

*Pays - Bas*

## THE CULTURAL HERITAGE PRESERVATION ACT

Act of 1 February 1984 (Bulletin of Acts and Decrees 49) establishing the Cultural Heritage Preservation Act<sup>1</sup>

We Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau etc., etc., etc.

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

Whereas we have considered it desirable to promote the preservation of the Dutch cultural heritage by laying down provisions designed to prevent objects with a special cultural-historical or scientific significance from being lost to the Dutch cultural heritage;

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

### Chapter 1                      General Provisions

#### Section 1

The following definitions shall apply for the purposes of this Act and the provisions pursuant thereto:

- a. protected cultural heritage: a protected object, moveable property as referred to in section 14a or a cultural object as referred to in section 14b;
- b. a protected object: moveable property of cultural-historical or scientific

<sup>1</sup> Amended by the acts of 23 December 1988 (Bulletin of Acts and Decrees 638), 3 July 1989 (Bulletin of Acts and Decrees 348), 25 October 1989 (Bulletin of Acts and Decrees 492), 22 June 1994 (Bulletin of Acts and Decrees 573), 9 March 1995 (Bulletin of Acts and Decrees 1995, 145) and the Act amending the General Administrative Law Act (Bulletin of Acts and Decrees 1992, 422).

- value which should be preserved independently or as part of a collection and, to this end, has been placed independently or as part of a collection on the list to be kept pursuant to this act;
- c. collection: moveable property which, from a cultural-historical or scientific viewpoint, belongs together;
  - d. Our Minister: Our Minister of Education, Culture and Science;
  - e. the Council: the Cultural Heritage Council as referred to in section 2 of the Cultural Heritage Council Act;
  - f. the inspector: the official designated as such by Our Minister.

## **Chapter II                    The designation of protected objects**

### **Section 2**

1. Our Minister, having heard the Council, shall designate items of moveable property as protected objects by placing them, or the collection of which they form a part, on a list of protected objects. In urgent cases, Our Minister may place an object or collection on the list before obtaining the Council's advice; the advice of the Council on the listing shall be requested at the same time.
2. Our Minister, having heard the owner and the Council, shall determine which objects belong to a listed collection. A description of the collection shall be appended to the list.
3. The reason for each listing shall be recorded. In recording the reason and appending the description of the collection to the list pursuant to the second sentence of subsection 2, no reference may be made to the name of the owner of the collection or his relations or to the whereabouts of the collection without the permission of the owner.
4. Having heard the Council, Our Minister may remove an object or collection from the list, alter descriptions and references, and add objects to or remove them from the description of a collection.
5. Our Minister shall give prior notice in the Government Gazette of the

submission of a request to the Council for advice concerning his intention to remove an object or collection from the list or to introduce any changes to the listing thereof.

### Section 3

1. If, in an urgent case, the Council has not yet been heard on the placement of an object or collection on the list, such shall be announced on publication of the decision in question.
2. A copy of the list and the descriptions appended thereto, from which the names of the owners and the locations of the protected objects and collections have been omitted, shall be available for public inspection free of charge at the Ministry of Education, Culture and Science. Copies thereof shall be obtainable on payment of the costs incurred.
3. Having heard the Council, we shall lay down provisions by order in council on the organisation of the list, the description of the collections and on the form and manner in which the notifications referred to in this Act shall be given.

### Section 4

1. Any object which:
  - a. is the property of the person who made it or his heirs;
  - b. is the property of the person who brought it into the Netherlands or of the person who obtained it within five years of its being brought into the Netherlands, or of his heirs;may be placed on the list or included in the description of a collection only with the permission of the owner.
2. The provisions of subsection 1 shall also apply to heirs who obtained an object by means other than inheritance.
3. The provisions of subsection 1 shall apply only to those heirs who have inherited an object within thirty years, or, in the case of archive material,

fifty years of the death of the legator.

4. Returning an object to the Netherlands from a temporary location elsewhere shall not constitute bringing it into the Netherlands within the meaning of subsection 1.

## Section 5

1. On request or on his own initiative, Our Minister shall undertake not to place on the list any object, collection or part thereof which:
  - a. is in the custody of a person who takes up temporary residence in the Netherlands;
  - b. is lent by a non-resident to be exhibited in the Netherlands;
  - c. for other comparable reasons does not, in the opinion of Our Minister, having heard the Council, belong in the Netherlands.
2. Our Minister shall withdraw this undertaking should the circumstances constituting the grounds on which it was entered into cease to exist. In such cases, Our Minister shall refrain from applying the provisions of this Act for one year as from the date on which the undertaking was withdrawn.

## Chapter III Protection

### Section 6

Placement on the list shall constitute designation within the meaning of article 1 of the Convention concluded in Paris on 17 November 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property (Treaty Series 1972, no. 50).

### Section 7

1. No one may offer for auction, transfer ownership of, mortgage, rent out,

- lend or allocate to a non-resident a protected object on the settlement of an estate unless the inspector has been notified of the relevant draft agreement. The location of a protected object may not be changed without first notifying the inspector of the intention to do so.
2. No one may perform any of the actions referred to in subsection 1 without the permission of the inspector or Our Minister for one month as from the date on which notification has been sent to the inspector. Our Minister may extend this period by a maximum of three months unless, on being informed that a protected object is to be offered for auction, he has stated no reservations or, an object having been offered for auction, he has applied the provisions of section 2, subsection 1, second sentence. This subsection shall not apply where notification relates to an intention to move the object within the Netherlands.
  3. Should an action as referred to in subsection 1 entail the removal of an object from the Netherlands, permission may only be given by Our Minister, having heard the Council. Upon the expiry of the period specified in the foregoing subsection, with or without an extension, and provided that no reservations have been stated, Our Minister shall, within eight days of receiving a request, confirm in writing that no reservations have been stated in respect of the action, provided it is performed within a year of notification thereof. The action and the date shall be specified in the confirmation.
  4. No one may perform an action referred to in subsection 1 if Our Minister has informed them, in writing, of his reservations in respect of the action within the period specified in subsection 2, with or without an extension. Reservations may be based only on the consideration that the object is in danger of being lost to the Dutch cultural heritage.
  5. Before stating reservations, Our Minister shall hear the Council.
  6. Moreover, should no reservations have been stated, an action as referred to in subsection 1 shall be prohibited once again one year from the date of the notification. Should Our Minister have announced, in accordance with section 13, subsection 1, that he shall not state any reservations,

this year shall commence as of the date on which this announcement was issued.

### Section 8

When communicating the information referred to in section 7, subsection 4, Our Minister may announce that the prohibition shall not apply insofar as the action concerned is performed in accordance with the conditions specified in the communication. These conditions may only serve to prevent the protected object's being lost to the Dutch cultural heritage.

### Section 9

1. The owner of a protected object shall be obliged to inform the person to whom he transfers ownership of the object or to whom he grants rights relating thereto of its placement on the list.
2. Any person who has custody of a protected object shall be obliged to show it, on request, to the inspector and to inform him without delay of its loss or destruction.

### Section 10

1. A communication from Our Minister that reservations have been stated shall for eight months constitute a bid by the State to purchase the protected object in accordance with the provisions of sections 11 and 12, insofar as the reservations concern:
  - a. transfer of ownership of the object, or
  - b. its allocation to a non-resident, or
  - c. its removal to the owner's permanent place of residence outside the Netherlands.
2. The stating of reservations shall not constitute a bid to purchase the object if the relevant communication contains an announcement as

referred to in section 8.

### Section 11

Should reservations have been stated in respect of the sale of the object, transfer to the State may be effected only for the same purchase price and under the same conditions of sale as specified in the draft purchase agreement, provided the Council has put forward a unanimous proposal to this effect in its recommendation made pursuant to in section 7, subsection 5.

### Section 12

1. Should the provisions of section 11 not apply, Our Minister shall enter into negotiations with the owner on the purchase price and the other conditions of sale immediately after notification has been given that reservations as referred to in section 7, subsection 4 have been stated.
2. Should the negotiations fail to lead to agreement, the price shall be determined, on application of either party, by the District Court at The Hague, unless the owner announces that he will not perform the action referred to in section 7 subsection 1 or Our Minister withdraws the reservations he stated in respect thereof.
3. Before reaching a decision, the court shall gain the advice of experts. The registrar of the court shall forward a copy of the experts' recommendation to the plaintiff and the other party, who may submit their views on the recommendation to the registrar within a period to be specified by the court.
4. Appeal against rulings given pursuant to this section may only be lodged in cassation.

### Section 13

1. Within one month of the purchase price being finalised pursuant to

sections 11 and 12, Our Minister may inform the owner that he is to withdraw his reservations, and the owner may announce that he will not perform the action of which he had given notification.

2. Should the provisions of the foregoing subsection not be put into effect, the established purchase price shall be deemed to have been agreed by both parties.

#### **Section 14**

1. Insofar as reservations stated in accordance with section 7 which have not led to purchase by the State or application of the provisions of section 11 have rendered useless certain expenses incurred by one of the parties, the State shall reimburse such costs. The State shall not reimburse costs which, in view of the probability that reservations would be stated, should, in all reasonableness, not have been incurred. Applications shall be submitted to Our Minister.
2. Disputes arising from the provisions of this section shall be put before the District Court at The Hague.

### **Chapter III A Protection of public and church collections**

#### **Section 14a**

1. No one may export from the Netherlands moveable property which forms an integral part of a public collection, as listed in the inventory of a museum, an archive or permanent collection of a library, and of which the State or other public body is owner, without the written permission of the owner. Should the owner fail to issue a statement on the matter, this permission may be substituted, at the request of the interested party, by a licence issued by Our Minister.
2. The prohibition referred to in subsection 1 shall also apply to moveable property that forms part of:



- a. the inventory of moveable property of cultural-historical or scientific value of which a church community, an independent part thereof, or other religious community is owner;
- b. a public collection listed as part of the inventory of a museum, an archive or permanent collection of a library, whose owner is a legal person in private law which is largely funded by the State or other public body and which has been designated by Our Minister as falling within the scope of this prohibition;
- c. the inventory of moveable property of cultural-historical or scientific value which is kept by the Netherlands Office for Fine Arts;
- d. Section 9, subsection 2 shall apply mutatis mutandis.

**Chapter IIIB            Export of cultural objects outside the territory of a member state of the European Union or of another State that is party to the Agreement on the European Economic Area**

**Section 14b**

1. Cultural objects belonging to a category listed in the annexe to Council Regulation (EEC) No. 3911/92 of 9 December 1992 may not be exported outside the territory of a member state of the European Union or of another state which is party to the Agreement on the European Economic Area without a licence issued by Our Minister or other competent authority as referred to in article 2, paragraph 2 of said Council Regulation.
2. Our Minister may specify that the prohibition referred to in subsection 1 does not apply to archaeological objects more than one hundred years old which are the products of excavations and finds on land or under water or archaeological sites, if these objects are of limited archaeological or scientific value and provided they are not the direct product of excavations, finds or archaeological sites on the territory of a member state of the European Union or another state that is party to the

Agreement on the European Economic Area, and have been brought onto the market legally.

## Chapter 4 Supervision and penalties

### Section 15

1. The inspector and officials designated therefor by Our Minister shall be responsible for monitoring compliance with the provisions laid down by or pursuant to this Act.
2. Customs and excise officers shall be responsible for monitoring compliance with the provisions of sections 14a and 14b.
3. Notification of designation as referred to in subsection 1 shall be given in the Government Gazette.

### Section 16

1. The following officials shall be responsible for investigating offences specified as such under the provisions of this Act:
  - a. the officials designated under article 141 of the Code of Criminal Procedure;
  - b. the inspector and the officials referred to in section 15, subsection 1, insofar as they are designated as such by Our Minister of Justice;
  - c. customs and excise officers.
2. At the request of a member state of the European Union, or of another state that is party to the Agreement on the European Economic Area, the officials referred to in subsection 1 shall be responsible for tracing moveable property specified in the request, which, pursuant to national legislation, constitutes a cultural object within the meaning of article 1, paragraph 1 of Council Directive no. 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, provided removal of the property from the territory of the

state in question may be deemed unlawful within the meaning of said Directive.

3. Notification of designation as referred to in subsection 1b shall be given in the Government Gazette.

#### **Section 17**

1. The inspector and the officials referred to in section 15, subsection 1 and section 16 shall have access to any place which might reasonably need to be entered for the purpose of establishing the whereabouts of a protected cultural object. If necessary, they shall obtain entry with the assistance of the police.

#### **Section 18**

1. The inspector and the officials referred to in section 15, subsection 1 shall be authorised to demand from the owner or holder of a protected cultural object any information which they might reasonably deem necessary for the performance of the duties for which they are responsible under the provisions of this Act.
2. They shall be authorised to order the occupant of a dwelling to show them the protected cultural object which is located therein.
3. They shall be authorised to examine and copy any documents relating to a protected cultural object, insofar as this might reasonably be deemed necessary for the performance of the duties for which they are responsible under the provisions of this Act.

#### **Section 19**

Parts 4 and 5 of Chapter V of the Customs and Excise Act shall apply mutatis mutandis to the officers referred to in section 15, subsection 2.

## Chapter 5 Final Provisions

### Section 20

(lapsed)

### Section 21

Having heard the Council, further rules may be laid down by order in council to implement this Act,

### Section 22

1. This Act may be cited as the Cultural Heritage Preservation Act.
2. It shall enter into force on a date to be determined by Us, which date may differ for each of the sections<sup>2</sup>
3. Articles 429a to 29r of the Code of Civil Procedure shall enter into force for the matters referred to in section 12 on the same date as section 12 enters into force.

We order and command that this Act shall be published in the Bulletin of Acts and Decrees (Staatsblad) and that all ministries, authorities, bodies and officials whom it concerns shall diligently implement it.

Done at The Hague on 1 February 1984

Beatrix

L.C. Brinkman

Minister for Welfare, Health and Cultural Affairs

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<sup>2</sup> The Cultural Heritage Preservation Act entered into force on 25 May 1985, pursuant to article 12 of the Cultural Heritage Preservation Decree (Bulletin of Acts and Decrees 1985, 262)

Published on the eighth of March 1984

F. Korthals Altes

Minister of Justice

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## Cultural Heritage Preservation Decree

Decree of 13 March 1985 (Bulletin of Acts and Decrees 262), comprising an order in council implementing section 3, subsection 3 and section 21 of the Cultural Heritage Preservation Act<sup>3</sup>.

We Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

On the recommendation of 12 July 1984 of Our Minister for Welfare, Health and Cultural Affairs, Museums, Monuments and Archives Department, no. MMA/U-135161;

Having regard to the provisions of section 3, subsection 3 and section 21 of the Cultural Heritage Preservation Act (Bulletin of Acts and Decrees 1984, 49);

Having heard the National Commission for Museums;

Having heard the Council of State (recommendation no. W13.84.0380/24.4.46 of 13 November 1984);

Having seen the further report of 4 March 1985 of Our Minister for Welfare, Health and Cultural Affairs, Museums, Monuments and Archives Department, no. U 16360;

Have approved and decreed:

### Part 1      General Provisions

#### Article 1

The following definitions shall apply for the purposes of this decree:

- a.    the act: the Cultural Heritage Preservation Act;
- b.    the list: the list referred to in section 2, subsection 1 of the act.

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<sup>3</sup> Amended by the decrees of 30 January 1987 (Bulletin of Acts and Decrees 196), 21 September 1989 (Bulletin of Acts and Decrees 434) and 23 December 1993 (Bulletin of Acts and Decrees 541)

## Article 2

1. An object shall be deemed to have such cultural-historical or scientific value that it should be preserved as part of the Dutch cultural heritage and should thus be placed on the list, if it may be regarded as irreplaceable and indispensable.
2. An object shall be deemed irreplaceable within the meaning of paragraph 1 should no, or hardly any other similar objects or objects of a similar type to be found in good condition in the Netherlands.
3. An object shall be deemed indispensable within the meaning of paragraph 1 if it possesses one or more of the following characteristics:
  - a. symbolic value, meaning that the object or collection serves as a clear memorial to persons or events which are of evident importance to the history of the Netherlands;
  - b. a link function, meaning that the object serves as an essential element in a development which is of evident importance to the practice of science in the Netherlands, including the study of the history of culture;
  - c. a benchmark function, meaning that the object makes an essential contribution to research into or knowledge of other important artistic or scientific objects.
4. A collection shall be deemed to be of such cultural-historical or scientific value that it should be preserved as part of the Dutch cultural heritage and should thus be included on the list if the entire collection, or one or more of the objects that form an essential part thereof, meet the requirements specified in paragraph 1.

## Part 2      The list

### Article 3

The list shall comprise two main categories:

- a.    protected objects, and
- b.    collections.

### Article 4

Each main category shall be divided into the following sub-categories:

- 1: the Fine Arts
- 2: History
- 3: Natural History

### Article 5

Having heard the Council, Our Minister shall determine in which category protected objects or collections should be placed. Should an object or collection fall into more than one category, placement under one category shall suffice.

### Article 6

The pages on which protected objects are listed shall be subdivided into three columns, the first for a brief description of the protected object, the second for the reason for its placement on the list and the third for special remarks.

### Article 7

1.    The pages on which collections are listed shall be subdivided as specified in the foregoing article. However, in the column reserved for a brief description of the collection, reference to a separately numbered annexe shall suffice.
  
2.    The list of objects belonging to the collection, the description of the elements common to these objects and the description of the collection, as referred to in section 2, subsection 2 of the Act, shall be included in



the annexe referred to in paragraph 1.

#### **Article 8**

The following shall in any event be included in the column for special remarks: the date and number of the decision placing the object on the list, the date on which the owner gave the permission referred to in section 2, subsection 3, second sentence of the act, the number and a short summary of any decisions or rulings given by Our Minister or the ordinary or administrative court concerning the object or collection after its placement on the list, provided they make no reference to the owner or location of the protected object apart from the fact that the former has granted permission.

#### **Article 9**

Instead of the description of a protected object or collection as referred to in articles 6 and 7, a photograph or other reproduction of the protected object or collection may, in consultation with the owner, be attached to the list.

### **Part 3        Notifications**

#### **Article 10**

Our Minister may lay down further provisions relating to the form and content of the notification referred to in section 7, subsection 3, second sentence of the act. The decision shall be announced in the Government Gazette.

#### **Article 11**

This decree may be cited as the Cultural Heritage Preservation Decree.

#### **Article 12**

The Cultural Heritage Preservation Act shall enter into force on the second day following the publication of the Bulletin of Acts and Decrees in which this decree is published. This decree shall enter into force on the same date.

We order and command that this decree and the accompanying Explanatory Memorandum shall be published in the Bulletin of Acts and Decrees and that a copy thereof shall be forwarded to the Council of State and the Court of Audit.

The Hague, 13 March 1985

Beatrix

The Minister for Welfare, Health and Cultural Affairs,  
L.C. Brinkman

Issued on the twenty-third of May 1985

The Minister of Justice,  
F. Korthals Altes