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GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 495.

2 April 1986

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 11 van 1986: Wysigingswet op Oorlogsgrafte en Nasionale Gedenkwaardighede, 1986.

No. 495.

2 April 1986

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 11 of 1986: War Graves and National Monuments Amendment Act, 1986.

WAR GRAVES AND NATIONAL MONUMENTS AMENDMENT
ACT, 1986

Act No. 11, 1986

GENERAL EXPLANATORY NOTE:

- [** **I** Words in bold type in square brackets indicate omissions from existing enactments.
- _____** Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the War Graves and National Monuments Act, 1969, in order to make the "Burgergraftekomitee" and the British War Graves Committee responsible to the National Monuments Council; to authorize the said council to undertake investigations; to provide for the compilation and maintenance of a register of immovable property worthy of conservation; to provide for the designation of conservation areas; to empower the said council to declare any movable property to be a cultural treasure; to make further provision for the granting of financial assistance to a registered person, authority or body; to extend the authority of the Minister of National Education to delegate a power, duty or function; to provide for the conservation of historical sites; to define the said council's powers in respect of wreck and to provide for the issue of a permit for the disturbance or removal of wreck; to extend the said council's power in respect of the issue of a permit for export; to provide for the registration in the Deeds Office of a garden of remembrance; to extend the power of the said council and a local authority to make by-laws; to provide that certain acts shall constitute offences in terms of the said Act; to increase the penalties which may be imposed under the said Act; and to amend the short title of the said Act; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 10 March 1986.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

1. Section 1 of the War Graves and National Monuments Act, 1969 (hereinafter referred to as the principal Act), is hereby
5 amended—
- (a) by the insertion before the definition of "badge" of the following definition:
"alter' means a structural or any other alteration to a
10 monument;"
- (b) by the insertion after the definition of "badge" of the following definition:
"conservation area' means an area referred to in section 5 (9);"
- 15 (c) by the insertion after the definition of "council" of the following definition:
"cultural treasure' means any movable property declared under this Act to be a cultural treasure;"

Amendment of section 1 of Act 28 of 1969, as amended by section 1 of Act 35 of 1979 and section 1 of Act 13 of 1981.

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- (d) by the insertion after the definition of "garrison troops" of the following definition:
 "historical site' means any identifiable building or part thereof, marker, milestone, gravestone, landmark or tell older than 50 years;"
- (e) by the insertion after the definition of "monument" of the following definition:
 "planning authority' means an office of the State, a province, a local authority or a regional authority which is invested with a physical planning capacity;" and
- (f) by the substitution for the second definition of "register" of the following definition:
 "register' means the register [mentioned] referred to in section 5 (1) (cC) or (7) as the case may be;"

2. Section 2A of the principal Act is hereby amended by the insertion after the word "monuments", wherever it occurs, of the words "and cultural treasures".

Amendment of section 2A of Act 28 of 1969, as inserted by section 2 of Act 35 of 1979.

3. Section 3A of the principal Act is hereby amended by the addition of the following subsection:

"(7) The committees referred to in subsection (1) shall for all purposes be deemed to be committees of the council."

Amendment of section 3A of Act 28 of 1969, as inserted by section 3 of Act 13 of 1981.

4. Section 5 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the following words:
 "at the request of the Minister, or of its own accord, to investigate and report to the Minister on —";
- (b) by the insertion in subsection (1) after paragraph (cB) of the following paragraphs:
 "(cC) to compile and maintain a register of immovable property which it regards as worthy of conservation on the ground of its historic, cultural or aesthetic interest and to supplement, amend or delete any entry in the register from time to time by notice in the *Gazette*: Provided that an entry shall not be made until such time as it has consulted with the local authority in whose area of jurisdiction such immovable property is situated;
 (cD) by notice in the *Gazette* to declare, after consultation with the owner, any movable property to be a cultural treasure as described in such notice;"
- (c) by the insertion after subsection (6) of the following subsection:
 "(6A) The Minister may, at the request of any person whose property has by notice under subsection (1) (cD) been declared to be a cultural treasure, after consultation with the council, by notice in the *Gazette* withdraw such a declaration."; and
- (d) by the addition of the following subsection:
 "(9) The council may, after consultation with the relevant authority, by notice in the *Gazette* designate any area of land to be a conservation area on the ground of its historic, aesthetic or scientific interest: Provided that in the absence of any agreement the relevant authority may appeal to the Minister, who may after consultation with the council, revoke such designation by notice in the *Gazette*."

Amendment of section 5 of Act 28 of 1969, as amended by section 3 of Act 35 of 1979 and section 5 of Act 13 of 1981.

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5. The following section is hereby substituted for section 5A of the principal Act:

Substitution of section 5A of Act 28 of 1969, as inserted by section 4 of Act 35 of 1979.

5 "Rendering of financial assistance to registered person, authority of body of persons.
5A. (1) Subject to the provisions of section 9 the council may with the approval of the Minister render financial assistance to any person, authority or body of persons which restores and preserves monuments and which has been registered under this section, for **[the purposes of the restoration and preservation by] defraying such expenditure of such person, authority or body [of such monuments] as determined by the Minister from time to time.**

10 (2) Any person, authority or body of persons desirous of being registered under this section, shall apply to the council and shall in connection with the application furnish such particulars as may be required by the council."

6. The following section is hereby substituted for section 7A of the principal Act:

Substitution of section 7A of Act 28 of 1969, as inserted by section 5 of Act 35 of 1979 and substituted by section 7 of Act 13 of 1981.

20 "Delegation of powers by Minister.
7A. The Minister may delegate any power, duty or function conferred or imposed upon or assigned to him by sections 5 (1) (f), 5 (2), 5 (4) (a) and (b), 5 (7), 5A, 6 and 8 (1) to the Director-General **[, Deputy Director-general: National Education, or the director of archives appointed under section 3 of the Archives Act, 1962 (Act No. 6 of 1962),] or the incumbent of a designated post in the Department of National Education."**

7. Section 11 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

Amendment of section 11 of Act 28 of 1969, as amended by section 10 of Act 35 of 1979.

30 "(2) The council may at any time cancel or renew any notice referred to in subsection (1)."

8. Section 12 of the principal Act is hereby amended—

Amendment of section 12 of Act 28 of 1969, as amended by section 11 of Act 35 of 1979 and section 11 of Act 13 of 1981.

35 (a) by the insertion after subsection (1) of the following subsection:

40 "(1A) Any planning authority as well as the owner of **immovable property appearing in the register referred to in section 5 (1) (cC) or of a conservation area shall consult with the council in respect of planning which affects such immovable property or such a conservation area."**

40 (b) by the substitution for paragraph (f) of subsection (2A) of the following paragraph:

45 "(f) any other historical site, archeological or palaeontological finds, material or object,";

45 (c) by the substitution for subsection (2B) of the following subsection:

50 "(2B) No person shall destroy, damage, alter or export from the Republic—

50 (a) any painting, print, document, deed, seal, stamp or manuscript or collection or group thereof or an object made of paper in respect of which it is known or generally accepted that it has been in the Republic for longer than **[80] 50 years; [or]**

55 (b) any object or collection or group of objects **[made of gold, silver, copper, brass, bronze, iron, glass, wood or china]** of any substance except paper, in respect of which it is known or generally accepted that it has been in the Republic **[, including the territorial waters of the Republic as defined in section 2 of the Territorial Waters Act, 1963 (Act No. 87 of 1963),]** for longer than 100 years;

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- (c) any movable object or collection of objects of any substance, including manuscripts, declared by the council to be a cultural treasure;
- 5 (d) any wreck or portion of wreck, or any object derived from wreck, known or generally accepted to have been in South African territorial waters longer than 50 years; or
- (e) any burial ground or grave referred to in section 3A (2),
- 10 except under the authority of and in accordance with a permit issued under this section.”;
- (d) by the insertion of the following subsection after subsection (2B):
- 15 “(2C) (a) No person shall disturb or remove any wreck which is 50 years old or older, except by virtue of a permit issued by the council on such conditions as it may deem fit and by virtue of a licence issued by the Commissioner of Customs and Excise.
- 20 (b) A permit referred to in paragraph (a) may only be issued to a person providing written proof of affiliation with a museum approved by the council.
- (c) (i) A permit referred to in paragraph (a) may only be issued by the council after it has by notice in the *Gazette* afforded the opportunity for the submission of representations to it on the issuing of such permit and after representations received thereon have been considered by it.
- 30 (ii) The location of wreck shall not be disclosed in the notice referred to in subparagraph (i).
- (d) Any person to whom the council issues a permit referred to in paragraph (a), shall thereby acquire no other right to wreck than the right granted him by such permit.
- 35 (e) (i) The council shall not issue a permit referred to in paragraph (a) with regard to wreck in a security area or nature conservation area, or in an area adjacent to a security area or nature conservation area, without obtaining the prior approval of the department controlling such security area or nature conservation area.
- 40 (ii) The department concerned may grant its approval subject to certain conditions, which shall be binding on all parties concerned.
- (f) All material recovered from wreck or a wreck site shall be placed in the custody of the museum referred to in paragraph (b), and the museum, in consultation with the council and the holder of the permit, shall decide on the disposal thereof: Provided that in the case of a dispute among the parties referred to in this paragraph the said museum shall refer the matter to arbitration.”;
- 55 (e) by the deletion in subsection (4) of the word “or” at the end of paragraph (a) and the addition of the following paragraph:
- “(c) disturb or remove wreck as referred to in subsection (2C) (a);” and
- 60 (f) by the substitution for subsection (6) of the following subsection:
- “**(6) Whenever any person has been convicted of [damaging or altering anything in] any** contravention of subsection (2), (2A) or (2B), the council may—
- 65 (a) by notice in writing served upon such person by

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- 5 post or by delivery to him personally, direct him to **effect such repairs or alterations** put right the result of the act of which he was found guilty **to it** as may be specified in the notice, in the manner thus specified and within such period as may be so specified;
- 10 (b) upon failure of such person to comply with such notice, **effect** put right or cause to be **effected** put right the **repairs or alterations** result of the act of which he was found guilty and recover the cost **of such repairs and alterations** thereof from such person.”.

9. Section 13 of the principal Act is hereby amended—

Amendment of
section 13 of
Act 28 of 1969.

- 15 (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“Whenever under this Act any area of land or any place or object on any land has been declared or provisionally declared to be or has been recommended to be declared or has been included in or recommended to be included in a national monument or a national garden of remembrance or whenever the council is investigating the desirability of having any area of land or any place or object on land so declared or included, the council may take such steps as it may consider necessary—”; and
- 20 (b) by the substitution for subsection (2) of the following subsection:
“(2) If any area of land or any place or object on any land in respect of which a survey has taken place under the provisions of subsection (1), has been or is declared by notice in the *Gazette* to be or to be included in any national monument or national garden of remembrance, the council shall furnish the registrar of deeds in whose deeds registry the land in question is registered, with a copy of the said notice and particulars of the survey (including any diagram prepared).”.
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10. Section 16 of the principal Act is hereby amended—

Amendment of
section 16 of
Act 28 of 1969,
as substituted by
section 12 of
Act 35 of 1979,
and amended by
section 13 of
Act 13 of 1981.

- 40 (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
“(a) contravenes or fails to comply with any provision of section 12 (1), (1A), (2), (2A), (2B), (2C) or (3);”;
- 45 (b) by the deletion in subsection (1) of the word “or” at the end of paragraph (h); and
- (c) by the substitution in subsection (1) for the words following on paragraph (i) of the following paragraphs and words:
“(j) disturbs or removes wreck without a permit referred to in section 12 (2C) (a); or
50 (k) obstructs the holder of a permit referred to in section 12 (2C) (a) in exercising a right granted to him by means of such a permit,
shall be guilty of an offence and liable on conviction, in the case of an offence referred to in paragraph (a), (b),
55 (c) **or** (d), (j) or (k), to a fine not exceeding **five thousand rand** R10 000 or to imprisonment for a period not exceeding **twelve months** two years or to both such fine and such imprisonment or, in the case of an offence referred to in paragraph (e), (f), (g), (h) or
60 (i), to a fine not exceeding **five hundred rand** R1 000

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or, in default of payment of such fine, to imprisonment for a period not exceeding **[six] 12 months.**"

11. Section 18 of the principal Act is hereby amended—

5 (a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) safeguarding monuments and conservation areas from damage, disfigurement, alteration, destruction or defilement or for the prevention of unauthorized export of monuments;"

10 (b) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e) regulating the conditions of use by any person of any area of land which has been declared to be a monument and which is under the control of the council, as well as conservation areas;"

15 (c) by the addition to subsection (1) of the following paragraph:

20 "(g) regarding the keeping of proper records during work on wreck, the submission of reports on such work and the application of suitable conservation measures on material recovered."; and

(d) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

25 "(c) safeguarding such monuments and conservation areas from damage, disfigurement, alteration, destruction or defilement;"

12. The following section is hereby substituted for section 22 of the principal Act:

30 "Short title. **22. This Act shall be called the [War Graves and National Monuments Act, 1969].**"

13. This Act shall be called the War Graves and National Monuments Amendment Act, 1986.

Amendment of section 18 of Act 28 of 1969, as amended by section 13 of Act 35 of 1979.

Substitution of section 22 of Act 28 of 1969, as substituted by section 16 of Act 13 of 1981.

Short title.