- (3) The SAHA Council, with the approval of the Minister, may, by notice in the *Gazette*— 45
- (a) declare an object, or a collection thereof, or a type of object or list of objects, whether specific or generic, to be a heritage object;
  - (b) amend any notice published under paragraph (a); or
  - (c) withdraw any notice published under paragraph (a) or amended under paragraph (b). 50
- (4) The SAHA Council may not exercise its power under section (3) unless—
- (a) in the case of a specific object or collection, it has served on the owner a notice of its intention and has given him or her at least 60 days to lodge an objection or suggest reasonable conditions regarding the care and custody of such object under which such declaration is acceptable; or 55



- (b) in the case of a type of object, it has—
- (i) published a notice of provisional declaration in the *Gazette*;
  - (ii) by public advertisement and any other means it considers appropriate, made known publicly the effect of the declaration and its purpose; and
  - (iii) invited any interested person who might be adversely affected to make submissions to or lodge objections with the SAHA within 60 days from the date of the notice,
- and has considered all such submissions and objections.

(5) An object or collection shall be deemed to be protected as a heritage object for six months from the date of service or publication of a notice under paragraph (4)(a) or (4)(b)(i), or until such notice is withdrawn or the object or collection or type of objects is declared to be a heritage object, whichever is the shorter period.

(6) The SAHA must maintain a register of heritage objects in which all objects, collections of objects and types of objects which have been declared heritage objects be listed.

- (a) The register shall be in two parts:
- (i) Part I: Heritage objects listed by type;
  - (ii) Part II A: specific heritage objects as listed in the inventory of a public museum in South Africa or otherwise displayed or kept in secure conditions;
  - (iii) Part II B: other specific heritage objects.

(b) The SAHA may prescribe the further division of the parts of the register into categories or other subdivisions.

(7) The SAHA must make available to the public the information contained in Parts I and II A of the register and, subject to subsection (8), a summary of information in Part II B of the register.

(8) Where it is necessary to ensure the proper protection of a heritage object which is entered in Part II B of the register, no information which may identify the location of the object may be accessible to any person except with the express consent of the SAHA, for so long as the SAHA may determine.

(9) All reproduction rights either in two or three dimensions in respect of heritage objects not in private ownership, whether by way of model cast, photograph, cinematograph, video film or any other form, belong to the State, and no person may make such reproduction for profit except with the authority of the SAHA, which may prescribe the fees payable in respect of such reproduction.

(10) (a) The SAHA may designate any person or any institution in South Africa as an expert examiner for the purposes of this section, on the basis of his, her or its special knowledge.

(b) It is the function of an expert examiner to give advice to the SAHA on a matter referred by it.

(11) The SAHA may provide to the owner or custodian of a heritage object listed in Part II of the register of heritage objects a certificate or badge indicating its status.

(12) The owner of a heritage object listed in Part II of the register of heritage objects must notify the SAHA of the name and address of the new owner when such object is sold or otherwise alienated and must provide the new owner or custodian with any certificate or badge under subsection (11) relating to such a heritage object.

(13) No person may destroy, damage, disfigure or alter any heritage object, or disperse any collection which is listed in Part II of the register, except with the authority of the SAHA.

(14) The SAHA may make regulations relating to the registration of dealers in heritage objects and the control of trade in heritage objects.

(15) It is the responsibility of the owner or custodian of a heritage object to keep the heritage object in good condition and in a secure place.

(16) The owner or custodian of a heritage object must immediately report to the SAHA any loss of or damage to a heritage object or any part thereof upon discovery of such loss or damage.

(17) No person may carry out any work of restoration or repair except with the authority of a duly authorised representative of the SAHA.

(18) On application by the owner or custodian the SAHA may at its discretion assist in funding any restoration or repair work undertaken by a restoration or repair craftsman approved by the SAHA.

(19) No person may export or attempt to export from South Africa any heritage object except with the authority of the SAHA issuing an export permit to such a person. 5

(20) No heritage object may be removed from South Africa other than through a customs port of entry, and the relevant export permit issued under subsection (19) or certificate of exemption issued under subsection (32) must be produced to a custom officer before removal from South Africa is effected or allowed.

(21) An application for such an export permit must be made in the manner and contain such information as prescribed by the SAHA. 10

(22) On receipt of an application to export a heritage object the SAHA may refer it to one or more expert examiners, who must submit to the SAHA a written report on the application.

(23) The SAHA must consider the report and— 15

(a) issue a permit to export the object concerned, subject to such conditions if any as the SAHA considers necessary; or

(b) refuse to issue a permit.

(24) In considering an application to export any object of a type listed in Part I of the register of heritage objects permanently, an expert examiner and the SAHA must consider whether the object— 20

(a) is of outstanding significance by reason of its close association with South African history or culture, its aesthetic qualities, or its value in the study of the arts or sciences; and

(b) is of such a degree of national importance that its loss to South Africa would significantly diminish the national heritage, 25

and if satisfied that the object fulfils both these criteria, may not recommend the issue of a permit, or issue a permit, as the case may be, to export the object permanently.

(25) In the event of the SAHA refusing to issue an export permit the applicant may, within 30 days after such refusal, by written notice require the compulsory purchase of the heritage object to which such refusal relates. 30

(26) On receipt of a notification under subsection (25) the SAHA must—

(a) if it is of the opinion that a fair offer to purchase the object concerned might be made by a person or public authority in South Africa within the following six months, establish a delay period of not less than two months and not more than six months during which an export permit may not be issued in respect of such object; or 35

(b) on its own behalf or on behalf of a public institution or authority in South Africa or a person who will undertake to keep the object in the country, offer to purchase the object either by an immediate cash payment or by payment of compensation in such manner as the Minister in consultation with the Minister of Finance may determine; or 40

(c) in any other case, issue a permit to export the object concerned.

(27) Where the SAHA establishes a delay period under subsection (26)(a) in respect of a heritage object, it— 45

(a) must give written notice of the delay period to the applicant, the NHC and the Minister;

(b) must advise such institutions and public authorities in South Africa as it sees fit of the delay period and of the object in respect of which such delay period was established; 50

(c) may by public advertisement or any other means it deems appropriate make known the delay period and the object in respect of which it was established; and

(d) may stipulate that the heritage object concerned is deposited on temporary loan with a specified South African museum or public authority for the duration of the delay period. 55

(28) The Minister may extend a delay period established in terms of subsection (26)(a) for a maximum period of two years.

(29) In the event that—

(a) during a delay period established in terms paragraph (26)(a), an offer to 60

purchase the heritage object concerned is made and the applicant and a public authority or person making such offer cannot agree as to the amount of a fair cash offer; or

- (b) the SAHA and the applicant cannot agree as to the amount of a fair offer or compensation under subsection (26)(b),

such dispute must be arbitrated by a panel appointed by the Minister, consisting of equal representatives of dealers in heritage objects, museums and collectors of heritage objects, which must determine the amount of a fair cash offer to purchase such heritage object and must notify the parties concerned and the SAHA thereof.

(30) Where a delay period established in terms of subsection (26)(a) expires without a fair offer being made to purchase the heritage object concerned, the SAHA must forthwith on the request of the applicant issue a permit to export such heritage object.

(31) Where a delay period established in terms of subsection (26)(a) expires and the SAHA is satisfied that a fair offer to purchase the heritage object concerned has been made, the SAHA may not issue a permit to export such heritage object.

(32) A person who intends to import an object which is of a type listed in Part I of the register of heritage objects, for temporary purposes or in circumstances in which the person may subsequently wish to export the object, may apply to the SAHA for a certificate of exemption authorising the export of the object concerned for the period specified in the certificate.

### *Part 3b*

#### *General protections*

##### **Import of objects protected in terms of laws of foreign states**

**38.** (1) In this section—

“cultural property agreement”, in relation to a foreign state, means an agreement between South Africa and a foreign state or an international agreement to which South Africa and a foreign state are both parties, relating to the prevention of illicit international traffic in cultural property;

“foreign cultural property”, in relation to a reciprocating state, means any object that is specifically designated by that state as being of importance for archaeology, history, literature, art or science;

“reciprocating state” means a foreign state that is party to a cultural property agreement.

(2) No person may import into South Africa any foreign cultural property other than through a customs port of entry, and the export permit or other permission issued in the country of origin of such object must be produced to a customs officer before import to South Africa is effected or allowed.

(3) After a cultural property agreement between South Africa and a reciprocating state comes into force, no person may import into South Africa any foreign cultural property that has been illegally exported from a reciprocating state.

(4) A customs officer who has reason to believe that a person is attempting to import an object in contravention of subsection (2) or (3), may detain the object concerned and such object must be kept in the custody of the SAHA until such time, not exceeding six months, as an investigation into the provenance of such object is completed.

(5) The SAHA may, with the consent of the Minister and the Minister of Foreign Affairs, liaise and co-operate with the authority responsible for the protection of cultural property in any reciprocating state and may enter into agreements with any such authority with regard to the return to the country of origin of any heritage object or cultural property which is illegally imported into South Africa or the reciprocating state, whether specifically or in general.

##### **Structures**

**39.** (1) No person may alter or demolish any structure or part of a structure which is older than 60 years except with the authority of the provincial heritage authority concerned by the issuing of a permit.

(2) Within three months of the refusal of the heritage authority to issue a permit, it must give consideration to the protection of the place concerned in terms of one of the formal designations provided for in Part 1 of this Chapter.

(3) The provincial heritage authority may at its discretion, by notice in the *Provincial Gazette*, make an exemption from the requirements of subsection (1) within a defined geographical area, or for certain defined categories of site within a defined geographical area, providing that it is satisfied that heritage resources falling into the defined area or category have been identified and are adequately provided for in terms of the provisions of Part 1 of this Chapter. 5

(4) Should the provincial heritage authority believe it to be necessary it may, 10 following a three month notice period published in the *Provincial Gazette*, withdraw or amend a notice under subsection (3).

### **Archaeology, palaeontology and meteorites**

**40.** (1) Subject to the provisions of section 23, the protection of archaeological and palaeontological sites and material and meteorites is the responsibility of the SAHA. 15

(2) Subject to the provisions of subsection (8)(a), all archaeological objects, palaeontological material and meteorites are the property of the State. The responsible heritage authority must, on behalf of the State, at its discretion ensure that such objects are lodged with a museum or other public institution that has a collection policy acceptable to the heritage authority and may in so doing establish such terms and conditions as it sees fit for the conservation of such objects. 20

(3) Any person who discovers archaeological or palaeontological objects or material or a meteorite in the course of development or agricultural activity must immediately report the find to the responsible heritage authority, or to the nearest local authority offices or museum, which must immediately notify such heritage authority. 25

(4) No person may, except with the authority of the responsible heritage authority by issuing a permit—

- (a) destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;
- (b) destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite; 30
- (c) trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object, or any meteorite; or
- (d) bring onto or use at an archaeological or palaeontological site any excavation equipment or any equipment which assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites. 35

(5) When the responsible heritage authority has reasonable cause to believe that any activity or development which will destroy, damage or alter any archaeological or palaeontological site is under way, and where no application for a permit has been submitted and no heritage resources management procedure in terms of section 43 has been followed, it may— 40

- (a) serve on the owner or occupier of the site or on the person undertaking such development an order for the development to cease immediately for such period as is specified in the order; 45
- (b) carry out an investigation for the purpose of obtaining information on whether or not an archaeological or palaeontological site exists and whether mitigation is necessary; and
- (c) recover the costs of such investigation from the owner or occupier of the land on which it is believed an archaeological or palaeontological site is located or from the person proposing to undertake the development. 50

(6) The responsible heritage authority may, after consultation with the owner of the

land on which an archaeological or palaeontological site or a meteorite is situated, serve a notice on the owner or any other controlling authority, to prevent activities within a specified distance from such site or meteorite.

(7) (a) Within a period of two years from the commencement of this Act, any person in possession of any archaeological or palaeontological material or object or any meteorite which was acquired other than in terms of a permit issued in terms of this Act, equivalent provincial legislation or the National Monuments Act, 1969 (Act No. 28 of 1969), must lodge with the responsible heritage authority lists of such objects and other information prescribed by that authority. Any such object which is not listed within the prescribed period shall be deemed to have been recovered after the date on which this Act came into effect. 5 10

(b) Paragraph (a) does not apply to any public museum or university.

(c) The responsible authority may at its discretion, by notice in the *Gazette* or the *Provincial Gazette*, as the case may be, exempt any institution from the requirements of paragraph (a) subject to such conditions as may be specified in the notice, and may by similar notice withdraw or amend such exemption. 15

(8) An object or collection listed under subsection (7)—

- (a) remains in the ownership of the possessor for the duration of his or her lifetime, and the SAHA must be notified who the successor is; and
- (b) must be regularly monitored in accordance with regulations by the responsible heritage authority. 20

### **Burial grounds and graves**

41. (1) Where it is not the responsibility of any other authority, the SAHA must conserve and generally care for burial grounds and graves protected in terms of this section, and it may make such arrangements for their conservation as it sees fit. 25

(2) The SAHA must identify, and may erect memorials associated with, the graves of victims of conflict and any other graves which it deems to be of cultural significance, and must maintain such memorials.

(3) (a) No person may, except under the authority of a permit issued by the SAHA—

- (a) destroy, damage, alter, exhume, or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves; 30
- (b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or 35
- (c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

(4) The SAHA may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3)(a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant and in accordance with any regulations made by the heritage authority. 40

(5) The SAHA may not issue a permit for any activity under subsection (3)(b) unless it is satisfied that the applicant has, in accordance with regulations made by the provincial heritage authority— 45

- (a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and
- (b) reached agreements with such communities and individuals regarding the future of such grave or burial ground. 50

(6) Subject to the provision of any other law, any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the SAHA which must, in co-operation with the South African Police Service and in accordance with regulations by the SAHA— 55

- (a) carry out an investigation for the purpose of obtaining information on whether or not such grave is protected in terms of this Act or is of significance to any community; and
- (b) if such grave is protected or is of significance, assist any person who or community which is a direct descendant to make arrangements for the exhumation and re-interment of the contents of such grave or, in the absence of such person or community, make any such arrangements as it deems fit. 5
- (7) (a) The SAHA in consultation with the NHC must, over a period of five years from the commencement of this Act, submit to the Minister for his or her approval lists of graves and burial grounds of persons connected with the liberation struggle and who died in exile or as a result of the action of State security forces or *agents provocateur* and which, after a process of public consultation, it believes should be included among those protected under this section. 10
- (b) The Minister must publish such lists as he or she approves in the *Government Gazette*. 15
- (8) Subject to section 32(5), the SAHA has the power, with respect to the graves of victims of conflict outside the Republic, to perform any function of a provincial heritage authority in terms of this section.
- (9) The SAHA in consultation with the NHC, must identify the grave in a foreign country of any unknown victim of conflict connected with the liberation struggle and, following negotiations with the next of kin, or relevant authorities, it may re-inter the remains of that person in a prominent place in the capital of the Republic and erect and maintain a commemorative memorial in such place. 20

### Public monuments and memorials

42. Public monuments and memorials must, without the need to publish a notice to this effect, be protected in the same manner as prescribed. 25

### Heritage resources management

43. (1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development as described in terms of the following categories— 30
- (a) construction of road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;
- (b) construction of a bridge or similar structure exceeding 50m in length;
- (c) any development or other activity which will change the character of a site— 35
- (i) exceeding 5000m<sup>2</sup> in extent;
- (ii) involving three or more existing erven or subdivisions thereof; or
- (iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or
- (iv) the costs of which will exceed a sum set in terms of regulations by the SAHA;
- (d) re-zoning of a site exceeding 10 000m<sup>2</sup> in extent; or 40
- (e) any other category of development provided for in regulations by the SAHA, must at the very earliest stages of initiating such a development, notify the SAHA and furnish it with details regarding the location, nature and extent of the proposed development.
- (2) The SAHA must, within 14 days of receipt of a notification in terms of subsection (1)— 45
- (a) if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development to submit an impact assessment report. Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the SAHA with relevant qualifications and experience and professional standing in heritage resource management; or 50

- (b) notify the person concerned that this section does not apply.
- (3) The SAHA must specify the information to be provided in a report required under subsection (2)(a): Provided that the following must be included:
- (a) the identification and mapping of all heritage resources in the area affected;
  - (b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 4(2) or prescribed under section 22; 5
  - (c) an assessment of the impact of the development on such heritage resources;
  - (d) an evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development; 10
  - (e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
  - (f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and 15
  - (g) plans for mitigation of any adverse effects during and after the completion of the proposed development.
- (4) The report must be considered timeously by the SAHA which must, after consultation with the person proposing the development, decide— 20
- (a) whether or not the development may proceed;
  - (b) any limitations or conditions to be applied to the development;
  - (c) what general protections in terms of this Act apply, and what formal protections may be applied, to such heritage resources;
  - (d) whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and 25
  - (e) whether the appointment of specialists is required as a condition of approval of the proposal.
- (5) The applicant may appeal against the decision of the SAHA to the Minister, who— 30
- (a) must consider the views of both parties; and
  - (b) may at his or her discretion—
    - (i) appoint a committee to undertake an independent review of the impact assessment report and the decision of the SAHA; and
    - (ii) consult the SAHA; and
  - (c) must uphold, amend or overturn such decision.
- (6) The provisions of this section do not apply to a development described in subsection (1) affecting any heritage resource formally protected by the SAHA unless the authority concerned decides otherwise. 35
- (7) The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environmental Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the SAHA in terms of subsection (3), and any comments and recommendations of the SAHA with regard to such development have 45 been taken into account prior to the granting of the consent.
- (8) The SAHA, with the approval of the Minister may, by notice in the *Provincial Gazette*, exempt from the requirements of this section any place specified in the notice.
- (9) Any person who has complied with the decision of SAHA in terms of subsection (4) or of the Minister in terms of subsection (5) or other requirements referred to in subsection (7), must be exempted from compliance with all other protections in terms of this Part, but any existing heritage covenants made in terms of section 47 must continue to apply. 50

**Part 4**

**Management**

**Inventory of national estate**

- 44.** (1) For the purposes of the consolidation and co-ordination of information on heritage resources, the SAHA must compile and maintain an inventory of the national estate, which must be in the form of a data base of information on heritage resources which it considers to be worthy of conservation, including— 5
- (a) all places and objects with which it and its predecessors have been involved;
  - (b) all places and objects protected by notice in the *Gazette*, whether in terms of this Act or provincial legislation; 10
  - (c) places and objects subject to general protections in terms of this Act or provincial legislation for the management of heritage resources; and
  - (d) any other place and object which it considers to be of interest,
- and for this purpose it must co-ordinate, and may prescribe, national standards for the recording of information by provincial heritage authorities. 15
- (2) Heritage resources must be listed in the inventory in the format and under the categories prescribed by the SAHA.
- (3) The SAHA may from time to time, after consultation with the relevant provincial heritage authority and the local authority concerned, make, amend or delete entries in the inventory, provided that— 20
- (a) all places listed in any heritage register must be entered in the inventory;
  - (b) a local authority must inform the SAHA on the destruction of a place listed in a heritage register, whereupon the SAHA must record such destruction in the inventory.
- (4) Any person has access to the inventory at the offices of the SAHA: Provided that information may be withheld if its disclosure may impact negatively on the privacy or economic interests of the owner or any person with an interest in a property, or a potential investor, or on the continued conservation of a heritage resource. 25
- (5) The SAHA must at regular intervals, publish a summary and analysis of the inventory of the national estate. 30

**National heritage resources assistance programme**

- 45.** (1) Subject to section 19, the SAHA may provide financial assistance in the form of a grant or a loan to an approved body or an individual for any project which contributes to the purpose, and is in accordance with the principles as prescribed. 35
- (2) The SAHA must prescribe the procedures for applications for approval and granting of financial assistance and the criteria for the assessment of projects.
- (3) A loan may be approved in such amount and subject to such terms and conditions as the SAHA determines: Provided that a loan must be—
- (a) at the rate of interest fixed by the Minister, in consultation with the Minister of Finance; or 40
  - (b) if the Minister, in consultation with the Minister of Finance, so approves—
    - (i) at the rate of interest fixed by the Minister in respect of that loan; or
    - (ii) without interest.
- (4) Any financial assistance in terms of this section is to be provided out of a fund reserved by the SAHA for this purpose, which shall be called the National Heritage Resources Fund. 45

**Restitution of heritage objects**

- 46.** (1) When a community or body with a *bona fide* interest makes a claim for the restitution of a movable heritage resource which is part of the national estate and is held by or curated in a publicly funded institution, the institution concerned must enter into a process of negotiation with the claimants regarding the future of the resource. 50



(2) The SAHA with the approval of the Minister, may make regulations regarding the establishment of *bona fide* interest in terms of subsection (1) and the conditions under which such claims may be made.

(3) In the absence of an agreement on a heritage resource which is the subject of negotiations in terms of subsection (1), the claimants or the institution concerned may appeal to the Minister, who must, with due regard to subsection 6(8) and in a spirit of compromise—

- (a) mediate between the parties concerned with the aim of finding a mutually satisfactory solution; and
- (b) in the absence of agreement between the parties concerned, make a final decision on the future of the resource, including any conditions necessary to ensure its safety, the conditions of access of the claimants or the institution or any other interested party to the resource, or any other appropriate conditions.

### Heritage agreement

47. (1) (a) The SAHA may negotiate and agree with a provincial authority, local authority, conservation body, person, or community for the execution of a heritage agreement to provide for the conservation, improvement or presentation of a clearly defined heritage resource: Provided that the consent of the owner of such resource must be given.

(b) Such a heritage agreement must be in the form of a binding contract.

(2) A heritage agreement may include such terms and conditions as the parties think fit, including provision for public access, and provision for financial or other assistance from the heritage authority concerned.

(3) Without limiting subsection (2), a heritage agreement may be expressed to have effect in perpetuity or for any specified term, or to terminate upon the occurrence of a specific event.

(4) A heritage agreement may, with the consent of the owner of the resource concerned, be varied or cancelled by agreement between the parties.

(5) The consent of the owner of the resource concerned to the heritage agreement or any variation of the heritage covenant may be given, subject to the inclusion in the heritage agreement of any additional provisions or modified provisions, or to the deletion of such provisions, as the owner giving the consent considers necessary.

(6) Nothing in this Act requires a heritage authority to negotiate or agree with any person or authority to enter into or execute any heritage agreement.

(7) A heritage agreement in respect of a place attached to the land is binding on the owner of the place and on any person who becomes an owner of the place, as at the date of execution of the agreement, while the agreement remains in force.

(8) The owner of a national heritage site, a provincial heritage site or a place listed in a heritage register may, by a heritage agreement entered into with the heritage authority or local authority responsible for the protection of such place, or any person or body approved by such authority concerned, appoint the heritage authority or the local authority or the person or body concerned, as guardian of the place.

(9) The heritage agreement referred to in subsections (7) or (8) may provide for—

- (a) the maintenance and management of the place;
- (b) the custody of the place and the duties of any person who may be employed in connection therewith;
- (c) the occupation or use of the place by the owner or otherwise;
- (d) the restriction of the right of the owner or occupier to do certain acts or things on or near the place;
- (e) the facilities of access to be permitted to the public and to persons deputed by the guardian to inspect or maintain the place;
- (f) the presentation of the place;
- (g) the notice to be given to the guardian in case the owner intends to offer the land on which the place is situated for sale, lease or other disposal, and the

- right to be reserved to the guardian to have first refusal of such sale, lease or other disposal;
- (h) the payment of any expenses incurred by the owner or by the guardian in connection with the maintenance of the place;
  - (i) any other matter connected with the protection or management of the place which is agreed to by the owner and the guardian; 5
  - (j) the duration of the agreement, with provision for the earlier termination thereof by any party thereto; and
  - (k) the procedure for the resolution of any dispute arising out of the agreement.
- (10) The owner of a place which is under guardianship shall, except as expressly provided by this Act, continue to have the same estate, right, title and interest in and to the place as before. 10
- (11) Every heritage agreement has effect according to its tenor but subject to the provisions of this Act: Provided that—
- (a) the execution of a heritage agreement in respect of a heritage resource must not prevent the heritage authority responsible for its protection from exercising any powers in terms of this Act in relation to that resources; and 15
  - (b) nothing in any heritage agreement shall permit or allow any person to carry out any act contrary to the provisions of this Act.

### **Incentives** 20

**48.** On advice from the SAHA the Minister, in concurrence with the Minister of Finance, may publish regulations on financial incentives for the conservation of heritage resources which form part of the national estate, or otherwise promote the purpose of this Act.

### **Presentation of protected resources** 25

- 49.** (1) Heritage authorities and local authorities must, wherever appropriate, co-ordinate and promote the presentation and use of places of cultural significance and heritage resources which form part of the national estate and for which they are responsible in terms of section 6 for public enjoyment, education, research and tourism, including— 30
- (a) the erection of explanatory plaques and interpretive facilities, including interpretive centres and visitor facilities;
  - (b) the training and provision of guides;
  - (c) the mounting of exhibitions;
  - (d) the erection of memorials; and 35
  - (e) any other means necessary for the effective presentation of the national estate.
- (2) Where a heritage resource which is formally protected in terms of Part 3a of Chapter II is to be presented, the person wishing to undertake such presentation must, at least 60 days prior to the institution of interpretive measures or manufacture of associated material, consult with the heritage authority which is responsible for the protection of such heritage resource regarding the contents of interpretive material or programmes. 40
- (3) No person may erect in the vicinity of a place protected in terms of this Act any plaque or other permanent display or structure associated with such presentation except with the authority of the heritage authority responsible for the protection of the place. 45

### **Compulsory repair order**

- 50.** (1) When the heritage authority responsible for the protection of a heritage site considers that such site—
- (a) has been allowed to fall into disrepair for the purpose of— 50
    - (i) effecting or enabling its destruction or demolition;
    - (ii) enabling the development of the designated land; or

(iii) enabling the development of any land adjoining the designated land; or  
 (b) is neglected to such an extent that it will lose its potential for conservation, the heritage authority may serve on the owner an order to repair or maintain such site, to the satisfaction of the heritage authority, within a reasonable period of time as specified in the order: Provided that the heritage authority must specify only such work as, in its opinion, is necessary to prevent any further deterioration in the condition of the place. 5

(2) Subject to subsection (3), upon failure of the owner to comply with the terms of an order under subsection (1) within the specified time, the authority which served the order may itself take such steps as may be necessary for the repair or maintenance thereof and recover the costs from the owner. 10

(3) If the owner can show good cause, he or she may, within 21 days of the service of a repair order under subsection (1)—

- (a) apply to the heritage authority which served the repair order for the extension of the time specified in the order; or 15
- (b) appeal to the Minister, in the manner prescribed under section 54. 15

### Expropriation

**51.** (1) The Minister may, on the advice of the SAHA Council after consultation with the Minister of Finance expropriate a national heritage site, and the MEC may, on the advice of a provincial heritage authority, after consultation with the MEC responsible for finance, expropriate a provincial heritage site, provided that the heritage authority concerned— 20

- (a) considers that the place is neglected to the extent or is being used in such a way that it will lose its potential for conservation, or that expropriation is the only way to ensure its conservation; 25
- (b) has, at least 60 days prior to such expropriation, served a notice on the owner ordering him or her to take such necessary steps within such time as may be specified in the notice to ensure the conservation of the property, and advising the owner of its intention to expropriate if such steps are not taken; and
- (c) is satisfied that the order referred to in paragraph (b) has not been satisfactorily carried out. 30

(2) For the purposes of this section, a place which has been provisionally protected by the SAHA or a provincial heritage authority shall be deemed to be a national or provincial heritage site, as the case may be.

(3) The Minister or MEC shall not expropriate any place— 35

- (a) which, or any part of which, is periodically used for religious observances;
- (b) if the owner of the place—
  - (i) is willing to enter into a heritage covenant for its conservation or constitute an authority guardian thereof as provided by section 55; or
  - (ii) is willing to give, sell or lease it to a heritage authority on acceptable terms, 40
 and has executed the necessary heritage covenant or instrument for that purpose within 60 days of the service of a notice under paragraph (1)(b).

### General policy

**52.** (1) The SAHA and a provincial heritage authority— 45

- (a) must, within three years after the commencement of this Act, adopt statements of general policy for the management of all heritage resources owned or controlled by it or vested in it; and
- (b) may from time to time amend such statements so that they are adapted to changing circumstances or in accordance with increased knowledge; and 50
- (c) must review any such statement within 10 years after its adoption.

(2) Each heritage authority must adopt for any place which is protected in terms of this Act and is owned or controlled by it or vested in it, a plan for the management of such place in accordance with the best environmental, heritage conservation, scientific and educational principles that can reasonably be applied taking into account the 55

location, size and nature of the place and the resources of the authority concerned, and may from time to time review any such plan.

(3) A conservation management plan may at the discretion of the heritage authority concerned and for a period not exceeding 10 years, be operated either solely by the heritage authority or in conjunction with an environmental or tourism authority or under contractual arrangements, on such terms and conditions as the heritage authority may determine. 5

(4) Regulations by the heritage authority concerned must provide for a process whereby, prior to the adoption or amendment of any statement of general policy or any conservation management plan, the public and interested organisations are notified of the availability of a draft statement or plan for inspection, and comment is invited and considered by the heritage authority concerned. 10

(5) A heritage authority may not act in any manner inconsistent with any statement of general policy or conservation management plan.

(6) All current statements of general policy and conservation management plans adopted by a heritage authority must be available for public inspection on request. 15

### CHAPTER III

#### GENERAL PROVISIONS

##### *Part 1*

#### *Enforcement, appeals, offences and penalties* 20

#### **Permits**

**53.** (1) A heritage authority may prescribe the manner in which an application is made to it for any permit in terms of this Act and other requirements for permit applications, including—

- (a) any particulars or information to be furnished in the application and any documents, drawings, plans, photographs and fees which should accompany the application; 25
- (b) minimum qualifications and standards of practice required of persons making application for a permit to perform specified actions in relation to particular categories of protected heritage resources; 30
- (c) standards and conditions for the excavation and curation of archaeological and palaeontological objects and material and meteorites recovered by authority of a permit; 30
- (d) the conditions under which, before a permit is issued, a financial deposit must be lodged and held in trust for the duration of the permit or such period as the heritage authority may specify, and conditions of forfeiture of such deposit; 35
- (e) conditions for the temporary export and return of objects protected under section 37 or section 40;
- (f) the submission of reports on work done under authority of a permit; and
- (g) the responsibilities of the heritage authority regarding monitoring of work done under authority of a permit. 40

(2) On application by any person in the manner prescribed under subsection (1), a heritage authority may in its discretion issue to such person a permit to perform such actions at such time and subject to such terms, conditions and restrictions or directions as may be specified in the permit, including a condition— 45

- (a) that the applicant give security in such form and such amount determined by the heritage authority concerned, having regard to the nature and extent of the work referred to in the permit, to ensure the satisfactory completion of such work or the curation of objects and material recovered during the course of the work; or 50
- (b) providing for the recycling or deposit in a materials bank of historical building materials referred to in paragraph 32(3)(e);
- (c) stipulating that design proposals be revised; or
- (d) regarding the qualifications and expertise required to perform the actions for which the permit is issued. 55

(3) A heritage authority may at its discretion, in respect of any heritage resource protected by it in terms of Chapter II, by notice in the *Gazette* or the *Provincial Gazette*, as the case may be, grant an exemption from the requirement to obtain a permit from it for such activities or class of activities by such persons or class of persons in such circumstances as are specified in the notice. 5

### Appeals

54. (1) Regulations by the Minister must provide for a system of appeal to the NHC against a decision of a committee or other delegated representative of the SAHA, and to the Minister against a decision of the NHC.

(2) In considering an appeal referred to in subsection (1) the Minister must have due regard to— 10

- (a) the advice of at least two independent assessors appointed by the Minister to assist in the matter by virtue of their expertise with regard to the matter;
- (b) the cultural significance of the heritage resource in question;
- (c) heritage conservation principles; and 15
- (d) any other relevant factors which are brought to his or her attention by the appellant or the heritage authority.

(3) Should the Minister find in favour of the appellant, he or she may require that appropriate compensation for the loss of heritage resources be made to the heritage authority or another appropriate body for use in ensuring the continued conservation of other heritage resources. 20

### Appointment and powers of heritage inspectors

55. (1) The SAHA may, in writing, appoint heritage inspectors: Provided that if a heritage inspector is a staff member of a government department or supported body, such appointment must only be made by agreement with the Minister or other person in charge of the administration of such department or body. 25

(2) By force of this section, each member of the South African Police Service and each customs and excise officer is deemed to be a heritage inspector.

(3) The heritage authority must issue to each heritage inspector, other than a person referred to in subsection (2), an identity card containing a photograph and the signature of the heritage inspector. 30

(4) For the purposes of this section, a reference to an identity card in relation to a person referred to in subsection (2), is a reference to written evidence of the fact that he or she is a member of the bodies referred to in subsection (2).

(5) A person who ceases to be a heritage inspector must forthwith return his or her identity card to the heritage authority concerned. 35

(6) A heritage inspector, other than a customs and excise officer or a member of the South African Police Service in uniform, may not exercise his or her powers in terms of this Act in relation to another person unless the heritage inspector first produces the identity card for inspection by the other person: Provided that if the production of the identity card would endanger the health or safety of the heritage inspector, he or she must produce it as soon as is practicable to do so. 40

(7) Subject to the provisions of any other law, a heritage inspector or any person authorised by a heritage authority in writing, may at all reasonable times enter upon any land or premises for the purpose of inspecting any heritage resource protected in terms of the provisions of this Act, or any other property in respect of which the heritage authority is exercising its functions and powers in terms of this Act, and may take photographs, make measurements and sketches and use any other means of recording information necessary for the purposes of this Act. 45

(8) A heritage inspector may at any time inspect work being done under a permit issued in terms of this Act and may for that purpose at all reasonable times enter any place protected in terms of this Act. 50

(9) Where a heritage inspector has reasonable grounds to suspect that an offence in terms of this Act has been, is being, or is about to be committed, the heritage inspector may with such assistance as he or she thinks necessary— 55

- (a) enter and search any place, premises, vehicle, vessel or craft, and for that purpose stop and detain any vehicle, vessel or craft, in or on which the

heritage inspector believes, on reasonable grounds, there is evidence related to that offence;

- (b) confiscate and detain any heritage resource or evidence concerned with the commission of the offence pending any further order from the responsible heritage authority; and 5
- (c) take such action as is reasonably necessary to prevent the commission of an offence in terms of this Act.

(10) A heritage inspector may, if there is reason to believe that any work is being done or any action is being taken in contravention of this Act or the conditions of a permit issued in terms of this Act, order the immediate cessation of such work or action pending any further order from the responsible heritage authority. 10

(11) A heritage inspector may require any person who he or she has reason to believe has committed an offence in terms of this Act to supply his or her name and address and reasonable evidence of his or her identity, and may arrest a person who refuses to comply with those requirements. 15

(12) A person—

- (a) must comply with a request or requirement lawfully made in terms of this section to the extent that the person is capable of complying with it;
- (b) may not knowingly furnish information that is false or misleading; and
- (c) may not hinder or obstruct any heritage inspector in the exercise of his or her powers in terms of this section. 20

### Offences and penalties

**56.** (1) The Minister, in consultation with the Minister of Justice and MECs must prescribe a Schedule referred to in subsection (2) of the maximum penalties applicable for offences in terms of this Act, including such penalties applicable for the contravention of regulations by heritage authorities and by-laws by local authorities, and must at regular intervals revise such Schedule. 25

(2) Notwithstanding the provisions of any other law, any person who contravenes—

- (a) section 34(13), 36(5), 37(13) or 37(19) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 1 of the Schedule; 30
- (b) section 38(3), 40(4)(d) or 41(3)(c) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 2 of the Schedule;
- (c) section 35(2) or 39(1) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 3 of the Schedule; 35
- (d) section 34(17), 37(15), 40(6) or 49(3) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 4 of the Schedule; 40
- (e) section 34(18)(b), 37(9), 39(3), 40(3), 40(7)(a) or 41(6) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 5 of the Schedule;
- (f) section 37(16), 37(20) or 49(2) is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment as set out in item 6 of the Schedule. 45

(3) The Minister or the MEC, as the case may be, may make regulations in terms of which the magistrate of the district concerned may—

- (a) levy admission of guilt fines up to a maximum amount determined by such regulations, for infringement of the provisions of this Act for which such heritage authority is responsible; and 50
- (b) serve a notice upon a person who is contravening a specified provision of the Act or has not complied with the terms of a permit issued by such authority, imposing a daily penalty for the duration of the contravention, subject to a maximum period of 365 days. 55

(4) Any person who—

- (a) fails to provide any information that is required to be given, whether or not on the request of a heritage authority, in terms of this Act;

- (b) for the purpose of obtaining, whether for himself or herself or for any other person, any permit, consent or authority in terms of this Act, makes any statement or representation knowing it to be false or not knowing or believing it to be true;
- (c) fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions subject to which any permit, consent or authority has been issued to him or her in terms of this Act; 5
- (d) obstructs the holder of a permit in terms of this Act in exercising a right granted to him or her by means of such a permit;
- (e) damages, takes or removes, or causes to be damaged, taken or removed from a place protected in terms of this Act any badge or sign erected by a heritage authority or a local authority under section 31(2)(o) or section 34(12), any interpretive display or any other property or thing; 10
- (f) receives any badge, emblem or any other property or thing unlawfully taken or removed from a place protected in terms of this Act; and 15
- (g) within the terms of this Act, commits or attempts to commit any other unlawful act, violates any prohibition or fails to perform any obligation imposed upon him or her by its terms, or who counsels, procures, solicits or employs any other person to do so,
- shall be guilty of an offence and upon conviction shall be liable to such maximum penalties, in the form of a fine or imprisonment or both such fine and such imprisonment, as shall be specified in the regulations under subsection (2). 20
- (5) Any person who believes that there has been an infringement of any provision of this Act, may lay a charge with the South African Police Service or notify a heritage authority. 25
- (6) A magistrate's court shall, notwithstanding the provisions of any other law, be competent to impose any penalty under this Act.
- (7) When any person has been convicted of any contravention of this Act which has resulted in damage to or alteration of a protected heritage resource the court may—
- (a) order such person to put right the result of the act of which he or she was found guilty, in the manner so specified and within such period as may be so specified, and upon failure of such person to comply with the terms of such order, order such person to pay to the heritage authority responsible for the protection of such resource a sum equivalent to the cost of making good; or 30
- (b) when it is of the opinion that such person is not in a position to make good damage done to a heritage resource by virtue of the offender not being the owner or occupier of a heritage resource or for any other reason, or when it is advised by the heritage authority responsible for the protection of such resource that it is unrealistic or undesirable to require that the results of the act be made good, order such person to pay to the heritage authority a sum equivalent to the cost of making good. 35 40
- (8) In addition to other penalties, if the owner of a place has been convicted of an offence in terms of this Act involving the destruction of, or damage to, the place, the Minister on the advice of the SAHA, may serve on the owner an order that no development of such place may be undertaken, except making good the damage and maintaining the cultural value of the place, for a period not exceeding 10 years specified in the order. 45
- (9) Before making the order, the local authority and any person with a registered interest in the land must be given a reasonable period to make submissions on whether the order should be made and for how long. 50
- (10) A development order under subsection (8) attaches to the land and is binding not only on the owner as at the date of the order, but also on any person who becomes an owner of the place while the order remains in force.
- (11) The Minister on the advice of the SAHA, may reconsider a development order and may in writing amend or repeal such order. 55

(12) In any case involving vandalism, and whenever else a court deems it appropriate, community service involving conservation of heritage resources may be substituted for, or instituted in addition to, a fine or imprisonment.

(13) Where a court convicts a person of an offence in terms of this Act, it may order the forfeiture to the SAHA, as the case may be, of any vehicle, craft, equipment or any other thing used or otherwise involved in the committing of the offence. 5

(14) Any vehicle, craft, equipment or other thing forfeited under subsection (13) may be sold or otherwise disposed of as the heritage authority concerned deems fit.

## *Part 2*

### *Miscellaneous* 10

#### **Delegation**

57. (1) The NHC and the SAHA may for purposes of this Act delegate any function or responsibility to a body established in terms of this Act.

(2) Such a delegation may be withdrawn at any time.

#### **Notices** 15

58. (1) The NHC and the SAHA may, by publication of a further notice, amend or withdraw any notice which it has published in the *Gazette*.

(2) The SAHA may prescribe the manner in which legally enforceable property descriptions may be published in notices in the *Gazette*, in terms of the provisions of this Act including— 20

(a) methods of technology permissible in measuring areas; and

(b) methods to be used in compensating for margins of error in measurement.

#### **Delegation of powers by Minister**

59. The Minister may delegate any power, duty or function conferred or imposed upon him or her under this Act to the Deputy Minister or the incumbent of a designated post in the national department responsible for arts and culture. 25

#### **Limitation of liability**

60. No person is liable in respect of anything done in terms of this Act in good faith and without negligence.

#### **Transitional provisions and consequential amendments** 30

61. (1) For the purposes of this section, “the previous Act” means the National Monuments Act, 1969 (Act No. 28 of 1969).

(2) The National Monuments Council established by section 2 of the previous Act is hereby abolished and all its assets, rights, liabilities and obligations shall devolve upon the SAHA without formal transfer and without payment of any duties, taxes, fees or other charges. The officer in charge of registration of deeds registry must, on submission of the title deed and on application by the authority concerned, endorse such a title deed with regard to such development. 35

(3) The National Monuments Council library shall become part of the national heritage library established under section 30(2)(b). 40

(4) The committees established by section 3A of the previous Act are hereby abolished and all their assets, rights, liabilities and obligations shall devolve upon the SAHA without formal transfer and without payment of any duties, taxes, fees or other charges.

(5) Unless it would in any particular case obviously be inappropriate, any reference in any law, document or register, to the National Monuments Council must be construed as a reference to the SAHA and any such reference to an officer or employee of the National Monuments Council must be construed as a reference to an employee of the SAHA performing functions or exercising powers similar to those of the first-mentioned officer or employee. 50



(6) All trust funds for which the National Monuments Council acted as trustee, including the War Graves Trust Fund referred to in section 9A of the previous Act, shall on the date of commencement of this Act become vested in the SAHA as part of the national heritage resources fund referred to in section 47, and the SAHA must act as trustee on the same terms and conditions as existed prior to the commencement of this Act. 5

(7) On the establishment of a provincial heritage authority, arrangements must be made for the transfer of such assets, liabilities and obligations of the SAHA in that province to the provincial heritage authority as the Minister and the MEC deem fit.

(8) Sites and objects which prior to the commencement of this Act were protected by notices in the *Gazette* in terms of the previous Act, shall, subject to the provisions of any provincial legislation for heritage resources conservation and any agreement in that regard, and without the need for the publication of notices in the *Gazette*, continue to be protected in terms of the following provisions of this Act: 10

- (a) immovable national monuments in terms of section 10 of the previous Act shall remain national heritage sites: Provided that within five years of the commencement of this Act, the SAHA must assess the significance of such sites in accordance with the heritage assessment criteria set out in section 4(3) and prescribed under section 22(1) and must declare any place which fulfils the criteria for Grade II status a provincial heritage site; 15 20
- (b) immovable properties entered in the register in terms of section 5(1) of the previous Act must be entered in the heritage register for the province in which they are situated and in the inventory of the national estate; 20
- (c) conservation areas in terms of section 5(9) of the previous Act shall be heritage areas: Provided that where no provision has been made for the protection of such areas in by-laws under the previous Act or in a town or regional planning scheme— 25
  - (i) subsections 38(7)(a), (b) and (c) of this Act automatically apply to such heritage areas; and
  - (ii) the local or other planning authority concerned must provide for the protection of such area in accordance with the provisions of section 38 within three years of the commencement of this Act; 30
- (d) provisionally declared immovable properties in terms of section 5(1)(c) of the previous Act are provisionally protected for such remaining period as specified in the notice of provisional declaration; 35
- (e) national gardens of remembrance in terms of section 9C of the previous Act are provincial heritage sites;
- (f) cultural treasures under section 5(c) and movable national monuments in terms of section 10 of the previous Act are heritage objects. 40

(9) A notice under section 10(3)(a) or 5(5)(b) of the previous Act which was served within six months prior to the commencement of this Act shall be deemed to be a notice served by a heritage authority in terms of section 34(6) or 36(2) of this Act, as the case may be.

(10) A permit issued under the previous Act shall be deemed to be a permit issued by the responsible heritage authority under the relevant section of this Act. 45

## Repeal

62. The National Monuments Act, 1969 (Act No. 28 of 1969), and section 39(2) of the Environment Conservation Act, 1989 (Act No. 73 of 1989), is hereby repealed.

## Short title and commencement

63. This Act shall be called the National Heritage Act, 1998, and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*. 50

**SCHEDULE**

**PENALTIES FOR NATIONAL HERITAGE ACT**

**(Regulations under section 56(2))**

1. A fine or imprisonment for a period not exceeding five years or to both such fine and imprisonment.
2. A fine or imprisonment for a period not exceeding three years or to both such fine and imprisonment.
3. A fine or imprisonment for a period not exceeding two years or to both such fine and imprisonment.
4. A fine or imprisonment for a period not exceeding one year or to both such fine and imprisonment.
5. A fine or imprisonment for a period not exceeding six months or to both such fine and imprisonment.
6. A fine or imprisonment for a period not exceeding three months or to both such fine and imprisonment.

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL HERITAGE BILL, 1998**

The National Heritage Bill, which introduces an integrated and interactive system for the management of the national heritage, has been prepared after an extensive period of research and consultation.

The major part of the Bill sets out a system for the management of those heritage resources that are currently managed by the National Monuments Council and makes provision for the devolution of certain powers to provincial heritage authorities.

The Bill protects the national estate which includes immovable and movable property with cultural significance and living heritage which also includes oral history, cultural traditions and general principles for the management of heritage resources.

The Bill empowers civil society to play an active role in the identification of those aspects of heritage that are important to the respective communities.

The Bill establishes the National Heritage Council with the object of developing, promoting, protecting and co-ordinating the national heritage.

The National Heritage Council will be advised on matters relating to heritage by:

The South African Heritage Agency;

The National Museums Division;

The National Archives Division;

The Heraldry Division; and

The Geographical Placenames Division.

There shall be a three-tier system for heritage resources management, in which national level functions are the responsibility of the SAHA, provincial level functions are the responsibility of provincial heritage authorities and local level functions are the responsibility of local authorities. National and provincial heritage authorities shall be accountable for their actions and decisions and the performance of functions under this system.

In the opinion of the Department and the State Law Advisors, the Bill should be dealt with in terms of section 76 of the Constitution of the Republic of South Africa, 1996.

